Amanda Holt's Testimony, 3/27/18

The legislation before you proposes to take the map drawing power away from the legislature and place it in the hands of citizens. But I ask you: how would this change improve the checks and balances in redistricting?

James Madison noted in 1788 how human nature leads to abuses in government:

> "What is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself."

The founders acknowledged the need for controls in government by creating a system of checks and balances. These controls were not only through a separation of powers, but also through the laws they enacted. They referred to the absence of these checks and balances as tyranny, usurpation, and the end of free government.

So, when it comes to redistricting, how are the checks and balances working? Do those involved have a sufficient legal obligation to control their actions in the redistricting process?

Some are concerned the legislature overstepped its bounds in drawing the 2011 congressional map. Others are concerned that the Pennsylvania Supreme Court overstepped its bounds in finding the map unconstitutional and in how it provided for a remedy. All of these concerns point to the same missing piece in the redistricting process – the absence of a clear and measurable standard.

And this is a significant shortcoming in the legislation before you. Citizens, like politicians, are people too. So where is the obligation for the map drawers to control their actions?

Other states have proven a measurable standard is a win for both legislators and citizens. They protect map drawers who adhere to the standard from a court challenge. But the measurable rule also protects the people by allowing them to hold accountable map drawers who violate the standard.

I urge you to first address the underlying, more fundamental flaw exposed in redistricting in recent times before turning your attention to other reforms. If the same flawed redistricting process is handed off to another body, what has been gained?

It is up to each one of you to promote good governance. Will you take the advice of James Madison and other founders by inserting a redistricting control which map drawers will be obliged to follow? Or will you leave the redistricting process without adequate checks and balances, exposing the people to tranny, usurpation, and the end of free government?

I ask you to set aside self-interest and personal ambition. I ask you to follow the example of the great founders of our nation and commonwealth. I ask you to choose to defend the people and their voice in your decision on this important topic.

Cases of Interest

Cases where state districts were overturned for failure to create map with fewest splits possible or upheld for having created fewest splits possible (http://www.ncsl.org/research/redistricting/redistricting-case-summaries-2010-present.aspx)

- **Twin Falls County v. Idaho Comm'n on Redistricting, No. 39373, 2012, 271 P.3d 1202 (Idaho 2012).**
  - The Idaho Supreme Court interpreted the requirements of art. III, § 5, as being mandatory, thus holding that the only permissible reason to deviate from art. III, § 5, was to comply with the Equal Protection Clause, and only then to the smallest extent necessary. Because the commission had considered plans that split fewer counties and also complied with the Equal Protection Clause, the plan the commission ultimately adopted did not split as few counties as was practicable. Thus, the commission's plan violated the Idaho Constitution. The court directed the commission to reconvene and adopt new maps that complied with the mandates of both the federal and state constitutions.
- **In re Reapportionment of the Colo. Gen. Assembly, No. 11SA282, 332 P.3d 108 (Colo. Nov. 15, 2011).**
  - The commission's plan that the legislature ultimately adopted split several counties around Denver into multiple districts, claiming this was necessary to comply with the Voting Rights Act. The challengers to the maps said there was no evidence indicating a need to create majority-minority districts in either of the contested counties (Jefferson and Arapahoe), and thus the commission needlessly violated art. V, § 47(2)'s prohibition on minimizing the number of cities and towns with multiple districts. The Supreme Court held that the commission had not established a need to comply with the Voting Rights Act, and thus it improperly infringed on the commands of § 47(2). The districts were remanded to the commission to be redrawn correctly.
- **Legislative Research Commission v. Fischer, No. 2012-SC-000091 (Ky. Apr. 26, 2012)**
  - On appeal, the Kentucky Supreme Court noted that it had previously adopted a limit on population deviations of plus or minus 5 percent from the ideal, rather than the federal limit of 10 percent on the overall range of deviations. At least one district in each plan had a deviation of more than 5 percent, which was not saved by having other districts less than 5 percent. The court held that the Legislative Research Commission had not carried its burden of proving the excessive population deviation was a result of a consistently applied rational state policy. Since plaintiffs had demonstrated that fewer county splits and population deviations of no more than five percent could be achieved in both the House and Senate, the new maps adopted by the legislature in 2011 were unconstitutional.
- **Moore v State, 436 S.W. 3d 775 (Tenn. Ct. App. 2014)**
  - Article II, § 6 of the Tennessee Constitution prohibits splitting counties to form senatorial districts. In 2012, the General Assembly adopted a Senate redistricting plan splitting eight counties with an overall population range of 9.17 percent. Plaintiffs challenged the constitutionality of the plan based on county splitting and offered a plan that split five counties with an overall population range of 10.05 percent as a plan more compliant with the Tennessee Constitution. No plan splitting fewer counties with an overall population range under either 9.17 percent or 10 percent was offered as an

alternative. Affirming summary judgment in favor of the state, the Tennessee Court of Appeals found that the state demonstrated that crossing county lines was necessary to best achieve population equality on balance with the state constitutional interests.

- **Tennant v. Jefferson County, No. 11-1184, 567 U.S. ____ (Sep. 25, 2012)**
  - The Jefferson County Commission and residents of Jefferson County alleged that West Virginia's 2011 congressional plan violated the "one-person, one-vote" principle of Article I, § 2, of the U.S. Constitution. West Virginia created a redistricting plan that had a maximum population deviation of 0.79 percent (the variance between the smallest and largest districts). The State conceded that it could have made a plan with less deviation, but that other traditional redistricting principles such as not splitting counties, avoiding contests between incumbents, and preserving the cores of prior districts were legitimate state objectives. The district court held that "the State's asserted objectives did not justify the population variance." The U.S. Supreme Court held that the legislature did provide a sufficient record connecting the State's interests and the necessary deviation needed to sustain those interests. The court reversed and remanded the case to the district court.
- **Bingham County v. Comm'n for Reapportionment, 2002 Opinion No. 30, 137 Idaho 870, 55 P.3d 863 (Idaho Mar. 1, 2002)**
  - On remand, the Commission adopted a new plan, L91, on January 8, 2002. The plan had an overall range of 11.79 percent and detailed Findings and Conclusions. The Court found that the rational state policies used by the commission—preserving whole counties and preserving traditional neighborhoods and communities of interest—were not applied consistently statewide. It also found that the plan violated the Idaho Constitution by dividing counties more than was necessary to meet equal-population requirements. Following the statutory policy of preserving traditional neighborhoods and communities did not justify violating the constitutional prohibition against splitting counties. The Court directed the Commission to reconvene and adopt a new legislative plan.
- **Bonneville County v. Ysursa, 2005 Opinion No. 138, 142 Idaho 464, 129 P.3d 1213 (Idaho Dec. 28, 2005)**
  - In March 2002, the Commission adopted plan L 97. The plan had a "maximum deviation" (overall range) of 9.71 percent. Various counties, voters, and state representatives challenged the plan as a violation of both the federal one person, one vote requirement and state constitutional and statutory requirements for the district-drawing process. The Supreme Court appointed a special master to develop a factual record. The special master submitted his report in September 2004. In December 2005, the Court rejected all challenges. It found that the underpopulation of districts in "north" Idaho did not discriminate against voters in not-"north" Idaho, since the population deviations were within tolerable limits and there was no evidence of an intent to discriminate against not-"north" Idaho. It found that the Commission had not abused its discretion in deciding which counties to split and in what ways in order to meet equal-population requirements.