

**Summary of SC92237, *State ex rel. Molly Teichman v. Robin Carnahan, et al.***

Original proceeding in this Court seeking a writ of mandamus or prohibition  
Argued and submitted January 12, 2012; opinion issued January 17, 2012.

**Attorneys:** Molly Teichman was represented during arguments by David G. Brown of the Brown Law Office LC, in Columbia, (573) 814-2375; and Robin Carnahan, et al., was represented by Deputy State Solicitor Jeremiah J. Morgan of the attorney general's office in Jefferson City, (573) 751-3321.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** Pursuant to art. III, secs. 2 and 7, of the Missouri Constitution, a state bipartisan reapportionment commission of citizens was appointed to develop new apportionment plans and maps for the state Senate. That commission failed to file the required plans and map with the secretary of state (Robin Carnahan) by the September 18, 2011, deadline prescribed by art. III, secs. 2 and 7. Under art. III, secs. 2 and 7 and art. V, sec. 4.3, this Court was then required to appoint six appellate judges to serve as a nonpartisan reapportionment commission to file its plans and maps within 90 days of September 18, 2011 (i.e., December 17, 2011). The nonpartisan reapportionment commission filed its initial plans and maps on November, 30, 2011. On December 9, 2011, it sought to withdraw its initial map and file a new map “upon further consideration of a constitutional provision regarding multi-district counties.”

Teichman seeks a writ to prevent the secretary of state from using either Senate map filed by the nonpartisan reapportionment commission. In a per curiam decision that cannot be attributed to any particular judge and that is joined by all participating judges, the Supreme Court of Missouri concludes that once the original plans and maps were filed by the commission as a body, as required by the constitution, the commission had no authority to revise the reapportionment process on its own volition even if a majority of the members of the commission recognized a constitutional infirmity in the plan and map that earlier had been unanimously signed and filed. The original plan and map violates a clear and express constitutional limitation regarding the splitting of counties and is, therefore, invalid.

Article III, sec. 7, of the Missouri Constitution expressly contemplates reapportionment of state senatorial districts following the occurrence of either of two separate events: first, after the decennial census and, second, after the invalidation of a reapportionment by a court of competent jurisdiction. The facts necessary to analyze this case are undisputed. Under the facts of this case, both triggering events have occurred, and the process required by art. III, sec. 7, compels the legislative process to be redone in accordance with its terms.

In light of the foregoing, a writ of prohibition is directed to issue to the secretary of state prohibiting her from using the original or revised Senate plan and map submitted by the nonpartisan reapportionment commission.

**Facts:** Pursuant to art. III, secs. 2 and 7, of the Missouri Constitution, after each decennial census of the United States, a state bipartisan reapportionment commission of citizens must be appointed to develop new apportionment plans and maps for the Senate. The commission has six months to file with the secretary of state a final statement of the numbers and boundaries of the districts, together with a map of the districts. In this case, the commission failed to file the specified materials.

When the bipartisan commission failed, the Supreme Court, as specified in art. III, sec. 7, appointed six judges from the Missouri court of appeals ("the nonpartisan reapportionment commission") to develop new redistricting plans and maps for the state. On November 30, 2011, the nonpartisan reapportionment commission unanimously approved, signed and filed with the Secretary of State a reapportionment plan and related maps redistricting the boundaries for the Missouri Senate. On December 9, 2011, the nonpartisan reapportionment commission purported to withdraw the plan it had submitted previously and filed with the secretary of state a "revised" (second) Senate reapportionment plan purporting to supersede the original one. The nonpartisan commission noted it had "opted to revise the plan upon further consideration of a constitutional provision regarding multi-district counties."

Teichman contends that the revised reapportionment plan, and related maps filed with the secretary of state by the nonpartisan reapportionment commission is invalid because the commission lacked authority to withdraw its original plan in lieu of a revised plan. She further argues that the first plan also is invalid because it violates art. III, sec. 7, of the constitution with respect to the provision that "no county lines shall be crossed except when necessary to add sufficient population to a multi-district county or city to complete only one district which lies partly within such multi-district county or city so as to be as nearly equal as practicable in population."

## **WRIT DIRECTED TO ISSUE TO SECRETARY OF STATE.**

**Court en banc holds:** The issuance of a writ of prohibition is discretionary but this Court's precedent supports the issuance of a writ of prohibition when the actual case in controversy involves the election of public officials, there is no adequate legal remedy under time constraints applicable, and there is no time for a lower court of competent jurisdiction to address the case.

The reapportionment of the senate districts and preparation of the map continues to be a legislative function despite the constitution's requiring appellate judges to draw the lines. After appointment of the nonpartisan reapportionment commission, this Court

had no further right or responsibility regarding the reapportionment process until this petition was filed.

The constitution expressly provides that, while the commission may generally not cross county lines when reapportioning senate districts, in dividing multi-district areas, county lines may be crossed no more than once, if necessary to complete a district that would otherwise have insufficient population to constitute its own district. The nonpartisan reapportionment commission's initial plan filed on November 30, 2011, violated this constitutional provision by improperly dividing the district boundaries in the multi-district areas of Jackson and Greene Counties. In particular, the plan for the multi-district area of Jackson County included two districts, districts 8 (which crosses into Cass County), and 10, (which crosses into Cass and Clay Counties), which crossed county lines. Likewise, the multi-district area of Greene County was reapportioned such that both districts 20 (which crosses into Christian, Douglas, Greene, Webster, and Wright Counties) and 28 (which crosses into Barton, Cedar, Dade, Dallas, Greene, Polk, and Vernon Counties) crossed county lines.

The nonpartisan reapportionment commission is a constitutionally created commission of limited authority. What is not explicitly stated in the provisions of the constitution granting the commission its power and not implicitly necessary to carry out its express duties, therefore, lies outside of its power. Once the nonpartisan reapportionment commission's reapportionment plan has been signed by a majority of the nonpartisan reapportionment commission and filed with the secretary of state, "senators shall be elected according to such districts until a reapportionment is made as herein provided." The fact that the nonpartisan reapportionment commission could have taken more time prior to filing its plan and related maps does not rectify the consequence that once it did its express duty, it had no further authority.

Allowing the nonpartisan reapportionment commission to revise its plan and map after signing and filing it also runs afoul of the common law doctrine of *functus officio*. The Latin phrase "*functus officio*" refers to a public official or public official body being "without further authority or legal competence because the duties and functions of the original commission have been fully accomplished."

Neither does this Court have the authority to send the matter back to the commission with directions to prepare and file a revised plan and map that comply with the constitution. Art. III, sec. 7, itself, provides an express remedy in the event that the plan is found invalid by a court of competent jurisdiction. It states that "within sixty days after notification by the governor that a reapportionment has been invalidated by a court of competent jurisdiction" the reapportionment process must be restarted.

In light of the foregoing, a writ of prohibition is directed to issue to the secretary of state prohibiting her from using the original or revised Senate plan and map submitted by the nonpartisan reapportionment commission.