

Statement of Charles P. Blahous¹
Before the State Government Committee of the Pennsylvania House of Representatives

July 22, 2021

Thank you, Chairman Grove, Democratic Chair Davidson, and all the members of this Committee. I appreciate the opportunity to testify today about considerations in the drawing of congressional district boundaries.

The findings I will summarize today are drawn from my 2019 study, “Thinking Apolitically about Gerrymandering.” Before summarizing the findings, I wish to stress that this research explored *general* issues associated with redistricting, but not issues *specific* to Pennsylvania or any other individual state.

My testimony presents four findings to the committee:

- 1) Gerrymandering is a genuine problem that is creating observable, adverse consequences;
- 2) Our longstanding system of congressional representation is based on where we live; any other criterion employed to guide redistricting must ultimately be subordinated to that foundational principle;
- 3) Fair districting is more a matter of geography than of politics;
- 4) There are simple mathematical tools available to constrain gerrymandering, as tightly or as loosely as you choose.

Finding #1: Gerrymandering Is a Genuine Problem with Adverse Consequences

Gerrymandering is generally defined as the warping of legislative district boundaries for the purpose of political advantage. Strong majorities of Americans express opposition to gerrymandering, irrespective of their political affiliations. Among the concerns commonly expressed are that gerrymandering reduces elected officials’ accountability to voters, that it unfairly disadvantages some voters relative to others, that it fosters political polarization, and that it results in governing decisions that diverge significantly from the preferences of the median voter. Research finds that there is validity to these concerns and that the expected adverse consequences of gerrymandering are observed in practice.

As my study notes, “to the extent that gerrymandering achieves political advantage, it reduces the chances that the districting party’s candidate will lose a general election . . . relative to the risk of that candidate’s losing (to) a primary challenge. . . Primary challenges to incumbents . . . should . . . become more attractive to potential challengers. . . .Gerrymandering should be expected furthermore to reduce officeholders’ incentives to reach policy agreements with . . .

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officials of an opposing political party, because of these officeholders' reduced need to appeal to cross-party voters in a general election, combined with their increased need to appeal to their own party's electors in a potentially contested primary." This is all a long way of saying that gerrymandering makes general elections less competitive, primary challenges more attractive, and legislative behavior more partisan.

These expected effects of gerrymandering are observed: We do see increased competitiveness in primary elections relative to general elections, we see widening gaps between the positions of officials in opposing parties, and we see several other effects detailed in my longer study. To take but one example, between 2004 and 2016, the number of congressional districts that were more competitive in the primary contest than the general election roughly doubled.²

There is reason to believe that the effects of gerrymandering may be self-reinforcing. Various studies document the "echo chamber" effect, where persistent exposure to like-minded viewpoints renders us less open to seeing the merits of opposing views, and less able to identify the factual basis for decision-making.³ Thus, to the extent gerrymandering rewards voters for clustering with others who share their political opinions, and to the extent this self-separation distorts the information flow through which voters and candidates move, it may foster increased polarization. Importantly, this concern applies with equal force to proposed remedies for gerrymandering, as I will later discuss. A supposed remedy is no remedy at all if it leaves these adverse effects unchecked.

We must remember that not all of these concerning trends can be blamed on gerrymandering. Many societal factors may contribute. Indeed, we see evidence of these trends even in places where gerrymandering is not a factor, such as the United States Senate, and states with only one congressional district. However, this only renders it more important that congressional district lines not be drawn in a manner that exacerbates these problems.

Finding #2: Our System of Congressional Representation Is Based on Where We Live

When analyzing and addressing gerrymandering, it is important to bear in mind that the foundational principle of our system of representation is that our representatives be elected by voters who live relatively near one another.

Americans have an instinctive feel for this principle. If you vote in one district but your neighbor down the street votes in another, you sense that something is wrong. If you look at a congressional district map and see districts twisting here and there in wildly irregular shapes, you sense that something is wrong. The reason you sense this is that we have internalized the principle that we should form voting constituencies with those who live near us.

This organizing principle for our elections was not inevitable, and it was not accidental. We could have arrived at a very different system for selecting our representatives. The U.S. Constitution's dictates on this point are vague. It delegates to state legislatures the power to

² Charles Blahous, "Thinking Apolitically about Gerrymandering," Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, July 2019, 8-9.

³ Nicholas DiFonzo, "The Echo-Chamber Effect," *New York Times*, April 22, 2011.

determine how senators and representatives are elected, while providing the U.S. Congress with the power to “make or alter” such regulations.⁴ Conspicuously absent from the Constitution’s Elections Clause is any requirement that U.S. Representatives be chosen by dividing states into separate congressional districts.

In theory, the wording of the Constitution considered by itself would permit states to employ entirely different systems for choosing representatives. For example, instead of a system of individual congressional districts, states could have statewide elections, awarding seats to representatives of opposing political parties in proportion to the shares of the statewide vote each party receives. The reason states do not currently employ such proportional representation systems is not because of the wording of the Constitution, but because of a national consensus for districting by residence that formed over the succeeding centuries, and which has been frequently codified in federal apportionment law.

For example, the 1842 federal Apportionment Act specified that members of Congress “shall be elected by districts composed of contiguous territory equal in number to the number of Representatives to which said State may be entitled, no one district electing more than one Representative.”⁵ The 1901 Apportionment Act went further, specifying that districts must be composed of “contiguous and compact territory and containing as nearly as possible an equal number of inhabitants.”⁶

There was a period of the 20th century during which states had the latitude to create multimember congressional districts if they chose, and some did. In 1967, however, federal law restored the requirement that each district only elect one representative (though with an exemption for states that had used multimember districts in all previous elections).⁷ There have also been times when federal law has not specified that congressional districts must have populations as nearly equal as practicable, but the U.S. Supreme Court established in *Wesberry v. Sanders* (1964) that the Constitution requires that they must.⁸ The contiguousness and compactness requirements of previous federal apportionment acts are no longer specified in current federal law.

The U.S. Constitution as well as multiple federal apportionment laws could quite easily have eliminated the practice of gerrymandering simply by requiring that states choose their representatives via a method designed to prevent it, such as proportional representation of different parties or political groups. However, they did not. We have instead inherited a system of representation that is not designed to eliminate political asymmetries. To the contrary, a district-based system renders it virtually inevitable that there will be some differential political impact, a nearly unavoidable consequence of any system in which representatives are chosen by geographical district rather than at-large.

While the federal compactness requirement for shaping congressional districts has lapsed, a number of states maintain statutory compactness requirements (and even more states, including

⁴ U.S. Constitution art. I, § 4.

⁵ 27 Cong. Ch. 47, June 25, 1842, 5 Stat. 491.

⁶ 56 Cong. Ch. 93, January 16, 1901, 31 Stat. 733-734.

⁷ Public Law 90-196, December 14, 1967. 81 Stat. 581.

⁸ *Wesberry v. Sanders*, 376 U.S. 1, 7-8, 18 (1964).

Pennsylvania, maintain them for state legislative districts).⁹ It is typical for these compactness requirements to be general rather than precisely defined or quantified. However, as my testimony will later explain, even a vague compactness requirement seems to be more effective than none, because the most highly gerrymandered districts appear where such compactness requirements are absent.

Future efforts to constrain gerrymandering, in the manner most consistent with longstanding consensus principles, would focus on limiting the irregularity of district boundaries, a characteristic that can be objectively measured and controlled -- rather than on divining, dictating or circumscribing mapmakers' subjective considerations.

Finding #3: Fixing Gerrymandering Is More about Geography than about Politics

Living as we do in a time of intense partisanship, it has become common for many advocates to discuss redistricting reform in terms of redistributing power between political parties. This is problematic for many reasons.

First, although our political opinions, affiliations and allegiances may be dear to many of us, the blunt truth is that the U.S. Constitution is indifferent to them, as is the basic structure of our representational system. In fact, many of the drafters of the Constitution were abidingly fearful of political parties and factions of any kind, and the last thing they would have done would have been to structure our Constitution to protect or institutionalize them. So, while we have rights as *individuals* to equal treatment under election law, we do not have the right to demand proportional representation of any particular political group to which we might attach ourselves.

The U.S. Supreme Court has spoken to this point in many rulings, perhaps most emphatically in its *Vieth* decision: "The Constitution provides no right to proportional representation. . . . It guarantees equal protection of the law to persons, not equal representation . . . to equivalently sized groups. It nowhere says that farmers or urban dwellers, Christian fundamentalists or Jews, Republicans or Democrats, must be accorded political strength proportionate to their numbers."¹⁰ The opinion's listing of these disparate types of groups, from political parties to religious groups to professional interests makes an important point, which is that nothing in our constitutional election framework privileges political parties relative to any other method of grouping people. Certainly, district mapmakers *can*, if they choose, consider the impact of district boundaries on opposing political parties, but there is nothing requiring them to do so.

To the contrary, there is an inherent conflict between districting with the intent of grouping voters *geographically*, and districting with the intent of achieving a particular *political* outcome – irrespective of whether the desired outcome is maximizing one party's advantage relative to another's or ensuring perfectly equal or proportional treatment of each. Indeed, the very purpose of districting by region is inherently undermined by gerrymandering districts into irregular shapes, regardless of whether the gerrymandering's purpose is partisan, bipartisan, multipartisan

⁹ Doug Spencer, "Where Are the Lines Drawn?," *All About Redistricting* (Loyola Law School), accessed July 15, 2021, <https://redistricting.lls.edu/redistricting-101/where-are-the-lines-drawn/#compactness>.

¹⁰ *Vieth v. Jubelirer*, 541 U.S. 267, 288 (2004).

or nonpartisan. A truly effective limitation on gerrymandering is one that requires districts to be compact, and which limits the scope for indulging mapmakers' political considerations, whatever they may be.

Gerrymandering and partisan advantage are separable concepts. Gerrymandering can and does occur for many reasons other than partisan advantage, such as protecting powerful incumbents, punishing intraparty dissent, or ensuring adequate representation of historically underrepresented groups. By the same token, partisan advantage may exist for reasons unrelated to gerrymandering, as in illustrative Figures 1 and 2.

Figure 1

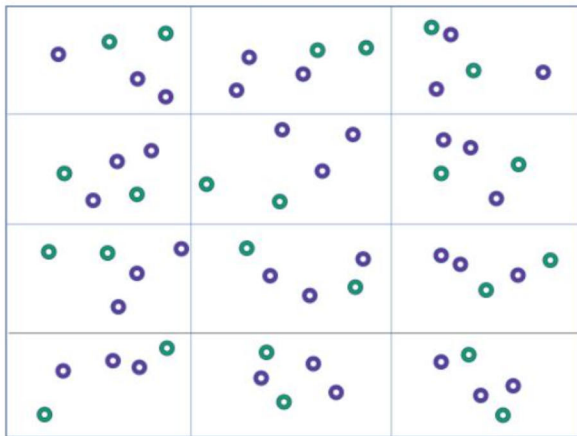
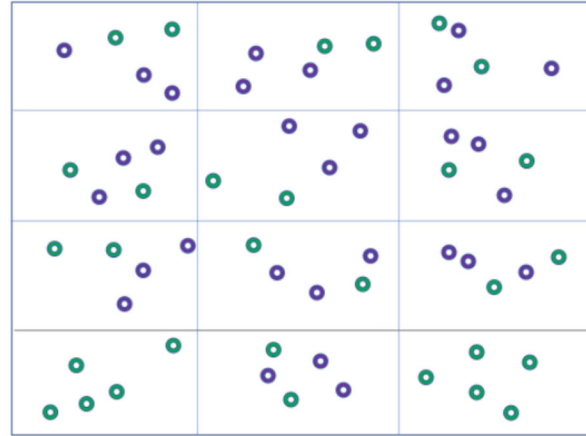


Figure 2



Figures 1 and 2 depict two imaginary states, each with twelve legislative districts, with voters represented by purple or green circles signifying their preference for either a purple or green state flag. In the imaginary state depicted in Figure 1, 60% of the voters favor a purple flag. There is no gerrymandering whatsoever in the state; each one of its twelve districts is exactly the same size and shape and contains the same number of voters. Yet in Figure 1, purple representatives would make up 100% of the legislature. In the state depicted in Figure 2, the purple party constitutes 50% of the voting public and yet controls 83% of the seats. Various metrics that have been developed to measure gerrymandering in political terms, for example the “efficiency gap,” would mistakenly conclude that both of these maps were highly gerrymandered when they are in fact not gerrymandered at all. One would actually need to engage in fairly aggressive gerrymandering to eliminate the “efficiency gap” between the purple and green parties in both of these examples.

Accordingly, gerrymandering cannot effectively be constrained by mechanisms designed primarily to engineer *political* outcomes. Special districting commissions have been found to produce maps that are less likely to be challenged by opposing political advocates, but not necessarily superior or less gerrymandered maps.¹¹ They may simply require that

¹¹ Peter Miller and Bernard Grofman, “Redistricting Commissions in the Western United States,” *UC Irvine Law Review* 3, no. 3 (2013): 666.

gerrymandering benefit a different constellation of political interests. The same is true of relying on computer models to draw maps, if those models are programmed to balance political interests rather than to minimize gerrymandering itself.

Perhaps the most important reason not to conceive of redistricting reform as a partisan balancing act is that doing so is unresponsive to its observed adverse consequences. If a purported reform simply results in balancing one party's advantage in one district, with another party's advantage in a different district, then we would expect all of the problematic effects described today to continue: districts could be irregular in shape, incumbents would still be less responsive to voters, general elections would still grow less competitive relative to primary challenges, and partisan residential separation and political polarization would all continue to worsen.

Thus, while many advocates conceive of gerrymandering reform as an exercise in political rebalancing, approaching the task in that manner is unresponsive to the larger public interest, and fails to address gerrymandering's observable problematic effects. Properly constructed districts would *lessen* compensations for political separation and polarization, while *bolstering* incentives for effectively communicating and appealing across party lines.

In sum, the only way to constrain gerrymandering is to constrain gerrymandering. Fortunately, there are a number of simple mathematical tools available to do so, as I will outline in the next section of my testimony.

Finding #4: There Are Simple Mathematical Tools Available to Constrain Gerrymandering

The irregularity of a congressional district's shape can be defined mathematically. My study notes that there are dozens of preexisting standards and definitions that might be drawn upon for this purpose. Widely available mapping software can analyze district shapes using multiple alternative standards of compactness.¹²

Perhaps the simplest, most intuitive measure of a district's compactness, for purposes of illustration and explanation, is a concept called the "G score," or "gerrymandering score," described by John Mackenzie in his article *Gerrymandering and Legislator Efficiency*.¹³ The G score is simply the ratio of the square of a district's perimeter to its area, with an adjustment factor for the proportion of the district boundary (for example, a portion that is also part of the state border or defined by a shoreline) over which mapmakers lack discretion.

In my study, I suggest that the U.S. Congress would be fully within its well-established authority to specify a minimum standard of compactness that all states must observe when drawing congressional district lines. While my study focuses on federal solutions, there is no reason that Pennsylvania or any other state couldn't enact, or simply choose to observe, such a minimum standard on its own. One very simple way would be to limit the maximum G score of every

¹² Caliper Mapping and Transportation Software Solutions, "Caliper Mapping and Transportation Glossary," accessed July 15, 2021, <https://www.caliper.com/glossary/what-are-measures-of-compactness.htm>.

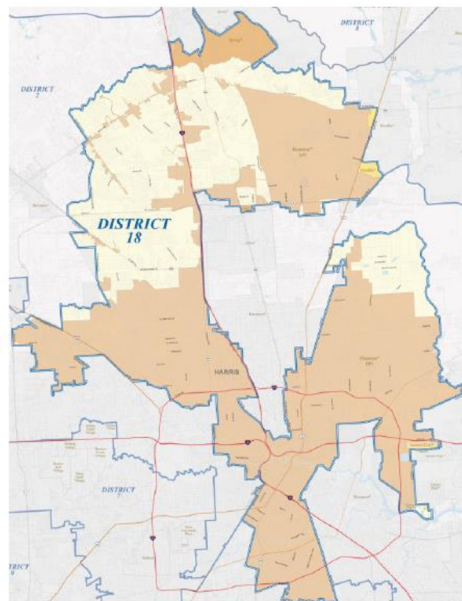
¹³ John Mackenzie, "Gerrymandering and Legislator Efficiency," (Newark, DE: University of Delaware, February 2010).

congressional district so as not to exceed an agreed-upon number. That simple act would constrain the available latitude for gerrymandering either as loosely or as tightly as desired.

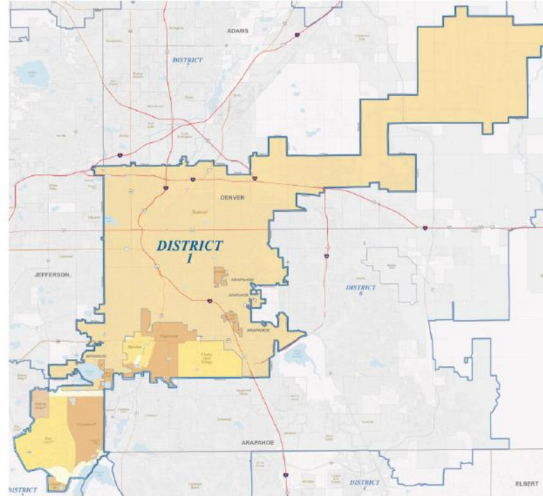
Let me be more specific. The most regular of all two-dimensional shapes is a circle. A circle has a G score of approximately 12.6. A square, another extremely regular shape, has a G score of 16. The more elongated or irregular a shape becomes, the more the G score rises. An equilateral triangle has a G score of about 20.8. A 10-by-1 rectangle has a G score of 48.4.

The most recent U.S. Congress analyzed in my study was the 115th Congress, which served from January 2017 until January 2019. I estimated that 21 congressional districts in that Congress, or roughly 5%, had G scores exceeding 150. Roughly 8% had G scores exceeding 125. In other words, imposing a maximum G score of between 125-150 would have forced redrawing of roughly the most gerrymandered 5-8% of districts (and their adjacent districts as well).

Most people intuitively understand these concepts even if math isn't their preferred way of filtering information. For example, consider the following district (not in Pennsylvania) that has a G score of 152.

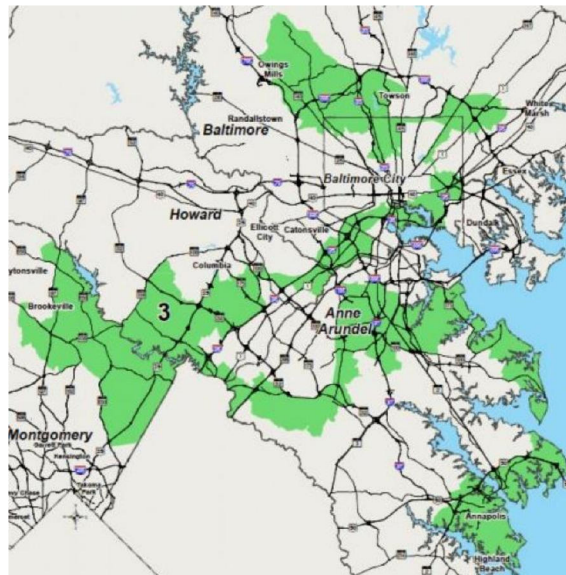


Many people can look at that district, without understanding anything about a G score or how it is calculated, and immediately see that it is highly irregular. To most eyes it will appear deliberately gerrymandered. The following picture is of another district (also not in Pennsylvania), with a G score of 128.



This second district is also quite irregular, though it doesn't exhibit as much warping as the first district shown. Again, even without knowing anything about the calculation of a G score, many people are able to look at these two district maps and see that, while both are irregular to a degree, the first is more distorted than the second.

The most gerrymandered district in the 115th Congress looked as shown in the following image.¹⁴ This district is in a state (not Pennsylvania) that lacks a compactness requirement for congressional districts, as was true of the first example. The ratio of the square of its perimeter, to its area, is an enormous 460. This amount of warping looks inherently scandalous to the layman's eye and is exceptional even in an age of aggressive gerrymandering.



¹⁴ Image created by the Maryland Department of Planning and reproduced from Aaron Blake, "Name That District Contest: Maryland's 3rd," *Washington Post*, October 10, 2011, accessed July 15, 2021, https://www.washingtonpost.com/blogs/the-fix/post/name-that-district-contest-marylands-3rd/2011/10/07/gIQAE0WaL_blog.html.

Before I close, I wish to acknowledge an important point that others have made and will make: that the pursuit of compactness in district shapes guarantees neither that elections within them will be competitive, nor that everyone's idea of fairness will be satisfied. By itself, compactness does not ensure that local neighborhoods or political subdivisions will be respected, or that historically underrepresented groups will be adequately represented. Those considerations would still be left to the discretion of mapmakers.

An important attribute of a compactness standard, however, is that it is *objective*. It reduces the scope for subjective judgments of *all* kinds, whether one regards those judgments as malicious, benign, or necessary. Neutrality and objectivity are important guarantors of legitimacy, especially given that what one political interest sees as vital and good, another may see as partisan mischief.

To the extent a compactness standard is observed, it takes off the table any political agenda that requires dramatic warping of district shapes to achieve. No doubt this is unsatisfying to those looking to assert their cherished objectives in the redistricting process, but then, that is precisely the point. *Objective* standards of compactness force all political interests to compete on a playing field that is constrained to serve the historical purpose of drawing district lines. Indeed, it is the only criterion that is rooted directly in the foundational purpose of districting itself.

I thank the committee for the opportunity to testify and would be pleased to answer questions.