

Written Testimony of

Michael C. Li and Yuriy Rudensky

Brennan Center for Justice at New York University School of Law

Hearing on Congressional Redistricting
Before the House State Government Committee
of the Pennsylvania House of Representatives

July 22, 2021
at 1:30 p.m.

Chair Grove, Vice Chair Davidson, and members of the House State Government Committee:

Thank you for this opportunity to testify in connection with the critically important upcoming redrawing of Pennsylvania's congressional map. Like many states, Pennsylvania has had a troubled history of redistricting. But this decade, with control of the legislative process divided among Democrats and Republicans for the first time in twenty years, the state has a fresh opportunity to create a fairer, more inclusive, and more transparent process.

The Brennan Center for Justice at New York University School of Law is a nonpartisan public policy and law institute that works to reform, revitalize, and defend our country's system of democracy and justice. Through its Democracy Program, the Brennan Center seeks to bring the ideal of representative self-government closer to reality. For more than two decades, the Brennan Center has built up a large body of nationally respected quantitative, empirical, legal, and historical research and work on these issues, including in the fields of redistricting and election law. A key focus of our work is fairness for communities of color both in redistricting and in voting.

Our testimony today focuses on how Pennsylvania's past redistricting has failed to live up to basic norms and how it can improve. We are happy to follow up with the Committee with additional information, either on the subject of today's testimony or on other topics.

Pennsylvania's Troubled Recent Redistricting History

At the time of our country's founding, John Adams wrote that legislative bodies should be "in miniature, an exact portrait" of the people as a whole.¹ Indeed, ensuring representation for all communities was a central value underlaying the Revolution. That goal has become only more important as the country has become more diverse.

Unfortunately, many states, including Pennsylvania, have often fallen short of that goal thanks to gerrymandering and other discriminatory linedrawing. Abuses are especially likely to occur when linedrawing is under the control of a single party. In fact, our research shows that more than any other factor, single-party control – whether by Democrats or Republicans – is the biggest predictor of whether a state will experience discriminatory mapdrawing.

In Pennsylvania, single-party control of the congressional redistricting process by Republicans in the last decade produced some of the nation's most skewed and unrepresentative maps and, as importantly, a secretive, closed-door process deeply at odds with how the democratic process should work. In 2011, for example, Republican lawmakers in Pennsylvania did not release a proposed map with the congressional redistricting bill they introduced in September (SB 1249).² Instead, it was not until the morning of committee hearings on the bill that Republicans amended the bill to add descriptions of actual districts.³ Republicans then suspended rules to rush the bill to the floor of the Pennsylvania Senate, where it passed the same day on party lines.⁴ No Democratic member of the General Assembly had seen the map before that morning.⁵ It passed the Pennsylvania House of Representatives less than a week later.⁶

Unsurprisingly given that Democrats were excluded from the process, the map overwhelmingly favored Republicans. Under the redrawn map, Republicans were able to comfortably win 13 of the state's 18 congressional districts in 2012, 2014, and 2016.⁷

¹ John Adams to William Hooper, March 27, 1776, in *Thoughts on Government, Applicable to the Present State of the American Colonies. In a Letter from a Gentleman to his Friend*, ed. Robert J. Taylor (Cambridge: Belknap Press, 1979), accessible online at <http://www.masshist.org/publications/adams-papers/index.php/view/PJA04dg2>.

² *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 743 (Pa. 2018).

³ *Id.*

⁴ *League of Women Voters v. Commonwealth*, 2017 PA Commw. Ct. 261 paras. 126(c), 126(d), 177 A.3d 1010 (Pa. 2017).

⁵ *Id.* paras. 107, 125-28.

⁶ *League of Women Voters of Pa.*, 178 A.3d at 744.

⁷ *Id.* at 764.

Notably, even when Democrats won a majority of the congressional vote, as they did in 2012, Democrats were able to win no more than five congressional seats.⁸

*Pennsylvania Congressional Elections (2012-2016)*⁹

Election	Democratic vote	Republican vote	Democratic seats	Republican seats
2012	50.8%	49.2%	5	13
2014	44.5%	55.5%	5	13
2016	45.9%	54.1%	5	13

This skewed result was all the more remarkable given that Pennsylvania was, and remains, a closely divided battleground state at the statewide level. Barring extreme gerrymandering like that of 2011, a great many districts would be expected to be naturally competitive. For example, under the state's prior map, Democrats won eleven of nineteen congressional districts in 2006, a strong Democratic year, and seven seats in 2010, a weak year for Democrats.¹⁰

But by carefully redesigning the map in 2011 to spread Republican-leaning voters among districts, Pennsylvania Republicans were able to remove that elasticity and create a map that the Brennan Center estimates would net Democrats only five seats under reasonably foreseeable election scenarios and just *six* of eighteen seats even if they won 56 percent of the congressional vote (the same percentage of the vote that Democrats won in 2006 when they won eleven seats).¹¹

Pennsylvania is hardly unique. Around the country, extreme partisan gerrymandering has reached levels unseen in the last 50 years. Research by the Brennan Center shows that skewed maps after the 2010 census consistently gave Republicans 15-17 extra congressional seats over most of the course of last decade.¹² Shifts in political winds have virtually no electoral impact in gerrymandered states. In 2018, a political tsunami year for Democrats, no districts changed parties in Ohio and North Carolina, two states with extremely biased maps. Although Democrats won nearly half the vote in both

⁸ Id. at 765.

⁹ Id.

¹⁰ Id. at 763.

¹¹ Laura Royden, Michael Li, and Yurij Rudensky, *Extreme Gerrymandering and the 2018 Midterm*, Brennan Center for Justice, 2018, 12-14, https://www.brennancenter.org/sites/default/files/2019-08/Report_Extreme_Gerrymandering_Midterm_2018.pdf

¹² Laura Royden and Michael Li, *Extreme Maps*, Brennan Center for Justice, 2017, 6-13, https://www.brennancenter.org/sites/default/files/2019-08/Report_Extreme%20Maps%205.16_0.pdf

states, they won only a quarter of the seats. The overwhelming majority of the seats that did change parties in 2018—72 percent—were drawn by commissions, courts or split-control governments.¹³ Not a single seat in Ohio, in fact, has changed parties all decade.

To be clear, Republicans are not alone in rigging districts to their advantage. A Democratic gerrymander in Maryland has proven to be just as unbreakable in the Republican wave of 2014.¹⁴ Both parties are more than capable and willing to draw districts that primarily serve their partisan ends if given the opportunity, and did so last decade with devastating consequences for American democracy.

Many of last decade's redistricting abuses came at the expense of communities of color. When Republican-drawn maps in Virginia, North Carolina, and Texas were successfully challenged on the grounds that they discriminated against minority voters, the states defended the maps, in part, by arguing that politics, rather than race, had been the driving force behind their maps.¹⁵ Democrats in Maryland, likewise, rejected a congressional map that would have given Black voters additional electoral opportunities because that would have created an additional Republican seat.¹⁶

How the Pennsylvania General Assembly Can Improve Mapdrawing

While congressional redistricting in Pennsylvania has been a secretive and abuse-prone process in the past, this decade can be different. With a divided government and new state-law limits on partisan gerrymandering, Pennsylvania has a chance to depart from its past and create a redistricting process that is transparent and incorporates the public and public input in a meaningful way. The following are best practices derived from Brennan Center research:

Clearly explain the process and the rules. Tell the public in advance what process you will use in drawing maps, including the order and priority of rules used for drawing maps. This is especially important for any ad hoc or informal rules adopted by the General Assembly beyond those imposed by federal or state law. Explaining these supplemental principles and how they will be prioritized will allow the public to better gear its testimony toward what is relevant. To

¹³ Annie Lo, "How Did Democrats Flip the House? Fairer Maps," Brennan Center for Justice, November 12, 2018, <https://www.brennancenter.org/our-work/analysis-opinion/how-did-democrats-flip-house-fairer-maps>.

¹⁴ *Benisek v. Lamone*, 266 F.Supp.3d 799, 810 (D. Md. 2017).

¹⁵ Guy-Uriel E. Charles and Luis Fuentes-Rohwer, "Race and Representation Revisited: The New Racial Gerrymandering Cases and Section 2 of the VRA," *William and Mary Law Review* 59 no. 5 (2018): 1559-1600.

¹⁶ Aaron C. Davis, "Redistricting in Md. Has Element of Racial Friction," *Washington Post*, July 24, 2011, https://www.washingtonpost.com/local/dc-politics/redistricting-in-md-has-element-of-racial-friction/2011/07/23/gIQAU86MXI_story.html?utm_term=.b84f2191878d.

ensure that these rules align with what the public wants, states should ideally have a public hearing before finalizing a decision on rules.

Explain in advance what you want in testimony. For most of the people testifying at redistricting hearings, it will be their first time doing so. This is likely especially to be the case in 2021. Setting out in advance in detail the type of information that would be most useful to mapdrawers and a clear structure for providing that information will help structure and streamline testimony. These guidelines can be general to the whole state (e.g., define your most important community) or particular to specific regions where especially complicated decisions will have to be made.

Make data available. All data used for redistricting purposes should be made available online and at no cost in an easily useable format. Data should be made available as soon as decisionmakers determine which datasets will be used and as soon as that data is available to lawmakers. This will let the public both evaluate proposed maps and submit their own.

Let people comment after maps are drawn. It is important to leave sufficient time for the public to comment on maps *after* they have been proposed and before a vote on adoption. Many members of the public will not have the ability to draw their own maps, and their abstract testimony before maps are drawn may be too generalized to be helpful. But once a map is in front of them, they often will have very useful particularized comments about where a map could be improved.

Be prepared for volume. Interest in redistricting is exploding. Hearings on redistricting reform bills now often attract hundreds of people with very little notice. It will be wise to make sure that resources, staffing, and the number of hearings are adequate to accommodate this heightened interest.

Engage (selectively) with people testifying. Although the normal process in most states is to take testimony without asking questions, limited questioning can be helpful in evaluating what are real comments and what are comments planted by interested parties.

Establish a clear schedule. Public participation works best when the public has adequate notice of hearings and opportunities to participate. This is important both for the hearings before maps are drawn and those after. No hearings or meetings should take place without at least seven days' advance notice--but the more the better.

Conclusion

Redistricting has often been viewed as a political blood sport. It need not be. With divided government in this round of Pennsylvania redistricting, the state has a unique opportunity to leave its troubled redistricting history behind and create an open, transparent, and inclusive process for how maps are drawn. The public and, indeed, many members of this body are eager to change the way Pennsylvania draws maps, as evidenced by bipartisan support for redistricting reforms. Although it is too late to wholly reform the redistricting process for this decade, there is nonetheless much that the General Assembly can do to fix a broken system. It should do so because the people of Pennsylvania deserve no less.