Redistricting Testimony by Amanda Holt

July 22, 2021

State Government Committee Hearing
House of Representatives

Summary of Key Points

1. Without a standard, it is impossible to uniformly evaluate a Congressional Plan.

2. Established rules leave much up to interpretation and supposition.

3. Clear and measurable standards are needed to safeguard the map drawing process.

4. Five basic criteria form a solid foundation on which to build a redistricting plan.

5. It is essential to have transparency and clarity on how the criteria will be defined, prioritized, and balanced.

Beginning on page 6 are suggested measurable standards and how they might be prioritized in congressional redistricting.

Which map is the best map? Which map is legally defensible?
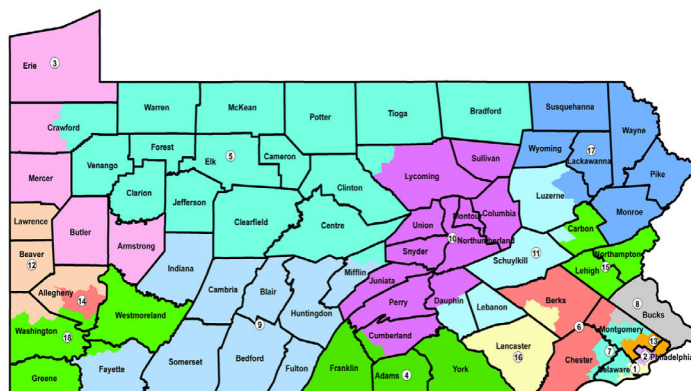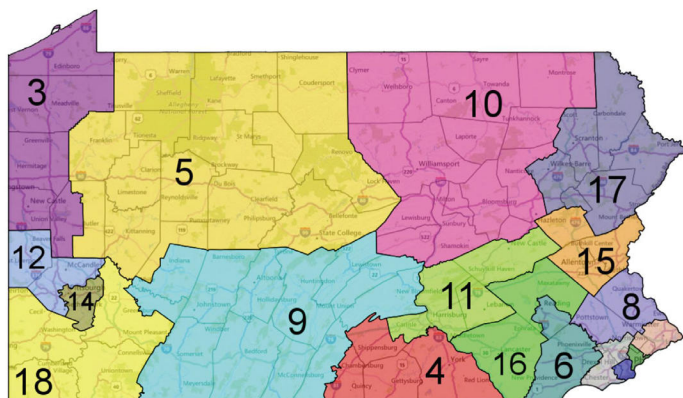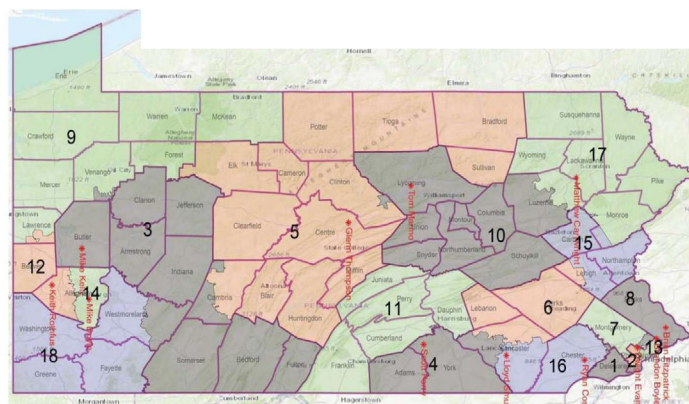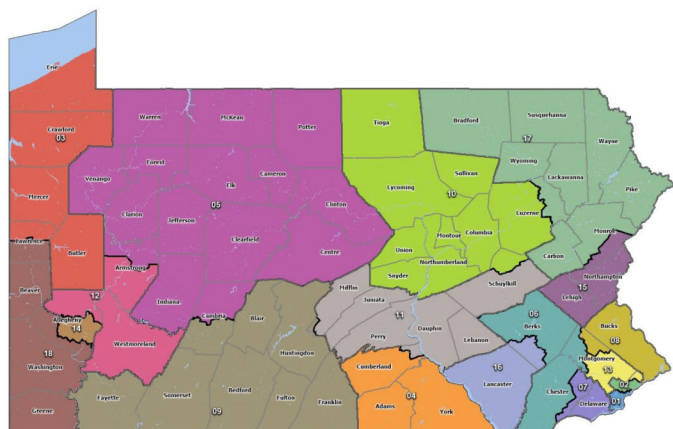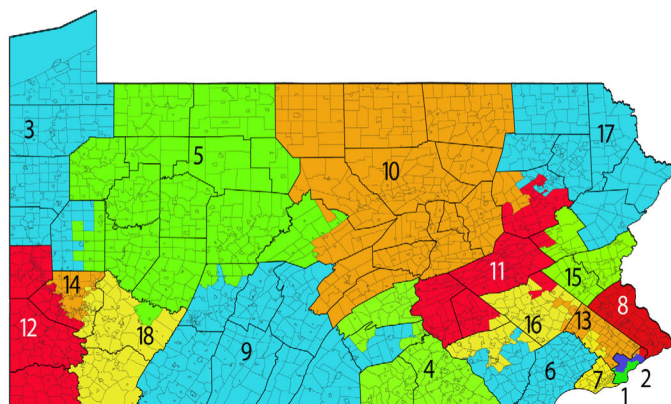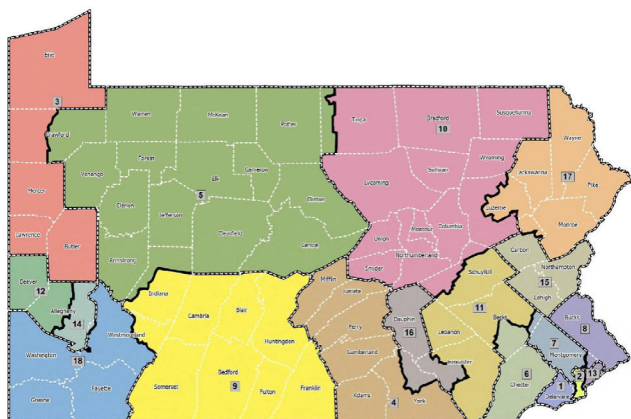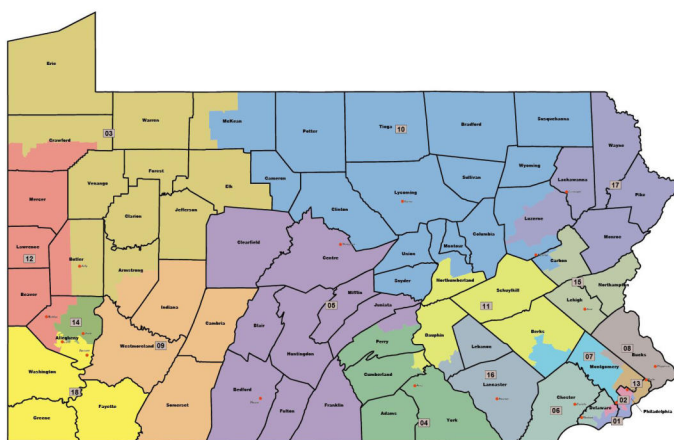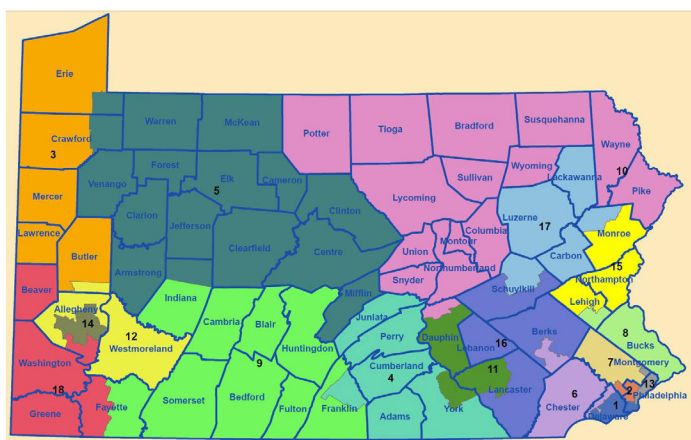
The only way to answer that question, is to have a standard. But what should the standard be?

There are limited rules in Pennsylvania regarding Congressional redistricting.

FEDERAL STANDARDS

Equal Population

Each district exactly equal in population

OR

Small deviations allowed to achieve legitimate state objectives

(see Appendix B for more details)

Voting Rights Act (VRA)

Prohibits discrimination against minorities when drawing districts.

A minority district is when a minority voting-age population (VAP) is over 50% of the VAP in the district.

There is no state statute specific to congressional redistricting.

In 2018, the Pennsylvania Supreme Court found the 2011 Congressional Plan was designed to dilute votes and so in violation of Pennsylvania's Constitution ("Elections shall be free and equal.").

The established rules leave much up to interpretation and supposition.

How does the General Assembly plan to create a defensible map which will respect the people and stand up in court?
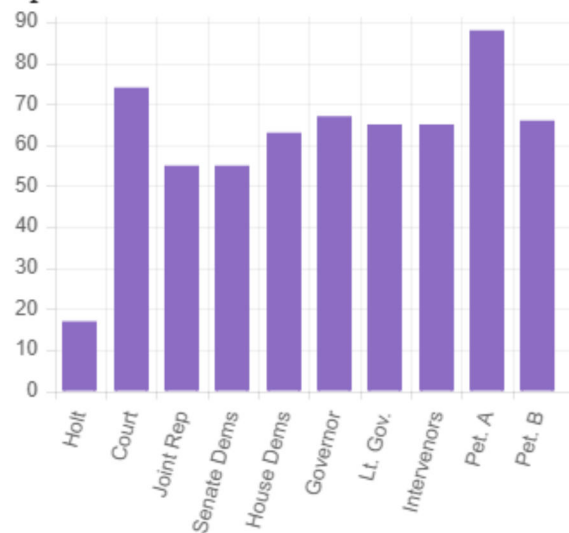
I suggest that this is achieved by having

a clear and measurable standard.

The current map provides an illustration of what happens when comparing a stated goal with the final Congressional Plan.

Stated Court Goal: "Fourth, to comply with this Order, **any congressional districting plan** shall consist of: congressional districts composed of compact and contiguous territory; as nearly equal in population as practicable; and which **do not divide any county, city, incorporated town, borough, township, or ward, except where necessary to ensure equality of population."** (emphasis added)

Final Court-drawn Congressional Plan: Contained more divisions overall to counties, municipalities, ward, and voting precincts compared to other plans.
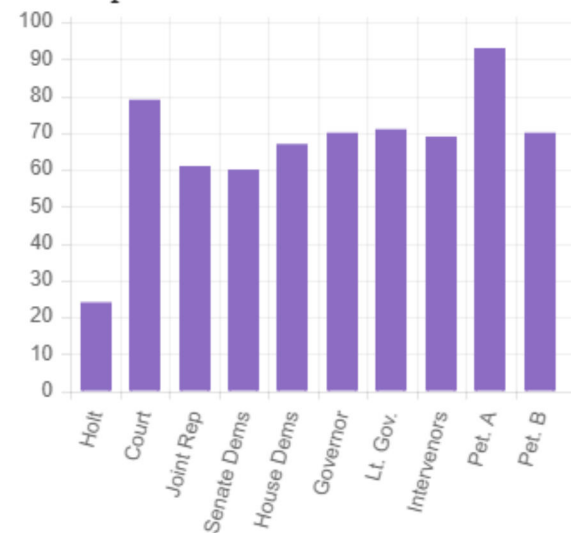
The other maps submitted to the Court achieved population equality with fewer divisions than the Court created Congressional Plan. Because of this, it raises the question as to what their stated goal actually meant.

At the end of the day, the Court Remedial Map did little to bring resolution to the underlying issue of a redistricting process without firm, measurable standards.

Traditional Priorities

There are **5 basic criteria** which, at a minimum, are generally accepted priorities.
1. Respect minorities – ensure the VRA is followed, even if doing so divides a political subdivision.
2. Equal population – as close to zero as possible while consistently meeting state goals.
3. Preserve political subdivision boundaries – limit or eliminate ability to divide boundaries.
4. Contiguous – all districts are physically connected.
5. Compact – not generally defined further.

Recommendation: Use only these 5 criteria as the guideline or objectives. Instead of attempting to gain agreement around a multitude of possible criteria, focus only on getting these five basic priorities established for use in 2021.

If those are the only criteria to be considered, **how do they interplay with each other** (especially if in conflict)? Some clear guidance is available through Federal case law and common practices.
1. Respecting minorities: No other goal can prevent following the Voting Rights Act. Federal case law states that the minority cannot be predominant consideration in configuring districts. But at the same time, adhering to traditional criteria cannot cause the packing or cracking of a minority group.
2. Equal population: As close to zero as possible while meeting state goals, like minimizing or eliminating county and town divisions (equal population and preserving boundaries are the two goals most often linked in the law and guidelines of other states).
3. Preserve political subdivision boundaries – divisions only allowed for population and VRA standards, but not for contiguity or compactness. This is a standard which requires precise definitions to be effective.
4. Contiguity is generally addressed when preserving county and town boundaries. It really becomes a non-issue, even when the political subdivision itself is not contiguous. For example, Chester County is technically not contiguous but has always been treated as if it was contiguous in the redistricting process (until the current map).
5. Compactness is generally considered only after the other goals have been met.

Recommendation: With limited time, use these common practices to form the core structure for 2021 Congressional Reapportionment standards and guidelines. They can always be refined, improved upon, and added to later.

Conclusion: Consider investing energies and resources into creating clearly defined and measurable standards based on these common practices for use in the 2021 congressional redistricting process. These will protect the voice of the people.

What are Characteristics of Better Redistricting Criteria?

1. **Clear Objectives:** People should be able to easily understand the key objectives Pennsylvania wants to achieve in a congressional district plan, even before a line is drawn. This includes definitions of terms, which should have the same plain meaning both in the legal system and to the public.

2. **Limited Criteria:** While focusing exclusively on a single criterion creates imbalance, including too many criteria will create confusion. The more criteria, the more reasons exist for justifying district lines, and the more room for discretionary interpretation by judges, lawyers, legislators, and the public.

3. **Transparent Priorities:** Even within the standard criteria – equal population, respect for minorities, preserving political subdivisions, compactness, contiguity – it is essential that Pennsylvania be clear on how these will be balanced. If two criteria are in conflict, which will get precedence?

4. **Enforceable Outcomes:** Though standards should be simple enough to be understood, they also must be specific enough to withstand legal interpretation. Quantifiable redistricting standards allow the resulting plan to be substantiated when measured against them. It provides assurance to those creating congressional district plans and those living within them that the law will be followed. This is because it gives a mechanism for defending lawful plans and defeating an improper plan.

Suggested Measurable Standards

I think the Court articulated a sound objective when it said to not divide political subdivisions unless needed for equality of population. The follow–through might be improved upon, but the concept is a step in the right direction.

Connecting these two principles — population equality and preserving jurisdictions — is not new. The minutes of the 1968 Constitutional Convention recorded the same intent when explaining a similar law: "no ward, borough, county, and so forth, lines being divided unless absolutely necessary under the one-man, one-vote rule."

Nearly 80% of the jurisdictional divisions in the current congressional plan could have been avoided. These excessive splits affected millions of Pennsylvania residents.

1. Permit use of small population deviations to achieve legitimate state objectives.

In looking at other states in 2010, 12 states did not have districts exactly equal in population. That is 28% of the 43 states which draw congressional districts. (See Appendix A for a list and Appendix B for why this works in Pennsylvania)

2. No voting precinct shall be divided in forming a congressional district.

There is perhaps no division more confusing to a voter and costly to the state than one made to a voting precinct. Over 50% of the excessive jurisdictional divisions were to voting precincts in the current congressional map.

3. No division to any municipality smaller than a congressional district.

Our Constitution outlines some key standards which are valuable to Pennsylvanians. One criterion has been present in every constitution since 1790 — respecting the boundaries of political subdivisions. This value has a long-standing history of being a legitimate Commonwealth interest in Pennsylvania's redistricting process. Every municipality in Pennsylvania smaller than a congressional district should be afforded the benefit of maintaining this 200+ year tradition.

There are benefits to using standards such as "no municipality can be divided unless it exceeds the size of a congressional district." It is something that can be easily fact checked. It would be obvious, upon examination, if no municipalities were divided. It is a clear and measurable standard.

The municipal boundary lines in Pennsylvania are established and rarely (if ever) change. This makes political subdivision boundaries more impartial than other criteria.

Over 30% of the excessive jurisdictional divisions were to cities, boroughs, or townships in the current congressional map.

4. Minimize divisions to counties and wards.

Just because some counties and possibly Philadelphia wards will have to be divided in the redistricting process, limits should still exist. It is also important to consider this number overall and not just within a county. For example, eliminating a division in one county might mean it creates a division in another county. Over 10% of the excessive jurisdictional divisions were to counties and wards in the current congressional map.

5. First try to respect both minorities and the place where they live.

Many times, a VRA district can be created without dividing a jurisdiction. For example, it was unnecessary in 2011 to extend a congressional district between Philadelphia and Delaware County in order to provide a minority district. Instead, two could have been formed within Philadelphia. Give the minority group the benefit of not only being unified as a minority but also unified within the place they live.

6. Consider Chester County to be contiguous.

Technically speaking, Chester County is not contiguous. This is thanks to the Twelve-Mile Circle created in 1681 and how Delaware County was separated from Chester County in 1789. Through these outside forces, a small (maybe 1 mile) piece of land became inaccessible from Pennsylvania and just misses remaining contiguous with Chester County by less than 1000 feet.

From a district-making perspective, Chester County as a whole has always been considered contiguous even though it was known to technically not be contiguous. The current map ignores this tradition and splits this small tract of land in which no one lives from the rest of Chester County and places it in a neighboring district.

This track along with other small geographic anomalies in Pennsylvania should not necessitate a jurisdictional division. They should be treated as if they were contiguous to their jurisdiction, as they have always been.

7. Do not attempt to define a specific measurement for compactness.

Most state laws only reference compactness as a concept and do not attempt to select or apply a specific measurement. Should a jurisdiction be divided just so that the district improves a compactness score? The places people live seem to matter more than the ultimate shape of the district. Because of this, I believe it is better to not attempt to set a specific measurement and leave this as a general principle.

Process suggestion:

1. Instead of working from existing district boundaries, start from a blank map without consideration of district numbers.

2. Focus first on achieving the primary objectives before taking into account any secondary considerations. If a secondary consideration is in conflict with the primary goal, then the primary goal should be followed. Secondary goals should never be achieved at the expense the main objectives.

Appendix A: NCSL 2010 Redistricting Deviation Table

Source: https://www.ncsl.org/research/redistricting/2010-ncsl-redistricting-deviation-table.aspx

2010 Redistricting Deviation Table

1/15/2020

There are several methods of measuring the extent to which populations of all the districts in a plan vary, or differ collectively from the "ideal." The method expressed in the below table is "Overall Range."

Overall range is perhaps the most commonly used measure of population equality, or inequality, of all districts, which can be expressed as a percentage (relative) or the actual population numbers (absolute). The "range" is a statement of the population deviations of the most populous district and the least populous districts. (For example, if the ideal district population is 100,000, the largest district in the plan has a population of 102,000, and the smallest district has a population of 99,000, then the range is +2,000 and -1,000, or +2 percent and -1 percent.) The overall range is the difference in population between the largest and the smallest districts, expressed as a percentage or as the number of people. (In the preceding example, the "overall range" is 3 percent or 3,000 people.)

This information is current as of January 2012. If you would like to provide an update on the deviation numbers for your state's redistricting plans please email Wendy Underhill.

For more about population deviation, how the numbers are calculated, and data from the 2000 cycle, see NCSL's Redistricting Law 2010 publication on p. 47.

State	2010 Congressional Plan			2010 State House Plan		2010 State Senate Plan	
	Ideal District Size	Percent Overall Range	Overall Range (# of people)	Ideal District Size	Percent Overall Range	Ideal District Size	Percent Overall Range
Alabama	682,819	0.0	1	45,521	1.98	136,564	1.98
Alaska*[1]				17,756	4.25	35,512	2.97
Arizona**	710,224	0.0	0	213,067	8.78	213,067	8.78
Arkansas	728,980	.06	428	29,159	8.36	83,312	8.2
California	702,905	0.0	1	465,674	1.98	931,349	1.99

Virginia	727,366	0.0	1	80,010	2.0	200,026	4.0
Washington**	672,454	0.0	19	137,236	.07	137,236	.07
West Virginia***	617,665	.79	4,871	18,530	9.99	109,000	10.00
Wisconsin	710,873	0.0	1	57,444	.76	172,333	.62
Wyoming*	536,626	0.0	0.0	9,394	9.84	18,788	9.37

2010 Redistricting Deviation Table

SOURCE: National Conference of State Legislatures, 2019

* State has only one Congressional seat.

** These states use multi-member districts, with two House seats elected in each Senate district.
*** These states use multi-member districts with varying numbers of senators (Vermont) or representatives (Maryland, New Hampshire, Vermont and West Virginia) in each district.

1. Alaska: Data from the unified plan adopted for elections in 2014.
2. Connecticut: Data for the Senate from the plan adopted for elections in 2016.
3. Florida: Data for the Senate from the plan adopted for elections in 2016.
4. Georgia: Data from the plans adopted for elections in 2016 (House) and 2014 (Senate).
5. Hawaii modifies the census counts for legislative plans; the modified numbers are used to apportion seats to the four basic island units (BIUs). Each unit has a separate target population for each chamber. The deviation numbers in the table reflect the range of all districts for that chamber.
6. Kentucky: Data from legislative plans adopted for elections in 2014.
7. Maryland has three House of Delegates districts nested within each Senate district; tehse three may be either a three-member district, or any combination of single-member or two-member districts. The ideal district size for the two-member districts is 81,875, with an overall deviation of 9.39%. The ideal district size for the single-member district is 40,938 with an overall deviation of 8.92%.
8. Montana: Data from the legislative plans adopted for elections in 2014.
9. North Carolina: Data from legislative plans finalized for elections in 2018.
10. Ohio used a customized dataset for the legislative plans with numerous split blocks; this does not affect the ranges.
11. Pennsylvania: Data from plans adopted for elections in 2014.
12. South Dakota: Thirty-three of the state's 35 districts elect one senator and two House members, but the state also maintains two Senate districts split into four single-member House districts. These four districts have an ideal population of 11,631, with an overall deviation of 4.68%.
13. Utah: These numbers reflect the legislative plans as enacted in 2011 using the census counts. Subsequent review by the state found several instances where local political boundaries were incorrect in the geography files. Deviations based upon updated block assignment files from the Census Bureau are 1.55% for the House and .39% for the Senate.
14. Vermont split a census block, which affects the overall range for the House; it would be 19.07% using whole blocks.

About This NCSL Project

Redistricting is the process of redrawing state legislative and congressional district boundaries every 10 years following the decennial U.S. Census. NCSL helps prepare legislatures and others for the redistricting cycle with comprehensive information on redistricting law, technology and process.

For more information, contact: Wendy Underhill, NCSL Staff Liaison.

Appendix B: Population Equality & State Objectives

The National Conference of State Legislatures (NCSL) found only two of these twelve states faced court challenges related to population variances (Mississippi and West Virginia). In both instances, these maps were upheld. One of those maps had an overall population range that exceeded 4,000 persons. (Texas also faced challenges, but on the issue of racial discrimination.)

These twelve states make it clear that congressional districts can vary in population. Yet Pennsylvania's 2001 congressional map, with an overall population range of 19 persons, failed to hold up in court. **How could those states succeed where Pennsylvania failed?**

Beginning with the *Kirkpatrick v. Preisler* decision, the US Supreme Court required states which use population variances to answer the question: Were the population variances "necessary to achieve some legitimate goal", objective, purpose, or interest?

This brings us back to defining a goal which is a "legitimate state interest." In the *Vieth v. Pennsylvania* court case, Pennsylvania claimed they had to create a deviation of 19 persons to reduce the number of divided voting precincts. But upon examination, it was found Pennsylvania could produce a map that divided no voting precinct with no population variance.

The court found that the reason Pennsylvania gave for having a population variance was not necessary for them to achieve their stated goal. The court specifically said:
> Therefore, to the extent that such justification is genuine, we acknowledge that the desire to avoid splitting precincts is a legitimate state interest which could justify a nineteen person deviation. … We find, however, that the Defendants' arguments on this point are a mere pretext. Specifically, the evidence has demonstrated that it is possible to draw a congressional district map with zero deviation and no precinct splits."

This means those drawing the maps must prove that they could not achieve their stated goal at a lower population range. It is that burden that the other two states met.

The US Supreme Court concluded in the West Virginia case:
> Given the State's concession that it could achieve smaller population variations, the remaining question under Karcher is whether the State can demonstrate that "the population deviations in its plan were necessary to achieve some legitimate state objective." 462 U. S., at 740. Considering, as Karcher instructs, "the size of the deviations, the importance of the State's interests, the consistency with which the plan as a whole reflects those interests, and the availability of alternatives that might substantially vindicate those interests," id., at 741, it is clear that West Virginia has carried its burden.

The US Supreme Court further explained:

> As an initial matter, the District Court erred in concluding that improved technology has converted a "minor" variation in Karcher into a "major" variation today. Nothing about technological advances in redistricting and mapping software has, for example, decreased population variations between a State's counties. See id., at 733, n. 5. Thus, if a State wishes to maintain whole counties, it will inevitably have population variations between districts reflecting the fact that its districts are composed of unevenly populated counties. Despite technological advances, a variance of 0.79% results in no more (or less) vote dilution today than in 1983, when this Court said that such a minor harm could be justified by legitimate state objectives.

What might this look like if Pennsylvania had this kind of standard in place? For example, is it possible to divide no municipality in Pennsylvania (except Philadelphia, which exceeds the size of a congressional district)? All other municipalities (other than Philadelphia) are well within the size of a congressional district.
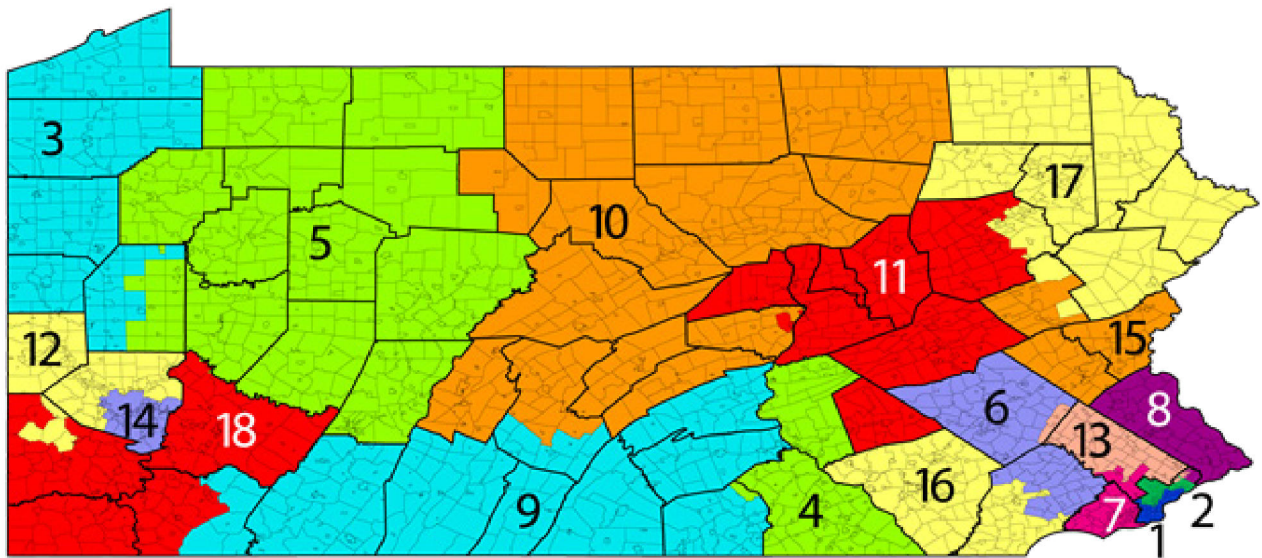
I found that, at least in 2010, it was possible to draw a map which split no municipality other than Philadelphia while also minimizing divisions of and in counties. The resulting overall population variance was not 4,000 persons, but only 17 persons. It was the minimum population variance which avoided municipal divisions in every instance except Philadelphia.
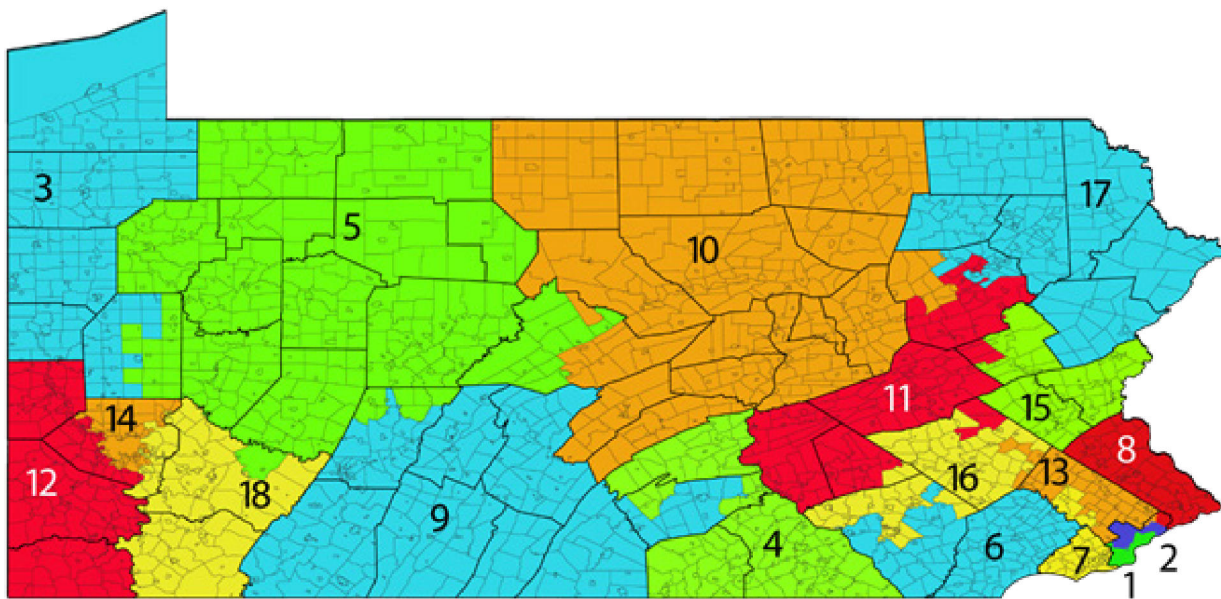
For comparison, here is a congressional map with a deviation of 21 persons.
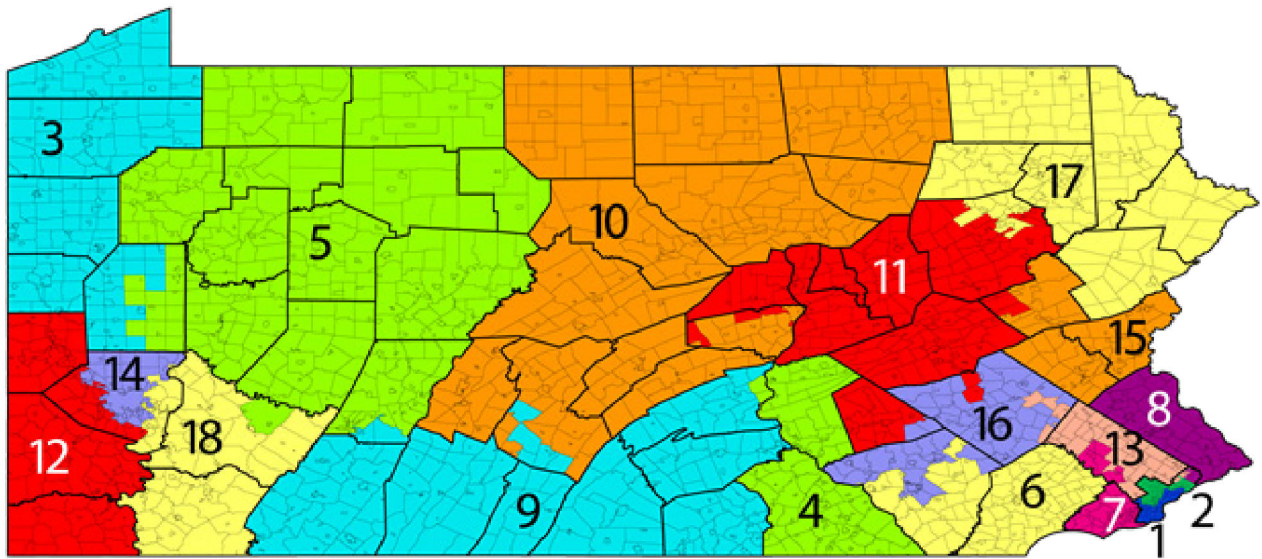
And another congressional map example, with a deviation of 125 persons.

2011 PA CONGRESSIONAL MAP