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HOUSE OF REPRESENTATIVES

STATE GOVERNMENT COMMITTEE
PUBLIC HEARING

STATE CAPITOL
HARRISBURG, PA

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THURSDAY, OCTOBER 28, 2021
10:05 A.M.

PRESENTATION ON
CONGRESSIONAL REDISTRICTING:
POPULATION DEVIATION BETWEEN DISTRICTS
AND CENSUS DATA ANALYSIS

BEFORE:

HONORABLE SETH M. GROVE, MAJORITY CHAIRMAN
HONORABLE RUSS DIAMOND
HONORABLE DAWN W. KEEFER
HONORABLE RYAN E. MACKENZIE
HONORABLE BRETT R. MILLER
HONORABLE ERIC R. NELSON
HONORABLE CLINT OWLETT
HONORABLE PAUL SCHEMEL
HONORABLE JEFF C. WHEELAND
HONORABLE SCOTT CONKLIN, DEMOCRATIC CHAIRMAN
HONORABLE ISABELLA V. FITZGERALD
HONORABLE KRISTINE C. HOWARD
HONORABLE MAUREEN E. MADDEN
HONORABLE BENJAMIN V. SANCHEZ
HONORABLE JOE WEBSTER
HONORABLE REGINA G. YOUNG

* * * * *

Debra B. Miller

dbmreporting@msn.com

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TESTIFIERS

* * *

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SUBMITTED WRITTEN TESTIMONY

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P R O C E E D I N G S

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MAJORITY CHAIRMAN GROVE: Good morning.

Welcome to this hearing of the State Government Committee, which is our 12th congressional redistricting hearing, eight of which were regional hearings around the Commonwealth. For note, this is also our 34th hearing of this committee this year.

I am State Representative Seth Grove, Chairman of the House State Government Committee. This morning, we will be taking testimony concerning the population deviation between congressional districts and an overview of population demographic changes between the 2010 census and 2020 census data. These are important issues in developing the congressional maps. I look forward to the testimony today from all the testifiers.

Now I'll throw it over to Chairman Conklin for any opening remarks.

MINORITY CHAIRMAN CONKLIN: As always, we thank everyone for coming out. What you are doing is very, very important, and we're all ready to listen again.

MAJORITY CHAIRMAN GROVE: We have Members and testifiers in attendance virtually, as well as the public viewing via livestream. Due to Sunshine Law requirements, if either of these platforms experience technical

1 difficulties, we will pause the meeting in order to correct
2 the issues.

3 For the Members participating virtually, please
4 mute your microphones. Please know that when you speak,
5 we all hear you. If you want to be recognized for
6 comments, please use the "Raise Hand" function. After
7 being recognized but prior to speaking, please turn on
8 your camera and unmute your microphone. After you have
9 completed your questions, please re-mute your microphone.

10 I will go to Committee introductions. We will
11 start with the Members present in the Committee this
12 morning and then we will go over to those attending
13 virtually, and we'll start with our far left.

14 REPRESENTATIVE YOUNG: Regina Young, Philadelphia
15 and Delaware Counties.

16 REPRESENTATIVE MADDEN: Maureen Madden, the
17 115th District, Monroe County, the Poconos.

18 MINORITY CHAIRMAN CONKLIN: Scott Conklin, the
19 77th District, Centre County.

20 MAJORITY CHAIRMAN GROVE: Again, Seth Grove, the
21 196th District, York County.

22 REPRESENTATIVE MILLER: Brett Miller, the
23 41st District in Lancaster County.

24 REPRESENTATIVE DIAMOND: Good morning, everyone.
25 Russ Diamond, the 102nd District in Lebanon

1 County.

2 REPRESENTATIVE NELSON: Good morning.

3 Representative Eric Nelson, the 57th District,
4 Westmoreland County.

5 REPRESENTATIVE MACKENZIE: Good morning.

6 Ryan Mackenzie from the 134th District in portions
7 of Lehigh and Berks Counties.

8 REPRESENTATIVE WHEELAND: Good morning.

9 Representative Jeff Wheeland, the 83rd District,
10 Lycoming County.

11 REPRESENTATIVE SCHEMEL: Paul Schemel, portions
12 of Franklin County.

13 MAJORITY CHAIRMAN GROVE: Representative Keefer.

14 REPRESENTATIVE KEEFER: Representative
15 Dawn Keefer, the 92nd District, York and Cumberland
16 Counties.

17 MAJORITY CHAIRMAN GROVE: Representative
18 Fitzgerald.

19 REPRESENTATIVE FITZGERALD: Good morning.

20 Isabella Fitzgerald, representing the
21 203rd Legislative District -- West Oak Lane, East Oak Lane,
22 and the Lower Northeast in Philadelphia.

23 MAJORITY CHAIRMAN GROVE: Representative Howard.

24 REPRESENTATIVE HOWARD: Hi.

25 It's Kristine Howard from the 167th District in

1 Chester County.

2 MAJORITY CHAIRMAN GROVE: Representative Sanchez.

3 REPRESENTATIVE SANCHEZ: Good morning, everyone.

4 It's Ben Sanchez from the 153rd District in
5 Montgomery County.

6 MAJORITY CHAIRMAN GROVE: Representative Webster.

7 REPRESENTATIVE WEBSTER: Yes. Good morning,
8 everyone.

9 Joe Webster. I represent House District 1-5-0,
10 150. Thank you.

11 MAJORITY CHAIRMAN GROVE: Thank you all very
12 much. And just in case, did I miss anybody? Any House
13 Members that are virtually? Seeing none, we might have
14 some joining in, and I will announce them when they do
15 arrive.

16

17 PANEL 1

18 FEDERAL EQUAL POPULATION REQUIREMENT:

19 ONE PERSON, ONE VOTE

20

21 MAJORITY CHAIRMAN GROVE: With that, we will
22 move on to our first panel: "Federal Equal Population
23 Requirement: One Person, One Vote." We have Dr. Thomas
24 Brunell and Dan Morenoff, who will be providing testimony
25 this morning. I believe they are both online.

1 Gentlemen, if you could turn on your cameras and
2 unmute. I'm going to swear you both in. If you can both
3 please raise your right hand:

4 Do you swear or affirm that the testimony you are
5 about to give is true to the best of your knowledge,
6 information, and belief? If so, please indicate by saying
7 "I do."

8 DR. BRUNELL: I do.

9 MR. MORENOFF: I do. Thank you.

10 MAJORITY CHAIRMAN GROVE: Thanks. And just to
11 let you know, we don't have any power to marry anybody in
12 this State, so you don't have to worry about that either.

13 With that, gentlemen, Dr. Brunell, please begin
14 your testimony. Thank you both for attending. We greatly
15 appreciate it and look forward to your testimony.

16 DR. BRUNELL: Good morning, and thank you for
17 inviting me. I'm happy to be here today and to share a bit
18 of wisdom, or at least my opinion, about the "one person,
19 one vote" standard in congressional redistricting.

20 I'm a Professor of Political Science at
21 The University of Texas at Dallas. I got a PhD in
22 political science from the University of California, Irvine
23 in 1997, and I study basically representation, and in that,
24 I study American elections and redistricting. Those are my
25 specialties, so today I'll offer some opinions and advice

1 to the Committee in terms of the principle of equal
2 population.

3 So the so-called redistricting revolution
4 happened in the 1960s after the Supreme Court made a series
5 of decisions all regarding the "one person, one vote"
6 principle, and these decisions, these series of decisions
7 regularized the necessity for every State to redraw the
8 districts for both congressional and legislative chambers
9 after each and every census. And so combined, we talk
10 about these as the "one person, one vote" decisions.

11 So there is kind of a distinction between
12 congressional and legislative districting in terms of
13 population equality, and this has to do with the different
14 constitutional justifications that the Supreme Court used
15 for the congressional decisions and then the State
16 legislative decisions.

17 So the justification in *Wesberry v. Sanders*,
18 which was the congressional decision, was that, you know,
19 that they used from Article I, was that the House was
20 supposed to represent the populace, and that differs from
21 the justification, the constitutional justification, for
22 State legislative districts, which were based upon the
23 Equal Protection Clause.

24 So over time, this distinction became important,
25 because the court basically disallowed any population

1 deviations for congressional districts, but they were more
2 lenient in terms of deviations for State legislative
3 districts, usually if there was a range of plus or minus
4 5 percent from the ideal population for each district.
5 That was almost usually okay for legislative districts.
6 That's generally not the case for congressional districts
7 where the default is really to zero out population
8 deviation, so to draw districts down to the person, you
9 know, where there might be a one-person deviation in some
10 districts because you can't do it evenly.

11 So there are some instances when a State might
12 draw districts, congressional districts, with some
13 population deviations. That is to say they don't zero out
14 the population differences completely, but it has to be a
15 good reason. It has to be a compelling reason, and the
16 most common one is when a State draws congressional
17 districts in such a way that they keep every single county
18 whole in the State. So two recent examples of this were in
19 Iowa and in West Virginia. So both of these States drew
20 all of their -- they have an easier job -- right? -- than
21 Pennsylvania does, because they don't have nearly as many
22 districts as you guys have. And in every district, there
23 wasn't a single county split across the State.

24 And the deviations weren't huge, right? We're
25 talking about a few thousand people. In terms of

1 percentages, I think in West Virginia, it was less than
2 1 percent. So even, you know, even if you tried to keep
3 all the counties whole and you had like a 10-percent
4 population deviation in a Pennsylvania congressional map,
5 that would likely be frowned upon by a Federal judge, I
6 would think. I'm not a lawyer, but I think that wouldn't
7 be -- they wouldn't like that.

8 So if the goal is to keep counties whole, I think
9 there's a little bit of tolerance for some deviations, but
10 obviously you guys can't keep -- well, you guys have some
11 counties that are bigger than congressional districts, so
12 those counties, obviously, wouldn't necessarily be split.
13 And so it may not even be possible in Pennsylvania.

14 And, of course, Pennsylvania is no stranger to
15 this. I was a witness for the *Vieth* case, which went all
16 the way to the Supreme Court back in the early 2000s, and
17 the map drawn by the Legislature, which had only a
18 19-person deviation, if I remember correctly, for the
19 congressional districts back in 2003, the State was forced
20 to go back by the Federal three-judge panel and fix those
21 deviations. So as you can see, a very, very small
22 deviation without a justification will likely draw judicial
23 attention.

24 And that was the problem there, is that, you
25 know, in court, you know, the person that drew the map,

1 you know, was like, well, why did you stop here; why didn't
2 you get rid of this 19-person deviation, and they said,
3 well, my boss said that this was close enough, so they
4 stopped. And so I think the judges sort of felt like they
5 had to do something because there was no justification
6 whatsoever. Because, obviously, 19 people out of, you
7 know, a 700,000-person district isn't very many, but this
8 is the extent to which this can draw the attention of a
9 judge.

10 Okay. So I want to mention one other thing that
11 you might hear about, and that is the Census Bureau is
12 required by law to keep census data, individual census
13 data, private, and so they take this very seriously, as
14 they should, but they changed the way in which they are
15 trying to ensure privacy for the 2020 data.

16 So this is called, they use a method that is
17 called differential privacy. And it's relatively complex
18 -- right? -- if you want to understand it completely, but
19 the simple way to think about it is that the Census Bureau
20 adds noise, what they call noise to the data, which means
21 they basically purposefully introduce some errors to the
22 data so that somebody can't go back and replicate from a
23 relatively small level of geography some information and be
24 able to drill down and figure out exactly who lives in this
25 house, right? And so it adds this noise -- right? -- which

1 again means that they're going to move data around.
2 They're going to change, sometimes change the number of
3 people that live in a block, and sometimes change some of
4 the characteristics of people that live in the block, for
5 instance, ethnicity or race or age, and sometimes they
6 might do both.

7 So what this means, of course, is that when you
8 do zero out the population, you are not really zeroing out
9 the population. But I don't think you should even let this
10 be a consideration, because of course the census data
11 before differential privacy isn't really accurate either,
12 right? We sort of, we pretend that it's accurate, and I
13 think that's what everybody expects Legislatures to do. So
14 even if there wasn't some noise added to the data, the
15 actual number of people, when you draw Congressional
16 District 3 in Pennsylvania and the mapping software says,
17 you know, there's 787,343 people in this thing, that, of
18 course, is not right, because the census data is already a
19 year old, et cetera, et cetera.

20 So that shouldn't be a distraction, and so my
21 bottom-line recommendation is, unless you have a very good
22 compelling reason to not zero out the population deviations
23 completely in a congressional map, I would just do that. I
24 think that's the safest bet, right? Because there's going
25 to be litigation anyway, and so you want to remove as many

1 possible objections to the map as possible, because if you
2 don't, that's going to be just another element that some
3 lawyer is going to sue the State for.

4 So I will stop there.

5 MAJORITY CHAIRMAN GROVE: Thank you so much.

6 DR. BRUNELL: Thank you.

7 MAJORITY CHAIRMAN GROVE: And Mr. Morenoff, the
8 floor is yours, sir.

9 MR. MORENOFF: Thank you, sir. I appreciate it.

10 My name is Dan Morenoff. Unlike Dr. Brunell, I
11 am a lawyer. I have been practicing for 20 years. I am a
12 graduate of Columbia College of Columbia University in the
13 city of New York and of the University of Chicago Law
14 School. Currently, I am the Executive Director of the
15 American Civil Rights Project. We are a public-interest
16 law firm dedicated to assuring the equality of all
17 Americans before the law.

18 I am honored to have been asked to testify and am
19 happy to explain, or at least try to, the genesis and the
20 history of the rules that Dr. Brunell was just discussing,
21 as well as, you know, what they mean for current
22 congressional redistricting.

23 Look, we're starting with what the courts say
24 must be done under the Constitution, and given that that's
25 what we're discussing, it's probably worth beginning with

1 what the Constitution actually says.

2 So ever since the ratification of the
3 14th Amendment in the 1860s, congressional seats have been
4 apportioned among the States "according to their respective
5 numbers, counting the whole number of persons in each
6 State, excluding Indians not taxed." That's the language
7 from Section 2 of the 14th Amendment.

8 There is a sentence immediately following that in
9 Section 2 of the 14th Amendment which functions to
10 incentivize States to fully enfranchise their adult
11 American populations. Other than those two provisions,
12 there is really nothing in the text of the Constitution
13 that says anything about how the States should fill those
14 apportioned seats.

15 And it's worth noting that if you jump before the
16 postwar amendments, in fact, before any of the amendments,
17 many of the States in the early years of the Republic in
18 fact elected their congressional delegations by slate, the
19 same way that most States currently elect their electors to
20 the Electoral College. That obviously isn't how we, for
21 the most part, do things now.

22 Nonetheless, we can look at this and say that,
23 look, the constitutional text has a clear intimation of a
24 relationship between population and representation, but the
25 interstitial threads of exactly how those two are going to

1 relate constitutional text doesn't answer. It does, on the
2 other hand, have one other thing to say that is relevant.
3 That's in Article I, Section 4, Clause 1, of the original
4 Constitution back in 1797, which authorizes the Congress to
5 set rules for the time and manner of the election of
6 Congressmen. Congress has taken that invitation and has in
7 fact enacted a number of statutes over the years filling
8 gaps in how Congressmen are elected.

9 The first of those laws was enacted in 1842. In
10 the period between 1842 and today, there have been a number
11 of amendments to the congressional legislation. For part
12 of that period, between 1872 and 1929, Congress expressly
13 required that States draw single-member districts that were
14 contiguous and that equalized population between districts
15 within the State. You'll notice that that had an end date,
16 that 1929 number, and as that implies, the current codified
17 version of this rule no longer includes this requirement.
18 It's found at 2 U.S.C. 2c, if that's helpful.

19 2 U.S.C. 2c does require the drawing of
20 single-member districts. It does not include any textual
21 requirement of equal population. You might think that in
22 the interim, with no constitutional text on point and no
23 longer any legislative text on point, that would be the end
24 of our story and of this requirement. That is not the case
25 for the reason that Dr. Brunell mentioned.

1 There were a series of cases that came out in
2 the 1960s and which have been followed since which
3 constitutionalized this rule. In fact, no court since
4 1967, when, again, the current version of 2 U.S.C. 2c was
5 passed, no court has interpreted those facts as a policy
6 decision by Congress to repeal the equal population
7 requirement and so authorize the States to craft
8 differently populated districts.

9 Instead, you have got this line of cases, and
10 they did start in 1962 with the Supreme Court case called
11 *Baker v. Carr*. *Baker v. Carr* is, to be honest, kind of an
12 odd case. The court, the court until that time had deemed
13 redistricting fights to be non-judiciable, to be issues
14 left to the elected branches to the extent the Federal
15 Government had a role. They pointed to the language of the
16 time, place, and manner requirement we were discussing and
17 said, see, this has been entrusted to Congress; take it up
18 there; don't tell us. But at this point in *Carr*, the court
19 changed that approach. It faced kind of a strange fact
20 pattern.

21 We were in Tennessee. Tennessee had a State
22 Constitution that required the State to reapportion its
23 State legislative seats after each census to equalize the
24 population of the district in each county, and yet, despite
25 that requirement, the State Legislature hadn't

1 reapportioned seats between counties after the censuses of
2 1910, of 1920, of 1930, 1940, 1950, or of 1960. For six
3 decades, they had flatly ignored the requirement of their
4 own Constitution.

5 There are some theoretical problems with the fact
6 that the Supreme Court in *Baker v. Carr* decided that it was
7 going to tell the State Government what State law required
8 the State Government to do when the State Government had
9 decided that State law didn't require such a thing. Ignore
10 all of those niceties for a moment. The Supreme Court did.
11 What they did was to order the State to comply with its
12 constitutional requirements, and so is born the year of
13 judiciable fights over apportionment.

14 Two years later, we reached the case that
15 Dr. Brunell mentioned, *Wesberry v. Sanders*. That was when
16 the court began to constitutionalize the equal population
17 requirement specifically for congressional districts. In
18 that case, Justice Black announced that the Constitution
19 required that as nearly as practicable, one man's vote in a
20 congressional election is to be worth as much as another's.

21 He didn't cite any on-point constitutional text.
22 As I mentioned, there isn't any. He did reference a number
23 of constitutional provisions, including the ones that I
24 have mentioned, as well as Article I, Section 2's language
25 that "Representatives shall be chosen 'by the People of the

1 several States'...."

2 But that language doesn't really dictate an
3 answer here. To be honest, it's fairly clear that
4 Justice Black was using this as the barest of pegs for his
5 argument rather than as a tent pole to actually support it.
6 I think he knew that that's what he was doing. Instead,
7 the lion's share of the opinion extrapolates the
8 requirement out of Madison's notes from the Constitutional
9 Convention, Justice Black's understanding of the meaning
10 of the House of Representatives in the Great Compromise
11 between the large and small States at that convention, as
12 well as some citations to the Federalist Papers and to the
13 post-ratification speeches of Justice James Wilson.

14 Okay. Later cases followed *Wesberry* anyway, and
15 they have made clear that as it concerns congressional
16 maps, equalizing "as nearly as practicable" a population of
17 districts really does meaningfully equalize it. The
18 clearest court language on this subject I think comes from
19 *Karcher v. Daggett*. That was a case out of New Jersey. In
20 it, the court found that "the population of the largest
21 district is less than one percent greater than the
22 population of the smallest district." They nonetheless
23 found that the maps were unconstitutional.

24 As Dr. Brunell pointed out, there are some
25 marginal exceptions that exist. That's true. I would not

1 count on those exceptions ever actually being approved if
2 pursued. It is simply a bad bet that a court, especially
3 one that doesn't have a binding precedent to require such a
4 thing, is going to accept the exception to what the Supreme
5 Court has told it is otherwise a binding rule.

6 So at present, this line of cases is almost
7 universally understood to stand for the requirement that
8 congressional districts be drawn to allocate population
9 equally between the districts. The courts have admitted
10 that sometimes the math doesn't allow you to actually fully
11 equalize; that, you know, if you have an even number of
12 districts and an odd number of people, one of them is going
13 to have one more person. You can't break up, you know, a
14 person into 18 districts. They'll let you do that; they
15 don't let you do much more.

16 That does still leave open the question of, so
17 what population does States have to equalize between their
18 districts? That may not be an obvious question. It most
19 famously played out in the *Evenwel v. Abbott* case decided
20 by the Supreme Court in the last decade. There, the State
21 of Texas had drawn State Senate districts, and admittedly
22 this was a State House map, and that may have a bearing on
23 this, which we'll get back to. They largely equalized
24 total population between those districts within the
25 parameters that Dr. Brunell mentioned, less than a

1 10-percent variance.

2 Nonetheless, the plaintiffs in *Evenwel*, they were
3 concerned that due to the presence of large numbers of
4 noncitizens in the State as well as age discrepancies
5 between different regions of the State, that the resulting
6 map, yes, acceptably equalized the total population of the
7 State, but it did so on a map that left massive disparities
8 between districts in the numbers of citizens of voting age
9 in different districts.

10 According to Justice Ginsburg's opinion, the
11 deviation between the number of registered voters in
12 different districts and the deviation between the number of
13 citizens of voting age in different districts, that
14 deviation exceeded 40 percent. Forty percent is a pretty
15 big number for these purposes. Forty percent is starting
16 to look an awful lot like the rotten boroughs' cases of the
17 1960s where this rule came from.

18 So drawing on the language of earlier cases, the
19 plaintiffs in *Evenwel* argued that there was in fact a
20 constitutional requirement that States allocate citizens of
21 voting age between districts, not just a total population
22 that wasn't entitled to vote.

23 It's important to note that the decisions that
24 came out of *Evenwel* were divided. Justice Ginsburg's was
25 the majority opinion. It did partially answer this

1 question. It did not fully answer it. It did expressly
2 hold that a State may decide to draw a map equalizing total
3 population, that that would be constitutional and that the
4 courts would not upset it. It did not reach the question
5 of whether States could instead choose to equalize their
6 citizen voting age population between districts or their
7 registered voter populations between districts.

8 This is where I think it is relevant to bring
9 back up that this was a case involving State maps, a State
10 Senate map rather than a congressional map, given that the
11 language that served as the peg for the rule as applied in
12 congressional cases is the apportionment language which
13 looks directly to the number of persons. That may actually
14 be a meaningful difference. It is also worth noting that
15 not all the Justices seemed to think that it would be. Of
16 course, they were dealing with the State Senate map.

17 But Justice Thomas, who concurred in the opinion,
18 or in the result, did reach the question of whether these
19 other alternatives would be acceptable, stating that "the
20 Constitution does not prescribe any one basis for
21 apportionment within States[;]" and that "It instead leaves
22 States significant leeway in apportioning their own
23 districts to equalize total population, to equalize
24 eligible voters, or to promote any other principle
25 consistent with a republican form of government."

1 Finally, *Evenwel* does leave open the question of
2 whether a State could choose to equalize something other
3 than total population. Without a prior decision announcing
4 that other options would be respected, however, one should
5 expect that if a State were to pursue such an option to the
6 exclusion of equalizing total population, there would be
7 resulting litigation. And it's worth noting again that
8 with this difference between State legislative maps,
9 congressional maps, and the constitutional language to
10 which they are pegged, we should probably expect that the
11 difference there would result in a much more hostile
12 reception by the judiciary.

13 It's also worth noting that equalizing total
14 population and equalizing citizen voting age population,
15 these are not necessarily mutually exclusive goals. A
16 demographer could equalize total population, as we know is
17 allowed by *Evenwel*, and also seek to equalize the
18 population of citizens of voting age between districts,
19 perhaps as one of the "traditional redistricting criteria"
20 like contiguity or maintaining the integrity of recognized
21 communities of interest that are expected of map drawers to
22 be the kinds of things that are considered.

23 Look, I'm not a demographer. I'm not a mapmaker.
24 I cannot tell you how easy it would be to equalize both. I
25 am a litigator who has litigated a redistricting case and I

1 have instructed a demographer to do both, so I know it to
2 be within the realm of possibility to achieve.

3 I should also mention what happens if a State
4 simply doesn't actually redistrict, I guess. Congress does
5 provide an answer at 2 U.S.C. 2a(c) that was passed in 1929
6 before this constitutionalization of the equal population
7 requirement. It says that if a State has more districts,
8 according to its statutes, than it has been apportioned,
9 then all of its Congressmen would be elected at large. You
10 should know that that is not actually what courts do.
11 Courts simply order into place a map that they draw
12 themselves. So that's on the books, but only in a very
13 nominal sense, and that would leave us then with, what is
14 the current status of the rule?

15 As of today, it is reasonably clear that as a
16 result of the 2020 census, Pennsylvania is going to be
17 required to equalize the population of its congressional
18 districts. Equalization will mean literal equalization
19 down to differences of no more than one, with potential but
20 very unreliable exceptions; and that while Pennsylvania may
21 have the option of equalizing something else, it would be
22 far, far safer to include those options as a second-tier
23 criteria rather than as an alternative to equalizing total
24 population.

25 I hope that that's helpful, and thank you for

1 your time.

2 MAJORITY CHAIRMAN GROVE: Thank you both.

3 We'll go now to Member questions for both
4 Dr. Brunell and Attorney Morenoff, and we'll start with
5 Representative Miller.

6 REPRESENTATIVE MILLER: Thank you both for your
7 testimony.

8 Mr. Morenoff, I have a question for you.

9 In relation to your testimony here just a minute
10 ago about, both of you testified that the "one person,
11 one vote" is likely to stand for judicial scrutiny. My
12 question: Would it be possible for a State to draw a map
13 largely "one person, one vote," but because of extraneous
14 circumstances, maybe boundaries or county lines, to mix a
15 "one person, one vote" with a citizen voting age
16 combination?

17 MR. MORENOFF: It would be possible to try to
18 achieve both. I don't believe that you should expect that
19 the fact that you are trying to do both would garner from
20 the court's deference to a map that did not achieve
21 equalization of total population between districts.

22 REPRESENTATIVE MILLER: Dr. Brunell, could you
23 comment as well?

24 DR. BRUNELL: Yeah.

25 It would be hard to do. I don't know if it's

1 impossible to do. But I think if you, as long as you
2 equalize total population, you know, I think you're fine.
3 You know, if you also try to equalize citizen population,
4 voting age population, CVAP, whatever you want to do as a
5 secondary level, I don't think anybody is going to mind as
6 long as the total population is equal.

7 REPRESENTATIVE MILLER: Okay. Thank you very
8 much.

9 MAJORITY CHAIRMAN GROVE: Representative Madden.

10 REPRESENTATIVE MADDEN: Thank you, Mr. Chairman.

11 This question is for both of you. Thank you for
12 testifying today. Thank you for all the really good
13 information that you provided.

14 So as you know, in the 2000 census and the
15 redistricting that occurred, Pennsylvania was declared the
16 worst case of gerrymandering in the history of
17 redistricting in Pennsylvania. Can you gentlemen tell me
18 which States take Legislators out -- I know California
19 does; I believe it is California -- takes Legislators out
20 of the process and uses independent folks to draw lines?
21 Or independent commissions?

22 DR. BRUNELL: For legislative or congressional or
23 both?

24 REPRESENTATIVE MADDEN: Both.

25 DR. BRUNELL: Both.

1 I know California has a commission. Arizona has
2 a commission. Michigan has a new commission. I believe
3 Ohio now has a commission. So there's a handful. I'm
4 probably missing one or two others. Missouri might.
5 Missouri went back and forth with competing initiatives, so
6 I don't know what the situation is there. But there are a
7 handful of States -- New Jersey has a commission -- that
8 use commissions rather than Legislators.

9 MR. MORENOFF: I can't add to the specificity of
10 that answer as to who does and who does not. I can tell
11 you that I have published an article pointing out, among
12 other things, that whether States have independent
13 commissions or not does not seem to have any bearing on
14 whether they are sued or whether they lose redistricting
15 fights, and it doesn't seem to result in less aggressive
16 gerrymanders.

17 California is an interesting example since it
18 had an independent body draw its map for the first time
19 10 years ago, and the resulting map was in fact a more
20 aggressive partisan gerrymander than the parties had drawn
21 for themselves in the previous 30 years.

22 REPRESENTATIVE MADDEN: Thank you, and thank you
23 for answering my follow-up question.

24 MAJORITY CHAIRMAN GROVE: Representative Diamond.

25 REPRESENTATIVE DIAMOND: Thank you, Mr. Chairman.

1 Dr. Brunell, you mentioned Iowa and West Virginia
2 recently having congressional redistricting maps that
3 included non-zero deviation, and you went through the
4 reason for that a little bit. Were those maps challenged
5 in court, and if so, can you explain in more detail the
6 actual reasoning courts used to permit those deviations?

7 DR. BRUNELL: That's a great question, which
8 means I don't know the answer to it. I don't know if
9 either one of them was sued on that basis and whether a
10 court actually, you know, gave its stamp of approval, or if
11 nobody bothered to sue because of population deviations.
12 Dan might. Dan might know better than I do.

13 MR. MORENOFF: It is a good question, by which I
14 mean I also can't actually tell you with specificity the
15 answer.

16 Those are both States which, to be honest, are
17 much less likely to be involved in redistricting fights
18 because of the ethnicity makeup of their populations.
19 Given the Voting Rights Act is about race and language
20 minority status and neither State is known for its
21 widespread diversity, there's a lot less to fight about in
22 Federal courts, a lot less of a peg, and I'm unaware of
23 whether they wound up being sued specifically on the
24 question of equal population. I don't think either could
25 be sued on another basis.

1 REPRESENTATIVE DIAMOND: But given---

2 DR. BRUNELL: And that's a great point. They're
3 both very, very White States, and neither one of them has a
4 lot of districts. West Virginia actually lost its third,
5 so it only has two now. I think Iowa might have eight or
6 something like that.

7 So that's an excellent point, that there's sort
8 of a whole, you know, huge section of, you know, claims in
9 terms of the Voting Rights Act that really aren't available
10 to litigators for either one of those States.

11 REPRESENTATIVE DIAMOND: Well, given the
12 inability to give, you know, a specific, you know, lack of
13 specificity, whatever term you used there, can you contrast
14 or speculate at least and contrast those quote, unquote,
15 "permissible deviations" with the Pennsylvania maps in 2003
16 that were prohibited in part due to a 19-person deviation?
17 Can you just kind of like conceptualize this for the
18 laymen?

19 DR. BRUNELL: I'll go quickly.

20 So both the West Virginia map and the Iowa map
21 that had deviations kept every single county whole. There
22 wasn't a single county that was split in either map, and of
23 course that wasn't the case for the Pennsylvania map. So
24 if you want to have deviations, you have to have a
25 compelling reason -- right? --that furthers, you have to

1 have a good reason that furthers a compelling State
2 interest -- right? -- to try to talk like a lawyer, which
3 I'm not.

4 So that was the compelling reason that they had,
5 right? They're like, hey, we're keeping all of our
6 counties whole. That's preserving more communities of
7 interest. We do have more deviations than you would expect
8 otherwise. But that's the reason, right? And Pennsylvania
9 had split counties and cities, had split counties in their
10 map in 2003, so they basically didn't have a reason. They
11 didn't give the court a reason for why they had deviation,
12 so the court said, okay, you got to clean this up; you got
13 to fix them up.

14 REPRESENTATIVE DIAMOND: So just to follow-up
15 then, Mr. Chairman.

16 In Pennsylvania, we have numerous waterways. We
17 have numerous individual mountains. So what you're saying
18 is that if we do land on a deviation that is not zero and
19 the only way to correct that is, oh, we have to reach
20 across the Susquehanna to get three people for this
21 congressional district, or we have to reach across a
22 mountain or two to get 17 people to match that up, that
23 might be a compelling enough reason to not have a non-zero
24 deviation. Is that what you're saying?

25 DR. BRUNELL: That's possible, you know, but no

1 district -- but a district has, you know, you can go any
2 direction, you know what I'm saying? So if you go west for
3 this hypothetical district and you have to go across a
4 mountain range to get 17 people, that's one thing. But,
5 you know, can you go south or north or east and get
6 17 people without doing that? So I think it's possible,
7 right? Like, hey, here's what the district looked like
8 with unequal population and we decided not to make this
9 little jut out, but usually you can go some other
10 direction.

11 So like Dan said, I think you are risking, you
12 know, you are risking the map, right? Why not just draw
13 it, right? Just draw it. Go across the mountains, get the
14 17 people, because it's just less likely to get struck
15 down.

16 REPRESENTATIVE DIAMOND: All right. Thank you.

17 Thank you, Mr. Chairman.

18 MAJORITY CHAIRMAN GROVE: Representative
19 Mackenzie.

20 REPRESENTATIVE MACKENZIE: Thank you, Mr. Chair,
21 and thank you to both of the testifiers.

22 So my question, I'll direct it to Dr. Brunell,
23 but if Mr. Morenoff wants to answer as well or jump in, he
24 can. And the reason I do that, Dr. Brunell, you talked
25 about in your testimony the distinction that is made for

1 legislative redistricting and constitutional apportionment,
2 legislative redistricting being based on the Equal
3 Protection Clause and the constitutional apportionment
4 reasoning, you know, underlying the zero deviation for
5 congressional districts.

6 And so we're talking about it based on population
7 and focusing on population. Are there other implications
8 that come about because of that distinction that we should
9 be aware of, or is it just solely population?

10 DR. BRUNELL: That's another great question. I
11 had never thought of it.

12 That's the only one that I know of. I don't
13 think there's any -- I don't think that bleeds into any of
14 the other principles. And again, Dan, I'll defer to Dan on
15 this since he's a lawyer. He may know if there's other
16 things.

17 MR. MORENOFF: The constitutional peg for those
18 decisions does not appear to largely impact litigation more
19 broadly. The courts draw from their redistricting
20 precedents without a whole lot of care as to which kinds of
21 districts those dealt with. So it would be a good bet that
22 on everything else, the rules are going to be the same.

23 REPRESENTATIVE MACKENZIE: Okay. Great. Thank
24 you.

25 Thank you, Mr. Chair.

1 MAJORITY CHAIRMAN GROVE: Thank you.

2 This is for both of you.

3 In advance of the 2021 redistricting cycle, some
4 number of States have decided to make changes on how they
5 consider the population of residents, of group quarters,
6 for the purpose of redistricting, most particularly in
7 prisons. Here in Pennsylvania, the Legislative
8 Reapportionment Commission has made a decision to use
9 adjusted data on that issue as a basis for its State
10 redistricting plans. Is there any relevant Federal court
11 precedent on the issue as it relates to congressional
12 redistricting?

13 DR. BRUNELL: Go ahead, Dan.

14 MR. MORENOFF: Yeah. I'm unfortunately not aware
15 of any, but that's not honestly a subject that I have
16 delved into, so I can't tell you that there isn't any.

17 I also would think -- and forgive me, I simply
18 don't know your law on this topic; I'm in Dallas -- that to
19 the extent, I don't know what the status of Pennsylvania
20 law is on felon enfranchisement, so I don't know whether
21 that might be a compounding factor there for you or not.

22 DR. BRUNELL: This is relatively new, you know,
23 reallocating prisoners back to where they lived rather than
24 the prison, and so I don't think there's a whole bunch of
25 litigation. But that's just my guess. You know, certainly

1 somebody could look this up to see if there is. If there
2 is, I don't think there's a whole bunch.

3 I feel like maybe somebody did this before, but
4 it has become more popular this round. So maybe there
5 might have been one State who reallocated prisoners last
6 time at most, but the whole prison gerrymandering thing is
7 sort of, is relatively new, and so this is the first round
8 of redistricting where we have seen it become more common.
9 But still, I think most States aren't doing it. But like
10 you said, Pennsylvania is among a handful of States that is
11 doing it, and so I don't think it has been tested yet.

12 MAJORITY CHAIRMAN GROVE: Okay.

13 Given the various strict requirements for a
14 deviation of one or zero persons between congressional
15 redistricts, a congressional redistricting plan using data
16 adjusted to reassign prisoners to addresses other than
17 those recorded by the census would include deviations in
18 total population when compared to the census data itself,
19 far exceeding 1 or even 19 individuals. Should the States
20 that have chosen to use adjusted data to create
21 congressional redistricts expect litigation on that basis?

22 DR. BRUNELL: I would always expect litigation.
23 But I think most courts would say that this is okay.
24 Again, I'm not a lawyer and I'm certainly not a judge, but,
25 you know, I think it would be odd if somebody said, you

1 know, hey, Pennsylvania didn't really zero out deviations
2 because they reallocated prisoners back to where they
3 lived, you know. But who knows. There might be a judge
4 that says, okay, that is a violation.

5 MR. MORENOFF: I'm of the opinion that you really
6 can't take the politics out of politics, and that as a
7 result of that, if anyone thinks, if any group believes
8 that it's their political advantage to make that argument
9 in litigation, they're likely to bring that litigation and
10 make the argument.

11 It isn't necessarily unique to the context that
12 you are raising either. And I dropped this as a footnote
13 in the written version of my testimony and didn't bother to
14 bring it up, but I do think it's relevant. Like, there are
15 lots of ways that we know that the census is not accurately
16 depicting who is going to be available to vote in
17 districts. Yes, we could talk about as examples of that
18 prisoners who may be disenfranchised by law. We could take
19 a different tact and instead of looking at that, we could
20 look at the fact that we know for a fact that there is a
21 large American expat community around the world. They do
22 not appear in the census. They are entitled to vote, they
23 are registered, and they do. And while that means that we
24 can be perfectly certain that the census numbers, even if
25 equalized down to a differential of zero, that that does

1 not mean the same number of people are going to be voting
2 in those districts. We know this, and yet the courts have
3 required that differentiation down to zero or one anyway.

4 So is anyone going to make the argument? I think
5 you have to assume someone will make the argument, unless
6 there's a reason not. I also think the expat situation,
7 given how many Americans overseas are in the military,
8 might be a good example of why people might decide that it
9 is not to their benefit to make this argument.

10 I know I would not want to be the person in a
11 court arguing that a map is illegal because it allows
12 American soldiers to vote. I wouldn't want to make that
13 argument. I wouldn't want to see a judge's face as I made
14 it. It's possible that that could be exactly the same here
15 and might result in it not being raised. You have to
16 expect that it will be.

17 MAJORITY CHAIRMAN GROVE: Okay.

18 Representative Nelson.

19 REPRESENTATIVE NELSON: Thank you, Mr. Chair.

20 And my question starts with Mr. Morenoff.

21 In your testimony, you had mentioned this issue
22 of what population is counted, and specifically you were
23 referring to that *Evenwel v. Abbott* case. I think it was
24 in Texas. Addressing the measure of population that is to
25 be equalized between the districts, I think, you know, part

1 of that Texas component was noncitizens being included in
2 the count, which then created larger disparities. Can you
3 dig a little bit deeper into that, please?

4 MR. MORENOFF: Yes. The *Evenwel* case was
5 entirely about what kind of equality the "one man, one
6 vote" rule involved.

7 On the one hand, there were those who said that
8 this was representational equality, that everyone should be
9 able to contact their Congressman with an issue, and that
10 should include those who are not citizens. On the other
11 hand, there was the argument raised by the plaintiffs and
12 eventually the petitioners at the Supreme Court that what
13 was most relevant was the voting strength of American
14 citizens; that after all, if you go back to the language of
15 Justice Black, it was "that as nearly as practical one
16 man's vote in a congressional election is to be worth as
17 much as another's." It was that kind of language that they
18 pointed to to say citizen voting age population is what
19 matters here, because if you have got a 40-percent
20 differential in the number of citizens between districts,
21 or citizens of voting age, then the value of a vote is
22 dramatically different.

23 Look, there's a---

24 REPRESENTATIVE NELSON: Just to clarify, because
25 I'm not the attorney. So you said there is a majority

1 opinion and then a minority opinion, and as you are
2 referring to Black, which side of that was he on?

3 MR. MORENOFF: So the majority opinion was
4 written by Justice Ginsburg, and it's the opinion that told
5 us surely that you may equalize total population, as most
6 States have done for most of the history of the republic.

7 There's a concurrence by Justice Thomas which
8 said, yes, you can do that, or you could equalize citizen
9 voting age population or you could equalize registered
10 voters. The only real peg here is the Republican Form of
11 Government Clause of Article IV, and that as long as
12 whatever you have done is reasonably republican, small "r,"
13 this is fine.

14 That was a concurrence. There was a majority.
15 It was Justice Ginsburg's.

16 REPRESENTATIVE NELSON: Okay. And, Mr. Chair, I
17 appreciate this.

18 Just, as we consider weighing those alternatives,
19 and I think you kind of mentioned at the very end consider
20 as an alternative to equalizing population, because no one
21 is looking forward to the pending litigation, but weighing
22 actual voters versus actual counted citizens, how do we
23 weight the legal challenges between recognizing those
24 groups?

25 MR. MORENOFF: Sure.

1 Given the Supreme Court opinion written by
2 Justice Ginsburg and the concurrence of Justice Thomas, you
3 know that if you equalize population, you will win that
4 litigation. No one can complain about equalizing total
5 population.

6 You can be reasonably sure that if you do not
7 equalize total population, there will be litigation, and
8 it will be at best a jump ball on whether equalizing
9 something else to the exclusion of total population is
10 allowed.

11 REPRESENTATIVE NELSON: Great. That was
12 extremely helpful for me.

13 And any comments, Mr. Brunell?

14 DR. BRUNELL: No. I think Dan covered it very,
15 very well.

16 REPRESENTATIVE NELSON: Thank you, Mr. Chair.

17 MAJORITY CHAIRMAN GROVE: Representative
18 Wheeland.

19 REPRESENTATIVE WHEELAND: Thank you,
20 Mr. Chairman.

21 And thank you to our testifiers. This has been
22 very helpful.

23 This is for Mr. Morenoff.

24 As you note redistricting and its surrounding
25 legal precedent have shifted substantially throughout the

1 history of the United States, has the concern regarding
2 unequal distributions of citizens of voting age, is that
3 just like a recent phenomenon or has it been dealt with in
4 other periods in our history?

5 MR. MORENOFF: Sure.

6 Look, the entirety of the civil rights revolution
7 of the 1960s and 70s had its roots in the disparate
8 treatment of different groups of citizens throughout
9 largely the Jim Crow South but also across the rest of the
10 nation. So had there ever been complaints raised about
11 allegations? Probably there had. I don't know that that's
12 terribly important at this stage. There has been, at this
13 point, 70 years of case law following this "one man, one
14 vote" principle through.

15 The specific question of need one equalize
16 citizens or total population, that's a question that only
17 could come up at various chapters of American history
18 when there was a sufficiently large population of resident
19 noncitizens that the numbers are materially different.

20 That is certainly true in the present in many
21 parts of the country. It has not always been true. So
22 that's probably what drives the fact that this had never
23 been litigated until, well, the last decade there were two
24 cases, the latter of which was *Evenwel* and went to the
25 Supreme Court for the first time.

1 REPRESENTATIVE WHEELAND: Thank you very much.
2 Fascinating.

3 Okay. Thank you.

4 MAJORITY CHAIRMAN GROVE: Representative Schemel.

5 REPRESENTATIVE SCHEMEL: Thanks.

6 In light of the *Evenwel* decision, are you aware,
7 have any States changed their methodologies for
8 computation?

9 DR. BRUNELL: Well, no. The problem is that, if
10 you remember, there was a battle over the census during the
11 Trump administration about whether or not there would be a
12 question included on every -- that went to every household
13 about how many people were citizens and noncitizens. So
14 the basis for that was likely for redistricting, and the
15 Supreme Court disallowed the Trump administration from
16 including that, including that citizenship question on the
17 full census.

18 And so what that means is that the only data
19 available to the States is from the American Community
20 Survey, which is a survey; it's not a complete census. And
21 so the data are only estimates. The census are estimates,
22 too, to be honest with you, but they're better estimates.
23 So that's going to be the main reason why.

24 I don't think anybody has, is the short answer,
25 and the reason is that it would of course be challenged,

1 and I think that most States feel like they're going to be
2 in a very bad position by using survey data as estimates
3 for how many noncitizens are at very, very low levels of
4 geography.

5 REPRESENTATIVE SCHEMEL: All right. Thank you.

6 MAJORITY CHAIRMAN GROVE: Thank you, gentlemen.

7 We are out of questions. We greatly appreciate your time
8 this morning and your willingness to come testify and help
9 us work through the population deviation.

10 As we kind of heard through our regional
11 hearings, it's a tough concept to get behind and one of the
12 many reasons we have the districts that look like we do.
13 Unlike the State House and Senate districts, a deviation of
14 plus 10 percent, minus 5, plus 5, makes it a little easier
15 to draw cleaner maps, cleaner looking maps. But that
16 "one person, one vote" kind of pinpointed that we want to
17 highlight that fact within the testimony. So, gentlemen,
18 thank you so much for your time.

19 DR. BRUNELL: You're welcome.

20 MR. MORENOFF: Thank you.

21 MAJORITY CHAIRMAN GROVE: And you can run away or
22 you can stay on. The choice is yours. Don't feel free to
23 go anywhere if you don't want to.

24 As we head to the next testifier, I do want to
25 note that Representative Owlett has joined us virtually.

1 PANEL 2

2 CENSUS DATA ANALYSIS:

3 IMPACT ON URBAN PENNSYLVANIA
4

5 MAJORITY CHAIRMAN GROVE: And our next testifier
6 on the "Census Data Analysis: Impact on Urban Pennsylvania"
7 is Attorney Brian Gordon. And come on up and grab a seat.

8 And actually, before you sit down, I'm going to
9 swear you in anyway, so you might as well just stay
10 standing.

11 Okay. So just raise your right hand:

12 Do you swear or affirm that the testimony you are
13 about to give is true to the best of your knowledge,
14 information, and belief? If so, indicate by saying "I do."

15 MR. GORDON: I do.

16 MAJORITY CHAIRMAN GROVE: All right. And when
17 you are comfortable and ready, the floor is yours, sir.

18 MR. GORDON: Good morning, Chairman Grove,
19 Co-Chair Conklin -- good to see you -- and Members of the
20 panel. Thank you very much for the opportunity to speak
21 with you today.

22 My name is Brian Gordon. I am the Founder and
23 Co-Director of Concerned Citizens for Democracy. It's an
24 anti-gerrymandering think tank in Montgomery County,
25 Pennsylvania, on the western border of Philadelphia.

1 I was one of the lead attorneys in the 2017
2 Federal litigation involving the 2011 congressional map.
3 The case was *Agre v. Wolf*. After the Federal case ended, I
4 filed, with the help of my team, Concerned Citizens for
5 Democracy, two influential amicus briefs in the *League of*
6 *Women Voters v. Pennsylvania* matter before the Pennsylvania
7 Supreme Court on behalf of CCFD, Concerned Citizens for
8 Democracy.

9 The Pennsylvania Supreme Court and their
10 redistricting expert -- that was Professor Persily from
11 Stanford -- looked favorably upon our methodology, which
12 was reflected in the final 2018 map. Counties were
13 assembled compactly. Territory was added using whole
14 townships to equalize the population along common borders.
15 Some of the lines in the hard-to-draw sections of
16 Pennsylvania were taken from our proposed map.

17 A little bit about my background. I am a former
18 12-year Lower Merion Township Commissioner. I have run for
19 public office six times in my life and won three of those
20 elections. Aside from township commissioner elections, I
21 threw my hat in the ring twice to be a Member of Congress,
22 unfortunately unsuccessfully. Once was against
23 Jim Gerlach, and the second time was, the incumbent was
24 Chaka Fattah.

25 I was a former U.S. congressional intern and a

1 former research assistant to a British Member of Parliament
2 while studying at the London School of Economics. My
3 degrees are from Cornell Undergraduate and the University
4 of Wisconsin Law School.

5 Concerned Citizens for Democracy is probably the
6 leading group in Pennsylvania on how to draw maps in a
7 compact manner with minimum division of political
8 subdivision. My comments here today are focused on the
9 impact of the census and redistricting upon urban and
10 suburban populations, but more precisely, the impact of the
11 growth of such populations on census and redistricting.

12 For my testimony, I looked carefully at the
13 population changes between the 2010 census and the
14 2020 census on existing congressional district boundaries.
15 I ran calculations on population changes from 2010 to 2020
16 during the 18-seat map and then ran the same changes for a
17 17-seat map to more deeply understand the changes using the
18 current congressional districts as a starting point, and
19 I'll come back to that later.

20 My findings, and I'm going to give eight examples
21 of these so you can get a sense of the patterns that I saw,
22 because they're interesting.

23 My findings on a district-by-district basis are
24 as follows. I'm going to begin with the 1st Congressional
25 District, and I think that's probably going to be most

1 helpful for you in your efforts to redraw maps following
2 the Supreme Court of Pennsylvania's guidelines.

3 So it's going to be a little bit, it's going to
4 be a little bit difficult to show all of you because it's
5 such a linear panel. So you're going to get an angled
6 view, and it's a little tough, but I'll try to include all
7 of you in this.

8 MAJORITY CHAIRMAN GROVE: So we have these in our
9 testimony, right?

10 MR. GORDON: Yeah. Oh, I'm sorry. These are in
11 your testimony labeled, this is Figure 7 in your testimony.
12 You can see this map.

13 MAJORITY CHAIRMAN GROVE: All right. You got to
14 drop the map.

15 MR. GORDON: What's that?

16 MAJORITY CHAIRMAN GROVE: We can't have---

17 MR. GORDON: Oh, I can't show you?

18 MAJORITY CHAIRMAN GROVE: Yeah. We have them in
19 our testimony, so.

20 MR. GORDON: Oh, okay.

21 MAJORITY CHAIRMAN GROVE: You can refer to them.
22 We have them on the back page.

23 MR. GORDON: On the back page.

24 MAJORITY CHAIRMAN GROVE: For Members, it's---

25 MR. GORDON: It's Figure 7.

1 MAJORITY CHAIRMAN GROVE: Yeah.

2 MR. GORDON: So it's the seventh figure in my
3 testimony. So I'm going to, I'll just refer to the map
4 here---

5 MAJORITY CHAIRMAN GROVE: Yep.

6 MR. GORDON: ---if that's helpful. But it's such
7 a tiny map, it's going to be a little tough to see. But
8 I'll give it a go. Here we go.

9 So first of all, the 1st Congressional District,
10 which is comprised -- it's the orange one in the
11 southeastern corner of Pennsylvania. It's comprised
12 largely of Bucks County. It has had a growth of 22,005
13 persons. The district would need to grow -- actually, let
14 me just back up and make two more preliminary comments.

15 The first is, I have taken notes of all your
16 questions, and I have some pretty good answers to a number
17 of the questions, including, for example, Rep. Diamond's
18 question about -- actually, all of your questions. So
19 we'll turn to that later, and I'm happy to answer your
20 questions.

21 And the other thing I wanted to say is, if you
22 don't learn at least five new things about redistricting as
23 a result of my testimony, you get double your money back.

24 Okay. The 1st Congressional District, which is
25 comprised largely of Bucks County, had a growth of

1 22,005 persons. The district would need to grow by adding
2 37,173 persons to reach the target population for a 17-seat
3 map of 764,865 persons.

4 Following the Pennsylvania Supreme Court's rules
5 set forth in the *League of Women Voters v. Pennsylvania*,
6 the district can be amended by cleaning up the border with
7 the abutting district, the 4th District, by making the
8 addition of municipalities extend along the entire border
9 between Bucks and Montgomery County.

10 So right now, it's just a portion of it. You see
11 sort of an orange intrusion into Montgomery County. What
12 you could do is you could actually make that one district,
13 one township wide and elongate it all the way along the
14 border, and it would preserve, it would preserve the
15 compactness of both districts.

16 The alternative would be -- and I'll try to move
17 more quickly. The alternative would be to extend -- this
18 would help restore Montgomery County in the 4th District by
19 taking--- And the other thing you can do is you can clean
20 up the southern border of Montgomery County in which a
21 little piece of the brown, or 5th District, which is
22 Lower Merion, where I reside, was taken out of Montgomery
23 County and added to the 5th District.

24 And I can tell you it doesn't matter. Nobody
25 minds in Lower Merion where I'm from and where I served as

1 a commissioner. There's no squawking about that, because
2 they are very similar representatives. But what I wanted
3 to -- which will come up later. But the point is that if
4 you wanted to really keep Montgomery County intact, you can
5 do so, and then that would push the 4th District further
6 into Bucks County by a bit. All the districts have to
7 grow.

8 Let me turn next to the 2nd Congressional
9 District, which is mostly composed of Northeast
10 Philadelphia and Philadelphia east of Broad Street. That
11 has grown by a population of 22,413 persons. The district
12 will need to increase, therefore, by 36,765 people, which
13 could be accomplished compactly and limiting municipal
14 splits by extending southward to the southern border of
15 Philadelphia.

16 So if you blow up District 2, you will see that
17 it stops as it comes down. The right-hand or recessed side
18 of Philadelphia, if it was extended south, you would pick
19 up the additional voters.

20 The 3rd Congressional District, composed of the
21 western half of Philadelphia and some of southwest
22 Philadelphia, has a substantial increase in population of
23 41,416 persons. The district will need to increase in
24 population geographic size by 17,762 persons, which could
25 be accomplished by retaining a larger piece of Philadelphia

1 now in the 5th District.

2 Now, the pattern that should be emerging here is
3 that you can actually clean up these districts by bringing
4 them closer to the county, the county boundaries, and they
5 are both compact and keeping them whole. And the court
6 would probably, you know, say, good job.

7 Let me turn now to some of the more rural
8 districts. The 8th Congressional District in the northeast
9 corner of Pennsylvania, including the Poconos, Wayne,
10 Lackawanna, Pike, Luzerne, and portions of Monroe County,
11 has experienced a modest increase in size of 2,445 persons
12 over the course of 10 years. Since this district has grown
13 but grown less relative to other districts, there will be a
14 need for a more substantial increase in geographic
15 territory to accommodate an additional 56,733 people to
16 reach the new target population. This could be
17 accomplished compactly by adding Susquehanna and portions
18 of Wyoming County to the 8th.

19 So let me keep going. So the idea is if you were
20 to add the purple counties to the green county, which is
21 the 8th, you see it becomes a more compact district.

22 The 9th Congressional District consisting --
23 let me skip over the 9th. I'm sorry if you're from there,
24 but in the interests of speed, I'm going to go to the
25 12th District.

1 The 12th District, consisting of the northern tier
2 counties from Potter to Susquehanna and then reaching down
3 to Perry County in central Pennsylvania, had a significant
4 drop in population of 23,859 persons. To reach the target
5 population of 764,865, the district would need to add
6 83,037 persons. To accomplish this, the district should or
7 could be moved westward.

8 And then moving westward to the 15th District.
9 The 15th Congressional District, consisting of the rural
10 counties from Warren and McKean County on the northern tier
11 to Centre and Cambria County, then west to Armstrong,
12 Clarion, and Venango Counties, is a highly compact, rural
13 district. This district lost 36,316 persons in population.
14 This district would need to add 95,494 persons. This could
15 be accomplished by merging the 15th with the 16th or 12th
16 Congressional Districts, thereby eliminating counties to
17 the south and more equally dividing the population along
18 the northern tier.

19 The 16th Congressional District, the northwest
20 corner and western edge of Pennsylvania from Erie to
21 Lawrence County and portions of Butler County, lost
22 population in the amount of 22,613 persons. This district
23 must grow in population then by 81,791 people, or merge
24 with another district. This could be accomplished by
25 merging the 16th in the upper west corner with the 15th,

1 which is to its east, or the 12th and/or the 8th and then
2 redefining those districts and then shrinking them on the
3 southern side in order to make them more compact.

4 Let me go to one more. Actually, let me go to
5 the analysis and conclusions.

6 So the loss of one congressional seat will mean
7 that the target population for each district will grow from
8 704,687 persons to 764,865 persons, with a difference of
9 59,178 people. This means that all of the remaining, of
10 the 17 remaining Pennsylvania congressional seats, we'll
11 need to add enough new territory to include 59,178
12 additional persons.

13 Not a single congressional district grew by more
14 than 59,178 people in the last decade. The largest
15 increase was in the 10th District -- Dauphin, York, and
16 Cumberland -- with 48,000 more people. That would include
17 where we are now. The largest decrease was the
18 15th district, which lost 36,316.

19 The overall population shifts between the 2010
20 and 2020 census do not indicate a simple picture of
21 depopulating rural counties and the growth of urban
22 counties and districts. The population shifts appear to be
23 slightly more nuanced than that.

24 Some examples that counter the rural-urban
25 migration narrative include the 18th District, portions of

1 Allegheny County, which lost 2.74 percent of its
2 population. There is also the 11th Congressional District,
3 which is two rural counties in south/southern Pennsylvania
4 on the east side, York and Lancaster, which increased
5 population by 3.63 percent.

6 There was a pattern of suburban districts
7 increasing population such as the 6th -- Chester and Berks
8 -- which increased by 4.2 percent, and the 4th Congressional
9 District, Montgomery County, which increased by
10 4.46 percent.

11 Fourth, regardless of whether there was a
12 population increase or decline in current districts, every
13 one of the 17 districts will need to increase population to
14 reach the new target population of 764,865. The difference
15 is that the current districts that gained population will
16 need less territory and districts that lost population will
17 need substantially more territory to reach its target
18 population.

19 Fifth, shrinking populations of rural
20 congressional districts include the 12th, and I wish I could
21 show you on the map, but the 12th, which is in purple; the
22 13th, which is down below in, I guess, I don't know, pink
23 and purple. I'll just list them: the 13th, 14th, 15th, and
24 16th Districts located in central and western Pennsylvania.
25 Since Pennsylvania must lose one congressional seat to keep

1 the districts compact and to minimize breaks, I suggest --
2 I won't even say recommend -- but I suggest merging the
3 12th, 15th, or 16th Districts along the northern border using
4 whole counties to equalize population and then add
5 townships in layers until the target population is
6 achieved.

7 Six, the growth of population in Philadelphia and
8 suburban counties should not -- this is to answer the
9 question I was asked to answer. The growth of population
10 in Philadelphia and suburban counties should not
11 significantly affect urban populations much if those seats
12 are kept compact. The loss of a congressional seat with
13 its corresponding increase in population of each district
14 means that urban and suburban seats should change less than
15 rural seats to reach the target population. I repeat: The
16 increase in population -- well, I don't have to repeat
17 that. You heard it the first time.

18 Seven, if seats are kept compact, the lost seat
19 should come from a combination of bordering districts that
20 lost population, not urban or suburban districts that
21 gained population, if you can. You know, that is my
22 suggestion. The loss of a seat should -- and that's based
23 on keeping everything compact and that's if you want to
24 follow as a starting point the existing map, and we'll move
25 forward.

1 The loss of a seat should not affect the
2 distribution of seats between city and suburban versus
3 rural areas greatly. If the new map is drawn compactly
4 with minimum broken political subdivisions, there should be
5 the loss of one rural seat.

6 Nine, the VRA, the Voting Rights Act. The
7 compactness will usually address any Voting Rights Act
8 concerns without racial, partisan gerrymandering. By
9 keeping districts compact and whole, political subdivisions
10 such as townships and wards and cities, you will usually
11 keep racial and linguistic groups from being fragmented,
12 and this is both for State maps and Federal maps.

13 For example, keeping the boundary line down
14 Broad Street in Philadelphia, you keep neighborhoods and
15 linguistic groups intact. I saw earlier testimony of
16 Latino members of Pennsylvania recommending that you keep
17 the district where it is, the line where it is, and the
18 thing is that by keeping eastern Philadelphia intact, you
19 actually preserve the entirety of the Latino community.

20 On the other hand, and I think this was
21 inadvertent, and I did run in this district. During the
22 2011 map, the line was struck straight down North 5th
23 Street, which exactly split the Latino community in
24 Philadelphia in half. It's a linear population, you know,
25 sort of settlement pattern, and it just cut it right in

1 half. I don't even think it was intentional, which is why
2 if it's possible to get a draft map out in time to have
3 some community input, then if you have inadvertent division
4 of populations, you will have a chance to make those
5 adjustments.

6 I'm coming to the end. I see some eyes are
7 glazing over. Anyway, communities of interest.

8 Counties, townships, and other political
9 subdivisions are communities of interest. This is where
10 people choose to live, face common problems, and pool tax
11 dollars to solve common problems. If you assemble
12 political subdivisions compactly, you will most often
13 protect communities of interest. Occasionally, geographic
14 drafting will inadvertently split a community of interest;
15 therefore, the final map should have some public input. I
16 just said that. Sorry to repeat.

17 Eleven, in the words of a circuit judge analyzing
18 a pattern of criminal activity, and also based on the
19 language of the RICO statute -- I'm not suggesting that
20 redistricting had been criminalized, because it hadn't, but
21 just for analogy -- and what great judges have said, two
22 forms of pattern -- two forms of pattern. Any pattern of
23 boundary selection that has a tendency to crack or pack an
24 opponent's likely voters will likely be detected by the
25 courts.

1 You have an opportunity to join a long line of
2 patriots in fighting for democracy in the way you draw the
3 map. Either you can try to generate seats for your own
4 party, you can assemble whole political subdivisions, or
5 you can assemble whole political subdivisions compactly.
6 If you do the latter, you will create a natural
7 distribution of conservative, liberal, and swing districts,
8 which will be a win for democracy.

9 I wish you Godspeed in drawing a beautiful and
10 fair map.

11 On that, I do have answers to your questions,
12 unless you want me to wait and take the questions.

13 MAJORITY CHAIRMAN GROVE: We'll go to our
14 questions.

15 MR. GORDON: Okay.

16 MAJORITY CHAIRMAN GROVE: Representative Nelson.

17 REPRESENTATIVE NELSON: Thank you, Mr. Chair.

18 Interesting testimony and map. You know, from my
19 opinion representing Westmoreland County, which this
20 proposal would actually divide us across three
21 congressional districts, this is an effort, you know,
22 that's extremely anti-rural and a blatant effort to expand
23 urban power.

24 You know, when we look at diluting Butler and
25 Westmoreland Counties with an urban county, what the result

1 we're going to get is continued absence of broadband and
2 representation for support, absence of clean water, and
3 absence of the ability to confront some of the isolationism
4 which prevents businesses and families from thriving in
5 these more rural areas.

6 We have heard testimony from each of these
7 counties about the importance of them drawing a line of
8 separation between an urban area that has essential and
9 reliable infrastructure, that has a very different economic
10 status level, and instead join with people who want to join
11 together to improve their lives. And how, sir, by
12 splitting our county into three does that help to achieve
13 better recognition for seniors, for single parents, and for
14 people who can't even log on to the Internet to get an
15 employer to show up because we don't have the essentials
16 needed to be able to build population?

17 MR. GORDON: It doesn't. So let me explain, and
18 I should have---

19 REPRESENTATIVE NELSON: No, I think you have
20 explained it just fine right there, because you want more,
21 and you want to take---

22 MR. GORDON: Let me read---

23 REPRESENTATIVE NELSON: ---from those who have.

24 MR. GORDON: Let me read my---

25 REPRESENTATIVE NELSON: The result would be a

1 decade of devastation for our areas where we as a State
2 should be looking to build the infrastructure and recruit
3 people to come in. By this effort to blatantly build in
4 the areas that have and continue to dilute the areas that
5 haven't, it is extremely frustrating from my perspective.

6 MR. GORDON: So there's no question that the
7 14th has to add population. The 14th District lost 21,052
8 persons, and as I say in my notes, this district should
9 increase population by 80,230 people. This could be
10 achieved by adding all of Westmoreland County and possibly
11 portions of Somerset County.

12 The methodology that I'm suggesting is that we
13 move toward, any county that is split, we move toward
14 making it whole as the first---

15 REPRESENTATIVE NELSON: But, sir, as I look,
16 Westmoreland County in your plan is split into three.

17 MR. GORDON: This is the---

18 REPRESENTATIVE NELSON: Just, if you could, the
19 number of square miles that the 12th District, and if, I
20 think -- my old eyes. What's the number of square miles of
21 coverage in District 12 under this plan? Landmass.

22 MR. GORDON: Westmoreland County, I see it as
23 next to Pittsburgh in the 14th.

24 REPRESENTATIVE NELSON: Yes. This question is
25 about the 12th, the proposal for the 12th District. How

1 many square miles would one Congressman represent in
2 the State of Pennsylvania, or do you have that in
3 percentage?

4 MR. GORDON: I don't have the square mileage.
5 The largest square mileage will be in the rural territories
6 in order to achieve equal population.

7 REPRESENTATIVE NELSON: And how many square miles
8 in the 15th District? Or is your plan overlaying with these
9 areas, and how much of them don't have clean, reliable
10 water and consistent broadband Internet?

11 MR. GORDON: The goal would be to assemble the
12 rural territories compactly, just like every other
13 territory. If you assemble them compactly, then you'll
14 have people who can elect to represent someone who shares
15 their views and values, who chose to live there, and who
16 can get clean water and broadband to rural areas. That's
17 the idea. If you---

18 REPRESENTATIVE NELSON: Sir, I think this idea
19 runs counter to full State development and prosperity.

20 Thank you, Mr. Chair.

21 MAJORITY CHAIRMAN GROVE: Thank you.

22 A quick question from my end.

23 As we have heard from prior testifiers regarding
24 legal precedent governing congressional redistricting,
25 Pennsylvania's congressional districts must be equalized

1 within one person of each other. In practice, this likely
2 means that in some instances, counties, municipalities, and
3 even precincts will be split on the borders between
4 congressional districts. Can you discuss the impact that
5 these types of splits tend to have on urban communities and
6 if you're aware of any particular places where such a split
7 may be more or less disruptive than others?

8 MR. GORDON: So referring, first, referring to
9 the two previous speakers, both of them were referring to
10 Federal constitutional principles and none of them made
11 reference to the *League of Women Voters*, which is governed
12 under the State Constitution. It's odd, because you are
13 drawing Federal districts but it's governed by our State
14 Constitution. And I would say the combination is going to
15 require plus or minus one person. So has that ever caused
16 damage to sort of like-thinking people?

17 I think your question, if I can perhaps rephrase
18 it, does getting to plus or minus one person force you to
19 draw odd-shaped districts? Can I answer that question? If
20 you don't want that answer, I'll try to answer your
21 question directly. I try to answer questions directly.

22 MAJORITY CHAIRMAN GROVE: Yeah. I mean -- yeah.

23 MR. GORDON: Okay. All right.

24 MAJORITY CHAIRMAN GROVE: It's a direct question,
25 so.

1 MR. GORDON: So the direct question is, has plus
2 or minus one person ever inappropriately fragmented
3 communities to take away the power in urban areas, and the
4 answer is no.

5 MAJORITY CHAIRMAN GROVE: Well, it's not really
6 urban areas. It's, how do you make it less disruptive than
7 other areas.

8 MR. GORDON: That's a great question.

9 MAJORITY CHAIRMAN GROVE: What is kind of like
10 the thought process behind it?

11 MR. GORDON: Yeah.

12 So the answer to the question, and I'm a more
13 visual thinker, so I'll look at the map. But the answer to
14 the question really can be seen in the 1972 map, which was
15 the inspiration for our methodology. And if you take a
16 look at Figure 6 in your materials and you look at Butler
17 County, Butler County is the one in the light blue directly
18 above Pittsburgh, and in our view, this is the model for
19 redistricting. And what was done in Butler County is that,
20 and this was right after *Wesberry*, the first districting
21 after *Wesberry v. Sanders*, and what the designer or the
22 drafter did was in order to equalize population, he added
23 whole townships along the common border of two
24 congressional districts in order to -- I'm sorry -- the
25 common border of two counties in order to create

1 congressional districts of equal population, and by doing
2 this, you add one district, then another, then another and
3 another until you get to equal districts. And then what
4 you only need to do is you only need to split one township,
5 and then when you break down the township -- one precinct,
6 one ward, one precinct -- you get to equal population.

7 Now, there is a point of silliness. Well, I
8 shouldn't say silliness. There are reasons for equal
9 population, and if I can go on? May I?

10 So the policy reason for equal population that
11 has been overlooked is that the easiest way to do partisan
12 gerrymandering, and imagine a world where the Democrats are
13 in power. And I don't favor partisan redistricting ever --
14 okay? -- and our group is opposed to it. But imagine the
15 Democrats are in power and you had this plus or minus
16 5 percent deviation for a 203-seat House, right? The first
17 thing they are going to tell, if it was a free-for-all, the
18 first thing that a bad districter is going to tell their
19 drafter, their mapper, is, okay, give all the Republicans
20 minus 5 percent and give all the Democrats plus 5 percent.
21 I'm sorry, the other way around. Give all the Democrats --
22 if you're a Democrat, right? A designer is going to say,
23 let's stuff the Republicans; let's give them all large
24 populations and the Democrats small populations so we can
25 right there get 20 extra seats, 20.5 extra seats, right?

1 That's why. That's the policy, is that it is very easy to
2 partisan gerrymander if you have that deviation.

3 It's a tradeoff, because, yes, you can keep
4 townships intact. But to go to the earlier question is,
5 how do you use this crazy, you know, plus or minus
6 one-person system, how do we employ that in a way that
7 doesn't fragment municipalities? If you focus on, if you
8 assemble counties compactly and then you focus on the
9 county boundaries and you add one township after another
10 until you get close to equal population and then you split
11 that one township, a number of good things are going to
12 happen.

13 One is, you'll have probably like-minded people
14 on either side of the -- the counties will remain intact.
15 You'll have like-minded people on either side of the county
16 who are able to, you know, who are able to vote. If you
17 did it in Bucks County where Brian Fitzpatrick is, you
18 probably, you know, and added districts, added townships
19 linearly along Montgomery County, which is largely rural,
20 you will probably guarantee his election for the next
21 10 years, right? But you would do it in a way that isn't
22 inappropriate. I'm not recommending that. Anyway. I am a
23 Democrat, just so you know. You would be surprised. But
24 what would happen is, I mean, you would have a fair, you
25 would have a fair districting.

1 And likewise, if you -- and that applies pretty
2 much anywhere in the State. So that's the methodology we
3 are recommending. And you really probably won't be scolded
4 by the Supreme Court either, because it would be really
5 difficult to quarrel with what you did, and you exchange
6 rural for rural. And likewise, if you are in an urban
7 setting or a liberal suburban setting like where I live and
8 you wind up, you know, in Mary Gay Scanlon's district
9 versus Madeleine Dean, nobody cares, right? It would be
10 nice to keep the township whole, but honestly, no one
11 cares.

12 Now, the silliness is -- and this is to answer
13 one of your earlier, I'm sorry Rep., your question, sir.
14 The silliness about this equality of population is the day
15 after the census, like, does it make sense to have exactly
16 equal population? And the answer is no, that small
17 deviations really shouldn't matter that much to the courts,
18 but they have to be minor and there has to be some reason
19 for doing it so you don't do it for partisan reasons. But
20 small deviations don't matter, because the census is out of
21 date the day after it is passed, and the reason is that
22 people are born, people die, and people move in and out of
23 a district. So it's out of date immediately by a small
24 degree, and as the decade progresses, it becomes more and
25 more out of date.

1 Now, the reason why it's a good thing to have
2 some counting point is because it enables you to sort of
3 fairly apportion districts. You have to pick some point.
4 But that's why, you know, at the precinct level, 17 seats
5 crossing a mountain or whatever, really it should say it
6 doesn't make sense to make people cross over. It would be
7 a burden.

8 We have in Merion Station near Philadelphia, on
9 the city's western border, we have a polling machine with
10 seven people. The other reason why you would argue against
11 that is if you have a polling machine with seven people,
12 you have privacy concerns. If all seven people voted for,
13 you know, Mary Gay Scanlon or Donald Trump or whoever, you
14 would know. Your polling officials would know.

15 So there are some reasons for minor deviations.
16 And our group is available to both conservatives and
17 progressives if you want to consult with us. We're not
18 partisan. Okay.

19 MAJORITY CHAIRMAN GROVE: Representative
20 Mackenzie.

21 REPRESENTATIVE MACKENZIE: Thank you,
22 Mr. Chairman.

23 So for our testifier, if I understood you
24 correctly, so you participated, was it an amicus brief in
25 challenging the, was it the 2011 maps? Is that correct?

1 MR. GORDON: I did.

2 REPRESENTATIVE MACKENZIE: Okay.

3 MR. GORDON: I wrote two amicus briefs to the
4 Pennsylvania Supreme Court in the *League of Women Voters*
5 case.

6 REPRESENTATIVE MACKENZIE: Okay. And so you
7 clearly saw that as a gerrymander and you were challenging
8 that, and what was the basic premise of that challenge?

9 MR. GORDON: The premise of the challenge was
10 that -- well, actually, our amicus brief was to suggest the
11 methodology that I have just shared with you. But the
12 litigation, which I was third chair in the 2017 litigation
13 in *Agre v. Wolf*, was to challenge the partisan drafting of
14 the districts in the 2010-2011 map. And the basis with the
15 challenge is that the 2011 districts were obviously drafted
16 with partisan goals in mind; that the districts were, they
17 appeared to be, I mean, circumstantial evidence was the
18 districts were designed to generate like a 55-to-45 percent
19 Republican voting, proven Republican voting districts and
20 some other, as well as personal gerrymanders.

21 So our argument was that there was partisan
22 intent used in drafting those districts and that it was
23 successful, that by drawing districts like the 7th, "Goofy
24 kicking Donald Duck," and attaching proven conservative
25 territory west of Philadelphia to a mildly conservative

1 voting suburban Philadelphia district, you guaranteed that
2 Representative Meehan would be elected. Not you
3 personally, but one guaranteed that Representative Meehan
4 would be elected for a decade if he chose to continue to
5 run. So that was part of it.

6 So that was the basis, and if you would like me
7 to go on, there are a number of additional partisanship.
8 And if you see it in the Democrats, blow the whistle, call
9 them on it, and vice versa. So the indicators of
10 partisanship would be, for example, if, you know, in the
11 2011 map, I don't have it in front of me, but the 2011 map,
12 Representative Turzai was in charge of western
13 Pennsylvania. There was another, there was a State Senator
14 in charge of the eastern side of Pennsylvania. And what
15 was done, what was done on the eastern side of Pennsylvania
16 is that all of the districts were elongated from east to
17 west, including the 7th District, the 6th District, which was
18 Chester County that had this wild tail going west, and then
19 going all the way up the eastern side of the State. They
20 were elongated from east to west in order to take in
21 reliable rural voting territory to create that 55-45 split
22 of conservative, too, and that was after kind of packing
23 Democrats or progressives into cities and inner rings of
24 urban territory. And it's not hard to do. It's not rocket
25 science, but there was a pattern. There was a pattern of

1 this.

2 And the other indicator is that, well, I don't
3 want to get into all the partisanship, but, you know.
4 Unless you're interested, I can go on, but there was a
5 pattern.

6 REPRESENTATIVE MACKENZIE: Yeah. So, well, I
7 would like to go then to this map that you were talking
8 about, the one that was drawn by an individual who was
9 appointed by the State Supreme Court.

10 MR. GORDON: Yes.

11 REPRESENTATIVE MACKENZIE: So in my opinion,
12 this map takes into account partisan considerations at
13 every turn, even though it is keeping more counties
14 whole, you know. And I'll read from a New York Times
15 article here. From [nytimes.com](https://www.nytimes.com) it says, "Every possible
16 competitive Republican-held district juts out to add
17 Democrat areas," and it goes on to list them. So it says
18 like adding York to the 10th, Lansdale to the 1st, Reading
19 to the 6th, Stroudsburg to the 7th. So these small
20 considerations were done for every single district with the
21 intent of a Democrat partisan advantage. Is that of
22 concern to you?

23 MR. GORDON: I don't think it's true. Our
24 mapper, who is a Caltech physicist engineer, much smarter
25 than me, she looked at the districts in terms of the

1 Cook Voting Index and found that there is a tendency when
2 you keep districts compact, it gives a slight advantage to
3 the Republicans, because Democrats tend to vote in cities.
4 So it's a little bit easier to pack Democrats in.

5 But anyway, so the answer is, I don't think the
6 map did that. To answer your question directly, I do not
7 believe it did it. And she analyzed the 2018 remedial map,
8 and it had a slight Republican advantage in terms of -- it
9 still had a slight Republican advantage. And I think what
10 happened was, the Democrats were so fired up because of the
11 Trump election and they were so motivated that you had, you
12 know, a shift of four seats.

13 REPRESENTATIVE MACKENZIE: Yeah. So, I mean, I
14 guess they would disagree with you. I mean, they say
15 hundreds of simulated maps show how well Democrats fared in
16 this map. They ran 500 computer simulations, and they
17 couldn't come up with a more Democratic favorable map
18 because of all of these small changes they made.

19 They also point to the fact that even when you
20 keep counties whole, how you go about grouping those
21 counties will matter. And again, every consideration, they
22 say here, advantaged Democrats.

23 So there was clearly a partisan intent, because
24 if you run 500 computer simulations and you can't come up
25 with a more Democratic favorable map, and all of these

1 considerations have been pointed out, partisan
2 considerations were taken into account to draw this map.
3 And you say that you're not in favor of partisan
4 gerrymandering or partisan redistricting, but yet you let
5 this stand and you hold this up as the best-drawn map out
6 there, and I just struggle to see how that is not a
7 partisan consideration on your part.

8 MR. GORDON: Our group could draw a far more
9 partisan Democratic map, and it would look like Chicago's
10 map. And Chicago has districts emanating from the city of
11 Chicago like the rays of the sun in order to manufacture
12 artificially 55-45 percent Democratic districts. It could
13 be much, much worse.

14 REPRESENTATIVE MACKENZIE: And we would be
15 opposed to that as well, don't you think? Right?

16 MR. GORDON: So -- yeah.

17 REPRESENTATIVE MACKENZIE: So everybody would be
18 opposed to that. But I guess what I'm struggling to see
19 and understand is that there seems to be a lack of
20 understanding that gerrymandering does not just occur by
21 drawing crazy lines. Gerrymandering can occur when you
22 draw nice compact districts but then you make partisan
23 considerations around the edges.

24 So in the district that I live in, the
25 7th Congressional District, if you were to go and think

1 about that district as the Lehigh Valley, Lehigh and
2 Northampton Counties, if you go around that district from
3 Upper Bucks County, upper Montgomery County, Berks County,
4 Schuylkill County, Carbon County, even the western portion
5 of southern Monroe County, there is no Democratic area to
6 pick up in significant numbers except going to
7 East Stroudsburg, and the New York Times points that out as
8 well. That is a partisan consideration to bring that into
9 the 7th District to slightly tip that district from being a
10 Republican-favoring district or even to a
11 Democratic-favoring district. And when you make that
12 decision every time across the map, it's like you are the
13 house in a casino game. You take a 51-49 advantage every
14 single time. And you know what they say in gambling? The
15 house always wins. So this is a Democratic partisan
16 gerrymander, and it should have been challenged. It is not
17 constitutional, and we need to be on guard to prevent the
18 unelected, unappointed, unquestioned individual that was
19 allowed to draw this by the State Supreme Court.

20 We cannot let that happen again. This map was
21 drawn in darkness. It had no public input. And the fact
22 that you let this stand is, to me, shocking, just shocking,
23 and it shows your partisanship.

24 I will conclude there, Mr. Chairman. Thank you.

25 MAJORITY CHAIRMAN GROVE: Representative Madden.

1 REPRESENTATIVE MADDEN: Mr. Gordon, thank you
2 for your testimony and thank you for your commitment to
3 compacting contiguous lines and making sure that, you know,
4 Legislators aren't picking their voters, that voters are
5 picking their Legislators.

6 To my colleague's point, we have nearly a million
7 more Democrats than Republicans registered to vote in the
8 State of Pennsylvania, so when we redraw the maps and make
9 them fairer, wouldn't it make sense that there would be
10 more Democrats in those districts than Republicans? Am I
11 correct about that?

12 And I would just like to make a point talking
13 about keeping communities together. My colleague on the
14 other side of the aisle, Representative Rader, we can be in
15 the same community. He can be on one side of the street
16 and be in his district; I can be on the other side of the
17 street and be in my district. How do we ensure that
18 doesn't happen?

19 Thank you.

20 MR. GORDON: Okay. It's your first comment, and
21 I apologize if I don't address the second. I was analyzing
22 the first question.

23 We are a State, if I'm not correct, of about
24 11 million people, and yes, there are more than 1 million
25 Democrats than Republicans. And if the methodology used

1 by the Pennsylvania Supreme Court were completely neutral,
2 one would expect that instead of a 9-9 map, you might see a
3 10-8 Democratic map, and you didn't. It's a 9-9 map, and
4 that has to deal with the slight preference or the slight
5 tendency of Democrats to self-pack in cities, right?

6 But a lot of Democrats who I have spoke to -- and
7 I myself am a Democrat; I have full disclosure -- is that
8 I would rather see there be rules of the game than a
9 free-for-all where might makes right, because you can't
10 have democracy if there are no standards.

11 So what we did is, someone has asked the question
12 of how many independent commissions are there. The
13 independent commissions don't guarantee that maps are drawn
14 fairly, it depends on who makes those subtle, and yes, they
15 can be very subtle choices in where boundary lines are
16 drawn, which is why we suggested, to answer your question
17 -- I think that you were asking about the independent
18 commissions -- that there are really four conditions that
19 almost guarantee fair maps and will drive out
20 gerrymandering.

21 The first is, independent commissions is a great
22 starting point, but it's not a guarantee.

23 Secondly, you should have rigorous design
24 standards for congressional or State House or State Senate
25 districts.

1 Thirdly, the process should be wide open. You
2 are a hundred percent right, Representative, they should be
3 wide open. There shouldn't be secret deliberations. There
4 shouldn't be legislative privilege. Every communication,
5 if you count votes in public with everyone looking, you
6 should design district boundaries with the same degree of
7 public access. There shouldn't be any communications that
8 are hidden, whether you are consulting me off the record or
9 a partisan district mapper, right? Nothing should be
10 hidden.

11 And lastly, you need to have a referee. So you
12 need to have access to the courts as a referee. There has
13 to be a final referee.

14 So I don't know if I answered your second
15 question, but go ahead.

16 REPRESENTATIVE MADDEN: Yes, you did. Thank you.

17 MR. GORDON: All right. Thanks.

18 MAJORITY CHAIRMAN GROVE: Quickly,
19 Representative Schemel.

20 REPRESENTATIVE SCHEMEL: Oh, sorry. I will ask
21 quickly.

22 It's curious to me, as I have looked at the
23 various maps as we made our tour through the State and saw
24 a lot of proposals, how frequently maps end up more or less
25 on a kind of 50-50 split, more or less, in terms of voting

1 trends. Although there are more registered Democrats in
2 Pennsylvania, we are actually a fairly purple State when it
3 comes to voting trends. And you already pointed out that
4 one of the challenges for us as mappers is, you know,
5 making these districts compact and so forth, acknowledging
6 the fact that Democrats, you know, ghettoize in cities.
7 That makes it very challenging for us, because, you know,
8 it's hard to break those cities without creating spokes on
9 a wagon wheel.

10 So as we do this, it's interesting to me how the
11 maps are drawn and the choices that are made that almost
12 very frequently come up with this kind of 50-50 split. If
13 we don't take into consideration politics, which you
14 suggest we shouldn't, and I believe that you are correct in
15 that, do you think it's acceptable if we have a map that
16 comes up with a split with voting trends that is nowhere
17 close to 50-50? Regardless of whether that's a Republican
18 or Democrat advantage, do you think that is a problem at
19 all if we have a map that overwhelmingly favors one party
20 in terms of voting trends but meets all of the boxes when
21 it comes to compactness, you know, communities of interest,
22 et cetera, et cetera?

23 MR. GORDON: So the answer, the answer is yes and
24 no. I think you have to have rigorous design standards so
25 that the Pennsylvania Supreme Court in its decision says,

1 look, you have to apply these four rules of equal
2 population, compact, contiguous, and no islands, right?

3 REPRESENTATIVE SCHEMEL: Yep.

4 MR. GORDON: Oh, and don't split any political
5 subdivisions.

6 So what we did as a think tank is we started to
7 look at those maps, you know, and we looked at the historic
8 maps of Pennsylvania when they just assembled counties
9 compactly, and there was a tendency that if you assemble
10 rural counties in whole pieces, compactly, you will have
11 representation of the views and values of those
12 communities. And the same thing in suburban and exurban
13 communities if they stay compact.

14 So your question was, so where do you work in the
15 fact that you may get some maps in some States that are
16 wildly different than the way people vote, and the answer
17 is, I don't think it would be wildly different, but if you
18 did have some differences, I would favor going to the
19 Supreme Court's secondary criteria, which is to say that if
20 you follow the main rules, you can make small, minor
21 adjustments for other legitimate purposes, and one of them
22 would be to prevent incumbent contests. And some of the
23 weird shapes that you see in the congressional districts
24 were really to keep three candidates or existing Members of
25 Congress from going up against each other, because it would

1 just create, be politically untenable. It would, you know,
2 create a riot. Because, you know, if you put two incumbent
3 Republicans or two Democrats, it doesn't matter. Anyway.
4 So that's part of it.

5 Secondly is that the Princeton Gerrymandering
6 Project and Professor Nagle in western Pennsylvania, they
7 both feel like responsiveness is the most important thing,
8 and what they're really saying is that you should be able
9 to adjust the boundaries in order to reach how people
10 vote.

11 So if you looked at voting patterns in the past
12 10 years of how many people voted for Hillary versus Donald
13 or versus, you know, or look at the State Attorney General
14 races or the gubernatorial races, so if you sort of take an
15 amalgam of those and you say, well, how are people voting,
16 shouldn't you be allowed fairly to do minor adjustments in
17 the boundaries after this kind of geometric design problem
18 in order to go toward, toward the percentage of the way
19 people vote -- responsiveness. And I think it's
20 appropriate, but the problem is it's really hard to draw
21 the line to say how much is too much, because then you get
22 to the conundrum of the Supreme Court, which is where you
23 have this -- we don't want to go back into a free-for-all.

24 So the answer is yeah, and maybe it's based on a
25 numerical standard. It's saying that if 53 percent of

1 Pennsylvanians vote for Democrats, regardless of how
2 they're registered over the past 10 years, then maybe we
3 should allow small adjustments to at least start to get
4 toward 53 percent of the districts being Democratic and
5 47 being Republican.

6 But, you know, as I said, I even have trouble
7 with that, because it becomes a little difficult. As I
8 said, I keep going back and forth. It is mathematical, so
9 there is some objective quality to it, because you can look
10 at how people voted. I say it should not be based on
11 registration, but how people voted over like a 10-year span
12 may be an appropriate way to do your secondary finer
13 adjustments. I don't know how the Supreme Court will
14 respond to that, but that's my view. That's my view.

15 REPRESENTATIVE MACKENZIE: It's a great
16 challenge. Yeah.

17 Thank you.

18 MR. GORDON: Okay.

19 MAJORITY CHAIRMAN GROVE: Thank you. That's all
20 the questions we have. Thank you so much for your time.
21 Thank you for traveling to Harrisburg. We greatly
22 appreciate your testimony.

23 MR. GORDON: I really appreciate you holding the
24 hearing, and you're on the right track in having everything
25 out in the open. Thank you so much.

1 MAJORITY CHAIRMAN GROVE: We're trying. We're
2 trying.

3
4 PANEL 3

5 CENSUS DATA ANALYSIS:

6 IMPACT ON RURAL PENNSYLVANIA

7
8 MAJORITY CHAIRMAN GROVE: Our last testifier is
9 Dr. Kyle Kopko, Director of the Center for Rural
10 Pennsylvania.

11 And if you don't mind, just stay standing. I'll
12 swear you in real quick. Raise your right hand:

13 Do you swear or affirm that the testimony you are
14 about to give is true to the best of your knowledge,
15 information, and belief? If so, indicate by saying "I do."

16 DR. KOPKO: I do.

17 MAJORITY CHAIRMAN GROVE: Thank you so much.

18 We appreciate your time and your willingness to
19 testify, and when you are comfortable and ready, the floor
20 is yours.

21 DR. KOPKO: Sure. Can everyone hear me?
22 Excellent. Very good.

23 I know that we're running over on time here, so
24 I'll try to keep my testimony brief and just hit the main
25 hitting points of the slide.

1 So good morning, Chairman Grove, Chairman
2 Conklin, and Members of the Committee. Thanks for the
3 opportunity to be here today and discuss redistricting and
4 some demographic trends and population trends in rural
5 Pennsylvania.

6 My name is Dr. Kyle Kopko, and I'm the relatively
7 new Director of the Center for Rural Pennsylvania. Just
8 some background on me. Before assuming this position, I
9 was an Associate Dean and Associate Professor of Political
10 Science at Elizabethtown College. I have a master's and
11 PhD in political science from The Ohio State University.
12 They do require us to say "The."

13 MAJORITY CHAIRMAN GROVE: You're going to have to
14 leave.

15 DR. KOPKO: (Laughing.)

16 I also have a bachelor's degree in political
17 science from Elizabethtown College, and I'm a part-time
18 juris doctor candidate at the University of New Hampshire
19 Franklin Pierce School of Law.

20 As you know, the Center for Rural Pennsylvania is
21 a legislative service agency of the General Assembly. We
22 are bipartisan, bicameral, and we serve both chambers of
23 the General Assembly.

24 We have two broad legislative mandates. The
25 first is to conduct and sponsor applied policy research to

1 better serve the General Assembly, local officials,
2 nonprofit groups, all throughout the Commonwealth, and also
3 we are obligated to maintain a comprehensive statistical
4 database of indicators for rural and urban Pennsylvania so
5 we can do comparative policy analysis and understand how
6 trends differ between urban and rural. And much of what
7 I'm discussing here today is going to draw from that
8 database. It includes Federal data, State data, private
9 foundation data, and also data that we have collected
10 through our own research.

11 So I want to talk about three broad trends or
12 themes today as part of my testimony: population trends
13 overall across the Commonwealth in recent years in what we
14 call the "Bifurcation of Pennsylvania." So that's the
15 shift of population to the southeast of Pennsylvania and
16 then largely population declines outside of that region.
17 Also, demographic changes with regard to age and race and
18 ethnicity, and also what might be driving these changes.
19 So this information should help inform your decisionmaking
20 process in the redistricting process.

21 And just as a very quick takeaway, too,
22 Pennsylvania is becoming older and it is becoming more
23 diverse, and there are these pockets of population shifts
24 that are occurring within the Commonwealth.

25 And I'll also note, too, that if I don't know the

1 answer to a particular question, I will get back to the
2 Committee. Or if there's any Members of the Committee that
3 have very specific data requests, we're more than happy to
4 generate any sort of reports, maps, graphs, tables,
5 anything that you and your staff may need for either this
6 committee's work or for any other work that you undertake
7 as part of your legislative responsibilities.

8 So I'll start off actually with slide 3 within
9 your packets. This is a map of rural and urban
10 Pennsylvania based upon the Center's definition. We
11 maintain definitions for counties, school districts, and
12 municipalities. This is our county-level map across the
13 Commonwealth.

14 So 48 of Pennsylvania's 67 counties are
15 classified as "rural" based upon the 2020 census. We
16 basically use a population density threshold. The average
17 density is 291 persons per square mile. If you are at or
18 above that, you are considered an urban county. If you are
19 below that, you are considered a rural county.

20 Just to put this in perspective, that's about
21 75 percent of the landmass in the Commonwealth, about a
22 quarter of the Commonwealth's population. If rural
23 Pennsylvania were to be its own State, it would be larger
24 than 21 States and the District of Columbia, and its GDP is
25 also larger than 14 States. So we're talking about a very

1 sizable economic powerhouse and population powerhouse as
2 well.

3 So let's start by talking about how population
4 has changed over time. We'll get into slide 5 of my
5 submitted slide testimonies.

6 We provided information dating back to 1920, and
7 what you can see over time is that there has been a sharp
8 increase in the population in urban Pennsylvania, but in
9 rural areas, it has largely stagnated in recent years. We
10 lost about 90,000 residents in rural areas as of the 2020
11 census, and we do expect this kind of change to persist for
12 the foreseeable years to come, and I'll get into that in
13 just a little more detail.

14 We'll go to slide No. 6 now. This is a statewide
15 map showing the changes in population by county since the
16 2010 census. And this is one of the most important slides
17 that I would like to draw to your attention.

18 So you can see what we mean by this "Bifurcation
19 of Pennsylvania," a shift of population to the southeast.
20 And it's not just Philadelphia and the suburbs surrounding
21 the city, we're talking about the southeast being from
22 Philadelphia County as far west as Franklin County. This
23 largely parallels the I-81, I-78 transportation corridors.
24 So if you're to the east or south of those major
25 thoroughfares, population has generally increased over

1 time. Outside that area, it has largely decreased. Now,
2 there are some exceptions. Obviously, Centre County has
3 grown in size. The same thing with Washington County,
4 Allegheny County, Butler County. Any of the shaded
5 counties here on this map have gained population since
6 2010.

7 I'll go to the next slide, slide No. 7. This
8 follows up on some of the testimony that Mr. Gordon just
9 delivered, some of the population changes that we have seen
10 by congressional district.

11 You can see that for the most part, based upon
12 the current boundaries, there has been population decline
13 to the west and to the north. So six of our congressional
14 districts, existing congressional districts, have seen
15 population decline. The rest have seen some level of
16 population increase. Obviously, that means that there is
17 going to have to be some sort of geographic expansion
18 within these areas.

19 And these supplemental materials, slide 24 and
20 forward, I'm not going to discuss those today out of time
21 constraints, but we do provide more information, even in
22 terms of roadways by congressional district, just to give
23 you a sense of what we're talking about for transportation
24 issues within those particular areas.

25 And we'll go to slide 8 now. This change,

1 though, this shift in populations from rural areas into
2 urban areas, it's not unique to Pennsylvania. This is part
3 of a larger national trend, and in fact many of our
4 neighboring border States of New York, Ohio, West Virginia,
5 many of their rural counties have seen population declines
6 in recent years, and more than 60 percent of rural counties
7 all across the United States have also seen population
8 declines.

9 So I wanted to point that out, because this isn't
10 something that's the fault of any particular policy, any
11 particular Administration. This has really been a
12 long-term demographic trend in many areas and something
13 that the Center is greatly concerned about, and we're going
14 to track and do more studies on this over time.

15 Okay. So what is causing some of these
16 population changes over time? I want to point out a couple
17 of things, starting on page 10. This is largely due to
18 differences in birth rates, death rates, and in-migration
19 and out-migration within the Commonwealth. So slide 10
20 here, this is specific to rural Pennsylvania, our rural
21 counties, but you can see that deaths have outpaced births
22 for the most part since the year 2000. So we plot this out
23 over time since 1970. Obviously, the sharp increase in
24 deaths in 2020 is the result of the COVID-19 pandemic. But
25 this is something that we expect to persist for the

1 foreseeable future.

2 But even though this particular graph here is
3 specific to rural Pennsylvania, the color-coded map in the
4 upper right, the purple-shaded regions, those are all
5 counties that had more deaths than births as of 2019. So
6 that also includes a number of urban counties as well,
7 including Erie, Allegheny, Lackawanna County, to name a
8 few. So this is not just a rural issue per se.

9 Going to slide 11. Relative to the birth rate
10 is fertility rates. Many of you are probably aware that
11 a fertility rate of 2.1 is generally needed to sustain
12 population levels. Based on this slide, there were only
13 two counties between 2017 and 2019 that hit that
14 threshold, Potter County and Mifflin County. The
15 remaining 65 counties in Pennsylvania did not attain that
16 threshold.

17 And nationally speaking, no State on average has
18 hit that threshold. So again, this is also part of a
19 nationwide phenomenon. Pennsylvania ranks 39th in terms of
20 fertility rate out of 50 States. Overall, the statewide
21 rate is 1.65 for these time periods of analyses.

22 Turning to in-migration and out-migration, one
23 of the other factors that influences population change.
24 On slide 12, we do have net-positive migration,
25 particularly to rural Pennsylvania, but there's a caveat

1 here. Much of this is also driven by large group quarters,
2 particularly in Centre County, Indiana County, and
3 Union County. So this is universities, and obviously
4 there's a penitentiary in Union County. If you were to
5 take out those three counties from the analysis, net
6 migration into rural Pennsylvania would be negative for
7 this timeframe.

8 And turning to slide 13, we provide a national
9 map just to give a sense of where people are coming from
10 whenever they move into rural Pennsylvania. It shouldn't
11 be too much of a surprise when people move into rural
12 Pennsylvania. They are generally coming from about
13 100 miles away or less. And in the bottom right, we also
14 provide a map of, whenever folks move out of rural
15 Pennsylvania, where are they going? You'll notice that
16 there's a large number of former Pennsylvania residents
17 going to Florida and Arizona, most likely retirees,
18 probably not too surprising to most of the Members of the
19 Committee here today.

20 All right. We'll switch gears now and talk about
21 demographic changes over time, starting with slide 15. The
22 current iteration of the census data that's available does
23 not provide age cohorts other than a cut point of above
24 18 years of age or below. So we were able to graph out
25 over time those individuals who are older than 18 and those

1 who are younger than 18 back to 1950. From a high of 1960,
2 35 percent. That's the most young people we have had in
3 rural Pennsylvania during this time period of analysis, and
4 we're down to 19 percent. So we are seeing a phenomenon
5 where there are fewer young people in our rural areas and
6 more older individuals.

7 Just to further contextualize this, going to
8 slide 16, I just wanted to provide some workforce
9 information here. Again, this is just to provide context
10 as you begin your planning process for mapmaking. But the
11 workforce in rural Pennsylvania generally is becoming
12 older. There are more and more workers that are age
13 55 years of age or older. They constituted only 14 percent
14 of the rural workforce in 2000. That increased to
15 27 percent as of 2020. So the workforce is also becoming
16 older.

17 Slide 17. I would like to draw your attention
18 there. These are some estimates that we derived in
19 partnership with the State Data Center based upon ACS and
20 census data. We're hoping to update this in the next few
21 years as we get more robust census data. It projects out
22 20-year-olds versus senior citizens, those 65 years of age
23 or older, and by 2030, there will be more senior citizens
24 in rural Pennsylvania than young people, and that's
25 expected to persist at least through 2040. Now, this

1 isn't, again, unique to rural Pennsylvania.

2 Slide 18. We provide a color-coded map showing
3 this change over time. This is the other very, very
4 important slide I would like to draw to your attention,
5 this slide 18. By 2030, our estimates show that
6 47 counties out of 67 counties will have more senior
7 citizens than what they do young people. Obviously, this
8 is something you might want to consider for your current
9 mapmaking work, but also, this is going to have
10 wide-ranging implications for workforce, education,
11 housing, transportation. It's going to affect so many
12 different policy areas, and this trend is expected to
13 persist at least through 2040 as well. So Pennsylvania is
14 becoming older.

15 Switching to diversity, race, and ethnicity. On
16 slide 20, we provide two different maps of the
17 Commonwealth, one from the 2000 census, another from the
18 2020 census, denoting persons of color all throughout the
19 Commonwealth. Each dot on the map represents 10 people,
20 see you can see how much Pennsylvania's diversity has
21 changed in the last 20 years. So roughly 1.4 million
22 persons of color have been added across the State within
23 this 20-year timeframe.

24 Now, if we break this down specifically to rural
25 Pennsylvania, on slide 21, we did a 10-year comparison

1 looking at the 2010 census versus the 2020 census. People
2 of color represented 7 percent of the rural population in
3 2010. By 2020, that had almost doubled. It is now
4 12 percent of the rural population. And we break that down
5 even further based upon the exact responses for race and
6 ethnicity.

7 And what might be driving that -- this is on
8 slide 22 -- it's largely due to the birth rate among
9 persons of color, particularly within rural Pennsylvania.
10 Dating back to at least 2005, the birth rates, when they
11 are standardized by population, have consistently outpaced
12 that of White rural residents, and the fertility rate for
13 persons of color in rural Pennsylvania has been above the
14 replacement rate, 2.17 versus 1.66 for rural White
15 residents.

16 I'll wrap up my comments for right now. Again,
17 there's a lot more data that are presented in the
18 supplemental slides. And if I can't answer a question,
19 again, please feel free to be in touch with my office at
20 any time. We have significant statistical and data
21 analytic capabilities. We're happy to generate any other
22 information that might be of use to you or your staff.

23 Thank you.

24 MAJORITY CHAIRMAN GROVE: For questions, we'll go
25 to Representative Diamond.

1 REPRESENTATIVE DIAMOND: Thank you, Mr. Chairman.

2 I have a question that you were probably not
3 anticipating, because it actually is involved in another
4 area of law that I have been working on, and it has to do
5 with, it underpins all of your testimony here today. And
6 the reason I ask it is not because I think -- I think you
7 are underselling. This particular point undersells the
8 needs and the wants of rural Pennsylvania, and that has to
9 do with the classification of counties as "urban" or
10 "rural" based solely on that average number and whether it
11 falls above or below that average number of 291 people per
12 square mile. Has there ever been any consideration into
13 weighting that differently or having further deeper
14 classifications?

15 For instance, we have eight classes of
16 counties in---

17 DR. KOPKO: Mm-hmm.

18 REPRESENTATIVE DIAMOND: ---you know, in
19 Pennsylvania statute. Because when I was looking at this
20 other area of law, I always considered Lebanon County to be
21 a rural county, but we do have a third-class city that
22 shares a lot of commonalities with other cities as well.
23 But when I look at your map, Lebanon County is in the same
24 classification as Philadelphia County, which has 40 times
25 more people per square mile.

1 DR. KOPKO: Right.

2 REPRESENTATIVE DIAMOND: And I would consider
3 that the people of Lebanon County share far more of their
4 needs and wants and even ideologies with the people of
5 Elk County at the extreme low end of the scale, where the
6 difference is only, you know, 10 times less, that sort of
7 thing.

8 So do other States classify "rural" and "urban"
9 the same way by just drawing that average line and
10 anything above, anything below, and just doing the two
11 classifications, and is that standard? Has there ever
12 been any talk about changing that kind of dynamic? Because
13 just about everything that we talk about in this Capitol
14 Complex comes down to the urban-rural divide, and I'm just
15 not sure that we're actually drawing that line in the
16 proper place.

17 DR. KOPKO: That's a great question.

18 REPRESENTATIVE DIAMOND: So can you address that
19 a little bit?

20 DR. KOPKO: Yeah, absolutely. No, that's a
21 great question, and it's also one of the reasons why we
22 have definitions for school districts and municipalities.

23 So just to give you a quick example. On 25, we
24 provide the school district map, and there's obviously
25 rural school districts in Lebanon County, too. If we look

1 at municipalities, there are pockets of rural in every
2 single county in the Commonwealth except for Philadelphia
3 County and Delaware County.

4 So dating back to why we have this particular
5 definition, we used to follow what the census definition
6 was for "rural" and "urban," but then we got into some very
7 unusual classifications. Was it Forest County that was
8 classified as -- Cameron County, excuse me. Under the
9 Census Bureau's definition, Cameron County, which is a very
10 rural county, was actually classified as "urban." Yes, it
11 didn't make any sense. It didn't have any face validity at
12 all.

13 So the Federal Government has many, many, many
14 different definitions of "rural" and "urban." They
15 sometimes take a seven-point scale. It really depends on
16 which Federal agency you are dealing with. If you're
17 working with the OMB, the Census, the USDA, they have all
18 these gradations. So for our purposes, and we're actually
19 going to be going through a process where we reconsider the
20 municipal definition in the near future, but for our
21 purposes, at the time, we worked with some folks at
22 Penn State to come up with a relatively simplistic
23 definition that wouldn't complicate things, because the
24 Federal Government had all these different types of
25 classification levels.

1 I'm not aware of other States that take an
2 approach like this. I don't think that we quite have a
3 similar analog in other State Governments. But that's at
4 least why we do what we do in terms of this definition.
5 But we do recognize that, yes, there are -- like, I'm from
6 Lancaster County, Pennsylvania, and I graduated from
7 Solanco High School, home of the Golden Mules. I can't
8 imagine a more rural high school mascot. So we do
9 recognize, though, that there are definitely these
10 gradations within counties.

11 REPRESENTATIVE DIAMOND: Okay. So there's
12 nothing in statute, in the authorizing statute that created
13 the Center for Rural Affairs---

14 DR. KOPKO: We were---

15 REPRESENTATIVE DIAMOND: ---that made that
16 definition, and that's just kind of an internal thing that
17 you guys did?

18 DR. KOPKO: Correct. Correct.

19 REPRESENTATIVE DIAMOND: Okay.

20 DR. KOPKO: Exactly.

21 REPRESENTATIVE DIAMOND: All right. Because I
22 was going to suggest if we need some kind of legislation to
23 permit some sort of, just a little more granular---

24 DR. KOPKO: Sure.

25 REPRESENTATIVE DIAMOND: ---determination of

1 what's rural and what's urban in Pennsylvania. But that
2 has always been concerning to me, and I'm glad you came
3 today so I could get that answer. Thank you so much.

4 DR. KOPKO: Thank you.

5 MAJORITY CHAIRMAN GROVE: Looking at your
6 demographic changes, generally what we're seeing is States
7 just stealing population back and forth. There's no real
8 new creation of population happening in any State. So we
9 are fighting for our current population as far as
10 competition, correct?

11 DR. KOPKO: That's about right, yes.

12 MAJORITY CHAIRMAN GROVE: And that trend is going
13 to kind of continue in the foreseeable future outside of
14 subsets of people of color.

15 DR. KOPKO: Right.

16 MAJORITY CHAIRMAN GROVE: Like, they're the only
17 demographic actually naturally growing because their
18 fertility rates are---

19 DR. KOPKO: In terms of -- yes, in terms of
20 fertility rates, birth rates, and we don't expect to see
21 any change in the foreseeable future.

22 I will add one quick caveat. We actually
23 released a report yesterday demonstrating a significant
24 change in home sales, particularly in the northeast.
25 There's some evidence that folks came from the New York,

1 New Jersey, Philadelphia regions, particularly into Wayne,
2 Pike, and Monroe Counties. I think every single Member of
3 the Committee here should have gotten that report this
4 morning in your physical mailboxes.

5 So that in-migration phenomenon could be one way
6 that Pennsylvania grows in the future, and there is already
7 some strong evidence that that happened due to the COVID-19
8 pandemic, but those home sales would have occurred after
9 the census capture date.

10 MAJORITY CHAIRMAN GROVE: Gotcha.

11 And then when we talk about, you know, loss of
12 population out of Pennsylvania, mostly seniors heading to
13 Florida, is that the---

14 DR. KOPKO: That's part of it.

15 MAJORITY CHAIRMAN GROVE: Is that the main kind
16 of cohort---

17 DR. KOPKO: I'll have to get back to you on
18 whether that's the majority.

19 MAJORITY CHAIRMAN GROVE: Okay.

20 DR. KOPKO: We do see this in terms of even some
21 young people, college-educated graduates, moving to either
22 urban areas within Pennsylvania or moving elsewhere for job
23 opportunities. But we can get more specific information
24 and report back to you on that.

25 MAJORITY CHAIRMAN GROVE: Okay.

1 And then when we look at population loss in rural
2 Pennsylvania, gains in suburban and urban Pennsylvania,
3 it's not like people are just moving down there, it's a
4 different demographic look. It's out-of-Staters coming in,
5 people of color birth rates increasing---

6 DR. KOPKO: It's all of the above.

7 MAJORITY CHAIRMAN GROVE: All of the above?
8 Okay.

9 DR. KOPKO: It's all of the above.

10 MAJORITY CHAIRMAN GROVE: Okay. And that's all
11 the questions I have.

12 Yep. Representative Madden. Yep, go ahead.

13 REPRESENTATIVE MADDEN: Thank you.

14 Your comments about Monroe, Carbon, and Pike, I
15 represent Monroe County, and maybe you could -- this is a
16 belief that I have, that during COVID, you know, there was
17 a lot of advertisement "come quarantine" from New York and
18 New Jersey in COVID-free Poconos. And I think, it is my
19 belief that many, many people came and didn't leave and
20 weren't properly represented in the census. Because we
21 actually decreased in population in Monroe County.

22 DR. KOPKO: That's right.

23 REPRESENTATIVE MADDEN: And since I am a
24 transplant, I do understand the desire to come to the
25 beautiful Poconos.

1 Do you think that there's a possibility that that
2 happened, that for 10 years, for the next 10 years, we are
3 going to be represented based on population that isn't
4 accurate? Because I know that you talk about home sales.

5 DR. KOPKO: Yeah.

6 REPRESENTATIVE MADDEN: It's nearly impossible to
7 find an apartment or a home to buy in Monroe County.

8 DR. KOPKO: Right.

9 So the short answer is yes, and I'll add some
10 qualifications to that. We don't know yet if these folks
11 are going to stay. We are presuming that the new home
12 buyers in this region, you know, might be remotely or
13 telecommuting for work purposes. We know that from
14 anecdotes from county commissioners, municipal officials,
15 that, you know, there's much more traffic, there's much
16 more demands on local services, and there are thousands of
17 new home sales for folks that hailed from the New York,
18 New Jersey, and Philadelphia regions.

19 Now, I think in fairness, the Census Bureau
20 would say, well, the count is as of the beginning of April.
21 As many of you are aware, the housing market was largely
22 dormant for the first few months of the COVID pandemic,
23 and then after that census capture date is whenever the
24 market really opened up. And to my knowledge, we have
25 never been in a situation where there was such a large

1 shock to the housing system so close to a census capture
2 date like this.

3 I mean, it's possible that you could have a
4 multiple percentage-point change in population in some of
5 these northeastern counties within a period of 18 months,
6 which you normally would have expected to see maybe over a
7 decade. Is it going to be as reflective of what the census
8 count was? Well, no, but again, the census count was
9 specific to that April 2020 deadline, and much of these
10 home sales occurred after that. But the people are there.

11 MAJORITY CHAIRMAN GROVE: Representative Schemel.

12 REPRESENTATIVE SCHEMEL: Thank you.

13 This is a demographic question, and of course one
14 of the criteria we have to take into consideration is
15 communities of interest. And this is really just for my
16 information, because I have always wondered how this plays
17 in.

18 But in terms of what you would term to be
19 "Black and Brown" communities and birth rates, so who fits
20 into that category? If a person who is otherwise, maybe
21 under census data, you know, identifies themselves as being
22 White and they marry anyone who is identified as being, you
23 know, non-White and they have a child, is the child
24 considered non-White, and therefore, is that -- I mean, I
25 have to wonder if just a lot of intermarriage, which we

1 would expect and hope for, honestly, in a changing
2 demographic community.

3 DR. KOPKO: Mm-hmm.

4 REPRESENTATIVE SCHEMEL: But does that in any way
5 play into the percentages in terms of increase where maybe
6 one, you know, where one racial group never shows increase,
7 others show outsized increase. I just don't understand it.
8 I have always wondered.

9 DR. KOPKO: Sure.

10 It's a difficult question to answer, because the
11 race and ethnicity questions are largely determined by
12 self-response and how one thinks of themselves. Are they
13 biracial? Are they a member of a particular ethnic group?
14 And also with the 2020 census, there were more options to
15 choose from relative to past census data.

16 Now, our data source, too -- I'll make this quick
17 aside. Our data source was State-level data from the
18 Department of Health in terms of birth rates. So that data
19 treats members of the Hispanic and Latino community a
20 little differently in terms of calculating that rate. It
21 shouldn't be too, too dramatically different relative to
22 what the census does, but I just wanted to at least point
23 that out. It's not quite an apples-to-apples comparison
24 there.

25 But to your point, yes, that's going to be a

1 factor, how individual selves identify, and just that
2 there's more people moving into rural areas and the
3 Commonwealth in general who have a diverse background
4 overall.

5 MAJORITY CHAIRMAN GROVE: Would you like to
6 predict the final score of the Ohio State-Penn State game
7 on Saturday?

8 DR. KOPKO: I won't say the exact score, but I
9 will predict an Ohio State win with apologies to all
10 Penn State fans.

11 MAJORITY CHAIRMAN GROVE: It's all good. You got
12 to respect your alumni.

13 By the way, Representative Conklin does represent
14 the fine university.

15 DR. KOPKO: Oh, yes. Well, my father is a
16 Penn State grad, and we grew up in a household where God
17 made the sky blue and white for a reason. But yeah.

18 MAJORITY CHAIRMAN GROVE: With that, we are out
19 of questions.

20 Any final comments, Chairman?

21 MINORITY CHAIRMAN CONKLIN: Yes.

22 I want to thank everyone for coming out. I want
23 to thank the presenters. Most of all, I want to thank
24 Chairman Grove for, it was like joining the football team
25 on 3-day practices, and it has been quite rigorous.

1 I have really enjoyed the testimony. I think one
2 of the clear thoughts that has been brought forth through
3 every testimony is, don't do this like we did it. Don't
4 allow the majority that rules do the same way. So I
5 think when we talk about transparency, I think the
6 transparency now begins. I think we do have that
7 opportunity now.

8 I think if you have ever seen the play *Hamlet*, I
9 want to be in the room where it happens. I think we now
10 have an opportunity to bring the public into the room where
11 it is happening. I think we have the public, unlike
12 10 years ago to where we ran a vessel without a map just to
13 get the process started, I'm looking forward to this time
14 actually having that map when we start that.

15 So again, I want to thank Chairman Grove for
16 making this transparent, and I'm really looking forward to
17 the transparency and what's about to come.

18 Thank you.

19 MAJORITY CHAIRMAN GROVE: Thank you.

20 And I echo the testifiers today, and actually all
21 the testifiers we have had. It has been very informative,
22 and hopefully it is evident that we are very much committed
23 to an open and transparent process and an accountable
24 redistricting process. So I echo your comments, Chairman,
25 exactly.

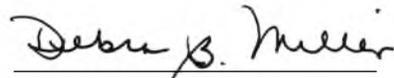
1 So with that, thank you again to the testifiers.

2 Good luck on Saturday. And we are adjourned.

3

4 (At 12:23 p.m., the public hearing adjourned.)

1 I hereby certify that the foregoing proceedings
2 are a true and accurate transcription produced from
3 audio/video on the said proceedings and that this is a
4 correct transcript of the same.

5
6
7 

8 Debra B. Miller

9 Transcriptionist

10 dbmreporting@msn.com