

11-11:30 (In Person)
Census Data Analysis: Impact on Urban PA
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My name is Brian Gordon. I am the founder and Co-Director of Concerned Citizens for Democracy (“CCFD”), an anti-gerrymandering thinktank in Montgomery County, Pennsylvania on the western border with Philadelphia.

My pro-bono legal work for the past four years is focused on redistricting law.

I was one of the lead attorneys in the 2017 federal litigation involving the 2011 Pennsylvania Congressional map. After the federal case ended, I filed two influential amicus briefs in the *League of Women Voters v. Pennsylvania* matter before the Pennsylvania Supreme Court on behalf of CCFD. The PA Supreme Court and their redistricting expert looked favorably upon our methodology which was reflected in the final 2018 remedial map. Counties were assembled compactly. Territory was added using whole townships to equalize population along common borders. Some of the lines in the hard-to-draw sections of Pennsylvania were taken from our proposed map.

I am also a former 12-year Lower Merion Township Commissioner.

I was a former U.S. Congressional intern and a former Research Assistant to a British Member of Parliament while studying at the London School of Economics.

CCFD is probably the leading group in Pennsylvania on how to draw maps in a compact manner with minimal division of political subdivisions.

My comments here today will be focused on the impact of the Census and redistricting upon urban and suburban populations, or more precisely, the impact of the growth of such populations on the Census and redistricting.

For my testimony, I looked carefully at population changes between the 2020 Census and 2021 Census on existing Congressional District boundaries. I ran calculations on population changes from 2010 to 2020 for an 18 seat map and a 17 seat map to more deeply understand the changes using the current Congressional Districts as a starting point.

Our findings, district by district are as follows:

The 1st Congressional District, which is comprised largely of Bucks County, had a growth of 22,005 persons. This District would need to grow by adding 37,173 persons to reach the target population for a 17 seat map of 764,865 persons. Following the PA Supreme Court’s rule set in *League of Women Voters v. Pennsylvania*, that district can be amended by cleaning up the border

with the abutting 4th District by making the addition of municipalities extend along entire border with Montgomery County or alternatively restoring Montgomery County to the 4th District and by taking a portion of rural Lehigh or Northampton Counties. This would make the 1st District primarily a Bucks County district while keeping Montgomery County largely in-tact.

The 2nd Congressional District, consisting mostly of northeast Philadelphia and Philadelphia east of Broad Street has grown by a population of 22,413 persons. This district will need to increase by 36,765 which could be accomplished compactly and limiting municipal splits by extending southward to the southern Philadelphia border.

The 3rd Congressional District, composed of the western half of Philadelphia and some of Southwest Philadelphia has had a substantial **increase** in population of 41,416 persons. This district will need to increase in geographic size by 17,762, which could be accomplished by retaining a larger piece of Philadelphia now in the 5th District.

The 4th Congressional District, composed mainly of Montgomery County, has **increased** in size by a substantial 43,955 persons. This district still needs to increase by 13,223 persons. This can best be accomplished by incorporating the southern tier of Lower Merion along the Montco-Delaware County border and by pushing westward into Berks County or by reclaiming the Montco-Bucks border and having the 1st District take additional territory in rural Lehigh or Northampton County.

The 5th Congressional District , composed of Delaware County, a small portion of Montgomery County, and a portion of Southwest Philadelphia, had a moderate **increase** in population of 20,371 persons. This district should decrease slightly in geographic size which could be achieved by removing townships along the Delaware-Chester County border in a layered manner.

The 6th Congressional District. Consisting of Chester County and a portion of Berks County had a substantial **increase** in size of 42,297 persons. This district will need to add 16,881 persons. This may be accomplished by adding portions of Berks or Lancaster to the 6th District.

The 7th Congressional District, consisting primarily of Lehigh County and Northampton County with a sliver of Monroe County has also seen an **increase** in size of 35,141 persons. This district will need to add 24,037 persons which can be accomplished by adding layers of Monroe County until the target population is reached.

The 8th Congressional District consisting of Wayne, Lackawanna, Pike, Luzerne, and portions of Monroe County has experienced a modest **increase** in size of 2,445 persons. Since this district has grown, but grown less, relative to other Congressional districts, there would be an **increase** in geographic size to accommodate an additional 56,733 to reach the new target population. This could be accomplished compactly by adding Susquehanna and portions of Wyoming Counties to the 8th.

The 9th Congressional District, consisting of Carbon, Schuylkill, Columbia, portions of Berks, portions of Montour, portions of Northumberland and Lebanon counties experienced a substantial **decrease** in population of 4,395 persons. To reach the target population this district you would need to add 63,573 persons. This could be accomplished by adding all of Montour, Northumberland, Snyder and Union to the District.

The 11th Congressional District, consisting of all of Lancaster County and portions of York County also showed an **increase** in population of 37,950 persons. Though York and Lancaster are viewed as rural counties, this trend belies the narrative that all rural counties lost population. As a result of the population **increase**, this District would still need to add 21,228 persons to reach the target population. This could be accomplished by adding all of York County and portions of Adams County to the District.

The 12th Congressional District, consisting of the Northern Tier counties from Potter to Susquehanna, and reaching down to Perry County in central Pennsylvania, had a significant drop in population of 23,859 persons. To reach the target population of 764,865, the district would need to add 83,037 persons. To accomplish this, the district should be merged or move westward.

The 13th Congressional District in the southern tier from Adams County to portions of Westmoreland County and reaching into central Pennsylvania, lost significant population in the amount of 15,828 persons. Again, this rural district would increase in population by 75,006 to reach the target population. This district would benefit in terms of compactness by returning the eastern portion of Westmoreland County to the 14th district and adding Perry, Juniata, and Mifflin, Cambria, and/or Indiana Counties until population equality was achieved.

The 14th Congressional District consisting of the southwest corner of Pennsylvania lost population in the amount of 21,052 persons. This district should increase population by 80,230. This could be achieved by adding all of Westmoreland County and possibly Somerset County.

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

The 16th District, consisting of the northwest corner and western edge of Pennsylvania from Erie County to Lawrence County and portions of Butler County lost population, in the amount of 22,613 persons. This district must grow in population by 81,791 or merge with another district. This could be accomplished by merging the 15th with the 16th or the 12th Congressional Districts,

eliminating counties to the south and more equally dividing counties and population along the northern tier.

The 17th Congressional District consisting of Beaver County portions of Allegany County gained population the amount of 26,014 persons. The district would still need to add 33,164 to reach the target population. This could be accomplished by adding Butler County and layers of Lawrence County.

The 18th Congressional District Consisting of Pittsburgh in Allegany County had a modest **increase** of 8,028 persons. This district would need to add 51,150 to reach the target district population. This could be accomplished by adding back portions of Allegheny County until the target population is achieved.

The overall population shifts between the 2010 Census on the 2020 Census do not indicate a simple picture of depopulating rural counties and the growth of urban counties and districts. The population shifts appeared to be slightly more nuanced than that. Some examples that counter the rural to urban migration narrative include the 18th Congressional District (portions of Allegany County) which lost 2.74% of its population. There is also the 11th Congressional District two rural counties York and Lancaster **increased** population by 3.63%. There is also a pattern of suburban districts increasing population, such as the 6th District (Chester and Berks) that **increase** population by 4.46% of its population and the 4th Congressional District (Montgomery County) that **increased** population by 4.46%

Regardless of whether there was a population increase or a decline in the current Congressional Districts, every one of the 17 new districts will need to increase population to reach the new target population of 764,865 per district. The difference is that districts that gained population would need to less territory and districts that lost population would need substantially more territory to reach the target population.

Fitting in with the narrative of the shrinking populations of rural Congressional districts include the 12th, 13th, 14th, 15th, 16th all located in central and western Pennsylvania. Since Pennsylvania must lose one congressional seat, to keep districts compact and to minimize breaks political subdivisions, I recommend merging the 12th, 15th or 16th Districts and adjusting the boundaries using whole counties to equalize population and then add townships in layers until the target population is achieved.

The growth of population in Philadelphia and suburban counties should not affect urban and suburban populations much because of the simultaneous loss of a congressional seat with a corresponding increase in the population of each district. The lost seat should come out of a combination of bordering Districts that lost population, not urban or suburban districts that gained population.

**AN END TO GERRYMANDERING: HOW RIGOROUS AND
NEUTRAL DESIGN CRITERIA, TO EQUALIZE
POPULATION DEVIATION BETWEEN ELECTORAL
DISTRICTS, CAN RESTRAIN OR END PARTISAN
REDISTRICTING**

*Brian Gordon**

SUMMARY

I have come before you to talk about the mechanics of how to minimize the deviation of population between Congressional Districts as is required in Congressional redistricting after Wesberry v Sanders (1964), Veith v Jubelirer, (2004) and as mandated by our PA Supreme Court in League of Women Voters v PA (2018).

According to the U.S. Census, Pennsylvania has a population of 13,002,700 persons. When divided by the 17 seats the Pennsylvania was allocated by law, the target population of each district is 764,865 persons per district.

Gerrymandering, or partisan equalization of population deviations between districts, is the “art” of packing an opposing party’s likely voters into a few districts and fragmenting remaining concentrations of opposing voters into separate districts where they cannot achieve the majorities needed to elect state and federal representatives who reflect their interests. partisan equalization of population deviations can be stopped or greatly restrained by strictly imposing neutral and historic design criteria of compactness and by minimizing partisan splits in political

* The author was a member of the plaintiffs’ legal team in *Agre v. Wolf*, 284 F. Supp. 3d 591 (E.D. Pa. 2018), a federal anti-gerrymandering case that challenged the 2011 Pennsylvania congressional map in 2017 before a federal three judge panel. Mr. Gordon is also the founder and a managing member of Concerned Citizens for Democracy (CCFD), a nonprofit organization dedicated to ending partisan gerrymandering.

subdivisions (counties, cities, townships, etc.) during the process of equalizing population between electoral districts.

The key to this method is to deprive map drafters of discretion to pick and choose territory needed to “crack or pack” an opposing party’s likely voters and replace that discretion with historic and known municipal boundaries.

The use of rigorous design criteria to minimize population deviation between Congressional Districts is compatible with both neutral independent commissions and the most aggressive partisan gerrymanderers. Both types of drafters are forced to design districts using whole political subdivisions arranged compactly in an electoral map. Most importantly, when applied rigorously, neutral design criteria create objective, judicially enforceable standards to evaluate, approve, reject, or redraw legislative maps that violate the principles of free and fair elections. This method of redistricting answers the plea of the United States Supreme Court for a neutral and judicially manageable standard to draw and evaluate electoral maps.

INTRODUCTION

The target population for each Pennsylvania Congressional District, based on the 2020 Census, is 764,865 persons per district. The question before you is how we equalize population deviation in a manner that preserves free and fair democratic elections in each congressional district.

In September of 2017, a team of lawyers challenged the 2011 Pennsylvania congressional map in federal court under Article I, Section 4 of the U.S. Constitution.¹ This Section provides: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.”²

1. See Complaint – Injunctive Relief Requested, *Agre v. Wolf*, 284 F. Supp. 3d. 591 (E.D. Pa. 2018) (No. 2:17-cv-04392-MMB). The team, including the author, was led by Thomas H. Geoghegan, Esq. and Alice W. Ballard, Esq. The Brennan Center of New York University is a valuable resource for lawyers and researchers working on redistricting cases. The site has collected pleadings and opinions of major redistricting cases since 2016. See, e.g., *Agre v. Wolf*, BRENNAN CTR. FOR JUST. (May 29, 2018), <http://www.brennancenter.org/our-work/court-cases/agre-v-wolf> [https://perma.cc/E3K9-GK44].

2. U.S. CONST. art. I, § 4, cl. 1.

The team's focus was to persuade a three-judge panel to interpret the words "[t]he Times, Places and Manner of holding Elections"³ as giving state legislators the power to hold only fair elections and not to use that power to favor one political party over another in the quest to create equal population districts.

The 2011 Pennsylvania congressional map, with its tortured districts, delivered thirteen of eighteen congressional seats to Republicans in a state that consistently voted approximately 50% Democratic and 50% Republican in statewide elections from 2012 through 2016.⁴ The legal team knew that gerrymandering was wrong but had no answer for how to prevent it other than asking the trial court to appoint a neutral commission or a neutral expert to redraw the ill-formed map.

The absence of a judicially manageable standard to evaluate electoral maps was the stated reason why the U.S. Supreme Court refused to weigh in on gerrymandering in 2004 and again in 2019.⁵ In *Vieth v. Jubelirer*,⁶ a case challenging the fairness of the 2001 Pennsylvania congressional map, Justice Kennedy framed the problem as follows:

The second obstacle—the absence of rules to confine judicial intervention—is related to the first. Because there are yet no agreed upon substantive principles of fairness in districting, we have no basis on which to define clear, manageable, and politically neutral standards for measuring the particular burden a given partisan classification imposes on representational rights. Suitable standards for measuring this burden, however, are critical to our intervention. Absent sure guidance, the results from one gerrymandering case to the next would likely be disparate and inconsistent.⁷

The most serious problem with the Court's refusal to referee partisan maps is that if legislators can draw districts favorable to themselves or their political party, they can remain in power indefinitely and become less accountable to the will of the people through democratic elections.

In *Vieth*, Justice Kennedy left open the possibility that American ingenuity could solve the problem and someday create a judicially manageable standard to control partisan gerrymandering.⁸ He stated:

That no such standard has emerged in this case should not be taken to prove that none will emerge in the future. Where important rights are involved, the impossibility of full analytical satisfaction is reason to err on the side of caution. . . . This possibility suggests that in another case a standard might emerge that suitably demonstrates how an apportionment's *de facto*

3. U.S. CONST. art. I, § 4, cl. 1.

4. See KAREN L. HAAS, OFFICE OF THE CLERK, U.S. HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 8, 2016, at 62–64 (2017); KAREN L. HAAS, OFFICE OF THE CLERK, U.S. HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 4, 2014, at 40–41 (2015); KAREN L. HAAS, OFFICE OF THE CLERK, U.S. HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 6, 2012, at 52–53 (2013).

5. See *Rucho v. Common Cause*, 139 S. Ct. 2484, 2508 (2019); *Vieth v. Jubelirer*, 541 U.S. 267, 305–06 (2004).

6. 541 U.S. 267 (2004).

7. *Vieth*, 541 U.S. at 307–08 (Kennedy, J., concurring) (citation omitted).

8. See *id.* at 311–13.

incorporation of partisan classifications burdens rights of fair and effective representation (and so establishes the classification is unrelated to the aims of apportionment and thus is used in an impermissible fashion).

If suitable standards with which to measure the burden a gerrymander imposes on representational rights did emerge, hindsight would show that the Court prematurely abandoned the field. That is a risk the Court should not take.⁹

In 2019, redistricting reform was again addressed by the U.S. Supreme Court in *Rucho v. Common Cause*,¹⁰ a case involving partisan gerrymandering of congressional seats in North Carolina and Maryland.¹¹ Given the absence of agreed-upon objective, neutral standards, Chief Justice Roberts, writing for the majority, came to a similar conclusion as the majorities in *Davis v. Bandemer*¹² and *Vieth*. Regarding the *Vieth* decision, Chief Justice Roberts observed:

Eighteen years later, in *Vieth*, the plaintiffs complained that Pennsylvania's legislature "ignored all traditional redistricting criteria, including the preservation of local government boundaries," in order to benefit Republican congressional candidates. Justice Scalia wrote for a four-Justice plurality. He would have held that the plaintiffs' claims were nonjusticiable because there was no "judicially discernible and manageable standard" for deciding them. Justice Kennedy, concurring in the judgment, noted "the lack of comprehensive and neutral principles for drawing electoral boundaries [and] the absence of rules to limit and confine judicial intervention."¹³

I. TOWARD A NEUTRAL, JUDICIALLY MANAGEABLE STANDARD

You are the Legislature as described in Article 1 Section 4 of the U.S. Constitution.

Right now, in 2021, you have a golden opportunity to create a national standard for fair districting or return to partisan gamesmanship and "game the system" under the guise of merely creating equal population districts.

So let me help you be statesmen or states-persons and pick up where the PA Supreme Court left off in February of 2018.

Here is how.

The original "Gerry-Mander,"¹⁴ from 1813, shown in Figure 1, was formed of whole Massachusetts townships in a noncompact manner. One can observe districts that

9. *Id.*

10. 139 S. Ct. 2484 (2019).

11. *Rucho*, 139 S. Ct. at 2487.

12. 478 U.S. 109 (1986), *abrogated by Rucho*, 139 S. Ct. 2484.

13. *Id.* at 2498 (alteration in original) (citations omitted).

14. *Cartoon, "The Gerry-Mander", 1813*, SMITHSONIAN NAT'L MUSEUM OF AM. HIST., http://americanhistory.si.edu/collections/search/object/nmah_509530 [https://perma.cc/AWS3-QVK5] (last visited Apr. 1, 2021) ("The 'Gerry-Mander' cartoon first appeared in the Boston Gazette, March 26, 1812, and was quickly reprinted in Federalist newspapers in Salem (this copy is from the Salem Gazette from April 2, 1813) and Boston. The cartoon expressed opposition to state election districts newly redrawn by Massachusetts'")

respected municipal boundaries, but were not compact, would be subject to abusive partisan gerrymandering.

FIGURE 1

THE "GERRY-MANDER"



Historically, both Congress and the Pennsylvania legislature addressed the problem of partisan gerrymandering by requiring that districts be compact, contiguous, of roughly equal population, and that districts minimize the division of counties, townships, cities, boroughs, and wards. The requirement that districts be contiguous first appeared in the Federal Apportionment Act of 1842¹⁵ “in ‘an attempt to forbid the practice of the Gerry-mander.’”¹⁶ The 1901 Reapportionment Act¹⁷ and the 1911 Federal Reapportionment Act¹⁸ (1911 Reapportionment Act) set forth three of the four

Jeffersonian Democratic-Republican Party, led by Governor Elbridge Gerry. Fearing that the Federalist Party would gain power in the 1812 election, Gerry consolidated Federalist voting strength in a salamander-shaped voting district. The practice—though not invented by Gerry—became known as a ‘gerrymandering.’”

15. Ch. 47, 5 Stat. 491 (1842).

16. *Rucho*, 139 S. Ct. at 2495 (quoting ELMER C. GRIFFITH, *THE RISE AND DEVELOPMENT OF THE GERRYMANDER* 12 (1907)).

17. Ch. 93, 31 Stat. 733 (1901).

18. Ch. 5, 37 Stat. 13 (1911).

redistricting requirements, which later appeared in the 1968 Pennsylvania Constitution.¹⁹ Section 3 of the 1911 Reapportionment Act provides:

That in each State entitled under this apportionment to more than one Representative, the Representatives to the [next Congress] and each subsequent Congress shall be elected by districts composed of a contiguous and compact territory, and containing as nearly as practicable an equal number of inhabitants.²⁰

Section 3 of the 1901 Reapportionment Act contained nearly identical language.²¹

Article II, section 16 of the Pennsylvania Constitution is a near verbatim restatement of three design standards from the 1911 Reapportionment Act.²² State legislative districts were required to be “compact and contiguous territory as nearly equal in population as practicable.”²³ The drafters of the Pennsylvania Constitution added a fourth requirement that an electoral map may not divide municipalities and other political subdivisions “[u]nless absolutely necessary.”²⁴ Article II, section 16 provides:

The Commonwealth shall be divided into 50 senatorial and 203 representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.²⁵

The 1968 Pennsylvania Constitution thereby addressed partisan gerrymandering in state house and senate districts but left federal gerrymandering unregulated.²⁶ The 1911 Reapportionment Act was deemed to have expired when the next reapportionment act, which did not contain these provisions, was enacted.²⁷ However, an examination of the Pennsylvania congressional maps enacted in 1943,²⁸ 1951,²⁹ 1962,³⁰ and 1972³¹ reveals that, despite this repeal, these requirements continued to be followed.

19. See PA. CONST. art. II, § 16.

20. 1911 Reapportionment Act § 3, 37 Stat. at 14.

21. 1901 Reapportionment Act § 3, 31 Stat. at 734.

22. Compare PA. CONST. art. II, § 16, with 1911 Reapportionment Act § 3, 37 Stat. at 14.

23. PA. CONST. art. II, § 16.

24. *Id.*

25. *Id.*

26. *See id.*

27. *Wood v. Broom*, 287 U.S. 1, 6–7 (1932); *see also* Act of June 18, 1929, ch. 28, 46 Stat. 21.

28. *See Pennsylvania Congressional Districts: Act 119 of 1943*, PA. REDISTRICTING, http://www.redistricting.state.pa.us/Resources/GISData/Districts/Congressional/1941/PDF/CongressionalDistricts_1943.pdf [<https://perma.cc/KN4G-9WFX>] (last visited Apr. 1, 2021).

29. *See Pennsylvania Congressional Districts: Act 464 of 1951*, PA. REDISTRICTING, http://www.redistricting.state.pa.us/Resources/GISData/Districts/Congressional/1951/PDF/CongressionalDistricts_1951.pdf [<https://perma.cc/3MMF-KDBA>] (last visited Apr. 1, 2021).

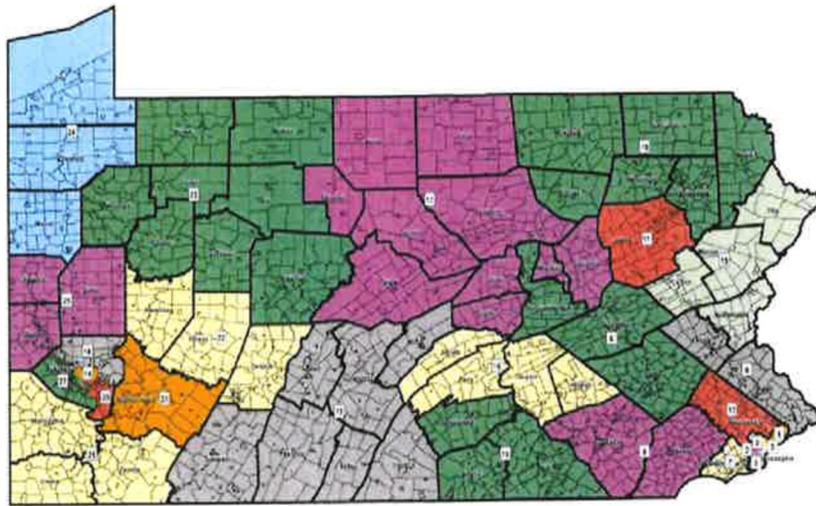
30. *See Pennsylvania Congressional Districts: Act 1 of 1962*, PA. REDISTRICTING, http://www.redistricting.state.pa.us/Resources/GISData/Districts/Congressional/1961/PDF/CongressionalDistricts_1962.pdf [<https://perma.cc/AT5D-FSU2>] (last visited Apr. 1, 2021).

31. *See Pennsylvania Congressional Districts: Act 3 of 1972*, PA. REDISTRICTING, http://www.redistricting.state.pa.us/Resources/GISData/Districts/Congressional/1971/PDF/CongressionalDistricts_1971.pdf [<https://perma.cc/K5PC-E4CK>] (last visited Apr. 1, 2021).

These maps show that the Pennsylvania legislature had little problem creating congressional maps with districts that were compact, contiguous, and equal in population to the extent reasonably practicable.³² The legislature also did not divide political subdivisions unless necessary to create districts of equal population.³³ The 1962 Pennsylvania congressional district map, shown in Figure 2, illustrates how districts were composed of whole counties that were assembled or divided compactly to achieve roughly equal population districts.

FIGURE 2

1962 PENNSYLVANIA CONGRESSIONAL MAP



The 2002 Pennsylvania congressional map, shown in Figure 3, began to show signs of more aggressive gerrymandering.³⁴ Montgomery County—which demonstrated increasing Democratic voter strength in the 1990s by electing two Democratic members of Congress in November 1992³⁵ and November 1998³⁶—was cracked into four pieces,

32. See *supra* notes 28–31 and accompanying text.

33. See *supra* notes 28–31 and accompanying text for examples of prior Pennsylvania congressional maps.

34. See *Pennsylvania Congressional Districts – 19 Districts Total*, U.S. CENSUS BUREAU, http://www2.census.gov/geo/maps/cong_dist/cd108_gen/ind_pdf/Pennsylvania/PA_CDloc.pdf [<https://perma.cc/C2HM-3RC2>] (last visited Apr. 1, 2021).

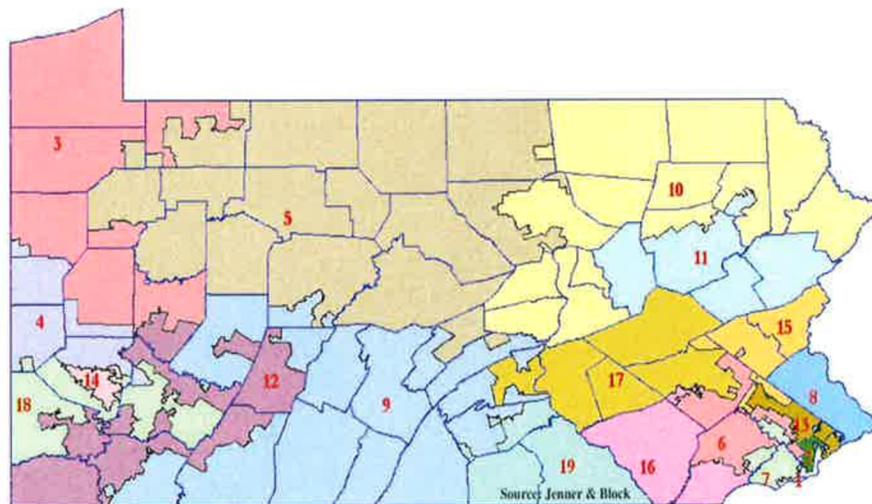
35. See DALLAS L. DENDY, JR., OFFICE OF THE CLERK, U.S. HOUSE OF REPRESENTATIVES, STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 3, 1992, at 62 (1993) (listing Democrat Marjorie Margolies-Mezvinsky as winning Pennsylvania’s Thirteenth District).

36. See JEFF TRANDAHL, OFFICE OF THE CLERK, U.S. HOUSE OF REPRESENTATIVES, STATISTICS OF THE CONGRESSIONAL ELECTION OF NOVEMBER 3, 1998, at 38 (1999) (listing Democrat Joseph M. Hoeffel as winning Pennsylvania’s Thirteenth District, which included Montgomery County).

distributing its voters into the neighboring Seventh, Sixth, Fifteenth, and Second Congressional Districts.³⁷ The map also showed significant gerrymandering in the southwestern corner of the state, where Democrats from the inner-ring suburbs of Pittsburgh were added to the Fourteenth District.³⁸ Whenever drafters deliberately move opposing voters to one district, the drafters simultaneously remove such voters from the abutting district. By adding suburban Democratic voters to more liberal voting cities, the drafters of this map also cleansed suburban districts of Democratic voters.

FIGURE 3

2002 PENNSYLVANIA CONGRESSIONAL MAP



The 2011 Pennsylvania congressional map, shown in Figures 4 and 4-A, was drafted in a wildly and unabashedly gerrymandered manner.³⁹ To the untrained eye, the map contained mysterious and unusual shapes, some of which were so contorted that they were described as cartoon characters.⁴⁰

37. See *Pennsylvania Congressional Districts – 19 Districts Total*, *supra* note 34.

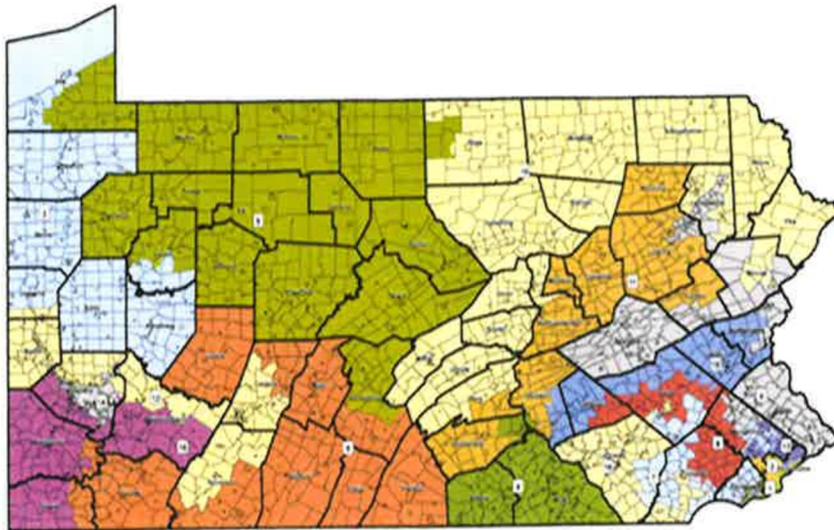
38. See *id.*

39. See *Pennsylvania Congressional Districts: Act of 131 of 2011*, PA. REDISTRICTING, <http://www.redistricting.state.pa.us/Resources/GISData/Districts/Congressional/2011/PDF/2011-PA-Congressional-Map.pdf> [<https://perma.cc/D5LY-PTGR>] (last visited Apr. 1, 2021).

40. See Trip Gabriel, *In a Comically Drawn Pennsylvania District, the Voters Are Not Amused*, N.Y. TIMES (Jan. 26, 2018), <http://www.nytimes.com/2018/01/26/us/pennsylvania-gerrymander-goofy-district.html> [<https://perma.cc/E8HF-2CV3>]; see also *Pennsylvania Congressional Districts: Act of 131 of 2011*, *supra* note 39.

FIGURE 4

2011 PENNSYLVANIA CONGRESSIONAL MAP



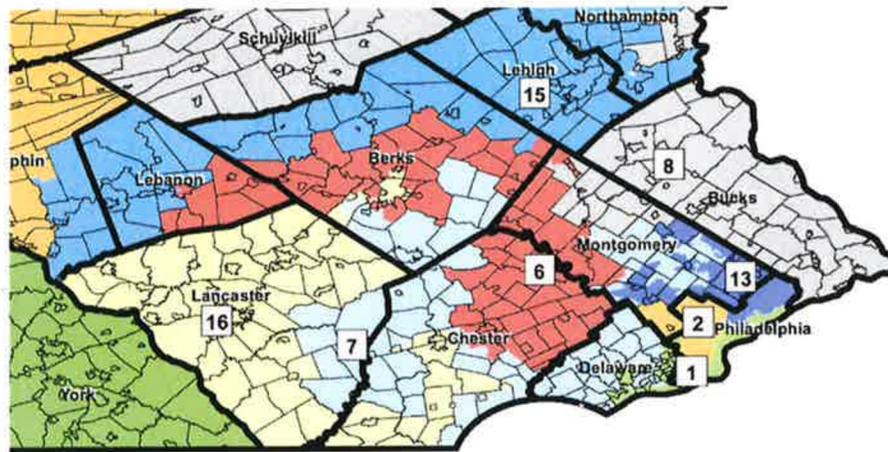
Visually, the worst gerrymandering was the Seventh Congressional District,⁴¹ located in the southeastern part of the state. This district is known for its shape resembling Disney cartoon characters and is described as “Goofy Kicking Donald Duck.”⁴²

41. See *infra* Figure 4-A; see also Gabriel, *supra* note 40.

42. Gabriel, *supra* note 40.

FIGURE 4-A

AN EXPANDED VIEW OF SOUTHEASTERN PENNSYLVANIA IN THE 2011 PENNSYLVANIA CONGRESSIONAL MAP

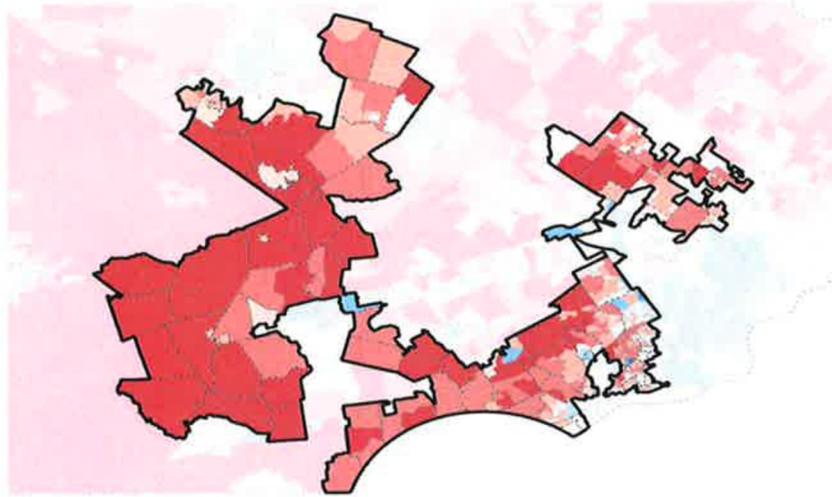


The head and body of Goofy—which appear in Figure 5 as a dog’s snout, head, open mouth, body extending south, and left leg formed by the Delaware-Pennsylvania border—were a collection of suburban Republican-leaning neighborhoods in Montgomery and Delaware Counties.⁴³

43. Cf. Michaëlle Bond, *The Philadelphia Suburbs Turned Blue in a Big Way. What Do Democrats Plan To Do with Their New Power?*, PHILA. INQUIRER (Nov. 6, 2019), <http://www.inquirer.com/news/delaware-county-blue-wave-democrats-gop-election-bucks-chester-20191106.html> [<https://perma.cc/67Q4-XLT6>] (discussing the results of the 2019 election where Democrats gained “the lead role in shaping all of Philadelphia’s collar counties” for the first time ever).

FIGURE 5

REPUBLICAN AND DEMOCRATIC VOTING STRENGTH IN AND AROUND THE SEVENTH CONGRESSIONAL DISTRICT⁴⁴



This figure is instructive in that it shows how the drafters were able to use census blocks, combined with historical voting data, to separate Republican and Democratic voters on a block-by-block basis.⁴⁵ If one looks at Goofy's ears on the upper right of Figure 5, one sees that Democratic voters (located on the right—above, between, and below Goofy's ears) were removed from the Seventh Congressional District and simultaneously added to the Thirteenth Congressional District, a packed Democratic seat.⁴⁶ This practice underscores the principle that unrestrained allocation of territory will allow a gerrymanderer to simultaneously pack urban districts with suburban Democrats while cleansing suburban districts of Democratic voters.⁴⁷

The other notable feature of the Seventh District is the cartoon figure on the left, often described as the Donald Duck part of the district. This portion of the district

44. Figure 5 was created by Daniel McGlone of Azavea and was introduced in *Agre v. Wolf*, 284 F. Supp. 3d 591 (E.D. Pa. 2018).

45. DANIEL MCGLONE, AZAVEA, PARTISAN GERRYMANDERING IN PENNSYLVANIA 17–19 (2017), as submitted in *Agre*, 284 F. Supp. 3d 591 (No. 17-4392).

46. See *supra* Figure 5. Compare *Pennsylvania Congressional Act of 131 of 2011*, *supra* note 39, with *Pennsylvania Congressional Districts – 19 Districts Total*, *supra* note 34. In 2012, the Democratic candidate won the Thirteenth Congressional District with 69.1% of the total vote; in 2014, by 67.1% of the total vote; and in 2016, the Democratic candidate was unopposed and won 100% of the vote. *Pennsylvania's 13th Congressional District*, BALLOTPEdia, http://ballotpedia.org/Pennsylvania%27s_13th_Congressional_District [<https://perma.cc/M3G6-SUJN>] (last visited Apr. 1, 2021).

47. See Reid J. Epstein & Nick Corasaniti, *The Gerrymander Battles Loom, as G.O.P. Looks To Press Its Advantage*, N.Y. TIMES (Feb. 1, 2021), <http://www.nytimes.com/2021/01/31/us/politics/gerrymander-census-democrats-republicans.html> [<https://perma.cc/BG63-Q9HF>] (discussing efforts to gerrymander suburban districts in cities such as Atlanta and Houston, as well as in northeastern Ohio).

consisted of rural Republican voting territory, which was added to the Seventh Congressional District to give it a strong Republican lean that would last for a decade of elections. Here, the drafters succeeded in securing Republican victories in the Seventh District⁴⁸ in 2012, 2014, and 2016.⁴⁹

Looking at the 2011 congressional map as a whole, in both the eastern and western halves of Pennsylvania, congressional districts were elongated from east to west in search of reliable, rural Republican voters in the center of the Commonwealth.⁵⁰ Starting at the top of the eastern part of the Commonwealth, the Tenth, Eleventh, Seventeenth, Fifteenth, and Sixth Congressional Districts were also elongated from east to west.⁵¹ For example, the Tenth District, from Pike County in the northeast along the Delaware River to Mifflin County in the center of the state, appears to break five counties in search of rural voters, thus violating the principle against not dividing political subdivisions unless “absolutely necessary.”⁵² Similarly, the Sixth District (shaped like a tadpole), with its head in Chester County and its elongated tail reaching westward through Montgomery, Berks, and Lebanon Counties, also violated the principle of compactness.⁵³ In the western part of the state, the Fifth, Third, Twelfth, Eighteenth, and Ninth congressional districts were elongated from west to east in search of rural voters.⁵⁴

Each of these drafting choices demonstrates an obvious departure from the customary drafting criteria of compactness and the preservation of whole political subdivisions.⁵⁵ The absence of historic design standards for congressional districts allowed drafting choices in the 2011 map that crack and pack opposing voters at will. When one compares the Pennsylvania congressional maps of 1943, 1951, 1962, and 1972 with the 2011 map, a story of neutral redistricting versus partisan redistricting emerges.⁵⁶ The former maps show a genuine effort to follow the custom of forming compact districts that preserve counties and other political subdivisions.⁵⁷ The 2011 map reveals rampant

48. In the Seventh Congressional District, the Republican candidate won the seat by 59.4% to 40.6% in 2012, 62% to 38% in 2014, and 59.5% to 40.5% in 2016. *Pennsylvania’s 7th Congressional District*, BALLOTPEdia, https://ballotpedia.org/Pennsylvania%27s_7th_Congressional_District [https://perma.cc/R5YP-X9BZ] (last visited Apr. 1, 2021).

49. In the neighboring Thirteenth Congressional District, the Democratic candidate won the seat by 69.1% to 30.9% in 2012, by 67.1% to 32.9% in 2014, and with 100% of the vote in 2016 as the Republicans were unable to find a challenger to the Democratic incumbent. *Pennsylvania’s 13th Congressional District*, *supra* note 46.

50. See *supra* Figure 4.

51. See *supra* Figure 4.

52. See *supra* Figure 4; see also PA. CONST. art. II, § 16. The fragmented counties comprising the Tenth Congressional District are Monroe, Lackawanna, Tioga, Northumberland, and Perry. See *Pennsylvania Congressional Act of 131 of 2011*, *supra* note 39.

53. See *supra* Figure 4; see also PA. CONST. art II, § 16.

54. Compare *supra* Figure 4, with *Pennsylvania Congressional Districts – 19 Districts Total*, *supra* note 34.

55. See *supra* notes 16–33 and accompanying text for an explanation of the compactness and preservation principles.

56. Compare *Pennsylvania Congressional Districts: Act 3 of 1972*, *supra* note 31, *Pennsylvania Congressional Districts: Act 1 of 1962*, *supra* note 30, *Pennsylvania Congressional Districts: Act 464 of 1951*, *supra* note 29, and *Pennsylvania Congressional District: Act 119 of 1943*, *supra* note 28, with *Pennsylvania Congressional Districts: Act of 131 of 2011*, note 39.

57. See *supra* notes 28–31 and accompanying text.

gerrymandering, where each district displays the drafters' strategy to cleanse Democratic voters from Republican majority districts or crack and fragment concentrations of Democratic voters to limit their voting power.⁵⁸

II. THE EMERGENCE OF CCFD'S DESIGN CRITERIA

The 1972 congressional map, created after *Wesberry v. Sanders*,⁵⁹ was CCFD's inspiration for how to design districts (equalize population deviations) in a fair manner. *Wesberry* involved a plaintiff who resided in a Georgia congressional district with a population two to three times greater than other congressional districts in the state.⁶⁰ The Supreme Court held that Article I, Section 2's requirement that representatives be chosen "by the People of the several States" meant that, as nearly as is practicable, states were under an obligation to equalize the population of allotted congressional districts.⁶¹

The 1972 congressional map, shown in Figure 6, represented a genuine effort to ensure compact districts and minimal municipal divisions while maintaining equal populations. The drafters appeared to form congressional districts by using whole counties and then adding whole townships along the borders of each district to equalize population.

58. See *Pennsylvania Congressional Districts: Act of 131 of 2011*, *supra* note 39; see also Wesley Pegden, Ariel D. Procaccia & Dingli Yu, A Partisan Districting Protocol with Provably Nonpartisan Outcomes 1 (Oct. 24, 2017) (unpublished manuscript), <http://arxiv.org/pdf/1710.08781.pdf> [<https://perma.cc/XSU8-5WCU>]; Jonathan Lai & Liz Navratil, *Pennsylvania, Gerrymandered: A Guide to Pa.'s Congressional Map Redistricting Fight*, PHILA. INQUIRER (Sept. 24, 2018), <http://www.inquirer.com/philly/news/politics/state/pennsylvania-gerrymandering-case-congressional-redistricting-map-coverage-guide-20180615.html> [<https://perma.cc/XH7F-BU7D>] (discussing experts' views that the 2011 Pennsylvania congressional map was an "extreme outlier" in the significant advantage it provided Republicans in the state).

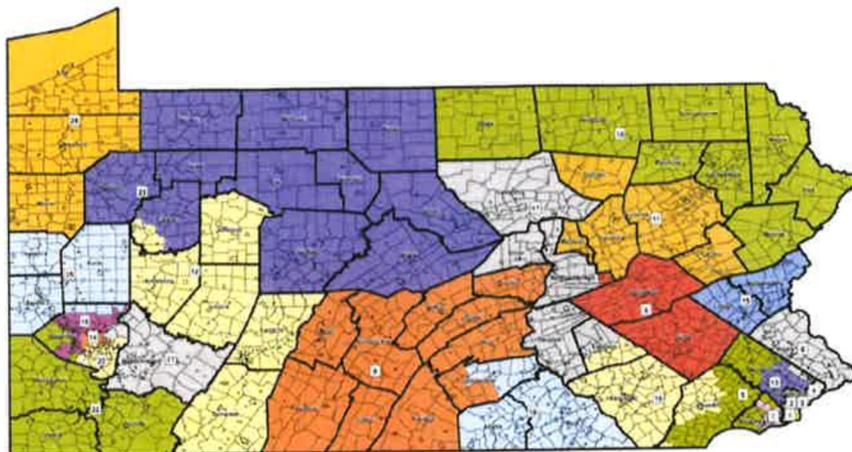
59. 376 U.S. 1 (1964).

60. *Wesberry*, 376 U.S. at 2–3.

61. *Id.* at 7–8.

FIGURE 6

1972 PENNSYLVANIA CONGRESSIONAL MAP



After studying the 1972 congressional map,⁶² CCFD was inspired to develop a set of rules that, in equalizing population deviation between districts, mandated drawing districts compactly in a manner that minimized the division of municipalities.⁶³

The CCFD method requires drafters, when creating congressional districts, to start the redistricting process by assembling counties into electoral districts with roughly equal target populations, based on the population of the state divided by its allotted number of districts.⁶⁴ To further equalize population, drafters shall then add whole townships or municipalities at the assembled county borders.⁶⁵ CCFD developed two additional rules for drafting to prevent suburban cracking and packing.⁶⁶

First, drafters may divide counties only a minimum number of times necessary to form equal population districts.⁶⁷ This rule would prevent drafters from dividing a county with a large percentage of an opponent's likely voters into many separate districts.⁶⁸

62. *Pennsylvania Congressional Districts: Act 3 of 1972*, *supra* note 31.

63. See Brief for Amicus Curiae Concerned Citizens for Democracy at 6–10, *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018) (No. 159 MM 2017). Section II of CCFD's amicus brief lays out a step-by-step guide for Pennsylvania to comply with the Pennsylvania Supreme Court's January 22, 2018, order to create new congressional districts. *Id.*; see also Order, *League of Women Voters*, 178 A.3d 737 (No. 159 MM 2017). The Brennan Center for Justice provides access to all court documents related to this case on their website. See *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*, BRENNAN CTR. FOR JUST. (Oct. 29, 2018), <http://www.brennancenter.org/our-work/court-cases/league-women-voters-pennsylvania-v-commonwealth-pennsylvania> [https://perma.cc/76H2-W3CP].

64. See Brief for Amicus Curiae Concerned Citizens for Democracy, *supra* note 63, at 7–8.

65. *Id.* at 8.

66. See *id.* at 7–9.

67. *Id.* at 7–8.

68. See *id.* at 9–10.

Second, where a city or county contains extra population that is insufficient to form a single congressional district, drafters must add territory, as a whole, to a single abutting county in need of additional population to reach the target population of a congressional district.⁶⁹ The purpose of this rule is to prevent drafters from packing cities by simply adding urban voters to inner-ring suburban territory, which both tend to vote Democratic, in an effort to dilute Democratic votes.⁷⁰

The final set of design criteria, as reflected in *Agre* expert witness Anne Hanna's report and testimony, reads as follows:

Congressional districts shall be composed of territory which is:

1. Compact;
2. Contiguous;
3. As equal in population as practicable; and
4. "Unless absolutely necessary, no county, city, incorporated town, borough, township or ward shall be divided in forming . . ." a Congressional district.

However given the tendency of those drafting Congressional districts to use partisan criteria or partisan proxies for the design of districts, some useful additional guidelines to avoid gerrymandered maps might be as follows. I wish to emphasize that these guidelines are not exhaustive, and additional neutral criteria might be considered. In addition these criteria are based on the assumption that it is legally required to have exactly equal populations in each district (+ or – one person) based on the preceding U.S. Census.

1. No county shall be divided unless absolutely necessary to create Congressional districts that are "equal in size to the extent reasonably practicable" and then may be divided only as many times as is absolutely necessary to achieve this objective.

2. No precinct, borough, township, incorporated town, or ward shall be divided unless absolutely necessary to create Congressional districts that are "equal in size to the extent reasonably practicable" and then may be divided only as many times as is absolutely necessary to achieve this objective.

3. Where additional territory is needed for additional population in a district, it shall be added from the border of a contiguous County and shall move inward only after all of the contiguous territory of the County has first been utilized.

4. If a county's population is greater than the target Congressional district population, any additional population may not be added to adjoining counties that have a population greater than that of an average district. Such additional population must instead be added to adjoining Counties whose population is smaller than the average district (unless there is no adjoining county which is smaller than an average district).

5. Districts shall be "reasonably compact". An appropriate compactness score can be derived by using any of several common measures of geometric compactness, the simplest and most intuitive being the Polsby-Popper,

69. *Id.* at 8.

70. See *supra* Figure 5 for an illustration of the concentrations of the Democratic voters on both sides of the border of Philadelphia, shown with light dotted lines.

Schwartzberg, and Reock measures. The Legislature might choose to measure the compactness of the Congressional districts from the 1931, 1943, 1951 and 1962 maps to devise a target level of compactness for any new Congressional District map.⁷¹

On February 19, 2018, the Pennsylvania Supreme Court released its remedial congressional map and ordered that the Pennsylvania Department of State use the map to conduct the 2018 primary election.⁷² The remedial congressional map, shown in Figure 7, reflected CCFD's method of drawing compact districts, which was stated in its amicus briefs.⁷³ Congressional districts were formed using whole counties, were assembled compactly, and additional territory (to equalize population) was composed of whole townships along the border of counties.⁷⁴

71. Report of Anne C. Hanna, Expert Witness, to author (Nov. 7, 2017) (on file with author) (emphasis omitted). Hanna's report was entitled *Report on Whether Traditional Neutral Criteria Exist To Draw Congressional Districts Without Partisan Gerrymandering* and was submitted into evidence in *Agre v. Wolf*, 284 F. Supp. 3d 591 (E.D. Pa. 2018). Hanna, *supra*; *Agre*, 284 F. Supp. 3d at 660–63 (discussing Hanna's expert testimony). See Transcript Morning Session of Trial Day 2 at 5–90, *Agre*, 284 F. Supp. 3d 591 (No. 17-4392), for a transcript of Hanna's testimony on direct, cross, and redirect examination during trial.

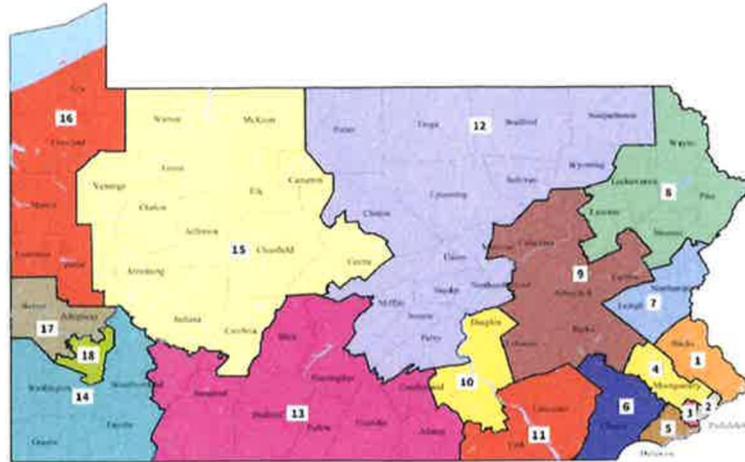
72. See *League of Women Voters v. Commonwealth*, 181 A.3d 1083, 1087–88 (Pa. 2018) (per curiam).

73. Compare *id.* at 1089 app. A, with Brief for Amicus Curiae Concerned Citizens for Democracy, *supra* note 63, at app. A.

74. See Nate Cohn, Matthew Bloch & Kevin Quealy, *The New Pennsylvania Congressional Map, District by District*, N.Y. TIMES (Feb. 19, 2018), <http://www.nytimes.com/interactive/2018/02/19/upshot/pennsylvania-new-house-districts-gerrymandering.html> [<https://perma.cc/2JSP-6MQS>] (displaying an interactive map that shows old and new districts' changes in shape between the 2011 map and the 2018 remedial map).

FIGURE 7

PENNSYLVANIA SUPREME COURT'S REMEDIAL MAP IN *League of Women Voters v. Commonwealth*⁷⁵



Comparing the 2018 remedial congressional map with the 2011 congressional map, the tortured districts are eliminated and replaced by more compact shapes that follow county boundaries with far fewer splits or fragmented municipalities.⁷⁶ A few odd shapes remain—for example, the Eighteenth District in Allegheny County.⁷⁷

As reflected in the map, the method of redistricting was nearly identical to the CCFD method. Counties were assembled compactly and whole townships were added at the border of assembled counties, layer by layer, until nearly equal populations were achieved. Then, a single municipality was divided along a common border to equalize populations.

The importance of this map was demonstrated in the 2018 general election. As anticipated, compactness created naturally Republican districts in rural voting areas and naturally Democratic districts in urban areas.⁷⁸ Competitive or swing districts appeared in the suburbs of Philadelphia and Allegheny Counties, and old factory towns in the northeast and southwest counties of the state created very competitive seats.⁷⁹ With the tendency of Democrats to self-pack in cities,⁸⁰ the map was naturally slightly Republican

75. 181 A.3d 1083, 1089 app. A (Pa. 2018) (per curiam).

76. See Cohn et al., *supra* note 74. Compare *League of Women Voters*, 181 A.3d at 1089 app. A, with *Pennsylvania Congressional Districts: Act of 131 of 2011*, *supra* note 39.

77. See *supra* Figure 7.

78. See *Pennsylvania Election Results 2018*, POLITICO, <http://www.politico.com/election-results/2018/pennsylvania/> [<https://perma.cc/5P45-GFSS>] (last updated Apr. 3, 2021).

79. See *id.*

80. See Drew DeSilver, *How the Most Ideologically Polarized Americans Live Different Lives*, PEW RES. CTR. (June 13, 2014), <http://www.pewresearch.org/fact-tank/2014/06/13/big-houses-art-museums-and-in->

leaning.⁸¹ However, this perceived disadvantage to Democrats, in CCFD's view, is outweighed by the implementation of a set of fair design standards that makes aggressive gerrymandering impossible and provides the courts with an objective, judicially manageable standard.

III. THE SIGNIFICANCE OF CCFD'S METHODOLOGY

The most significant accomplishment of the CCFD redistricting methodology is that it creates a judicially manageable standard for redistricting. If all districts, whether at the congressional or state level, are composed of counties or townships assembled compactly with other whole townships or political subdivisions (added along a border to reach equal population districts), then drafters who violate this norm would need to publicly and transparently explain their drafting choices. By having a standard of well-drafted districts, violations of this standard are both mathematically and visually detectable.

Unusually shaped districts can be further examined and understood by looking at the partisan voting patterns inside or outside of established political subdivisions in a proposed map. For example, highly fragmented counties with a concentration of voters from the party opposing the drafter will create an inference of cracking.⁸² Splitting off a small concentration of opposing voters and adding them to districts overwhelmingly populated by voters of the drafter's own party will create an inference of cracking. A look at the partisan distribution of votes along a district boundary almost always explains the decision of the drafter to include or exclude territory for partisan or other reasons.⁸³

You have a golden opportunity to use the elusive remedy referred to by Justice Kennedy in *Vieth*,⁸⁴ as you and your staffs equalize population deviations between congressional districts. A remedy based on neutral and objective drafting rules that can be measured mathematically creates a judicially enforceable standard.⁸⁵

Where the standard is abused or ignored, and lines deviate from the norm, a court could find a prima facie case of partisan intent.⁸⁶ The drafters would then be required to explain a neutral basis for their drafting choices.⁸⁷ In response, a challenger could present evidence that the drafters' choices result in the packing or fragmenting of an opposing party's voters to dilute the power of that party's votes.

laws-how-the-most-ideologically-polarized-americans-live-different-lives/ [https://perma.cc/HKP7-LEKL] (“[L]iberals opt for smaller houses and walkable communities in cities”); see also *supra* Figure 5.

81. See Aaron Bycoffe, *Pennsylvania's New Map Helps Democrats. But It's Not A Democratic Gerrymander*, FIVETHIRTYEIGHT (Feb. 20, 2018, 1:16 PM), <http://fivethirtyeight.com/features/pennsylvanias-new-map-helps-democrats-but-its-not-a-democratic-gerrymander/> [https://perma.cc/7HFT-WDJH].

82. See *supra* Figure 3 and notes 36–37 for a discussion of how Montgomery County was fragmented as a result of its Democratic voter strength.

83. See, e.g., *supra* Figure 5 for an example of a Pennsylvania district where many parts of the boundary line appear to divide areas with bipartisan voters.

84. See *Vieth v. Jubelirer*, 541 U.S. 267, 307–08 (2004) (Kennedy, J., concurring).

85. See *id.*

86. See, e.g., *id.* at 347–51 (Souter, J., dissenting).

87. See *id.* at 351.

IV. PRESERVING COMMUNITIES OF INTEREST

Another advantage of the CCFD method is that by ensuring electoral districts have equal populations and are compact and undivided, districts tend to be compliant with the Voting Rights Act.⁸⁸

According to the 2020 U.S. Census, Pennsylvania has a population which is 81% white, 12% African American, 7.8% Latino, 2.8% Asian. Most racial, cultural, and linguistic minority populations live together in certain neighborhoods in cities and towns across the Commonwealth. When districts are drawn compactly, these communities of interest remain intact, so voter dilution does not occur. After drafting districts using the objective criteria, the drafters should then verify that the map is in compliance with the Voting Rights Act.⁸⁹ In most cases, by not diluting or splitting concentrations of minority voters the Act will not be violated. Where communities of interest are inadvertently divided, as a final step in drafting, minor modifications can be made to protect the voting strength of minority populations. This should be a final step in drafting in order to accomplish the overall goal of fair and democratic redistricting. If you begin drafting by creating minority districts, you will likely pack partisan voters into a few districts wherever minority populations tend to vote in a partisan manner.

CONCLUSION

You have an opportunity to be statesmen and states-women by using the mandatory district population equalization criteria in good faith.

Rigorous historic design standards create a neutral method of drafting, evaluating, judging, and if necessary, redrafting electoral maps by requiring electoral districts to be highly compact without unnecessarily dividing political subdivisions. The method imposes neutral redistricting rules that provide a judicially manageable standard.

Courts can easily detect violations of those neutral principles by a visual test, supported by examining the number of split counties, townships, and other political subdivisions, along with the compactness scores for each proposed electoral district.

Litigants can then provide circumstantial evidence of partisan intent by showing partisan voting patterns to explain the lines drawn on a proposed map. CCFD's methodology has ultimately answered the pleas of Justice Kennedy in *Vieth* and Chief Justice Roberts in *Rucho* for a neutral, judicially manageable standard to judge and remedy partisan electoral maps.⁹⁰

88. 42 U.S.C. § 1973 (2018); see Brief for Amicus Curiae Concerned Citizens for Democracy, *supra* note 63, at 7–10.

89. In *Thornburg v. Gingles*, the U.S. Supreme Court established a legal framework for “vote dilution through submergence” claims. 478 U.S. 30, 48 (1986). Under the *Gingles* test, plaintiffs must show the existence of three preconditions: (1) the racial or language minority group is “sufficiently large and geographically compact to constitute a majority in a single-member district,” (2) the minority group is “politically cohesive” (meaning its members tend to vote similarly), and (3) the “majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Id.* at 50–51 (citations omitted).

90. See *Rucho*, 139 S. Ct. at 2498–500; *Vieth*, 541 U.S. at 307–08 (Kennedy, J., concurring).