



PENNSYLVANIA REDISTRICTING Reform Commission



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at Public Hearings

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To: The Governor's Commission on Redistricting
From: Brian A. Gordon, Esq, Member Concerned Citizens for Democracy
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Subject: **Final thoughts before you deliberate**
Date: June 12, 2019

Thank you for the opportunity to speak on this important topic to our democracy. This Commission has the potential to set a high standard for non-partisan redistricting that will influence the Governor, the Legislature and the Courts for the next decade and beyond.

The most important of your findings will be that there are non-partisan solutions to ending gerrymandering. Not even the U.S. Supreme Court has found a non-partisan solution to end gerrymandering. You have the opportunity to define and present a national standard for our Commonwealth, other states and courts to follow.

As this is my third presentation, I wish to make a few discrete points on redistricting to aid in your deliberation and final recommendations to the Governor.

1. Please do not use "communities of interest" as an acceptable criteria for redistricting. This concept is too vague and invites partisan redistricting. A better criteria, which is analogous to "communities of interest," are county and municipal boundaries. Municipal boundaries are fixed and cannot be manipulated to accommodate the whims of partisan drafters. Municipal boundaries are communities of interest. Municipal boundaries are places where people choose to live, face common problems and pool tax dollars of community organizing to solve common problems.

2. Please note that using a limited number of objective criteria creates a judicially enforceable standard. The most important Art. II, Section 16 Criteria are requiring districts to be compact and prohibiting the division of political subdivisions unless absolutely necessary to achieve equal populations. To minimize partisan manipulation of districts one should also limit the number of times that each county or larger municipality may be divided.

Non compact districts (odd shapes) create a prima facie case of partisan gerrymandering. Non-compact boundaries, or boundaries which unnecessarily divide counties and other municipalities usually correspond to redistricting strategies of packing and cracking concentrations of an opponent's voters and careful distribution of the drafter's and opponent's voters.

3. Please do not accept false pro-gerrymandering narratives which stand in the way of solutions to partisan gerrymandering. These include:

- A. Gerrymandering cannot be solved.
- B. There are no neutral or historic standards for redistricting.
- C. The equal population requirement causes partisan redistricting.
- D. Compliance with the Voting Rights Act causes partisan redistricting.

How to End or Severely Limit Partisan Redistricting in Pennsylvania:

Gerrymandering can be ended, once and for all, with a combination of strictly applying redistricting criteria, a process open to the public, scholars and candidates and easy access to a court or referee to correct abuses. Here are the essential steps to ending Gerrymandering:

1. **Strict neutral rules for redistricting** that prevent a drafter from picking or choosing territory based on partisan voting behavior. The rules were derived from the PA Constitution Article 2 Section 16 but with a method to ensure the rules are strictly enforced.

- A. Districts shall be compact.
- B. There shall be NO division of political subdivisions unless absolutely necessary to achieve equal population districts.
- C. Districts shall have equal populations to the extent practicable.
- D. Districts shall be contiguous.

While neutral criteria for drawing districts are important, there are other safeguards which protect against partisan gerrymandering. They are:

2. **Neutral Commission:** There shall be a neutral commission of citizens and experts tasked with drawing new maps based on the above criteria or choosing a map from competitive submissions based upon the above criteria. Elected officials should **never** be permitted to choose their own voters or tilt maps in favor of political friends or against political foes.

3. **Open process:** The process for creating legislative maps shall be open to the public, fellow legislators and scholars. Every email, letter, memo, conference presentation and communication between legislators about redistricting or district design shall be open to the public to prevent the use of partisan manipulation of districts or

personal gerrymanders. All data used in creating a proposed map must be well marked and made available to the public without charge.

4. **Open data sets and programs:** All data and programs used to create districts shall be open to the public and publicly available. Like election machines, a state redistricting program may need to be purchased for this purpose.

5. **No partisan data may be used:** It shall be unlawful to use partisan data in drawing legislative districts. Prohibited partisan data should include how citizens voted in past elections, or a proxy for voting histories such as NRA membership, Sierra Club membership, who drives an electric car. This data may not be used to draw districts but is essential to use when evaluating districts for partisan intent or effect.

6. **No Incumbent protection:** Protecting incumbents treats some citizens more favorably than others and reinforces past partisan gerrymanders.

If, for political reasons, the Commission must allow for incumbency considerations, this could be the final step in drafting districts after the Article II, Section 16 rules are strictly followed. Remember, however, that incumbency protection will (1) interfere with a judicially manageable standard; (2) reintroduce past partisan districting; and (3) violate the equal protection of citizens wishing to run for office.

7. **Beware of “communities of interest” as an acceptable criteria:** “Communities of interest” is a very vague criteria that can be used to justify packing inner-ring suburbs with cities and other partisan gerrymanders.

Our criteria and methodology for neutral redistricting of *Congressional Districts* is set forth in Appendix A below.

Our criteria and methodology for neutral redistricting of *State Legislative Districts* is set forth in Appendix B below.

Again, thank you for your interest in this important topic.

Sincerely,

Brian Gordon, and the whole CCFD Team

Appendix A

A Neutral Methodology for creating PA *Congressional* Districts

If we take the criteria from the 1911 Reapportionment Act and the PA Constitution and apply those principles to PA’s Congressional districts, an appropriate non-partisan set of districting rules might initially look something like this:

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.*

We can summarize the method as a five-step process as follows:

Step 1. Divide your state by the number of required districts using the largest political subdivisions. For example, in creating a Congressional district map with 17 districts, begin by using whole counties and cities until you arrive at 17 districts with roughly equal populations without breaking your largest political units.

A. For cities with a population larger than one district, use all of the territory within the cities first and then add the unused piece of compact territory to a surrounding county in need of additional population to constitute a single district. Do not add extra territory to a surrounding County which already has greater than the target population.

B. For rural areas you will assemble lower-population counties to form whole compact districts.

Step 2. To equalize population further, add or subtract whole townships or other whole municipalities along the borders of counties. For example, if a district needed more voters to reach the target population add whole townships along the length of the border of a county in rows until the target population is achieved. Do not reach in or go to the next row of townships until the first row is completely used. This is very important technique to preempt the selection of territory based upon partisan goals of packing or cracking. This technique may allow a small amount of favoritism by choosing which end to begin first. However, the discretion to select territory for improper reasons is far more limited than the chaos of having no rules at all and selection of territory.

Step 3. Divide one, and only one, municipality along the border between two proposed districts to achieve exactly equal population, if Constitutionally required. The division of a single municipality (township or borough, etc.) shall also be done in a linear manner which uses one precinct at a time along a common border until the target population is achieved.

Step 4. Districts shall be compact. Subject to the above rules, districts shall be compact using commonly used mathematical compactness measures (Polsby-Popper, Schwartzberg, and Reock scores). Districts that fail to achieve maximum compactness using these measures shall be rejected as improper. We want to deny flexibility in drawing maps in order to preempt packing opposing voters into neighboring districts or cracking concentrations of an opponent's voters into two or more districts. For example

of districts that fail to compactness criteria due to partisan manipulation of boundaries, see 2011 Pa. Congressional Map Districts 1, 13, 6, 7, 17, 12, 14, 9, 3 and 5.

Step 5. Verify the resultant map is consistent with the Voting Rights Act. In most instances, no further adjustment will be needed as compact districts lead to intact community representation, which leads to compliance with the VRA.

Step 6. If, for political reasons, the Commission must allow for incumbency considerations, this could be the final step in drafting districts after the Article II, Section 16 rules are strictly followed. Remember, however, that incumbency protection will (1) interfere with a judicially manageable standard; (2) reintroduce past partisan districting; and (3) violate the equal protection of citizens wishing to run for office.

Appendix B

A Neutral Methodology for Creating *State Legislative Districts*

Article 2 Section 16 of the Pennsylvania Constitution states:

§ 16. Legislative districts.

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.*

(Apr. 23, 1968, P.L.App.3, Prop. No.1)

Step 1. Divide the Commonwealth into 203 House and 50 senatorial districts of roughly equal population using only whole cities, counties, townships, boroughs, towns and wards in a reasonably compact manner. Preference shall be given at this point to avoid the division of counties, cities, townships, boroughs and wards.

At each step, districts shall be assembled in a compact manner.

Step 2. Where territory needs to be added to or subtracted from larger geographical districts to achieve more equal population districts, add or subtract territory at the borders of a whole political subdivision (county, township, borough or ward) in a linear fashion, layer by layer, using whole precincts or other political subdivisions to achieve more equal population districts.

Note: Territory should not be added to a county, township, borough or ward, etc. which has a larger population than needed for a legislative district. Such excess territory must

instead be added to an abutting municipality which needs additional population to form a complete district with equal population.

Step 3. After Step 2, only one township, borough or ward may be divided along a common border to achieve equal population districts; and then such break shall be in a compact manner assembling whole wards and precincts in a linear or layer by layer manner.

Step 4. Districts shall be compact. Subject to the above rules, districts shall be compact using commonly used mathematical compactness measures (Polsby-Popper, Schwartzberg, and Reock scores). Districts that fail to achieve maximum compactness using these measures shall be rejected as improper.

Step 5. Check to make sure that districts that result from the above methodology do not violate the Voting Rights Act by inadvertently eliminating minority districts.

Step 6. If, for political reasons, the Commission must allow for incumbency considerations, this could be the final step in drafting districts after the Article II, Section 16 rules are strictly followed. Remember, however, that incumbency protection will (1) interfere with a judicially manageable standard; (2) reintroduce past partisan districting; and (3) violate the equal protection of citizens wishing to run for office.

Public Comment

Pennsylvania Redistricting Reform Commission, Harrisburg, June 12, 2019

Carol Kuniholm, Chair of Fair Districts PA

For the past three years I've traveled around Pennsylvania speaking to citizens about our distorted district maps. I've talked in Erie about the way that county was divided into two Congressional districts and SIX PA House districts, one wandering across four counties. I spoke in Slippery Rock where voters stared in outrage at the way their community was bisected by strangely contorted House districts. In Lancaster, Shippensburg, Scranton, Easton, Philadelphia, Pittsburgh, and dozens more communities, I've studied maps and listened to voters who know their votes don't count. I've heard the great frustration of citizens who believe they've been used as pawns in tragically rigged elections.

Tom Hofeller, the architect of gerrymandered plans in multiple states spanning several decades, said in 1991: "Redistricting is a very complex field, but I think it's a field which affects Americans a lot more than they understand. I define redistricting as the only legalized form of vote-stealing left in the United States today." Speaking to legislators at the National Council of State Legislators in 2000, he said "Redistricting is like an election in reverse! It's a great event. Usually the voters get to pick the politicians. In redistricting, the politicians get to pick the voters!"

No other major democracy allows legislators any role in defining their district lines. The Election Integrity Project ranks US elections far below other western democracies on this issue of voting district boundaries. President Ronald Reagan called gerrymandering "a national scandal," "the greatest single blot on the integrity of our elections." In 1989, in his farewell speech as president, he urged creation of independent citizens commissions to draw district lines.

Other nations that have struggled with gerrymandered districts have shifted to citizens commissions with positive outcomes and restoration of trust. States across the US are doing the same. When bills to create citizens commissions come to public referendum, they win by large margins. Polls show respondents across the political spectrum believe legislators should not be drawing district lines, with large majorities endorsing the idea of citizen commissions. Very very few respondents believe the current process is acceptable.

On his first day in elected office, PA Congressman Brian Fitzpatrick introduced legislation to create an independent commission. During his time as national supervisor for the FBI's Public Corruption Unit and as head of the agency's Campaign Finance and Election Crimes Enforcement program, he saw first-hand the incentives for corruption when elected officials have power to draw their own district maps. In public comment he has said that the current process encourages elected officials to act as "kings, not representatives," unaccountable to voters and beyond the reach of rules. According to him, "The only way to get back to a true citizen legislature with moderate representation and independent thinkers is to draw lines in a fair manner. And the only way to do that is to have an independent citizen commission that is nonpartisan."

As Chair of Fair Districts PA, I've studied reforms in other states, discussed best practices with experts from organizations and think tanks, and am convinced that Pennsylvania needs an independent citizens commission, selected in a way that removes any opportunity for legislators to control outcomes or hand-pick their preferred commissioners. The commission must be constructed in a way that balances partisan interests and gives a say to third party and unaffiliated voters. The process must be completely transparent, with all information available to the public and strict prohibitions against the use of partisan data or preferential treatment for incumbents.

Public input is an important part in restoring trust in the process and ensuring maps that represent communities well. Hundreds of conversations with voters have made clear: voters believe they should be able to reach their elected officials offices without traveling through other districts or negotiating geographic obstacles. Compactness, as determined by distance to center of the district, should be a key component, but with information from voters on specific geography, provided through public meetings across the state.

In the same way, voters have expressed strong belief that their townships, municipalities and counties should be respected. Pennsylvania citizens identify strongly with their geographic location, far more than may be the case in some other regions, and voters want districts that reflect obvious local boundaries. This, again, should be balanced by public input provided online and in public meetings. In some places rivers divide areas completely. In others, communities on both sides of a river consider themselves one place. The same is true in places like State College, where multiple municipalities are considered one geographic entity.

Of great importance to everyone I've talked with, both voters and legislators, is the answer to the question "what happens when commissioners can't agree on a map." From research of the process in other countries and conversation with California Citizens Redistricting Commissioners, I would say that the incentive for a citizens commission to agree on fair maps is high, and deadlock extremely unlikely. In the unlikely event of deadlock, it is very important that the mapping process stay within the commission rather than be handed back to legislators or to a court appointed special master. A public elimination vote among commissioners would resolve that concern while keeping the process totally transparent and independent of elected official influence.

Our PA Constitution promises free and equal elections and also guarantees "the people" the right to alter and reform our government as we may deem proper. Our state legislature and representative governance were once a shining example to other states and nations. Partisan manipulation of maps has put far too much power in the hands of too few in a way that has undermined representation, diminished accountability and harmed the common good of our commonwealth. An independent citizens commission with strong criteria for respect of communities and requirements for public input and transparency would be transformative for the health of our state.

Chris Satullo, Draw the Lines PA

My name is Chris Satullo. For the last two years, I've been project director of Draw the Lines PA, a nonpartisan, statewide initiative of the Committee of Seventy.

Our mission is to show that the people of Pennsylvania are ready, willing and able to take on a core task of democracy: drawing election maps. And to prove that, given the chance, they'll do it better than those who *have* been doing it, the politicians and partisan operatives.

To that end, we've held two public mapping competitions, using District Builder, a data-rich online mapping tool designed by Azavea, a Philadelphia software firm. In the last nine months, more than 2,600 people have signed onto District Builder to try their hand at drawing a congressional map of PA. They've worked on more than 5,300 maps, resulting in 659 valid contest entries.

I'm one of two living humans who's looked at all of those 600-plus maps. (The other is my colleague Justin Villere, who spoke at the commission's Philadelphia hearing.)

So, with some authority I can tell you this about those maps. More than 500 of them are, by the eye test and by accepted mapping metrics, clearly better than the map produced in Harrisburg in 2011.

The case has been powerfully made: Given the chance, the tools and the data, regular folks from around PA (some of them as young as 14) *will* seize the chance to draw a map. And they'll do it well enough to explode any rhetoric about maps needing to be done by experts and insiders. That claim is just a self-interested canard.

I want to stress to you today a key point that has emerged from our work with these citizen mappers, one too often lost in the clouds of learned discussion about efficiency ratios, wasted votes and fairness algorithms.

Challenged to draw an election map, the bulk of ordinary citizens do the work guided by a sense of fairness, geographic common-sense and respect for the stated rules. In other words, the last thing they ever would set out to create is a highly partisan gerrymander.

So much effort in the redistricting debate recently has gone into devising some clear, incontrovertible statistical metric to pinpoint when a map goes over the line into excessive gerrymandering. I get why. Much of this effort is intended to persuade a U.S. Supreme Court to do *something* about a clear and present danger to democracy.

But isn't obvious it that the nation's high court has failed to articulate a legal standard for gerrymandering not because it's impossible, but instead because it really, really doesn't want to?

My point is: If you have ordinary voters holding the mouse (as they clearly are capable of doing) that whole complicated quest for the perfect metric to define excessive gerrymandering becomes nearly beside the point, a nice to have, not a must have.

You see, the maps you would get from any well-formed panel of citizens would not come within miles of violating such a metric.

I want to circle back in a second to what I mean by “well-formed,” but first some data from the Draw the Lines mappers that backs up the claim I just made.

Each DTL mapper is asked to pick one to three goals (from a list of nine) as the priorities for a given map. Taken as a whole, these choices offer a useful peek at what goals would guide the mouse were Pennsylvania voters taking on the task for real.

Toting up the results from both the fall and spring contests, we found that the No. 1 priority of both sets of mappers was *equal population*. In other words, strong fidelity to the constitutional principle of “one person, one vote.” That was picked 489 times.

Nearly tied for second, with 330 and 329 mentions, were *compactness* and *contiguity*. In other words, voters believe Donald Duck should never again kick Goofy, particularly not using so slender a thread as the parking lot of Creed’s Steak and Seafood House.

Competitive elections came in next at 244. *Communities of interest* was the only other goal that reached triple digits. *Party advantage* – in other words, *I want a map that’s good for my team* – was picked only 40 times. *Incumbent protection*, only 5.

Permit me to comment of two preoccupations of the redistricting reform debate in our state that strike me as off the mark, based on the data and the maps emerging from Draw the Lines.

One, the notion that political or election data should be excluded from map-making strikes me, speaking as an individual, as wrong-headed. For a substantial number of voters, their definition of a “fair district” is one that is regularly competitive, where each major party has a fair shot at winning each time out. Without that data, you could draw maps that look compact and pleasing, but whose real-world impact would be to lock in lopsided election results.

Remember, the ultimate point of election maps is to conduct elections. Why would you bar yourself from glimpsing how your proposal would affect the real-world outcomes?

Similarly, some of the steps proposed to scrub a citizens panel of all political experience or leanings strike me as excessive, in fact, Rube Goldbergian.

True, our problem in recent decades has been an excessive desire for partisan advantage, carried out with diabolical precision due to sophisticated software powered by Big Data.

But the best cure for excess in one direction is not excess in the other. It's a carefully calibrated balance. Here's what I mean.

So much of the conversation about reform in our state has been framed as "California or bust." Either we get a fully independent, omnipotent citizens commission – selected through a process of huge complexity to root out any taint of political leanings – or we're doomed.

I don't believe that. I know Pennsylvania is not California. And the differences are why I live here, not, God forbid, there. I'd rather see my state design a process of its own that achieves the maximum progress possible within the constitutional and political realities that confront us.

To me, Pennsylvania's new way of doing maps should have three touchstone principles, befitting the birthplace of the Constitution:

- 1) Trust the people.
- 2) Maximize the sunlight.
- 3) Give lawmakers their proper say in the outcome. If you observe the first two principles well, no great harm will come from this third.

By trust the people, I mean this: You don't need to overcomplicate the process of picking members of a commission or over-specify how they go about their business once picked. Just let the commission members know the broad goals of their work and the legal guardrails that have been placed on it. Let their diversity of backgrounds and viewpoints bump up against each other, creating a candid, robust dialogue. That will suffice to prevent a stampede to a partisan result.

In other words, just like James Madison planned it.

Maximize the sunlight. Create robust and extended public comment periods, both before and after the commission produces maps. Ensure transparency and public availability of the data to be used in mapping. Set up a free, online public tool that citizens can use to submit testimony in the form of maps. Get the hearing process into the 21st century, using social media and texts to notify the public of hearings and using apps and video conferencing tools to let them testify remotely.

Remember this: Every well-done citizen map submitted becomes part of a guardrail channeling the final result in a good direction. Every citizen mapped formally entered into testimony is a piece of evidence that can be used to overturn in court a map that ignores a public consensus.

Finally, principle 3, give politicians their proper say. And not just because they'll never vote for a system that aggressively excludes them. Ultimate constitutional accountability does reside with them, though nothing prevents them from delegating the work of drafting to voters.

Our problem has been a system where this legislative power was exercised without accountability, where only a select few self-interested lawmakers had the real power to draw the lines, without input or correction short of a painful, tumultuous legal fight.

So, yes, give the lawmakers a final say, but only over a menu of choices generated by a citizens panel. Again, guardrails.

Here's one way it could work:

Create a 15-member citizens commission. Select 11 members from a pool of volunteers, with some vetting to make sure none are political wolves in sheep's clothing but avoiding excessive restrictions so that no person who's ever shown an active interest in politics is excluded. Let the caucus leaders get four appointees – just no active office-holders or state or county party officials.

For Congress, the panel would create, debate and approve at least two and no more than four proposed maps, each needing to be approved by a supermajority of nine. These would be forwarded to the General Assembly, which would have a month to approve one. It could approve one while sending it back to the commission with suggested technical fixes, which the commission could accept or reject, piecemeal.

If the General Assembly couldn't approve one of the options provided by the commission, the commission would determine the map by ranked-choice voting on the options.

For legislative maps, the commission would operate on an advisory basis to the Legislative Reapportionment Commission, submitting options for House and Senate maps. Perhaps, if the LRC rejects or ignores all the suggestions, the LRC could be required to attach a written explanation to the map it does approve, explaining why it thinks its version is superior.

Again, all this would produce a robust evidentiary basis for court appeals of the approved map. Again, this prospect would serve as a guardrail reminding the LRC of the risks of producing an extreme result, whether tinged deep blue or deep red.

In conclusion, if followed, these three principles – Trust the People, Maximize Sunlight, Give Lawmakers Their Proper Say – would give Pennsylvania far fairer election maps than it has had for decades.

And of these three, I would say that, based on the evidence of Draw the Lines, the most revolutionary and clarifying of them all is the first.

Just trust the people. For a change. They will not let you down.

Thank you.

Common Cause Pennsylvania
Written Testimony on Redistricting
Governor’s Redistricting Commission
June 12, 2019

To: Chairman David Thornburgh, member of the Governor’s Redistricting Commission, Legislative Elected Officials and the citizens of the Commonwealth of Pennsylvania.

My name is Micah Sims, Executive Director of Common Cause Pennsylvania and I’m honored to share this testimony regarding one of the most crucial aspects of a functional, effective and reflective democracy – federal, state and local redistricting.

It is important to establish from the onset of this testimony that Common Cause Pennsylvania has been at the forefront for over 30 years to end gerrymandering in the Commonwealth of Pennsylvania. These efforts are best witnessed through our extensive advocacy initiatives, proposed legislation, coalition and partnership building and grassroots outreach and education. Common Cause has organized, led coalitions and legislative redistricting achievements in states such as California, Arizona, and others. We are fully engaged in the legislative efforts in states such as Ohio, Virginia and North Carolina. We believe our vast history and experience regarding redistricting is beneficial to the current conversation and development of any meaningful legislation around redistricting.

The topic of redistricting is vast and comprehensive, for the sake of this testimony we will limit our focus on a few critical concerns and suggested solutions to ending gerrymandering in Pennsylvania and across the country.

- **Legislation versus Implementation**

It has been noted by several states across the country that implementation of redistricting reform is more daunting and arduous than passing the legislation. Our meetings with citizens, elected officials and stakeholders have recently yielded wide concern about a “rushed product”. Common Cause believes that we cannot sacrifice the

success of a commission for the sake of just passing a bill or constitutional amendment. We must operate in a manner of ensuring the greatest opportunity of success for the commission.

- **Multiple Avenues of Reform** – There are multiple avenues of reform being discussed in the redistricting community at this time. There are multi-phase redistricting reform efforts, two bills – one commission efforts, and SB22. We believe the best answer is the formation of an independent citizens redistricting commission with robust provisions for transparency and public input and with clear criteria for map drawing that explicitly protects the interests of communities of color and upholds the value of racial equity, not a politician-appointed commission in which legislators handpick the commissioners who will draw their districts.
- **Contextualization of Redistricting *racial equity* *inclusion*** - While there are multiple avenues of reform, racial equity and inclusion must be an integral criterion in redistricting efforts. The districts created must provide an equal opportunity to participate in the political process and may not dilute or diminish an individual's ability to elect candidates of choice whether alone or in a coalition with others on account of that person's race or membership in a language minority group. Districts should also respect that boundaries of communities of interest, including, contiguous populations that share common social and economic interest, language, or cultural characteristics. Being mindful of these groups during the redistricting process is critical.
- **Grassroots, Grasstops, & Diversity** – It is imperative for any redistricting effort to have buy-in from various grassroots and grasstops communities. It is critical that groups from across the commonwealth and across specialties are involved in this process. Engaging with the business community, civic engagement groups, and agriculture, faith and labor leaders is an essential part in any process moving forward. It is critical for any legislation to have success, that a wide and diverse base of support be solicited from these groups. These relationships must be cultivated in order to reach a representative base of racial, gender and demographic diversity across the commonwealth. Without a diverse base, redistricting efforts in Pennsylvania will not be successful or supported.
- **Random Selection, Appointments & Commission Success** – There are several avenues for random selection and appointments in the crafting of a commission. It is our belief that random selection is key for a fair and open process, but random selection and appointments must work in tandem. Appointments should have clear provisions listed. For example, appointments should not be allowed to be bestowed upon family members of elected or appointed officials. In addition, racial equity and the protection of communities of interest must also be considered in the process.

Bipartisan Bills

Common Cause continues to pursue legislation with bipartisan support. Bills should demonstrate the importance of people, not partisan politics. We would encourage the creation of a working group of legislators and advocacy leaders to draft legislation that all parties can support and advance.

No More Back Rooms

Common Cause recommends that a bill be created reflecting the values, criteria, transparency and engagement regarding redistricting. This type of policy will allow advancement in redistricting or drawing of maps regardless of who is doing the drawing. People need to be involved. People need to see what is taking place to help rebuild trust in government.

Time Limits Don't Exist

Common Cause believes that we must eliminate the illusion of time or deadlines. A bill must be passed, a constitutional amendment should be brought before the citizens of Pennsylvania, however the issue is it needs to happen and not necessarily it must happen by a certain time. We must continue to pursue reform and as the political atmosphere changes within the legislature, the advancement of redistricting reform should not cease. Redistricting reform is about improving on the ways we draw federal and legislative districts in Pennsylvania. The time to do it is now, tomorrow and forever.

We thank you for allowing us to submit this testimony. We commit ourselves to be available to work with this commission and every member to further advance redistricting reform that brings forth elections resulting

Humbly Submitted,

Micah Sims
Executive Director
Common Cause Pennsylvania



Public Comments on Redistricting Reform

June 12, 2019

Statement by: The Rev. Sandra L. Strauss
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In a resolution dated April 4, 2017, the Pennsylvania Council of Churches' Board of Directors stated that it "supports the creation of an independent citizen redistricting commission."

Members of the Christian community represented by the Council typically identify with Jesus' call to "love our neighbors as ourselves" and to care for our most vulnerable neighbors. Therefore, much of the focus of our communities of faith has been directed at addressing the needs of our sisters and brothers who may be less fortunate and advocacy to protect programs and funding that help to fulfill those needs. This has included programs and funding directed at needs like hunger, housing, wages, and education. It has also included protecting our environment, prompted by God's call to care for the creation that God pronounced good. And of course, there are other areas that involve how we treat our most vulnerable neighbors as well, including criminal justice and immigration.

So for many years, redistricting remained mostly off the radar for people of faith represented by the Council—as did most issues related to voting and elections, despite the efforts of advocates like myself trying to raise the profile of these issues and how they affect our ability to influence the many areas that we have recognized as important to us. We have long asserted that many elected officials are more interested in preserving their own seats or maintaining a partisan majority than in hearing the concerns of their constituents. When partisan gerrymandering serves to protect these interests, preserving the incumbency of some officials while effectively denying access to challengers, our democracy suffers.

The rise of Fair Districts PA has helped to elevate the profile of how gerrymandering has distorted how our elected officials respond to Pennsylvania voters. The Pennsylvania Supreme Court's decision forcing our Congressional districts to be redrawn helped to drive that point home when we witnessed a 13-5 advantage by one party shift to a 9-9 split according to party—much more in line with the balance of voter registration by party in Pennsylvania.

We desperately need for a fair process to be put in place for all electoral districts—federal and state level alike. We believe this requires a mechanism that removes most of the heavy partisan influence from the way districts are drawn. We believe that an independent commission with citizen representation that is not solely dependent on partisan choices made by our elected officials will help to make the process fairer and more representative of voters in the Commonwealth. However, we also believe that there should be strict guidelines set for both the selection of commissioners and how they are to go about their job. This includes criteria that ensure the commission is balanced geographically, racially, and by gender, among other things, and that all are capable of doing the work and committing the time necessary to do it. It also includes direction concerning how districts are to be drawn that meet criteria such as population, contiguity, communities of interest, municipal boundaries, racial balance, competitiveness, and other criteria required by Pennsylvania's Constitution. There must be safeguards in place to ensure that independence and impartiality are maintained, and that the process is transparent and includes sufficient opportunities for public input.

Others, of course, can speak more specifically about how fairness criteria can and will affect the process. Our concern, as people of faith, is that all Pennsylvanians can have a voice in the political process and not feel powerless because of a system that protects incumbents and existing partisan majorities. We believe that an independent citizens redistricting commission will provide a much fairer and transparent process that in turn will result in a system that is more responsive to the citizens of Pennsylvania. We call upon our current elected officials to do the honorable thing and support redistricting reform that produces the kind of result we have described.

Wilkes Barre

M. L. ... - Rep
John Yudick - Sen

Testimony Before the Redistricting Reform Commission
Wilkes Barre, Pa., June 6, 2019
By Robert Smith, 9 West Lake Road, Bear Creek, Pa. 18602

First, I thank the Commission for its effort to solicit public opinion on the issue of redistricting reform in Pennsylvania and for the opportunity to provide this testimony.

I was one of the plaintiffs in the gerrymandering lawsuit last summer. 17 of us and the League of Women Voters challenged our 2011 congressional map.

The argument before the Pennsylvania Supreme Court in that case was based on provisions within our State constitution which guarantee "free and equal elections", "free expression and association," and "equal protection of the law." If you compare those constitutional provisions and the present gerrymandering process, it becomes clear that in the interest of fairness a new map had to be drawn.

It is true human nature that any representative who is guaranteed to win will naturally cater those who assure that win. We see it now in Pennsylvania politics. For example, during our trial in Harrisburg some of my colleagues who testified told me that their Congressional

Representatives in gerrymandered districts were unresponsive to their needs or preferences, like not returning their phone calls.

But how has it affected me personally? Frankly, it hurts. Up until this last election, friends and people I know have told me that they are not inclined to vote in a congressional election because they say the results are pre-determined by demographics.

Let me give you another sad example. Last year before the revised map was established, I was approached to help find a candidate to run in the then upcoming congressional election. Among those I contacted was a popular and successful former County Official. He told me he could not run for election because he was sure to lose under the current map structure.

Such a response by individuals who feel denied an opportunity to participate in elections violates the very principles of our democracy.

Frankly today's partisan division calls for, if not demands, that our gerrymandered maps have to be replaced.

Let's look for a moment at the Supreme Court's decision. Because the Legislature could not provide a non-partisan map, the Court assigned

the task to a university--professionally experienced in political mapmaking and the Court required that the University adhere to Pennsylvania's constitutional provisions. The resultant map was fair and the results closely reflect the party registration-democrat and republican- throughout the State.

Should the Pennsylvania Supreme Court draw our Congressional maps? Absolutely not! If we had a process to assure a non-partisan map could be drawn we would not need the intervention of the Courts.

Pennsylvania's constitution was written in 1776 and was the first Constitution in the United States. It predates our federal constitution and places every emphasis on the rights of persons. This issue, congressional mapping, should not be one of political partisanship. It should be governed by fairness.

The current method of relying solely on the political process to draw our Congressional maps does not work. We need to change it.

I commend the Governor and this Commission for holding these meetings and soliciting public input on this important issue.

Reading

How Best To Impartially Define Electoral Districts

By Roy A. Minet

(Rev. 03/29/18)

One of many techniques politicians use to keep themselves in power is the process known as “gerrymandering.” That is, deliberately drawing the lines of electoral districts to favor themselves, or their political party. The practice has rightly been bemoaned for decades. It is past time to fix it.

Many approaches have been proposed which are messy, not totally satisfying and fail to hit the nail squarely on the head. It turns out that a really good and clean solution is possible; it should be implemented as soon as possible.

As usual, the first step toward determining the best solution is to correctly identify the requirements and clearly write them down in order of importance:

1. **One Person, One Vote** – It is a hard requirement that each of multiple districts must contain, as nearly as is reasonably possible, the same number of eligible electors. This is an obvious good thing, and the SCOTUS has decreed it.
2. **Impartial** – The process by which districts are determined must not give any systematic advantage or disadvantage to any group or faction.
3. **Understandable** – The process by which districts are drawn should be understandable by a reasonably bright high school student. (In fact, anything having to do with voting and elections should meet this requirement.)
4. **Verifiable** – It should be possible for reasonably equipped and motivated citizens or organizations to independently verify that districts are correctly drawn. It is a bonus if a rough verification can be done quickly just by visually inspecting the map.
5. **Well-defined and Stable** – The process should be clearly and publicly spelled out. It should not be changeable on a whim or when different people are implementing it. Enshrining the process in the state or even the U.S. Constitution would be a good idea.
6. **Preserve Precinct Atomicity** – Precincts are very small areas of roughly 600 to 1,800 voters which are determined locally based upon available polling places and their proximity to voters. It is unnecessarily disruptive if redistricting requires redrawing precinct boundaries. Therefore, each precinct should be entirely contained within a single district. (If precincts straddling a district boundary should need to be merged, the merged precinct lands in the district from which most of its voters came until the next redistricting is done.)
7. **Contiguous** – It is required in many jurisdictions that voting districts be geographically contiguous, and that no district be completely contained within any other district. This requirement tends to support requirements 3 and 4.
8. **Compact** – Compactness can have several definitions. Fortunately, it is not critically important. Compactness does make it easier for candidates who must repeatedly traverse the district for campaign purposes and easier for elected representatives to commune with

constituents. But primarily, compactness is believed to be desirable today mainly because it is felt to be an indication that the district has not been gerrymandered. However, this requirement does support requirements 3 and 4.

One thing NOT part of the requirements is "fairness." People sling the word "fair" around all the time, but the criteria by which they judge fairness can vary radically. Without a detailed understanding of the criteria, the word is meaningless.

Popular proposed solutions seem to revolve around establishing an unbiased commission which figures out how to draw boundaries. No semi-intelligent individual is completely unbiased, so what that means is a commission on which it is lightheartedly hoped that opposing factions hold each other in check. How commission members are selected becomes very important and is quite problematic. A commission does not guarantee requirement 2 and definitely does not satisfy requirements 3, 4 and 5. It doesn't seem sensible to make a commission re-invent the redistricting wheel (with somewhat variable and unpredictable results) every time a redistricting is needed.

A much superior approach is to clearly define a *procedure* that satisfies all requirements. It doesn't matter who (or what) executes the procedure, the same impartial boundaries are the result.

A procedure which well satisfies all requirements (except 6) was proposed circa 2002 by Warren D. Smith. It is called "splitline." The splitline procedure very simply divides a state into two sections having the desired populations using the shortest possible line. If more than two districts are needed, the process is repeated (as many times as necessary) to subdivide one or both of the two sections until the desired number of equal population districts has been drawn.

There is a three-minute YouTube video which very clearly explains the procedure. Also, maps are viewable online which show the splitline Congressional districts for each state.

In order to meet requirement 6, "the shortest possible line" of the splitline method is changed to "the shortest distance along precinct boundaries." Because of precinct granularity, this will introduce small errors in population (completely inconsequential for large districts, perhaps 1% for very small districts containing only 25 or 30 precincts). Some small tweaks to the algorithm could further reduce population errors. Appendix A spells out the procedure in detail and discusses such variants in more depth.

Splitline districts are always contiguous and maximally compact (geometrically). They are based *only* on the boundaries and populations of precincts; no voting history or registration data are ever used. The procedure is easy to understand. If you're familiar with the state's population distribution, you can see that the lines have to be pretty much correct by just looking at them on a map. Lots of individuals and organizations are capable of independently verifying the boundaries. Also, it should be obvious that this one simple procedure can be used for any kind of district: Congressional, State Senator, State Representative, etc. Finally, it also should be obvious that splitline can be done in minutes by a computer at near-zero cost.

No matter how straightforward and impartial splitline may be, there still will be objections. The first probably will be that splitline is necessarily going to ignore geographic features and political boundaries. Chalk that up as part of being impartial. It definitely will divide cities and counties. But this is not an actual problem. It's more a vague "feel good" notion in people's heads. As proof, we've lived just fine for decades with many of the craziest such divisions which were introduced by gerrymandering. Also, quite a few splits of political entities will be inevitable just to achieve the one-person-one-vote requirement, no matter what method may be used. If it's OK some places, it won't hurt to do it other places as well. (One could even argue that it's "fairer" to do it everywhere.) Certainly, it is conceivable that geographic features (e.g., a river) could make traversing a district somewhat less convenient, but as a practical matter, this cannot be a large problem, especially when precincts are preserved.

The second complaint will be that some faction or another doesn't receive fair (!) representation. Well, what faction did you have in mind? There are so many. Factions might be defined by various political philosophies, religions, races, etc.; there are many factions of each type. And, of course, the smallest and most important faction is the individual. So, good luck! Whether a real or imagined issue, it is certainly not something that can be solved by playing around with district boundaries; wrong mechanism. Other remedies to consider which may partially address such concerns are multiple-representative districts, ranked-choice voting (MRCV, not IRV) and proportional representation. These definitely are good things to think about, but they don't have anything to do with impartially defining equal-population electoral districts.

Appendix A

Pure Splitline – We wish to impartially divide a political entity having a total population of p and some arbitrary, but well-defined boundary (e.g., a state) into n contiguous and geometrically compact districts which have populations as nearly equal as is reasonably possible. This can be accomplished in a straightforward manner by repeating the following three steps as many times as may be necessary.

1. If n is 1, no subdivision is necessary and this is a final district. If $n > 1$, then define two new numbers $i = n/2$ rounded up and $j = n/2$ rounded down. (Note that $i + j$ always equals n , and if n is even, i obviously will equal j .)
2. Draw the shortest possible line dividing the area into two sections so that one section has a population equal to p multiplied by i/n , while the population of the other section has a population equal to p multiplied by j/n . If there is more than one such line, use the line closest to a north-south orientation and if there is still a tie, use the westernmost line.
3. For each of the two sections separately, go back to step 1 using the section's population for p and either i or j as n .

The fact that Earth is a sphere means that the shortest line of step 2 must be along a great circle route, but this will differ significantly from plane geometry only for very large areas. When

subdividing an irregularly shaped political entity, it is possible that a great circle route may enter, then leave and re-enter the entity. If/when that happens, the line's length is defined to be the total distance between the two most distant points at which the line intersects the boundary of the area being subdivided.

Obviously, the shortest line will cut right through many things, occasionally even someone's residence. Impartial rules determine on which side of the line any such "dead hit" cases will be placed. However, this is an annoying problem with the pure splitline algorithm. Also, each redistricting will force all intersected voting precincts to be redefined, sometimes into inconvenient entities. A better tradeoff would be to preserve the atomicity of precincts, the smallest political subdivisions, at the cost of introducing very small errors in the equality of district populations.

Preserve Precincts, Shortest Boundary – The most obvious way to accomplish this is to change "the shortest possible line" of step 2 to read "the shortest possible distance along precinct boundaries." Imagine that you are traveling from the opposite side of the world along the great circle route of the pure splitline method. Mark the first intersection with the area being divided as point A. Mark as point B the (last, normally only) point where the great circle line exits the area being subdivided. Now, the problem is simply to determine the shortest route from point B to point A (traffic always seems to be much lighter going this direction) which follows precinct boundaries. This is the familiar problem that your GPS unit's routing software solves all day, every day. Errors in population equality among districts will be inconsequential for large districts. The smallest districts (consisting of only 25 or 30 precincts) may have errors of about 1%.

Preserve Precincts, Smallest Population Deviations – The best way to maintain precinct atomicity will achieve the lowest possible population errors. It is only slightly harder to understand. Make a list of just the precincts that the great circle line of the pure splitline method traverses. Any of the traversed precincts which have 75% or more of their area on one side of the line are assigned to that side. Assign the remaining precincts to the two sections in the manner which most closely approaches the target populations. Then draw the boundary line accordingly. The distance along precinct boundaries may now be slightly longer, but minimum population errors are assured.

Procedure For Drawing Electoral Districts

(05/10/19 – Roy Minet)

In all cases where a political entity (e.g., a state) is entitled to elect multiple representatives, the procedure defined here must be used to draw the electoral district boundaries for such representatives. If the population of the political entity is p and the number of districts to be drawn is n , the following (sometimes iterative) procedure is used.

- 1.** If n is 1, no subdivision is necessary and this is a final district. If $n > 1$, then define two new numbers $i = n/2$ rounded up and $j = n/2$ rounded down. (Note that $i + j$ always equals n , and if n is even, i obviously will equal j .)
- 2.** Draw the shortest possible (great circle) line dividing the area into two sections so that one section has a population equal to p multiplied by i/n , while the population of the other section has a population equal to p multiplied by j/n . If there is more than one equally short line, use the line closest to a north-south orientation and if there is still a tie, use the westernmost line. For irregularly shaped political entities, it is possible that a line could exit and then re-enter the entity; the length of the line is defined to be the total distance between the two most distant points which lie on the boundary of the area being subdivided.
- 3.** Make a list of just the voting precincts that the great circle line of step 2 traverses.
- 4.** Any of the traversed precincts on the list which have 75% or more of their area on one side of the line are then assigned to the section on that same side of the line.
- 5.** If any precincts remain on the list, assign the largest to the section which needs the most people to hit its population target. Repeat this step until all precincts have been assigned.
- 6.** Then draw the final boundary accordingly.
- 7.** For each of the resulting two sections separately, go back to step 1 using the section's population for p and either i or j (whichever was associated with the section) as n .



Action. Access. Progress.

May 28, 2019

Prison-Based Gerrymandering: The Problem And The Solution

I. *Prison-based gerrymandering unfairly distorts the populations and demographics of legislative districts*

Pennsylvania's prisons are clustered in rural parts of the Commonwealth, while the inmates disproportionately hail from urban areas and minority communities. Inmates cannot vote if they are serving felony sentences, seldom have ties to the communities near their prisons, and nearly always return to their hometowns upon release. But in the redistricting process, the Legislative Reapportionment Commission has traditionally treated inmates as residents of their cells instead of their hometowns. This creates accounting magic: inmates swell the populations of rural regions for redistricting purposes, even though they have no role in those regions' civic life. Under the current Pennsylvania House map, there are some 10 districts where over 5% of the population consists of inmates. This distortion of district populations is at odds with basic fairness principles, including the constitutional requirement of one person, one vote.

In 2020, the Census Bureau will once again tabulate inmates as if they were residents of their cells. But five states—New York, Maryland, Delaware, California, and Washington—now have statutes that expressly direct redistricting authorities to reassign inmates to their hometowns. In Pennsylvania, the Election Code specifies that inmates are residents not of their cells, but of their pre-incarceration addresses. In spite of this provision, the LRC has always treated inmates as residents of their cells when redrawing state legislative districts. This should not continue in 2021.

II. *The LRC can—and must—reassign inmates to their home addresses in 2021*

Although the Census Bureau's official count for Pennsylvania will treat inmates as residents of their cells, the LRC is not obligated to use the official census data without adjustment. Indeed, in every decade the LRC makes technical adjustments to the official census reports before drawing legislative districts, such as correcting voting-district code

and name discrepancies, municipality name discrepancies, late precinct changes, and problems with split blocks. Courts have repeatedly affirmed the permissibility of basing redistricting plans on adjusted Census data.¹

This adjustment is not merely optional. The Pennsylvania Election Code states:

Except as otherwise provided in this subsection, no individual who is confined in a penal institution shall be deemed a resident of the election district where the institution is located. The individual shall be deemed to reside where the individual was last registered before being confined in the penal institution, or, if there was no registration prior to confinement, the individual shall be deemed to reside at the last known address before confinement.

25 Pa.C.S. § 1302(a)(3). In other words, Pennsylvania law defines inmates to be residents of their hometowns, not their prison cells. Article II, § 16 of the Pennsylvania Constitution requires the LRC to draw districts that are “as nearly equal in population as practicable.” The Pennsylvania Supreme Court recently clarified that this provision requires state legislative districts to “accord equal weight to the votes of **residents** in each of the various districts.” *League of Women Voters of Pa. v. Commonwealth*, 178 A.3d 737, 814 (Pa. 2018) (emphasis added). Accordingly, for the LRC to satisfy the equipopulation mandate of Article II, § 16, it must correct the official census data to account for inmates’ legal residences, i.e., the addresses where they were registered to vote or where they lived before incarceration.

¹ See, e.g., *Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 & n.3 (2016); *Bethel Park v. Stans*, 449 F.2d 575, 582 n.4 (3d Cir. 1971) (“Although a state is entitled to the number of representatives in the House of Representatives as determined by the federal census, it is not required to use these census figures as a basis for apportioning its own legislature.”). Maryland and New York adjusted the official 2010 Census data to correct inmates’ addresses, and courts upheld this process in both states. *Fletcher v. Lamone*, 831 F. Supp. 2d 887 (D. Md. 2011) (three-judge panel), *aff’d without opinion*, 567 U.S. 930 (2012); *Little v. N.Y. State Legislative Task Force on Demographic Research & Reapportionment*, No. 2310-2011 (N.Y. Sup. Ct. Dec. 1, 2011), available at http://www.prisonersofthecensus.org/little/Decision_and_Order.pdf, *aff’d without opinion*, 963 N.E.2d 787 (N.Y. 2012).

In order to fulfill this requirement in 2021, the Commonwealth should take steps in 2019 and 2020 to ensure the timely availability of data on inmates' home addresses. The best option for doing this would be to take advantage of a new data product offered by the Census Bureau. Under this option, the Commonwealth would submit to the Census Bureau data indicating where prisoners are incarcerated on Census Day (April 1, 2020), plus their pre-incarceration addresses, and then the Bureau will provide a supplemental data product meant "to assist [the states] in their goals of reallocating their own prisoner population counts." Final 2020 Census Residence Criteria and Residence Situations, 83 Fed. Reg. 5525, 5528 (Feb. 8, 2018). To take advantage of this opportunity, agencies including the Pennsylvania Department of Corrections and Department of State should begin working now to ensure that the Commonwealth will promptly assemble data linking inmates' identities, cell addresses, and pre-incarceration voter-registration and residential addresses. This compilation is relatively simple in concept, but implementation may present some challenges, depending on how state agencies have collected and formatted the relevant data.

Even if the Commonwealth does not obtain the Census Bureau's optional data product, it can still assemble data on inmates' home addresses for use by the LRC. New York and Maryland both overcame data-collection challenges to achieve this in the last redistricting cycle without direct assistance from the Census Bureau. *See generally* Erica L. Wood, *Implementing Reform: How Maryland & New York Ended Prison Gerrymandering*, Demos (Aug. 15, 2014), available at <https://www.demos.org/research/implementing-reform-how-maryland-new-york-ended-prison-gerrymandering>. And even if the Commonwealth does not supply the LRC with data on inmates' home addresses, the LRC should be able to make reliable extrapolations on the basis of Census information and other publicly available data. *See* Brianna Remster & Rory Kramer, *Shifting Power: The Impact of Incarceration on Political Representation*, 15 Du Bois Rev. 417 (2019), available at https://www.cambridge.org/core/services/aop-cambridge-core/content/view/3C54A4F45E8E7129B1AEFCB0B7B15432/S1742058X18000206a.pdf/shifting_power.pdf.

The Public Interest Law Center has assembled extensive information about prison-based gerrymandering and how to end it. For further details, please contact Benjamin D. Geffen, Esq., at bgeffen@pubintl.org or 267-546-1308.

Why compactness and not spitting political subdivisions matter?

1. Compactness is historically-grounded and creates an objective standard. See: 1911 Reapportionment Act and 1968 Pa. Constitution. Other states: 30 other states have compactness requirements for Congressional redistricting and 40 other states have compactness requirements for state legislative districts. Not breaking political boundaries is found in 29 states for Congress and 45 states for legislative districts.
2. Compact districting restrains gerrymandering. The most important criteria in design. Consider the original Gerrymander.
3. Counties, cities, townships, and other municipalities/political subdivisions have meaning to citizens because this is where people choose to live and/or raise their families.
4. Counties, cities, townships, and other political subdivisions have meaning to citizens because this is where people face common problems that are unique to their communities, such as failing schools, congested highways, the need for parks, libraries, after school programs, storm water management, medical care, jobs, and/or economic development. On many specific issues, needs of communities may differ from county to county or township to township.
5. Counties, cities, townships, and other municipalities have meaning to citizens because this is where people pool their resources in the form of taxes to solve common problems.

6. Compact districts based on county boundaries will make it easier for people to visit, get to know, and lobby their Congressional representative and feel less alienated. Elongated districts make it very difficult for citizens to get to know their Congressional representative and for their Congressional representative to get to know them.

7. By having clear geometric standards for keeping counties, townships and wards or boroughs whole, additional breaks in counties, townships, wards or boroughs become an indication of partisan manipulation. Oddly shaped districts would then create a prima facie case of partisan intent. Proof of partisan intent could be established, in part, by boundaries that follow partisan voting territory. Unexplained boundaries that did not follow county or other boundaries in a compact manner could be stricken as the product of partisan gerrymandering. The 4-rule framework in the Pa Supreme Court's January 22, 2018 Order is a manageable judicial standard.

8. Compact districts encourage candidates to run. Candidates will find it easier to walk districts, meet voters in town centers or shopping areas purchase media, and drive to events. Consider the new PA 5th.

States/Requirements	Contiguous	Compact	Political Boundaries
Alabama	C,L	C,L	L
Alaska	L	L	L
Arizona	C,L	C,L	C,L
Arkansas	L	L	L
California	C,L	C,L	C,L
Colorado	C,L	C,L	C,L
Connecticut	L		L
Delaware	L		
Florida	C,L	C,L	C,L
Georgia	C,L	C,L	C,L
Hawaii	C,L	C,L	
Idaho	C,L	C,L	C,L
Illinos	L	L	
Indiana	L		
Iowa	C,L	C,L	C,L
Kansas	C,L	C,L	C,L
Kentucky	C,L		C
Louisiana	C,L		C,L
Maine	C,L	C,L	C,L
Maryland	L	L	L
Massachusetts	L		L
Michigan	C,L	C,L	C,L
Minnesota	C,L	C,L	C,L
Mississippi	L	C,L	C,L
Missouri	C,L	C,L	L
Montana	L	L	L
Nebraska	C,L	C,L	C,L
Nevada	C,L	C,L	C,L
New Hampshire	L		L
New Jersey	L	L	L
New Mexico	C,L	C,L	C,L
New York	C,L	C,L	C,L
North Carolina	C,L	C,L	C,L
North Dakota	L	L	L
Ohio	C,L	C,L	C,L
Oklahoma	C,L	C,L	C,L
Oregon	C,L		C,L
Pennsylvania	C,L	C,L	C,L
Rhode Island	C,L	C,L	C,L
South Carolina	C,L	C,L	C,L
South Dakota	L	L	L
Tennessee	L		L
Texas	L		L
Utah	C,L	C,L	C,L
Vermont	L	L	L

Communities of Interest

C,L

L

C,L

L

C,L

C,L

C,L

C,L

C,L

C

C,L

C,L

C

C,L

C,L

C,L

C,L

C,L

C,L

L

C,L

L

Virginia	C,L	C,L	
Washington	C,L	C,L	C,L
West Virginia	C,L	C,L	C,L
Wisconsin	L	L	L
Wyoming	C,L	C,L	C,L
C* = Congressional District	32	30	29
L* = State Legislative District	50	40	45

C,L
C,L
L
20
25

A. Five Principles to End Gerrymandering

1. There are neutral criteria for redistricting.
2. There are historic criteria for redistricting that prevent partisan gerrymandering.
3. False neutral criteria should be avoided.
4. As an added protection to prevent partisan gerrymandering, one must forbid the use of any partisan data or intent to manipulate any boundary for partisan purposes.
5. The process of redistricting must be open to the public, media and legislators: 100% open communications, 100% open data used for redistricting, and 100% open programs used for redistricting.

B. Five Methods to End Gerrymandering

1. Require neutral criteria for redistricting that are strictly construed: districts must be highly compact using mathematical measures and districts must minimize the division of municipalities in creating equal population districts. See: PA Cstn Art. II. Section 16
2. Require only historic criteria for redistricting that prevent partisan gerrymandering. Compact districts that do not divide municipalities. See 1911 Reapportionment Act, PA Congressional maps from the 1940's through 1982 and PA Cstn Art II. Section 16
3. Prohibit the use of vague redistricting criteria that can be manipulated for partisan goals: Do not adopt a "communities of interest standard;" instead require districts to hue closely to counties, cities, towns, townships, boroughs, wards, and precincts. Political subdivisions are communities of interest. These are places where people choose to live, have common problems, are forced to deal with one another across economic (and political) lines, and pool tax dollars to solve common problems. Separating people by political views is not a community of interest and will polarize any legislature by allowing representatives to ignore opposing points of view.
4. Forbid the use of any partisan data or partisan considerations to draw any boundaries of any district. By requiring the absence of partisan data or partisan intent combined with highly compact districts that do not divide municipalities unless absolutely necessary will create a neutral judicially enforceable standard. This is very important for the enforcement of unlawful gerrymandering.
5. Constitutionally require that redistricting be a completely open process with no hidden communications. To prevent partisan redistricting, there must be 100% open, publicly available communications, 100% open data used for redistricting, 100% open programs used in the redistricting process and full disclosure of all proposed maps.

C. Five steps to redraw district in a neutral manner.

To maximize compactness and minimize splitting political subdivisions for partisan aims, CCFD developed the following five-step method for redistricting:

Step 1. Divide the state roughly into the required number of districts using the largest possible political subdivisions (e.g., counties and cities) in a compact manner, initially, without dividing any county or other larger political subdivision.

Note: For political units with a population larger than one district, (cities and counties) create as many compact whole districts as possible within the political unit, and then add the remaining unused territory along the border as a single piece to a neighboring district.

Step 2. To equalize district populations further, add or subtract territory at the boundary of each larger political subdivisions (e.g. counties) in layers using whole municipalities of the next smallest size. For example, if a Congressional district needs more voters to reach the target district population, add whole municipalities along the entire border of a single district-edge county in layers until the target population is achieved. Do not add municipalities from the next layer until the first layer is completely used. This is very important technique to preempt the selection of territory based upon partisan goals of packing or cracking.

Step 3. Repeat the procedure in Step 2 with each level of smaller political subdivisions (e.g., municipalities, wards, precincts) to improve district population equality to the required degree. At each level, no more than one political subdivision should be split between any pair of adjacent districts.

Note: No political subdivision should ever be divided between more than two districts unless its population is larger than two districts, in which case it should be divided amongst no more than the absolute minimum number of districts necessitated by its population.

Step 4. Compute the compactness of all the districts using one or more mathematical measures of compactness. (e.g. Reock, Schwartzberg, Convex Hull, etc.) In choosing amongst competing maps, preference should be given to those maps which achieve maximum compactness without excessive political subdivision splits. This reduces the discretion of would-be gerrymanderers to pick and choose non-compact territory that breaks up one political subdivision after

another based on partisan goals. See Ex. A, page 9, 2011 PA Congressional map Districts 1, 13, 6, 7, 17, 12, 14, 9, 3, and 5. The strict application of compactness and no unnecessary splits of partisan

Step 5. Verify that the resultant map is consistent with the Voting Rights Act. In most instances, no further adjustment will be needed. Compact districts which respect political subdivisions tend to preserve communities of interest, which leads to compliance with the VRA. Any problems at this stage can usually be resolved with relatively slight adjustment of district boundaries.

The reasons this method works is that requirements for compactness and preservation of political subdivisions significantly reduce the leeway attempted gerrymanderers have to choose territory based on self-serving criteria such as partisan voting performance in past elections. For example, the infamous PA 7th Congressional District from the 2011 PA Congressional map (“Goofy kicking Donald Duck”) would be impossible using this method. Following County borders would preempt selection of territory based on partisan voting behavior.

Our method also prevents more subtle gerrymanders by requiring that territory be added using entire layers of undivided municipalities along the borders of counties. Referring to the 2011 PA Congressional Map, Ex. A, page 9, the less obviously gerrymandered districts consisting of the 6th, 15th, 17th, 11th, 10th, 9th, 18th, 12th, 5th, 4th, and 14th would all be all be unlawful for dividing counties unnecessarily and in a non-compact fashion.

In seeking a remedial map, the PA Supreme Court not only invited proposed maps, but also required submitters to provide compactness computations and enumerations of county, municipal, and precinct splits. This enabled the Court to survey the landscape of reasonable mapping outcomes and ensure that its own final map would comply well with the standards it had established.

Dear Commission Members,

- My name is Jason Magidson. I live in Haverford Township in Delaware County. I currently live in the 5th Congressional District, and in what was previously the 7th Congressional District.
- I would like to share a citizen's perspective on why districts that are compact and follow communities of interest are important.
- I moved to Delaware County 28 years ago. I've always been a regular voter but I became increasingly confused over time about my Congressman's geographic area of responsibility. I naively assumed that my Congressman represented Delaware County. Around 2011 I worked in King of Prussia, across the street from Creed's Seafood Restaurant. I had no idea that my Congressional District went through there, but was only as wide as their parking lot.
- In 2017, I learned about the extent of gerrymandering in Pennsylvania and elsewhere. I was shown the shape of my 7th Congressional District, and it was pointed out that it resembles "Goofy kicking Donald."
- I also became aware that many of my friends did not know who their U.S. Representatives were.
- I believe that gerrymandering is corrosive to democracy. With gerrymandering, the "side" in power doesn't have to listen to constituents with other viewpoints or interests. When we are no longer represented we are no longer a functioning democracy. Gerrymandering also creates extremist positions that preclude collaboration and compromise.
- I like the new Congressional District map because I believe they make elections more competitive and so the elected representatives need to listen to all of their constituents in a compact area, and that the counties they represent are now once again being represented.
- I became active in anti-gerrymandering efforts in late 2017, at which point my education began. I became one of the 26 plaintiffs in the PA Federal gerrymandering lawsuit, *Agre v. Wolf*. After that suit, I joined Concerned

Citizens for Democracy, a local group whose goal is to end partisan gerrymandering.

- I was very encouraged to learn about the neutral, judicially enforceable standard for drawing districts that members of Concerned Citizens for Democracy had developed. I liked the:
 - Use of historical political boundaries because they were based on historical communities of interest.
 - Not dividing counties, municipalities, wards, etc. unless absolutely necessary to get to balanced numbers of citizens in a Congressional District.
 - Keeping districts compact by taking territory first from the perimeter of a county, etc. in order to balance populations in districts.
 - All information used in drawing maps should be made public in real time, and partisanship should never be the basis for drawing a map.
 - I believe these guidelines could be used for the future drawing of maps to severely hamper would-be gerrymanderers.

Redistricting Reform Principles

The nature of the pushback in the Pennsylvania legislature against redistricting reform efforts, combined with as the evidence and analysis presented in recent anti-gerrymandering activism and litigation in our state, has made it clear that Pennsylvania's current redistricting process is intrinsically corrupt. A well-structured independent commission for both legislative and Congressional redistricting is essential to ensuring that redistricting will serve all Pennsylvanians rather than only powerful politicians.

However, simply creating something called an "independent" commission is not enough. Numerous proposed bills over the past few years have purported to offer this. Some bills have been reasonably well constructed, others seem to have been well-intentioned but flawed, and yet others appear to have been deliberately designed to continue the same old corrupt politics as usual under the guise of reform. Meanwhile, powerful pro-gerrymandering forces have stonewalled reform efforts at every turn, risking Pennsylvania undergoing yet another redistricting using a process which has been failing our state disastrously for decades.

An analytical framework is essential to help sort through the maze of competing reform proposals. In addition, it is important to develop avenues for incrementally improving the existing process in the event that stonewalling of full reform continues through 2021. Based on observation of the key failures of the existing system, this submission proposes six primary principles that should be observed in a fair redistricting process, which can help guide both comprehensive and incremental reform efforts:

1. Complete ***independence*** of the commission from the politicians and lobbyists who have direct conflicts of interest in the results of the process.
2. Total and permanent ***transparency*** of all aspects of the process, from commission selection to the reasoning behind final district designs.
3. Broad ***public engagement***, both via a well-designed commissioner selection process to recruit a diverse and qualified commission, and via inclusive solicitation of public input into the district design process.
4. Rigorous quantitative ***design standards*** for districts, in order to reduce the freedom for districts to be manipulated to corrupt ends.
5. Strong ***data hygiene*** requirements to prevent use of partisan data or individual addresses to design districts for partisan purposes or to advantage or disadvantage specific candidates.
6. Efficient, accessible, and effective ***redress*** procedures against a corrupted process or result, available for as long as the districts are in effect.

More details on each of these principles are discussed below.

1. ***Independence***

State legislators, Congressional representatives, their political allies, and lobbyists must not be permitted to have any influence whatsoever over who the commissioners are or how the districts are designed, other than through the same public channels available to ordinary citizens. Commissioner candidates must be evaluated for a commitment to fair-mindedness and problem-solving, rather than selected as competing representatives of partisan or other interest groups, although balancing party registration, including independent voters, and ensuring commission diversity are still important to avoid unfairness. Significant randomization of the commissioner selection, amongst a large and well-diversified pool of qualified candidates, is also important to reduce the ability of powerful political actors to put their thumbs on the scales.

Commissioners must be explicitly required to act without regard for partisan interests, and without any intent to advantage or disadvantage any incumbent or candidate for office.

If legislative involvement in commissioner selection or district design cannot be prevented, then maximal checks and balances must be put in place, to make it as difficult as possible for any one party to dominate the process (possibly with the help of a few minority party quislings), or for a bipartisan incumbent-protection gerrymander to be enacted. Such checks and balances must take into account the present reality of our legislature — significant and durable one-party majorities in both the Senate and the House, deliberately established by the extreme 2011/2012 partisan legislative gerrymander.

2. ***Transparency***

Everything the commission does related to their redistricting duties, every commission meeting, and every communication they send or receive on the subject, must be made public online immediately and preserved as part of the public record. In addition, commissioners must be required to prepare detailed written explanations for every district design decision, as well as reports listing all relevant statistics (populations, compactness, county, municipal, and precinct splits, VRA compliance, etc.).

3. ***Public engagement***

Public input must be aggressively facilitated and solicited at every point in the process, through recorded and publicly broadcast open meetings across the commonwealth, as well as in writing, over the phone, electronically, etc. The data and tools used by the commission to design the districts must be made freely and widely available so that ordinary members of the public can

easily submit their own proposed district designs.

Commissioner candidate pools must be selected for diverse backgrounds and skill-sets that will enable them to empathize with and integrate the wide variety of concerns that different groups of Pennsylvanians may have about the redistricting process, and to cooperate effectively with their fellow commissioners in a highly-charged political environment. Commissioner compensation must be sufficient to ensure that even Pennsylvanians of modest means can serve at a high level of engagement over many months, and the commissioner recruitment and application process must be designed to be as inclusive as possible for Pennsylvanians from all walks of life.

4. ***Rigorous standards***

District designs must be held to rigorous standards to reduce the freedom to manipulate district boundaries for corrupt purposes, and the commission must be supplied with sufficient resources to ensure that they can retain expert advisors to assist them in adhering to these standards.

In particular, the state constitutional requirements for equal population, contiguity, compactness, and avoiding division of counties, municipalities and wards, and the federal constitutional requirement for Voting Rights Act compliance, must be given more than vague lip service. Specific requirements must be spelled out in detail, based on expert advice.

Methods of achieving and/or measuring optimal compactness, should be specified, as, for example, in Iowa's redistricting standards. Note that maximizing average compactness of all districts should not be considered sufficient. (Maximizing the compactness of the worst district might be a better measure.)

The concept of split minimization must also be clarified to note that, not only must the number of divided counties, municipalities, and wards be minimized, each county, municipality, or ward must only be divided amongst the smallest possible number of districts.

Population equality requirements should *not* be construed to require exact population equality between districts down to a single person, a criterion which badly misrepresents the precision of the available population data. Instead, split minimization and compactness should be prioritized as long as populations are equal to within some reasonable and clearly-specified standard. This will eliminate the use of "exact" population equality as an excuse for arbitrary block-by-block division of municipalities and highly-convoluted districts.

Contiguity requirements should account not just for technical boundary contiguity, but also, as much as possible, for travel contiguity — all parts of a district should be connected within the district by meaningful travel corridors.

5. ***Strong data hygiene***

District design processes should not be permitted to use any data which may enable partisan gerrymandering or creation of unfair advantages for incumbents. Such data includes addresses of incumbents, candidates, or other individual Pennsylvanians (e.g., major donors), voter registration data, election results, designs of prior gerrymandered districts, or any other data, like marketing surveys or opinion polls, which could be used to reliably infer partisan affiliations. The only exceptions to this should be (a) for Voting Rights Act analysis or (b) possibly as a final check on the redistricting process to confirm that gerrymandering has *not* occurred.

6. ***Availability of redress***

No matter how carefully a redistricting process is structured, problems may arise that drafters could not foresee. It needs to be feasible for citizens to challenge a biased or failed redistricting process, at whatever point in time that failure becomes apparent, even years afterward. That means that pathways for court challenges must not be foreclosed as long as the districts are still in effect, that all data related to the process must be required to be preserved and easily publicly available, and that whoever ends up drawing the maps must be required to affirmatively defend them, rather than being granted a presumption of lawfulness.

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Following is my oral presentation for the Governor's Redistricting Commission hearing in Pittsburgh on May 2, Thursday 4-7 PM in CMU Simmons Auditorium. Following that is what I had earlier submitted online.

I am submitting this document at the hearing along with my recently published paper. I'm also submitting my seats/votes figure and a document that contains language that I believe should be included in a bill. I will be pleased to answer any questions or engage in further discussion at the hearing or afterwards. I can be contacted at my coordinates above.

My name is John Nagle. I'm a professor of physics here at CMU. Besides doing physics, I've also been studying redistricting since 2012 and I've published three peer-reviewed papers on this subject. The most recent one is in Election Law Journal. It's entitled "What Criteria Should Be Used for Redistricting Reform?" My paper focused on PA, so it is especially pertinent to this hearing.

Let me just say a few words about my methodology which has followed the political science literature. I acquired results for previous statewide elections in PA at the precinct level, and I used those before the 2018 election to predict how many congressional seats would be won by each party for each percentage of the two party vote. This is called a Seats/Votes curve. You tell me the vote and I estimate the seats. As it turned out, Democrats won 54% of the two party vote. My prediction for that percentage was 9

Democratic and 9 Republican seats, so my methodology nailed it.

Many Democrats and reformers are pretty pleased with the 2018 result. But what would have happened if the Republicans had won 54% of the vote (as they have in previous years)? Then there would have been 5 Democratic and 13 Republican seats. Most telling, if the vote had split 50/50, then there would have been 7 Democratic and 11 Republican seats. The new map is still half as biased in favor of Republicans as the old map, (although the new map is more responsive to voters than the old map). I also analyzed the many maps that were submitted to the Supreme Court last year. Those maps also predicted 7 Democratic and 11 Republican seats for a 50/50 vote. This simply isn't fair.

So, why is this? The reason is well known. It's because the criteria for redistricting exacerbate the political geography of the state. The Court required that redistricting only split a minimum number of counties and municipalities. This automatically packs city Democrats in PA into fewer districts. The consequence is that the representation of progressive voters is diluted relative to that of conservative voters. Believing that the so-called neutral criteria of compactness and non-splitting will lead to fairness is what political scientists call the myth of non-partisan cartography. They also call it unintentional gerrymandering. It's not done intentionally by a commission. It's done by the criteria themselves. These traditional, so-called neutral criteria are simply unfair to progressive city voters like me.

The alternative is to draw districts that are likely to be fair and responsive to voters. It isn't that difficult.

I've done it. It's just the reverse of what Republicans did in 2011. They very effectively used past election results to gerrymander *for* partisan advantage. The same data can be used to *anti-gerrymander for fairness and* responsiveness, often called competitiveness.

Unfortunately, most well-meaning reformers still believe in the myth of non-partisan cartography. And so there are bills in the legislature that will lock in bias against progressive voters. The irony is that most of the reformers are progressive voters. But it's even worse. Those bills would even prohibit a commission from using past election data to draw fairer maps. That means that citizens like me couldn't challenge an unfair map. And neither could the courts.

In summary, are we going to insist on a public policy that is demonstrably unfair? Do we have to color our maps following county and muni lines as if we are in kindergarten coloring picture books outlines? Or can we please use modern tools of data analysis to redistrict for what is most important to our democracy, namely, fairness and responsiveness to the voters of our great state?

Nagle's earlier response to the online form:

How has the redistricting process affected you or your community? Do you have a story that illustrates how you or your community is impacted by the drawing of political boundaries?

My vote is nearly meaningless because I am packed into a highly Democratic district.

Who do you believe should draw, change, or approve the maps in Pennsylvania? (Note: These responsibilities can belong to different groups.)

Maps should be drawn AND approved by an independent commission.

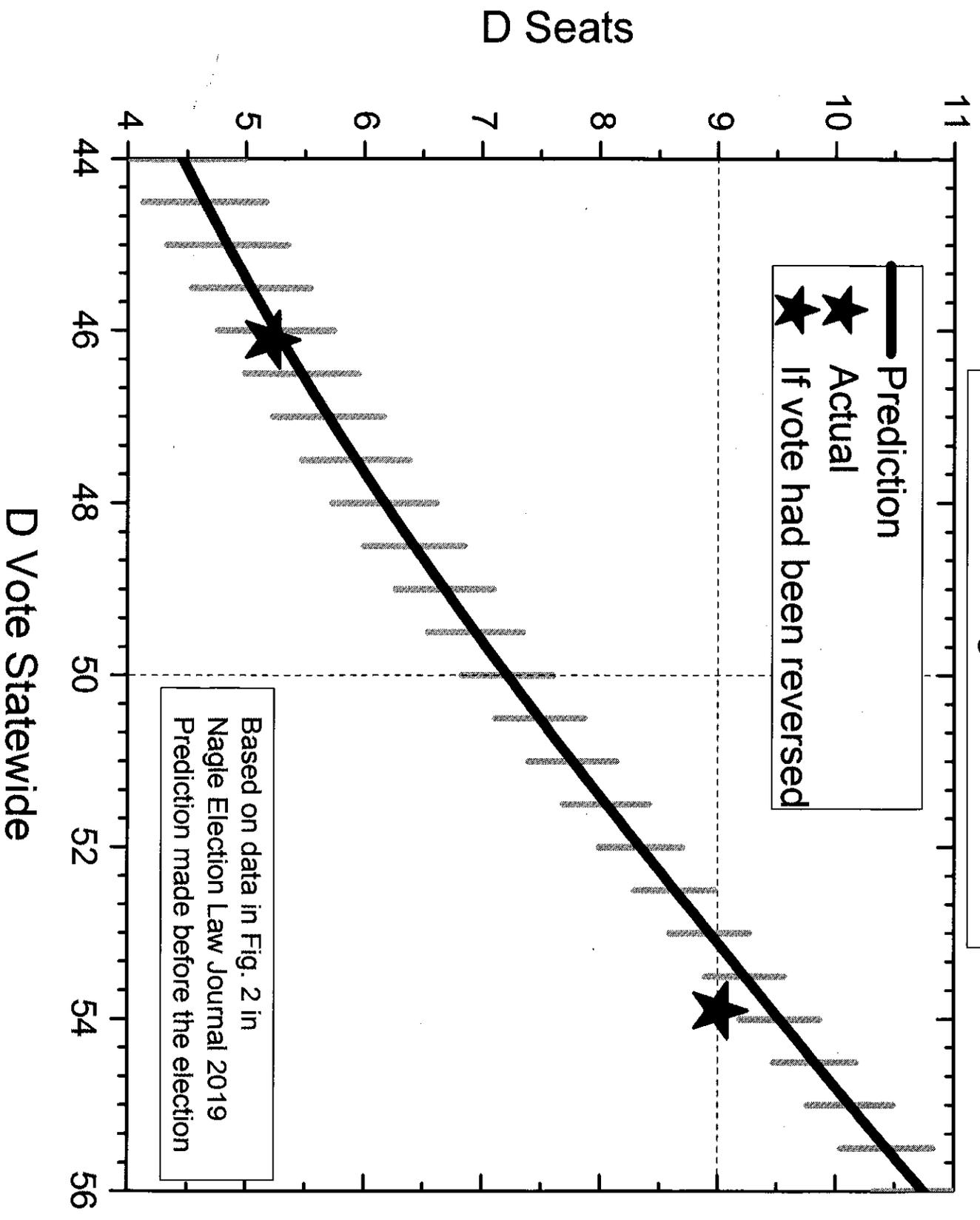
What types of criteria or values do you believe should be prioritized in the redistricting process in Pennsylvania? (Note: These can include, for example: compactness and equal population between districts, but there are numerous others.)

1. Fairness to voters of different persuasions - often called partisan fairness, as measured by the symmetry principle. If Democrats obtain N seats for a fraction V of the vote, then Republicans should expect to obtain N seats if they obtain the same fraction V of the vote.
2. Responsiveness to voters - often called competitiveness. The balance of representatives sent to congress or to the state legislature should be responsive to shifts in voter preferences.
3. Citizen input 1 - citizens should be able to express their preferences for criteria to the commission before the commission starts drawing maps. The criteria should not be set by law. The commission should be allowed to consider any criteria based upon what citizens testify to orally at hearings or in writing.
4. No prohibitions - The commission should be able to use any publicly held data in its deliberations.
5. Citizen input 2 - it should be easy for citizens to submit maps to the commission.
6. Transparency in deciding the final maps.

Please submit any other thoughts, questions, concerns, or comments not included in the prior responses.

1. My recent article in Election Law Journal 18 (2019) 63-77 explains why I think Fairness and Responsiveness should be the primary criteria rather than the traditional criteria of compactness and not splitting political subdivisions. Those traditional criteria acquiesce to political geography which in PA results in bias.
2. To achieve my desired criteria 1 and 2, it is essential that there be no prohibition against using department of state election data. Those data are publicly available and will be used in a stealth manner by outside groups seeking partisan advantage, so the commission needs to be able use the same data to defend against that and to bring about partisan fairness.
3. Once you write the criteria into law, you tie the hands of the commission from considering other, or new, criteria that may emerge from citizen hearings and written testimony. If the commission is chosen fairly, it will be closest to the public and it should have the power to decide the criteria it will use. If you write the criteria into law for 2021 redistricting, it will more difficult to adapt to new circumstances in 2031.
4. Finally, I do not think much can be done about legislative redistricting in 2021 because that is already set in Section 16 of the PA constitution. I suggest this commission focus on congressional elections which are not in the PA constitution and need the most attention.

PA 2018 Congressional Plan



CONGRESSIONAL REDISTRICTING ACT

Essentials Sections for Fairness April 15, 2019

Section 2. Declaration of General Policy.

The General Assembly finds and declares as follows:

(a) Representative government depends on elections that are **fair and responsive to voters.**

(b) For elections to serve their function, congressional districts must be drawn consistent with (a).

(c) The process of redrawing Pennsylvania's congressional districts must be open and transparent. It also must provide all residents of this Commonwealth with access to the information and tools necessary to allow them to effectively evaluate proposed redistricting plans, comment on proposed plans, and provide recommendations about redistricting plans.

Section 3. Definitions.

Section 4. General Rules **No restriction on using past election results.**

(a) Unless otherwise directed by court order, redistricting shall be permitted only once in the decade following the Census.

(b) The place of residence of any incumbent or political candidate shall not be considered in the creation of a plan.

(c) Districts shall not be drawn for the purpose of favoring or discriminating against an incumbent, political candidate, or political party.

Sections 5) Redistricting Authority, 6) Commission Composition, Selection and Qualifications, 7) the Redistricting Process

Section 8. Standards for redistricting.

(a) Population: Each congressional district shall each have a population that deviates no more than 1% from the average population of all districts.

(b) District boundaries.

(1) The area of each district shall be contiguous. Districts with areas that meet only at the points of adjoining corners are not contiguous.

(2) Contiguous precincts must reside in only one district.

(3) District boundaries shall coincide with the boundaries of political subdivisions of this Commonwealth **to the extent that this is consistent** with the general policy in Section 2. **Allows fairness to be considered.**

(c) The commission shall adopt one or more of the standard compactness measures, which shall be utilized for determining compactness. The standards established in subsections (a), and (b) (1), (b)(2), and (b)(3) shall take precedence over compactness if a conflict arises between maximal compactness and those standards.

Section 9. Citizen plans.

(a) Any resident of the Commonwealth may submit a notarized congressional redistricting plan to the Commission which must give it due consideration. The Commission must provide a convenient and timely electronic method for such submission.

(b) The Commission must make all citizen-generated maps and associated commentaries available electronically to the public.

Section 10-15. Public Information and Communications, Appeals, Advertising, Prohibited activities, Penalties, Severability

Comments on this language

Specifically, Section 2, (a) mentions fair and responsive in general terms that no one can object to. The commission does not have to adopt any particular measures, but this language does allow for citizens to argue that the commission should consider testimony regarding fairness and responsiveness. The commission may then balance such concerns with other concerns, or simply treat (a) and (b) as generalities if not enough people advocate for something more specific.

Sections 8 (b)(3) and 8(c) address the traditional criteria in a way that allows the commission to balance them with fairness and responsiveness if they so choose. Specifically, non-splitting and compactness do not take precedence over whatever the commission decides to do about fairness and responsiveness.

The usual FDPA speech begins with the horrendous outcome of the 2012 election, which makes me inclined to think people want fairness, but I may be wrong about that. What people perceive to be good redistricting may not be so clear, and it is likely to evolve with time. This CRA gives the independent citizens commission flexibility to respond to what people really want in 2021. And it would allow the 2031 commission to adapt without having to pass an entirely new bill with a different set of rigid standards.

PBA

I also wanted to follow up with my one thought on the potential restructuring of the redistricting process. This focuses specifically on the question of *Who do you believe should draw, change, or approve the maps in Pennsylvania?*

As Jessica Myers was wise to ask one of the citizen presenters during the panel discussion, how can we frame the Citizens' Commission members as being representative of the people? As critics of the Citizens' Commission argue: The General Assembly (GA) is vested with power from the electorate to legislate, and that legislative power includes drawing district boundaries. Now, the legislature often asks non-partisan issue experts to convene on advisory committees in order to formulate policy recommendations that are often adopted by the legislature, e.g. Joint State Government Commission, PA Public School Building Construction and Reconstruction Advisory Committee, Citizens Advisory Council to the Pennsylvania Department of Environmental Protection, etc.

Therefore, at the very least, the notion of creating a non-partisan body to make recommendations for legislative and congressional boundaries is nothing profoundly different than what already occurs in many policy areas. However, drawing district boundaries is highly political and therefore demands careful consideration of how to select members in a manner that all constituencies believe is both fair and representative, while also taking politics out of the process as much as possible.

My suggestion would be for each caucus leader to nominate up to twelve issue experts they would like to see on the redistricting advisory committee, aka the Citizens' Commission. In order to be eligible to be a nominee, a person must have some professional expertise in a field vital to the redistricting process (that list of skill sets is TBD, but examples might include: demography, statistics, geography, etc.), and be a citizen of Pennsylvania (there could also be a more specific provision that there be at least one nominee from designated regions of the state, or there must be x number of nominees from each region). Also, a set number of nominees must identify as member of to-be-designated marginalized demographics, e.g. African-American, people with disabilities, etc.

The lists of nominees would be made public, and a final chance to adjust the nominee list would be offered. Once the lists were finalized, from all 48 of these nominees (four caucus leaders with eight nominees each), there would be random selection of 9 (or 8) of them to serve on the commission; then another 2 (or 3) selected from the nominees who identify as members of marginalized communities. This would create an 11 member Citizens' Commission

Since any and all of a caucus leaders nominees could be selected, and they would see how radical or moderate the other party's nominees would be when the nomination lists were made public, this would create a Nash equilibrium. Adding to that, since the (11th) deciding member had a 50/50 chance from being from either party's lists, the caucus leaders ultimately would be incentivized to only nominate moderates or non-partisans to draw the lines, so their parties wouldn't run the risk of succumbing to an unfair disadvantage.

This 11 member commission would then convene and make public recommendations. The legislature would then only be allowed to vote up or down on the recommended district map--they would not be allowed to amend the map.

-John Rhoades
Chair, Commonwealth Commonsense

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2019-05-01

INTRODUCTION

The first chapter of our report on Gerrymandering in Pennsylvania¹ summarized the redistricting proposals currently before the General Assembly. That chapter provided a 29 item list of things Pennsylvania consumers had a right to rely on in the redistricting process.

The second chapter is a detailed examination of the 2017 Boscola/Samuelson² proposal for an independent redistricting commission. A group of editorial corrections were offered.³ This was augmented with some conceptual considerations toward implementing the intent of the Boscola/Samuelson Proposal. Ideas were offered to sort the language which should be part of a Constitutional Amendment and which should be in the implementing statutes. The chapter concludes with a specific proposal for a new printer number on the Boscola/Samuelson proposal.

The third chapter provided a review of the current law affecting redistricting in Pennsylvania in 2018.

The fourth chapter provided enough review of the literature to provide an effective definition of the terms, and a sketch of the history of Gerrymandering before and after the impact of computer enhanced "Social Technographic"⁴ profiling.

The fifth chapter addressed the material changes during the Spring of 2018. Our Supreme Court decided League of Women Voters v PA on 2018-02-07. Their decision redrew Pennsylvania's Federal Congressional Districts. Our General Assembly immediately appealed.⁵ Justice Alito denied all appeals against the League of Women Voters v PA decision on 2018-03-19. Our 2018-02-07 Federal Congressional elections implemented our Supreme Court's districts.

Sen. Mike Folmer (R), Chair of the State Government Committee, held Gerrymandering hearings on March 27 and April 23. On 2018-05-18 Sen. Folmer reconciled the court decisions and the hearings into SB22 A7149. Folmer's Senate State Government Committee unanimously passed the "Folmer Compromise" 2018-05-22. The Bill died in the House under the weight of 607 floor amendments. Our sixth chapter examined each provision of the "Folmer's Compromise".⁶ It also offered language toward the enabling legislation.

On April 3, 2019 Sens. Boscola and Folmer introduced SB22P531 into the new legislative Session. It was read out of Committee on April 9. On April 11, Rep. Murt introduced HB22P1382 as a Constitutional Amendment. Rep. Samuelson also introduced HB23P1383 as a statute pertaining to our Federal Congressional Districts. Gov. Wolf also established the Governor's Redistricting Reform Commission which is currently conducting hearings across the Commonwealth.

The purpose of this preliminary **Seventh Chapter** is to address certain accolades and concerns regarding our current Gerrymandering legislation.

- 1) The vetting process provided for the members of the Independent Reapportionment and Redistricting Commission provides no opportunity for public in-put. Under SB22, the qualified

¹2017-03-06 https://www.academia.edu/32072745/Gerrymandering_in_Pennsylvania

² Sen. Lisa Boscola introduced SB22 P0397 in the Senate, and Rep. Steve Samuelson introduced HB722 P1671 as a companion Bill in the House.

³ (Even lawyers make spelling and punctuation mistakes!)

⁴ This is also known as "psychographic" information.

⁵ A special election was held on 2018-03-18 applying our Supreme Court's districting plan.

⁶ All the legislative drafting edits have been eliminated so the language examined here is the final text.

applicants are selected by political office holders. Under HB22/23 they are randomly selected by an unelected official. The Secretary should provide a website on which voters could provide relevant information regarding any applicant.

- 2) COCO is terrified by the scope of jurisdiction granted to its Independent Commission. Every "district authorized under this Constitution" encompasses the General Assembly, Congress, our judiciary and every other elected office in the Commonwealth. Precincts and wards are drawn under statutes pursuant to our Constitution. The Bar Association has complained that this would politicize the Judiciary.
- 3) COCO is also terrified by the super majority process in SB22. Appointees are usually required to win a majority in the respective chamber. John Roberts was the last Supreme Court Justice to win a super majority in the Senate. None of the current Cabinet Secretaries were appointed with a super majority. A 2/3 majority requirement is majority tyranny, and guarantees gridlock. This requirement should be reduced to a simple majority vote.

Rev.Dr.Roger Thomas
Chair

COMMENTARY

Section 1. The following amendment to the Constitution of Pennsylvania is proposed in accordance with Article XI:

That section 17 of Article II be amended to read:

§ 17. Independent Reapportionment and Redistricting Commission.

Jurisdiction

(a) In each year of the Federal decennial census, but not later than July 1, an Independent Reapportionment and Redistricting Commission shall be constituted for the purpose of reapportioning and redistricting the Commonwealth's congressional, senatorial, representative and any other districts authorized under this Constitution. The commission shall act by a majority of its entire membership.

The first clause of this provision wisely provides for the appointment of the Independent Citizens' Commission while the Federal census is in progress. The Census Report will be due on January 31, 2021. Under this language, the Commission will already be fully constituted before July 1, 2020. The Commission will have been appointed and started their homework.

The second clause here provides a terrifying scope of jurisdiction. Every district "authorized under this Constitution" would include not only the General Assembly which is embraced under the current language of Article II but also the Judiciary which is districted under Article V. The statutes and case law which we detailed in Chapter 3 of our booklet, demonstrates that this is absolutely not the intent of the law.⁷

If the language recited in SB22P531 (2019) is liberally construed, the Commission would have jurisdiction over every elected office in the Commonwealth. All of our elected offices are detailed in either the Constitution or in the subsequent statutes. Under this proposal, the Commission would design everything, including the precincts and wards.

This clause violates the rudiments of the Separation of Powers. Judicial districts are drawn by our Supreme Court and affirmed by the General Assembly.⁸ Common Pleas Courts are contained within each county⁹ and other courts are state wide. Their districts are designed to be non-political.¹⁰ Courts are not representative bodies. The Independent Citizens' Commission is designed to measure political representation. The Commission should not have jurisdiction over courts.

Federalism designed the Congress to be inherently distinct from the state legislatures. Congress is given jurisdiction over the 18 powers recited in Article I, Section 8. The 10th Amendment reserves all other powers to the states. This shows an inherent, and deliberate, distinction by the Founding Fathers. This Federalist mindset is reflected in both the Federal and the Pennsylvania Constitutions. Congress and the General Assembly are to be designed and treated separately. Following this intent and purpose, the Congressional districts and the General Assembly districts should be drawn separately.

This provision is a huge over reach. It is so broad as to be unconstitutionally vague.

Composition

(b) The commission shall consist of 11 members and the General Assembly shall prescribe by law: This provision wisely enlarges the Commission from 5 to 11 members, and therefore makes it more representative.

⁷ https://www.academia.edu/34611618/Gerrymandering_Pennsylvania_3

⁸ Our Constitution Section V provides:

§ 11. Judicial districts; boundaries.

The number and boundaries of judicial districts shall be changed by the General Assembly only with the advice and consent of the Supreme Court.

§ 27. Judicial districts.

Until changed in accordance with section 11 of this article, the number and boundaries of judicial districts shall remain as at present.

42 PaCSA 901 recites the current districts

⁹ Seven thinly populated counties have been combined.

¹⁰ HB111P1630 & HB196P168 (2019) are currently attempting to alter this.

(1) The qualifications to serve as a member of the commission, provided that no person who has been registered as a lobbyist, held elective or appointive public office at the Federal or State level or elective judicial office in this Commonwealth, or any position of public service in aid or support of such a person, in the five years immediately preceding the date of appointment to the commission shall be eligible for appointment.

The first clause of this provision correctly charges the General Assembly with designing the Commission members' qualifications. They will do this by statute rather than Constitutional Amendment because the criteria will change through time.

The second clause precludes lobbyists and politicians from the Commission until they have been out of office for five years.

(2) The manner by which the Secretary of the Commonwealth shall provide for an open and transparent process to:

- (i) Receive applications for appointment as a member of the commission.
- (ii) Determine eligibility of applicants.
- (iii) Ensure applicants to be considered reasonably reflect the geographic, gender and racial diversity of this Commonwealth.

The General Assembly must give the Secretary of State positive guidance for receiving and processing applications. This will be in statute.

Provision (iii) insures diversity. It delineates "geographic, gender and racial". Other sub-groups, such as "religious, ethnic and sexual orientation" could be added, but a sub-group is invariably overlooked. The breadth of the term "diversity" probably makes further delineation unnecessary.

(3) Reasons for removing a member of the commission and the manner by which vacancies shall be filled.

(4) The manner by which the Secretary of the Commonwealth shall submit to the Governor and the General Assembly a list of qualified applicants by political party affiliation.

These two provisions continue the General Assembly's duty to provide the Secretary with positive, statutory guidance regarding process and procedure. They are statutory because they can change.

Nowhere in this procedure does the public have an opportunity to see the qualified applicants or participate in their selection. Neither SB22 nor HB22 require the Secretary to provide a website with applicants' photo resumes. Voters should have the opportunity to recommend or detract the applicants. I want to hear what Edward Snowden and David Duke have to say before they reach the final qualification process. Under both Bills, the final selection will be made without a public introduction.

Selection:

(b.1) Upon receipt of the list of qualified applicants from the Secretary of the Commonwealth, members of the commission shall be appointed as follows:

(1) The Governor shall recommend three individuals from the list of qualified applicants who are not registered with either of the two largest political parties in this Commonwealth based upon registration for approval by a two-thirds vote of the General Assembly.

No two of these Commissioners should be of the same political party. They should not all be Federalists or Libertarians.

(2) The Majority Leader and Minority Leader of the Senate shall each recommend two individuals from the list of qualified applicants for approval by a two-thirds vote of the Senate.

(3) The Majority Leader and Minority Leader of the House of Representatives shall each recommend two individuals from the list of qualified applicants for approval by a two-thirds vote of the House of Representatives.

This is the second troublesome provision.

A critical failure in 2011 was that all 5 Commissioners were male lawyers, from urban areas, of the same denomination. One was Latino and 4 were sitting members of the General Assembly. Three were Republicans and two were Democrats. After months of dialogue, one Democrat consented to the

Republican plan simply to reach a resolution. This total lack of diversity, and inherent conflict of interest, resulted in the Holt I&II litigation of 2013, and the League of Women Voters litigation of 2018.

Elected officials, such as Governors and members of the General Assembly, should be actively involved in designing any Commission this consequential. As stated above, they must not serve on the Commission. Nor must they control it.

Paragraph (b.1), as drafted, grants sole control of the approval process to the General Assembly. There is no public in-put regarding the nominees. Robert Bork, Anita Hill, Christine Ford, Fred Rogers, and John Wayne cannot make themselves heard. Edward Snowden would have to go to the press and hide in Moscow. Joseph Welch could not represent his client. This can be resolved by allowing public disclosure of each of the qualified nominees.¹¹ Alexis de Tocqueville speaks to this in "The Tendency Toward Tyranny in Democracies".¹²

Paragraph (b.1) also requires a 2/3 majority approval of each nominee. This is majority tyranny which leads to mediocrity.

- In 2019 our Senate is 26 Republicans and 22 Democrats.¹³ 2/3 of 50 = 33. The Majority Leader of the Senate must hold all his Republican votes, and persuade 7 Democrats to join him. The Minority Leader of the Senate must hold all 22 Democrats and convince 11 Republicans. This is gridlock. Each nominee must be non-threatening to the opposition.
- The 2019 House of Representatives consists of 109 Republicans and 93 Democrats. 2/3 of 203 = 135. The Majority Leader must hold all 109 Republicans and persuade 26 Democrats to support him. The Minority Leader must hold all 93 Democrats and persuade 42 Republicans to support his nominees.

There is a rebuttable presumption that the Commission will consist of 4 Republicans, 4 Democrats and 3 Independents. This is not borne out in the statutory language.¹⁴

There is an alternative to deadlock and mediocrity. John C. Calhoun implemented James Madison's idea of "Concurrent Majority"¹⁵ "A majority of each of the conflicting parties" allowed Northern and Southern states were admitted in an orderly manner until the Mexican War. The tariff did not stifle either faction. In 2018 Ohio amended its Constitution with a concurrent majority in its redistricting process.¹⁶ Legislation is now enacted there by a majority of both major parties. Deadlock and majority tyranny died!

(4) Each individual recommended for appointment shall have been continuously registered in this Commonwealth with the same political party, or continuously unaffiliated with a political party, in the three years immediately preceding the date of appointment to the commission.

(5) In making appointments to the commission, the General Assembly shall consider such factors as deemed appropriate so that the commission reasonably reflects the geographic, gender and racial diversity of this Commonwealth.

This charges the General Assembly with the same diversity requirement charged to the Secretary of State in paragraph (b)(2)(iii).

No later than July 1 in each year of the Federal decennial census, the members approved under this section shall be certified by the President pro tempore of the Senate and the Speaker of the House of Representatives to the elections officer of the Commonwealth who under law shall have supervision over elections.

¹¹ HB22&23 provides neither legislative nor public in-put. The Secretary of State simply appoints 11 qualified applicants at random without any hearing.

¹² Plato & Rousseau also spoke to tyranny in democracies.

¹³ 2 Senate seats have not yet been filled.

¹⁴ HB22 (2019) specifies the party distribution in paragraph (b).

¹⁵ Andy Leo, "John C. Calhoun's Concurrent Majority", *The Princeton Tory*, April 7, 2016, <http://theprincetontory.com/john-c-calhouns-concurrent-majority/>. Ford Jr., Lacy K. "Inventing the Concurrent Majority: Madison, Calhoun, and the Problem of Majoritarianism in American Political Thought," *The Journal of Southern History*, Vol. 60, No. 1 (Feb., 1994), pp. 19-58 in JSTOR

¹⁶ https://ballotpedia.org/Article_XI,_Ohio_Constitution#Section_1

Chairmanship:

Within 45 days after their certification, the members shall select a chairman of the commission.

The chair should be a non-affiliated voter.

July 1 + 45 days = August 15.

If the 11 members fail to select a chairman within the time prescribed, the General Assembly, by a two-thirds vote of each chamber, shall appoint the chairman of the commission within 30 days.

This super majority is another example of majority tyranny.

August 15 + 30 days = September 14.

Preliminary Plan

No later than 90 days after either the commission has been duly certified or the population data for the Commonwealth as determined by the Federal census are available, whichever is later in time, the commission shall file a preliminary reapportionment and redistricting plan with such elections officer based upon Federal census data for each geographic and political unit. The preliminary reapportionment and redistricting plan must be approved by at least seven affirmative votes that must include at least two votes of members registered from each of the two largest political parties in this Commonwealth based on registration and two votes of members not registered with either of the two largest political parties based upon registration. The commission shall schedule and conduct at least six public hearings on the preliminary reapportionment and redistricting plan in different geographic regions throughout this Commonwealth.

This super majority is the first time the Bill actually requires equitable distribution of Republicans, Democrats and Independents.

July 1 + 90 days = September 29.

In addition to the requirements of section 16, the following shall apply:

(1) Senatorial districts shall be drawn with the fewest number of divisions to counties, municipalities and wards within the maximum population deviation permissible. A county may not contain more senatorial districts than the number required by the population plus one. The commission shall provide a written explanation for each division.

(2) Representative districts shall be drawn with the fewest number of divisions to counties, municipalities and wards within the maximum population deviation permissible. A county may not contain more representative districts than the number required by the population plus two. The commission shall provide a written explanation for each division.

(3) Congressional districts shall each have a population within the maximum population deviation permissible and shall be composed of compact and contiguous territory and, unless absolutely necessary, no county, city, incorporated town, borough, township or ward shall be divided in forming congressional districts. The commission shall provide a written explanation for each division.

(4) The boundaries of each district shall be a single non-intersecting continuous line.

(5) In establishing districts, the commission shall not consider the following data:

(i) Addresses of any individual.

(ii) Political affiliation of registered voters.

(iii) Previous election results, unless required by Federal law.

(6) All meetings of the commission at which a quorum is present held for the purpose of deliberating official business or taking official action shall be conducted in an open forum and in a manner by which the public may contemporaneously observe the proceedings.

(7) Commission members and commission employees and advisors may not communicate with or receive communications from any other person about reapportionment or redistricting matters unless during an open public meeting or under such exceptions as the General Assembly may prescribe by law.

Final Plan:

The commission shall have 30 days after filing the preliminary plan and completing the six public hearings on the plan to make corrections in the plan.

Any person aggrieved by the preliminary plan shall have the same 30-day period to file exceptions with the commission in which case the commission shall have 30 days after the date the exceptions were filed to prepare and file with such elections officer a revised reapportionment and redistricting plan. If no exceptions are filed within 30 days, or if filed and acted upon, the commission's plan shall be final and have the force of law.

(c.1) The final reapportionment and redistricting plan must be approved by at least seven affirmative votes that must include at least two votes of members registered from each of the two largest political parties in this Commonwealth based on registration and two votes of members not registered with either of the two largest political parties based upon registration.

Here again there is a "super majority" requirement within the Commission.
September 29 + 30 days = October 29.

Remedy

(c) Any aggrieved person may file an appeal from the final plan directly to the Supreme Court within 30 days after the filing thereof. Upon receipt of an appeal, the Supreme Court shall immediately direct the appointment of a special master. The special master shall hold a hearing and take testimony on the final plan, and return the record and a transcript of the testimony together with a report and recommendations as prescribed by general rules of procedure. If the appellant establishes that the final plan is contrary to law, the Supreme Court shall issue an order remanding the plan to the commission and directing the commission to reapportion and redistrict the Commonwealth in a manner not inconsistent with such order.
October 29 + 30 days = November 28.

(e) When the Supreme Court has finally decided an appeal or when the last day for filing an appeal has passed with no appeal taken, the reapportionment and redistricting plan shall have the force of law and the districts therein provided shall be used thereafter in elections until the next reapportionment and redistricting as required under this section 17.

Senate Vacancy

(f) Any district which does not include the residence from which a member of the Senate was elected whether or not scheduled for election at the next general election shall elect a Senator at such election.

Funding

(g) The General Assembly shall appropriate sufficient funds for the compensation and expenses of members and staff appointed by the commission, and other necessary expenses. The members of the commission shall be entitled to such compensation for their services as the General Assembly from time to time shall determine

Legislative Remedy

(h) If a preliminary, revised or final reapportionment and redistricting plan is not filed by the commission by October 1 of each year ending in one, the following shall apply:
These dates conflict with the October 29 schedule for the final plan.

(1) The commission shall consider the proposed reapportionment and redistricting plan under this section.

(2) Not later than **October 15** of each year ending in one, the commission shall submit at least two, but not more than three, maps for reapportionment and redistricting of congressional, senatorial and representative districts to the General Assembly. All maps submitted to the General Assembly under this paragraph shall be made available for review by the public for a period of not less than 10 days prior to any vote by the General Assembly.

(3) The General Assembly shall approve one map submitted in each category by a two-thirds vote of

each chamber.

(4) If the General Assembly fails to approve the maps under paragraph (3) by December 31 of each year ending in one, the General Assembly shall submit the same sets of maps for each category to the Supreme Court within seven days, which shall approve one map submitted in each category. Upon receipt of the maps submitted under this paragraph, the Supreme Court shall immediately direct the appointment of a special master. The special master shall hold a hearing and take testimony on the maps submitted by the General Assembly and return the record and a transcript of the testimony together with a report and recommendations as prescribed by general rules of procedure.

(5) Any plan approved by the commission finally shall supersede all previous plans.

Publication

(i) Any reapportionment and redistricting plan filed by the commission, or approved by the General Assembly or Supreme Court upon the failure of the commission to act, shall be published by the elections officer once in at least one newspaper of general circulation in each senatorial and representative district. The publication shall contain a map of the Commonwealth showing the complete reapportionment and redistricting by districts, and a map showing the reapportioned and redistricted districts in the area normally served by the newspaper in which the publication is made. The publication shall also state the population of the senatorial and representative districts having the smallest and largest population and the percentage variation of such districts from the average population for senatorial and representative districts.

Section 2. (a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment. The Secretary of the Commonwealth shall submit this proposed constitutional amendment to the qualified electors of this Commonwealth at the first primary, general or municipal election which meets the requirements of and is in conformance with section 1 of Article XI of the Constitution of Pennsylvania and which occurs at least three months after the proposed constitutional amendment is passed by the General Assembly.