

Testimony on Congressional Redistricting Criteria
Senate State Government Committee
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Thank you, Chairman Argall, Chairman Street, and members of the State Government committee for holding this important discussion around congressional redistricting criteria.

Tens of thousands of Pennsylvanians and their representatives in this General Assembly have committed an unprecedented amount of time and resources preparing for the upcoming redistricting cycle. As has been documented extensively, the data and computing power available in 2010 dramatically exacerbated the dangers of gerrymandering for partisan and political gain. We saw the results in the maps and in the litigation that followed.

With regard to the congressional redistricting process to be initiated this year, the division of power between the legislative and executive branches should temper some risks of gerrymandering lines. But we remain seriously concerned about both this cycle and future cycles if permanent reforms are not enacted. Unfortunately, there is no longer time to create an independent commission to draw federal districts this year—the “who” of redistricting—but we appreciate your focus at this time on criteria and process—the “what” and “how”—while there is still time to codify meaningful reform.

Absent the enactment of statutory rules for congressional redistricting, the Pennsylvania Supreme Court’s 2018 decision has already set a precedent regarding criteria that hews closely to our constitutional language for state legislative redistricting. The court’s standard states:

“...any congressional districting plan shall consist of: congressional districts composed of compact and contiguous territory; as nearly equal in population as practicable; and which do not divide any county, city, incorporated town, borough, township or ward, except where necessary to ensure equality of population.”

These traditional redistricting criteria provide a solid starting place in determining what to prioritize while drawing the lines, but these criteria on their own cannot guarantee that a map incorporates how Pennsylvanians want to be represented. To achieve this end, the next congressional map must be drawn not only considering specific criteria but also with a transparent process and public input gathered from across the Commonwealth.

Priority Redistricting Criteria for Pennsylvania

Redistricting being a complicated feature of our democracy, we should first acknowledge that there are multiple, valid perspectives on how a map-drawing process can be constructed. There is no public debate around the principle that political districts should be drawn to achieve a degree of fairness in representation and with voters in mind rather than incumbents or parties. But there is more than one reasoned approach to seek this goal.

For our purposes today, I would like to highlight the Committee of Seventy's views on congressional redistricting criteria, which largely track the findings from the 2019 bipartisan [Pennsylvania Redistricting Reform Commission](#), which Gov. Wolf appointed me to chair and which spent hundreds of hours hearing from Pennsylvanians in nine public meetings across the Commonwealth about their views on redistricting in the Commonwealth.¹ The following is a brief overview of important criteria that we believe should be considered:

Make districts compact, contiguous and of equal population

All districts should be compact and contiguous, both of which are common in law in other states (including the PA Constitution for legislative districts) and commonsense. Contiguity can be defined as simply meaning that districts may not be separated from themselves at any point. Compactness is sometimes quantified, and there are several respected mathematical calculations for the compactness of a district. Polsby-Popper is most frequently cited in recent case law, measuring the ratio of the total area of the district to the area of a circle whose circumference is equal to the perimeter of the district. Pennsylvania is subject to the same federal standard as other states for population equality among districts.

Minimize the division of political jurisdictions

Of the comments from the more than one thousand Pennsylvanians who provided feedback to the PA Redistricting Reform Commission, splitting of counties or municipalities among multiple political districts was by far the most frequently named grievance. This seemed to be the case for two reasons: First, any Pennsylvanian can see plainly the division of their county or municipality on a map; and second, as residents of that community they likely had a sense of whether a certain division was justified by some straightforward consideration of geographic boundaries, the protection of racial or language minorities, or some other local community objective. Without any such justification, they assumed jurisdictional splits were due to a partisan or political factor. Residents of Berks County, for example, could not imagine why their county would be split among four congressional districts other than for some political end.

¹ See the [2019 PA Redistricting Reform Commission Report](#). Recommendations on criteria can be found on pages 26 and 27 of the report.

Rules to address political jurisdictions can vary in strictness. The current standard set by the Pennsylvania Supreme Court, similar to the constitutional requirement for state legislative redistricting, is one model.²

More formulaic language could also be adhered to; however, we should be wary of becoming overly prescriptive in compelling an absolute minimal number of splits, to the detriment of other legitimate priorities. Our recommendation would be to, in addition to the underlying court precedent regarding divisions, also install a cap on the number of times a county can be divided by congressional districts. For example, Berks County should include no more than the number of congressional districts required by its population, plus one. This would set a maximum of two districts, rather than the four that Berks County was carved into previously. Such a cap is a clearly discernible safeguard that could be combined with the instruction against divisions unless “necessary.”³

Protect racial and language minorities

In our diverse Commonwealth, it will remain critically important that minority communities are protected in the map-making process. The Voting Rights Act’s Section 2 continues to apply to congressional redistricting in every state and prevents district lines that would deny minority voters an equal opportunity “to participate in the political process and to elect representatives of their choice.”⁴ We are fortunate that this federal provision is still in effect, safeguarding minority communities from being “cracked” or “packed” with a discriminatory outcome regardless of intentionality.

If Pennsylvania were to enact its own statute, the PA Redistricting Reform Commission recommended the following criterion: “The districts should provide racial minorities with an equal opportunity to participate in the political process and shall not dilute or diminish their ability to elect candidates of choice whether alone or in coalition with others.” According to the Commission, “This would define a more precise standard for Pennsylvania that would supplement any federal mandates.”

² The division of voting precincts should also be prohibited.

³ In many parts of the Commonwealth, political jurisdictions—including both some counties and smaller municipalities—may meaningfully consist of a cohesive community, often referred to in the context of redistricting as a “community of interest.” With approximately 2,600 municipal governments, Pennsylvania is dissimilar from many other states in which counties are the predominant type of local government. However, and especially in more densely populated areas of the state, multiple and distinct communities may exist within a given county or a larger municipality. Including the consideration of “communities of interest” as a specific redistricting criterion is one way to address this issue. Ensuring thorough and detailed public feedback is incorporated throughout the map-making process is also important.

⁴ 52 U.S. Code § 10301 - Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation

But beyond any baseline protection provided in state or federal law, we would stress that a meaningful and accessible public engagement process is especially critical to hear from racial, ethnic, and language communities *during* the map-making process. This will ensure the final mapping plan best reflects these communities—far preferable to having to correct a potential violation in court.

Mitigate the risk of partisan manipulation

Finally, the PA Redistricting Reform Commission also recommended that the following not be used when drawing districts:

- Addresses of any individual;
- Political affiliation of registered voters; or
- Previous election results, unless required by Federal law.

The Committee of Seventy also supports a prohibition on the use of such data, none of which should inform decisions by mapmakers.

A more robust barrier to partisan gerrymandering and incumbent advantage (or disadvantage) would be to ban these political objectives explicitly by law, which a growing number of states are doing for congressional and state legislative districts. According to resources from national redistricting expert Justin Levitt, 17 states now have statutory or constitutional guards against partisan, congressional gerrymandering—more than double the number of states that had such law in 2010. Given Pennsylvania’s past experience with partisan gerrymandering, we would also recommend a rule against “unduly” favoring or disfavoring a candidate or political party.⁵

Public Engagement is Essential for a Fair Process

The PA Redistricting Reform Commission discussed extensively the mechanics of *how* the redistricting process would take place with a given set of mapmakers and set criteria. The opinion of the Commission was the same as ours at the Committee of Seventy and Draw the Lines PA, which is that thorough engagement of the wider public in the map-making process is essential. We have never believed that redistricting is something that can be handed over to an algorithm. Redistricting is inherently political and, consequently, it requires that people discuss, debate and make reasoned judgments about how and where to draw political boundaries in the best interests of the public. This also means that there is no perfect or singularly-fair map; rather, we can design a process with clear rules and objectives, guided by ample public input, and concluding with a final plan and explanation of that plan. If such a process is followed earnestly on behalf of Pennsylvanians, we are confident it would yield a map adequately reflective of the Commonwealth.

⁵ The Legislative and Congressional Redistricting Act (LACRA) currently in this General Assembly includes strong statutory language to meet this criterion.