

# Holt Testimony on November 10, 2021

## at the Senate State Government Committee Meeting

**Pennsylvania has a long-standing history** of keeping the places we live within one district. Like you, previous legislative bodies have seen the value in not crossing county and municipal lines when forming districts.

Before you today are several congressional map configurations which hold one thing in common – they divide no municipality in Pennsylvania except Philadelphia. To achieve this goal as well as limiting divisions to other entities (like counties and wards), it was necessary to use some population variances between districts.

But today, many question if this principle can still be adhered to under the population requirements that emerged in the 1960s and especially in light of the Veith case from the 2000 redistricting cycle.

### **Do these cases mean that it is not allowable to have any population variance between districts?**

Because this question is so critical to my testimony, let us review the information available.

**In drawing congressional districts after the 2000 census**, the legislature stated they needed a 19-person population variance in their congressional districts in order to reduce – not eliminate but reduce – the number of voting precincts split between districts. This idea was challenged by Veith, who put forward a map that had a zero population variance and divided no voting precincts.

The case went before the Middle Court of Pennsylvania, where it was finally decided.

People remember this case as the one where the legislature proposed a 19-person overall range in their congressional maps to avoid dividing voting precincts, and the courts told them they could not do this.

As you all know, perception is not always reality. Are some population variances allowed to form maps which reflect these longstanding values in Pennsylvania? Before dismissing this idea, it is important to review what happened in the Veith case.

The Majority Opinion stated:

[Karcher] did give several examples of **legislative policies that might justify some variance among the populations of the State's various congressional districts**. Specifically, the Court stated that "making districts compact, respecting municipal boundaries, preserving the cores of prior districts and avoiding contests between incumbent Representatives" may legitimate minor population deviations among congressional districts. The Court also made clear that the burden borne by the State varies inversely with the magnitude of the population deviation. That is, the greater the deviation, the more compelling the government's justification must be.

**Defendants contend that the population variances in Act 1 are justified by a desire to avoid splitting voting precincts.** Both parties agree that splitting precincts creates additional costs and work for county election officials in acquiring voting machines, in customizing ballots, in training precincts officials, in registering voters and in counting ballots. Moreover, we recognize that split precincts increase the potential for voter disorientation and candidate confusion. **Therefore, to the extent that such justification is genuine, we acknowledge that the desire to avoid splitting precincts is a legitimate state interest which could justify a nineteen person deviation.**

**We find, however, that the Defendants' arguments on this point are a mere pretext.** Specifically, the evidence has demonstrated that it is possible to draw a congressional district map with zero deviation and no precinct splits. ... The logical inconsistency is so deep that it causes us to pause and consider the sincerity of such proffer. If Defendants truly wanted to avoid splitting precincts, they would have done so by enacting a zero deviation map that did not split any precincts.

Moreover, it is worth noting that of the maps presented at trial, **Act 1 is that which least comports with the neutral legislative policies** that the Karcher Court stated would justify a Congressional redistricting plan with some deviations. Act 1 is the plan which contains the least compact districts. Act 1 splits the most counties (twenty-five) and municipalities (fifty-nine cities, townships, or boroughs). Act 1 even splits the most precincts. To the extent that Act 1 retains the cores of prior districts, it does so only for districts containing Republican incumbents.

However, it is on Karcher's final endorsed neutral criteria the avoidance of contests between incumbents that Act 1 fails most miserably. ... **In the face of such evidence, it is clear that Karcher's neutral criteria were not high on the priority list in enacting Act 1.**

We find, therefore, that the Defendants have failed to provide any legitimate justification for the population deviations contained in Act 1.

Based on the majority opinion, where is the evidence that a population variance is never permissible in congressional reapportionment? **The Court did not find that a 19-person deviation was forbidden** (remember they said it could be justified). Instead, the Court found the Legislature had been disingenuous. **If a legislative body does not do what it says, then this will pose a problem.** But hopefully, that is not the case in 2021.

## **Even though the Middle Court of Pennsylvania states population variances are allowable when properly justified, would the US Supreme Court agree?**

In 2012, the US Supreme Court reiterated that **population variances are allowed** to achieve legitimate state interests. They said:

**We have since explained that the “as nearly as is practicable” standard does not require that congressional districts be drawn with “precise mathematical equality,”** but instead that the

State justify population differences between districts that could have been avoided by “a good-faith effort to achieve absolute equality.”

Thus, if a State wishes to maintain whole counties, it will inevitably have population variations between districts reflecting the fact that its districts are composed of unevenly populated counties. **Despite technological advances**, a variance of 0.79% results in no more (or less) vote dilution today than in 1983, when this Court said that **such a minor harm could be justified by legitimate state objectives**.

Regardless of how to read that language from Karcher, however, our opinion made clear **that its list of possible justifications for population variations was not exclusive**. See *id.*, at 740 (“Any number of consistently applied legislative policies might justify some variance, including, for instance, . . .”).

12 states have congressional districts with some population variances. Most include some split jurisdictions and most went unchallenged.

State	2010 Congressional Plan				
	Ideal District Size	Overall Range (# of people)	Plan Contain County Splits?	Challenged for Overall Range?	Outcome of challenge?
Arkansas	728,980	428	Yes	No	n/a
Georgia	691,975	2	Yes	No	n/a
Hawaii	680,151	691	n/a	No	n/a
Idaho	783,791	682	Yes	No	n/a
Iowa	761,589	76	No	No	n/a
Kansas	713,280	15	Yes	No	n/a
Kentucky	723,228	334	Yes	No	n/a
Louisiana	755,562	249	Yes	No	n/a
Mississippi	741,824	134	Yes	No	n/a
New Hampshire	658,235	4	Yes	No	n/a
Texas (2nd map)	698,488	32	Yes	No	n/a
Washington	672,454	19	Yes	No	n/a
West Virginia	617,665	4,871	No	Yes	State Won

To return to the original question: **are population variances between congressional districts allowed? Yes.**

Based on the rulings of the Middle Court of Pennsylvania and the US Supreme Court as well as the practices of other states, **it is clearly allowable to have population variances in congressional districts.** The reason, however, for each population variance must be genuine and not a mere pretext.

Although Pennsylvania is not under any obligation to use a population variance, it is inaccurate to say that it is impermissible or even illegal. The decision on the use of a population variance is one this legislative body will have to make relatively soon. I'm asking you to consider using even a very, very small population variance in order to keep every municipality whole in the state of Pennsylvania that is smaller than a congressional district.

The sample maps provided today show that the population variance can be quite small – even smaller than the 19-person deviation the court thought allowable to reduce (not even eliminate) divisions to voting precincts.

In Veith, the Court said: “the greater the deviation, the more compelling the government's justification must be.” But in this instance, the justification is greater while the deviation is smaller.

The value of keeping municipalities whole when forming congressional districts is far greater than the “minor harm” caused by a 13-person population variance.

- It would help reduce voter confusion.
- People often request that places they live remain whole in the forming of congressional districts.
- The current Pennsylvania Supreme Court pointed to this as a value which should be implemented when drawing congressional maps.

The risk of challenge is minimal when the justification is genuine. Consider, how many states saw their maps challenged for population variances and were overturned?

At a time when many politicians refuse to enact neutral standards, putting forward a map which respects the boundaries of the places we live would be one step in the right direction. It would be one step toward demonstrating transparent motives and build trust into the process.

Say yes to embracing transparency. Say yes to doing what is in the best interest of the people. Say yes to respecting the places we live when drawing congressional districts.

## Sources

Source for overall ranges: <https://www.ncsl.org/research/redistricting/2010-ncsl-redistricting-deviation-table.aspx>

US Supreme Court in 2012 West Virginia case: <https://www.oyez.org/cases/2011/11-1184>

U.S. District Court for the Middle District of Pennsylvania: <https://law.justia.com/cases/federal/district-courts/FSupp2/195/672/2485298/>

### Source for county divisions to congressional plans:

- Arkansas: <https://www.arkleg.state.ar.us/Acts/FTPDocument?path=%2FACTS%2F2011%2FPublic%2F&file=1242.pdf&ddBienniumSession=2011%2F2011R> and [https://arkansasredistricting.org/wp-content/uploads/2020/04/Act1242-FinalCongressional\\_autoBound\\_Plan-1.pdf](https://arkansasredistricting.org/wp-content/uploads/2020/04/Act1242-FinalCongressional_autoBound_Plan-1.pdf)
- Georgia: <https://www.legis.ga.gov/api/legislation/document/2011EX1/117918>
- Hawaii: Does not list in terms of counties, but islands. ([https://elections.hawaii.gov/wp-content/uploads/2015/03/2011\\_CongressionalReapportionmentPlan\\_2011-09-26.pdf](https://elections.hawaii.gov/wp-content/uploads/2015/03/2011_CongressionalReapportionmentPlan_2011-09-26.pdf))
- Idaho: [https://legislature.idaho.gov/wp-content/uploads/redistricting/2011/c52\\_findings.pdf](https://legislature.idaho.gov/wp-content/uploads/redistricting/2011/c52_findings.pdf)
- Iowa: [https://www.legis.iowa.gov/docs/publications/REDST/2011/2011-03-31/Plan1\\_Report.pdf](https://www.legis.iowa.gov/docs/publications/REDST/2011/2011-03-31/Plan1_Report.pdf)
- Kansas: [http://www.kslegislature.org/li\\_2012/b2011\\_12/measures/documents/sb344\\_02\\_0000.pdf](http://www.kslegislature.org/li_2012/b2011_12/measures/documents/sb344_02_0000.pdf)
- Kentucky: [http://www.kslegislature.org/li\\_2012/b2011\\_12/measures/documents/sb344\\_02\\_0000.pdf](http://www.kslegislature.org/li_2012/b2011_12/measures/documents/sb344_02_0000.pdf)
- Louisiana: [https://house.louisiana.gov/H\\_Redistricting2011/BillsRedsitHouse/ACT2-HB6\\_2011ES1\\_DOCS/DistSplits\\_HB6-ACT2.pdf](https://house.louisiana.gov/H_Redistricting2011/BillsRedsitHouse/ACT2-HB6_2011ES1_DOCS/DistSplits_HB6-ACT2.pdf)
- Mississippi: [https://www.maris.state.ms.us/MAPS/Redistricting/Congress\\_2011.pdf](https://www.maris.state.ms.us/MAPS/Redistricting/Congress_2011.pdf) and <https://www.maris.state.ms.us/HTML/Redistricting/Redistricting.html#gsc.tab=0>
- New Hampshire: <https://legiscan.com/NH/text/SB202/2012>
- Texas (second map): [https://data.capitol.texas.gov/dataset/87d7ad5f-68f5-47dc-bfc2-8f25ff54e290/resource/3dd8e9ba-1d42-445b-963c-f9f6eb8dab38/download/planc235\\_red100\\_population\\_county\\_subtotals.pdf](https://data.capitol.texas.gov/dataset/87d7ad5f-68f5-47dc-bfc2-8f25ff54e290/resource/3dd8e9ba-1d42-445b-963c-f9f6eb8dab38/download/planc235_red100_population_county_subtotals.pdf) and <https://redistricting.capitol.texas.gov/history>
- Washington: [http://2011.redistricting.wa.gov/assets/Amended\\_Final\\_Plans\\_020112/Tables/CongCounty.pdf](http://2011.redistricting.wa.gov/assets/Amended_Final_Plans_020112/Tables/CongCounty.pdf) and <http://2011.redistricting.wa.gov/>
- West Virginia: [http://www.wvlegislature.gov/Bill\\_Text\\_HTML/2011\\_SESSIONS/1X/signed\\_bills/senate/SB1008%20ENR\\_signed.pdf](http://www.wvlegislature.gov/Bill_Text_HTML/2011_SESSIONS/1X/signed_bills/senate/SB1008%20ENR_signed.pdf)