Amanda Holt Testimony 5/26/2021

In the past, Pennsylvania relied on the guidelines set by federal case law for creating congressional district lines. But the question today is: **are those standards still sufficient or is it time for Pennsylvania to establish state standards for congressional district lines?**

With the last two congressional maps being overturned in the courts, now is the time for Pennsylvania to define legitimate state objectives for congressional district lines and then adopt measurable standards for achieving these goals. These standards should be clear enough so that, if followed, the resulting maps would stand or not even be challenged in the first place.

How do we reach this ideal? Our Constitution outlines some key standards which are valuable to Pennsylvanians. One criterion has been present in every constitution since 1790 -- respecting the boundaries of political subdivisions. This value has a long-standing history of being a legitimate Commonwealth interest in Pennsylvania's redistricting process.

While this sounds like a great ideal, it is immediately challenged by the question: **Don't congressional districts have to be exactly equal in population down to the person?**

In looking at other states in 2010, 12 states did not have districts exactly equal in population. That is 28% of the 43 states which draw congressional districts. (See Appendix A)

The National Conference of State Legislatures (NCSL) found only two of these twelve states faced court challenges over the population variances (Mississippi and West Virginia). In both instances, these maps were upheld. One of those maps had an overall population range that exceeded 4,000 persons. (Texas also faced challenges, but on the issue of racial discrimination.)

These twelve states make it clear that congressional districts can vary in population. Yet Pennsylvania's 2001 congressional map, with an overall population range of 19 persons, failed to hold up in court. **How could those states succeed where Pennsylvania failed?**

Beginning with the *Kirkpatrick v. Preisler* decision, the US Supreme Court required states which use population variances to answer the question: Were the population variances "necessary to achieve some legitimate goal", objective, purpose, or interest?

This brings us back to defining a goal which is a "legitimate state interest." In the Vieth v. Pennsylvania court case, Pennsylvania claimed they had to create a deviation of 19 persons to reduce the number of divided voting precincts. But upon examination, it was found Pennsylvania could produce a map that divided no voting precinct with no population variance.

The court found that the reason Pennsylvania gave for having a population variance was not necessary for them to achieve their stated goal. The court specifically said:
> 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."

This means those drawing the maps must prove that they could not achieve their stated goal at a lower population range. It is that burden that the other two states met.

The US Supreme Court concluded in the West Virginia case:

> Given the State's concession that it could achieve smaller population variations, the remaining question under Karcher is whether the State can demonstrate that "the population deviations in its plan were necessary to achieve some legitimate state objective." 462 U. S., at 740. Considering, as Karcher instructs, "the size of the deviations, the importance of the State's interests, the consistency with which the plan as a whole reflects those interests, and the availability of alternatives that might substantially vindicate those interests," id., at 741, it is clear that West Virginia has carried its burden.

The US Supreme Court further explained:

> As an initial matter, the District Court erred in concluding that improved technology has converted a "minor" variation in Karcher into a "major" variation today. Nothing about technological advances in redistricting and mapping software has, for example, decreased population variations between a State's counties. See id., at 733, n. 5. 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.

What might this look like if Pennsylvania had this kind of standard in place? For example, is it possible to divide no municipality in Pennsylvania (except Philadelphia, which exceeds the size of a congressional district)? All other municipalities (other than Philadelphia) are well within the size of a congressional district.

I found that, at least in 2010, it was possible to draw a map which split no municipality other than Philadelphia while also minimizing divisions of and in counties. The resulting overall population variance was not 4,000 persons, but only 17 persons. It was the minimum population variance which avoided municipal divisions in every instance except Philadelphia.
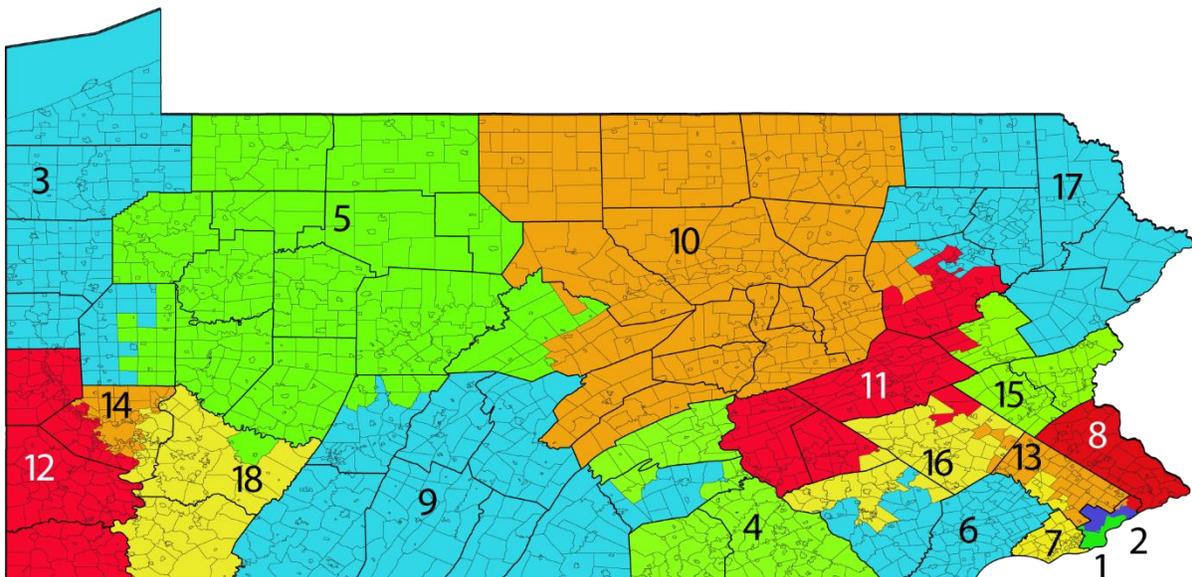
For comparison, here is a congressional map with a deviation of 21 persons.
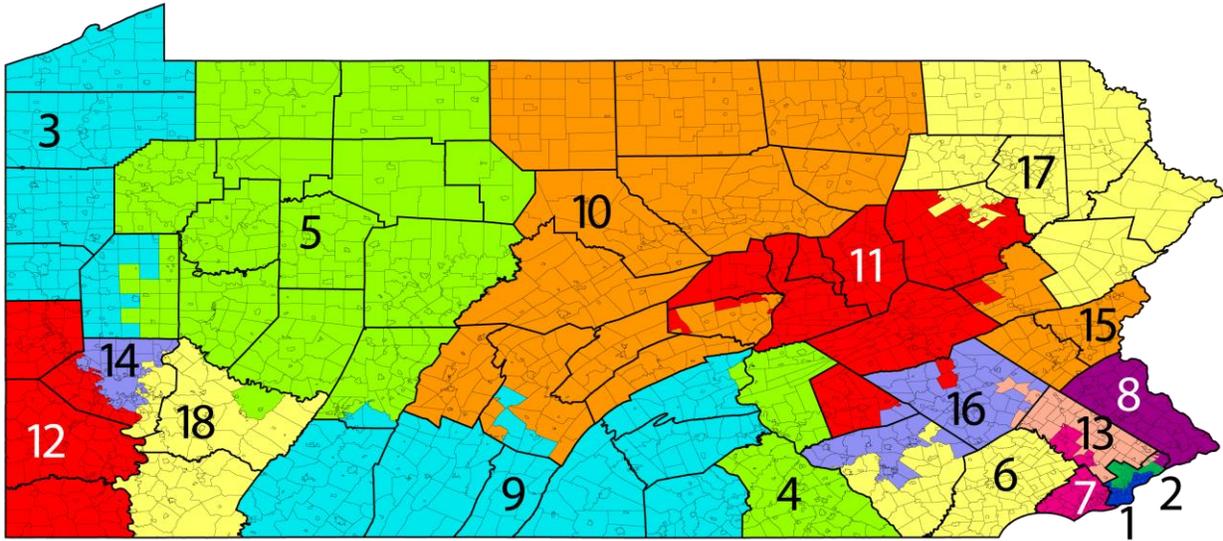
And another congressional map example, with a deviation of 125 persons.
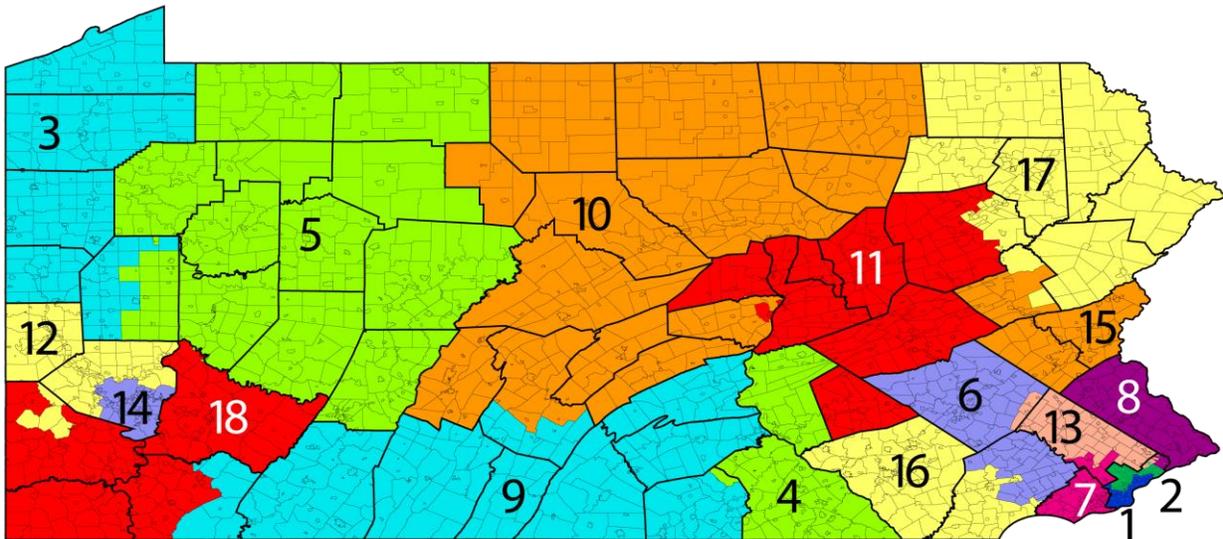
There are benefits to using standards such as "no municipality can be divided unless it exceeds the size of a congressional district." It is something that can be easily fact checked. It would be obvious, upon examination, if no municipalities were divided. It is a clear and measurable standard.

The municipal boundary lines in Pennsylvania are established and rarely (if ever) change. This makes political subdivision boundaries more impartial than other criteria.

This type of clear standard is what Pennsylvania needs today. Yes, there are other standards which might be considered. But **does a more objective standard exist?** Since the founding of our country, this is the one criterion in map drawing which is key to having the best kind of representation possible.

When I looked at the 1790 congressional redistricting, this is the standard they used. Political subdivision boundaries formed the basis for the first congressional district boundaries. Every Constitutional Convention since then has continued to find it a key value in creating representative districts, and the people of Pennsylvania agreed.

It is also important to remember that any criterion used must be balanced with respecting the minority voice. The need for equality in districts was made abundantly clear in the 1960s court cases and helps explain why this value is still important today.

Look at what the overall population ranges were in congressional districts before the 1970s.
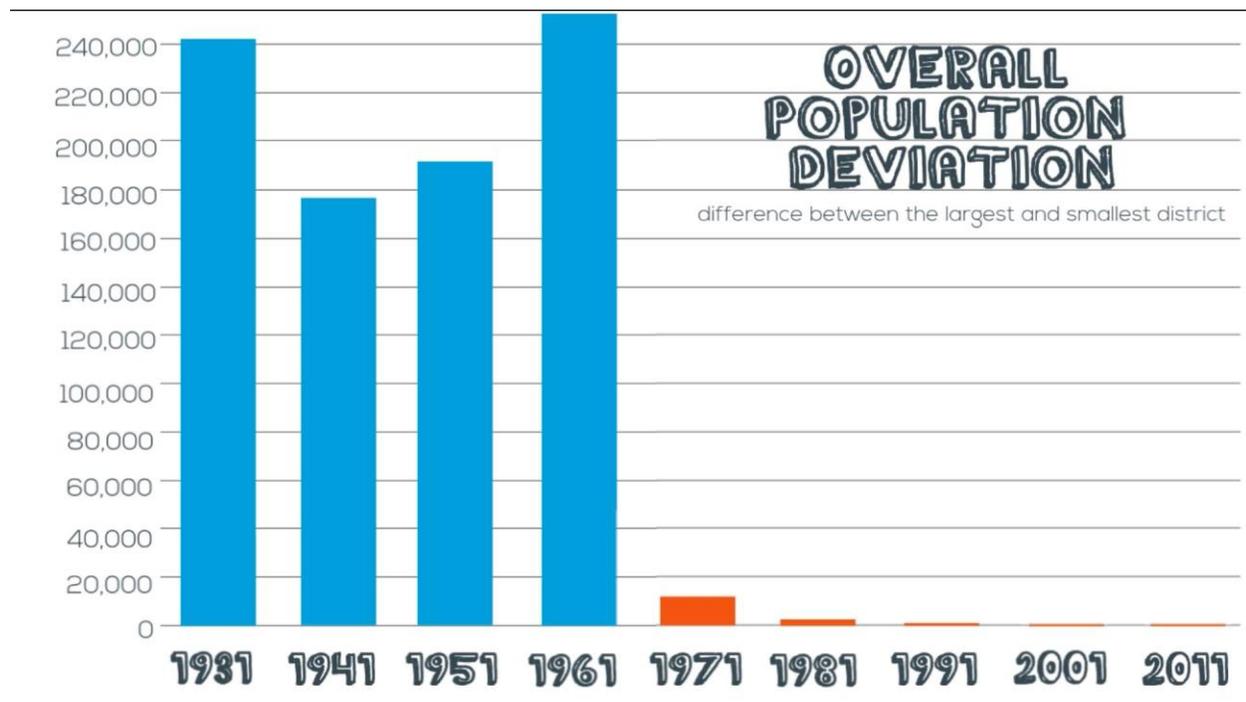
The extreme overall ranges used before 1970 remind us of the need for balance. Today, the laser focus on population ranges has relegated any other standard to be so far in background as almost meaningless in the redistricting process.

But **it doesn't have to be this way.** It is possible to maintain municipal boundaries while respecting minorities. The sample map includes both a majority-minority district as well as a minority coalition district (48% Black/Hispanic vs. 42% white). This was a higher percentage than provided through the court drawn congressional map.

Today it is possible for this legislature to restore much needed balance to how congressional district lines are drawn. Congressional districts can be equal and respect minorities without relinquishing a core Pennsylvania value.

You have the opportunity this year to leave a legacy of people before politics. Today can be the first step toward that legacy by supporting measurable standards in congressional redistricting. (See Appendix B for more on criteria and Appendix C for examples from other states.)

Appendix A: NCSL 2010 Redistricting Deviation Table

Source: https://www.ncsl.org/research/redistricting/2010-ncsl-redistricting-deviation-table.aspx

2010 Redistricting Deviation Table

1/15/2020

There are several methods of measuring the extent to which populations of all the districts in a plan vary, or differ collectively from the "ideal." The method expressed in the below table is "Overall Range."

Overall range is perhaps the most commonly used measure of population equality, or inequality, of all districts, which can be expressed as a percentage (relative) or the actual population numbers (absolute). The "range" is a statement of the population deviations of the most populous district and the least populous districts. (For example, if the ideal district population is 100,000, the largest district in the plan has a population of 102,000, and the smallest district has a population of 99,000, then the range is +2,000 and -1,000, or +2 percent and -1 percent.) The overall range is the difference in population between the largest and the smallest districts, expressed as a percentage or as the number of people. (In the preceding example, the "overall range" is 3 percent or 3,000 people.)

This information is current as of January 2012. If you would like to provide an update on the deviation numbers for your state's redistricting plans please email Wendy Underhill.

For more about population deviation, how the numbers are calculated, and data from the 2000 cycle, see NCSL's Redistricting Law 2010 publication on p. 47.

State	2010 Congressional Plan			2010 State House Plan		2010 State Senate Plan	
	Ideal District Size	Percent Overall Range	Overall Range (# of people)	Ideal District Size	Percent Overall Range	Ideal District Size	Percent Overall Range
Alabama	682,819	0.0	1	45,521	1.98	136,564	1.98
Alaska*[1]				17,756	4.25	35,512	2.97
Arizona**	710,224	0.0	0	213,067	8.78	213,067	8.78
Arkansas	728,980	.06	428	29,159	8.36	83,312	8.2
California	702,905	0.0	1	465,674	1.98	931,349	1.99

State							
Colorado	718,457	0.0	1	77,372	4.98	143,691	4.99
Connecticut[2]	714,819	0.0	1	23,670	5.99	99,280	9.79
Delaware*				21,901	9.93	42,759	10.73
Florida[3]	696,345	0.0	1	156,678	3.98	470,033	1.92
Georgia[4]	691,975	0.0	2	53,820	1.98	172,994	1.84
Hawaii[5]	680,151	0.1	691	24,540	21.57	50,061	44.22
Idaho**	783,791	0.1	682	44,788	9.7	44,788	9.7
Illinois	712,813	0.0	1	108,734	0.0	217,468	0.0
Indiana	720,422	0.0	1	64,838	1.74	129,676	2.88
Iowa	761,589	0.0	76	30,464	1.93	60,927	1.65
Kansas	713,280	0.0	15	22,716	2.87	70,986	2.03
Kentucky[6]	723,228	0.0	334	43,394	11.62	114,194	11.02
Louisiana	755,562	0.0	249	43,174	9.89	116,240	9.86
Maine	664,181	0.0	1	8,797	9.9	37,953	9.51
Maryland***[7]	721,529	0.0	1	122,813	8.87	122,813	8.87
Massachusetts	727,514	0.0	1	40,923	9.74	163,691	9.77
Michigan	705,974	0.0	1	89,851	9.96	260,096	9.79
Minnesota**	662,991	0.0	1	39,582	1.6	79,163	1.42
Mississippi	741,824	0.2	134	24,322	9.95	57,063	9.77
Missouri	748,616	0	1	36,742	7.8	176,145	8.5
Montana*[8]				9,894	5.44	19,788	5.26
Nebraska	608,780	0.0	1	N/A	N/A	37,272	7.39
Nevada	675,138	0.0	1	64,299	1.33	128,598	0.8
New Hampshire***	658,235	0.0	4	3,291	9.9	54,853	8.83
New Jersey**	732,658	0.0	1	219,797	5.2	219,797	5.2
New Mexico	686,393	0.0	0	29,417	6.68	49,028	8.7
New York	717,707	0.0	1	129,089	7.94	307,356	8.8
North Carolina[9]	733,499	0.0	1	79,462	9.97	190,710	9.49
North Dakota*				14,310	8.86	14,310	8.86
Ohio[10]	721,032	0.0	1	116,530	16.44	349,591	9.2
Oklahoma	750,270	0.0	1	37,142	1.81	78,153	2.03
Oregon	766,215	0.0	2	63,851	3.1	127,702	2.99
Pennsylvania[11]	705,688	0.0	1	62,573	7.88	254,048	7.96
Rhode Island	526,284	0.0	1	14,034	4.98	27,699	5.01
South Carolina	660,766	0.0	1	37,301	4.99	100,551	9.55
South Dakota*[12]				23,262**	9.64	23,262	9.47
Tennessee	705,123	0.0	1	64,102	9.74	192,306	9.17
Texas	698,488	0.0	32	167,637	9.85	811,147	8.04
Utah[13]	690,971	0.0	1	36,852	0.0	95,306	.01
Vermont*,***[14]				4,172	18.8	20,858	18.01

Virginia	727,366	0.0	1	80,010	2.0	200,026	4.0
Washington**	672,454	0.0	19	137,236	.07	137,236	.07
West Virginia***	617,665	.79	4,871	18,530	9.99	109,000	10.00
Wisconsin	710,873	0.0	1	57,444	.76	172,333	.62
Wyoming*	536,626	0.0	0.0	9,394	9.84	18,788	9.37

2010 Redistricting Deviation Table

SOURCE: National Conference of State Legislatures, 2019

* State has only one Congressional seat.

** These states use multi-member districts, with two House seats elected in each Senate district.
*** These states use multi-member districts with varying numbers of senators (Vermont) or representatives (Maryland, New Hampshire, Vermont and West Virginia) in each district.

1. Alaska: Data from the unified plan adopted for elections in 2014.
2. Connecticut: Data for the Senate from the plan adopted for elections in 2016.
3. Florida: Data for the Senate from the plan adopted for elections in 2016.
4. Georgia: Data from the plans adopted for elections in 2016 (House) and 2014 (Senate).
5. Hawaii modifies the census counts for legislative plans; the modified numbers are used to apportion seats to the four basic island units (BIUs). Each unit has a separate target population for each chamber. The deviation numbers in the table reflect the range of all districts for that chamber.
6. Kentucky: Data from legislative plans adopted for elections in 2014.
7. Maryland has three House of Delegates districts nested within each Senate district; tehse three may be either a three-member district, or any combination of single-member or two-member districts. The ideal district size for the two-member districts is 81,875, with an overall deviation of 9.39%. The ideal district size for the single-member district is 40,938 with an overall deviation of 8.92%.
8. Montana: Data from the legislative plans adopted for elections in 2014.
9. North Carolina: Data from legislative plans finalized for elections in 2018.
10. Ohio used a customized dataset for the legislative plans with numerous split blocks; this does not affect the ranges.
11. Pennsylvania: Data from plans adopted for elections in 2014.
12. South Dakota: Thirty-three of the state's 35 districts elect one senator and two House members, but the state also maintains two Senate districts split into four single-member House districts. These four districts have an ideal population of 11,631, with an overall deviation of 4.68%.
13. Utah: These numbers reflect the legislative plans as enacted in 2011 using the census counts. Subsequent review by the state found several instances where local political boundaries were incorrect in the geography files. Deviations based upon updated block assignment files from the Census Bureau are 1.55% for the House and .39% for the Senate.
14. Vermont split a census block, which affects the overall range for the House; it would be 19.07% using whole blocks.

About This NCSL Project

Redistricting is the process of redrawing state legislative and congressional district boundaries every 10 years following the decennial U.S. Census. NCSL helps prepare legislatures and others for the redistricting cycle with comprehensive information on redistricting law, technology and process.

For more information, contact: Wendy Underhill, NCSL Staff Liaison.

Appendix B: More on Criteria

What are Characteristics of Better Redistricting Criteria?

1. **Clear Objectives:** People should be able to easily understand the key objectives Pennsylvania wants to achieve in a congressional district plan, even before a line is drawn. This includes definitions of terms, which should have the same plain meaning both in the legal system and to the public.

2. **Limited Criteria:** While focusing exclusively on a single criterion creates imbalance, including too many criteria will create confusion. The more criteria, the more reasons exist for justifying district lines, and the more room for discretionary interpretation by judges, lawyers, legislators, and the public.

3. **Transparent Priorities:** Even within the standard criteria – equal population, respect for minorities, preserving political subdivisions, compactness, contiguity – it is essential that Pennsylvania be clear on how these will be balanced. If two criteria are in conflict, which will get precedence?

4. **Enforceable Outcomes:** Though standards should be simple enough to be understood, they also must be specific enough to withstand legal interpretation. Quantifiable redistricting standards allow the resulting plan to be substantiated when measured against them. It provides assurance to those creating congressional district plans and those living within them that the law will be followed. This is because it gives a mechanism for defending lawful plans and defeating an improper plan.

Suggested Congressional Map Drawing Criteria

1. Equality: The districts must be as equal as practicable, meaning to the greatest extent possible with an overall range of deviation at or approaching zero percent.
    a. Any deviation from the ideal population of a district must be used to the extent necessary to keep political subdivisions whole as provided for below.
2. No municipality shall be divided in forming a congressional district unless it exceeds the size of a congressional district, in which case:
    a. No voting precinct may be divided.
    b. All wards must remain whole to the extent possible (meaning the number of wards contained in more than one district should be the smallest number possible).
3. Whole counties should be in the same congressional district to the extent possible while achieving population equality. Congressional district lines shall break the fewest county boundaries possible.

Appendix C: Reference Materials

Measurable Criteria in Other States (selected highlights)

	Rule on Population	Rules on No Splits
Colorado	The state shall be divided into as many senatorial and representative districts as there are members of the senate and house of representatives respectively, each district in each house having a population as nearly equal as may be, as required by the constitution of the United States, but in no event shall there be more than five percent deviation between the most populous and the least populous district in each house. (Constitution)	Except when necessary to meet the equal population requirements of section 46, no part of one county shall be added to all or part of another county in forming districts. Within counties whose territory is contained in more than one district of the same house, the number of cities and towns whose territory is contained in more than one district of the same house shall be as small as possible. When county, city, or town boundaries are changed, adjustments, if any, in legislative districts shall be as prescribed by law. (Constitution)
Idaho	Districts shall be substantially equal in population and should seek to comply with all applicable federal standards and statutes. (Code)	Division of counties should be avoided whenever possible. Counties should be divided into districts not wholly contained within that county only to the extent reasonably necessary to meet the requirements of the equal population principle. In the event that a county must be divided, the number of such divisions, per county, should be kept to a minimum. (Code) Division of counties should be avoided whenever possible. Counties should only be divided into districts not wholly contained within that county to meet the requirements of the equal population principle or the Voting Rights Act. Sometimes, it will be necessary to divide a county into districts not wholly contained within that county. The number of such divisions, per county, should be kept to a minimum. (1991 Instructions)
Kansas	Districts should be numerically as equal in population as practical within the limitations of Census geography and application of guidelines set out below. Deviations should not exceed plus or minus 5 percent of the ideal population (Legislative State Committee Guideline)	The integrity and priority of existing political subdivisions should be preserved to the extent possible [under the population guideline]. (Legislative State Committee Guideline) Congressional: Whole counties should be in the same congressional district to the extent possible while achieving population equality among districts.
Kentucky		Counties should be used as district building blocks where possible, and to the extent consistent with other aspects of these criteria, recognizing that some counties will of necessity be split in order to achieve stated equality of population goals.

Michigan (congressional)	The constitutional guideline is that each congressional district shall achieve precise mathematical equality of population in each district. (Code)	Congressional district lines shall break as few county boundaries as is reasonably possible. If it is necessary to break county lines to achieve equality of population between congressional districts as provided in subdivision (a), the number of people necessary to achieve population equality shall be shifted between the 2 districts affected by the shift.

Congressional district lines shall break as few city and township boundaries as is reasonably possible. If it is necessary to break city or township lines to achieve equality of population between congressional districts as provided in subdivision (a), the number of people necessary to achieve population equality shall be shifted between the 2 districts affected by the shift. (Code) |
Missouri		(1) does not divide counties, except in large metropolitan areas (2) does not divide cities, except in large metropolitan areas and except when cities are in more than one county (House Committee Guidelines)
Montana	The districts must be as equal as practicable, meaning to the greatest extent possible, within a plus or minus 1% relative deviation from the ideal population of a district as calculated from information provided by the federal decennial census. The relative deviation may be exceeded only when necessary to keep political subdivisions intact or to comply with the Voting Rights Act. (Code)	District boundaries must coincide with the boundaries of political subdivisions of the state to the greatest extent possible. The number of counties and cities divided among more than one district must be as small as possible. When there is a choice between dividing local political subdivisions, the more populous subdivisions must be divided before the less populous, unless the boundary is drawn along a county line that passes through a city. (Code)
Nebraska	Congressional: Population among districts shall be as nearly equal as practicable, that is, with an overall range of deviation at or approaching 0%. No plan will be considered which results in an overall range of deviation in excess of 1% or a relative deviation in excess of plus or minus 0.5%, based on the ideal district population. Any deviation from absolute equality of population must be necessary to the achievement of a legitimate state objective as that concept has been articulated by the United States Supreme Court. (Legislative Resolution)	District boundaries shall follow county lines whenever practicable and shall define districts that are compact and contiguous as these terms have been articulated by the United States Supreme Court. Should adherence to county lines cause a redistricting plan, or any aspect thereof, to be in violation of principles set forth by the United States Supreme Court in interpreting the United States Constitution, that requirement may be waived to the extent necessary to bring the plan or aspect of the plan into compliance with these principles. (Legislative Resolution)