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The following testimony summarizes the position of Fair Districts PA on population equality as a standard in redrawing congressional districts and its relationship to other criteria the General Assembly may consider in the redistricting process. Fair Districts PA is an all-volunteer, grassroots organization dedicated to reform of Pennsylvania's redistricting processes for both congressional and state legislative redistricting.

The U.S. Supreme Court has interpreted Article I, Section 2, of the U.S. Constitution to require that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." [*Wesberry v. Sanders*](#) (1964). However, the "one person, one vote" standard does not require absolute population equality when redrawing congressional districts. Rather, the Court described equal representation as a "fundamental goal," but one which may not be possible with mathematical precision.

The "as nearly as practicable" standard requires that a state make a good faith effort to achieve mathematical equality. The burden is on those challenging a congressional redistricting plan to demonstrate that population differences among districts could have been avoided and were not the result of a good faith effort to achieve equality. [*Karcher v. Daggett*](#) (1983). However, proving the lack of a good faith effort does not by itself mean a redistricting plan is unconstitutional. What it means is that the burden of proof shifts to the state to prove "that the population deviations in its plan were necessary to achieve some legitimate state objective." The Court provided the following examples of "nondiscriminatory" state objectives that could justify minor population deviations:

Any number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, respecting the cores of prior districts, and avoiding contests between incumbent Representatives.

In *Karcher*, the Supreme Court rejected a New Jersey congressional redistricting plan in which the difference between the smallest and largest district populations was less than one percent (0.6984%) of the average district. The state argued that the deviation was necessary to achieve its goal of preserving the voting strength of racial minority groups. The Court did not dispute that New Jersey's claimed objective could be used to justify small variances in population. However, the state failed to document and prove that the population deviations in most of the congressional districts had any causal connection to protecting the voting strength of racial minority groups.

In 2002, a federal district court struck down Pennsylvania's congressional redistricting plan because the state failed to justify a deviation of 19 persons between the most populated and

least populated districts. [*Vieth v. Pennsylvania*](#). The court found that the state could have easily produced a plan with zero deviation that met the claimed objective to avoid splitting precincts.

However, the Supreme Court has also upheld a deviation greater than the ones that failed in those earlier cases. In [*Tennant v. Jefferson County Commission*](#) (2012), the Court found a “small” deviation of 0.79% from the average was justified by West Virginia’s objectives to avoid splitting counties, to minimize population shifts between districts and to avoid contests between incumbents. The Court upheld the plan even though the commission had considered and rejected alternative plans with smaller population deviations. Those alternative plans did not perform as well as the approved plan with regard to the state’s other legitimate redistricting objectives.

It is clear then that this committee may consider established criteria other than population equality when drawing congressional districts. But courts will still look to determine whether the deviation from equal population was necessary to achieve the state’s other legislative objectives and whether the degree of deviation was reasonable under the circumstances.

If Pennsylvania’s 2021 congressional plan is challenged in court for violating the “one person, one vote” standard, the state will need to identify specific policy objectives the General Assembly had in mind when it approved the plan. The best evidence of legislative policy is, of course, a statute enacted by the General Assembly. Unfortunately, Pennsylvania is among the minority of states that have no statutory standards for drawing congressional district lines.

Most states have enacted specific criteria for congressional redistricting, either by statute or in their state constitution. According to [research](#) by the National Conference of State Legislatures, a majority of states require that congressional districts be compact (29 states), contiguous (32) and that they preserve political subdivisions (29). Pennsylvania is listed among those states as a result of the 2018 state Supreme Court decision in [*League of Women Voters of PA v. Commonwealth of PA*](#). In *League of Women Voters*, the Court applied criteria mandated by the Pennsylvania Constitution for redistricting of state House and Senate districts, but never previously used to analyze a congressional plan.

In previous testimony before this committee, Fair Districts PA recommended that the General Assembly include those same criteria in statutory law, along with a number of other mapping criteria that were included in the original version of Senate Bill 222. While we still believe it would be preferable to spell out the state’s redistricting objectives in statute, we also recognize that is unlikely to occur before a final map is enacted.

This committee also has the opportunity to explain the rationale for its recommended map, including the specific policy objectives to be achieved, by including a written report along with the map and the descriptive listing of congressional districts. By doing so, the committee can provide the evidentiary basis to support a small deviation¹ from population equality if such deviation is deemed necessary to achieve those other legitimate objectives.

¹ Assuming the 2021 average Pennsylvania congressional district population is 761,200, the deviation of 0.79% permitted by the U.S. Supreme Court in *Tennant v. Jefferson County Commission* would be equivalent to approximately 6000 persons.