

APPENDIX

APPENDIX

TABLE OF CONTENTS

Appendix A Order of the Supreme Court of Pennsylvania
(March 16, 2022) App. 1

Appendix B Pennsylvania Supreme Court Docket Sheet Excerpt App. 8

Appendix C Petition for Review and Excerpts of Attached Appendices in the Supreme Court of Pennsylvania
(February 17, 2022) App. 29

Appendix D Excerpted Appendices from Brief in Support of Petition for Review
(March 7, 2022) App. 103

Appendix E Excerpts from Commission Record App. 120

Certificate of Commission
(March 16, 2021) App. 120

Excerpts of Stenographic Report of Hearing in the Commonwealth of Pennsylvania Legislative Reapportionment Commission
(December 16, 2021) App. 122

Excerpts of Legislative Reapportionment Commission Opening Statement of Commission Chair Mark A. Nordenberg
(December 16, 2021) App. 130

Excerpts of Stenographic Report of
Hearing in the Commonwealth
of Pennsylvania Legislative
Reapportionment Commission
(January 7, 2022) App. 134

Letter Regarding Preliminary
Reapportionment Plan from the
Commonwealth of Pennsylvania
(February 4, 2022) App. 138

Excerpts of Stenographic Report of
Hearing in the Commonwealth
of Pennsylvania Legislative
Reapportionment Commission
(February 4, 2022) App. 141

Excerpts of Meeting of the
Pennsylvania Legislative
Reapportionment Commission
Approval of a Final Plan; Senate
Hearing Room #1; February 4, 2022
(February 4, 2022) App. 155

Excerpts of Report of Mark A.
Nordenberg Chair of the 2021
Pennsylvania Legislative
Reapportionment Commission
Regarding the Commission’s Final Plan
(March 4, 2022) App. 160

Excerpts of Report of Dr. Matt Barreto
(January 7, 2022) App. 169

	Excerpts of Presentation of Dr. Matt Barreto (January 14, 2022)	App. 176
Appendix F	Constitutional and Statutory Provisions Involved.	App. 178
	Const. amend. XIV	App. 178
	Const. amend. XV	App. 180
	52 U.S.C. §10301.	App. 181
Appendix G	Excerpts of LRC Respondent’s Brief in Pennsylvania Supreme Court (March 11, 2022).	App. 182

App. 1

APPENDIX A

**IN THE SUPREME COURT OF
PENNSYLVANIA**

[Filed: March 16, 2022]

No. 4 WM 2022

Appeal from the Legislative Reapportionment
Commission Plan dated February 4, 2022

RYAN COVERT, DARLENE J. COVERT,)
AND ERIK HULICK,)
)
Petitioners)
)
v.)
)
2021 PENNSYLVANIA LEGISLATIVE)
REAPPORTIONMENT COMMISSION,)
)
Respondent)

No. 11 MM 2022

Appeal from the Legislative Reapportionment
Commission Plan dated February 4, 2022

KERRY BENNINGHOFF, INDIVIDUALLY,)
AND AS MAJORITY LEADER OF)

App. 2

THE PENNSYLVANIA HOUSE)
OF REPRESENTATIVES,)
)
Petitioner)
)
v.)
)
2021 LEGISLATIVE)
REAPPORTIONMENT COMMISSION,)
)
Respondent)
_____)

No. 14 MM 2022

Appeal from the Legislative Reapportionment
Commission Plan dated February 4, 2022

LISA M. BOSCOLA, SENATOR)
18TH DISTRICT,)
)
Petitioner)
)
v.)
)
2021 LEGISLATIVE)
REAPPORTIONMENT COMMISSION,)
)
Respondent)
_____)

App. 3

No. 16 MM 2022

Appeal from the Legislative Reapportionment
Commission Plan dated February 4, 2022

ERIC ROE,)
)
 Petitioner)
)
 v.)
)
 2021 LEGISLATIVE)
 REAPPORTIONMENT COMMISSION,)
)
 Respondent)
)

No. 17 MM 2022

Appeal from the Legislative Reapportionment
Commission Plan dated February 4, 2022

RON Y. DONAGI, PHILIP T. GRESSMAN,)
 PAMELA GORKIN, DAVID P.)
 MARSH, JAMES L. ROSENBERGER,)
 EUGENE BOMAN, GARY GORDON, LIZ)
 MCMAHON, TIMOTHY FEEMAN, AND)
 GARTH ISAAK,)
)
 Petitioners)
)
 v.)
)

App. 4

2021 LEGISLATIVE)
REAPPORTIONMENT COMMISSION,)
)
Respondent)
)
_____)

No. 18 MM 2022

Appeal from the Legislative Reapportionment
Commission Plan dated February 4, 2022

GABRIEL INGRAM, RUTH MOTON,)
MARK KIRCHGASSER AND)
SUSAN POWELL,)
)
Petitioners)
)
v.)
)
2021 LEGISLATIVE)
REAPPORTIONMENT COMMISSION,)
)
Respondent)
)
_____)

No. 7 WM 2022

Appeal from the Legislative Reapportionment
Commission Plan dated February 4, 2022

TODD ELLIOTT KOGER,)
)
Petitioner)
)
v.)
)

App. 5

2021 PENNSYLVANIA LEGISLATIVE)
REAPPORTIONMENT COMMISSION,)
)
Respondent)
_____)

No. 11 WM 2022

Appeal from the Legislative Reapportionment
Commission Plan dated February 4, 2022

_____)
JACKIE HUTZ,)
)
Petitioner)
)
v.)
)
2021 PA LEGISLATIVE)
REAPPORTIONMENT COMMISSION,)
)
Respondent)
_____)

No. 12 WM 2022

Appeal from the Legislative Reapportionment
Commission Plan dated February 4, 2022

_____)
EDWARD J. KRESS,)
)
Petitioner)
)
v.)
)

2021 LEGISLATIVE REAPPORTIONMENT)
COMMISSION OF THE)
COMMONWEALTH OF PENNSYLVANIA,)
)
Respondent)
_____)

ORDER

PER CURIAM

AND NOW, this 16th day of March, 2022, upon consideration of the above-captioned legislative reapportionment appeals filed pursuant to PA. CONST. art. II, § 17(d) (indicating that “[a]ny aggrieved person may file an appeal from the final plan [of the 2021 Pennsylvania Legislative Reapportionment Commission] directly to the Supreme Court”), this Court finds that the Final Reapportionment Plan of the Pennsylvania Legislative Reapportionment Commission filed on February 4, 2022, is in compliance with the mandates of the Pennsylvania Constitution and the United States Constitution and is not contrary to law, and, therefore, shall have the force of law. *See* PA. CONST. art. II, § 17(d) & (e) (specifying that “[i]f 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 that “[w]hen the Supreme Court has finally decided an appeal...the reapportionment plan shall have the force of law...”). Further, it is hereby ordered that said Plan shall be used in all forthcoming elections to the General Assembly until the next constitutionally-mandated reapportionment shall be approved.

App. 7

All outstanding motions filed in the above-captioned matters are hereby **DISMISSED**.

This Court's February 23, 2022 Order, at Judicial Administration Docket No. 569, which temporarily suspended the General Primary Election calendar relative to elections for seats in the General Assembly, is **VACATED**. Our adjustment to that calendar is resolved by separate order at that docket number and entered today.

Jurisdiction relinquished.

A True Copy Amy Dreibelbis, Esquire
As Of 03/16/2022

Attest: /s/ Amy Dreibelbis
Deputy Prothonotary
Supreme Court of Pennsylvania

App. 8

APPENDIX B

Supreme Court of Pennsylvania

[SEAL]

Miscellaneous Docket Sheet

Docket Number: 11 MM 2022

July 1, 2022

CAPTION

Kerry Benninghoff, individually, and as Majority
Leader of the Pennsylvania House of Representatives,
Petitioner

v.

2021 Legislative Reapportionment Commission,
Respondent

CASE INFORMATION

Initiating Document: Petition for Review

Case Status: Closed

Journal Number:

Case Administrative Case Redistricting
Category: Agency Type(s):

**CONSOLIDATED
CASES**

RELATED CASES

Docket No / Reason	Type
14 MM 2022 Same Issue(s) Boscola, L., Pet. v. 2021 Legislative Reapp Comm	Related
16 MM 2022 Same Issue(s) Roe, E., Pet. v. 2021 Legislative Reapp Comm	Related
17 MM 2022 Same Issue(s) Donagi, R, etal, Pets, v 2021 Legislative Reap Com	Related
18 MM 2022 Same Issue(s) Ingram, G, et al, Pets v 2021 Legislative Reap Com	Related
4 WM 2022 Same Issue(s) Covert, et al, Pets v. 2021 Legislative Reapp Comm	Related

App. 10

7 WM 2022 Related
Similar Issues
Koger, T., Pet. v.
2021 Legislative
Reapp Comm.

11 WM 2022 Related
Same Issue(s)
Hutz, J., Pet. v. 2021
Legislative Reapp
Comm

12 WM 2022 Related
Same Issue(s)
Kress, E., Pet v.
2021 Legislative
Reapp Comm

COUNSEL INFORMATION

Attorney: Duffy, Jeffry William
 Baker & Hostetler, LLP
Address: 1735 Market St Ste 3300
 Philadelphia, PA 19103-7501
Phone No: (215) 564-2916
Receive Mail: Yes
Receive EMail: Yes Email:

* * *

[p. 11]

FEE INFORMATION

Fee Dt	Fee Name	Fee Amt	Receipt Dt	Receipt No	Receipt Amt
02/17/2022	Petition for Review	90.25	02/17/2022	2022-SUP-M-000440	90.25

AGENCY/TRIAL COURT INFORMATION

Court Below: Legislative Reapportionment Commission

County: Division: Legislative Reapportionment Commission

Date of Agency/Trial Court Order: February 4, 2022

Docket Number: 2021 Legislative Reapportionment Con

Judge(s): OTN:

Order Type: Order

ORIGINAL RECORD CONTENT

Original Record Item	Filed Date	Content/Description
Agency Record	February 17, 2022	Filed at No. 4 WM 2022

Record Remittal:

BRIEFING SCHEDULE

**Amicus Curiae
Alvarado, Cynthia
Brief**
Due: March 11, 2022
Filed: March 11, 2022

**Intervenor -
Respondent
McClinton, Joanna E.
Brief**
Due: March 11, 2022
Filed: March 11, 2022

**Concerned Citizens
for Democracy
Brief**
Due: March 11, 2022
Filed: March 7, 2022

**Respondent
2021 Legislative
Reapportionment
Commission
Brief** Due: March 11,
2022 Filed: March 11,
2022

**Costa, Senator Jay
Brief**
Due: March 11, 2022
Filed: March 11, 2022

**Fair Districts PA
Brief**

Due: March 11, 2022

Filed: March 11, 2022

**LatinoJustice PRLDEF
Brief**

Due: March 11, 2022

Filed: March 11, 2022

**Make the Road
Pennsylvania
Brief**

Due: March 11, 2022

Filed: March 11, 2022

**NAACP Pennsylvania
State Conference
Brief**

Due: March 11, 2022

Filed: March 11, 2022

**Amicus Curiae
Pennsylvania Voice
Brief**

Due: March 11, 2022

Filed: March 11, 2022

**The Committee of
Seventy
Brief**

Due: March 11, 2022

Filed: March 11, 2022

**The County
Commissioners
Association of
Pennsylvania
Brief**

Due: March 7, 2022
Filed: March 7, 2022

**The League of
Women Voters of
Pennsylvania
Brief**

Due: March 11, 2022
Filed: March 11, 2022

**Thompson, John
Brief**

Due: March 11, 2022
Filed: March 11, 2022

**Petitioner
Benninghoff, Kerry
Brief**

Due: March 7, 2022
Filed: March 7, 2022

DISPOSITION INFORMATION

Related Journal No:		Judgment Date:	March 16, 2022
Category:	Decided	Disposition Author:	Per Curiam

App. 15

Disposition: Order Denying Petition for Review Disposition Date: March 16, 2022

Dispositional Filing: **Order** Author: Per Curiam

Filed Date: March 16, 2022

DOCKET ENTRY

Filed Date	Docket Entry / Representing	Participant Type	Filed By
February 17, 2022	Petition for Review	Petitioner	Benninghoff, Kerry
February 17, 2022	Application for Emergency Relief Directed to the 2022 Elections	Petitioner	Benninghoff, Kerry

App. 16

February 17, 2022	Praeipce for Appearance 2021 Legislative Reapportionment Commission	Respondent	Mintz, Leah Ariel
February 17, 2022	No. 569 Judicial Administration Docket - Order dated February 17, 2022		Supreme Court of Pennsylvania
February 17, 2022	Electronically Filed at No. 4 WM 2022		Legislative Reapportionment Commission
February 23, 2022	Answer to Application for Emergency Relief Directed to the 2022 Elections	Respondent	2021 Legislative Reapportionment Commission

February 23, 2022	Answer to Application for Emergency Relief Directed to the 2022 Elections	Respondent	Leigh M. Chapman, Acting Secretary of the Comm. & Jessica Mathis, Director of Elections
------------------------------	--	------------	---

February 25, 2022	Order Denying Application for Emergency Relief Directed to the 2022 Elections		Per Curiam
------------------------------	--	--	------------

Comments:
AND NOW, this 25th day of February, 2022, the
Application for Emergency Relief is DENIED.

February 25, 2022	Order Exited		Office of the Prothono- tary
------------------------------	---------------------	--	------------------------------------

March 4, 2022	Application to Amend the Court's February 17, 2022 Order to Allow for Reply Briefs and Oral Argument	Petitioner	Benninghoff, Kerry
March 4, 2022	Notice of Intervention	Intervenor - Respondent	McClinton, Joanna E.
March 4, 2022	Motion for Admission Pro Hac Vice of Robert J. Tucker, Esq. Benninghoff, Kerry	Petitioner	Duffy, Jeffrey William
March 4, 2022	Motion for Admission Pro Hac Vice of Patrick T. Lewis, Esq. Benninghoff, Kerry	Petitioner	Duffy, Jeffrey William
March 4, 2022	No Answer Letter to Motions for Admission Pro Hac Vice	Respondent	2021 Legislative Reapportionment Commission

App. 19

March 7, 2022	Answer to App. to Amend the Court's Feb. 17, 2022 Order to Allow for Reply Briefs and Oral Argument	Respondent	2021 Legislative Reapportion -ment Commission
--------------------------	--	------------	---

March 7, 2022	Order Granting Application to be Admitted Pro Hac Vice		Dreibelbis, Amy
--------------------------	---	--	--------------------

Comments:

AND NOW, this 7th day of March, 2022, the Applications to be Admitted Pro Hac Vice of Robert J. Tucker, Esquire, and Patrick T. Lewis, Esquire, are hereby granted.

March 7, 2022	Order Exited		Office of the Prothono- tary
--------------------------	---------------------	--	------------------------------------

March 7, 2022	No Answer Letter to Motions for Admissions Pro Hac Vice	Respondent	Leigh M. Chapman, Acting Secretary of the Comm. & Jessica Mathis, Director of Elections
March 7, 2022	Brief of Amicus Curiae Concerned Citizens for Democracy in Response to the Pet. for Review	Amicus Curiae	Concerned Citizens for Democracy
March 7, 2022	Amicus Curiae Brief of The County Commissioners Association of Pennsylvania	Amicus Curiae	The County Commissioners Association of Pennsylvania
March 7, 2022	Petitioner's Brief	Petitioner	Benninghoff, Kerry

App. 21

March 8, 2022	Answer to the App. to Amend the Court's Feb. 17, 2022 Order to Allow for Reply Briefs and Oral Argum	Respondent	Leigh M. Chapman, Acting Secretary of the Comm. & Jessica Mathis, Director of Elections
March 8, 2022	Answer in Opposition to Application to Amend the Court's February 17, 2022 Order	Intervenor - Respondent	McClinton, Joanna E.
March 9, 2022	Order Denying Applic to Amend the Court's 2-17- 2022 Order to Allow for Reply Briefs & Oral Argument		Per Curiam

Comments:

AND NOW, this 9th day of March, 2022, the Application to Amend the Court's February 17, 2022 Order to Allow for Reply Briefs and Oral Argument is DENIED.

Justice Brobson notes his dissent.

March 9, 2022	Order Exited		Office of the Prothonotary
March 9, 2022	Petitioner's Application for Order Limiting Briefing by Intervenor Joanna E. McClinton	Petitioner	Benninghoff, Kerry
March 10, 2022	No Answer Letter to Petitioner's Application for Order Limiting Briefing by Intervenor	Respondent	Leigh M. Chapman, Acting Secretary of the Comm. & Jessica Mathis, Director of Elections

App. 23

March 10, 2022	Answer to Petitioner's Application for Order Limiting Briefing by Intervenor Joanna E. McClinton	Intervenor - Respondent	McClinton, Joanna E.
March 10, 2022	Answer to Petitioner's Application for Order Limiting Briefing by Intervenor Joanna E. McClinton	Respondent	2021 Legislative Reapportionment Commission
March 11, 2022	Intervenor McClinton Answer to Petition for Review	Intervenor - Respondent	McClinton, Joanna E.
March 11, 2022	Amicus Brief of LatinoJustice PRLDEF & Make the Road PA	Amicus Curiae Amicus Curiae	LatinoJustice PRLDEF Make the Road Pennsylvania

App. 24

March 11, 2022	Intervenor McClinton Brief	Intervenor - Respondent	McClinton, Joanna E.
March 11, 2022	Brief of Amicus Curiae League of Women Voters, et al	Amicus Curiae Amicus Curiae Amicus Curiae	The League of Women Voters of Pennsyl- vania Fair Districts PA The Committee of Seventy
March 11, 2022	Brief of Amicus Curiae NAACP, et al	Amicus Curiae Amicus Curiae Amicus Curiae	NAACP Pennsyl- vania State Conference Thompson, John Alvarado, Cynthia
March 11, 2022	Brief of Amicus Curiae Pennsylvania Voice	Amicus Curiae	Pennsyl- vania Voice
March 11, 2022	Brief of Amicus Curiae Senator Jay Costa	Amicus Curiae	Costa, Senator Jay

App. 25

March 11, 2022	LRC Respondent Brief	Respondent	2021 Legislative Reapportion- ment Commission
March 11, 2022	LRC Answer to Petition for Review	Respondent	2021 Legislative Reapportion- ment Commission
March 11, 2022	Application for Order Striking the Newly Submitted Expert Report (in McClinton Brief)	Petitioner	Benninghoff, Kerry

Comments:

“Application for Order Striking the New Submitted Expert Reports Relief Upon by Respondent Commission and Intervenor/Respondent McClinton”

March 14, 2022	No Answer Letter to Application for Order Striking the Newly Submitted Expert Report (in McClinton B	Respondent	Leigh M. Chapman, Acting Secretary of the Comm. & Jessica Mathis, Director of Elections
March 14, 2022	Answer to Application for Order Striking the Newly Submitted Expert Report (in McClinton Brief)	Respondent	2021 Legislative Reapportionment Commission
March 14, 2022	Answer to Application for Order Striking the Newly Submitted Expert Report (in McClinton Brief)	Intervenor - Respondent	McClinton, Joanna E.

March 16, 2022
Order
Regarding
Petition for
Review

Per Curiam

Comments:
PER CURIAM

AND NOW, this 16th day of March, 2022, upon consideration of the above-captioned legislative reapportionment appeals filed pursuant to PA. CONST. art. II, § 17(d) (indicating that “[a]ny aggrieved person may file an appeal from the final plan [of the 2021 Pennsylvania Legislative Reapportionment Commission] directly to the Supreme Court”), this Court finds that the Final Reapportionment Plan of the Pennsylvania Legislative Reapportionment Commission filed on February 4, 2022, is in compliance with the mandates of the Pennsylvania Constitution and the United States Constitution and is not contrary to law, and, therefore, shall have the force of law. See PA. CONST. art. II, § 17(d) & (e) (specifying that “[i]f 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 that “[w]hen the Supreme Court has finally decided an appeal...the reapportionment plan shall have the force of law...”). Further, it is hereby ordered that said Plan shall be used in all forthcoming elections to the General Assembly until the next constitutionally-mandated reapportionment shall be approved.

All outstanding motions filed in the above-captioned matters are hereby DISMISSED.

This Court's February 23, 2022 Order, at Judicial Administration Docket No. 569, which temporarily suspended the General Primary Election calendar relative to elections for seats in the General Assembly, is VACATED. Our adjustment to that calendar is resolved by separate order at that docket number and entered today.

Judgment relinquished.

March 16, 2022	Order Exited	Office of the Prothono- tary
March 31, 2022	Reconsid- eration Time Expired/Case Closed	Office of the Prothono- tary
June 8, 2022	Notice of Extension of Time Granted	Clerk of the U.S. Supreme Court

APPENDIX C

**IN THE SUPREME COURT OF
PENNSLYVANIA**

[Filed: February 17, 2022]

KERRY BENNINGHOFF, individually,)
and as Majority Leader of the)
Pennsylvania House of Representatives,)
)
Petitioner,)
)
vs.)
)
2021 LEGISLATIVE)
REAPPORTIONMENT COMMISSION,)
)
Respondent.)

PETITION FOR REVIEW

In the Nature of an Appeal from the Final Plan of the
2021 Legislative Reapportionment Commission

Pursuant to Section 17(d) of Article II of the Pennsylvania Constitution and Pennsylvania Rule of Appellate Procedure 3321, The Honorable Kerry A. Benninghoff, in his capacities as Majority Leader of the Pennsylvania House of Representatives, a Member of the Legislative Reapportionment Commission, and a registered voter in Centre County (the “Petitioner”)

files this Petition for Review, seeking this Court’s review of the February 4, 2022 final reapportionment plan (“2021 Final Plan”)¹ approved by the 2021 Legislative Reapportionment Commission (“Commission”). In support of the Petition, Petitioner states as follows:

INTRODUCTION

1. This Court has stated that “[i]t is a core principle of our republican form of government ‘that the voters should choose their representatives, not the other way around.’” *League of Women Voters of Pa. v. Commonwealth*, 645 Pa. 1, 8 (2018). The 2021 Final Plan eviscerates that principle. It subordinates the nonpartisan redistricting criteria required by Article II, Section 16 of the Pennsylvania Constitution to “political factors” – i.e., maximizing the number of Democratic-leaning districts – in a manner contrary to the Constitution. *Holt v. 2011 Legislative Reapportionment Comm’n (Holt II)*, 620 Pa. 373, 413 (2013). Statistical evidence of the nature endorsed by this Court in *LWV*, including simulation analysis, mean-median, and efficiency gap measures further discussed below, confirm that the 2021 Final Plan is an extreme partisan outlier. One Commission Member, the House Minority Leader, put it bluntly in an October 2021 televised public statement: she expected to achieve a Democratic Party takeover of the House in

¹ The 2021 Final Plan was adopted on February 4, 2022, but since the Commission Chair has referred to it as the 2021 Final Plan, it will be referred to that way herein for consistency. But in concert with the practice of prior Commissions and the date of passage, it should actually be labelled the 2022 Final Plan.

2022 through “redistricting.”² The 2022 Plan appears to be the attempted fulfillment of her promise.

2. Although some Members of the Commission have attempted to defend the goal of the 2021 Final Plan as merely being to engineer a sufficient number of Democratic Party-leaning districts to approximate the two-party statewide vote share of the Commonwealth (i.e., proportional representation), a balancing of representational political interests is neither required by the Pennsylvania Constitution, nor can it trump the constitutional redistricting criteria of population equality, compactness and avoiding political subdivision splits except where absolutely necessary. But that is exactly what this map does—and, in so doing, adoption of the plan would violate Article II, Section 16 of the Pennsylvania Constitution as well as the guarantee of Article I, Section 5’s “Free and Equal Elections Clause” that requires that “an individual’s electoral power not be diminished through any law which discriminatorily dilutes the power of his or her vote...” *LWV*, 645 Pa. at 120.

3. The updated report of Michael Barber, Ph.D, attached as **Appendix A**,³ establishes that the 2021

² Remarks of Hon. Joanna E. McClinton, Oct. 18, 2021, available at <https://s3.us-east-2.amazonaws.com/pagopvideo/634363247.mp4> (last visited Feb. 9, 2022).

³ Dr. Barber submitted his original report based upon the 2021 Preliminary Plan to the Commission on January 7, 2022. His updated report reflects the same analysis, but it is based upon the 2021 Final Plan and the Benninghoff Amendment that were not available at the time he submitted his original report.

Final Plan is an extreme partisan outlier when compared to a representative sample of 50,000 computer-simulated plans of the House districts drawn using only the constitutional criteria set forth in Article II, Section 16 of the Pennsylvania Constitution and no partisan or racial data. Updated Barber Rep. at 5, 11, Fig. 3. Professor Barber's 50,000 simulated plans are consistent with the 2021 Final Plan in terms of population deviation, county and municipal splits, contiguity, and compactness. *Id.* at 7, Table 1. However, the unbiased simulations reflect that the 2021 Final Plan generates more Democratic-leaning districts than **99.998%** of the simulated maps. *Id.* at 10-11, Fig. 3. The most common outcome in the simulations is 97 Democratic seats, yet the 2021 Final Plan is predicted to result in 107 Democratic seats using an index of 2012-2020 elections. *Id.* This is a statistically significant finding demonstrating that the dramatically large number of Democratic-leaning districts in the plan cannot be explained by adherence to the constitutional redistricting criteria set forth in Article II, Section 16 of the Constitution. Kosuke Imai, Ph.D., an expert submitted by the Democratic Caucus of the House, confirmed this finding in his January 14, 2022 testimony.⁴

4. In addition, other partisan fairness metrics, such as mean-median and efficiency gap, demonstrate that the 2021 Final Plan has a significant partisan bias in favor of Democrats when compared to the simulated

⁴ See Jan. 14, 2022 LRC Hearing at 1:02, available at: <http://aws.redistricting.state.pa.us/Redistricting/Resources/Video/11422-LRC-2.mp4> (last visited Feb. 9, 2022).

plans. Dr. Barber's additional analysis reflects that the 2021 Final Plan has a mean-median that is more favorable to Democrats than all but one of the 50,000 simulated plans. Updated Barber Rep. at 55-56, Fig. 27. Similarly, the 2021 Final Plan has an efficiency gap of -.027 that is more favorable to Democrats than any of the 50,000 simulated plans. *Id.* at 56-59, Fig. 28. By any definition, these metrics demonstrate that the 2021 Final Plan is an extreme partisan outlier.

5. The Commission has attempted to defend the strong partisan bias exhibited in the 2021 Final Plan by arguing that it can be explained by the Commission's goal of intentionally creating a series of districts to supposedly afford more opportunities for minorities to elect candidates of their choice. On multiple occasions, the Chair of the Commission conceded as much. And throughout the process, the Chair and Democratic members of the Commission, as well as their staff, frequently discussed a desire or need to draw districts predominantly on the basis of race—even "scoring" proposed districts based, in part, on how many 35% minority voting-age population districts were created. However, there was *no evidence* in the Commission's record—let alone a strong basis in evidence—of legally significant racially-polarized voting to justify drawing districts on the basis of race. Therefore, there was no compelling state interest to classify voters based upon race (a suspect classification that triggers strict scrutiny), and the districts in question run afoul of the Fourteenth and Fifteenth Amendments to the United States Constitution as a matter of controlling federal law. These districts also

offend Article I, Section 29 of the Pennsylvania Constitution.

6. But setting that aside, a desire to enhance minority voting strength is *not* an explanation of the 2021 Final Plan's partisanship. In the House, the 2021 Final Plan unnecessarily reduces minority voting strength in many areas rather than increasing it. Dr. Barber's testimony and updated report demonstrate that a similar number of majority-minority and "opportunity" districts are generated by his simulated plans simply by following traditional redistricting criteria. Updated Barber Rep. at 8-9, Figs. 1 & 2. Thus, Dr. Barber's conclusion that the 2021 Final Plan is a partisan outlier cannot be explained away by any claimed desire to draw districts based on race.

7. In addition, the Commission received significant public feedback and public testimony asking the Commission to honor the integrity of communities of interest—including historical communities of interest—throughout the Commonwealth in the creation of the 2021 Final Plan. Despite this significant testimony, the Commission unnecessarily split several communities of interest, including but not limited to those located in the Cities of Harrisburg and Lancaster, the Borough of State College, and Montgomery Township.

8. The amendment offered by Leader Benninghoff to the House Plan during the February 4, 2022 Commission meeting addressed many of the above problems but was not adopted. It lowered the population deviation from 8.65% to 7.99%. *See* Updated Barber Rep. at 61, Tbl 4. It lowered the total municipalities split from 56 to 42, and eliminated the

unnecessary splits in Allentown, Lancaster, Reading, Harrisburg and State College. *Id. See also* LDPC Report of 2.4.22 Benninghoff Amendment (“Benninghoff Am.”), attached as **Appendix B**. And in doing so, it increased the voting strength of minority voters. The amendment contained eight majority Black districts, five majority Hispanic districts, and 26 overall majority-minority districts without subordinating traditional redistricting criteria. Updated Barber Rep. at 61-62. It also creates 17 minority opportunity districts, including four Hispanic “opportunity” districts with a Hispanic voting age population between 35% and 50%. And it did so without explicit consideration of race.

STATEMENT OF JURISDICTION

9. The basis for the jurisdiction of this Court is Section 17(d) of Article II of the Pennsylvania Constitution and 42 Pa. C.S. 725(1), which provides that the Supreme Court shall have exclusive jurisdiction of appeals from the final orders of the Legislative Reapportionment Commission.

10. This appeal is addressed to the Court’s appellate jurisdiction and is in the nature of a petition for review pursuant to Rule of Appellate Procedure 3321.

PARTIES

11. Representative Benninghoff is the duly-elected representative for the 171st House District and the Majority Leader of the Pennsylvania House of Representatives and in that capacity is a member of the Commission. He is also a registered voter in Centre County, Pennsylvania. Majority Leader Benninghoff

brings this Petition in his capacity as an elected official and as an individual registered voter who is aggrieved by the 2021 Final Plan.

12. The Respondent is the 2021 Legislative Reapportionment Commission.

13. Pursuant to Section 17(b) of Article II of the Pennsylvania Constitution, the Commission is composed of Representative Kerry Benninghoff, the majority leader of the House of Representatives, Representative Joanna McClinton, minority leader of the House of Representatives, Senator Kim Ward, majority leader of the Senate, Senator Jay Costa, minority leader in the Senate, and Mark A. Nordenberg, the fifth member selected by this Court after the other four Commission members were unable to agree on a fifth member. Mr. Nordenberg served as Chair of the Commission.

DETERMINATION TO BE REVIEWED

14. The determination for which Petitioner seeks review is the constitutionality of the 2021 Final Plan of the Commission approved on February 4, 2022. A copy of the 2021 Final Plan for the Pennsylvania House and the map reflecting the 2021 Final Plan for the House are attached as **Appendices C and D**. A copy of the 2021 Final Plan for the Pennsylvania Senate and the map reflecting the 2021 Final Plan for the Senate are attached as **Appendices E and F**.

**CONTROLLING CONSTITUTIONAL
PROVISIONS**

15. Section 16 of Article II of the Pennsylvania Constitution states:

The Commonwealth shall be divided into 50 senatorial and 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.

Pa Const., art. II, § 16.

16. Section 5 of Article I of the Pennsylvania Constitution states:

Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

Pa. Const., art. I, § 5.

17. Section 29 of Article I of the Pennsylvania Constitution states:

Equality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the race or ethnicity of the individual.

Pa. Const., art. I, § 29.

PROCEDURAL BACKGROUND

18. Pursuant to Section 17(a) of Article II of the Pennsylvania Constitution, in 2021, the year following the Federal decennial census, the 2021 Legislative Reapportionment Commission was constituted for the purposes of reapportioning the Commonwealth.

19. Due to delays resulting from the COVID-19 pandemic, the U.S. Census Bureau failed to deliver the decennial census data by the April 1, 2021 deadline. Rather, it did not make the P.L. 94-171 data available for download until August 12, 2021 and the full redistricting toolkit until September 16, 2021.

20. Under Section 17(c) of Article II of the Pennsylvania Constitution, the Commission must file a preliminary reapportionment plan within 90 days after the Commission has duly certified the population data.

21. On August 24, 2021, the Commission by a vote of 3 to 2, decided to reallocate certain prisoners to their address prior to incarceration rather than the address of the prison where they were located. This is the first time in history that the Commission has reallocated prisoners to addresses different from those contained in the Census data.

22. Thus, while the Commission received the Census data on August 12, 2021, and the data was available for use by the Commission on September 17, 2021, the decision to reallocate prisoners caused further significant delays in the process. The data necessary to reapportion the state based upon

reallocated prisoners was not complete and certified by the Commission for use until October 25, 2021.

23. Pursuant to Section 17(c) of Article II of the Pennsylvania Constitution, the Commission approved a preliminary reapportionment plan on December 16, 2021 by a 3 to 2 vote for the House map, with Commission Members Ward and Benninghoff dissenting, and a 5-0 vote for the Senate map (collectively, “2021 Preliminary Plan”).

24. The Commission held eight public hearings on the 2021 Preliminary Plan between December 16, 2021 and February 4, 2022. During the course of the hearings, citizens and government officials objected to the 2021 Preliminary Plan and/or voiced their opinions about it.

25. Thousands of comments and exceptions to the 2021 Preliminary Plan were submitted by January 18, 2022 online, by mail and to the Commission by the House Republican Policy Committee. In particular, Majority Leader Benninghoff timely submitted his exceptions to the 2021 Preliminary Plan on January 15, 2022.

26. On February 4, 2022, the Commission held a public meeting to vote on the 2021 Final Plan. Before the Commission voted on the 2021 Final Plan, Majority Leader Benninghoff presented the Commission with an amendment that addressed many of the issues with the 2021 Final Plan’s failure to comply with the Article II, Section 16 criteria and other issues relating to violations of the Voting Rights Act, the 14th and 15th Amendments to the United States Constitution, and

Article I, Sections 5 and 29 of the Pennsylvania Constitution. See Benninghoff Am. Majority Leader Benninghoff's amendment to the 2021 Final Plan was defeated by a three to two vote.

27. With a four to one vote, the Commission approved the 2021 Final Plan on February 4, 2022. Petitioner was the lone dissenting vote, though Leader Ward expressed her reservations about the House Plan in the 2021 Final Plan.

OBJECTIONS TO THE 2021 FINAL PLAN

28. The Pennsylvania Constitution provides that House and Senate districts should be “as nearly equal in population as practicable.” Pa. Const., art. II, § 16. It further provides that “[u]nless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.” *Id.*

29. The evidence submitted to the Commission demonstrates that there are numerous political subdivisions that were unnecessarily split, including unnecessary divisions of the cities of Allentown, Lancaster, Reading, and Harrisburg, and in the Borough of State College. The Commission divided these municipalities purely for partisan gain to create more Democratic-leaning seats.

30. To achieve the goal of “one person, one vote” the average House district should contain approximately 64,053 persons, and the average Senate district should contain approximately 260,054 persons.

31. With total population deviations of 8.65%⁵ and 8.11%, respectively for the House and Senate maps, the 2021 Final Plan also fails to create districts that are as nearly equal in population as practicable.

32. Moreover, several House districts in the 2021 Final Plan were drawn predominantly based upon race without a narrowly tailored compelling state interest in violation of the 14th and 15th Amendments to the United States Constitution and Article I, Section 29 of the Pennsylvania Constitution. The 2021 Final Plan thus unnecessarily subjects itself to liability for racial gerrymandering claims.

A. The 2021 Final Plan Divides Numerous Political Subdivisions Where It is Not Absolutely Necessary.

33. The 2021 Final Plan fails to comply with the requirement of Article II, Section 16 of the Constitution that “unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.”

34. The updated report of Dr. Michael Barber demonstrates how the plan unnecessarily divides up cities to combine highly Democratic areas with Republican suburban areas to spread out packed Democratic votes in violation of Article II, Section 16, and Article I, Section 5, of the Pennsylvania Constitution.

⁵ If analyzed using the non-adjusted Census data, the population deviation is 9.88%.

35. “Scholarship in political science has noted that the spatial distribution of voters through-out a state can have an impact on the partisan outcomes of elections when a state is, by necessity, divided into a number of legislative districts. This is largely the case because Democratic-leaning voters tend to cluster in dense, urban areas while Republican-leaning voters tend to be more equally distributed across the remainder of the state.” Updated Barber Rep. at 14.

36. “One prominent study of the topic (Chen and Rodden, 2013) finds that ‘Democrats are highly clustered in dense central city areas, while Republicans are scattered more evenly through the suburban, exurban, and rural periphery...Precincts in which Democrats typically form majorities tend to be more homogenous and extreme than Republican-leaning precincts. When these Democratic precincts are combined with neighboring precincts to form legislative districts, the nearest neighbors of extremely Democratic precincts are more likely to be similarly extreme than is true for Republican precincts. As a result, when districting plans are completed, Democrats tend to be inefficiently packed into homogenous districts.’” *Id.* (quoting Rodden, Jonathan A. *Why cities lose: The deep roots of the urban-rural political divide.* Hachette UK, 2019).

37. “This inefficient distribution of votes would not be a problem for Democrats if district boundaries were able to amble about the state and divide municipalities so as to create districts that had less overwhelming Democratic support. Rodden (2019) notes this by saying: ‘Democrats would need a redistricting process

that intentionally carved up large cities like pizza slices or spokes of a wheel, so as to combine some very Democratic urban neighborhoods with some Republican exurbs in an effort to spread Democrats more efficiently across districts' (pg. 155). However, the laws governing redistricting in Pennsylvania run counter to either of these strategies. Pennsylvania's redistricting rules that require districts to be geographically compact and to avoid county and municipal divisions prohibit the type of meandering districts described above." Updated Barber Rep. at 17.

38. The 2021 Final Plan does exactly this in the House Plan as well as the Senate Plan.

1. Allentown

39. Allentown is a heavily Democratic city with a population of 126,364. Updated Barber Rep. at 21. Thus, it must be divided into two districts, but the House Plan divides it unnecessarily into three. Figures 8 & 9 on pages 24-25 of Dr. Barber's updated report illustrates how the 2021 Final Plan carves up Allentown by combining the Democratic areas in Allentown with more Republican areas in the exurbs to create three safe Democratic seats instead of two more homogeneous Democratic-leaning seats—but at the expense of splitting Allentown into three pieces, which is more than is necessary and in violation of the constitution. In addition, the Senate Plan unnecessarily splits Allentown into two districts—SD-14 and SD-16—not because the population of the City requires such a split (it does not), but rather to carve-up Allentown to create an additional Democratic-leaning district and for partisan political gain. This

division also appears to have been performed with race as a predominant motive (as SD-14, one of the districts included in the split, was created as an alleged “minority opportunity district” for Hispanic voters, that the Voting Rights Act does not require, and contains approximately 26.37% Hispanic voting-age population).

2. Lancaster

40. Another example is found in the City of Lancaster, population 58,431, which is divided in half even though its population is small enough that the entire City can be held in one district. Updated Barber Rep. at 27-31, Figs. 12-13. And as a result, heavily Democratic precincts in the City can be combined with more Republican precincts in the City’s suburbs. *Id.*

3. Reading

41. Yet another example is the City of Reading, which was divided into three House districts even though, based on population, it only needed to be split into two House districts. Updated Barber Rep. at 33. The City was unnecessarily split four times into three House districts to gain an additional Democratic-leaning seat by combining portions of the City with more Republican-leaning voters in the suburbs. *Id.* at 33-35 Figs. 15-16.

4. Harrisburg

42. Even the Commonwealth’s Capitol City is not spared. Harrisburg, population of 50,679, can be easily contained within a single House district yet is split—in order to create another Democratic-leaning seat by combining strongly Democratic areas of the City of

Harrisburg with more Republican-favoring areas outside the City limits. Updated Barber Rep. at 38-39. This creates two Democratic districts with comfortable margins at the expense of splitting the State Capitol and a community of interest in violation of the Constitution. Updated Barber Rep. at 38-43, Figs. 19-20.

5. State College

43. State College, home of the Pennsylvania State University, with a population of 40,508 could easily be placed in a single House district but was split into two districts—even dividing the campus of the University—all to draw more and more Democratic districts. Updated Barber Rep. at 47-51, Figs. 25-26. The Commission received well over 100 comments about the splitting of State College but ignored this important feedback.

6. Scranton

44. In the 2021 Preliminary Plan, Scranton was shockingly divided into four House districts despite the fact that by its population it can be contained in only two. Updated Barber Rep. at 44. Although the 2021 Final Plan revised the House districts in this area to divide Scranton into only two House districts, it does so in a manner that generates more Democratic-leaning districts than in 98% of the 50,000 simulated plans. *Id.* at 44-45 & Fig. 22.

7. Pittsburgh

45. The City of Pittsburgh was also divided into three Senate districts—SD-38, SD-42, and SD-43—for

partisan political gain even though, based on population, it only needed to be split once.

8. South Whitehall Township

46. South Whitehall Township in Lehigh County was unnecessarily divided into two districts in the Senate Plan—SD-14 and SD-16—even though the Township could have been kept whole inside one district. This unnecessary division of South Whitehall Township was also performed for partisan political gain.

47. The Commission provided no credible justifications for the division of these cities, townships, and boroughs.

48. Rather, the aggregate of the above examples demonstrates how the 2021 Final Plan gerrymanders districts in urban areas throughout the Commonwealth to pinwheel and pie-up these municipalities to more “efficiently” spread Democratic voters out to maximize the number of Democratic-leaning seats.

49. Drawing lines to intentionally benefit one political party over another, whether to negate a natural disadvantage or not, is still a gerrymander and a violation of Article II, Section 16 and the Free and Equal Elections Clause under Article I, Section 5 of the Pennsylvania Constitution.

50. Article II, Section 16 does not speak of equalizing representation. It “speaks of the ‘integrity’ of political subdivisions, which bespeaks history and geography, not party affiliation or expectations.” *Holt II*, 620 Pa. at 413-14. The 2021 Final Plan historically

and unconstitutionally splits numerous cities across the state for the purpose of creating extra Democratic-leaning districts and discriminating against Republican-leaning voters throughout the Commonwealth.

51. The 2021 Final Plan contains multiple divisions of political subdivisions that are not “absolutely necessary.”

52. At no time did the Commission demonstrate that these divisions were “absolutely necessary” and evidence presented to the Commission proves the contrary.

53. The Commission failed to address, consider or adjust the 2021 Final Plan in accordance with requests from the public regarding these unnecessary splits and generally failed to comply with the mandates of Article II, Section 16 of the Pennsylvania Constitution.

54. The 2021 Final Plan’s House Plan splits 56 municipalities a total of 92 times. However, the amendment offered by Petitioner on February 4, 2022 splits only 42 municipalities a total of 76 times – significantly less. Benninghoff Am., Places Split By House Districts at 1. Most notably, the Benninghoff Amendment does not split Harrisburg, Lancaster or State College, and contains the minimum number of splits in Reading and Allentown. *Id.*; see also Updated Barber Rep. at 61. The offered amendment demonstrates that numerous splits in the 2021 Final Plan are not absolutely necessary.

B. The 2021 Final Plan Fails To Comply With The One-Person, One-Vote Standard Because It Has Excessive Population Deviation.

55. Article II, Section 16 states that House and Senate districts “shall be . . . as nearly equal in population as practicable.” Equality of population is the primary directive in the efforts of the Commission. *Holt v. 2011 Legislative Reapportionment Commission* (“*Holt I*”), 614 Pa. 364, 437 (2012). Although a range is permissible, the Supreme Court of Pennsylvania warned that it would not “direct the LRC to develop a reapportionment plan that tests the outer limits of acceptable deviations.” *Id.* at 445.

56. The total population deviation in the 2021 Final Plan for the House is 8.65%. That is significantly higher than the deviation under the current reapportionment plan, approved in *Holt II*, which is 7.88%. As such, the total population deviation of the 2021 Final Plan for the House districts unnecessarily stretches the bounds of what is permissible. The amendment offered by Petitioner had a population deviation of only 7.99%. *See* Benninghoff Am.; Updated Barber Rep. at 61. And given that the amendment likewise contains fewer subdivision splits, it cannot be said that a higher population deviation was needed to lower the number of political subdivision splits.

57. This unnecessary and excessive population deviation reflects yet another subordination of constitutional, traditional districting criteria for partisan advantage. *See LWV*, 645 Pa. at 122. This is especially true where there is a strong partisan skew to

the population deviation that systematically disadvantages Republican voters. The ideal population of a House district is 64,053. Of the 25 most underpopulated districts in the plan, only six are Republican-leaning and 19 are Democratic-leaning. By contrast, of the 25 most overpopulated districts in the plan, 20 are Republican-leaning and only five are Democratic leaning. See Report of 25 Most Under- and Overpopulated Districts, attached as **Appendix G**. This further demonstrates the intentional spreading out of Democratic voters to generate more Democratic-leaning seats.

58. This skew shows that the district lines were drawn for partisan gain and not based on traditional redistricting principles, and also shows a violation of the Equal Protection Clauses of the U.S. and Pennsylvania Constitutions. See *Larios v. Cox*, 300 F. Supp.2d 1320 (N.D. Ga. 2004) (three-judge panel), *aff'd*, 524 U.S. 947 (finding a plan that systematically underpopulated districts in rural areas and overpopulated districted in suburban areas in order to favor Democrats and disfavor Republicans was unconstitutional).

59. The total population deviation in the 2021 Final Plan for the Senate is 8.11%. That is higher than the deviation under the current reapportionment plan, approved in *Holt II*, which is 7.96%. As such, the total population deviation of the 2021 Final Plan for the Senate unnecessarily stretches the bounds of what is permissible.

60. Finally, the Commission drew the 2021 Final Plan using 2020 census data that was altered to

“reallocate” tens of thousands of prisoners from the prisons where they were counted in the Census, to what is purported to be their pre-incarceration residence.⁶ The United States Census Bureau counts incarcerated persons as residents of the district where they are incarcerated and there was no reason to depart from this practice. *See Evenwel v. Abbott*, 136 S. Ct. 1120 (2016) (approving status quo of using total population from Census for apportionment); *Davidson v. City of Cranston, Rhode Island*, 873 F.3d 125, 144 (1st Cir. 2016) (concluding that since the U.S. Supreme Court held that use of unadjusted total population is constitutional, there is no reason to think that inclusion of prisoners in total population for apportions is constitutionally suspect).

61. The Pennsylvania Constitution establishing the Commission repeatedly refers to the Federal decennial Census and mentions nothing of any adjustments to that data. Pa. Const., art. II, § 17. Any change to this practice should have been done through a constitutional amendment or statutory enactment by the General Assembly.

62. No state has established a policy regarding prisoner reallocation for reapportionment purposes absent legislative action.

⁶ The Commission’s decision to “reallocate” prison populations caused significant delays in a reapportionment process already behind schedule due to the four-and-a-half month delay in the release of Census data. These delays have placed into jeopardy the ability to have a legislative reapportionment plan in place for the 2022 elections.

63. The use of this altered Census data to reapportion the General Assembly has resulted in further departures from the population equality requirements of the Pennsylvania and U.S. Constitution, further violating the rights of voters throughout the Commonwealth. Indeed, if analyzed using the original, unaltered Census data, the total population deviation in the 2021 Final Plan's House Plan is 9.88% and in the 2021 Final Plan's Senate Plan is 8.49%.

64. Moreover, it caused further delays with the adoption of the 2021 Final Plan, placing the ability to use such districts for the 2022 election cycle in jeopardy.

C. The 2021 Final Plan Excessively Pairs Republican Incumbents in the House Plan, Which Further Demonstrates That The 2021 Final Plan Was Drawn Intentionally for Unfair Partisan Gain

65. As additional evidence that the 2021 Final Plan was drawn for the benefit of Democrats, it pits eight Republican incumbents against each other and only two Democrat incumbents against each other in the House. *See Report of Paired Incumbents, Appendix H.* In addition, it creates five districts where a Republican incumbent is paired against a Democratic incumbent in the House. But in all five of those districts, the Democrat incumbent has a significant advantage, whether measured by having a greater percentage of that Democrat incumbent's prior district included in the new district or by way of having more registered Democratic voters than registered Republican voters in

the district. This cannot have been by accident, and the deliberate and excessive pairing of Republican incumbents is further evidence of discrimination against Republican voters and the subordination of traditional and constitutional redistricting criteria for partisan favoritism. If the Commission is going to pair incumbents, it should not systematically favor one political party. *See Larios*, 300 F. Supp.2d 1320 (recognizing that the plans also systematically paired Republican incumbents while reducing the number of Democrat incumbents who were paired).

D. The 2021 Final Plan Violates The Fourteenth and Fifteenth Amendments to the United States Constitution, The Voting Rights Act, And Article I, Section 29 of the Pennsylvania Constitution

66. Proponents of the 2021 Final Plan have *argued* that the plan for the House was drawn with the intent and design of creating more opportunities for minority voters to elect the representatives of their choice. Thus, race was purported to be the predominant factor governing the creation of the 2021 Final Plan for the House.

67. The U.S. Supreme Court has held that “the Fourteenth Amendment requires state legislation that expressly distinguishes among citizens because of their race to be narrowly tailored to further a compelling governmental interest.” *Shaw v. Reno*, 509 U.S. 642, 643 (1993). “[A] plaintiff challenging a reapportionment statute under the Equal Protection Clause may state a claim by alleging that the legislation, though race neutral on its face, rationally cannot be understood as

anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification.” *Id.* at 649. A plaintiff alleging a racial gerrymandering claim need only show that race was the “predominant factor motivating the legislature’s decision” which requires proving that the legislature subordinated traditional race-neutral districting criteria to racial considerations. *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 792 (2017).

68. It has been posited that the racial intent driving the creation of the 2021 Final Plan for the House is consistent with the federal Voting Rights Act of 1965. “But in the context of a Fourteenth Amendment challenge, courts must bear in mind the difference between what the law permits and what it requires.” *Shaw*, 509 U.S. at 654. And if the state is going to invoke the Voting Rights Act to justify race-based redistricting, it must show that it has “a strong basis in evidence” for concluding it was required. *Alabama Legislative Black Caucus v. Alabama*, 125 S. Ct. 1257, 191 L. Ed. 2d 314, 335 (2015).

69. Further, Article I, Section 29 of the Pennsylvania Constitution, adopted by the voters in 2021, provides that “[e]quality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the race or ethnicity of the individual.” In the Plain English Statement describing this new amendment, Pennsylvania’s Attorney General wrote: “Inclusion of this amendment within the Pennsylvania Constitution signifies that freedom from discrimination based on race or ethnicity is an essential

principle of liberty and free government. This amendment applies to all Pennsylvania state, county and local governmental entities, and guarantees equality of rights under the law. ... This equal right to be free from racial or ethnic discrimination will exist independent from any such rights under the United States Constitution or corresponding federal law.”

70. Throughout the Commission’s work, there was a clear focus on drawing districts on the basis of race. For example, during one meeting on November 16, 2021, a member of Leader McClinton’s staff circulated a sheet analyzing certain proposed districts in or about Bucks County. The sheet included rows listing the number of “35% or Higher 18+ Black Seats,” “35% or Higher 18+ Hispanic Seats,” and “35% or Higher 18%+ Coalition (Black, Hispanic, Asian Combined) Seats.” See **Appendix I**. This fixation on the creation of districts throughout the Commonwealth with threshold levels of minority group voting-age population permeated the Commission’s work.

71. The Commission Chair has acknowledged that it drew several House districts on the basis of race. Chair Nordenberg testified at the December 16, 2021 hearing that “the plan includes seven minority opportunity districts—true VRA districts, minority influence districts, and collation districts—in which there is no incumbent, creating special opportunities

[for] the election of minority representatives.”⁷ Those districts included Districts 10⁸, 22, 54, 104, 116, and 203. *Id.*⁹ As the Chair further testified, “there is no incumbent-advantage that will need to be overcome in any of these districts, which should give the minority communities residing in them a special opportunity.” *Id.* at 13. Thus, the Chair has openly stated that these districts were drawn with race as the predominant factor.

72. At the February 4, 2022 hearing at which the Commission voted to adopt the 2021 Final Plan, Chair Nordenberg stated:

When circumstances permitted us to do so, and after ensuring compliance with state and federal law, we fashioned districts to create additional opportunities **beyond the minimum requirements of the Voting Rights Act**, positioning voters in racial and ethnic minority groups to influence the election of candidates of their choice. Going beyond those minimum requirements not only is consistent with the Voting Rights Act, but is consistent with, and

⁷ Written Testimony of the Commission Chair, Dec. 16, 2021, p. 12, available at <https://www.redistricting.state.pa.us/resources/press/20211216%20Chairman's%20Statement%20LRC%20Meeting%20121621.pdf>.

⁸ Was House District 9 in the 2021 Preliminary Plan.

⁹ The Commission Chair only listed six districts in his written remarks. However, House Districts 19 and 49 (was House District 50 in the 2021 Preliminary Plan) also appear to satisfy the Chair's criteria, getting to a total of eight districts.

perhaps required by, both the Free and Equal Elections Clause and the Racial and Ethnic Equality Clause of the Pennsylvania Constitution.¹⁰ (emphasis added).

This is a tacit admission that the 2021 Final Plan drew voters into districts based upon their race and when not required by the Voting Rights Act.

73. In addition, during conversations with the Chair's map drawer following adoption of the 2021 Preliminary Plan, proposed changes to House Districts 105 and 125 in Dauphin County to reduce municipal splits were rejected because any changes would purportedly lower the minority voting age population to an unidentified unacceptable number. This further demonstrates that the 2021 Final Plan illegally draws to a racial target.

74. In particular, certain members of the Commission have been outspoken regarding the creation of "coalition" districts that are nowhere required by the Voting Rights Act. As Chair Nordenberg testified at the February 4, 2022 hearing: "In addition to preserving and expanding districts in which a racial minority group makes up the majority of the population, the preliminary plan takes the important step of including coalition districts."¹¹

¹⁰ See Feb. 4, 2022 LRC Hearing at 0:09, available at <http://aws.redistricting.state.pa.us/Redistricting/Resources/Pres/2022-02-04%20LRC.mp4>

¹¹ *Id.* at 42:20.

75. In this case, the only evidence proffered to justify the Commission's explicit and predominant use of race in the construction of the 2021 Final Plan for the House was an expert report by Matthew Barreto, Ph.D. But as a matter of law, Professor Barreto's report fails to show the existence of legally significant racially polarized voting, in part because he has not studied a sufficient number of elections (including primary elections) to generate a reliable pattern of voting behavior by any of his groups; because he has improperly lumped together Black, Hispanic, and other minority voters into an aggregate all-minority metric for his analysis, which means he cannot demonstrate each racial group votes cohesively as a group, and with the other minority groups in the coalition; and because he has not shown evidence that all three *Gingles* preconditions are satisfied anywhere in the Commonwealth. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). Most notably of all, Professor Barreto admitted, under questioning by Leader Benninghoff on January 14, 2022, that his analysis did not identify legally significant racially polarized voting in the Commonwealth—meaning, that there was no evidence that white-bloc oppositional voting prevented minority voters from usually being able to elect the representatives of their choice.¹²

76. Further, Professor Barreto's report has been criticized by a leading political methodologist and Voting Rights Act expert, Professor Jonathan Katz,

¹² See Jan. 14, 2022 LRC Hearing at 1:53, available at: <http://aws.redistricting.state.pa.us/Redistricting/Resources/Videos/11422-LRC-2.mp4> (last visited Feb. 9, 2022).

who issued a report dated Jan. 14, 2022 (the “Katz Report,” provided to the Commission at the January 14, 2022 hearing), concluding that due to several methodological flaws, more fully set forth in his report, “Dr. Barreto’s analysis of racially polarized voting is statistically flawed and no scientifically valid inferences may be drawn from it.” Katz Rep. at 1. Dr. Katz updated his report after analyzing the 2021 Final Plan and concluded that nothing about the 2021 Final Plan changed his original analysis. *See Updated Katz Report*, dated Feb. 4, 2022, attached as **Appendix J**.

77. The analysis performed by Professor Barreto does not constitute a strong basis in evidence for the creation of majority-minority districts anywhere in the Commonwealth, let alone “coalition” districts. And the Commission has no other evidence to support its predominant use of race in drawing House districts in the 2021 Final Plan.

78. The Commission has also attempted to justify the extreme partisan bias exhibited by the 2021 Final Plan for the House due to racial considerations, a position it supported with written testimony dated Jan. 14, 2022 and an expert report dated Jan. 7, 2022 from Kosuke Imai, Ph.D. (the “Imai Testimony” and the “Imai Report”). Professor Imai ran a set of computer simulations and purports to demonstrate that the partisan bias exhibited in the Preliminary House Plan was explained by the fact that the Preliminary House Plan contains 25 majority-minority districts, including several so-called “coalition” districts (i.e., districts drawn so that a combination of racial groups together makes up 50% or more of the citizen voting-age

population), even though the Third Circuit has never held that claims under the Voting Rights Act may be brought by a “coalition” of multiple racial groups, and the Sixth Circuit has rejected that claim outright. *Nixon v. Kent Cty.*, 76 F.3d 1381 (6th Cir. 1996) (en banc).

79. But as Professor Barber demonstrated in his testimony (Barber Presentation Deck, Jan. 14, 2022, at p. 21), and in his updated report (at 8-9 & Figs. 1-2) more than 50% of his race-blind computer simulated plans contained at least 24 majority-minority districts (the 2021 Final Plan has 25), and more than 50% of his race-blind computer simulated plans generated 17 or more districts with at least 35%, but less than 50%, minority voting-age population (the 2021 Final Plan has 19). Professor Barber showed that drawing districts on the basis of race was not necessary to achieve a wealth of majority-minority districts or districts with 35% minority voting-age population. Thus, the number of Democratic-leaning seats generated by the 2021 Final Plan was not the result of attempting to generate districts that gave minorities more opportunities to elect candidates of their choice.

80. In addition, the amendment offered by Leader Benninghoff contained eight majority Black districts (one more than the 2021 Final Plan), five majority Latino districts (one more than the 2021 Final Plan), and 26 overall majority-minority districts (one more than the 2021 Final Plan) without subordinating traditional redistricting criteria. Updated Barber Rep. at 8, 61-62. It also creates 17 minority opportunity districts, including four districts with a Hispanic voting

App. 60

age population between 35% and 50% - two more than the 2021 Final Plan. *See id.* at 8, 61-63. And it did so without explicit consideration of race.

81. Moreover, as other evidence has shown, the 2021 Final Plan's splitting of various cities and urban areas in numerous House districts acts to "crack" and dilute minority communities for the purpose of Democratic partisan gain.

82. In Allentown, the 2021 Final Plan divides the city three different ways and cracks the Hispanic vote into three different House districts. Updated Barber Rep. at 26, Fig. 10. District 22 is a majority-Hispanic district, but has a lower Hispanic voting age population (53.3%) than the current district at 54.5%. *Id.* Thus, despite the growth of the Hispanic population in Allentown and the surrounding area, HD-22 in the 2021 Final Plan has a lower HVAP than the current plan. The Benninghoff amendment eliminates the extra, unnecessary split of Allentown. *Id.* at 61.

83. The Commission received written testimony from LatinoJustice raising concerns with the Latino Community's ability to elect candidates of their choice given the way its members are cracked in Allentown under the 2021 Preliminary Plan.¹³

84. The Commission received further testimony from the Hispanic community that while on paper the 2021 Preliminary Plan creates districts that may look good for the Hispanic community, it does not create

¹³ *See* Written Testimony from LatinoJustice at 2-3, **attached as Appendix K.**

districts that enhance the opportunity of Hispanics to elect the candidates of their choice.¹⁴ Nothing in the 2021 Final Plan addresses these concerns raised with the 2021 Preliminary Plan.

85. As one example, in the 2020 primary election, Representative Schweyer defeated Enid Santiago – a Hispanic candidate – **by just 55 votes** in the primary for HD-22. Yet, the 2021 Final Plan reduces the percentage of HVAP in HD-22 and the remaining two districts which include a part of Allentown and have an HVAP of just 38.4% and 15.1%, respectively. Updated Barber Rep. at 26, Fig. 10.

86. Despite this testimony, the 2021 Final Plan failed to address these concerns.

87. Similarly, HD-180 in Philadelphia has an Hispanic voting age population of 27,701 in the current plan, but was reduced to only 27,008 people in the 2021 Final Plan – 693 less potential Hispanic voters.

88. The same is also true in Lancaster. The City of Lancaster has an Hispanic voting age population of 35.9%. Yet instead of keeping Lancaster whole, the 2021 Final Plan divides it and creates two house districts with *lower* Hispanic voting age populations of 12.8% and 34.3%, respectively. Updated Barber Rep. at 32, Fig. 14. Thus, rather than strengthen the minority vote here, the 2021 Final Plan reduces it. The

¹⁴ Testimony of Victor Martinez, Jan. 6, 2022 LRC Hearing at 2:09, available at <http://aws.redistricting.state.pa.us/Redistricting/Resources/Video/1-6-22%20LRC%20Session%201.mp4>.

Benninghoff amendment eliminates the split of Lancaster. *Id.* at 61.

89. The City of Reading, which has an Hispanic voting age population of 64%, is similarly divided in a way that reduces the voting strength of the Hispanic community. The City of Reading is divided into three House districts, each with a significantly lower HVAP: 33.2% in HD-126, 34.4% in HD-129, and 52.1% in HD-127. Updated Barber Rep. at 37, Fig. 17. The Benninghoff amendment eliminates the unnecessary split of Reading. *Id.* at 61.

90. In particular, the 2021 Final Plan reduced the Hispanic voting age population in HD-127 from 31,822 people in the current plan to 23,915 people in the 2021 Final Plan.

91. As LatinoJustice submitted via their written testimony to the Commission regarding these reductions: “A reduction in the voting age population of Latinos will impede the ability of Latinos to elect a candidate of their choice.”¹⁵

92. The Black community is likewise cracked in certain areas. For example, the City of Harrisburg has a Black voting age population of 47.3%. Yet, despite the fact that the City of Harrisburg and its Black population could be contained all in one House district, it is split into two districts with a BVAP of 19.1% and 27.4%, respectively. Updated Barber Rep. at 43 Fig. 21. The Benninghoff amendment eliminates the split of Harrisburg. *Id.* at 61.

¹⁵ See LatinoJustice Written Testimony at 3.

93. For all these reasons, the 2021 Final Plan infringes the rights guaranteed to citizens of the Commonwealth under the Fourteenth and Fifteenth Amendments to the United States Constitution, the federal Voting Rights Act, and Article I, Section 29 of the Pennsylvania Constitution.

E. Specific Additional Objections

94. Many municipal splits throughout the 2021 Final Plan are not absolutely necessary and reflect a subordination of traditional, constitutional districting criteria for partisan advantage—including, without limitation, the following: (a) Plum Township and Upper St. Clair Township in Allegheny County; (b) Lancaster City in Lancaster County; (c) two municipal splits in House District 189: Stroud Township and Middle Smithfield Township in Monroe County; and (d) Harrisburg in Dauphin County.

95. The separation of the City of Johnstown in Cambria County from HD-71 was not justified by traditional, constitutional redistricting criteria and reflects a subordination of those criteria for partisan advantage.

96. Remove the municipal split of State College Borough in Centre County that is not absolutely necessary, and remove the Harrisburg based HD-103 from Cumberland County, in order to comply with the population equality requirement of Article II, Section 16 of the Pennsylvania Constitution and the U.S. Constitution and to not subordinate such criteria to partisan gain.

App. 64

97. It is necessary to reduce the three district splits in Allentown and Reading to two district splits in each city, because these excessive municipal splits are not absolutely necessary and reflect a subordination of traditional, constitutional districting criteria for partisan advantage. Additionally, reducing these splits will avoid diluting the Hispanic voting age population for the two Reading districts and the two Allentown districts and will additionally remove the municipal split of Upper Macungie Township in Lehigh County that is not absolutely necessary.

98. Remove the split of Montgomery Township in HD-151 that was done for partisan gain and that unnecessarily splits the Wissahickon School District and reduces the Korean population in this House district over hundreds of exceptions, including exceptions by several Korean citizens requesting that the Assi Plaza be kept with the rest of Montgomery Township, Horsham and Upper Dublin.

REQUEST FOR RELIEF

99. For the foregoing reasons, Petitioner asks this Court to determine that the 2021 Final Plan is contrary to law under Article I, Section 5, Article I, Section 29, and Article II, Section 16 of the Pennsylvania Constitution, the Voting Rights Act, and the Fourteenth and Fifteenth Amendments to the United States Constitution and to remand the 2021 Final Plan to the Commission with direction to make the following revisions:

- a. Eliminate the unnecessary splits of political subdivisions including in the cities of

App. 65

Allentown, Lancaster, Reading, Harrisburg, and the Borough of State College in the House map and within Allegheny County, Lancaster, and South Whitehall Township in the Senate map;

- b. Reduce the total population deviation in both the House and Senate maps;
- c. Redraw the legislative district lines without race as a predominant factor unless and until there is an identified compelling state interest;
- d. Redraw the legislative districts so that they do not subordinate traditional redistricting criteria for partisan gain;
- e. Address the remaining issues raised in this Petition.

100. Issue an order that because the Commission failed to timely adopt a reapportionment plan that meets the requirements of the Pennsylvania Constitution, the 2022 elections for the Pennsylvania General Assembly must occur under the districts adopted in 2012 pursuant to the Application for Relief to be submitted forthwith in this action.

Dated: Philadelphia, Pennsylvania
February 17, 2022

/s/ Jeffrey Duffy

BAKER & HOSTETLER LLP

Jeffrey Duffy (PA No. 081670)

BNY Mellon Center

App. 66

1735 Market Street, Suite 3300
Philadelphia, PA 19103
(215) 568-3100 / Fax (215) 568-3439
jduffy@bakerlaw.com

Patrick T. Lewis (Ohio 0078314)(*)
plewis@bakerlaw.com
BAKER & HOSTETLER LLP
Key Tower
127 Public Square, Suite 2000
Cleveland, OH 44114-1214
Telephone: 216.621.0200

Robert J. Tucker (Ohio 0082205)(*)
rtucker@bakerlaw.com
BAKER & HOSTETLER LLP
200 Civic Center Drive, Suite 1200
Columbus, OH 43215-4138
Telephone: 614.228.1541

Rodney A. Corey (PA 69742)
rcorey@pahousegop.com
James G. Mann (PA 85810)
jmann@pahousegop.com
Katherine M. Testa (PA 202743)
ktesta@pahousegop.com
PENNSYLVANIA HOUSE OF
REPRESENTATIVES REPUBLICAN
CAUCUS
Main Capitol Building, Suite B-6
P.O. Box 202228
Harrisburg, PA 17120-2228
Telephone: 717.783.1510

App. 67

() Pro hac vice applications
forthcoming*

*Counsel for The Honorable Kerry A.
Benninghoff, individually, and as the
Majority Leader of the Pennsylvania
House of Representatives*

[Certificates Omitted for Printing Purposes]

* * *

[Index of Appendices Omitted for Printing Purposes]

* * *

Report on Redistricting Plan
for the Pennsylvania House of Representatives
of the Pennsylvania Legislative
Reapportionment Commission

Dr. Michael Barber
Brigham Young University
724 Spencer W. Kimball Tower
Provo, UT 84604
barber@byu.edu

APPENDIX A

PAGES 0003a to 0008a REMOVED

* * *

[p. 0009a]

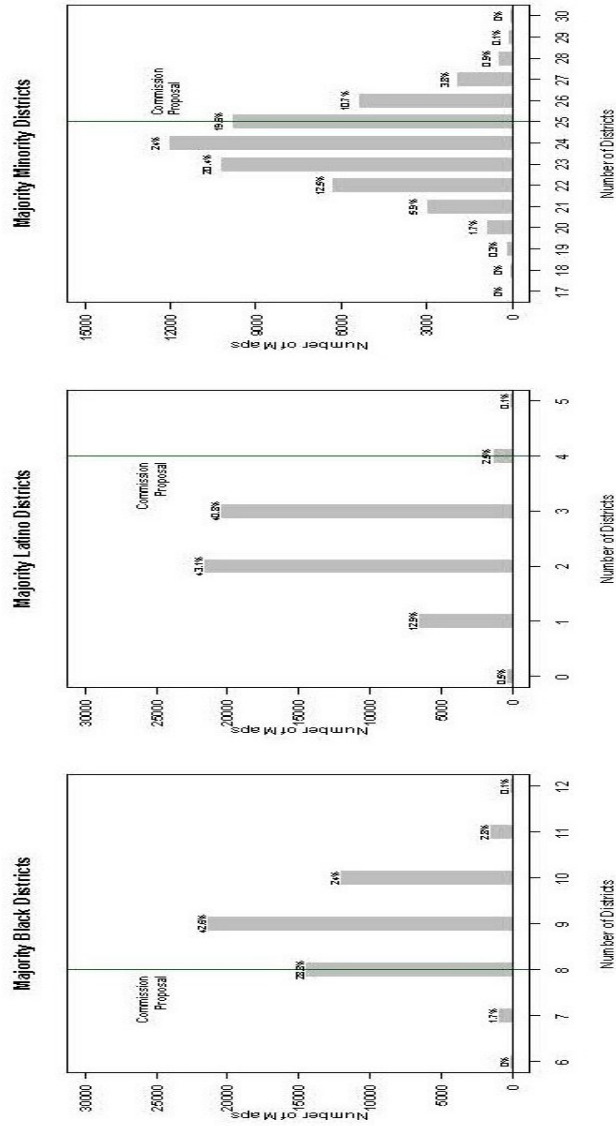
3.2 Race

Figure 1 displays the distribution of districts according to three different measures of the racial composition of districts commonly used in redistricting litigation - the number of majority Black districts, the number of majority Latino districts, and the number of majority-minority districts in the simulations as well as the Commission's proposal. The left panel shows the number of majority Black districts, the middle panel shows the number of majority Hispanic districts, and the right panel shows the number of majority-minority districts. The grey bars show the distribution of these

App. 69

districts in the simulations and the green vertical line shows the results for the Commission proposal according to each metric. The Commission proposal generates eight majority Black districts, four majority-Hispanic districts, and 25 majority-minority districts throughout the state. These are all within the range produced by the simulations even though the simulations do not explicitly consider race when drawing district lines.

Figure 1: **Racial Composition of Districts and Simulations - Majority Minority Districts**



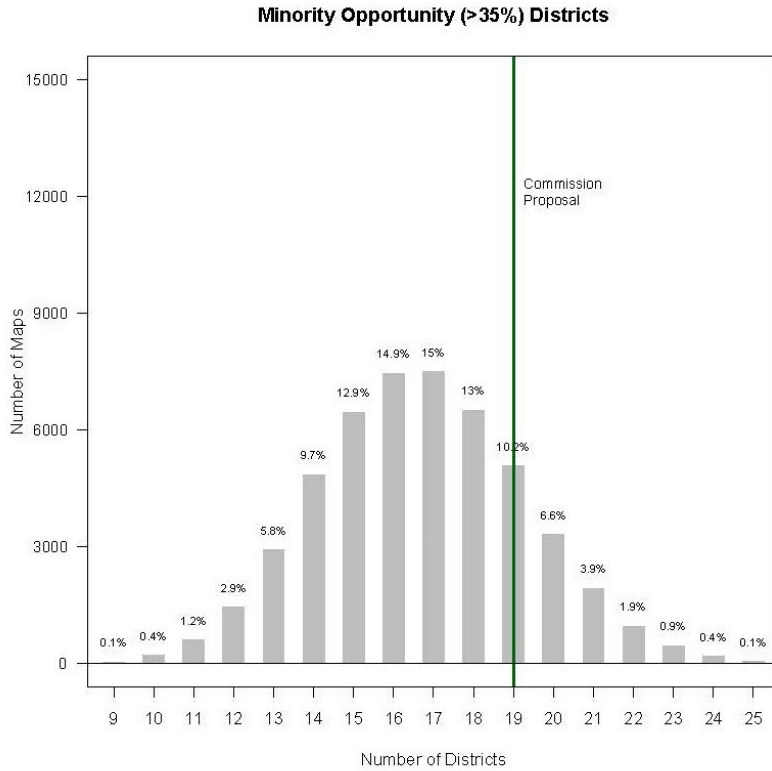
App. 71

Note: The grey distributions are the number of majority Black (left panel), Hispanic (middle panel), and minority (right panel) districts generated from the 50,000 simulations. The vertical green line is the respective number in the Commission's final proposal.

An additional consideration is the creation of coalition majority "opportunity" districts where the proportion of minority voters is not over 50% but is large enough that they can exert substantial influence in the selection of candidates.⁵ Figure 2 shows the results for these coalition minority opportunity districts. The green line shows the results for the Commission proposal according to each metric. The Commission proposal generates 19 minority coalition opportunity districts, which is within the range of the simulation results as well.

⁵The proportion of minority population necessary to constitute an effective "opportunity" district, whether or not a majority-minority district is necessary, and the number and location of these districts first requires an analysis of racially polarized voting in the different regions of the state, the degree of White crossover voting, as well as consideration of the other *Gingles* factors. I have not seen any such analysis of the LRC proposal.

Figure 2: Racial Composition of Districts and Simulations - Coalition Minority Opportunity Districts



Note: The grey distribution is the number of coalition minority opportunity districts generated from the 50,000 simulations. The vertical green line is the respective number in the Commission’s final proposal.

PAGES 0011a to 0021a REMOVED

* * *

[p. 0022a]

5.1 Lehigh and Bucks Counties

The combined population of Lehigh and Bucks counties is equal to approximately 16 legislative districts. In the 16 districts that cover this area, the Commission's proposal generates 11 Democratic leaning districts. The distribution of Democratic leaning districts based on the statewide partisan elections index calculated for each of the simulation results is shown in Figure 7. The black bars show the distribution from the simulation results, with the percentage of simulations that generate each of the various possible number of Democratic seats in the counties shown below each bar. The most common outcome in the simulations is 9 Democratic districts. The red vertical line at 11 represents the number of Democratic leaning seats in the Commission's map in the portion of the state. In 99.8% of the simulations there are fewer than 11 Democratic leaning districts in these counties. In less than 1% of the simulations are there 11 Democratic leaning districts in these counties, as is the case in the Commission's proposed map.

The Commission's plan achieves this by dividing the city of Allentown in Lehigh County more than is necessary so as to more evenly distribute the Democratic voters that live in the city across more districts. Allentown is heavily Democratic and has a population of 126,364, which when divided by the target district size of 64,053 comes to approximately 1.97 districts. Thus, Allentown is too large to be completely contained in one district and will need to be divided into two districts. However, the Commission's

App. 74

plan divides the city into three districts. Figure 8 below shows this using two maps. The top panel shows a map of the Commission's proposed district boundaries in Lehigh County where Allentown is located. The bottom panel focuses exclusively on the city of Allentown and shows how the city is split into three different districts.

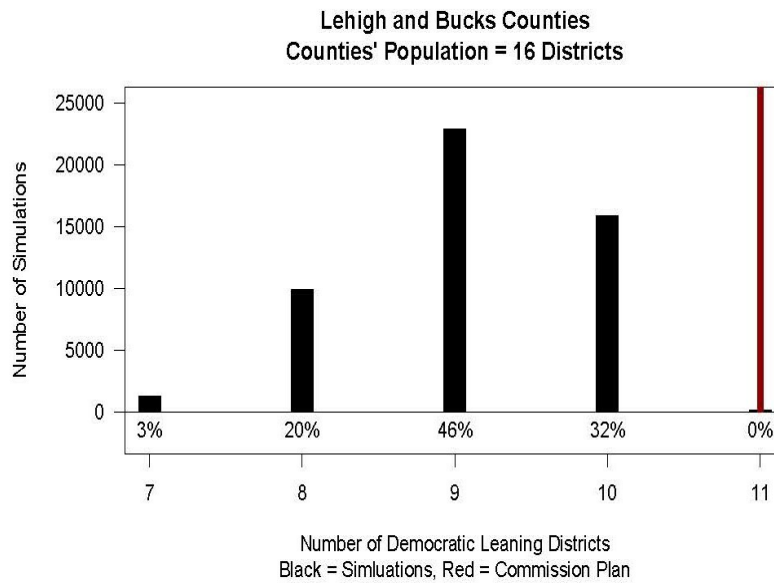
The next set of maps shows how this division follows the gerrymandering strategy of dividing Democratic cities into “pinwheel” shapes where Democratic voters in the city can be combined with less Democratic areas outside of the city to make more Democratic districts with comfortable margins, but not the overwhelmingly Democratic margins that would occur if fewer districts were drawn that were more geographically compact and split the city fewer times. In some cases this approach also has the effect of dividing minority communities that live in these cities and diluting their influence by distributing them across multiple legislative districts. Figure 9 shows a map of each of the three districts that intersect Allentown (HD-22, HD-134, HD-132). Each district is colored based on the partisan lean of the precincts in the district. The pattern we see, particularly in Districts 134 and 132, is exactly what I described earlier — the combination of heavily Democratic precincts in the center of the city with more Republican leaning precincts in the suburbs of the city. While Allentown itself is heavily Democratic (its partisan index based on the 2012-2020 statewide elections is 0.72), the inclusion of the more Republican leaning suburbs distributes Democrats more efficiently to create three Democratic leaning districts, two of which (HD-134 and HD-132)

App. 75

have less Democratic support, but are still comfortably Democratic.

The final map, Figure 10, shows that this approach also divides the Latino population in the city. As a whole, Allentown has a Hispanic voting age population of 48.9%. While District 22 is majority Latino, Districts 134 and 132 have substantially lower Latino populations (38.4% and 15.1%, respectively) as a result of the districts dividing the city and reaching into more suburban areas with a lower concentration of Latinos.

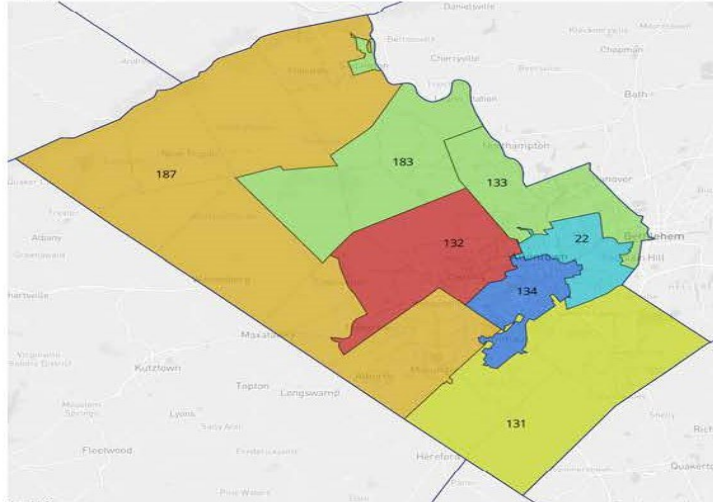
Figure 7: Distribution of Partisan Districts from Simulations in Lehigh and Bucks Counties



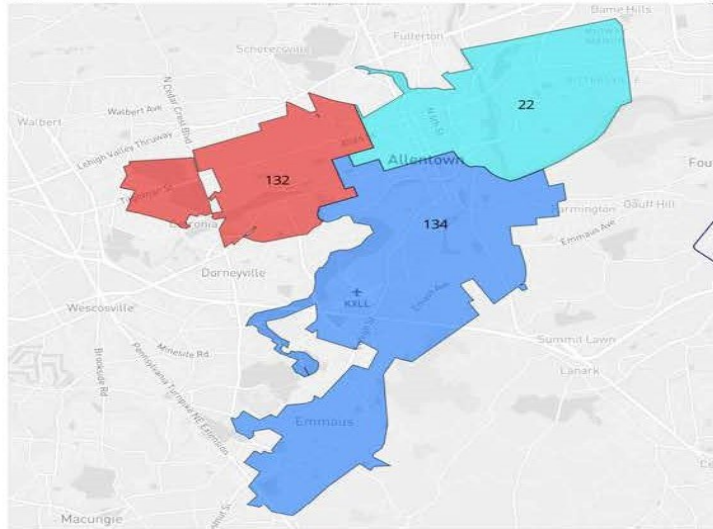
Note: Distribution of likely district partisanship based on the statewide partisan elections index calculated for each of the simulation results. The black bars show the distribution from the simulation results, with the percentage of simulations that generate each of the various possible number of Democratic seats in the cluster shown below each bar. The red vertical line shows the number of Democratic leaning seats in the Commission's proposed map in the same county.

Figure 8: Commission Proposed Districts in Lehigh County

(a) Proposal District Boundaries in Lehigh County



(b) District Boundaries within Allentown City Limits

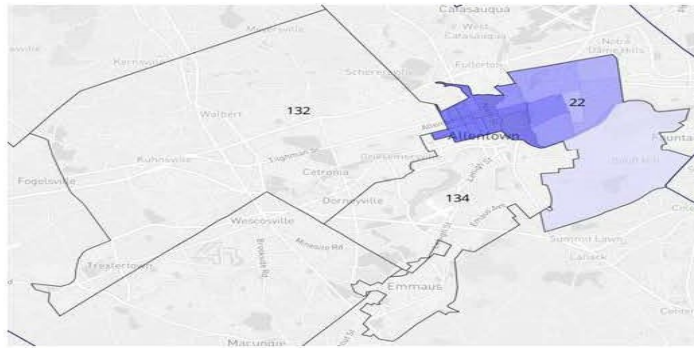


App. 78

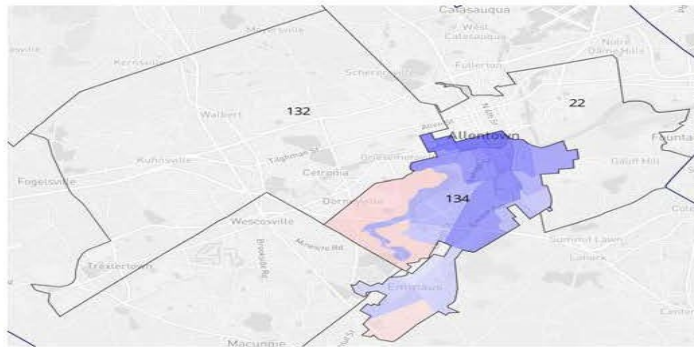
Note: The top figure shows the district boundaries within Lehigh County. The bottom figure shows how the city of Allentown is divided across three districts despite having a population that only requires it to be split into two districts. In each district we see a combination of heavily Democratic urban center with less Democratic suburban areas at the outer edges of the district.

App. 79

District 22 - Partisan Index: 0.74



District 134 - Partisan Index: 0.63



District 132 - Partisan Index: 0.56

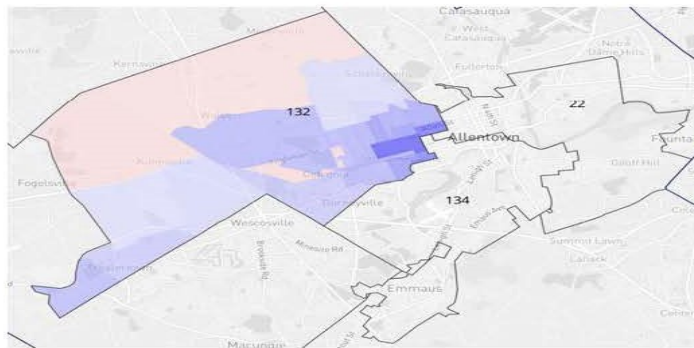
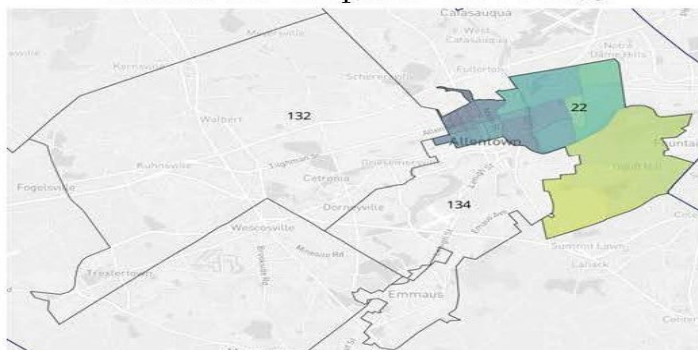


Figure 9: Note: Each panel shows one of the districts that intersect Allentown. The maps are colored

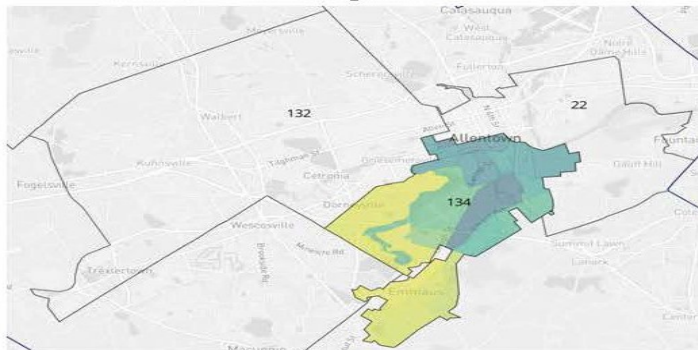
App. 80

according to the partisan composition of precincts in the district.

District 22 - Hispanic VAP: 53.3%



District 134 - Hispanic VAP: 38.4%



District 132 - Hispanic VAP: 15.1%

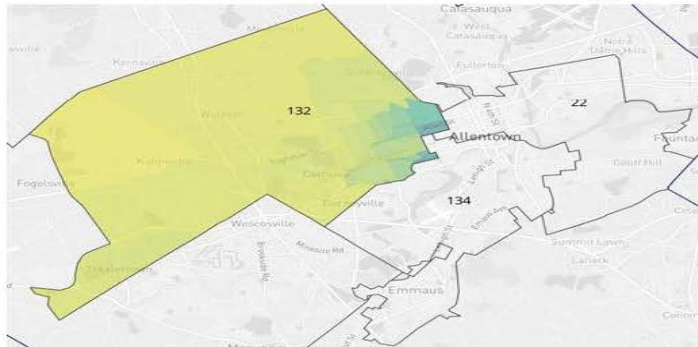


Figure 10: Each panel shows one of the districts that intersect Allentown. The maps are colored according to the Hispanic composition of precincts in the district. Darker shades indicate a greater proportion of Latinos. The city of Allentown has a 48.9% Hispanic voting age population.

5.2 Schuylkill, Berks, Lancaster, and Lebanon Counties

The combined population of Schuylkill, Berks, Lancaster, and Lebanon counties is equal to approximately 20 legislative districts. In the 20 districts that cover this area, the Commission's proposal generates 5 Democratic leaning districts. The distribution of Democratic leaning districts based on the statewide partisan elections index calculated for each of the simulation results is shown in Figure 11. The black bars show the distribution from the simulation results, with the percentage of simulations that generate each of the various possible number of Democratic seats in the counties shown below each bar. The most common outcome in the simulations is 4 Democratic districts. The red vertical line at 5 represents the number of Democratic leaning seats in the Commission's map in the portion of the state. In 80.8% of the simulations there are fewer than 5 Democratic leaning districts in these counties. In only 19% of the simulations are there 5 or more Democratic leaning districts in these counties, as is the case in the Commission's proposed map.

The Commission's plan achieves this by dividing the cities of Lancaster in Lancaster County and Reading in Berks County more than is necessary so as to more

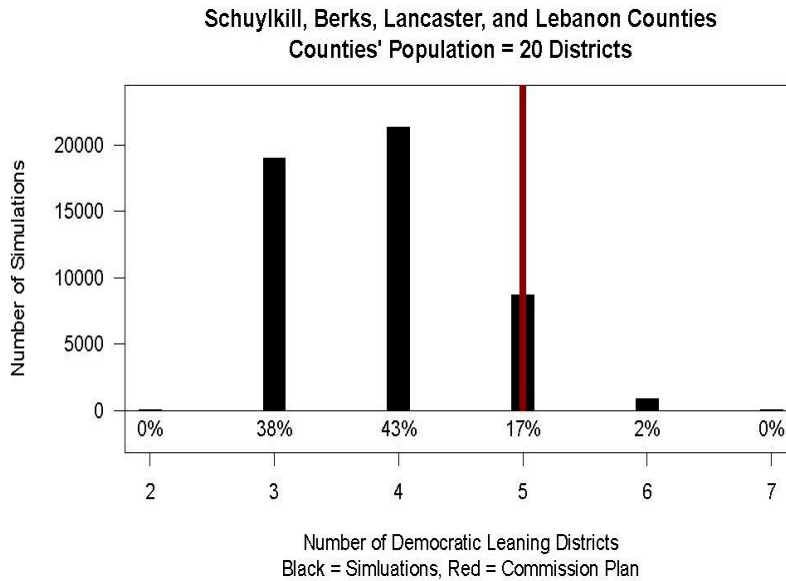
evenly distribute the Democratic voters that live in these cities across more districts. Lancaster is heavily Democratic and has a population of 58,431, which when divided by the target district size of 64,053 comes to approximately 0.91 districts. Thus, Lancaster is not larger than the target district population and could be kept whole. However, the Commission's plan divides the city nearly evenly into two districts. Figure 12 below shows this using two maps. The top panel shows a map of the Commission's proposed district boundaries in Lancaster County where the city of Lancaster is located. The bottom panel focuses exclusively on the city of Lancaster and shows how the city is split into two different districts.

The next set of maps shows how this division follows the gerrymandering strategy of dividing heavily Democratic cities and combining them with less Democratic areas outside of the city to make more Democratic districts with comfortable margins, but not the overwhelmingly Democratic margins that would occur if the city were kept whole. In Lancaster this approach also has the effect of dividing and diluting the influence of the Latino community that lives in the city by distributing them across multiple legislative districts. Figure 13 shows a map of each of the two districts that intersect Lancaster (HD-50, HD-96). Each district is colored based on the partisan lean of the precincts in the district. The pattern we see is familiar — the combination of heavily Democratic precincts in the center of the city with more Republican leaning precincts in the suburbs of the city. While Lancaster itself is heavily Democratic (its partisan index based on the 2012-2020 statewide elections is 0.76), the inclusion

of the more Republican leaning suburbs distributes Democrats more efficiently to create two Democratic leaning districts rather than one district that is overwhelmingly Democratic.

The final map, Figure 14, shows that this approach also divides the Latino population in the city. As a whole, Lancaster has a Latino voting age population of 35.9%. Both Districts 96 and 49 have a lower Latino population (12.8% and 34.3%, respectively) as a result of the districts dividing the city and reaching into more suburban areas with a lower concentration of Latinos.

Figure 11: Distribution of Partisan Districts from Simulations in Schuylkill, Berks, Lancaster, and Lebanon Counties

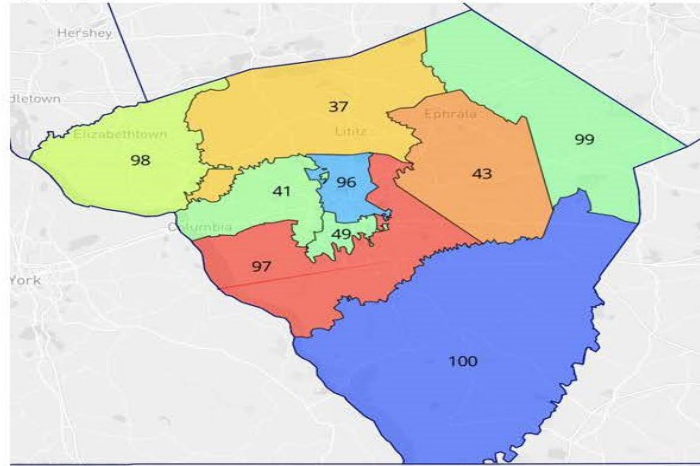


App. 84

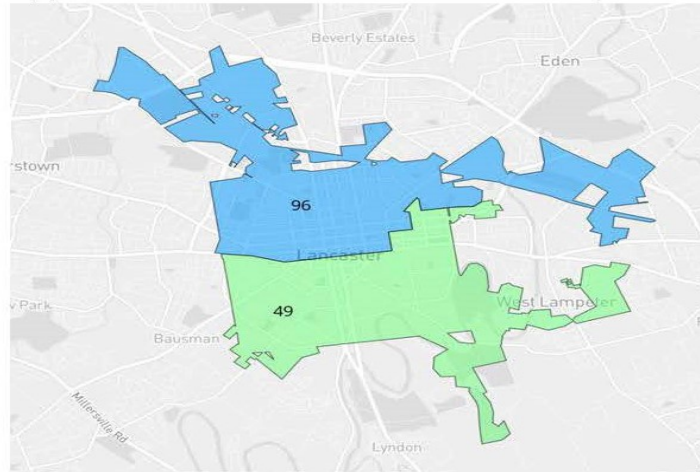
Note: Distribution of likely district partisanship based on the statewide partisan elections index calculated for each of the simulation results. The black bars show the distribution from the simulation results, with the percentage of simulations that generate each of the various possible number of Democratic seats in the cluster shown below each bar. The red vertical line shows the number of Democratic leaning seats in the Commission's proposed map in the same county.

Figure 12: Commission Proposed Districts in Lancaster County

(a) Proposal District Boundaries in Lancaster County



(b) District Boundaries within Lancaster City Limits

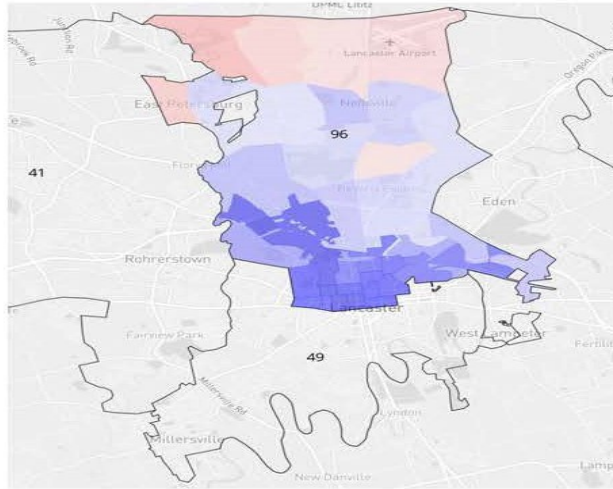


Note: The top figure shows the district boundaries within Lancaster County. The bottom figure shows how the city of Lancaster is divided nearly equally across

App. 86

two districts despite having a population that would allow the city to be entirely contained in one district.

District 96 - Partisan Index: 0.57



District 49 - Partisan Index: 0.69

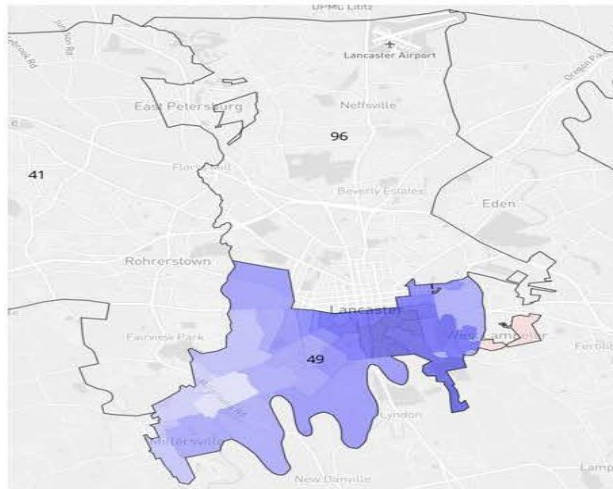
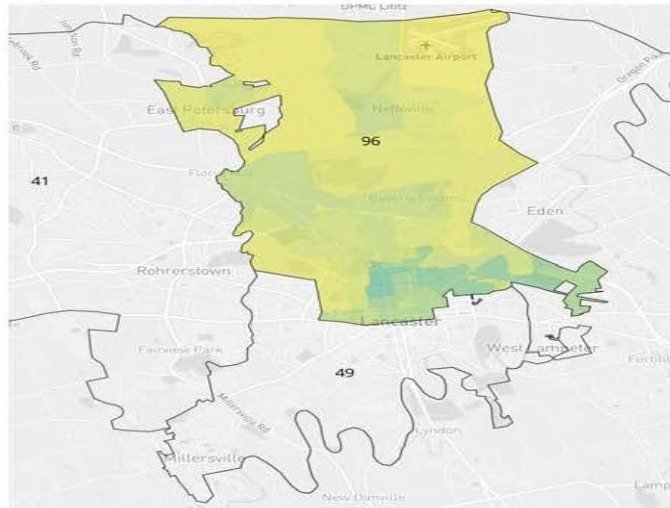


Figure 13: Each panel shows one of the districts that intersect Lancaster. The maps are colored according to the partisan composition of precincts in the district.

District 96 - Hispanic VAP: 12.8%



District 49 - Hispanic VAP: 34.3%

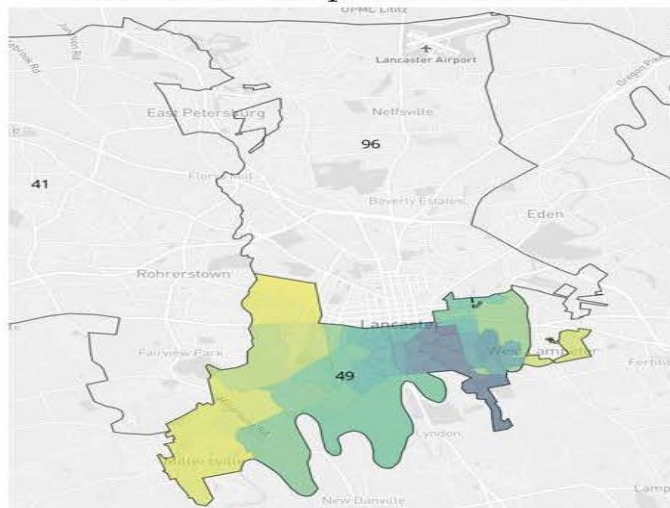


Figure 14: Each panel shows one of the districts that intersect Lancaster. The maps are colored according to the Hispanic composition of precincts in the district. Darker shades indicate a greater proportion of Latinos.

The city of Lancaster has a 35.9% Hispanic voting age population.

In Berks County the Commission's plan creates an additional Democratic district by dividing the city of Reading more than is necessary. Reading is heavily Democratic and has a population of 95,719, which when divided by the target district size of 64,053 comes to approximately 1.49 districts. Thus, Reading is too large to be completely contained in one district and will need to be divided into two districts. However, the Commission's plan divides the city four different times into three different districts. Figure 15 below shows this using two maps. The top panel shows a map of the Commission's proposed district boundaries in Berks County where Reading is located. The bottom panel focuses exclusively on the city of Reading and shows how the city is split four times into three different districts.

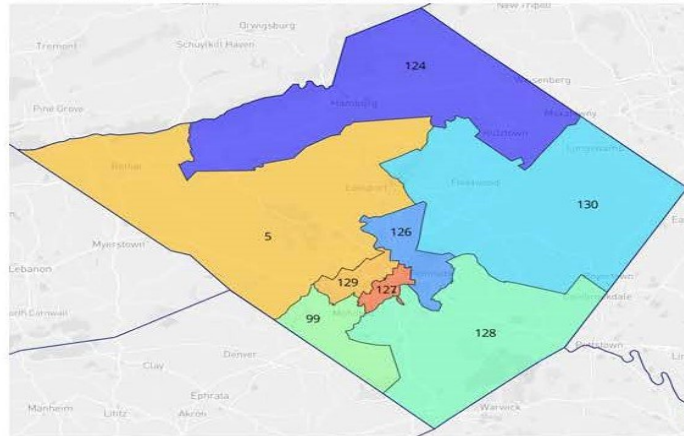
The next set of maps shows how this division follows the gerrymandering strategy of dividing Democratic cities into "pinwheel" shapes where Democratic voters in the city can be combined with less Democratic areas outside of the city to make more Democratic districts with comfortable margins, but not the overwhelmingly Democratic margins that would occur if fewer districts were drawn that were more geographically compact and split the city fewer times. In Reading this approach also has the effect of dividing and diluting the influence of the Latino community that lives in the city by distributing them across multiple legislative districts. Figure 16 shows a map of each of the three districts that intersect Reading

(HD-126, HD-127, and HD-129). Each district is colored based on the partisan lean of the precincts in the district. The pattern we see is again repeated — the combination of heavily Democratic precincts in the center of the city with more Republican leaning precincts in the suburbs. While Reading itself is heavily Democratic (its partisan index based on the 2012-2020 statewide elections is 0.79), the inclusion of the more Republican leaning suburbs distributes Democrats more efficiently to create three Democratic leaning districts which all have less Democratic support than the city overall, but are still comfortably Democratic.

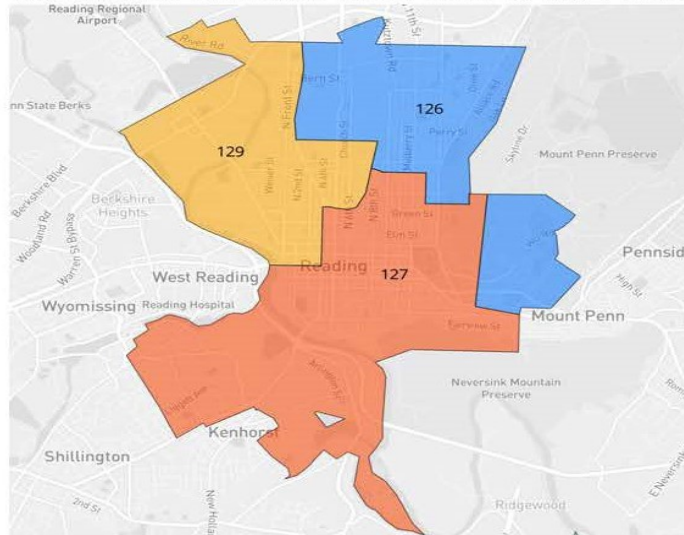
The final map, Figure 17, shows that this approach also divides the Latino population in the city. As a whole, Reading has a Latino voting age population of 64.0%. All three Districts that intersect Reading have a lower Latino population (33.2% in HD-126, 34.4% in HD-129, and 52.1% in HD-127) as a result of the districts dividing the city and reaching into more suburban areas with a lower concentration of Latinos.

Figure 15: Commission Proposed Districts in Berks County

(a) Proposal District Boundaries in Berks County



(b) District Boundaries within Reading City Limits

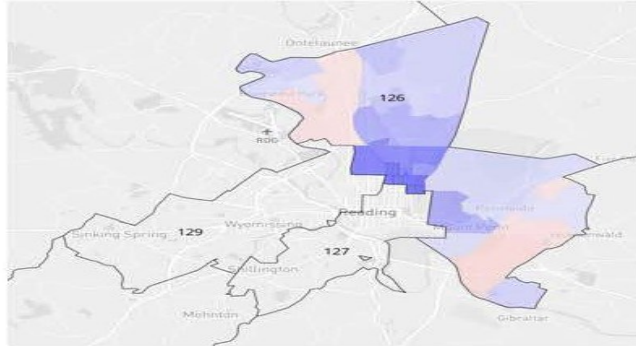


Note: The top figure shows the district boundaries within Berks County. The bottom figure shows how the

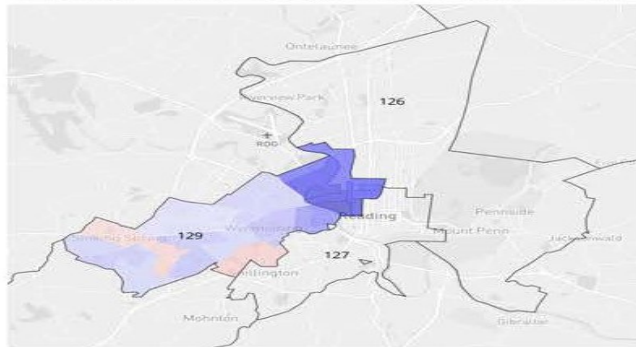
App. 91

city of Reading is divided four times into three districts despite having a population that would only require the city to be split into two districts.

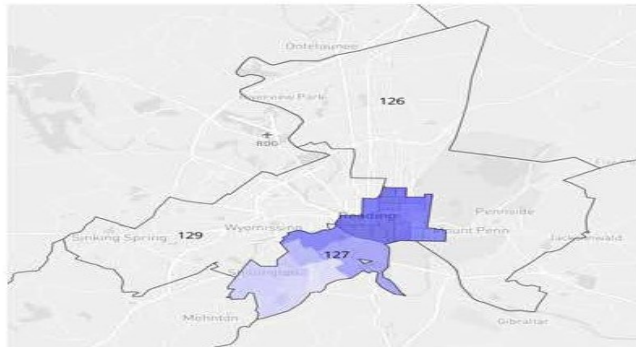
District 126 - Partisan Index: 0.59



District 129 - Partisan Index: 0.59



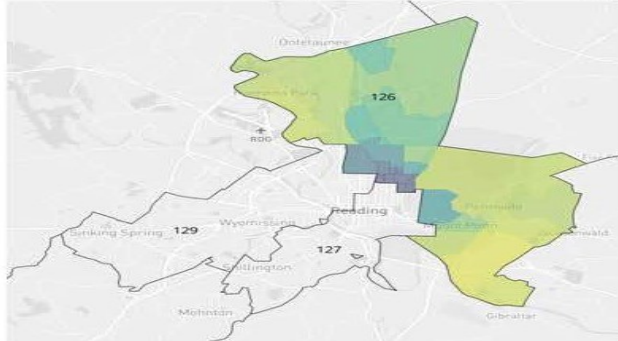
District 127 - Partisan Index: 0.70



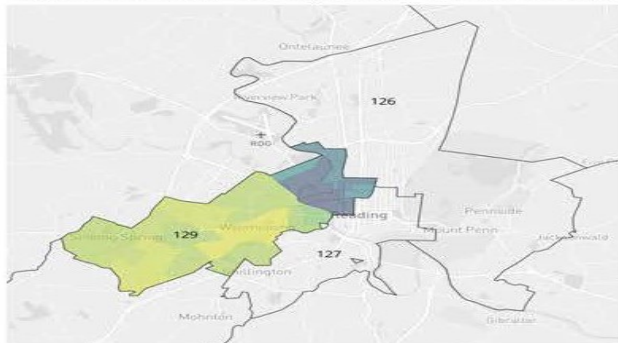
App. 92

Figure 16: Each panel shows one of the districts that intersect Reading. The maps are colored according to the partisan composition of precincts in the district.

District 126 - Hispanic VAP: 33.2%



District 129 - Hispanic VAP: 34.4%



District 127 - Hispanic VAP: 52.1%

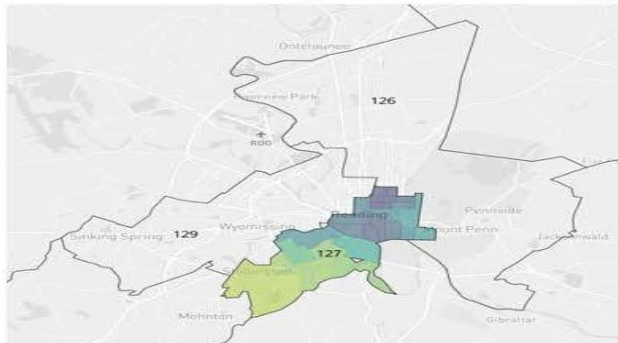


Figure 17: Each panel shows one of the districts that intersect Reading. The maps are colored according to the Hispanic composition of precincts in the district. Darker shades indicate a greater proportion of Latinos. The city of Reading has a 64.0% Hispanic voting age population.

5.3 Dauphin and Cumberland Counties

The combined population of Dauphin and Cumberland counties is equal to approximately 8.5 legislative districts. In the 8 complete districts that cover this area, the Commission's proposal generates 3 Democratic leaning districts. The distribution of Democratic leaning districts based on the statewide partisan elections index calculated for each of the simulation results is shown in Figure 18. The black bars show the distribution from the simulation results, with the percentage of simulations that generate each of the various possible number of Democratic seats in the counties shown below each bar. The most common outcome in the simulations is 2 Democratic districts. The red vertical line at 3 represents the number of Democratic leaning seats in the Commission's map in the portion of the state. In 76% of the simulations there are 2 Democratic leaning districts in these counties. There are 3 Democratic leaning districts in only 24% of the simulations in these counties, which is what the Commission's proposed map produces.

The Commission's plan achieves this by dividing the city of Harrisburg in Dauphin County more than is necessary so as to more evenly distribute the Democratic voters that live in Harrisburg across more districts. Harrisburg is heavily Democratic and has a

App. 94

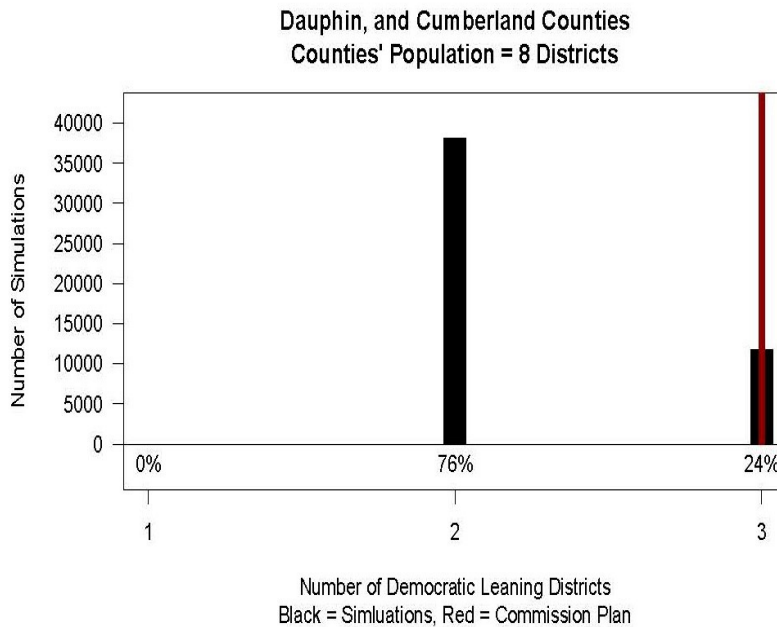
population of 50,679, which when divided by the target district size of 64,053 comes to approximately 0.79 districts. Thus, Harrisburg is not larger than the target district population and could be kept whole. However, the Commission's plan divides the city into two districts. Figure 19 below shows this using two maps. The top panel shows a map of the Commission's proposed district boundaries in Dauphin County where the city of Harrisburg is located. The bottom panel focuses exclusively on the city of Harrisburg and shows how the city is split into two districts.

The next set of maps shows how this division follows the gerrymandering strategy of dividing Democratic cities into "pinwheel" shapes where Democratic voters in the city can be combined with less Democratic areas outside of the city to make more Democratic districts with comfortable margins, but not the overwhelmingly Democratic margins that would occur if fewer districts were drawn that were more geographically compact and split the city fewer times. In Harrisburg this approach also has the effect of dividing the Black community that lives in the city and distributes them across multiple legislative districts. Figure 20 shows a map of each of the two districts that intersect Harrisburg (HD-103, HD-104). Each district is colored based on the partisan lean of the precincts in the district. The pattern we see is again repeated — the combination of heavily Democratic precincts in the center of the city with more Republican leaning precincts in the suburbs. While Harrisburg itself is heavily Democratic (its partisan index based on the 2012-2020 statewide elections is 0.86), the inclusion of the more Republican leaning suburbs distributes

Democrats more efficiently to create two Democratic leaning districts that have less Democratic support, but are still comfortably Democratic-leaning.

Figure 21 shows that this approach also divides the Black population in the city. As a whole, Harrisburg has a Black voting age population of 41.7%. Both districts that intersect Harrisburg have a lower Black population (19.1% in HD-103, 27.4% in HD-104) as a result of the districts dividing the city and reaching into more suburban areas with a lower Black population.

Figure 18: Distribution of Partisan Districts from Simulations in Dauphin, and Cumberland Counties

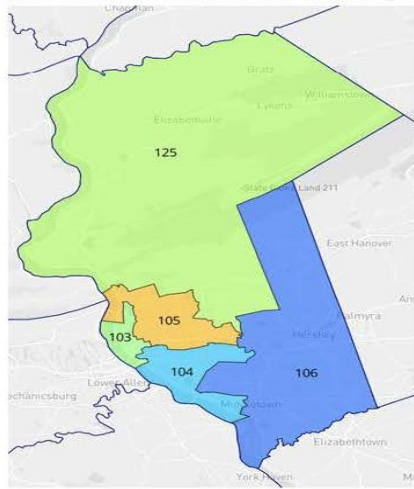


App. 96

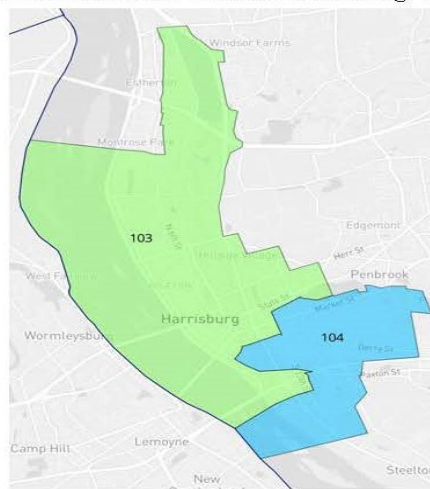
Note: Distribution of likely district partisanship based on the statewide partisan elections index calculated for each of the simulation results. The black bars show the distribution from the simulation results, with the percentage of simulations that generate each of the various possible number of Democratic seats in the cluster shown below each bar. The red vertical line shows the number of Democratic leaning seats in the Commission's proposed map in the same county.

Figure 19: Commission Proposed Districts in Dauphin County

(a) Proposal District Boundaries in Dauphin County



(b) District Boundaries within Harrisburg City Limits

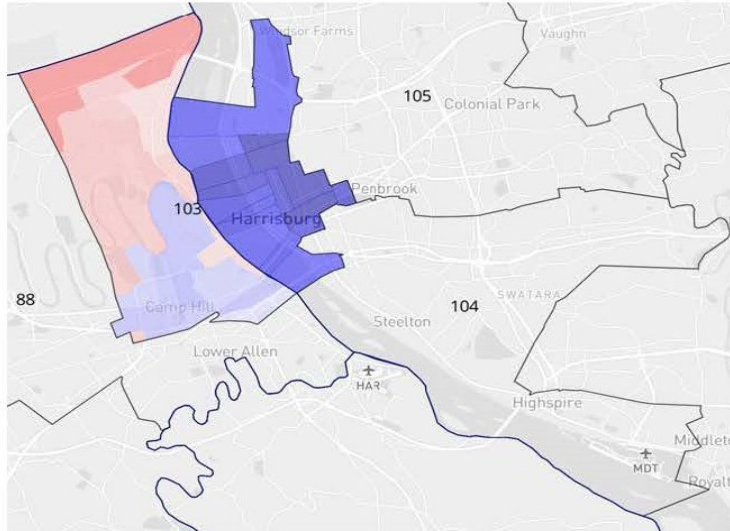


Note: The top figure shows the district boundaries within Dauphin County. The bottom figure shows how

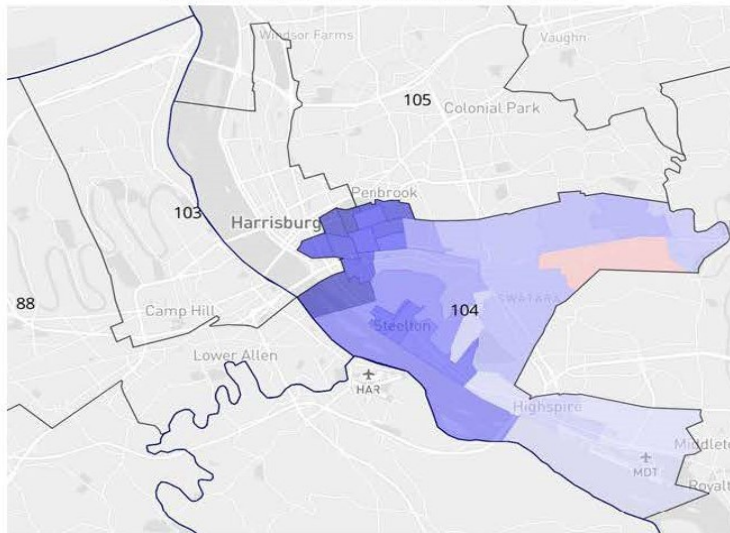
App. 98

the city of Harrisburg is divided across two districts despite having a population that would allow the city to be entirely contained in one district.

District 103 - Partisan Index: 0.62

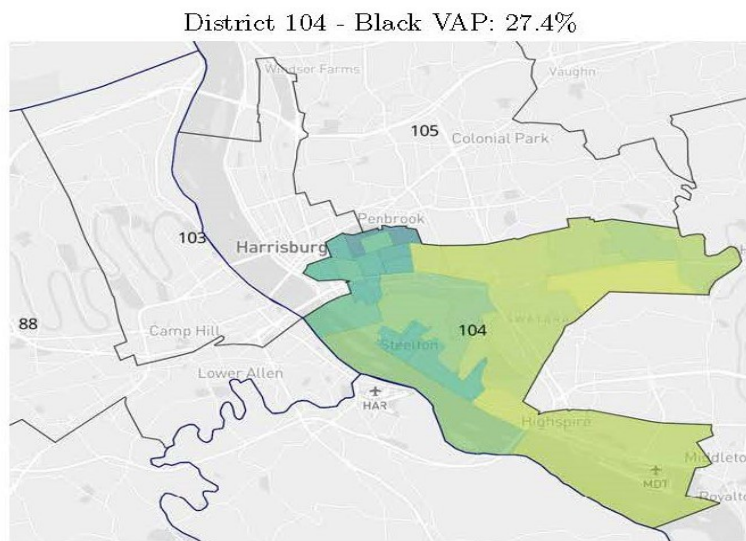
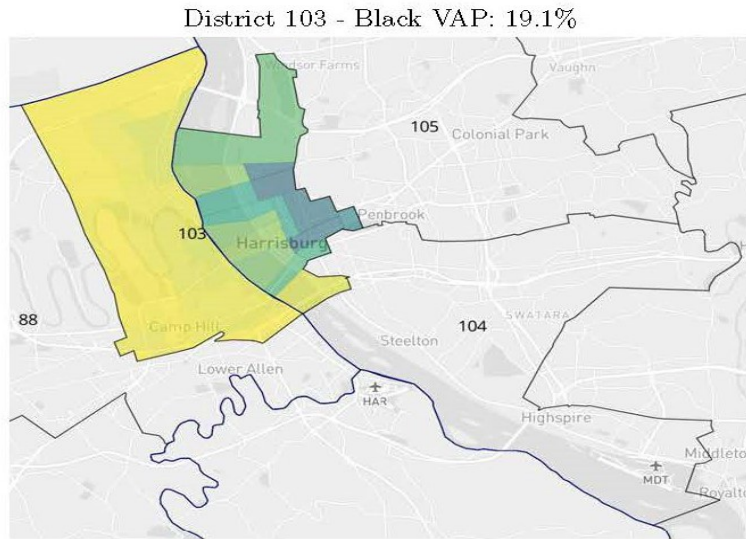


District 104 - Partisan Index: 0.68



App. 99

Figure 20: Each panel shows one of the districts that intersect Harrisburg. The maps are colored according to the partisan composition of precincts in the district.



App. 100

Figure 21: Each panel shows one of the districts that intersect Harrisburg. The maps are colored according to the Black composition of precincts in the district. Darker shades indicate a greater Black population. The city of Harrisburg has a 41.7% Black voting age population.

PAGES 0045a to 0074a REMOVED

* * *

APPENDICES B-H REMOVED

App. 101

Bucks County	Current Plan	Fair Districts	House Democratic Plan (Bucks)
Seats in Region	10	11*	10
% Deviation	7.11%	6.88%	8.93%
Polsby Popper Compactness	0.32	0.44	0.39
Reock Compactness	0.38	0.41	0.43
Municipal Splits	4	4	4
Elasticity (Competitive Districts)	5	5	
35% or Higher 18+ Black Seats	0	0	0
35% or Higher 18+ Hispanic Seats	0	0	0

35% or Higher 18+ Coalition (Black, Hispanic, Asian Combined) Seats	0	0	0
--	---	---	---

***1 District is located partially outside Bucks County. This district is not included in deviation statistics.**

APPENDIX I

* * *

APPENDIX J REMOVED

APPENDIX D

[Dated: March 7, 2022]

APPENDIX A

**In the Supreme Court of Pennsylvania
Middle District**

No. 11 MM 2022

—
KERRY BENNINGHOFF, individually, and as
Majority Leader of the Pennsylvania House of Representatives,
Petitioner-Appellant,

v.

2021 LEGISLATIVE REAPPORTIONMENT COMMISSION,
Respondent-Appellee.

On Review of The Legislative Reapportionment
Commission's Order Adopting A Final
Reapportionment Plan, PA. CONST. art. II, § 17(d)

AFFIDAVIT OF BILL SCHALLER

I, Bill Schaller, depose and state the following:

1. I am over 18 years of age and I have personal
knowledge of the matters set forth herein.

2. I am employed as Director of the Republican Reapportionment Department for the Republican Caucus of the Pennsylvania House of Representatives, and has been employed by the Pennsylvania House of Representatives for 26.5 years.

3. As part of my responsibilities, I assisted the Honorable Kerry Benninghoff in his capacity as a Member of the 2021 Legislative Reapportionment Commission (“Commission”) and am familiar with the proceedings of the Commission and the 2021 Preliminary and Final Plans promulgated by that Commission.

4. On September 17, 2021, the Pennsylvania Legislative Data Processing Center (“LDPC”) provided me, on behalf of Leader Benninghoff, with 2020 census data that had been processed and was in a form usable for reapportionment. This data set was known as “Data Set #1.” A true, accurate, and complete copy of the email from the LDPC enclosing this data is attached hereto as Exhibit A.

5. On October 14, 2021, the LDPC provided me, on behalf of Leader Benninghoff, with 2020 census data that had been adjusted to “reallocate” certain prison populations. This data set was known as “Data Set #2.” A true, accurate, and complete copy of the email from the LDPC enclosing this data is attached hereto as Exhibit B.

6. The Commission scheduled a meeting for October 25, 2021, for the purpose of passing a resolution to certify the data sets for use. Based upon conversations I had with staff members working for Chairman

Nordenberg, it was made clear to me that Chairman Nordenberg would not commence meetings to undertake substantive reapportionment work until after the data was certified.

7. The Commission passed resolutions on October 25, 2021 certifying the two datasets, and after that date, Chairman Nordenberg began to schedule meetings.

8. On November 16, 2021, I attended a meeting also attended by Chairman Nordenberg, members of his staff, representatives of Leader Joanna McClinton (Justin Klos and Andrew McGinley), Bob Nye, and others. During the meeting, representatives of Leader McClinton presented us with an analysis sheet, a true and accurate copy of which is attached to Leader Benninghoff's Petition for Review as Appendix I, purporting to describe various characteristics of a proposal they had for drawing House districts in Bucks County. The sheet appeared to be a standardized form reporting calculations of various aspects of the proposed plan. Three of the fields on the form identified the number of "35% or Higher" Black, Hispanic, or so-called Coalition districts. I am aware of no districting principle in Article II, Section 16 of the Pennsylvania Constitution that would require a form reporting a computation of the number of districts in a plan containing populations of racial groups that meet or exceed a specified threshold percentage.

9. On December 7, 2021, I attended a meeting at the Capitol attended by myself, Chairman Nordenberg, Professor Jonathan Cervas (a consultant employed by Chairman Nordenberg), Bob Nye, and others. The

purpose of the meeting was to discuss the initial draft of the 2021 Preliminary House Plan that Chairman Nordenberg and Professor Cervas had drawn the prior weekend.

10. During the December 7, 2021 meeting, Chairman Nordenberg confirmed that his map contained incumbent-less districts in Montgomery County, Philadelphia, Allentown, and Lancaster, along with the 116th House District (in Luzerne County), for the purpose of affording racial minorities a chance to elect a candidate without needing to deal with an incumbent. Further during this meeting, Professor Cervas advised that the split of Harrisburg was intended to create a minority influence district.

11. On December 9, 2021, I attended a meeting at the Capitol attended by myself, Chairman Nordenberg, members of the Chairman's staff, Bob Nye, Leader Benninghoff, and a few others, to discuss a draft of the 2021 Preliminary Plan.

12. In the course of the December 9, 2021 meeting, Chairman Nordenberg was asked to explain the decision to split several cities in the Commonwealth in the draft House Plan. Chairman Nordenberg responded that splits in Lancaster, Reading, Harrisburg, Allentown, and Scranton were done for the purpose of creating "VRA" or "minority influence districts."

13. On January 15, 2022, I inquired of Chairman Nordenberg in a meeting, following a public hearing the Commission had conducted that morning, as to his evidentiary basis to draw districts based on race. Chairman Nordenberg only identified Professor

App. 107

Barreto's testimony and report as that evidentiary basis.

I verify that the foregoing is true and correct to the best of my knowledge, information, and belief. This verification is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Dated: March 7, 2022

/s/ Bill Schaller

Bill Schaller

Director, Republican
Reapportionment Dept.
Pennsylvania House of
Representatives

EXHIBIT A - AFFIDAVIT OF BILL SCHALLER

From: Brent McClintock <bmcclintock@legis.state.pa.us>
Sent: Friday, September 17, 2021 3:12 PM
To: Schoenberg, Lora; Logue, Carlton; Davis, Chad; Klos Justin; Bliss David; Bill Schaller; Bob Nye
Cc: Mark Nordenberg; Reynolds Clark
Subject: Release of Data Set #1 (without prisoner reallocation)

We have completed the internal loads and validations for the first data set, and are releasing it for your review. Note that these files included the geography and population updates to the original Census data, but do NOT contain the prisoner reallocations. Those will be included in “Data Release No. 2”.

The files have been placed on the Google Drive (/Redistricting/2020/Phase 3/2021-09-17 LRC Data Release No. 1 (without prisoner adjustments)), at <https://drive.google.com/drive/folders/168PmuvYJ71ZECVX1qBQKjL7hhBZFndll?usp=sharing>

This includes:

- the updated GIS files from PaSDC
- the “Adjusted 2021 Census Population” at the VTD level, in Microsoft Access and Excel formats
- the updated “Placemap” file in Microsoft Access format, including a table for active precincts

App. 109

An unexpected situation came up that required me to be out of the office today, so I cannot provide your physical copies yet. But you should have immediate access via Google Drive, and I will deliver your physical copy of the data on Monday. If you are not able to access the files on the Google Drive, please let me know.

Thanks,

Brent McClintock
Executive Director
PA Legislative Data Processing Center
www.paldpc.us
717-787-7358

EXHIBIT B - AFFIDAVIT OF BILL SCHALLER

From: Brent McClintock <bmcclintock@legis.state.pa.us>
Sent: Thursday, October 14, 2021 3:18 PM
To: Schoenberg, Lora; Logue, Carlton; Davis, Chad; Klos Justin; Bliss David; Bill Schaller; Bob Nye
Subject RE: Data update

We have completed the internal loads and validations well ahead of schedule for the second data set (including prisoner reallocations), and are releasing it for your review.

The files have been placed on the Google Drive (/Redistricting/2020/Phase 3/2021-10-14 LRC Data Release No. 2 (with prisoner reallocations)), at <https://drive.google.com/drive/folders/1TNANDLJmD9J8wb7jJmTwENUgcZpwHaW?usp=sharing>. I'll deliver USS drives to you also.

This includes:

- the updated GIS files from PaSDC
- the "Adjusted 2021 Census Population" at the VTD level, in Microsoft Access and Excel formats
- the updated "Placemap" file in Microsoft Access format, including a table for active precincts

We've also included two Excel spreadsheets to assist in your review of the data

- **2021-10-14 DOC_Inmates_Block Information.xlsx** is the spreadsheet provided

by DOC. PaSDC has added additional columns to indicate the blocks associated with each SCI, and the prisoner's home address. Columns also indicate if the row was reallocated or not, and provides reasons.

- **2021-10-14 FINAL_All_Negative_Geographies.xlsx** is a spreadsheet that identifies any geographies that resulted in negative values after the reallocations. PaSDC has reviewed these instances and believes they are a result of Differential Privacy applied by the Census Bureau and the post-processing of the prisoner reallocations.

Brent McClintock
Executive Director
Legislative Data Processing Center
717-787-7358

From: Brent McClintock
Sent: Friday, October 8, 2021 1:39 PM
To: Schoenberg, Lora <lora.schoenberg@pasenate.com>; Logue, Carlton <clogue@pasen.gov>; Davis, Chad <cdavis@pasen.gov>; Klos Justin <jklos@pahouse.net>; Bliss David <dbliss@pahouse.net>; Bill Schaller <bschalle@pahousegop.com>; Bob Nye <bnye@pahousegop.com>
Subject: Data update

Good news! PaSOC delivered the first part of the prisoner reallocation data (Data Set #2) to us today. We've begun loading our internal systems and validating. PaSDC is still merging the population with the GIS layers, and will deliver that to us next.

App. 112

We will get you the data as soon as possible to review.

Brent McClintock
Executive Director
Legislative Data Processing Center
717-787-7358

APPENDIX B

**In the Supreme Court of Pennsylvania
Middle District**

No. 11 MM 2022

KERRY BENNINGHOFF, individually, and as
Majority Leader of the Pennsylvania House of Representatives,
Petitioner-Appellant,

v.

2021 LEGISLATIVE REAPPORTIONMENT
COMMISSION,
Respondent-Appellee.

On Review of The Legislative Reapportionment
Commission's Order Adopting A Final
Reapportionment Plan, PA. CONST. art. II, § 17(d)

**AFFIDAVIT OF THE HONORABLE
RYAN E. MACKENZIE**

I, Ryan E. Mackenzie, depose and state the following:

1. I am over 18 years of age and I have personal knowledge of the matters set forth herein.

2. I am the duly elected and serving Representative for the 134th House District of the Pennsylvania House of Representatives and have served the People of the Commonwealth in that capacity since 2012. The 134th

District includes portions of Lehigh County and Berks County.

3. In the morning of Saturday, January 15, 2022, I testified at a public hearing of the 2021 Legislative Reapportionment Commission (the “Capitol”) held at the Capitol. My testimony included discussion of the proposed districts in Lehigh County, and I expressed concern that the Commission was unnecessarily diluting Minority, and Hispanic, representation. I had proposed a “Possible Adjusted Map” during my testimony to show that this dilution was not necessary.

4. Following my testimony, I encountered Professor Jonathan Cervas, a staff member for Commission Chairman Mark Nordenberg. He said he could speak with me briefly, and we headed out of the meeting room and in a hallway.

5. Once in the hallway, Professor Cervas opened the conversation by saying that my presentation was “very impressive” and that I had done it “exactly the right way” by isolating the districts in Lehigh County to discussion/review. He also mentioned that I was right to bring up the Voting Rights Act, and that that was something “they needed to be concerned about.” I understood the word “they” to refer to Chairman Nordenberg or the Commission as a whole.

6. Professor Cervas said he wasn’t sure about my statement that an open seat wasn’t the best opportunity for a Hispanic to win a seat though. I explained how Rep. Schweyer had won comfortably when it was an open seat, but just barely won his last Primary against Enid Santiago. He said he wasn’t

familiar with all the politics, and I explained to him how Ms. Santiago lost by 55 votes and there were even questions surrounding that because of a judge of elections curing ballots inappropriately. He showed surprise and disbelief.

I verify that the foregoing is true and correct to the best of my knowledge, information, and belief. This verification is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

Dated: March 4, 2022

/s/ Ryan Mackenzie
Ryan E. Mackenzie
Representative, 134th House
District
Pennsylvania House of
Representatives

APPENDIX C

**In the Supreme Court of Pennsylvania
Middle District**

No. 11 MM 2022

KERRY BENNINGHOFF, individually, and as
Majority Leader of the Pennsylvania House of Representatives,
Petitioner-Appellant,

v.

2021 LEGISLATIVE REAPPORTIONMENT
COMMISSION,
Respondent-Appellee.

On Review of The Legislative Reapportionment
Commission's Order Adopting A Final
Reapportionment Plan, PA. CONST. art. II, § 17(d)

AFFIDAVIT OF BOB NYE

I, Bob Nye, depose and state the following:

1. I am over 18 years of age and I have personal knowledge of the matters set forth herein.

2. I am employed as Director of Demographic Information for the Republican Caucus of the Pennsylvania House of Representatives and have been employed by the Pennsylvania House of Representatives for 17 years.

3. As part of my responsibilities, I assisted Leader Benninghoff in his capacity as a Member of the 2021 Legislative Reapportionment Commission (“Commission”) and am familiar with the proceedings of the Commission and the 2021 Preliminary and Final Plans promulgated by that Commission.

4. On November 16, 2021, I attended a meeting also attended by Chairman Nordenberg, members of his staff, representatives of Leader Joanna McClinton (Justin Klos and Andrew McGinley), Bill Schaller, and others. During the meeting, representatives of Leader McClinton presented us with an analysis sheet, a true and accurate copy of which is attached to Leader Benninghoff’s Petition for Review as Appendix I, purporting to describe various characteristics of a proposal they had for drawing House districts in Bucks County. The sheet appeared to be a standardized form reporting calculations of various aspects of the proposed plan. Three of the fields on the form identified the number of “35% or Higher” Black, Hispanic, or so-called Coalition districts. I am aware of no districting principle in Article II, Section 16 of the Pennsylvania Constitution that would require a form reporting a computation of the number of districts in a plan containing populations of racial groups that meet or exceed a specified threshold percentage.

5. On December 7, 2021, I attended a meeting at the Capitol attended by myself, Chairman Nordenberg, Professor Jonathan Cervas (a consultant employed by Chairman Nordenberg), Bill Schaller, and others. The purpose of the meeting was to discuss the initial draft of the 2021 Preliminary House Plan that Chairman

Nordenberg and Professor Cervas had drawn the prior weekend.

6. During the December 7, 2021 meeting, Chairman Nordenberg confirmed that his map contained incumbent-less districts in Montgomery County, Philadelphia, Allentown, and Lancaster, along with the 116th House District (in Luzerne County), for the purpose of affording racial minorities a chance to elect a candidate without needing to deal with an incumbent. Further during this meeting, Professor Cervas advised that the split of Harrisburg was intended to create a minority influence district.

7. On December 9, 2021, I attended a meeting at the Capitol attended by myself, Chairman Nordenberg, members of the Chairman's staff, Bill Schaller, Leader Benninghoff, and a few others, to discuss a draft of the 2021 Preliminary Plan.

8. In the course of the December 9, 2021 meeting, Chairman Nordenberg was asked to explain the decision to split several cities in the Commonwealth in the draft House Plan. Chairman Nordenberg responded that splits in Lancaster, Reading, Harrisburg, Allentown, and Scranton were done for the purpose of creating "VRA" or "minority influence districts."

I verify that the foregoing is true and correct to the best of my knowledge, information, and belief. This verification is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

App. 119

Dated: March 7, 2022

/s/ Illegible Signature

Bob Nye

Director of Demographic
Information

Pennsylvania House of
Representatives

APPENDIX E

EXCERPTS FROM COMMISSION RECORD

* * *

The General Assembly of Pennsylvania

**MAIN CAPITOL BUILDING
HARRISBURG, PENNSYLVANIA 17120**

March 16, 2021

Veronica Degraffenreid
The Acting Secretary of the Commonwealth of Pennsylvania
302 North Office Building
Harrisburg, PA 17120

Dear Acting Secretary Degraffenreid:

In accordance with Article II, Section 17(b), of the Constitution of Pennsylvania, we, the President Pro Tempore of the Senate and the Speaker of the House of Representatives of the General Assembly of the Commonwealth of Pennsylvania do hereby certify the following individuals as members of the 2021 Legislative Reapportionment Commission:

Kim Ward, Senate Majority Leader
Jay Costa, Senate Minority Leader
Kerry Benninghoff, House Majority Leader
Joanna McClinton, House Minority Leader

[SEAL] Witness my hand and seal of office this 16th
day of March, 2021.

App. 121

/s/ Jake Corman

Jake Corman

President Pro Tempore of the Senate

[SEAL] Witness my hand and seal of office this 16th
day of March, 2021.

/s/ Bryan Cutler

Bryan Cutler

Speaker of the House of Representatives

App. 122

COMMONWEALTH OF PENNSYLVANIA
LEGISLATIVE REAPPORTIONMENT
COMMISSION

In re: Public Meeting of the Legislative
Reapportionment Commission

VOLUME XVII - Pages 980-1021

Stenographic report of hearing held
in Hearing Room No. 1, North Office
Building, Harrisburg, Pennsylvania

Thursday
December 16, 2021
1:00 p.m.

MARK A. NORDENBERG, CHAIRMAN

MEMBERS OF LEGISLATIVE
REAPPORTIONMENT COMMISSION

Sen. Kim Ward	Rep. Kerry Benninghoff
Sen. Jay Costa	Rep. Joanna McClinton

Also Present:

Robert L. Byer, Esq., Chief Counsel
G. Reynolds Clark, Executive Director
Dr. Jonathan Cervas, Redistricting Consultant
Leah Mintz, Assistant Counsel
G. Carlton Logue, Esq. Deputy Counsel, Senate
Majority Leader
Chad Davis, Research Analyst, Senate Republican
Policy Office
C.J. Hafner, Esq., Chief Counsel, Senate Democratic
Leader

App. 123

Ronald N. Jumper, Esq. Deputy Chief Counsel, Senate Democratic Leader

Lora S. Schoenberg, Director, Senate Democratic Legislative Services

Rod Corey, Esq., Chief Counsel, House Republican Caucus

James Mann, Esq., Senior Deputy Chief Counsel, House Republican Caucus

Katherine Testa, Esq., Senior Legal Counsel, House Republican Caucus

William R. Schaller, Director, House Republican District Operations

Michael Schwoyer, Esq., Special Counsel, Deputy Chief of Staff for Legislation and Policy, House Democratic Caucus

Reported by:

Ann-Marie P. Sweeney
Official Reporter

PAGES OMITTED

* * *

[p. 994]

but it also is telling that the average absolute deviation is only 2 percent, reflecting the fact that across the map as a whole, the district-to-district deviations have been kept at a markedly lower level.

Let me turn to just one feature of the new House map that might not be immediately apparent from a quick review of it. This plan includes seven minority opportunity districts, true VRA districts, minority influence districts, and coalition districts in which there is no incumbent, creating special opportunities

for the election of minority representatives. Just to quickly review those districts, they include District 9, which is in a fast-growing area of Philadelphia and has a black population exceeding 58 percent; District 22 in Lehigh County, which has a Hispanic population exceeding 50 percent; District 54 in Montgomery County, a compact district which has a minority population exceeding 50 percent; District 104 in Harrisburg, which has a minority population exceeding 50 percent; District 116, where the current incumbent has been elected to serve as a judge, has been redesigned as a district including parts of Luzerne and Schuylkill Counties which have a Hispanic voting age population over 37 percent, a total Hispanic population of 43 percent, so the growth trends are clear; and District 203 in Philadelphia, a district with a population that is 42 percent Black, 22 percent Hispanic, and 13 percent Asian. Again, there is no incumbent advantage that will have to be overcome in any of these districts, which should give minority communities residing in them a special opportunity.

Here are some companion thoughts about the preliminary map for the State Senate, which is now on the screen and which, again, will be posted on the Commission's website in a readily usable form shortly after the conclusion of this meeting, if the preliminary plan attracts majority support. Looking at the chart of quantifiable factors, the Senate plan also fares well compared to the current map on almost every measure except overall deviation and absolute deviation. So that is one feature of the plan that will require further attention. The Senate map, too, includes a new minority influence district in Lehigh County that has

no incumbent. Because they have a larger population base, the creation of such districts is harder in the Senate, and credit belongs to Majority Leader Ward and her counsel, Carlton Logue, for envisioning this one. This new district has a voting age Hispanic population of 27.9 percent, a total Hispanic population of 32.3 percent, and a Black population of 7.5 percent.

I'm only going to show one measure of comparative fairness, and to do so I will rely on the testimony given by Carol Kuniholm, the Chair of Fair Districts PA, at our November 15 hearing. At that time, she compared Fair District

PAGES OMITTED

* * *

[p. 1018]

Now then, let me ask, is there a motion to accept the Senate map as a part of the Commission's preliminary plan?

SENATOR COSTA: Mr. Chairman, I move that we accept the Senate plan at this point in time.

CHAIR NORDENBERG: Thank you, Senator Costa.

Is there a second?

SENATOR K. WARD: I will second.

CHAIR NORDENBERG: Thank you, Senator Ward.

Is there further discussion at this point?

Senator Ward.

SENATOR K. WARD: I will support this to move forward today. We need to keep the process on the timeline, as I stated, but I do want us to work on corrections before a final map is voted on.

CHAIR NORDENBERG: Thank you.

Any other discussion?

(There was no response.)

CHAIR NORDENBERG: If not, well, all in favor of moving forward with the Senate map as a part of the preliminary plan, please say "aye."

SENATOR K. WARD: Aye.

SENATOR COSTA: Aye.

CHAIR NORDENBERG: Aye.

REPRESENTATIVE BENNINGHOFF: Aye.

REPRESENTATIVE McCLINTON: Aye.

CHAIR NORDENBERG: Any opposed?

(There was no response.)

CHAIR NORDENBERG: Thank you.

At this point then, I would entertain a motion to move forward with the map of the House of Representatives as a part of the Commission's preliminary plan.

REPRESENTATIVE McCLINTON: Mr. Chairman, I make a motion to move to adopt the House plan.

CHAIR NORDENBERG: Leader McClinton has made such a motion.

Is there a second?

SENATOR COSTA: Mr. Chairman, I second the motion from Leader McClinton to approve the House plan as part of the preliminary plan.

CHAIR NORDENBERG: Senator Costa has offered a second.

Is there further discussion of the House map at this point in time?

(There was no response.)

CHAIR NORDENBERG: If not, I would ask that all in favor, please say "aye."

SENATOR COSTA: Aye.

CHAIR NORDENBERG: Aye.

REPRESENTATIVE McCLINTON: Aye.

CHAIR NORDENBERG: All opposed, please say "no."

SENATOR K. WARD: No.

REPRESENTATIVE BENNINGHOFF: No.

CHAIR NORDENBERG: Let the record show that Leader McClinton, Leader Costa, and I voted in favor, and that Leader Ward and Leader Benninghoff voted "no."

We will, as I indicated earlier, be conducting hearings in January before the 30 days has passed, but after the festivities of New Year's Eve and New Year's day. We'll post those dates and times so that interested citizens will have the opportunity to secure a place to testify.

Is there any other business that any Commissioner would like to bring forward today?

(There was no response.)

CHAIR NORDENBERG: If not, this meeting is adjourned. I thank you all.

(Whereupon, the proceedings were concluded at 2:10 p.m.)

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

/s/ Ann-Marie P. Sweeney
ANN-MARIE P. SWEENEY
Official Reporter
Legislative Reapportionment Commission

THE FOREGOING CERTIFICATION DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR SUPERVISION OF THE CERTIFYING REPORTER.

App. 129

ANN-MARIE P. SWEENEY
Official Reporter
Legislative Reapportionment Commission
P.O. Box 203079
Harrisburg, PA 17120

Legislative Reapportionment Commission

Opening Statement of Commission

Chair Mark A. Nordenberg

December 16, 2021

Good afternoon, everyone. My name is Mark Nordenberg. As Chair of the Pennsylvania Legislative Reapportionment Commission, it is my privilege to call this meeting to order. Let me begin by welcoming the interested citizens who are in attendance today, either in person or through our livestream. As has been my custom, I want to explicitly note that I am extending that welcome not only for myself but also on behalf of the other four Commission members – Senator Kim Ward, the Senate Majority Leader; Senator Jay Costa, the Senate Democratic Leader; Representative Kerry Benninghoff, the House Majority Leader; and Representative Joanna McClinton, the House Democratic Leader.

I now have been working closely with these four caucus leaders for almost seven months. Those experiences have left me with deeper feelings of respect for each of them. It quickly became clear to me why they have been selected as leaders by their caucus colleagues. Let me also say, then, that while there are variations in their leadership styles, as well as in the approaches taken by the teams that support them, each Leader has been fully attentive to the responsibilities that have been thrust upon all of them under the provisions of the state Constitution.

PAGES OMITTED

[p. 12]

fact that, across the map as a whole, the district-to-district deviations have been kept at a markedly lower level.

Let me turn to just one feature of the new House plan that might not be immediately apparent from a quick review of the map. This plan includes seven minority opportunity districts – true VRA districts, minority influence districts, and coalition districts – in which there is no incumbent, creating special opportunities the election of minority representatives. Just to review those districts quickly, they include:

- District 9, which is in a fast-growing area of Philadelphia and has a Black population exceeding 58%;
- District 22 in Lehigh County, which has a Hispanic population exceeding 50%;
- District 54 in Montgomery County, a compact district which has a minority population in excess of 50%;
- District 104 in Harrisburg, which has a minority population exceeding 50%;
- District 116, where the current incumbent has been elected to serve as a judge, has been redesigned as a district containing parts of Luzerne and Schuylkill Counties which have a Hispanic voting-age population over 37% and a total Hispanic population of 43%, so the growth trends are clear and positive; and

- District 203 in Philadelphia, a district with a population that is 42% Black, 22% Hispanic and 13% Asian.

Again, there is no incumbent-advantage that will need to be overcome in any of these districts, which should give the minority communities residing in them a special opportunity.

Here are some companion thoughts on the preliminary map for the state Senate, which is now on the screen and which will be posted on the Commission's website in a readily useable form shortly after the conclusion of this meeting.

Looking at the chart of quantifiable factors, the Senate map in this plan also fares well compared to the current map – except, again, on deviations, and here the both the overall deviation and the absolute deviation are higher than the enacted map, so that is one feature of the plan that is weaker than the House map and will require further attention.

The Senate map, too, includes a new minority influence district in Lehigh County that has no incumbent. Because they have a larger population base, such districts are harder to create in the Senate, and credit belongs to Majority Leader Ward and her counsel Carlton Logue for envisioning this one. This new district has a voting-age Hispanic population of 27.9%, a total Hispanic population of 32.3%, and a Black population of 7.5%.

I am only going to show one measure of comparative partisan fairness, and to do so, I will rely on the testimony given by Carol Kuniholm, the Chair of Fair

App. 133

Districts PA, at our November 15 hearing. At that time, she compared Fair District PA's People's maps with Pennsylvania's current legislative maps, using the Mean-Median Difference as calculated by PlanScore as the

PAGES OMITTED

* * *

App. 134

COMMONWEALTH OF PENNSYLVANIA
LEGISLATIVE REAPPORTIONMENT
COMMISSION

In re: Public Meeting of the Legislative
Reapportionment Commission

VOLUME XX - Pages 1194-1284

Stenographic report of hearing held
in Hearing Room No. 1, North Office
Building, Harrisburg, Pennsylvania

Friday
January 7, 2022
9:00 a.m.

MEMBERS OF LEGISLATIVE
REAPPORTIONMENT COMMISSION

Sen. Jay Costa	Rep. Kerry Benninghoff
Sen. John Gordner,	Rep. Matthew Bradford
(Deputy Commissioner for Sen. Kim Ward)	(Deputy Commissioner for Rep. Joanna McClinton)

Also Present:

Robert L. Byer, Esq., Chief Counsel
G. Reynolds Clark, Executive Director
Dr. Jonathan Cervas, Redistricting Consultant
Leah Mintz, Assistant Counsel
G. Carlton Logue, Esq. Deputy Counsel, Senate
Majority Leader
Chad Davis, Research Analyst, Senate Republican
Policy Office
C.J. Hafner, Esq., Chief Counsel, Senate Democratic
Leader

Ronald N. Jumper, Esq. Deputy Chief Counsel, Senate Democratic Leader

Lora S. Schoenberg, Director, Senate Democratic Legislative Services

Rod Corey, Esq., Chief Counsel, House Republican Caucus

James Mann, Esq., Senior Deputy Chief Counsel, House Republican Caucus

Katherine Testa, Esq., Senior Legal Counsel, House Republican Caucus

William R. Schaller, Director, House Republican District Operations

Michael Schwoyer, Esq., Special Counsel, Deputy Chief of Staff for Legislation and Policy, House Democratic Caucus

Reported by:

Ann-Marie P. Sweeney
Official Reporter

PAGES OMITTED

* * *

[p. 1234]

our State.

Thank you, Mr. Chairman.

CHAIR NORDENBERG: Thank you.

I'd like to pick up on one important part of Senator Gordner's statement. One of the things that we tried to do in both maps, because of testimony we had received earlier in the process, was to create districts with strong Latinx populations and with no incumbents, because we were led to believe that overcoming the

natural powers of an incumbent was very difficult. You didn't mention that in your comments, and so I just wondered if you had a reaction to it?

Do we still have you?

MS. GUTIERREZ: Yes, I am here. I will ask you, you know, if I have the opportunity to talk with my members and our partners and can get back to you as soon as we can.

CHAIR NORDENBERG: That would be fine.

MS. GUTIERREZ: I prefer to have the opportunity to, you know, speak with our people.

CHAIR NORDENBERG: That would be fine. It's an important question, and taking time to provide that feedback would be good. So thank you, again.

Leader Benninghoff also has questions.

LEADER BENNINGHOFF: Thank you, Mr. Chairman. And I appreciate your comments as well, piggybacking a little bit on that.

* * *
[p. 1284]

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

/s/ Ann-Marie P. Sweeny
ANN-MARIE P. SWEENEY

App. 137

Official Reporter
Legislative Reapportionment Commission

THE FOREGOING CERTIFICATION DOES NOT
APPLY TO ANY REPRODUCTION OF THE SAME BY
ANY MEANS UNLESS UNDER THE DIRECT
CONTROL AND/OR SUPERVISION OF THE
CERTIFYING REPORTER.

ANN-MARIE P. SWEENEY
Official Reporter
Legislative Reapportionment Commission
P.O. Box 203079
Harrisburg, PA 17120

PAGES OMITTED

* * *

App. 138

COMMONWEALTH OF PENNSYLVANIA

**MARK A.
NORDENBERG
CHAIR**

**HONORABLE
KIM L. WARD
SENATE MAJORITY
LEADER**

**G. REYNOLDS
CLARK
EXECUTIVE
DIRECTOR**

**HONORABLE
JAY COSTA
SENATE
DEMOCRATIC
LEADER**

**ROBERT L. BYER
CHIEF COUNSEL**

**HONORABLE
KERRY A.
BENNINGHOFF
HOUSE MAJORITY
LEADER**

**ANN-MARIE P.
SWEENEY
DIRECTOR OF
ADMINISTRATION**

**HONORABLE
JOANNA E.
MCCLINTON
HOUSE
DEMOCRATIC
LEADER**

**2021 LEGISLATIVE REAPPORTIONMENT
COMMISSION**

**MAIN CAPITOL BUILDING, P.O. BOX 203079
HARRISBURG, PA 17120
717-461-8030**

February 4, 2022

By Personal Delivery

App. 139

The Honorable Leigh M. Chapman
Acting Secretary of the Commonwealth
302 North Office Building
401 North Street
Harrisburg, PA 17120

RE: Preliminary Reapportionment Plan

Dear Acting Secretary Chapman:

With this letter, I am delivering to you for filing, pursuant to Pennsylvania Constitution Article II, Section 17(c), the Final Reapportionment Plan adopted by a majority vote of the Pennsylvania Legislative Reapportionment Commission at a public meeting in the Capitol in Harrisburg, Pennsylvania on February 4, 2022. I also enclose data showing “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” for purposes of the advertisements required by Pennsylvania Constitution Article II, Section 17(i).

I would appreciate your acknowledgement of receipt on the following page.

Thank you very much.

Sincerely,

/s/ Mark A. Nordenberg
Mark A. Nordenberg
Chair

cc: The Honorable Jonathan M. Marks
The Honorable Sari Stevens

App. 140

The Honorable Kerry A. Benninghoff
The Honorable Joanna E. McClinton
The Honorable Kim L. Ward
The Honorable Jay Costa

Hon. Leigh M. Chapman
February 4, 2022
Page2

I acknowledge receipt of the Preliminary
Reapportionment Plan and population data
transmitted with the above letter.

/s/ Illegible Signature

Signature

/s/ Acting Secretary of the Commonwealth

Title

February 4, 2022

App. 141

COMMONWEALTH OF PENNSYLVANIA
LEGISLATIVE REAPPORTIONMENT
COMMISSION

In re: Public Meeting of the Legislative
Reapportionment Commission

VOLUME XXV - Pages 1735-1795

Stenographic report of hearing held
in Hearing Room No. 1, North Office
Building, Harrisburg, Pennsylvania

Thursday
February 4, 2022
1:00 p.m.

MARK A. NORDENBERG, CHAIRMAN

MEMBERS OF LEGISLATIVE
REAPPORTIONMENT COMMISSION

Sen. Kim Ward	Rep. Kerry Benninghoff
Sen. Jay Costa	Rep. Joanna McClinton

Also Present:

Robert L. Byer, Esq., Chief Counsel
G. Reynolds Clark, Executive Director
Dr. Jonathan Cervas, Redistricting Consultant
Leah Mintz, Assistant Counsel
G. Carlton Logue, Esq. Deputy Counsel, Senate
Majority Leader
Chad Davis, Research Analyst, Senate Republican
Policy Office
C.J. Hafner, Esq., Chief Counsel, Senate Democratic
Leader

Ronald N. Jumper, Esq. Deputy Chief Counsel, Senate Democratic Leader

Lora S. Schoenberg, Director, Senate Democratic Legislative Services

Rod Corey, Esq., Chief Counsel, House Republican Caucus

James Mann, Esq., Senior Deputy Chief Counsel, House Republican Caucus

Katherine Testa, Esq., Senior Legal Counsel, House Republican Caucus

William R. Schaller, Director, House Republican District Operations

Michael Schwoyer, Esq., Special Counsel, Deputy Chief of Staff for Legislation and Policy, House Democratic Caucus

Reported by:

Ann-Marie P. Sweeney
Official Reporter

PAGES OMITTED

* * *

[p. 1742]

Article I, Section 5, known as the free and equal elections clause; and Article I, Section 29, the racial and ethnic equality clause. Of course, we also were attentive to the requirements of the 14th Amendment of the United States Constitution and the Federal Voting Rights Act. In fact, we heard from a sizable array of efforts about the Voting Rights Act and its requirements, both before drafting the preliminary plan and afterward.

When circumstances permitted us to do so, and after insuring compliance with State and Federal law, we fashioned districts to create additional opportunities beyond the minimum requirements of the Voting Rights Act, positioning voters in racial and ethnic minority groups to influence the election of candidates of their choice. Going beyond those minimum requirements not only is consistent with the Voting Rights Act, but is consistent with, and perhaps required by, both the free and equal elections clause, and the racial and ethnic equality clause of the Pennsylvania Constitution. Where we were able to do so, we drew those minority influence districts without an incumbent, thereby providing the greatest potential for racial and ethnic minority voters to influence the election of candidates of their choice. Again, we did so while being mindful of the traditional redistricting criteria of Article II, Section 16, of the Pennsylvania Constitution.

My starting point in this presentation then is the same starting point that we have used in all of our work - the language of Article II, Section 16, of the Pennsylvania Constitution, which provides: “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.... Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or a representative district.”

That seemingly straightforward language actually frames a daunting task. There are 2,560 municipalities

in Pennsylvania, and when the assignment is to draw 253 House and Senate district lines through them, there are boundaries that will need to be cut. And even though school districts are not mentioned in the Constitution, they often are viewed as constituting communities of interest, entitling them to a level of deference as well. There are 500 school districts in Pennsylvania, which adds another dimension of complexity to the tasks.

The chart now on the screen displays the relevant comparisons between the plan being considered today and the plan that was approved by the Pennsylvania Supreme Court in 2012. As you will see, both the House and Senate maps compare very favorably to that 2012 map. Looking first at the House map, both county and municipal splits are markedly lower, and

PAGES OMITTED

* * *

[p. 1754]

quote: “The fallacy of averaging the ensemble of simulations can be revealed by an analogy. A professional basketball coach could consider 1,000 people who know how to play the game and then randomly choose an average one to play center. That is like choosing a plan from many simulated plans in the middle of the ensemble of simulated plans. Or the coach could hire LeBron James. That is like picking the LRC proposed plan.”

At the very beginning of his report, the House Republicans’ witness declared that his “simulation process ignores all...racial considerations when

drawing districts.” That is a puzzling choice, since under similar circumstances, the Commission is required to take account of racial considerations, and in a broader set of circumstances is permitted to do so. Presumably, that is why Professor Imai included such data in his simulations. Neither the fact that his simulations included no racial data nor the fact that this is another area in which he has no academic publications to his credit kept the House Republicans’ witness from basing much of his analysis on the sweeping theme that if minority group voters are spread across multiple legislative districts, their influence is inevitably diluted. Of course, all of us know that voter influence can be diluted either by cracking or by packing. Knowing where the correct balance can be struck requires an intensive local appraisal, which the Republicans’ witness did not perform.

To conduct such an analysis, the House Democrats retained Dr. Matt Barreto, one of the country’s leading scholars of Latino politics and the Voting Rights Act. Professor Barreto is a faculty member with appointments in both Political Science and Chicana/o Studies at UCLA, where he also is the Faculty Director of the UCLA Voting Rights Project. In analyzing the 2012 House map that currently is in place, Dr. Barreto said this:

“Multiple Black-performing and Latino-performing districts are packed and exhibit wasted Minority votes, which results in vote dilution;” and

“Given growth of the Minority population in certain regions of the state, it is clear that existing Minority districts should be unpacked and that new

Minority-performing districts [should be] created to comply with the [Voting Rights Act] VRA.”

In analyzing this Commission’s preliminary plan, Dr. Barreto concluded, “Minority-performing districts in the preliminary plan will perform for Minority voters.” That, of course, was very important to us, because as I said when the Commission approved the preliminary plan, “This plan includes seven minority opportunity districts, true VRA districts, minority influence districts, and coalition districts in which there is no incumbent, creating special opportunities for the election of minority [preferred candidates].”

The Commission’s efforts to create these districts also were hailed by those who probably have the best informed insights, the three Latino Members currently serving in the House of Representatives, and the leadership of the Pennsylvania Legislative Black Caucus, which has served since 1973 as “an information and advocacy vehicle to advance the interests of African American, Latino, and other people of color of the Commonwealth of Pennsylvania.” This is some of what Representatives Burgos, Cruz, and Guzman said in their letter to the Commission:

“Since the approval of the preliminary map for Pennsylvania’s state House of Representatives on December 16, 2021, there has been a significant amount of discussion about how this map impacts communities of color across the Commonwealth. As Latino members of the House we feel compelled to address these important concerns.

“We applaud the work that you have done to ensure these communities, which have been underrepresented in the legislature for too long, are fairly represented....

“The LRC’s Preliminary Plan is responsive to [the] growth of the Latino population in many important ways. Statewide, this plan creates nine districts in which Latino communities should be able to elect their candidates of choice. Three of those districts will be open seats with no

PAGES OMITTED

* * *

[p. 1762]

number of experts and members of the public, in fact some more than once. We held our meetings in a hybrid format that allowed for participation in all of our meetings in Harrisburg, but also virtually from anywhere in Pennsylvania. We did not want geography or concerns about COVID-19 to limit our public’s participation.

Now, as indicated by the Chairman, there are many considerations that go into this process beyond simply population and district lines. This year we had to deal with the added challenge of delays receiving that population data, Census population data, due to COVID-19 challenges in the 2020 Census process. We tried to create districts that are compact and contiguous and do not separate communities of interest.

This Commission has been charged with developing House and Senate maps by abiding to various laws and

principles, and some of our goals have been to, as was indicated partly, faithfully adhering to the requirements of the Voting Rights Act, so that we can draw and maintain majority-minority districts, or even do things along the lines of working to create coalition districts, when possible. Our goals have been to accommodate the significant migration of population from the northern sections of the State into the southeastern portions. And more importantly, we have had to address the long practice of prison gerrymandering. Under the leadership of Leader Joanna McClinton, prison residents now

PAGES OMITTED

* * *

[p. 1773]

disrespectful. I hope that my counterpart is just misinformed and is, in fact, not trying to mislead people over something that is so serious about fairness and equality. These are important issues that I personally take offense to.

The simple truth is that the House map fairly reflects the significant demographic changes since the last Census. It provides equal opportunity for all Members and for the entire electorate to participate in the electoral process. In addition, the map includes nine districts with no incumbent in communities with very large minority populations which will provide opportunities for minority candidates to run for office. This Commission has heard expert testimony on voting rights issues from Dr. Matthew Barreto in support of the preliminary map. The Commission also received

testimony from Latino lawmakers in the House and from other Latino Pennsylvanians in support of the preliminary map. I am very proud to support the product that we have worked on collectively this afternoon.

Thank you, Mr. Chairman.

CHAIR NORDENBERG: Thank you.

Is there any other discussion?

(There was no response.)

CHAIR NORDENBERG: If not, I will call for a vote on the motion to amend. And because this does involve the House, let me begin with you, Leader Benninghoff.

REPRESENTATIVE BENNINGHOFF: I apologize, are you calling for the vote now?

CHAIR NORDENBERG: Yes.

REPRESENTATIVE BENNINGHOFF: I am a "yes."

CHAIR NORDENBERG: Leader McClinton.

REPRESENTATIVE McCLINTON: No.

CHAIR NORDENBERG: Leader Costa.

SENATOR COSTA: No.

CHAIR NORDENBERG: Leader Ward.

SENATOR K. WARD: Yes.

CHAIR NORDENBERG: And I vote "no" as well.

So the motion to amend fails.

There remains on the table the motion to approve the final plan, as was presented to the Commission earlier.

Is there further discussion?

REPRESENTATIVE BENNINGHOFF: Deferring my time earlier when the other Members gave their opening comments, I would like to add comments to the final plan before it actually goes for a vote, when you see that's convenient.

CHAIR NORDENBERG: That's fine.

REPRESENTATIVE BENNINGHOFF: I do thank you, Mr. Chairman, and those other Members of this Commission.

As I tell a lot of people, difference of opinion hopefully makes a better final product. I will be a "no" vote on this final plan for several reasons, but two specifically.

PAGES OMITTED

* * *

[p. 1791]

This is an imperfect process and it's an imperfect final plan, but I am confident that at least the Senate portion of this meets all the constitutional requirements and will be able to upstand and stand up against the legal challenges. And while I do wish that the House amendment was included in this, and I do wish the vote was bifurcated, as it was in the preliminary map and I voted against the House in the preliminary map, because I would vote against that

part of it again today, it's not bifurcated today, and my primary duty and obligation is to the Senate. And for that reason today, I will vote in the affirmative.

CHAIR NORDENBERG: Thank you, Leader Ward.

Are there other comments?

Leader McClinton.

REPRESENTATIVE McCLINTON: Thank you, Mr. Chairman.

I just want to make sure that I'm clear on behalf of my Caucus that I really, really hope that Leader Benninghoff's professed commitment to people of color in the Commonwealth of Pennsylvania becomes reflective in his public policy going forward throughout the next decade and is even reflective of his Caucus.

CHAIR NORDENBERG: I would like to make some comments for the record. First, I want to say that while we were worried that dealing with the issue of prison gerrymandering might cut into the time for focusing on maps, in fact its impact was very small. That was the product of the fact that the Census data was delayed. Much of the work that we did on that issue was done before we had the data that would permit us to focus on the maps, and I think the time of delay that could be attributed to the Commission's consideration of that issue was no more than three or four days.

Second, we have tried to manage the fairest possible process in terms of reaching out to receive public input. We've had more hearings than any past Commission. We had long hearings, we had hearings that provided

the witnesses with a meaningful amount of time to speak, and also provided Commissioners with the opportunity to engage with those witnesses.

There was a reference made to the testimony or the report of Dr. Katz. He had been identified as a witness who was to be called by the House Republican Caucus on the day of our expert witness hearing. We were then told that he would not be a witness. At the time of the hearing, a report was delivered from him, but he was never presented, as the other experts were, for questioning and exchanges with Members of the Commission. Though I did rule that his report could be a part of the record, and it is there, also a part of the record is the response from Professor Barreto to the report of Professor Katz.

There was a reference made to Dr. Cervas as the drafter of this map. He was not the principal drafter of either the House map or the Senate map. This is the first time that the Commission has had someone with the technical skills to permit it to keep up with the Caucus teams. Dr. Cervas actually is a Ph.D. in political science with technical skills. He is not a professional mapper, as would be the case with some of the members of the Caucus staff. And again, he was not the principal drafter of either of the maps.

Other comments from Commissioners?

(There was no response.)

CHAIR NORDENBERG: If not, let me call for a vote on the motion that is before the Commission now, and that is a motion to adopt the final plan that is being presented today.

Leader McClinton.

REPRESENTATIVE McCLINTON: Thank you, Mr. Chairman.

So moved -- yes.

CHAIR NORDENBERG: Leader Ward.

SENATOR K. WARD: Yes.

CHAIR NORDENBERG: Leader Costa.

SENATOR COSTA: Yes.

CHAIR NORDENBERG: Leader Benninghoff.

REPRESENTATIVE BENNINGHOFF: No.

CHAIR NORDENBERG: And I, too, cast a "yes" vote for the plan, which means that it has been adopted by the Commission.

Are there any further comments that Members of the Commission would care to make, or any other business to come before the Commission today?

Leader Benninghoff.

REPRESENTATIVE BENNINGHOFF: I just want to say thank you to everybody. Mr. Chairman, as you and I have talked in sidebars, and as I tell a lot of my colleagues, we're in an industry that needs to agree to disagree, and the difference of opinions doesn't necessarily make one right and one wrong, and we'll see where the process goes from here, and I thank you for that time and indulgence. And I thank the rest of the Members as well.

App. 154

CHAIR NORDENBERG: Thank you very much.

And with that, this meeting of the Commission is adjourned. Thank you all.

(Whereupon, the proceedings were concluded at 2:48 p.m.)

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

/s/ Ann-Marie P. Sweeney
ANN-MARIE P. SWEENEY
Official Reporter
Legislative Reapportionment Commission

THE FOREGOING CERTIFICATION DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR SUPERVISION OF THE CERTIFYING REPORTER.

ANN-MARIE P. SWEENEY
Official Reporter
Legislative Reapportionment Commission
P.O. Box 203079
Harrisburg, PA 17120

**Meeting of the Pennsylvania Legislative
Reapportionment Commission**

**Approval of a Final Plan; Senate Hearing Room
#1; February 4, 2022**

Good afternoon. My name is Mark Nordenberg. As Chair of the Pennsylvania Legislative Reapportionment Commission, it is my privilege to call this meeting to order. It has been my habit to welcome those in attendance, either here in the Capitol or through our livestream, not only for myself but for the distinguished legislative leaders who serve as members of the Commission. They are: Senator Kim Ward, the Senate Majority Leader; Senator Jay Costa, the Democratic Leader of the Senate; Representative Kerry Benninghoff, the Majority Leader of the House of Representatives; and Representative Joanna McClinton, the Democratic Leader of the House. Today, I also want to take this opportunity to thank them, both for all that they have contributed to this effort and for the many courtesies that they each have extended to me.

I also want to thank the talented and dedicated members of their caucus teams, people I have come to know and respect and with whom I have enjoyed working. Of course, we never would have reached this point in the process except for the work of the Commission's own team, which includes: Rob Byer, our Chief Counsel; Jonathan Cervas, our Redistricting Consultant; Renny Clark, our Executive Director; Ann-Marie Sweeney, our Director of Administration; and Cheri Mizdail, our Administrative Assistant. Also indispensable to so much of

PAGES OMITTED

* * *

[p. 18]

what really caught my attention is that this academic expert has not published a single academic article in the areas for which his expert testimony was being presented.

Contrast that with the truly amazing record of Prof. Kosuke Imai, who was the House Democrats' first witness and is regarded by many to be the world's leading quantitative political scientist. He was on the Princeton faculty for fifteen years, where he was the founder of its Program in Statistics and Machine Learning. He now is at Harvard, where he is the first faculty member in that university's history to hold appointments in both the Department of Government and the Department of Statistics. Not only does he have an outstanding publication record in the field that was the subject of his testimony, but he actually developed the algorithm used by the House Republicans' witness to analyze our preliminary plan.

Prof. Imai found three things when he analyzed the study that was conducted by the House Republicans' witness: (1) he could not replicate the results, which raises questions; (2) when he used the algorithm that he had developed to assess the preliminary plan himself, he found that plan to be less of a statistical outlier than the House Republicans had claimed; and (3) that became even more true when he factored in racial data. In fact, he concluded that when "majority-minority districts are considered, there is no empirical

evidence that the preliminary plan is a partisan gerrymander.”

PAGES OMITTED

* * *

[p. 20]

has invented two of the partisan bias metrics used by Dave’s Redistricting App.

In addition to his more scientific observations, Dr. Nagle offered a down-to-earth, but thought-provoking, perspective on the methods employed by the House Republicans’ witness. To quote: “The fallacy of averaging the ensemble of simulations can be revealed by an analogy. A professional basketball coach could consider 1,000 people who know how to play the game and then randomly choose an average one to play center. That is like choosing a plan from many simulated plans in the middle of the ensemble of simulated plans. Or the coach could hire LeBron James. That is like picking the LRC proposed plan.”

The Use of Racial Data

At the very beginning of his report, the House Republicans’ witness declared that his “simulation process ignores all . . . racial considerations when drawing districts.” That is a puzzling choice, since, under certain circumstances, the Commission is required to take account of racial considerations and in a broader set of circumstances is permitted to do so. Presumably, that is why Prof. Imai included such data in his simulations.

Neither the fact that his simulations included no racial data nor the fact that this is another area in which he has no academic publications to his credit kept the House Republicans' witness from basing much of his analysis on the sweeping theme that, if minority-group voters are spread across multiple legislative districts, their influence is inevitably diluted. Of course, all of us know that voter-influence can be diluted either by cracking or by packing and, under the law, knowing where the correct balance can be struck requires an intensive local appraisal, which the Republicans' witness did not perform.

To conduct such an analysis, the House Democrats retained Dr. Matt Barreto, one of the country's leading scholars of Latino politics and of the Voting Rights Act. Prof. Barreto is a faculty member with appointments in both Political Science & Chicana / Chicano Studies at UCLA, where he also is the Faculty Director of the UCLA Voting Rights Project. In analyzing the 2012 House map that currently is in place, Dr. Barreto said this:

- Multiple Black-performing and Latino-performing districts are packed and exhibit wasted Minority votes, which results in vote-dilution; and
- Given growth of the Minority population in certain regions of the state, it is clear that existing Minority districts should be unpacked and that new Minority-performing districts [should be] created to comply with the [Voting Rights Act] VRA.

In analyzing this Commission's preliminary plan, Dr. Baretto concluded, "Minority-performing districts in the preliminary plan will perform for minority voters." That, of course, was very important to us because, as I said when the Commission approved the preliminary plan, "This plan includes seven minority opportunity districts – true VRA districts, minority influence districts, and coalition districts – in which there is not an incumbent, creating special opportunities" for the election of minority-preferred candidates.

I probably should add, for the record, that the House Republican caucus did belatedly offer the written report of a second expert who took issue with some of Prof. Baretto's work. However, even though they had earlier identified this expert as a witness they did not deliver his report as scheduled or make that witness available for questioning by the Commission, but Prof. Baretto did offer his own powerful and persuasive reply.

The Commission's efforts to create these districts also were hailed by those who probably have the best-informed insights – the three Latino members of the current House of Representatives and the leadership of the Pennsylvania Legislative Black Caucus, which has served, since 1973, as "an information and advocacy vehicle to advance the interests of African American, Latino, and other people of color of the Commonwealth of Pennsylvania."

PAGES OMITTED

* * *

**REPORT OF MARK A. NORDENBERG
CHAIR OF THE 2021 PENNSYLVANIA
LEGISLATIVE REAPPORTIONMENT
COMMISSION
REGARDING THE COMMISSION'S FINAL
PLAN**

MARCH 4, 2022

PAGES OMITTED

* * *

[p. 22]

2. Demographic Trends

In addition to showing the areas in which the population grew or shrank, the 2020 census also revealed that Pennsylvania's population continues to become more diverse. In 2000, approximately 1.97 million people of color lived in Pennsylvania. (*See* Kopko Supplemental Testimony.) According to the 2020 census, that number is now approximately 3.46 million. (*Id.*) In other words, the population of people of color increased by 76% over two decades. (*Id.*)

This trend was true across the Commonwealth, with both rural and urban areas becoming more diverse. Nevertheless, the vast majority of people of color—upwards of 90%—live in urban areas. (*Id.*)

III. Reallocating Some State Prisoners Based on Their Residence Prior to Incarceration

At the Commission's meeting of May 26, 2021, its first meeting after my appointment as Chair,

Representative Joanna McClinton, the House Democratic Leader, presented for initial discussion a resolution providing that, for redistricting purposes, inmates incarcerated in state correctional facilities would be considered to be residents of the communities in which they lived prior to their incarceration, rather than as residents of the places of their incarceration. In doing so, she noted that similar adjustments were being made in a growing number of states, driven by a desire to address at least one consequence of mass incarceration and to ensure that the political power of minority and urban voters is not diluted.

PAGES OMITTED

* * *

[p. 35]

Other examples of the Commission's responsiveness to public comment can be found throughout both maps. For example, the Commission's Final Plan no longer divides Aspinwall, McCandless, Mechanicsburg, or Murrysville. The Final Plan also no longer divides the City of Scranton into four different districts, as had been done in the Preliminary Plan. The Commission's Final Plan further reflects testimony about communities of interest, such as reasons for putting East Caln Township in the same district as Downingtown, keeping Abbottstown with other communities with which it shares municipal services, and respecting the Wissahickon Gorge as a relevant dividing line for certain Philadelphia neighborhoods.

Similar changes were made to the Senate map between release of the Preliminary Plan and approval

of the Final Plan. For example, responding to suggestions made by numerous citizens and good-governance groups, the Commission created more compact districts in Philadelphia and, in the process, created a Latino-influence district in the Senate map. The Commission also responded to testimony that West Bethlehem, though it is in a different county, should not be in a different Senate district from the rest of the City of Bethlehem.

the Commission, either by the affected members or by Caucus Leadership, in time for us to assess and act upon them, if they got to us at all.

PAGES OMITTED

* * *

[p. 44]

Voters case. He not only has published academic papers directly relevant to his testimony but also is a member of the Advisory Board of PlanScore.²⁵

There is, in sum, a stark difference in credentials.

V. The Commission's Priorities, Values, and Challenges

In drafting the Preliminary and Final Reapportionment Plans for the House and Senate, the

²⁵ PlanScore is a project of Campaign Legal Center, a nonpartisan organization working to advance democracy through law. The PlanScore website (<https://planscore.campaignlegal.org/>) allows policymakers, advocates, and the public to evaluate district plans according to peer-reviewed measures of partisan fairness.

Commission’s predominant purpose always was to create districts that comply in all respects with the requirements of the Pennsylvania Constitution—most notably, Article II, § 16 (which sets forth requirements for legislative districts); Article I, § 5 (also known as the “Free and Equal Elections” clause); and Article I, § 29 (the Racial and Ethnic Equality clause). Of course, the Commission was also attentive to the requirements of the 14th Amendment to the United States Constitution and to the federal Voting Rights Act. In fact, the Commission heard from a sizeable number of Voting Rights Act experts, both before and after the Commission approved its Preliminary Plan.

When circumstances permitted the Commission to do so, and after ensuring compliance with all aspects of state and federal law, the Commission fashioned districts to create additional opportunities beyond the minimum requirements of the Voting Rights Act, positioning voters in racial and language minority groups to influence the election of candidates of their choice. Going beyond these minimum requirements not only is consistent with the Voting Rights Act, but also is consistent with, and possibly required by, both the Free and Equal Elections Clause and the Racial and Ethnic Equality Clause of the Pennsylvania Constitution.

When able to do so, the Commission team sought to create minority opportunity and influence districts without an incumbent, so as to provide the greatest potential for racial and language minority voters to

influence the election of candidates of their choice.²⁶ Again, the Commission did so while being mindful of and adhering to the traditional redistricting criteria of Article II, § 16 and other constitutional mandates.

A. Prioritization of Article II, § 16 Criteria

The Commission's starting point for all of its work was the language of Article II, § 16 of the Pennsylvania Constitution, which provides:

The Commonwealth shall be divided into fifty senatorial and two hundred three representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial

PAGES OMITTED

* * *

[p. 61]

U.S. Supreme Court authority gives significant latitude to states in how they effectuate the goals and requirements of the Voting Rights Act. *See Bartlett v. Strickland*, 556 U.S. 1, 23 (2009). The goal of the Voting Rights Act—prevention of minority vote dilution—is also important in the context of the Free and Equal Elections Clause and the Racial and Ethnic Equality Clause of Pennsylvania's Constitution.

²⁶ The importance of drawing districts without an incumbent was underscored by the testimony that a Latina candidate in an Allentown district had lost a primary election contest waged against an incumbent by only 55 votes, suggesting that, absent her opponent's incumbency advantage, she would have won.

As was earlier noted, the Commission further recognized that incumbency is often a barrier that prevents minority voters from electing candidates of their choice. To counter that political reality, the Commission looked for opportunities where districts with sizeable minority communities could be drawn in ways that did not include an incumbent as a resident. To be clear, however, the Commission did so only when consistent with other traditional redistricting criteria and while also keeping in mind the requirements and prohibitions of the 14th Amendment to the U.S. Constitution.

One of the challenges leveled at the Final Plan by Leader Benninghoff's Petition for Review is that the Plan dilutes minority votes, particularly by splitting cities like Reading and Allentown. Repeating a familiar pattern, for this claim, too, the Benninghoff Petition relies on Professor Barber's analysis. As noted above, Professor Barber's ensemble analysis did not include racial data. However, neither that fact nor the fact that this is another area in which he has no academic

PAGES OMITTED

* * *

[p. 73]

sign of partisan bias. However, a party holding a substantial majority of seats and holding most of the seats in parts of the state that have lost population would naturally be the subject to more pairings, and preliminary maps submitted by two respected good-governance advocates each actually paired 36 Republican incumbents.

It also should be noted that the number of Republican incumbents paired in the Final Plan has been reduced, and some of those pairings involve incumbents who plan to retire.

Many of the attacks made on the Final Plan have been addressed above. However, there are at least two additional points that should be made.

- The language of the Benninghoff Petition itself asserts that “[a] plaintiff alleging a racial gerrymandering claim need only show that race was the ‘predominant factor motivating the legislature’s decision.’” (Benninghoff Petition at ¶ 67 (quoting *Bethune Hill v. Va. State Board of Elections*, 137 S.Ct. 788, 792 (2017).) However, the fact that race is a factor, or even an important factor, does not make it the predominant factor, as the governing authority requires.
- The Benninghoff Petition also states that “[d]rawing lines to intentionally benefit one political party over another, whether to negate a natural disadvantage or not, is still a gerrymander and a violation of Article II, Section 16 and the Free and Equal Elections Clause under Article I, Section 5 of the Pennsylvania Constitution.” (Benninghoff Petition at ¶ 49.) However, in its *League of Women Voters* opinion, the Pennsylvania Supreme Court defined what is a gerrymander in a far different way: “Specifically, partisan gerrymandering dilutes the votes of those who in prior elections voted for the party not in power

to give the party in power a lasting electoral advantage.” 178 A.3d at 814. There has been no suggestion that anything of that nature has been involved in the Commission’s work.

It is often said that there is no such thing as a perfect plan, and the Supreme Court has never held the Commission to the standard of perfection or required that the Commission produce the best possible plan on all available metrics.⁵¹ However, the Commission’s plan is a very good plan, one that was approved by a majority of the Commission that had worked diligently to create it and one that has received praise from many quarters. Earlier this week, for example, the Founder and Chair of Fair Districts PA, a non-partisan, citizen-led coalition working to stop gerrymandering, described the plan in following way: “The final maps show that it’s possible to balance concern for incumbents with traditional redistricting criteria, provide representation for minority communities and yield maps that limit partisan bias.”⁵²

⁵¹ The Benninghoff Petition contends that Majority Leader Benninghoff has produced a better plan. However, it was presented to the Commission in a fashion that precluded serious consideration, not having been shared with the Commission until the day of the meeting scheduled to approve the Final Plan, though from dates on the document, it appears to have been available several days earlier. More substantively, that map also would produce markedly higher levels of partisan bias, which a majority of the Commission has sought to avoid.

⁵² “The good and the bad of Pennsylvania redistricting,” Lancaster Online (Mar. 2, 2022), available at https://lancasteronline.com/opinion/columnists/the-good-and-the-bad-of-pennsylvania-redistricting-column/article_f4852e2a-998c-11ec-b226-5741c8513951.html

App. 168

I would only add more explicitly that these maps should serve the people of Pennsylvania and Pennsylvania democracy well for the next ten years, and also extend my thanks to all the many people who contributed to this effort.

/s/ Mark A. Nordenberg

Mark A. Nordenberg

Chair

2021 Legislative Redistricting Commission

Analysis by Dr. Matt Barreto

To: Chairman Mark Nordenberg, Pennsylvania
Legislative Reapportionment Commission
From: Dr. Matt A. Barreto, Faculty Director, UCLA
Voting Rights Project
Re: Voting Rights Act compliance in Pennsylvania
January 7, 2022

1. My name is Matt A. Barreto, and I am currently Professor of Political Science and Chicana/o Studies at the University of California, Los Angeles. I was appointed Full Professor with tenure at UCLA in 2015. Prior to that I was a tenured professor of Political Science at the University of Washington from 2005 to 2014. At UCLA I am the faculty director of the Voting Rights Project in the Luskin School of Public Affairs and I teach a year-long course on the Voting Rights Act (VRA), focusing specifically on social science statistical analysis, demographics and voting patterns that are relevant in VRA expert reports. I have written expert reports and been qualified as an expert witness more than three dozen times in Federal and State voting rights and civil rights cases. I have been invited to give Congressional testimony about voting rights and co-authored a report on racially polarized voting that Congress relied on in their reauthorization of the VRA in 2006. I have published peer-reviewed, social science articles specifically about minority voting patterns, racially polarized voting, and have co-authored a software package specifically for use in

understanding racial voting patterns in VRA cases. I have been retained as an expert consultant by counties and states across the country to advise them on racial voting patterns as they relate to VRA compliance during redistricting. I have worked extensively with both plaintiffs groups and on behalf of defendants in VRA lawsuits, always to provide independent analysis. As an expert witness in VRA lawsuits, my testimony has been relied on by courts to find in favor of both plaintiffs and defendants.

2. Every 10 years states and localities must redraw political district boundaries to balance out the population and take into account demographic and population changes over the previous decade. While drawing the new districts, the Legislative Reapportionment Commission must balance a number of important factors in the Pennsylvania Constitution, including compactness, contiguity and avoiding municipal splits and ensuring free and equal elections, and must also consider preserving communities of interest. Among the important considerations is also the Federal Voting Rights Act. All redistricting bodies must be aware of, and comply with the standards in the VRA which prohibits districting plans which dilute opportunities for representation for racial or ethnic minorities. Specifically, Section 2b of the 1965 VRA states that a plan is in violation if a minority group has “less opportunity than other members of the electorate to participate in the

political process and to elect representatives of their choice.” It is this second clause of the VRA which directly relates to redistricting plans that either overly pack, or crack and diminish, the voting strength of racial or ethnic minorities – thereby diluting their vote and diminishing their ability to elect candidates of their choice. While race must not be the predominant factor in redistricting,

PAGES 2-5 OMITTED

* * *

[p. 6]

Voting patterns in Southwestern Pennsylvania

12. Below are a series of ecological inference scatterplots with a regression fit line mapping vote choice by precinct in different regions of the state. Each chart plots how every voting precinct within a region voted in 2020 elections. Blue dots represent the percent of the vote a precinct gave to the Democratic candidate and red dots the percent going to Republican candidates. Thus each precinct is represented by two data points. The candidate vote choice is plotted along the vertical y-axis. In addition to vote choice, each precinct is charted for the percent of the voting population which is White or non-White. Precincts at the far left hand side are those which are heavily minority (Black, Latino or Asian) and precincts at the far right hand side are those which are heavily White. Precincts right in the middle at the 50% mark are those

which are very diverse with about half the voters being White and half being minority.

13. We can start by reading the chart at the left hand side where precincts which are comprised of 75% to 100% non-white voters. In this first chart for Southwestern Pennsylvania, these minority precincts gave between 85% to 95% of their vote to Biden in the 2020 presidential election. This is very strong evidence of minority vote cohesion, the first *Gingles* component of a racially polarized voting inquiry. On the opposite side of the graph, the right hand side, we find precincts which are heavily White. There is a larger concentration of precincts here because White voters, and precincts which are over 80% White, make up the vast majority of precincts in this region. For those precincts which are most heavily White, the red dots for Republican voting rise to the top, suggesting that as the White population increases the vote for Trump increased considerably to over 75%. This provides evidence of the second component of racially polarized voting under the *Gingles* test of White block voting against minority candidates of choice.
14. In the 2020 election, Black voters in Southwestern Pennsylvania demonstrated very high rates of cohesive voting, with estimated Democratic vote share over 90% for State House elections, President, Congress and Attorney General. In contrast, White voters supported Republicans at rates between 70% to 90%. In the

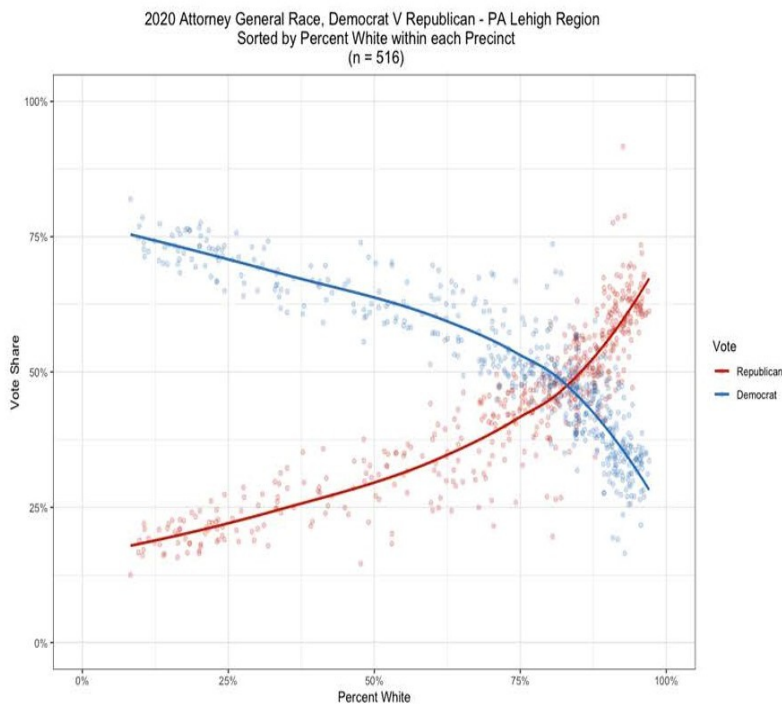
city of Pittsburgh, White voters still lean Republican but there is more evidence of cross-over voting in support of minority-preferred candidates, and thus the potential for minority coalition districts.

15. There is no magic threshold for minority performing districts, but generally where there are large Black populations courts have upheld districts which are at least 35% minority. It is often the case in areas with large minority populations that there is some white cross-over voting. When combined with very strong minority cohesion, this creates functional majority-minority districts. When considering minority performing districts, courts will often look to

PAGES 7-10 OMITTED

* * *

[p. 11]



Voting patterns in Philadelphia and Delaware Counties

17. In the 2020 election, Black, Latino and Asian voters in Philadelphia and Delaware counties demonstrated high rates of cohesive voting, with estimated Democratic vote share of 85% to 100% for State House elections, President, Congress and Attorney General. In contrast, White voters offered far less support to Democrats with an overall average support right around 50%. Even though this region is characterized by high Democratic voting rates, this is driven by very

strong cohesiveness among Black, Latino and Asian voters which vote in coalition for Democratic candidates. In the city of Philadelphia, White voters demonstrate reasonable rates of cross-over voting to support minority candidates of choice, which suggests the strong potential for minority coalition districts in the region. In areas where the minority population is overconcentrated or packed, there can be consideration given to unpacking these districts, so that they still perform for minority candidates of choice, but also allow for minority voters to be influential and numerous in size in adjacent minority coalition districts.

PAGES 12-19 OMITTED

* * *

App. 176

January 14, 2022

**ASSESSMENT OF POPULATION CHANGE AND
VOTING PATTERNS IN PENNSYLVANIA**

REVIEW OF FEDERAL VOTING RIGHTS ACT

Dr. Matt Barreto, UCLA Political Science & Chicana/o
Studies Faculty Director of the UCLA Voting Rights
Project

matt@uclavrp.org 909.489.2955

SLIDES 2-18 OMITTED

* * *

[p. 19]

Performance Analysis

- Minority-performing districts in the preliminary plan will perform for minority voters

Dist	Current % MVAP	Prelim % MVAP	Expected performance for Minority Cand of Choice
19	42.0	48.2	80.9
24	55.3	51.0	89.2
34	29.5	40.8	79.9
35	26.7	26.5	62.9

App. 177

54	4.2	43.0	69.5
189	28.3	35.9	58.4

Performance Analysis

- Minority-performing districts in the preliminary plan will perform for minority voters

Dist	Current % MVAP	Prelim % MVAP	Expected performance for Minority Cand of Choice
22	71.0	61.6	71.2
50	5.7	48.1	65.9
116	30.4	40.5	44.2
126	47.4	42.4	55.4
127	75.6	61.3	68.8
129	14.9	45.4	58.9
134	13.1	48.9	61.9

APPENDIX F

**CONSTITUTIONAL AND STATUTORY
PROVISIONS INVOLVED**

AMENDMENT XIV - Passed by Congress June 13, 1866. Ratified July 9, 1868.

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be

reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

App. 180

AMENDMENT XV - Passed by Congress February 26, 1869. Ratified February 3, 1870.

Section 1.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude--

Section 2.

The Congress shall have the power to enforce this article by appropriate legislation.

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

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 10303(f)(2) of this title, as provided in subsection (b).

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

(Pub. L. 89–110, title I, §2, Aug. 6, 1965, 79 Stat. 437 ; renumbered title I, Pub. L. 91–285, §2, June 22, 1970, 84 Stat. 314 ; amended Pub. L. 94–73, title II, §206, Aug. 6, 1975, 89 Stat. 402 ; Pub. L. 97–205, §3, June 29, 1982, 96 Stat. 134 .)

APPENDIX G

SUPREME COURT OF PENNSYLVANIA

**Nos. 4 WM 2022, 11 MM 2022, 14 MM 2022,
7 WM 2022, 16 MM 2022, 11 WM 2022,
17 MM 2022, 18 MM 2022, 12 WM 2022
(consolidated for briefing purposes)**

[Filed: March 11, 2022]

**In Re: 2021 LEGISLATIVE
REAPPORTIONMENT COMMISSION**

**Brief of Respondent
2021 Legislative Reapportionment Commission**

Appeal from the Final Plan of the 2021 Legislative
Reapportionment Commission, adopted
February 4, 2022

Robert L. Byer (Pa. 25447) Duane Morris LLP 600 Grant Street, Suite 5010 Pittsburgh, PA 15219 (412) 497-1083	Leah A. Mintz (Pa. 320732) Duane Morris LLP 30 S. 17th Street Philadelphia, PA 19103 (215) 979-1263
--	--

*Counsel for 2021 Legislative Reapportionment
Commission*

PAGES OMITTED

* * *

[p. 7]

**A. Adherence to Traditional Redistricting
Criteria in Article II, § 16.**

The Commission’s Final Plan for both the House and the Senate performs well on all the traditional redistricting criteria in Article II, § 16—compactness, contiguity, respecting the integrity of political subdivisions, and near equal population. Indeed, the Final Plan performs better on every metric, other than population equality, than the plan the Court approved in *Holt II*. Although this Court has recognized that comparing favorably to previously approved plans does not immunize a plan from attack, *see Holt II*, 67 A.3d at 1238, the magnitude of the improvement shows that the Commission’s Final Plan is not contrary to law.

The Commission’s Final Plan in no way approaches the situation in *Holt I*, where the Court invalidated the map because “the challengers’ presentation ‘overwhelmingly’ show[ed] the existence of political subdivision splits that rather obviously were not made absolutely necessary by competing constitutional, demographic, and geographic factors, and indeed where it was ‘inconceivable’ that the number of subdivision splits was ‘unavoidable.’” *Holt II*, 67 A.3d at 1240 (quoting *Holt I*, 38 A.3d at 756).

1. *Compactness*

The Commission’s Final Plan is more compact than the *Holt II* plan. Under the Reock measure, where a

higher score is better, the *Holt II* plan scored 0.38 for the Senate map and 0.39 for the House map. (See Report 70-71.) Under the Commission's Final Plan, those scores have increased to 0.39 for the Senate map and 0.42 for the House map. (*Id.*)

The Polsby-Popper measure, in which a higher score is also better, yields the same result. The *Holt II* Senate map has a compactness score of 0.27 and the *Holt II* House map has a compactness score of 0.28. (*Id.*) In the Commission's Final Plan, those scores have increased to 0.33 and 0.35, respectively. (*Id.*)

No Petitioner has challenged the Commission's Final Plan for not being sufficiently compact.

2. *Contiguity*

Similarly, no Petitioner has argued that the Commission's Final Plan is contrary to law because of a lack of contiguity. The districts in the House and Senate Maps are all contiguous except for the rare circumstances where municipalities along the border of a district are discontinuous. The Court has allowed such instances of discontinuity in order to preserve municipal and county boundaries. See *Holt II*, 67 A.3d at 1242.

3. *As Nearly Equal in Population as Practicable*

The Commission's Senate map has a population deviation of 8.11%, which is only marginally higher than the 7.96% deviation in the plan approved in *Holt II*. (Report 70.) The Commission's House map has a population deviation of 8.65%, which again is only

slightly higher than the 7.87% population deviation in the plan approved in *Holt II*. (*Id.*)

Both of these population deviations are presumptively constitutional under the 14th Amendment to the U.S. Constitution. The U.S. Supreme Court has recognized that “some deviations from population equality may be necessary to permit the States to pursue other legitimate objectives such as ‘maintain[ing] the integrity of various political subdivisions’ and ‘provid[ing] for compact districts of contiguous territory.” *Brown v. Thomson*, 462 U.S. 835, 843 (1983) (quoting *Reynolds v. Sims*, 377 U.S. 533, 578 (1964) (alterations in original)).

“An unrealistic overemphasis on raw population figures, a mere nose count in the districts, may submerge these other considerations and itself furnish a ready tool for ignoring factors that in day-to-day operation are important to an acceptable representation and apportionment arrangement.” *Gaffney v. Cummings*, 412 U.S. 735, 749 (1973).

In recognition of these considerations, the U.S. Supreme Court has held that “minor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case of invidious discrimination under the Fourteenth Amendment so as to require justification by the State.” *Id.* at 745. Instead, that Court has “established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations.” *Brown*, 462 U.S. at 842.

Although this Court has never adopted the 10% presumption, Pennsylvania jurisprudence tends to align with federal equal population principles. In *Holt I*, the Court held that Article II, § 16 “does not require that the overriding objective of reapportionment is equality of population.” 38 A.3d at 759. Instead, the nearly equal population requirement must be balanced with other redistricting mandates, including the compactness, contiguity, and minimization of political subdivision splits requirements in Article II, § 16. *Id.* Neither the U.S. Constitution nor the Pennsylvania Constitution “require[s] that reapportionment plans pursue the narrowest possible deviation, at the expense of other, legitimate state objectives.” *Id.* at 760.

The language of Article II, § 16 makes clear that populations of the districts must be as nearly equal “as practicable.” Pa. Const. art. II, § 16. This “‘practicable’ modifier in the ‘as nearly equal in population as practicable’ language necessarily leaves room for the operation of the other constitutional commands.” *Holt I*, 38 A.3d at 757. Further, the Commission has discretion to determine what population deviation is most practicable. *Holt II*, 67 A.3d at 1239.

The Commission’s Final Plan often chose to sacrifice achieving more equal population equality in the name of other constitutional mandates, including keeping counties and municipalities intact. (Report 51.) As this Court noted in *Holt II*, increasing the population deviation creates “more breathing space” for other constitutional considerations, including protecting the integrity of political subdivisions. 67 A.3d at 1238.

The Commission exercised its discretion to determine that population deviations in the 8%-9% range struck the appropriate balance of creating districts that are as nearly equal as possible and that also respect political subdivision boundaries, are compact, are contiguous.² In fact, as discussed below, the Commission's Final Plan outperforms every previous redistricting plan on county and municipal splits. The Commission's Final Plan achieves this goal while also ensuring that no district in either the Senate or the House map deviates more than 4.40% from the ideal district population. (C.R.³ Tab 42a.)

4. *Integrity of Political Subdivisions*

The Commission's Final Plan is a marked improvement over the plan approved in *Holt II*. The Commission's Senate map splits two fewer counties into six fewer county pieces. (Report 70.) While the Commission's Senate map splits two more municipalities, it creates one fewer municipality piece than the *Holt II* map. (*Id.*) Further, the Commission's Senate map splits two fewer wards than the *Holt II* map. (*Compare Holt II*, 67 A.3d at 1240, with C.R. Tab 42c. PDF page 6748.)

² Specific challenges to the population deviations in the Commission's Final Plan are discussed below.

³ C.R. stands for the Commission's Certified Record.

Senate Plan Comparisons

	Current Senate Plan	2020 Senate Plan
Counties Split	25	23
Number of Counties Splits	53	47
Municipalities Split	2	4
Number of Municipal Splits	11	10
Wards Split	10	8

Some of these splits are absolutely necessary based purely on population. Fourteen counties—Allegheny, Berks, Bucks, Chester, Dauphin, Delaware, Lancaster, Lehigh, Luzerne, Montgomery, Northampton, Philadelphia, Westmoreland, York—have populations larger than an ideal Senate district and, accordingly, must be split. *See* Penn State Data Center, County and Municipal Population Change Table.⁴ In addition, the population of Erie County is almost 5% above the ideal population for a Senate district. Similarly, two cities—Philadelphia and Pittsburgh—must be split in the Senate map because their populations exceed the size of an ideal Senate district. *Id.*

⁴ Available at https://pasdc.hbg.psu.edu/Portals/48/Features/CountyAndMunicipalPopulationChange_2010to2020.xlsx?ver=2021-08-24-080135-920

Allowing for these absolutely necessary splits, the Commission’s plan only splits nine additional counties and two additional municipalities. Compared to the 67 counties and 2,560 municipalities in the Commonwealth, the number of county and municipal splits in the Commission’s Senate map is “remarkably small.” *Holt II*, 67 A.3d at 1240 (“We agree with the LRC that the number of splits, over and above those numbers which would be inevitable even in the absence of other constitutional factors, is remarkably small.”).

The Commission’s House map even more dramatically outperforms the *Holt II* House map. The Commission’s House map splits five fewer counties into thirty-five fewer parts. (Report 71.) The Commission’s map also splits twenty-three fewer municipalities into thirty-two fewer parts. (*Id.*) Finally, the Commission’s House map splits sixteen fewer wards. (*Compare Holt II*, 67 A.3d at 1240, with C.R. Tab 43e, PDF page 6808.)

House Plan Comparisons

	Current House Plan	2020 House Plan
Counties Split	50	45
Number of Counties Splits	221	186
Municipalities Split	77	54
Number of Municipal Splits	124	92

Wards Split	103	87
--------------------	-----	----

Like with the Senate map, the House map splits an extremely small number of counties and municipalities, after discounting those counties and municipalities that must be split purely to achieve nearly equal population. Of Pennsylvania’s sixty-seven counties, thirty-seven—over half—must be split purely based on population. *See Penn State Data Center, County and Municipal Population Change Table.* The Commission’s House map splits only an additional eight counties.

The Commonwealth also has seven municipalities that must be split in any plan for the House—Philadelphia, Pittsburgh, Allentown, Reading, Erie (the city), Upper Darby Township, and Scranton. *Id.* The Commission’s Final Plan splits an additional forty-seven municipalities. (Report 71.) Considering that the Commonwealth has 2,560 municipalities, the Commission’s House map only divides 1.8% of the municipalities that otherwise would not be split.

B. The Commission’s Final Plan works to reduce partisan bias, in compliance with the Free and Equal Elections Clause.

The Commission’s Final Plan also complies with the Free and Equal Elections Clause. Pa. Const. art. I, § 5. This clause forbids “diluting the potency of an individual’s ability to select the [representative] of his or her choice.”⁵ *League of Women Voters v.*

⁵ *League of Women Voters* involved a challenge to the Commonwealth’s congressional districts, but the Free and Equal

Commonwealth, 178 A.3d 737, 816 (Pa. 2018). The Court explained that the first clause of Article I, § 5 “mandates clearly and unambiguously, and in the broadest possible terms, that *all* elections conducted in this Commonwealth must be ‘free and equal.’” *Id.* at 804. By using this language, the Constitution’s framers intended that “all aspects of the electoral process, to the greatest degree possible, be kept open and unrestricted to the voters of our Commonwealth.” *Id.* The clause also protects, “to the greatest degree possible, a voter’s right to equal participation in the electoral process for the selection of his or her representatives in government.” *Id.* In other words, all citizens have

PAGES OMITTED

* * *

[p. 47]

2. *Race did not predominate in creating the House map and, as a result, the House map is not a racial gerrymander.*

The Benninghoff and Roe Petitions also accuse the Commission’s House map as being a racial gerrymander. (Benninghoff Br. 62-79, Roe Br. 28-21.)

A racial gerrymandering claim is a species of a 14th Amendment, Equal Protection violation claim. “As interpreted by the [U.S.] Supreme Court, the Equal Protection Clause prohibits states from using race *as the sole or predominant factor* in constructing district

Elections Clause applies with equal force to the Commonwealth’s legislative districts.

lines, unless doing so satisfies strict scrutiny.” *Fletcher v. Lamone*, 831 F. Supp. 2d 887, 901 (D. Md. 2011) (three-judge district court) (emphasis in original) (citing *Easley v. Cromartie*, 532 U.S. 234, 241 (2001), and *Bush v. Vera*, 517 U.S. 952, 958-59 (1996) (plurality op. of O’Connor, J.)).

The Equal Protection Clause, however, “does not preclude *any* consideration of race in the redistricting process.” *Id.* (emphasis in original). The U.S. Supreme Court has expressly acknowledged that redistricting authorities will “almost always be aware of racial demographics.” *Miller v. Johnson*, 515 U.S. 900, 916 (1995).

A violation of the Equal Protection Clause only occurs when race is the *sole* or *predominant* factor, such that the state “has subordinated traditional, legitimate redistricting principles to racial considerations.” *Id.* (citing *Vera*, 517 U.S. at 959). In other words, the predominance of racial considerations is unconstitutional where “[r]ace was the criterion that, in the State’s view, could not be compromised,” and where traditional redistricting factors were considered “only after the race-based decision had been made.” *Shaw v. Hunt*, 517 U.S. 899, 907 (1996). This is a “demanding” burden for plaintiffs to meet, *Easley*, 532 U.S. at 241, and requires a showing of discriminatory motive, *Fletcher*, 831 F. Supp. 2d at 902.

Petitioners come nowhere close to meeting that demanding standard. Most fundamentally, Leader Benninghoff’s own expert—who Leader Benninghoff attempts to cite in support of his racial gerrymandering claim (Benninghoff Br. 67-68)—expressly concludes

that “the decision to divide particular cities in the Commission’s proposal *is not driven by minority representation*, but instead by partisan considerations.” (Benninghoff Br., App’x B, at 0064a.)

Petitioners are trying to have it both ways—they argue *both* that the Commission’s House map is a partisan gerrymander *and* a racial gerrymander. But to succeed on a racial gerrymandering claim, a plaintiff must show that the Commission’s *sole or predominant* purpose was to make decisions based on race, such that traditional redistricting criteria were subordinated. *Fletcher*, 831 F. Supp. 2d at 901. Even Leader Benninghoff’s expert concludes that partisan considerations, and *not* racial considerations, are responsible for any supposed departure from traditional redistricting standards. (See (Benninghoff Br., App’x B, at 0064a (expounding that “the decision to divide particular cities in the Commission’s proposal *is not driven by minority representation*, but instead by partisan considerations.”).)

Petitioners’ other evidence fares no better. Petitioners cite to passages from Chair Nordenberg’s statements explaining the features of the Preliminary Plan for the House. (See, e.g., Benninghoff Br. 67.) But these statements acknowledge nothing more than that the Commission was “aware of racial demographics,” which is to be expected. *Miller*, 515 U.S. at 916. Similarly, the testimony from Dr. Imai, about how ensembles that take into account race demonstrate that the House map is not a partisan gerrymander, also does nothing more than reveal that the Commission was aware of racial demographics when analyzing the

House map. (Benninghoff Br. at 69.) Moreover, these statements and analyses were made after the Preliminary House map was already drawn. By definition, then, these pieces of “evidence” do nothing to show *how* race factored into the Commission’s decisions, let alone that discriminatory racial intent predominated.

The declarations from members of Leader Benninghoff’s team also cannot form the basis of a racial gerrymandering claim. (Benninghoff Br. 68.) These stray instances of discussions about the racial makeup of different districts do not suggest that race was the one factor—to the exclusion of all others—that the Commission was using to draw districts. And even if the evidence is probative of the Commission’s intent, the declarations suggest that the Commission was trying to *promote* opportunities for minority communities, not to discriminate against them.

Leader Benninghoff’s allegations of racial gerrymandering are incredible for other reasons, too. To credit Leader Benninghoff’s allegations, the Court would have to believe that Leader McClinton—the first person of color to sit on the Commission in its fifty-year history—voted for and championed a map that discriminates against minorities. *See Fletcher*, 831 F. Supp. 2d at 902 (requiring evidence that “African-Americans are especially disadvantaged by the State Plan”). Similarly, the Court would have to believe that the House Legislative Black Caucus and the three Latino members of the House, all of whom have expressed support for the Commission’s plan, also agree with a plan that intentionally discriminates

against minorities. (Report 64-65.) The Court would have to believe that the same is true for the numerous good governance groups and individuals advocating for the rights of people of color, which have also supported the Commission's work. (*Id.* at 66-68.) The court in *Fletcher* refused to reach such a conclusion—that “the entire African-American leadership in the State of Maryland was hoodwinked”—on a less than overwhelming record.¹⁹ *Fletcher*, 831 F. Supp. 2d at 902. This Court should exercise the same caution here.

The case cited by Leader Benninghoff shows just how much evidence is needed to establish racial predominance in redistricting and, relatedly, just how short Leader Benninghoff's evidence falls. In *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016) (three-judge district court), the court found “overwhelming and consistent evidence” that race was the predominant factor in drawing districts. *Id.* at 130. Indeed, all the individuals involved in the redistricting process repeatedly stated, and then confirmed under oath, that they drew districts with three instructions in mind: (1) draw so-called “VRA districts” with at least 50%-plus-one Black voting age population; (2) “draw these districts first, before drawing the lines of other districts”; and (3) “draw these district everywhere there was a minority population large enough to do so and, if possible, in rough proportion to their population in the

¹⁹ Of course, that is not to say that every person of color supports the plan, or that there are no legitimate criticisms of the House map. However, disagreement among minority communities does not demonstrate that “discriminatory motivations predominated in the redistricting process.” *Fletcher*, 831 F. Supp. 2d at 902.

state.” *Id.* In other words, the architects of the North Carolina maps used immovable racial thresholds, drew minority districts first, and attempted to maximize minority districts.

Further, the North Carolina plan made no attempt to comply with traditional redistricting criteria. The plan split over 100 more municipalities than the benchmark plan, leaving the court with the impression that “little to no attention was paid to political subdivisions, communities of interest, or precinct boundaries.” *Id.* at 137-38. Nor was much attention paid to compactness, as the plan performed worse than the benchmark plan on almost every compactness measure. *Id.* at 138.

Here, the overwhelming and consistent evidence is that the Commission first focused on the traditional redistricting factors of Article II, § 16 and the Free and Equal Elections Clause, and then, when consistent with those general principles, looked to ensure that minority communities would have opportunities to elect or influence the election of candidates of choice. (Report 44-46, 60-61.) Indeed, unlike the plan in *Covington*, the Commission’s plan performs well under all the traditional redistricting measures, in many cases performing better than the simulations produced by Leader Benninghoff’s expert. Leader Benninghoff’s proffered evidence does nothing to undercut this evidence or demonstrate that race was the sole or predominant factor in how the Commission drew districts. As a result, Leader Benninghoff never gets

past the first hurdle for establishing a racial gerrymandering claim.²⁰

3. *The House map does not unnecessarily split municipalities.*

The Ingram Petitioners argue that the Commission's House map divides too many municipalities, without ascribing partisan motivations to the Commission. (Ingram Br. 7-11.)

The Commission's House map has significantly fewer municipal splits than the map approved by this Court in *Holt II*, as the chart below shows:

PAGES OMITTED

* * *

²⁰ Leader Benninghoff spends much space in his brief arguing that the Commission cannot satisfy strict scrutiny because the Commission has insufficient evidence of racially polarized voting. Because Leader Benninghoff fails to make the threshold showing that race was the prominent factor in the Commission's drawing of districts, the Court does not need to reach this issue. However, to the extent Leader Benninghoff criticizes Dr. Barreto's analysis on the Voting Rights Act, Dr. Barreto has again refuted these claims in a supplemental expert report, which is attached to the Commission's answer as Exhibit 3. In particular, Dr. Barreto explains in detail how Leader Benninghoff is misinterpreting the *Gingles* factors under the Voting Rights Act, and how Dr. Barreto did, in fact, establish patterns of racially polarized voting and bloc voting patterns by White majorities that prevent minority communities from electing candidates of choice. (See Barreto Supplemental Report at 3-6.)