

In the Supreme Court of the United States

Michael C. Turzai, in his capacity as Speaker of the Pennsylvania House of
Representatives, and Joseph B. Scarnati III, in his capacity as Pennsylvania
Senate President Pro Tempore,
Applicants,

v.

League of Women Voters of Pennsylvania, *et al.*,
Respondents.

APPENDIX TO AMERICAN CIVIL RIGHTS UNION'S AMICUS BRIEF IN SUPPORT OF EMERGENCY APPLICATION FOR STAY

To the Honorable Samuel A. Alito, Jr.
Associate Justice of the United States and
Circuit Justice for the Third Circuit

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Appendix A

**[J-1-2018]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

LEAGUE OF WOMEN VOTERS OF : No. 159 MM 2017
PENNSYLVANIA, CARMEN FEBO SAN :
MIGUEL, JAMES SOLOMON, JOHN :
GREINER, JOHN CAPOWSKI, :
GRETCHEN BRANDT, THOMAS :
RENTSCHLER, MARY ELIZABETH :
LAWN, LISA ISAACS, DON LANCASTER, :
JORDI COMAS, ROBERT SMITH, :
WILLIAM MARX, RICHARD MANTELL, :
PRISCILLA MCNULTY, THOMAS :
ULRICH, ROBERT MCKINSTRY, MARK :
LICHTY, LORRAINE PETROSKY, :

Petitioners

v.

THE COMMONWEALTH OF :
PENNSYLVANIA; THE PENNSYLVANIA :
GENERAL ASSEMBLY; THOMAS W. :
WOLF, IN HIS CAPACITY AS :
GOVERNOR OF PENNSYLVANIA; :
MICHAEL J. STACK III, IN HIS CAPACITY :
AS LIEUTENANT GOVERNOR OF :
PENNSYLVANIA AND PRESIDENT OF :
THE PENNSYLVANIA SENATE; :
MICHAEL C. TURZAI, IN HIS CAPACITY :
AS SPEAKER OF THE PENNSYLVANIA :
HOUSE OF REPRESENTATIVES; :
JOSEPH B. SCARNATI III, IN HIS :
CAPACITY AS PENNSYLVANIA SENATE :
PRESIDENT PRO TEMPORE; ROBERT :
TORRES, IN HIS CAPACITY AS ACTING :
SECRETARY OF THE :
COMMONWEALTH OF PENNSYLVANIA; :
JONATHAN M. MARKS, IN HIS :
CAPACITY AS COMMISSIONER OF THE :
BUREAU OF COMMISSIONS, :
ELECTIONS, AND LEGISLATION OF :

THE PENNSYLVANIA DEPARTMENT OF :
STATE, :
Respondents :

ORDER

PER CURIAM

AND NOW, this 26th day of January, 2018, in furtherance of this Court's Order of January 22, 2018, and in anticipation of the possible eventuality that the General Assembly and the Governor do not enact a remedial congressional districting plan by the time periods specified in that Order, the Court orders as follows.

Pursuant to Paragraph "Third" of our Order of January 22, 2018:

First, this Court appoints Professor Nathaniel Persily as an advisor to assist the Court in adopting, if necessary, a remedial congressional redistricting plan.

Second, the Pennsylvania General Assembly shall submit to the Court, or direct the Legislative Data Processing Center to submit to the Court, no later than **January 31, 2018 at noon**, ESRI shape files that contain the current boundaries of all Pennsylvania municipalities and precincts.

Third, any redistricting plan the parties or intervenors choose to submit to the Court for its consideration shall include the following:

a. A 2010 Census block equivalency and ESRI shape file expressing the plan.

b. A report detailing the compactness of the districts according to each of the following measures: Reock; Schwartzberg; Polsby-Popper; Population Polygon; and Minimum Convex Polygon.

c. A report detailing the number of counties split by each district and split in the plan as a whole.

d. A report detailing the number of municipalities split by each district and the plan as a whole.

e. A report detailing the number of precincts split by each district and the plan as a whole.

f. A statement explaining the proposed plan's compliance with this Court's Order of January 22, 2018.

Fourth, the parties and intervenors shall submit to the Court, no later than **January 31, 2018 at noon**, a 2010 Census block equivalency and ESRI shape file for the maps which formed the basis for the expert testimony and reports offered into evidence in the proceedings before the Commonwealth Court. All such maps shall be labeled consistently with the parties' or intervenors' exhibits and descriptions therein.

Justice Baer files a Concurring and Dissenting Statement.

Chief Justice Saylor and Justice Mundy dissent.

Appendix B

IN THE

Supreme Court of Pennsylvania

Middle District 159 MM 2017 LE

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA, CARMEN FEBO SAN MIGUEL, JAMES SOLOMON, JOHN GREINER, JOHN CAPOWSKI, GRETCHEN BRANDT, THOMAS RENTSCHLER, MARY ELIZABETH LAWN, LISA ISAACS, DON LANCASTER, JORDI COMAS, ROBERT SMITH, WILLIAM MARX, RICHARD MANTELL, PRISCILLA MCNULTY, THOMAS ULRICH, ROBERT MCKINSTRY, MARK LICHTY, LORRAINE PETROSKY, Petitioners,

v.

THE COMMONWEALTH OF PENNSYLVANIA; THE PENNSYLVANIA GENERAL ASSEMBLY; THOMAS W. WOLF, IN HIS CAPACITY AS GOVERNOR OF PENNSYLVANIA; MICHAEL J. STACK III, IN HIS CAPACITY AS LIEUTENANT GOVERNOR OF PENNSYLVANIA AND PRESIDENT OF THE PENNSYLVANIA SENATE; MICHAEL C. TURZAI, IN HIS CAPACITY AS SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES; JOSEPH B. SCARNATI III, IN HIS CAPACITY AS PENNSYLVANIA SENATE PRESIDENT PRO TEMPORE; ROBERT TORRES, IN HIS CAPACITY AS ACTING SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA; JONATHAN M. MARKS, IN HIS CAPACITY AS COMMISSIONER OF THE BUREAU OF COMMISSIONS, ELECTIONS, AND LEGISLATION OF THE PENNSYLVANIA DEPARTMENT OF STATE, Respondents.

On Appeal from the Commonwealth Court of Pennsylvania at No. 261 MD 2017

**PETITION TO FILE AMICUS CURIAE BRIEF
NUNC PRO TUNC ON BEHALF OF
THE AMERICAN CIVIL RIGHTS UNION**

LINDA A. KERNS (I.D. NO. 84495)
LAW OFFICES OF LINDA A. KERNS, LLC
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Philadelphia, PA 19102
(215) 731-1400
Counsel for American Civil Rights Union

The American Civil Rights Union ("ACRU"), through undersigned counsel, respectfully requests this Court to allow it to file an amicus brief that contains a proposed plan for Congressional Districts in the Commonwealth of Pennsylvania. ACRU submits this request nunc pro tunc.

ACRU respectfully submits that the redistricting map contained in the attached amicus brief will substantially assist the court in developing a final congressional redistricting map. First and foremost, the map was drawn using 20101 census data and 2010 census geography only. It was not drawn using any political affiliation criteria. Second, the proposed map does not protect incumbents or challengers. Third, the map maximizes compactness, using a variety of mathematical tests. Fourth, the map minimizes splits in political subdivisions. This is extremely important, because a minimal number of splits in political subdivisions reduces the ability of any party to politically gerrymander a redistricting plan. In short, the proposed map optimizes traditional redistricting criteria, using only fair, neutral redistricting map.

To ACRU's knowledge, the proposed map presents a plan that has not yet been proposed or presented to the Court by any party. Accordingly, ACRU

submits that its proposal will assist the Special Master in evaluating all other maps, creating a map that minimizes (or eliminates) the use of political data, and, and maximizing, to the extent possible, fair and neutral redistricting criteria.

As noted in its Statement of Interest, ACRU has been actively involved in election matters in the Commonwealth of Pennsylvania for several years. Indeed, undersigned counsel has represented ACRU on a variety of election law matters spanning that time, and she has not been retained solely to weigh in on this redistricting matter. Undersigned counsel has monitored the redistricting proceedings, and recently ACRU determined that it could contribute to the redistricting process by submitting a redistricting map to the Court.

The proposed Amicus Brief is attached at Exhibit 1.

Respectfully submitted,

February 15, 2018

/s/ Linda A. Kerns

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Attorney for American Civil Rights Union

CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and correct copy of the foregoing Brief of Amicus Curiae American Civil Rights Union was served upon all counsel of record, via electronic service, on this date, February 15, 2018.

/s/ Linda A. Kerns

Linda A. Kerns, Esquire (ID 84495)
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EXHIBIT 1

IN THE

Supreme Court of Pennsylvania

Middle District 159 MM 2017 LE

LEAGUE OF WOMEN VOTERS OF PENNSYLVANIA, CARMEN FEBO SAN MIGUEL, JAMES SOLOMON, JOHN GREINER, JOHN CAPOWSKI, GRETCHEN BRANDT, THOMAS RENTSCHLER, MARY ELIZABETH LAWN, LISA ISAACS, DON LANCASTER, JORDI COMAS, ROBERT SMITH, WILLIAM MARX, RICHARD MANTELL, PRISCILLA MCNULTY, THOMAS ULRICH, ROBERT MCKINSTRY, MARK LICHTY, LORRAINE PETROSKY, Petitioners,

v.

THE COMMONWEALTH OF PENNSYLVANIA; THE PENNSYLVANIA GENERAL ASSEMBLY; THOMAS W. WOLF, IN HIS CAPACITY AS GOVERNOR OF PENNSYLVANIA; MICHAEL J. STACK III, IN HIS CAPACITY AS LIEUTENANT GOVERNOR OF PENNSYLVANIA AND PRESIDENT OF THE PENNSYLVANIA SENATE; MICHAEL C. TURZAI, IN HIS CAPACITY AS SPEAKER OF THE PENNSYLVANIA HOUSE OF REPRESENTATIVES; JOSEPH B. SCARNATI III, IN HIS CAPACITY AS PENNSYLVANIA SENATE PRESIDENT PRO TEMPORE; ROBERT TORRES, IN HIS CAPACITY AS ACTING SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA; JONATHAN M. MARKS, IN HIS CAPACITY AS COMMISSIONER OF THE BUREAU OF COMMISSIONS, ELECTIONS, AND LEGISLATION OF THE PENNSYLVANIA DEPARTMENT OF STATE, Respondents.

On Appeal from the Commonwealth Court of Pennsylvania at No. 261 MD 2017

BRIEF FOR AMICUS CURIAE THE AMERICAN CIVIL RIGHTS UNION

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IN THE SUPREME COURT OF PENNSYLVANIA

LEAGUE OF WOMEN VOTERS ET AL	:	No. 159 MM 2017
	:	
Petitioners	:	
	:	
v.	:	
	:	
THE COMMONWEALTH OF	:	
PENNSYLVANIA, ET AL.	:	

AMICUS BRIEF BY THE AMERICAN CIVIL RIGHTS UNION

I. STATEMENT OF INTEREST

Amicus Curiae American Civil Rights Union ("ACRU") is a non-partisan 501(c)(3) tax-exempt organization dedicated to protecting the civil rights of all Americans by publicly advancing a Constitutional understanding of our essential rights and freedoms. It was founded in 1998 by long time policy advisor to President Reagan, and the architect of modern welfare reform, Robert B. Carleson. Carleson served as President Reagan's chief domestic policy advisor on federalism, and originated the concept of ending the federal entitlement to welfare by giving the responsibility for those programs to the states through finite block grants. Since its founding, the ACRU has filed amicus curiae briefs on various constitutional and election issues in cases nationwide, including redistricting cases.

ACRU has been active in the Commonwealth of Pennsylvania, litigating the Commonwealth's compliance with Section 8 of the NVRA, specifically 52 U.S.C. §20507(I). Additionally, ACRU has been working with Pennsylvania state senators and representatives on election integrity issues. The undersigned counsel has been retained by ACRU since 2016 with regard to election integrity issues and has continuously worked with ACRU since that time. ACRU's attorneys (both undersigned counsel and ACRU-retained counsel located in Denver, Colorado) authored this amicus brief. Furthermore, ACRU is solely responsible for paying an expert to develop the proposed map.

II. DESCRIPTION OF AMICUS' REDISTRICTING MAP

A. Introduction

The American Civil Rights Union ("ACRU") respectfully submits the attached redistricting map to assist the Court and Special Master in drawing Congressional districts for the Commonwealth of Pennsylvania. For purposes of brevity, this amicus brief will merely describe the map.

The attached map has been designed to maximize the criteria described by

the Pennsylvania Supreme Court. The map does not take into account the residency of incumbent members of Congress or the residency of candidates for Congress. It does not create potential Voting Rights Act issues. A printed copy of the statewide map is contained at Exhibit A. A printed copy of the southeastern portion of the Commonwealth is contained at Exhibit B. In addition, ACRU has submitted electronic files for the Special Master to examine more carefully.

B. Compactness

This map maximizes compactness across Pennsylvania:

- Under Reock measurements, 14 of 18 districts measure approximately 0.4. Five are above 0.5, and two are above 0.6.
- Under Polsby-Popper measurements, seven districts are above 0.4.
- Under the Population Polygon scores, 12 districts are above 0.8, and three are over 0.9.
- Under the Minimum Convex Polygon measurements, 13 districts score 0.8 or above.

A report containing the compactness scores is contained at Exhibit C.

C. Population

Thirteen districts contain 705,688 residents, and five districts contain 705,687 residents, based upon the 2010 Census.

D. Political Subdivision Splits

The map leaves 53 counties whole, and splits 14 counties. Of the 14 split counties, 11 are only split once, and three are split three times. All three of the counties containing three splits (Philadelphia, Allegheny, and Montgomery) are the largest three counties in the Commonwealth, are large enough to have at least one wholly contained congressional district within their borders, and are split in such a way that each has the maximum number of districts possible contained within them.

Out of the 20 largest counties in Pennsylvania this map keeps Bucks, Delaware, Lancaster, Chester, York, Northampton, Erie, Lackawanna, Washington, Butler, and Beaver counties whole. It only splits Berks, Westmoreland, Lehigh, Luzerne, Dauphin, and Cumberland once. Amicus' proposed plan splits only three boroughs: Dormont in Allegheny County, Nanty Glo in Cambria County, and Larksville in Luzerne. The proposed plan

splits 11 townships: Spring in Berks, South Newton in Cumberland, Lower Swatara in Dauphin, Shirley in Huntingdon, Little Beaver in Lawrence, Upper Saucon in Lehigh, Chestnuthill in Monroe, Hatfield and Lower Merion in Montgomery, Coal in Northumberland, and Hempfield in Westmoreland.

The City of Philadelphia has two districts wholly contained within it. The balance of Philadelphia is combined with Delaware County in the newly formed 7th district.

Only one Census Bureau Voting District ("VTD") in each of the above townships and boroughs is split, and two VTDs in Philadelphia are split. In all, only 16 VTDs are split statewide.

A report summarizing political subdivision splits is contained at Exhibit D.

In lieu of uploading the DBF and SHP files, which were not accepted by the PACFILE system, these files can be found at the following links:

DBF: <https://www.dropbox.com/s/r3lrlva85bp3omd/ACRU%20MAP.DBF?dl=0>

SHP: <https://www.dropbox.com/s/dbnd77n8bniumc7/ACRU.shp?dl=0>

III. Conclusion

We respectfully request that this Honorable Court accepts our proposal.

Respectfully submitted,

/s/ Linda A. Kerns

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Attorney for American Civil Rights Union

CERTIFICATE OF SERVICE

I, the undersigned, certify that a true and correct copy of the foregoing Brief of Amicus Curiae American Civil Rights Union was served upon all counsel of record, via electronic service, on this date, February 15, 2018.

/s/ Linda A. Kerns

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Attorney for American Civil Rights Union

EXHIBIT
A

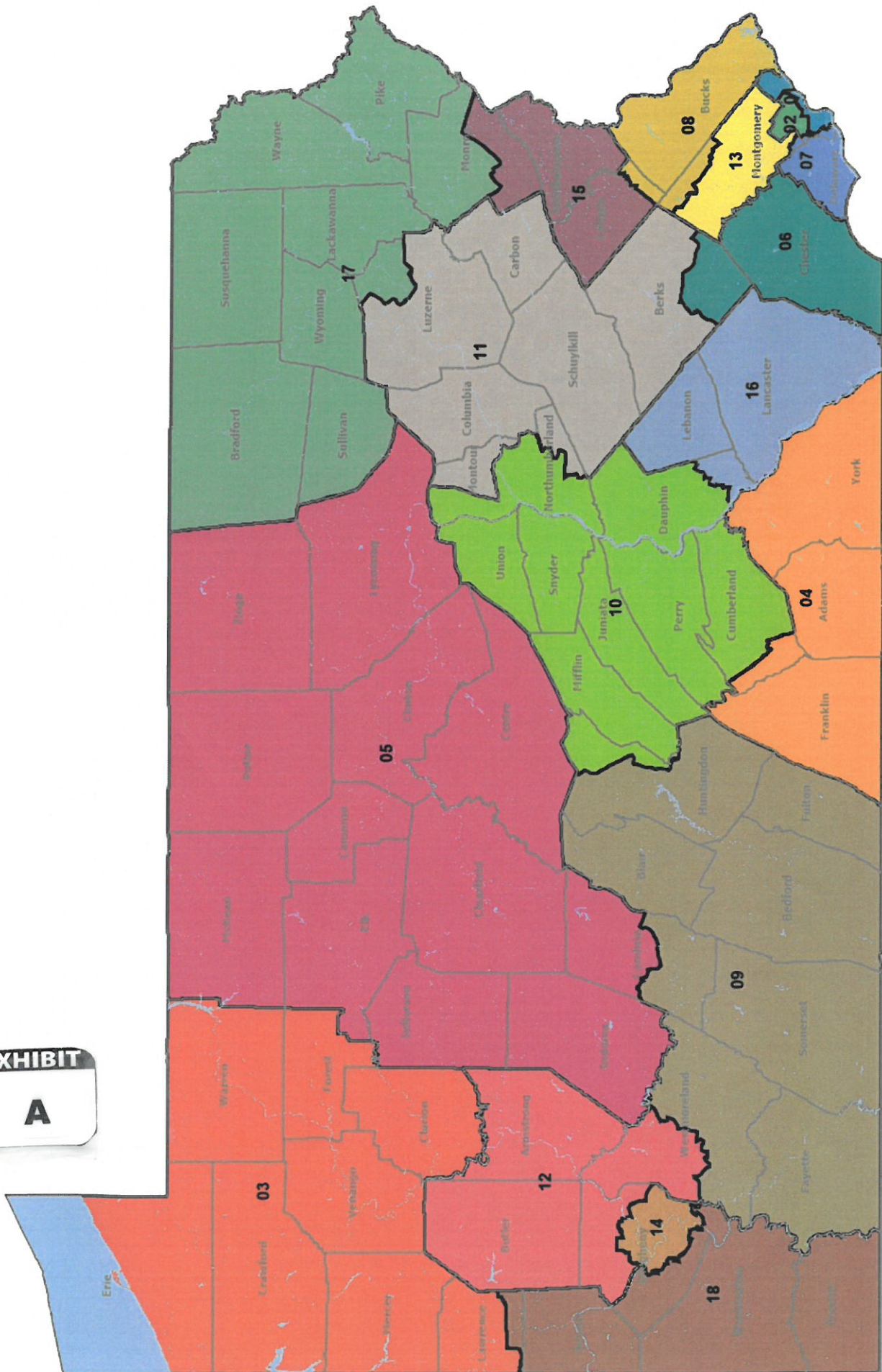
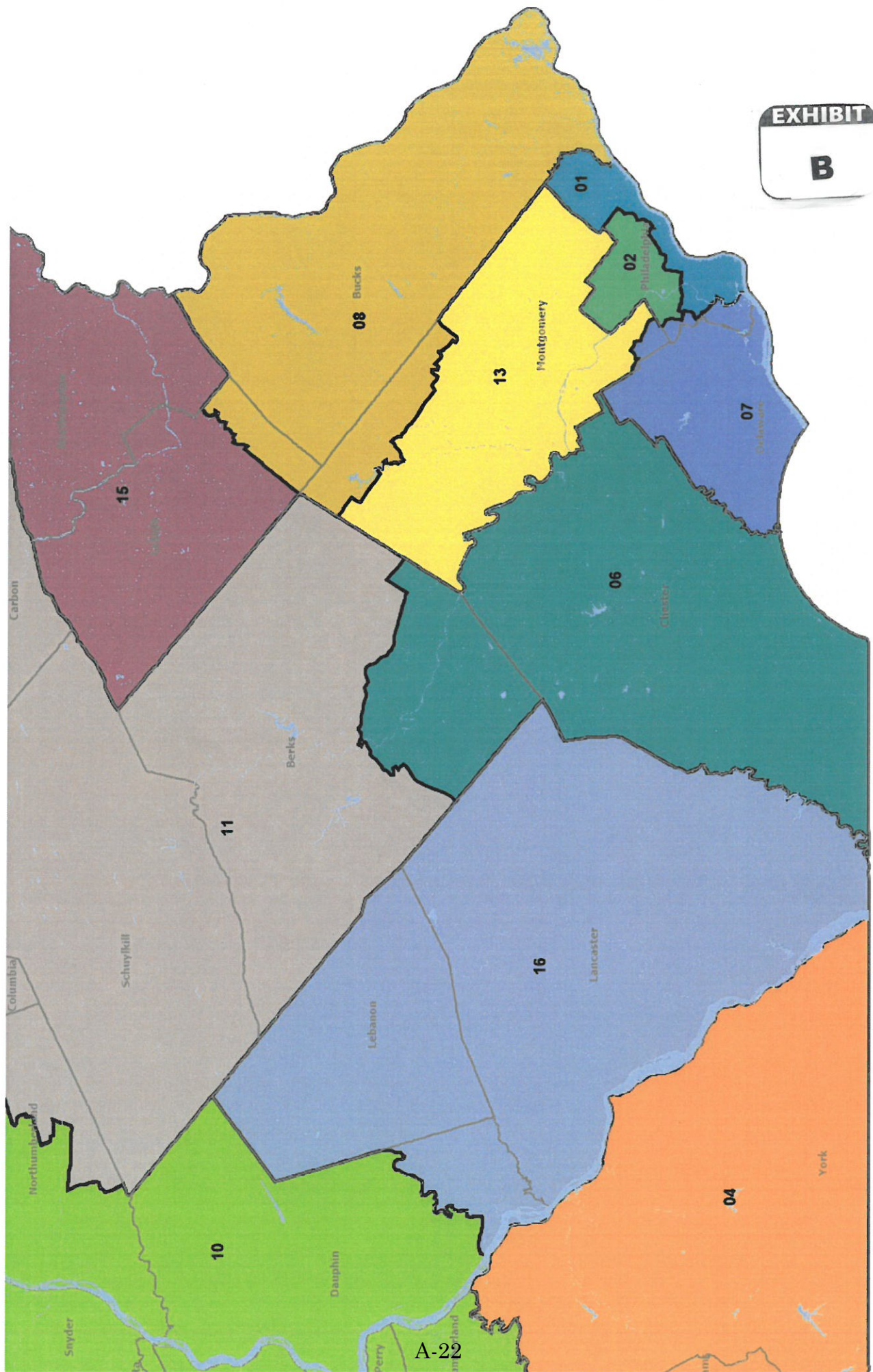


EXHIBIT
B



Plan Name: ACRU
Plan Type: Congressional
Date: 2/15/2018
Time: 11:51:07AM
Administrator:

Measures of Compactness

2/15/2018

Sum	N/A	N/A	N/A	N/A	N/A
Min	0.22	1.33	0.22	0.47	0.60
Max	0.66	2.08	0.49	0.93	0.89
Mean	0.47	1.57	0.37	0.78	0.81
Std. Dev.	0.11	0.18	0.07	0.14	0.06

DISTRICT	Reock	Schwartzberg	Polsby-Popper	Population Polygon	Min Convex Poly
01	0.22	2.08	0.22	0.60	0.60
02	0.51	1.58	0.40	0.85	0.78
03	0.53	1.33	0.43	0.93	0.81
04	0.30	1.59	0.36	0.83	0.82
05	0.47	1.37	0.49	0.85	0.88
06	0.47	1.68	0.30	0.81	0.75
07	0.53	1.42	0.45	0.89	0.87
08	0.41	1.52	0.40	0.71	0.79
09	0.46	1.52	0.39	0.81	0.87
10	0.58	1.55	0.37	0.89	0.84
11	0.61	1.61	0.37	0.59	0.82
12	0.58	1.61	0.32	0.54	0.80
13	0.39	1.74	0.31	0.68	0.81
14	0.66	1.69	0.29	0.89	0.84
15	0.43	1.56	0.39	0.92	0.79
16	0.48	1.34	0.48	0.93	0.89
17	0.43	1.43	0.43	0.83	0.85
18	0.37	1.70	0.32	0.47	0.82



Plan Name: ACRU
Plan Type: Congressional
Administrator:

Political Subdivisions Split Between Districts

Thursday February 15, 2018

11:55 AM

Number of subdivisions not split:

County 53
Voting District 9,231

Number of subdivisions split into more than one district:

County 14
Voting District 25

Number of subdivision splits which affect *no* population:

County 0
Voting District 0

Split Counts

County

Cases where an area is split among 2 Districts: 11

Cases where an area is split among 3 Districts: 3

Voting District

Cases where an area is split among 2 Districts: 25

County	Voting District	District	Population
<i>Split Counties :</i>			
Allegheny PA		12	244,910
Allegheny PA		14	705,688
Allegheny PA		18	272,750
Berks PA		06	206,802
Berks PA		11	204,640
Cambria PA		05	40,707
Cambria PA		09	102,972
Cumberland PA		04	19,691
Cumberland PA		10	215,715
Dauphin PA		10	215,426
Dauphin PA		16	52,674
Huntingdon PA		09	39,477
Huntingdon PA		10	6,436
Lawrence PA		03	75,216
Lawrence PA		18	15,892
Lehigh PA		08	18,332
Lehigh PA		15	331,165

Plan Name:	H	Administrator:
Plan Type:	Congressional	User:

County	Voting District	District	Population
<i>Split Counties (continued):</i>			
Luzerne PA		11	173,595
Luzerne PA		17	147,323
Monroe PA		15	76,787
Monroe PA		17	93,055
Montgomery PA		07	32,079
Montgomery PA		08	62,107
Montgomery PA		13	705,688
Northumberland PA		10	66,175
Northumberland PA		11	28,353
Philadelphia PA		01	705,688
Philadelphia PA		02	705,688
Philadelphia PA		07	114,630
Westmoreland PA		09	157,194
Westmoreland PA		12	207,975

Split VTDs :

Allegheny PA	DORMONT DIST 03	14	805
Allegheny PA	DORMONT DIST 03	18	501
Berks PA	SPRING TWP DIST 02	06	619
Berks PA	SPRING TWP DIST 02	11	1,777
Cambria PA	NANTY GLO WD 02 ED 02	05	203
Cambria PA	NANTY GLO WD 02 ED 02	09	757
Cumberland PA	SOUTH NEWTON TWP Voting District	04	822
Cumberland PA	SOUTH NEWTON TWP Voting District	10	561
Dauphin PA	LOWER SWATARA TWP DIST 01	10	2,026
Dauphin PA	LOWER SWATARA TWP DIST 01	16	221
Huntingdon PA	SHIRLEY TWP DIST MT. UNION	09	931
Huntingdon PA	SHIRLEY TWP DIST MT. UNION	10	686
Lawrence PA	LITTLE BEAVER TWP	03	1,057
Lawrence PA	LITTLE BEAVER TWP	18	354
Lehigh PA	UPPER SAUCON TWP DIST 01	08	1,082
Lehigh PA	UPPER SAUCON TWP DIST 01	15	1,313
Lehigh PA	UPPER SAUCON TWP DIST 02	08	1,162
Lehigh PA	UPPER SAUCON TWP DIST 02	15	1,308
Lehigh PA	UPPER SAUCON TWP DIST 04	08	5,486
Lehigh PA	UPPER SAUCON TWP DIST 04	15	16
Luzerne PA	LARKSVILLE WD 01	11	189
Luzerne PA	LARKSVILLE WD 01	17	1,345
Monroe PA	CHESTNUTHILL TWP DIST 02	15	1,726
Monroe PA	CHESTNUTHILL TWP DIST 02	17	2,732
Montgomery PA	HATFIELD TWP VTD 3-2	08	2,239
Montgomery PA	HATFIELD TWP VTD 3-2	13	91
Montgomery PA	HATFIELD TWP VTD 4-1	08	1,402
Montgomery PA	HATFIELD TWP VTD 4-1	13	166
Montgomery PA	HATFIELD TWP VTD 4-2	08	131
Montgomery PA	HATFIELD TWP VTD 4-2	13	1,390
Montgomery PA	HATFIELD TWP VTD 5-1	08	490
Montgomery PA	HATFIELD TWP VTD 5-1	13	963

Plan Name:	H	Administrator:
Plan Type:	Congressional	User:

County	Voting District	District	Population
<i>Split VTDs (continued):</i>			
Montgomery PA	LOWER MERION TWP WD 10 PCT 02	07	60
Montgomery PA	LOWER MERION TWP WD 10 PCT 02	13	1,295
Northumberland PA	COAL TWP WD 07	10	1,488
Northumberland PA	COAL TWP WD 07	11	128
Philadelphia PA	PHILADELPHIA WD 03 PCT 01	02	90
Philadelphia PA	PHILADELPHIA WD 03 PCT 01	07	687
Philadelphia PA	PHILADELPHIA WD 06 PCT 02	01	19
Philadelphia PA	PHILADELPHIA WD 06 PCT 02	02	623
Philadelphia PA	PHILADELPHIA WD 06 PCT 12	01	105
Philadelphia PA	PHILADELPHIA WD 06 PCT 12	02	525
Philadelphia PA	PHILADELPHIA WD 44 PCT 07	01	141
Philadelphia PA	PHILADELPHIA WD 44 PCT 07	02	694
Philadelphia PA	PHILADELPHIA WD 62 PCT 01	01	1,278
Philadelphia PA	PHILADELPHIA WD 62 PCT 01	02	216
Philadelphia PA	PHILADELPHIA WD 62 PCT 02	01	1,247
Philadelphia PA	PHILADELPHIA WD 62 PCT 02	02	29
Westmoreland PA	HEMPFIELD TWP VTD	09	627
	MIDDLETOWN		
Westmoreland PA	HEMPFIELD TWP VTD	12	364
	MIDDLETOWN		

Appendix C

The New York Times

Democrats Didn't Even Dream of This Pennsylvania Map. How Did It Happen?

They seemed not to believe that they would be allowed to strive for partisan balance in addressing Republican gerrymandering.

By Nate Cohn (<http://www.nytimes.com/by/nate-cohn>) Feb. 21, 2018

Few people expected that the Pennsylvania congressional map (<https://www.nytimes.com/interactive/2018/02/19/upshot/pennsylvania-new-house-districts-gerrymandering.html>), which the state Supreme Court ordered redrawn to undo Republican gerrymandering, would prove to be as favorable to Democrats as the one adopted by the court on Monday.

Perhaps the easiest way to convey the cause for surprise: The new map is better for Democrats — by nearly every measure — than the maps that Democrats themselves proposed.

The New Pennsylvania Map Is Even Better for Democrats Than the Democratic Proposals

Districts won by Democrats in the ...	Current Map	Proposed Democratic Plans				New Map
		Governor	Lt. Gov.	Senate	House	
2016 pres. race	6	7	7	7	7	8
2016 Senate race	4	7	7	6	7	5
Any 2016 race	9	9	10	10	11	11
Average of all 2016 races	5.4	7.4	8.0	7.8	8.2	8.4
Median 2016 Democratic pres. margin	-8.9	-10.6	-9.7	-9.6	-7.8	-5.7

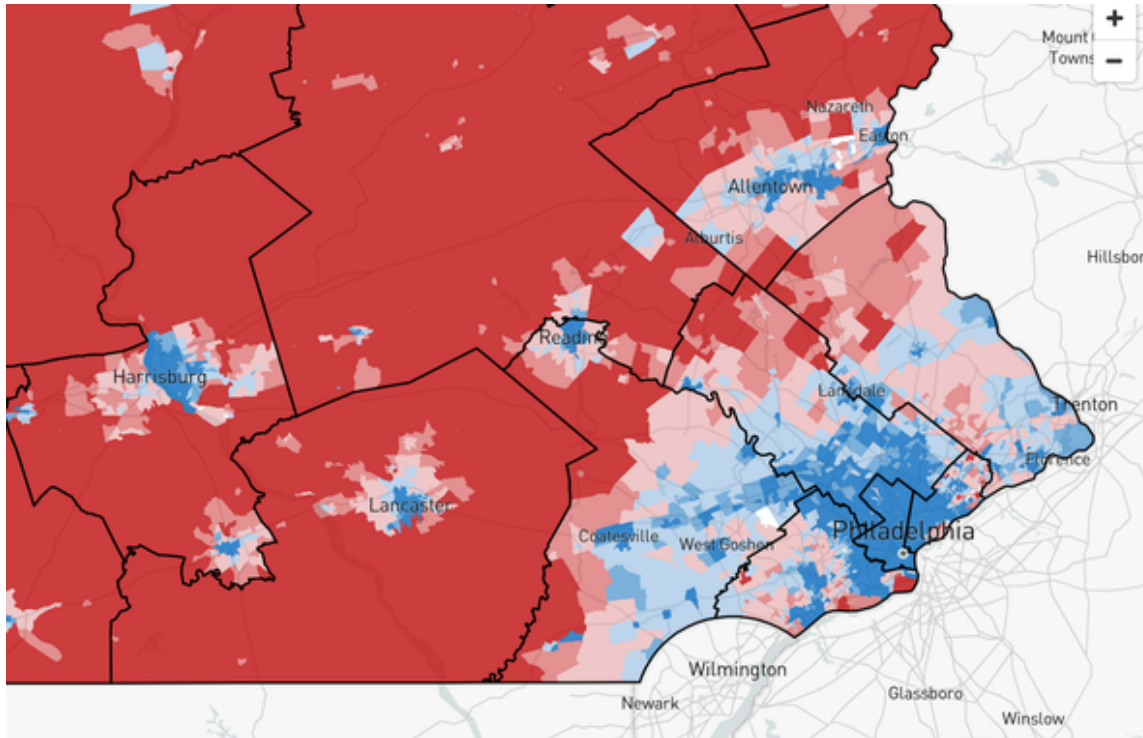
The 2016 races include those for president, Senate, attorney general, auditor general and treasurer.

How could that be?

It is hard to explain. Perhaps all four Democratic map proposals reflected an earnest effort to reach a compromise with Republicans. The more likely explanation is that Democrats did not believe it was realistic to demand such a favorable map, since it would require a series of Democratic-leaning choices. And the court order did not specify that the maps should aim for partisan balance, which might have justified a more Democratic map.

Apparently, a more favorable map was quite realistic; after all, it is now a reality, one that gives a significant boost to Democratic hopes of retaking the House. It's a reality because the newly adopted map consistently makes subtle choices that nudge districts in the direction of Democrats.

Many of those choices are easy to spot on a map. Every potentially competitive Republican-held district juts out to add Democratic areas, like adding York to the 10th District, Lansdale to the First District, Reading to the Sixth District, Stroudsburg to the Seventh District, South Philadelphia to the Fifth District, or Mount Lebanon and Penn Hills to the 17th.



The New Pennsylvania Congressional Map, District by District

Democrats couldn't have asked for much more from the new map.

Feb. 19, 2018

(<https://www.nytimes.com/interactive/2018/02/19/upshot/pennsylvania-new-house-districts-gerrymandering.html>)

There are also subtle choices that are harder to see. They're less about picking and choosing municipalities and more about how to group counties. These choices also often work to the advantage of Democrats, like the decision to center the 12th District in Beaver rather than in Butler County, or to have the Fifth District, rather than the Fourth or the First, take population in Philadelphia.

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Any of these decisions can be justified. It is also possible, although unlikely and unproven, that only this combination of choices yields the absolute minimum number of split counties or municipalities, the key criterion of the court order.

But in all of these cases, there were Republican-leaning alternatives of seemingly comparable merit. Collectively, it's a pattern of augmenting Democratic strength, inching the statewide map closer to partisan parity.

This does not necessarily mean the map amounts to a "Democratic gerrymander," as some have suggested. Over all, it admirably adheres to traditional nonpartisan redistricting criteria, like compactness and the avoidance of unnecessary county splits. But the map makes Democratic-tilting choices so consistently that it is hard not to wonder whether it was part of an intentional effort to achieve partisan balance in a state that is fairly evenly divided.

It would be somewhat surprising, at least to me, if the court drew this map without that goal in mind. Nathaniel Persily, the Stanford professor who helped draw the map, has been barred by the court from discussing it.

A series of pro-Democratic choices would be necessary to create statewide partisan balance, since lopsided winning margins in Philadelphia and Pittsburgh put Democrats at a considerable disadvantage in translating their votes to seats statewide. In fact, the new map still slightly advantages the Republicans with respect to the statewide popular vote.

Perhaps it shouldn't be a surprise if the court strove for partisan symmetry in the context of a partisan gerrymandering case. But the court order did not say that the maps should strive for partisan balance, and it seems that's the reason Democrats did not strive for it, either.

Michael McDonald, an associate professor at the University of Florida, suggests Democrats held back from greater ambition in part because they were protecting incumbents. But there was only one plausibly vulnerable Democratic incumbent to protect, Matt Cartwright, and there is little reason to believe the effort to protect him weakened the Democratic proposals.

Mr. Cartwright's new district voted for President Trump by 10 points; in the Democratic proposals, the district voted for Mr. Trump by an average of nine points. Just as important, even a concerted effort to protect him would have little effect on the overall statewide map. It would be enough to flip the old 15th

District from Mr. Trump to Hillary Clinton (going by 2016 results) but no more. And it wouldn't flip the 15th District in the other contests where Democrats generally fared better, like the 2012 presidential election.

The map comes close to maximizing the number of Democratic opportunities while complying with the court's order to minimize county, municipality or precinct splits except to make sure each district has about the same number of people. Perhaps the only plausible way to substantially improve Democratic chances from here would be to split the city of Pittsburgh, an unlikely choice given the requirement to avoid unnecessarily splitting municipalities.

Over all, it's a huge lift to Democrats' chances. In this political environment, they'd probably be favored to gain around four seats in the state, up from the two they were favored to carry before. They are overwhelming favorites to win the new versions of the old Seventh and modest favorites to win the old Sixth and 15th, with very good additional opportunities in the old Eighth and 12th, and two long-shot options in the old Third and Fourth.

Alone, the approximately two-seat shift toward the Democrats improves the party's chance of reclaiming the House by around 5 percent, and even more if the race remains so competitive heading into Election Day. It further diminishes the already deteriorating Republican structural advantages — including incumbency and geography — that have long been the key to G.O.P. hopes of surviving a so-called wave election in the House.

At the beginning of the cycle, it was hard to identify more than a dozen national races where Democrats would have a 50-50 or better chance to win in a wave election. After this decision — and months of strong Democratic recruitment and a wave of Republican retirements (<https://www.nytimes.com/interactive/2018/01/09/upshot/congress-retirements-tracker.html>) — it's a lot easier to come up with the two dozen seats they need to flip the House. Depending on how recruitment shakes out, five of the party's best 24 opportunities might now be in Pennsylvania.

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Appendix D

The New York Times

Hundreds of Simulated Maps Show How Well Democrats Fared in Pennsylvania

The next big debate in gerrymandering may be whether nonpartisan maps should strive for partisan symmetry, or whether they should try to avoid political considerations altogether.

By Nate Cohn (<http://www.nytimes.com/by/nate-cohn>) Feb. 26, 2018

In the [view](http://www.mcall.com/opinion/muschick/mc-opi-pennsylvania-gerrymandering-data-muschick-20180212-story.html) (<http://www.mcall.com/opinion/muschick/mc-opi-pennsylvania-gerrymandering-data-muschick-20180212-story.html>) of the majority of the Pennsylvania Supreme Court, “perhaps the most compelling evidence” that Republicans sacrificed traditional redistricting criteria for partisan gain was a political scientist’s simulation of 500 possible congressional maps.

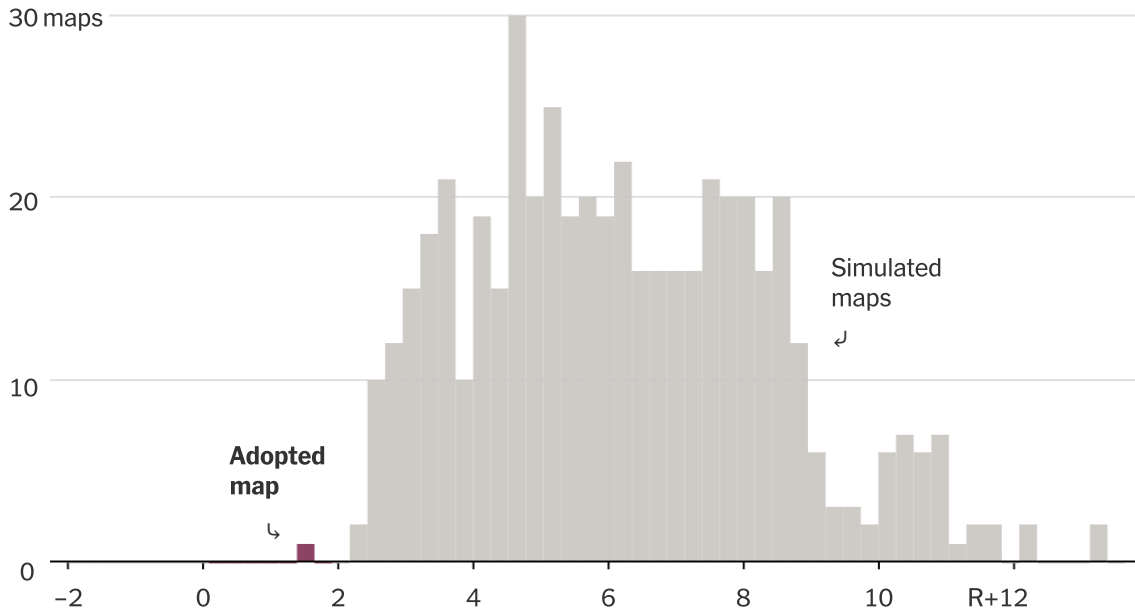
The Republican-drawn map was an extreme outlier compared with the [simulations made](https://www.wired.com/story/pennsylvania-partisan-gerrymandering-experts/) (<https://www.wired.com/story/pennsylvania-partisan-gerrymandering-experts/>) by Jowei Chen of the University of Michigan, who has provided expert testimony in many redistricting cases. None of the simulations favored Republicans by anywhere near as much as the congressional map enacted in 2011, which gave the Republicans a 13-to-5 advantage. And partly on that basis, the court ruled that the map violated the state’s constitution.

But what about the [remedial map](#)

(<https://www.nytimes.com/interactive/2018/02/19/upshot/pennsylvania-new-house-districts-gerrymandering.html?action=click&contentCollection=upshot®ion=rank&module=package&version=highlights&contentCollection=upshot>) recently adopted by the court? It is not an outlier to the same extent as the Republican-drawn map. But if you look at what 2016 statewide results would have been with the new map, the overall Democratic performance arguably would have been better than in all 500 of Mr. Chen’s simulations, according to an Upshot analysis.

New Map Favored Democrats Compared With Simulations

Republican advantage in the median congressional district compared with the average 2016 statewide popular vote in 500 simulations and the map adopted by the court.



By The New York Times | Source: Upshot analysis of Jowei Chen simulations, election results from Nathaniel Kelso and Michal Migurski.

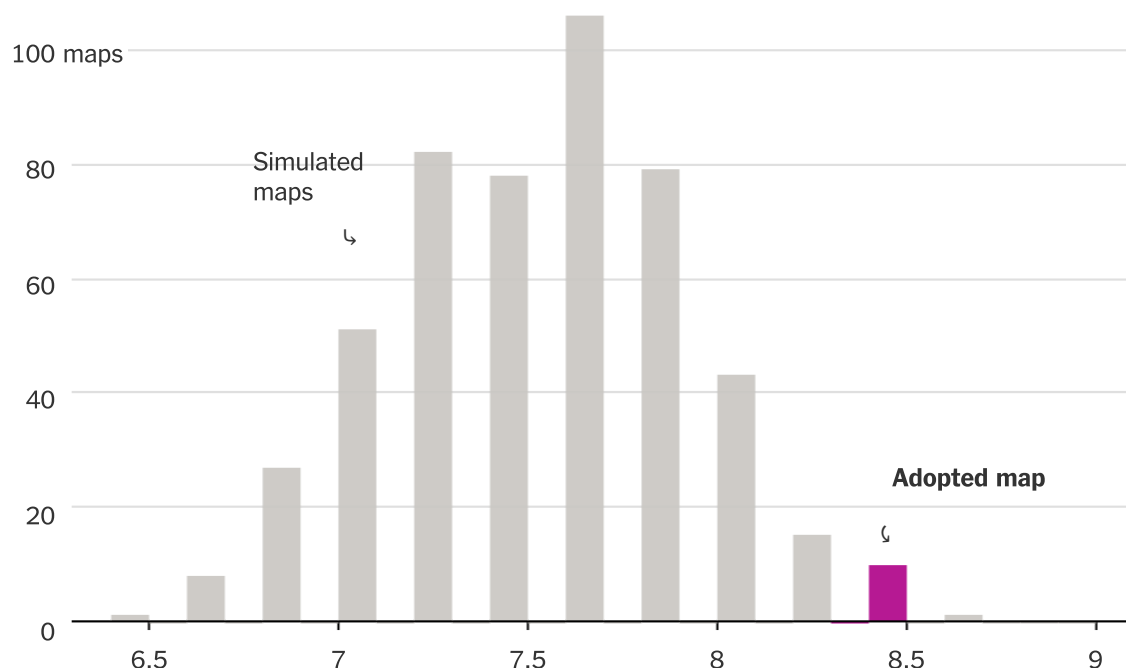
One common measure of a congressional map is to look at the result of the median congressional district in the average statewide election (here, the five contests in 2016). The larger the gap between the median and the average statewide popular vote, the harder it is to win a majority of seats despite winning the popular vote. By that measure, the new map was better for the Democrats than all 500 of Mr. Chen's simulations.

Another measure is simply how many districts the Democrats would have won in various statewide contests (here, the average of how many contests were won across the same five contests). Only one simulation was better for Democrats.

How Many Districts Democrats Would Have Won

Democrats won more districts in only one simulation.

Number of Democratic wins in the average 2016 statewide election in 500 simulated maps and the new adopted map.



Source: Upshot analysis of Jowei Chen simulations, election results from Nathaniel Kelso and Michal Migurski.

The strong Democratic showing compared with Mr. Chen's simulations doesn't necessarily indicate that the map is a Democratic gerrymander. For one, the simulations aren't perfect. And they aren't necessarily representative of realistic partisan-blind maps. To take a concrete example: The simulations often split the city of Pittsburgh, something few human map-drawers would choose to do given the requirement to avoid unnecessarily splitting municipalities.

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Perhaps more important, the remedial map still slightly favors the Republicans with respect to the statewide popular vote.

In the average 2016 contest on the new map, Democrats would have carried an average of 8.4 districts (out of 18), even though Democrats won the statewide popular vote in the average contest. The median congressional district favored the Republicans by a point in the average 2016 contest.

Over all, the new court-ordered map comes very close to achieving partisan symmetry in an evenly divided state.

The seeming contradiction between the analysis based on partisan symmetry and one based on simulated nonpartisan congressional districts gets at the heart of what may be the next big debate in gerrymandering: whether nonpartisan maps should strive for partisan symmetry, or whether they should try to avoid political considerations altogether.

The question is important because both methods of analysis are routinely employed to identify Republican gerrymanders.

And it is likely to continue to be a question, because it emerges when Democrats are at a geographic disadvantage, as they often tend to be. Just look at Pennsylvania. Democrats waste more votes than Republicans by carrying urban areas, like Pittsburgh or Philadelphia, by more lopsided margins than the Republicans carry their best areas. The result is that the rest of the state, and therefore the rest of its districts, tend to favor Republicans.

If one believes that partisan symmetry should be a goal in redistricting, the new map is eminently fair. It gives both parties a similar chance to translate their votes to seats, and makes no compromises to do so; it still admirably adheres to standard nonpartisan criteria like compactness or minimizing county splits.

The Upshot analysis also helps address a more arcane matter in the debate about the new court-ordered map: why many nonpartisan analysts thought it favored Democrats, even though it seemed to score well — it wasn't an outlier — by the measure of Mr. Chen's analysis. The reason is simple: Most nonpartisan analysts have judged the map by today's electoral landscape, while Mr. Chen's analysis used elections from 2008 and 2010.

Back then, Pennsylvania's political geography did not pose such a severe challenge to Democrats. But since then, the Democrats' geographic disadvantage has worsened. State and national Democrats lost ground in traditionally Democratic areas in western and northeastern Pennsylvania where the party still excelled as late as 2008 and 2010; they gained additional ground in

many urban and suburban areas where Democrats already had an advantage. As a result, Mr. Chen's simulations imply that Democrats were at a notable geographic disadvantage in 2016, but not 2008 or 2010.

Whatever the limitations of these simulations, the fact remains that the court seemed to find this sort of analysis persuasive. The strong Democratic performance on the remedial map adopted last week may imply that the map was drawn with consideration for attaining partisan symmetry, and perhaps even specifically by the measure of average Democratic performance in 2016 statewide elections.

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