

A Fair and Neutral Method to End Gerrymandering in Pennsylvania and Beyond



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Synopsis

Redistricting using rigorously applied neutral design criteria can produce transparent and fair voting districts that adhere to a judicially enforceable standard. Such criteria will eliminate the most egregious partisan gerrymandering. Design criteria and a step-wise design process can be used by commissions and legislative bodies to create or revise Congressional and state legislative districts.

Background

Concerned Citizens for Democracy (CCFD) is a nonprofit 501(c)(3) association. In October of 2017, CCFD joined the plaintiffs' team in *Agre v. Wolf*, US DC ED PA, No. 17-4392, the federal anti-gerrymandering case that went to trial before a three-judge panel in December 2017.

During the *Agre* case, CCFD presented a neutral method of redistricting that results in a fair distribution of seats in Pennsylvania, and prioritizes traditional neutral redistricting criteria. The method restrains partisan gerrymandering by limiting the choices of drafters to compact districts with minimal splits in political subdivisions and requiring that subdivision splits needed to achieve equal district populations be made in a rational, compact fashion. The method is readily adaptable for other states with any number of districts at both the state and federal level.

The effectiveness of the methodology was demonstrated during a subsequent Pennsylvania Supreme Court case, *League of Women Voters of Pa. v. Commonwealth of Pa.* 175 A. 3rd 282 (Pa. 2018). CCFD submitted amicus briefs to explain the methodology. As a result, the State Supreme Court replaced the highly partisan, gerrymandered 2011 Congressional map with a neutral, highly compact map (Figure 1) that minimized the division of political subdivisions, reflecting the solution proposed by CCFD.

Comparing the two Pennsylvania Congressional district maps is instructive. The 2011 map clearly illustrates the principal techniques of gerrymandering. This includes:

- “packing” opposing voters to dilute the power of their votes,
- “cracking” concentrations of opposing voters to distribute and dilute voter equity,
- elongating balanced districts into rural or urban territories that creates a partisan imbalance, and
- carefully distributing voters to create as many safe seats as possible for incumbents and candidates of the drafters' party.

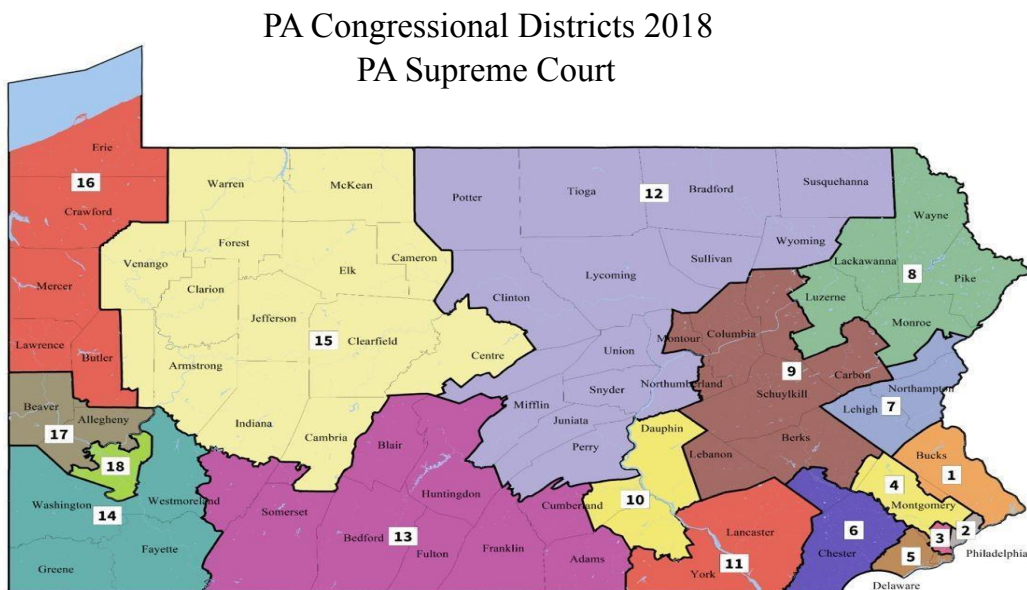
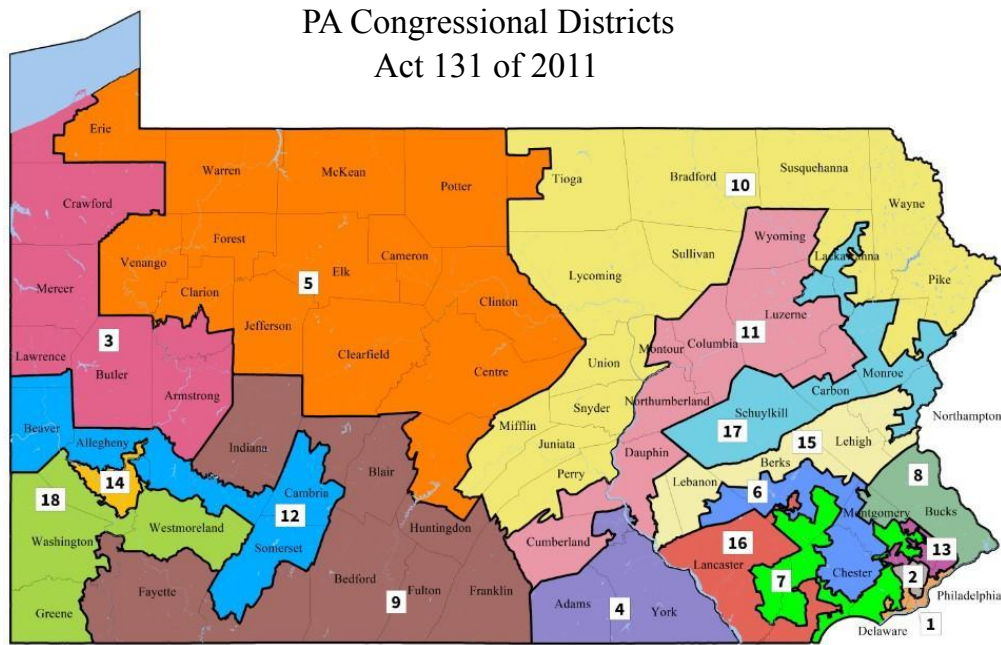


Figure 1 – Comparison of Congressional Districts, 2011 and 2018

The Pennsylvania Supreme Court's remedial map is an example of a well-drafted map adhering to strong design standards. Neither packing and cracking, nor distributing voters efficiently to favor the drafter's party side, was possible as the Court required all maps to follow county boundaries and achieve maximum compactness. In brief, partisan electoral boundaries are replaced by mandated historic county and municipal boundaries.

A Step-By-Step Method for Non-Partisan Redistricting

Electoral district maps can be readily prepared using a 5-step method that is transparent and fair. The method applies a judicially enforceable standard that reduces the risk of legal disputes. The following process summarizes the 5-step method:

Step 1. Divide the state into roughly equal population districts using the largest political subdivision in the first instance. These are usually counties.

Divide the state roughly into the apportioned number of districts using the largest possible political subdivisions (e.g., counties or municipalities). For example, in creating Congressional districts, select single or groups of whole counties or cities into compact districts with roughly equal populations, without breaking the largest political units.

Notes:

- A. For political units with a population larger than one district, first create as many (compact) whole districts as possible within the political unit, and then add the remaining unused territory as a single piece to a neighboring district.
- B. Assemble entire lower-population political units into compact districts.

Step 2. Add or subtract smaller political subdivisions in a compact manner beginning at the common border of the largest political subdivisions to begin equalizing population among districts.

To equalize district populations further, add or subtract territory in a compact manner beginning at the common border of each larger political subdivision (e.g., counties), using whole political subdivisions of the next smaller size (e.g., municipalities). Do not split more than one subdivision between any pair of adjacent districts. For example, if a Congressional district needs more voters to reach the target district population, add whole municipalities, choosing those that optimize compactness for both districts. It is strongly recommended to add smaller subdivisions (e.g., municipalities) in layers along the entire border of a single larger subdivision (e.g., county) to the extent practicable, but not where this approach undermines compactness or population equity, as might be in the case of municipalities with oddly shaped borders or widely varying populations. Requiring the addition of subdivisions in a compact layered manner is a very important technique to preempt the selection of territory based upon partisan goals of packing or cracking.

Step 3. Repeat the procedure in Step 2 with each level of smaller political subdivisions (e.g., municipalities, wards, precincts).

At each level, no more than one political subdivision should be split between any pair of adjacent districts. Unless impossible to draft otherwise, each political subdivision should be divided at most one time more than the minimum necessary based on its population. This means a political subdivision with a population less than the district target population may be divided no more than once. The total number of subdivision splits for each level (e.g., county, municipality) over the entire plan (wherein subdivisions split more than once counting for multiple splits) shall not be more than the number of districts required. In addition, the number of smaller subdivisions that are divided shall be no more than the number of districts included in the larger encompassing subdivision. For example, in a county divided among three districts, no more than three municipalities shall be divided. This rule prevents fragmentation of political subdivisions.

Step 4. Create compact districts as electoral districts are formed. Then measure compactness and the number of split political subdivisions.

Count the number of divided political units and compute the compactness of all the districts using one or more mathematical measures of compactness. In choosing among alternative plans, preference should be given to those maps which minimize political subdivision splits, while secondarily, maximizing compactness. This reduces the discretion of would-be gerrymanderers to use non-compact, subdivision-breaking selection of territory to gather far-flung groups of opposing voters and pack them into as few districts as possible. See, for example, 2011 PA Congressional Map Districts 1, 13, 6, 7, 17, 12, 14, 9, 3, and 5.

Step 5. As a final step, make sure the district complies with the VRA.

Verify that the resultant map is consistent with the Voting Rights Act of 1965, i.e., that the map does not unduly pack or fragment minority communities. In most instances, no further adjustment will be needed, as compact districts that respect political subdivisions most often lead to compliance with the Voting Rights Act and avoid the packing or fragmenting of minority communities.

Any problems at this stage can usually be resolved with relatively slight adjustment of district boundaries.

The Results – Disrupting Partisan Gerrymandering Practices

The 5-step method requirements for the preservation of political subdivisions and compactness significantly restrains partisan gerrymandering. The method also prevents more subtle gerrymanders by requiring that territory be added using entire layers of undivided municipalities along the borders of counties (or the largest municipality available). By reducing gerrymanderers' freedom to choose territory based on self-serving criteria, such as past voting performance, process transparency and voter fairness is upheld.

Mandating compact districts with minimal subdivision splits frustrates the two practices - cracking and packing - used by those who create districts based on partisan preferences.

- The CCFD method prevents packing by requiring that any additional territory added to equalize population be accumulated at the border of counties and larger political subdivisions in a layered manner. A drafter cannot grab a distant community to patch it into a geographically unrelated electoral district.
- The CCFD method prevents cracking by minimizing the divisions of political subdivisions and permitting only one division of such entity along a common border.
- For example, the infamous PA 7th Congressional District (“Goofy Kicking Donald Duck”, Figure 2) would have been impossible using this method. Following common county borders would preempt the selection of territory based on partisan voting behavior



Figure 2 – Detail of PA 7th District (green) “Goofy Kicking Donald Duck”

Lastly, maintaining political subdivisions (e.g., counties, municipalities, and wards) preserves “communities of interest.” In contrast to the many divergent “community of interest” definitions, political subdivisions generally have well-defined, commonly understood and stable boundaries that are not easily misrepresented or “handwaved” for disingenuous purposes. Using concrete, well-established boundaries to guide redistricting reduces the risk of discretionary cracking and packing by affinity or partisan groups. Representatives are elected from genuinely *compact, distinctive, and politically cohesive communities*, rather than sprawling multi-community conglomerations of unconnected fragments.

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Appendix 1 - Background on Concerned Citizens for Democracy (CCFD)

Mission and Purpose

The mission of Concerned Citizens for Democracy (“CCFD”) is to end partisan redistricting (“gerrymandering”) and to promote fairly drawn electoral districts through research and development of rigorously applied neutral design criteria that forms a judicially enforceable standard. CCFD is also committed to every other technique and condition that prevents partisan redistricting including independent commissions, publicly available data and redistricting software, a clear prohibition of the use of past voting behavior to draw legislative districts (except as necessary for Voting Rights Act analysis), a clear prohibition on private communications by redistricting officials to or from legislators and other partisan actors concerning the drafting of legislative districts, and a readily available dispute resolution process to enforce neutral rules and process. CCFD is organized (i) exclusively for educational and scientific/social science purposes, and (ii) primarily to conduct research and/or legal and public policy analysis for the public and societal benefit, under Section 501(c)(3) of the Internal Revenue Code.

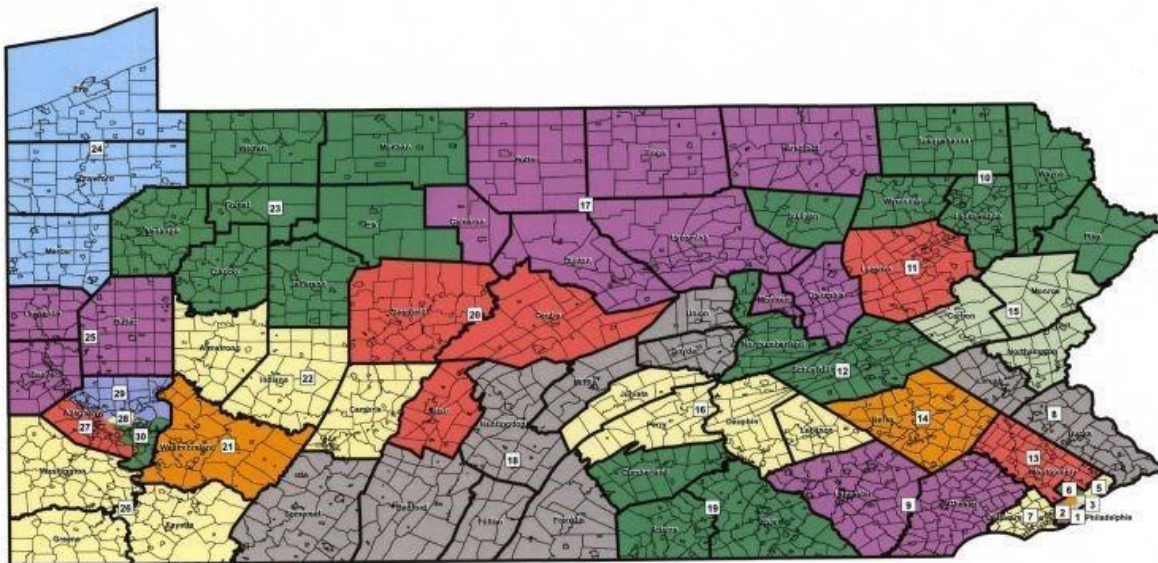
CCFD is a nonprofit association under the Pennsylvania Corporate Code, 15 P.S. 9111 et seq. CCFD was founded in February 2017 by a team of lawyers, engineers, computer scientists, geographers, and activists in suburban Philadelphia who organized to devise strategies to end partisan redistricting (gerrymandering) in the Commonwealth.

Through its involvement in the *Agre* case, CCFD developed a neutral method of redistricting that results in a fair distribution of seats in Pennsylvania, prioritizes traditional neutral redistricting criteria, and can be applied in other states, with any number of districts at both the state and federal level. The method restrains partisan gerrymandering by limiting the choices of drafters to compact districts with minimal splits in political subdivisions and requiring that subdivision splits needed to achieve equal district populations be made in a rational, compact fashion.

Appendix 2 – Lessons from Historical Redistricting Practices

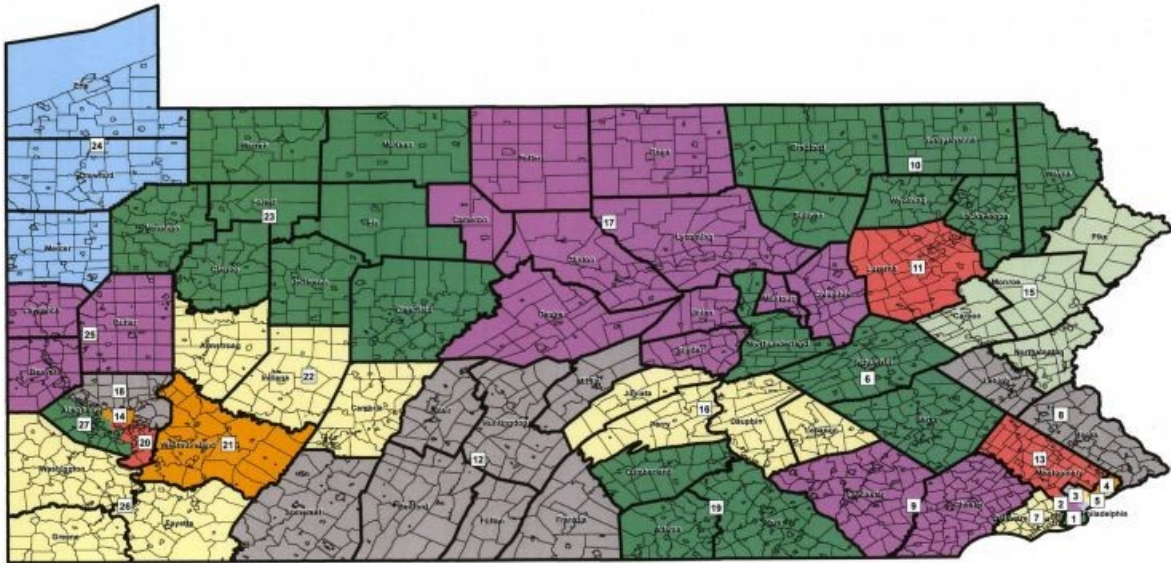
The CCFD methodology was developed by analyzing the Pennsylvania Congressional maps from the last century, specifically the Congressional maps enacted in 1951, 1962, 1972, and 1982. What these maps have in common is that (1) the districts are compact, (2) the districts follow county and municipal boundaries, and (3) where it was necessary to divide counties to equalize district populations, whole municipalities were added or removed in layers following the common borders of counties along the district edges, to keep the resulting districts compact.

Pennsylvania Congressional Districts
Act 464 of 1951



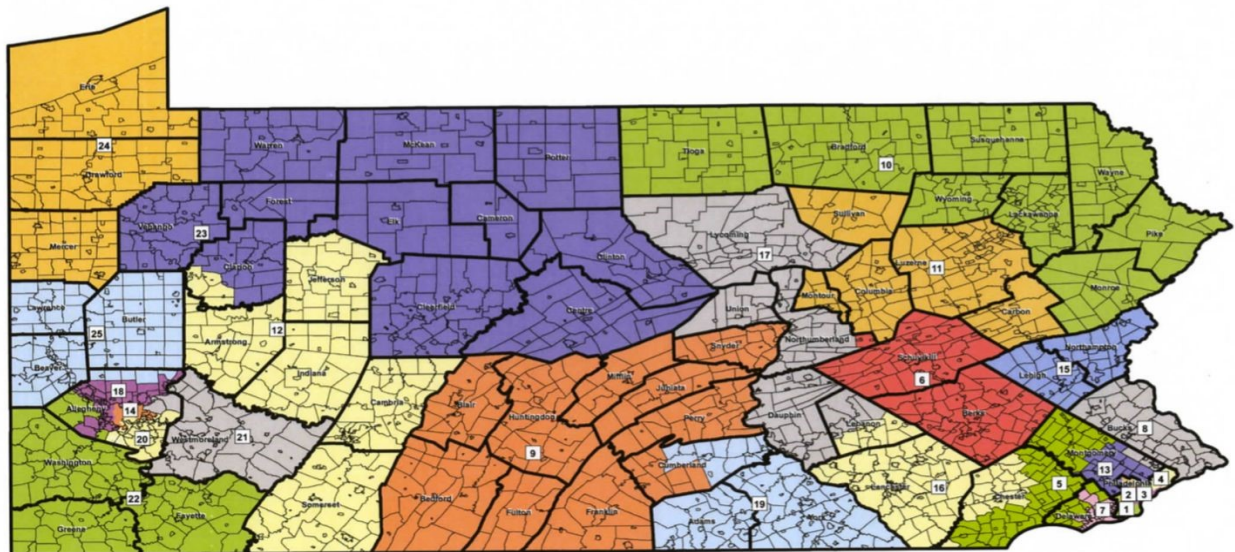
"Pennsylvania Congressional Districts Act 464 of 1951." *Congressional Redistricting*,
16 Jan. 2013, <http://www.redistricting.state.pa.us/Maps/index.cfm>

**Pennsylvania Congressional Districts
Act 1 of 1962**



"Pennsylvania Congressional Districts Act 1 of 1962." *Congressional Redistricting*,
16 Jan. 2013, <http://www.redistricting.state.pa.us/Maps/index.cfm>

**Pennsylvania Congressional Districts
Act 3 of 1972**





Each of the above maps (and the 1982 map) were drawn at a time when members of the Pennsylvania legislature continued to follow the redistricting methodology set forth in the federal Apportionment Act of 1911, while resisting the temptation to engage in overt partisan gerrymandering. These maps were not completely free of small personal gerrymanders to favor or disfavor individual legislators. However, the maps did follow the Apportionment Act of 1911 requirement that Congressional districts be “contiguous and compact territory ... containing as nearly as practicable an equal number of inhabitants.”¹

Since at least 1968, the Pennsylvania Constitution (like many other state constitutions) has also included a fourth rule for redistricting, laid out in Article 2, Section 16. This section 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.”² The explicit text of the Constitution applies the rule only to redistricting of the state legislature, but CCFD observed, and the state Supreme Court later confirmed, that the state constitutional requirement for free and equal elections means that these traditional neutral redistricting standards should and must be applied to Congressional redistricting, as well.

The CCFD team examined each of these elements to find a method to balance minimizing county and municipal splits and maximizing compactness. As a result of our study, we devised a more rigorous standard, which, when strictly applied, dramatically constrains partisan gerrymandering.

¹ **Section 3 of the 1911 Apportionment Act:**

[I]n each State entitled under this apportionment to more than one Representative, the Representatives to the Sixty-third and each subsequent Congress shall be elected by *districts composed of a contiguous and compact territory, and containing as nearly as practicable an equal number of inhabitants ...*”

² **Article 2, Section 16 of the Pennsylvania Constitution:**

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*. 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.* (Apr. 23, 1968, P.L. App. 3, Prop. No. 1)



Appendix 3 - Other conditions that help prevent partisan gerrymandering

Any complete anti-gerrymandering reform package should include:

1. A Ban on Gerrymandering

Any legislative reform must include a clear prohibition of partisan and individual gerrymandering as illegal and violative of the concept of free, fair, and equal elections.

2. No “Personal Gerrymanders”

A ban on “personal gerrymanders”, that is redistricting decisions made specifically to advantage or disadvantage any individual legislator, incumbent or candidate for office.

3. Limited Participation for Politicians, Legislators, and Political Allies

A ban on legislators and other affected politicians or their close allies participating in any way in the redistricting process, outside the channels accessible to all citizens. This is essential to prevent politicians from corruptly choosing their own voters, rather than allowing the voters to choose their legislators.

4. An Independent Redistricting Commission

Even with rigorous design criteria, a truly independent, diverse, and well-qualified redistricting commission is essential to the process of fair redistricting.

5. Communications Made Available To The Public

A requirement that all communications of any kind by redistricting officials regarding redistricting be immediately, easily, and permanently publicly accessible.

6. Citizen Participation

A strong public participation requirement, including recorded and broadcast public hearings across the entirety of the state, as well as broadly available, easily accessible, and well-publicized methods for ordinary citizens to submit comments and mapping proposals.

7. Redress Procedure

A well-designed redress procedure to ensure that citizens whose right to free and equal elections has been abridged can have their grievances addressed expeditiously *at any point during the redistricting process or afterward* when it becomes apparent that the redistricting process has been corrupted.



8. Mapping Tools Provided To The Public

A requirement that all redistricting data and computer programs used by redistricting officials and other government participants to draft proposed maps be available to experts and the general public throughout the entire redistricting process.

9. Strong Design Standards

As discussed, regardless of who draws the lines, there must be strong standards for redistricting design, rigorously enforced, to restrain would-be gerrymanderers from manipulating district lines for political advantage.

10. Partisan Data Must Be Prohibited

A ban on the use of election results, partisan voter registration data, or other partisanship indicators in district design, except to ensure that a map is responsive to voter preferences, to detect partisan gerrymandering, and to confirm VRA compliance.

11. Population Variance Between Districts Must Be Constrained.

CCFD recommends a 2% variance (+ or - 2%) in electoral district population as a goal to equalize district populations while keeping municipal subdivisions whole.

Pennsylvania state law allows a district population variance of state house and senate seats to be + or - 5%. In the age of computer aided district design, this large variance invites drafters to game the system by deliberately over-populating (by as much as 5%) districts likely to elect representatives from the opposing party, while under-populating (by as much as 5%) districts likely to be won by the drafter's own party. On the other hand, too low a variance in population will cause excessive municipal divisions and require extensive mapmaking time.

We note that the U.S. Supreme Court created a window to allow some variation in Congressional districts when it held that “[a]ny number of consistently applied legislative policies might justify some variance [from strict equality], including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives.” *Karcher v. Daggett*, 462 US 725 (1983)