

2021 Congressional Map Proposal

of

Concerned Citizens for Democracy

The citizen mappers and anti-gerrymandering activists at Concerned Citizens for Democracy (CCFD)¹ offer herein our proposed 2021 Congressional map for Pennsylvania. Readers may view and explore our map online at Dave's Redistricting, at the following URL:

<https://davesredistricting.org/join/d8dbd8a9-eab4-4d1c-a4b1-40cb60d8c972>

The purpose of this map is to establish, for the present redistricting cycle, the Pennsylvania Supreme Court's "'floor' of protection" for free and equal Congressional elections in our state. This floor is set by prioritizing solely the four traditional neutral redistricting criteria of contiguity, population equality, compactness, and minimization of multidistrict splitting of political subdivisions such as counties, municipalities, political wards, and precincts. The Court has affirmed, by word and deed, that, while additional priorities may sometimes appropriately play a role in designing redistricting plans, and may even potentially be required to ensure free and equal elections or comply with federal laws such as the 1965 Voting Rights Act, subordinating the traditional neutral criteria for partisan advantage or other extraneous considerations is unconstitutional in our state.

CCFD produced this map using our simple hand-design mapping methodology, which intrinsically incorporates the four traditional neutral criteria at every step and is easily understood and efficiently applied even by novice mappers and the general public. This map does not incorporate other mapping priorities, except as occasional tiebreakers between different possible mapping options, and should not be understood as opposing the many high-quality maps offered by other anti-gerrymandering advocates that advance additional values supporting free and equal elections². Instead, this map is a demonstration of the bare minimum of fairness via adherence to traditional neutral principles that Pennsylvania citizens should be able to expect from any Congressional redistricting map adopted by this Commonwealth, and of the ease with which such results can be achieved.

The narrative below details the Court's "'floor' of protection", the CCFD mapping methodology, the specific mapping choices that went into this particular map, and the likely impacts of those choices on Pennsylvania voters.

¹ <https://concernedcitizensfordemocracy.org/>

² One such map is the Pennsylvania Citizens' Map created by the Citizen Map Corps, which includes two of our members.

The ‘Floor’ of Protection

In 2018, the state Supreme Court put Pennsylvania’s political leadership on notice that bad-faith manipulation of redistricting maps will no longer be tolerated in our Commonwealth. The Court overturned and replaced³ the 2011 Pennsylvania Congressional redistricting plan on the grounds that this map was an extreme outlier in its violation of two of the four traditional neutral redistricting criteria⁴ and in its cracking, packing, and hijacking of communities across the state. The effect was to cement a durable and massively disproportionate partisan advantage for the party that controlled the redistricting process, in the service of no defensible democratic goal, and in violation of the Free and Equal Elections clause of our state Constitution⁵.

The Court warned that, while the 2011 gerrymander was particularly egregious and could be overturned simply on the basis of its extreme violation of the traditional neutral “floor” criteria, they remain alert to the threat of more subtle gerrymandering, and are prepared to address it if need be⁶:

As we have repeatedly emphasized throughout our discussion, the overarching objective of this provision of our constitution is to prevent dilution of an individual’s vote by mandating that the power of his or her vote in the selection of representatives be equalized to the greatest degree possible with all other Pennsylvania citizens. We recognize, then, that there exists the possibility that advances in map drawing technology and analytical software can potentially allow mapmakers, in the future, to engineer congressional districting maps, which, although minimally comporting with these neutral “floor” criteria, nevertheless operate to unfairly dilute the power of a particular group’s vote for a congressional representative.

However, as explicitly stated in their opinion and implicitly demonstrated in their own remedial Congressional plan⁷, it is clear that the Court does recognize that there remains room for redistricting maps to express other values beyond the four traditional neutral criteria, as long as those other values remain subordinate⁸:

We recognize that other factors have historically played a role in the drawing of legislative districts, such as the preservation of prior district lines, protection of incumbents, or the maintenance of the political balance which existed after the

³ *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*, Supreme Court of Pennsylvania, 159 MM 2017

⁴ Specifically, compactness and split minimization.

⁵ Article I, Section 5:

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=00&div=0&chpt=1&sctn=5&subscn=0>

⁶ 159 MM 2017, majority opinion, page 124:

https://www.brennancenter.org/sites/default/files/legal-work/LWV_v_PA_Majority-Opinion.pdf

⁷ The remedial plan avoided incumbent contests and achieved approximate partisan proportionality while performing comparably to or better than all proposed remedial maps on all four traditional neutral criteria.

⁸ 159 MM 2017, majority opinion, page 123

prior reapportionment. See, e.g., Holt I, 38 A.3d at 1235. However, we view these factors to be wholly subordinate to the neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts. These neutral criteria provide a “floor” of protection for an individual against the dilution of his or her vote in the creation of such districts.

Federal law, such as the Voting Rights Act of 1965, may, of course, impose additional overriding considerations. However, regardless of what other values may be at stake, in evaluating the constitutionality of a redistricting map, it remains central to understand where the Court’s “floor” of protection” lies, so that all proposed maps can be compared against it. This assists the public, experts, and public officials in detecting proposed maps which deviate below that floor, in discovering good- and bad-faith subordinate values implemented in nominally compliant maps, and in demanding explanations for discretionary choices made to balance different mapping values. The question of where this “floor” lies is the one we, the citizen mappers and anti-gerrymandering activists at Concerned Citizens for Democracy (CCFD), aim to help answer with our proposed 2021 Pennsylvania Congressional map.

The CCFD Methodology

CCFD’s mission over the past several years has been to study redistricting processes and maps all across the country, in order to help improve redistricting outcomes both locally and nationally. We were especially interested in the 2011 Pennsylvania Congressional map, for which we participated both in 2017-2018 federal litigation requesting redress of its severe flaws⁹ and in the ultimate remedial process to replace that map when it was overturned in the state court system in 2018. As part of our participation in that remedial process, CCFD developed and offered to the Pennsylvania Supreme Court our partisanship-blind hierarchical hand-design methodology for satisfying the four traditional neutral criteria, structured to be easily understood and applied by anyone, and capable of achieving, by neutral means, a baseline level of partisan proportionality in a balanced state like Pennsylvania. The Court’s ultimate remedial map design satisfied our design principles well in most regards, and, in many regions, closely matched the specific district lines offered in our proposed remedial map.

The methodology is easy to summarize. First, collect the largest political subdivisions (counties, in the case of PA Congressional districts) into compact groupings of roughly equal population, one for each district. Next, to improve population equality between districts, split no more than one county at the boundary between each pair of districts, keeping municipalities whole, and choosing the split line in a way that keeps both districts as compact as possible and layers split-off municipalities neatly along the boundary of the district they have joined. Then split no more than one municipality at each boundary, in the same way, and proceed to split smaller and smaller political subdivisions (wards, precincts) in this fashion until the smallest splittable unit

⁹ *Agre v. Wolf*, United States District Court for the Eastern District of Pennsylvania, 2:17-cv-04392-MMB

has been divided in such a way as to achieve the closest practicable population equality between districts.

Note that during this process, no political subdivision should be split among more districts than the number of districts it *must* be split among, based on its population, plus one (e.g., a subdivision with population smaller than a district should be split between no more than two districts, while a subdivision with population larger than one district but smaller than two districts should be split among no more than three districts). Each district's component within a particular county should be a single contiguous piece, rather than multiple discontinuous, disjoint municipalities. Any additional redistricting values of interest should be implemented as adjustments at the end of the process, rather than being allowed to dominate the map design process from the beginning. See our attached whitepaper for further details on the CCFD methodology.

This methodology, then, guides the mapper naturally toward compact and contiguous districts with minimal and comprehensible subdivision splits. It builds the four traditional neutral criteria intrinsically into every step of the mapping process and reduces the discretion of mappers to select arbitrary territory to achieve an advantage for their preferred party or candidate(s). The resulting districts are easy to describe, are easy for voters, candidates, elected representatives, and election officials to understand and navigate, and generally, in a 50/50 state like PA, tend to be reasonably balanced along partisan lines.

Resisting political subdivision splits typically serves communities of interest as well, by using relatively well-defined communities based in well-established political subdivisions, rather than opening the door to more nebulous criteria that may be “gamed” by bad-faith actors. Moreover, establishing districts compactly, in addition to making it easier for voters to travel to access their representatives, is a useful first cut at addressing Voting Rights Act needs. By the Gingles criteria, a Voting Rights Act concern may be present whenever a racial or language minority group is *sufficiently large and geographically compact* to constitute a majority in a single-member district, as well as being politically cohesive and subject to overwhelming opposing bloc voting by the majority.¹⁰

This is not to say that the bare bones of this methodology should be the entirety of the redistricting process. Even this methodology does involve choices, such as which counties to group in the original rough proto-district assemblages, which county, municipality, etc. to split at the boundary between any given pair of districts, and exactly which municipalities, wards, etc. to assign to either side of a split line. Mapping values other than the four traditional neutral criteria may serve as tiebreakers in deciding exactly how to make these choices. Rarely, a good-faith mapper using this methodology could reluctantly conclude that it is necessary to deviate from the strictest application of its guidelines in specific awkward spots in the map (such as non-contiguous municipalities or tight corners), or if another positive mapping value beyond the four traditional neutral criteria (such as the VRA) is sufficiently important and is not perfectly compatible the methodology in a particular region. The purpose of this methodology is not to

¹⁰ *Thornburg v. Gingles*, 478 U.S. 30 (1986)

force mappers to prioritize rigid, blinkered adherence to a small subset of all the possible good-faith redistricting guidelines above the ultimate goal of free and equal elections. Rather it is to help set the Court's "floor" of protection" on the degree of egregious, self-interested manipulation that mapmakers can attempt without having to explain themselves to the public.

The Proposed CCFD Map

To help locate this "floor" of protection", we offer here a pure methodology-based map, with other mapping values playing *only* tiebreaker roles, detailed below. Again, readers can review this map online at:

<https://davesredistricting.org/join/d8dbd8a9-eab4-4d1c-a4b1-40cb60d8c972>

Our map was designed entirely in Dave's Redistricting, using their "unadjusted" 2020 Census population data and precinct shapes. Due to statements by some members of the legislature that they will not consider maps with a higher population deviation, we targeted a population deviation of no more than +/-1 person (5 districts with 764,864 people and 12 districts with 764,865 people).

CCFD does not advocate using such a stringent population target — per *Karcher v. Daggett* (1983), avoiding disruptive precinct, ward, and municipal splits can potentially be a legitimate justification for slightly greater population deviations. Currently, 14 states have population deviations greater than 1 person in their Congressional district plans, with the greatest deviation being in West Virginia: a 0.79% difference between the populations of the largest and smallest districts, relative to the ideal district population.¹¹

Requiring +/-1 person population equality in our proposed map forced excess splits of 16 precincts and 14 municipalities that could otherwise have been kept whole. (Another municipality, the city of Philadelphia, has more population than two ideal districts, and so must be split at least three ways under any modern understanding of population equality requirements.) A precursor stage in our map design process achieved district population deviation bounds between -0.11% and +0.19% of the ideal district population (a difference of 2289 Census-enumerated persons between the smallest and largest districts), while splitting no municipalities other than Philadelphia and no precincts at all. Access this map at the following link:

<https://davesredistricting.org/join/c5f16faa-c378-4e81-abc8-2584155b0a9e>

This no-splits map also has one fewer county split, for a total of 14 split counties, rather than the 15 in the +/-1 person map. This split reduction does come at a small cost in compactness (0.3496 average Polsby-Popper compactness vs. a 0.3681 average for the map with municipal splits), but this would seem to be a minimal price to pay for such meaningful improvements in

¹¹ <https://www.ncsl.org/research/redistricting/2010-ncsl-redistricting-deviation-table.aspx>

district comprehensibility, and in the ease of election administration for the 14 otherwise-split municipalities and 16 otherwise-split precincts.

However, with or without the extra splits necessitated by the +/-1 population threshold, both maps score near the high end of the range of compactness scores achieved by other 17-district Pennsylvania Congressional maps published on Dave's Redistricting. Similarly, the total split count for the +/-1 person map achieves the practical minimum value for this parameter, 16 split precincts. In most real-world cases, lower split counts can be achieved only if one slightly relaxes the permissible population variance, as in the no-splits map.

These impressive scores should not be seen as establishing, on their own, absolute numerical measures that any other map must meet or exceed in order to provide free and equal elections to the citizens of Pennsylvania. As participants and amici alike demonstrated during both the evidentiary and remedial phases of the 2017-2018 *League of Women Voters v. PA* lawsuit over Pennsylvania's 2011 Congressional map, good-faith, competent attempts to comply with the four traditional neutral criteria can result in a wide variety of different possible maps, within a certain range of compactness and split scores. A hypothetical redistricting map which falls reasonably within this range (or better) should neither be presumptively assumed, without additional analysis, to be definitively free and equal (because it is in the "reasonable" range) nor be presumptively assumed to have definitively "subordinated" the four traditional neutral criteria to other factors (because it does not perfectly match the optimal scores in that range). Instead, high marks on the four traditional neutral criteria provide grounds to confidently proceed to analyzing subordinate factors that also support free and equal elections, while lower neutral-criteria scores within the acceptable range may need well-supported good-governance justifications commensurate with the level of score reduction.

The CCFD map's high scores on traditional criteria allow us both to move forward to consideration of its other metrics and to use it as a basis for comparison with other proposed maps.

For example, like most other strong traditional-criteria maps, this map includes two majority-minority districts in Philadelphia (one a predominantly Black district in North/Central/Southeast Philadelphia, the other a Black/Hispanic/Asian coalition district in Northeast Philadelphia), and one minority-influence district centered in Delaware County. It is somewhat feasible to gather more minority voting power into more concentrated minority-influence districts in Southeastern PA, in the Capital Region, and in Allegheny County, but this does come at a cost to compactness and splits, and may risk partisan packing.

Common community of interest concerns are also well-satisfied in many regions of the map — the northeastern portions of Philadelphia are gathered together, Delaware County is combined only with the most closely adjacent portions of Philadelphia and Chester County, Bucks County remains undivided, and Montgomery County is kept mostly whole, receiving only its single mandatory split. Most smaller cities are kept together with their aligned townships, suburbs, or metropolitan areas — the Lehigh Valley, Scranton/Wilkes-Barre, Reading, Lancaster, York, State

College, and Erie are all essentially undivided. Challenges arise in the Harrisburg region, where avoidance of additional county splits prevented full incorporation of closely associated Cumberland County municipalities into the same district as Harrisburg itself. Additionally, a combination of county-split avoidance and adherence to a common reluctance to divide Pittsburgh resulted in a somewhat awkwardly shaped district jammed into the southeastern corner of Allegheny County, consisting of Pittsburgh and its southeastern suburbs, while the northern and western suburbs are split off and combined with more distant, less-urban regions.

Some of these decisions also have partisan impacts. For example, avoiding a Pittsburgh split packs Democratic voters into Pittsburgh, making the western Allegheny district (15) narrowly Republican (48.11% Democratic to 49.21% Republican) even in the most Democratic-favoring election dataset available on the Dave's Redistricting website ("Composite 2016-2020"). In a more Republican-favoring dataset ("Senator 2016"), the district is reliably Republican at 41.80% Democratic to 53.41% Republican.

In another hotly contested area, the Capital Region's 10th district, avoiding county splits forces the map to gather more rural territory into the Harrisburg district, at the cost of splitting off most of the western suburbs of Harrisburg and isolating the city of Lancaster in the otherwise strongly-Republican 11th district. This results in a 10th district that is 53.71% Republican to 43.58% Democratic even in the most Democratic-favoring election dataset, which becomes an effectively insurmountable 56.56% Republican to 39.57% Democratic in the most-Republican dataset.

The overall map, taken at face value, would produce 9 Democrats and 8 Republicans in the most-Democratic dataset (statewide vote shares 52.46% Democratic to 47.54% Republican) and 6 Democrats and 11 Republicans in the most-Republican dataset (statewide vote shares 49.25% Democratic to 50.75% Republican). While this map is certainly capable of producing reasonable partisan proportionality, it does have a slight tilt against Democrats that some mappers might wish, in good faith, to remedy.

Another set of partisan impacts are the effects on current incumbent representatives. While two Democratic representatives (Conor Lamb and Mike Doyle, both in the Pittsburgh region) have said they will not be running for Congress in 2022, some incumbent representatives who have not made such announcements live in locations which make it difficult, under the CCFD methodology, to avoid drawing their homes into the same district as another representative without making specific adjustments to keep them apart. While it is legal for candidates to run for office in Congressional districts where they do not reside, the difficulties of overcoming perceptions of "carpetbagging" and of losing touch with one's previous base of support are strong disadvantages for incumbents who end up "double-bunked". Thus, it is often considered desirable to design maps to avoid this.

The design process for the primary CCFD map did not take incumbent locations into account, and so pairs Democratic incumbents Mary Gay Scanlon and Chrissy Houlahan in the 5th district, and Republican incumbents Dan Meuser and Fred Keller in the 12th district. While

pairing two Democrats in a Democratic-leaning district and two Republicans in a Republican-leaning district does not introduce partisan unfairness in and of itself, it still may be considered somewhat politically unpalatable.

To examine the tradeoffs associated with avoiding partisan imbalance and double-bunking, it is worth considering a second alternative map design:

<https://davesredistricting.org/join/87085985-1296-4cae-9dcb-b5f16c5e7f32>

This map design continues to follow the CCFD ruleset as much as possible, while adjusting the previous design to incorporate the following additional priorities:

- No contests are permitted between incumbents expected to run for re-election in 2022.
- No municipal splits are permitted except in Philadelphia (mandatory for population equality) and in Pittsburgh (to ease severe partisan packing).
- Strong disproportionate partisan imbalance is avoided to the extent feasible without major geographic distortion.

The population equality in this map is only slightly greater than that in the neutral-criteria-only no-splits map, ranging from 0.20% below to 0.16% above the ideal district population, a difference of 2762 Census-enumerated persons between the largest and smallest districts (which could easily be adjusted to +/-1 person with little change in its overall statistics, as was done with the other map). Its average compactness is in between the two neutral-criteria-only maps, at 0.3521 on the Polsby-Popper scale. In addition to the new Pittsburgh split, it also divides three more counties and adds one more discretionary (but still within the methodology guidelines) split to Philadelphia, compared to the previous no-splits map. 17 total counties are now split, with Philadelphia split amongst 4 districts instead of 3.

Yet these changes still leave the map well within the range of other neutral-criteria-only maps, and the improvements in partisan and incumbent impacts are significant. No two continuing incumbents are double-bunked, and the most-Democratic (10 D / 7 R) and most-Republican (7 D / 10 R) outcome estimates are far more balanced. It is clear from the comparison between these maps that there is nothing about the Court's "floor" of protection that mandates strong disproportionate partisan imbalance or severe costs to incumbents. Conversely, it is also clear that neither seeking partisan proportionality nor avoiding unduly penalizing incumbents demands violation of the Court's "floor" of protection.

Conclusion

CCFD urges the legislature and the Governor to take to heart the lessons of the corrupted 2011 redistricting process and its 2018 redress. Pennsylvanians now have a clearly established right to free and equal elections, which explicitly includes the right not to be subjected to vote dilution by partisan gerrymandering.

The four traditional neutral criteria of contiguity, population equality, compactness, and split minimization are essential to establishing a “‘floor’ of protection” against egregious gerrymandering. CCFD’s methodology and our primary map are designed to assist with that process. Yet our maps and analysis also show that mere nominal adherence to these criteria cannot reasonably be used to shield, much less mandate, election maps that are otherwise unfree or unequal.

Please do the right thing by our state and do it soon.