

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Carol Ann Carter, et al.
Petitioners

v.

464 MD 2021

Veronica Degraffenreid, in her official
Capacity as Acting Secretary of the
Commonwealth of Pennsylvania, et al.
Respondents

**PETITION TO FILE AN AMICUS BRIEF AND AMICUS BRIEF
ON BEHALF OF
CONCERNED CITIZENS FOR DEMOCRACY
AND AGGRIEVED CITIZENS JAN SWENSON, NADINE BOULWARE,
ELLYN ELSHANAWANEY, WILLIAM S. GORDON, AND JASON MAGIDSON**

Introduction

1. Concerned Citizens for Democracy (“CCFD”), is a Section 501(c)(3) tax-exempt, nonprofit, unincorporated association that since February 2017 has been studying and developing a neutral and judicially manageable and enforceable remedy to prevent partisan gerrymandering in Pennsylvania. Individual aggrieved persons and parties are citizens and registered voters of the Commonwealth of Pennsylvania (“the Aggrieved Persons”) from Philadelphia, Montgomery and Delaware Counties.
2. CCFD and the Aggrieved Persons respectfully offer this Court a superior methodology for neutral redistricting using the Pennsylvania Supreme Court’s mandated criteria set forth in *League of Women Voters of Pa. v. Commonwealth of Pa.*, 175 A.3d 282 (Pa. 2018) (“LWV”).
3. The CCFD method of redistricting may be greatly helpful to the Court and its expert mappers for the following reasons:
 - a. The CCFD method satisfies the requirements of the Pennsylvania Supreme Court in

LWV.

- b. The CCFD method is neutral.
- c. The CCFD method respects **the different** political views of regions of Pennsylvania. The method results in a distribution of conservative seats in rural territory, liberal seats in urban territory, and swing districts (competitive seats) in suburbs and areas of the Commonwealth with small cities and towns.
- d. The CCFD method creates highly compact seats with a limited number of divisions of counties, towns, townships, boroughs, wards, and other political subdivisions.
- e. The CCFD method is resistant to partisan gerrymandering.
- f. The CCFD method will allow the Court to detect and correct even subtle partisan gerrymandering.
- g. The CCFD method tends to protect minority or linguistic communities from being divided.
- h. Once a draft map is completed, the drafter can make minor adjustments to satisfy subordinate criteria such as avoiding incumbent contests and protecting minority or linguistic communities from being divided.
- i. Most importantly, the CCFD method creates a judicially manageable standard to evaluate, accept, reject, modify or create maps with fair districts.

Wherefore, CCFD and the Aggrieved Citizens respectfully petition this Honorable Court

for leave to submit the annexed Amicus Curiae brief and proposed 17-seat map.

Respectfully submitted,

/s Brian A. Gordon

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On behalf of Aggrieved Persons

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I. Facts and Procedural History

Concerned Citizens for Democracy (“CCFD”), is a Section 501(c)(3) tax-exempt, nonprofit, unincorporated association that since February 2017 has been studying and developing a neutral and judicially manageable and enforceable remedy to prevent partisan gerrymandering in Pennsylvania. Individual aggrieved persons and parties are citizens and registered voters of the Commonwealth of Pennsylvania who reside in Philadelphia, Montgomery, and Delaware Counties.

As a result of the 2020 Census, the population of Pennsylvania decreased relative to the rest of the country although the population did increase slightly from the 2010 Census. As a result, the Commonwealth’s Congressional delegation was reduced from 18 seats to 17 seats. The Legislature and the Governor were and are unable to agree on a new map. Several parties filed petitions for review against various other parties in separate lawsuits to ask the Commonwealth Court to draw the 17-seat congressional map.

On December 20, 2021, this Court consolidated all of the cases to this docket number. On the same date, the Court issued a scheduling order requiring all applications to intervene to be filed by December 31, 2021. The Court further ordered that if a plan were not adopted by the General Assembly and Governor by January 30, 2022, the Court would select a plan from those filed by the parties.

On January 14, 2022, the Court issued a further Order granting permission for certain parties to intervene and denying the request of other parties to intervene. The Court is allowing the admitted parties to submit up to two 17-seat maps based upon the 2020 Census, along with supporting expert reports and/or briefs, by Monday, January 24, 2022, at 5:00 p.m.

In paragraph 6 of the Court's January 14, 2022 Order, the Court also allowed amici participants to submit one 17-seat congressional map based on the 2020 Census and a brief and/or expert report in support of that map.

All such maps are required to comply with constitutional standards and other standards that apply by law. After each party's submission, no plan may be modified. (1/14/22 Order, Para.7)

If the General Assembly does not produce a new Congressional map by January 30, 2022, the Court will proceed to issue an opinion based on the hearing and evidence presented.

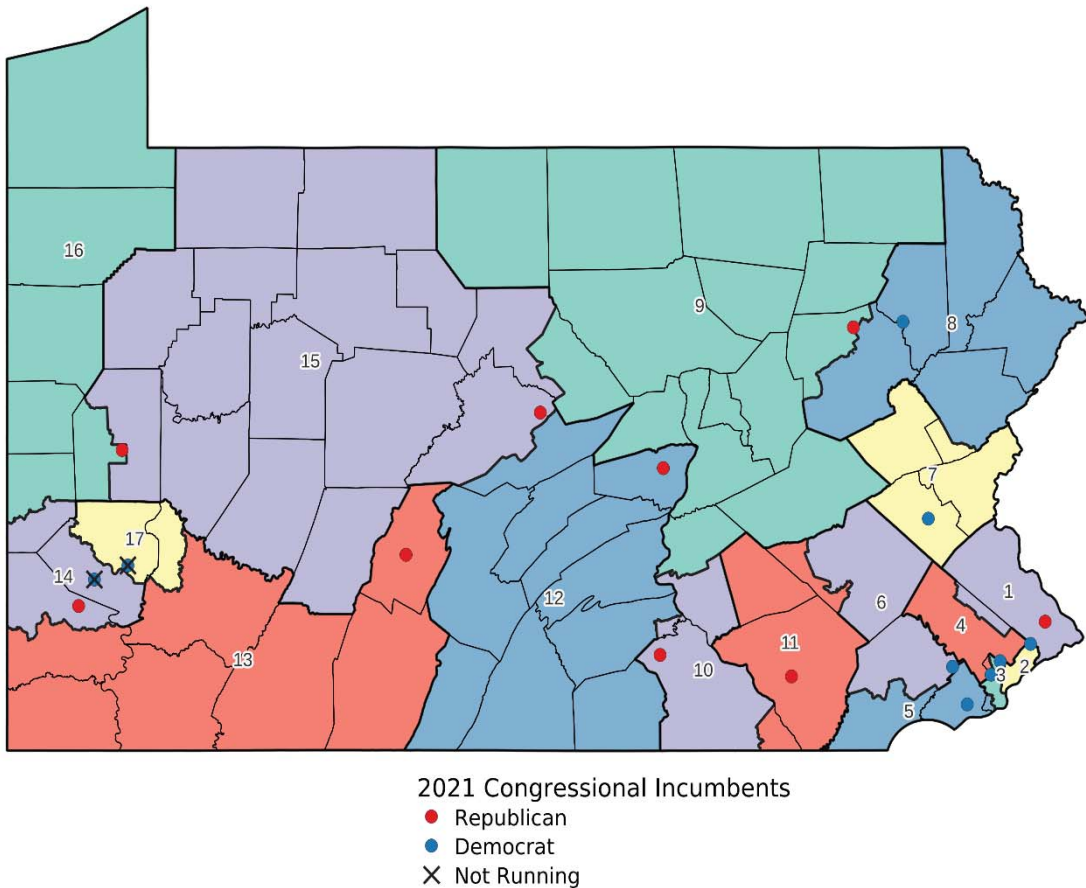
II. The CCFD 17-Seat Map

The CCFD 17-Seat map can be accessed on Dave's Redistricting at the following link:

<https://davesredistricting.org/join/19665c18-15a3-4b94-a254-f93d3feb984c>

The following figure is an image of the CCFD proposed 17-seat congressional map

showing the location of incumbent Members of Congress.



A report on split municipalities in the CCFD 17 seat map is attached as Exhibit A.

A report of the extent of contiguity and incumbent contests is attached as Exhibit B. We note that the final 17 seat CCFD map above is designed to avoid incumbent contests as this approach is consistent with PA Supreme Court’s 2018 remedial congressional map.

III. How the CCFD 17-seat Congressional Map was Created

A Step-By Step Guide to Neutral Redistricting

All CCFD maps are created by the following steps:

Step 1. The drafter of a new congressional map should divide the state by the number

of required districts based on the most recent decennial apportionment. In this case, 17 districts should be formed using whole counties or whole pieces of the largest political subdivisions in a visually compact manner.

A. For cities with a population larger than one district, the drafter first must draw the district boundaries within the county using as much of the territory as possible in a compact manner. The drafter should then add any unused compact portion of that county's territory to a single **adjacent** county in need of additional population to constitute a single district. (This will prevent cracking and packing of suburban counties.)

B. For rural and other less densely populated areas of a state, the drafter should assemble lower-population counties to form whole districts with the target population in a compact manner.

Step 2. To achieve the target population for each district, the drafter should then add or subtract whole townships or other whole political subdivisions along the borders of counties or the larger political subdivisions in a compact manner.

A. In practice, this usually means that additional whole townships, towns, or boroughs are added along the whole length of a common county boundary before moving to the next layer of such political subdivisions. The drafter shall continue in a layer-by-layer manner until nearly equal populations are achieved.

B. This is a very important technique to preempt the selection of territory based upon partisan goals of packing or cracking.

Step 3. The drafter should then divide one, and only one, political subdivision along the common border between two proposed districts to achieve population equality, that is plus or minus one resident, based on the 2020 Census.

A. The division of this single political subdivision should be accomplished in a compact manner using the next largest political

subdivision in a similar compact manner, until the target populations of each district are achieved. For example by adding precincts to boundary of a proposed districts to reach the needed population equality.

Step 4. The drafter should then measure the compactness of the resulting districts using commonly used mathematical compactness measures such as Polsby-Popper, Schwartzberg, and Reock scores. Districts that fail to achieve maximum compactness given the other mandatory criteria, when compared to other districts, should be redrawn.

Step 5. The drafter should then verify that the resulting map does not inadvertently divide racial or linguistic minority groups, thereby ensuring that the map does not violate the Voting Rights Act, 52 U.S. Code § 10101, et seq. (“VRA”).

A. In most instances, no further adjustment will be needed as compact districts generally lead to intact community representation, which leads to compliance with the VRA.

Step 6. The drafter may then make the most minimal adjustments needed to achieve subordinate goals that do not result in partisan gerrymandering: (a) avoiding incumbent contests in the same electoral districts; (b) avoiding the unnecessary division of racial, ethnic, linguistic populations or neighborhoods and promoting racial or ethnic diversity of a legislature; (c) other nonpartisan goals so long as the goal is not a proxy for partisan gerrymandering; or (d) ensuring that the overall Congressional map is responsive to and consistent with the state-wide vote share of all parties.

IV. Should the Court Permit Adjustments for Responsiveness to a Party's Vote Share?

The first four steps of the CCFD method are designed to build the four traditional neutral redistricting criteria of compactness, contiguity, population equality, and minimization of political subdivision splits directly into the structure of any map designed by this method. As the Pennsylvania Supreme Court noted in its opinion in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*, 159 MM 2017:

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.

The egregious violation of those four “floor” criteria in Pennsylvania’s 2011 Congressional map, in pursuit of extreme, durable, and disproportionate partisan advantage, was the basis of the Court’s decision to overturn that map as an unconstitutional partisan gerrymander. Thus, it is clearly essential to have a mapping methodology that ensures these criteria will be satisfied, and that is precisely what the CCFD method accomplishes

A more controversial aspect of **Step 6** of the proposed approach to redistricting is whether a court should allow minor adjustments in the final map to ensure that a map is responsive to the statewide vote share of all parties. This practice would allow the drafter to unpack cities and avoid cracking concentrations of voters of one party that may regularly obtain a majority of votes in statewide contests but would otherwise hold a minority of seats.

CCFD believes that a court should be able to allow such minor adjustments to respond to a party’s statewide vote share, on two conditions. First the adjustments should be minor and explicitly stated. Second, the adjustments should only allow a drafter to approach, but not exceed, the drafter’s party’s statewide vote share in anticipated legislative seats.

The reasons are as follows. The anticipated seat share is an objective numerical standard. The anticipated seat share can be determined by a simple formula: averaging the statewide vote totals of each party's candidates or independent candidates over a 10-year period of statewide elections immediately preceding the redistricting. Once the statewide vote share is reached, the drafter whose seat share is lower than the vote share may make minor geographic adjustments to the proposed districts to increase seat share approaching but not exceeding the anticipated seat share. For example, if a party has a 10-year statewide average vote share of 53%, the party can make minor adjustments in boundary lines to seek an anticipated seat share of 53% but not one seat higher.

It is extremely important that the Court carefully review this step to ensure that a drafter has not over-adjusted boundary lines to secure a greater than anticipated seat share. Otherwise, this practice would place the Court in a position of sanctioning partisan gerrymandering.

If the goal of legislative elections is to create a legislative or Congressional delegation that reflects the political diversity of the Commonwealth, then this goal should allow the drafter to make minor adjustments to ensure a statistically proportionate number of seats. Only by taking this last step do we ensure that the legislative or Congressional delegation reflects the political views and values of the electorate. We believe that legislative seat share responsiveness to voting patterns is consistent with Article I, Section 5 of the Pennsylvania which 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.*"

The Pennsylvania Supreme Court agreed with this view in *League of Women Voters of Pennsylvania v. Commonwealth of Pennsylvania*, 159 MM 2017:

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 also note that the Ohio Supreme Court recently rejected a proposed map for the sole reason that it did not reflect the anticipated seat share of each party. *See Adams v. DeWine*, Slip Opinion No. 2022-Ohio-89 (2022).

V. What is Right with the Proposed CCFD Map?

The model CCFD map has the following favorable attributes:

- a) 17 equal population districts (plus or minus one person) based on the 2020 Census.
- b) Districts are compact, which is healthy for representative democracy and resistant to partisan gerrymandering. (See discussion below.)
- c) Compactly assembling political subdivisions results in a seat share that reflects regional political views.
- d) Compact districts in areas with conservative, moderate, and liberal voters tend to create a healthy number of competitive districts where candidates will, by necessity, have to cross party and ideological lines to get elected.
- e) The presence of some competitive seats is a desired outcome for the following reasons: (1) competitive seats often generate moderate candidates who

compete for votes from members of all parties and independent voters; (2) competitive seats tend to depolarize legislatures; and (3) competitive seats tend to promote dialogue across party lines, compromise, and effective functioning of legislatures to pass laws.

- f) For other technical details, such as split counties and other political subdivisions, please see Exhibit A. [Bob Hess]

VI. Helping the Court to Make the Best Possible 17-seat PA Congressional Map

One of the greatest threats to democracy is partisan gerrymandering. The best weapon to end partisan gerrymandering is compact districts.

We expect that many of the maps proposed by various parties will contain elongated non-compact districts with unexplained jagged edges that hide partisan and personal gerrymanders. These shapes make it impossible for the courts to develop and apply judicially manageable standards for drawing all districts and should be rejected by the Court.

Therefore, we ask the Court to redraw all non-compact districts in the House and Senate maps in a compact manner, using whole political subdivisions, as mandated by *League of Women Voters of Pa. v. Commonwealth of Pa.*, 175 A.3d 282 (Pa. 2018) (“LWV”). Then and only then should the Court make the most minor adjustments to accomplish other important goals such as increasing minority representation.

Why Do Compact Districts Matter?

In general, compact districts, composed of whole political subdivisions, restrain partisan gerrymandering. Such districts limit the choices of map drafters in choosing territory based on voting history and replace that discretion with historic, stable political boundaries assembled

compactly. Compact districts also create an objective mathematical legal standard for courts to evaluate and redraw maps that contain overt and subtle partisan gerrymandering. The reasons are as follows:

1. Neither packing and cracking, nor distributing voters to advantage the drafter's party, is possible if all maps are required to follow county boundaries and other political subdivisions assembled compactly to achieve maximum compactness. In brief, partisan-drawn electoral boundaries will be replaced by mandated historic county and municipal boundaries.
2. Compact districts tend to create a natural distribution of (a) conservative districts in rural parts of a state, (b) liberal districts in urban parts of a state, and (c) swing districts in parts of a state that contain mixed voting populations - usually suburban areas or regions with factory towns and small cities.
3. Compact districts with smooth borders allow courts to easily detect partisan manipulation of district lines; that is, districts with jagged edges and non-compact boundaries are *prima facie* evidence of individual or partisan gerrymanders. The proponents of a non-compact district can then come forward with a neutral reason for non-compact boundary choices.
4. Compact districts tend to keep minority communities whole and prevent the fragmentation of minority communities for partisan gain. Compact districts protect racial and linguistic minorities from having their neighborhoods fragmented by cracking or packing, thereby reducing their voice in government. Conversely, intact neighborhoods, formed by assembling wards and other municipal subdivisions compactly, usually preserve the electoral strength of racial and linguistic minorities.

5. Compact districts, based on county boundaries and other political entities, make it easier for citizens to (a) get to know the identity of their representatives, (b) visit their representatives, and (c) lobby their representatives.
6. Compact districts also encourage candidates to run for public office. When districts are drawn in a compact manner, candidates will find it easier to walk through districts, meet voters in town centers or shopping areas, purchase media ads, and drive to events.
7. Compact districts with smooth edges allow courts to detect individual gerrymandering, that is, where drafters favor or hinder individual candidates or conceal punitive or retributive redistricting.
8. Compact districts in suburban areas and areas with small factory towns create a greater number of competitive districts and depolarize legislatures.
9. The United States Supreme Court in *Vieth v. Jubelirer*, 541 U.S. 267 (2004) and *Rucho v. Common Cause*, No. 18-422, 588 U.S. ____ (2019) said it is impossible to create a judicially manageable standard to evaluate and judge partisan maps, but that is not the case. The Pennsylvania Supreme Court already has created and applied such a standard in *LWV*, and the resulting remedial map. This standard needs to be honored and supported by the Legislative Reapportionment Commission in its proposed maps.

We therefore ask the Commonwealth Court to follow the drafting criteria in *LWV*, thereby preserving the most important tool for fighting partisan gerrymandering that any court in

the United States has ever articulated: compact districts of equal population composed of whole political subdivisions to the maximum extent possible.

Respectfully submitted,

/s Brian A. Gordon

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Splits by Political Subdivision Type

	Required*	Total	Design
County	5	18	13
Municipality	2	17	15
Ward	0	11	11
VTD	0	16	16

* A required split applies if population exceeds the upper variance limit of 0.00%.

"Design" splits are those in excess of the required splits.

Political Divisions with Design Splits

(Note: some may have multiple splits)

Note: Municipalities marked with a "*" are split between counties and split between districts. They are listed once with the first county alphabetically.

County	Municipality	Ward	VTD
Beaver	Allegheny-PITTSBURGH	Allegheny-PITTSBURGH WARD 17	Allegheny-PITTSBURGH WARD 17 DISTRICT 01
Berks	Beaver-GREENE	Berks-LOWER HEIDELBERG PRECINCT 03	Beaver-GREENE Voting District
Butler	Berks-LOWER HEIDELBERG	Butler-CENTER DISTRICT 03	Berks-LOWER HEIDELBERG PRECINCT 03
Centre	Butler-CENTER	Centre-WALKER DISTRICT WEST	Butler-CENTER DISTRICT 03
Chester	Cambria-TUNNELHILL*	Chester-WEST BRADFORD PRECINCT 01	Centre-WALKER DISTRICT WEST
Clinton	Centre-WALKER	Dauphin-MIDDLE PAXTON DISTRICT 01	Chester-WEST BRADFORD PRECINCT 01
Cumberland	Chester-WEST BRADFORD	Luzerne-PLYMOUTH DISTRICT 01	Cumberland-SHIREMANSTOWN Voting District
Dauphin	Cumberland-SHIREMANSTOWN	Philadelphia-PHILADELPHIA WARD 05	Dauphin-MIDDLE PAXTON DISTRICT 01
Luzerne	Dauphin-MIDDLE PAXTON	Philadelphia-PHILADELPHIA WARD 21	Luzerne-PLYMOUTH DISTRICT 01
Monroe	Luzerne-PLYMOUTH	Philadelphia-PHILADELPHIA WARD 51	Monroe-ROSS Voting District
Montgomery	Monroe-ROSS	Washington-MONONGAHELA WARD 03	Montgomery-SALFORD Voting District
Philadelphia	Montgomery-SALFORD		Philadelphia-PHILADELPHIA WARD 05 PRECINCT 08
Washington	Philadelphia-PHILADELPHIA		Philadelphia-PHILADELPHIA WARD 21 PRECINCT 06
Westmoreland	Washington-MONONGAHELA		Philadelphia-PHILADELPHIA WARD 51 PRECINCT 24
York	York-FAWN		Washington-MONONGAHELA WARD 03 PRECINCT 02 York-FAWN Voting District

**Exhibit A
Report of Split Political Subdivisions
CCFD 17 Seat Map with no incumbent contests.**

Congressional Incumbency Map 2022/01/22

Old District	Incumbent	Party	Running?	New District	Rep Ct.	LIC Score
1	Brian Fitzpatrick	R	Y	1	1	96
2	Brendan Boyle	D	Y	2	1	96
3	Dwight Evans	D	Y	3	1	91
4	Madeleine Dean	D	Y	4	1	92
5	Mary Scanlon	D	Y	5	1	82
6	Christina Houlahan	D	Y	6	1	76
7	Susan Wild	D	Y	7	1	91
8	Matthew Cartwright	D	Y	8	1	90
9	Daniel Meuser	R	Y	9	1	37
10	Scott Perry	R	Y	10	1	75
11	Lloyd Smucker	R	Y	11	1	74
12	Frederick Keller	R	Y	12	1	32
13	John Joyce	R	Y	13	1	37
14	Guy Reschenthaler	R	Y	14	2	14
15	Glenn Thompson	R	Y	15	1	87
16	George Kelly	R	Y	16	1	84
17	Conor Lamb	Dx	N	14	1	39
18	Michael Doyle	Dx	N	17	0	0

Incumbency Variances			Stacked (Multiple Incumbents in new district)		
Hijacked (No current incumbent in new district)			Stacked (Multiple Incumbents in new district)		
District	Incumbent	Party	District	Reps	Incumbents (Party, LIC Score)
18	Michael Doyle	Dx	14	2	Guy Reschenthaler(R, 14), Conor Lamb(Dx, 39)

This analysis assesses the constituency sub-groups that will persist between the current district boundaries and those under this proposal. That is, the constituents of each current District will become sub-divided into groups that in the proposed districting plan, with each subgroup assigned to a different district. We then hypothetically rearrange districts to maximize the number of subgroups who remain together. The result is a proportion for each new district that represents the largest combination of subgroups that remain in the same district.

On average, each new districts in the proposal includes 77% of its constituents who remain together. Two: District 1 – Bucks County and part of Montgomery County), and District 2 – the northern part of Philadelphia County, retain substantially the same constituents.

Many Districts in the middle of the state undergo substantial rearrangement – particularly Districts 9, 12, 13 and 14, to accommodate population losses in some and population gains in others. As a result, these districts retain at most relatively low proportions of their prior constituencies. In the process of computing the Constituency Continuity Scores, these Districts now best align with different district numbers that currently.

Exhibit B- Incumbent and Continuity Data

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CERTIFICATE OF SERVICE

On this 24th day of January, 2022, I served a true and correct copy of the foregoing pleading to all parties in this matter via e-filing with the Court's Unified PA Judicial website.

Respectfully submitted,

/s Brian A. Gordon

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