In the Supreme Court of Pennsylvania
Middle District

No. 11 MM 2022

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

v.

2021 LEGISLATIVE REAPPORTIONMENT COMMISSION,
Respondent-Appellee.

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

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STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Pa. Const. art. II, § 17(d) and 42 Pa. C.S. 725(1), which confers exclusive jurisdiction on this Court of appeals from the final orders of the 2021 Legislative Reapportionment Commission (the "Commission").

This appeal is addressed to the Court's appellate jurisdiction and is in the nature of a petition for review pursuant to Pa. R.A.P. 3321.

ORDER IN QUESTION

The Commission's February 4, 2022 adoption of the final reapportionment plan (the "2021 Final Plan"). LRC.R-Tab 43.[1]

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[1] "LRC.R" refers to the original Commission record filed in Case No. 4 WM 2022. Only the first 1,544 pages were consecutively paginated. The balance is cited by "tab" number and page of the particular document. "LRC.Tr." refers to Commission hearing transcripts in the original record.

SCOPE AND STANDARD OF REVIEW

This Court's scope of review of the legislative reappointment plan adopted by the Commission "is plenary, subject to the restriction...that a successful challenge must encompass the Final Plan as a whole, and the recognition in our prior cases that we will not consider claims that were not raised before the LRC." *Holt v. 2011 Legislative Reapportionment Comm'n* ("*Holt I*"), 38 A.3d 711, 733 (Pa. 2012). "On its face, the Constitution does not dictate any form of deference to the LRC, it does not establish any special presumption that the LRC's work product is constitutional, and it also places no qualifiers on this Court's scope of review." *Id.* at 730.

"On appeal from a Final Plan, the plan may be found to be unconstitutional only if the appellant establishes that it is 'contrary to law.'" 38 A.3d at 733 (quoting Pa. Const. art. II, § 17(d)). Purely legal questions are subject to *de novo* review, and *de novo* review is "without deference to the judgment of the tribunal, agency, or other entity whose determination is challenged." *Id.* Moreover, there is no constraint on the Court's *de novo* review of the Commission's Final Plan based on prior decade redistricting plans "approved" by the Court; "the current Final

Plan is not insulated from attack by decisions of this Court finding prior redistricting plans constitutional, unless a materially indistinguishable challenge was raised and rejected in those decisions." *Id.* at 735-36.

STATEMENT OF THE QUESTIONS INVOLVED

1. Is the 2021 Final Plan contrary to law due to its violation of multiple provisions of Article II, Section 16 of the Pennsylvania Constitution, including but not limited to the Plan's unnecessary splits of municipalities, counties, and other political subdivisions, and the excessive population deviation between districts?

2. Is the 2021 Plan contrary to law because it violates the Equal Protection Clauses of both the United States and Pennsylvania Constitutions by overpopulating Republican-leaning districts and under-populating Democratic-leaning districts and unnecessarily pairing more Republican Representatives?

3. Is the 2021 Plan contrary to law as a partisan gerrymander that violates Article I, Section 5 of the Pennsylvania Constitution?

4. Is the 2021 Plan contrary to law as a racial gerrymander that violates the Fourteenth and Fifteenth Amendments to the United States Constitution and Article I, Section 29 of the Pennsylvania Constitution?

5. Is the 2021 Plan contrary to law because the 2021 Legislative Reapportionment Commission reallocated only certain state prisoners?

Suggested answer to all five questions: Yes.

SUMMARY OF THE ARGUMENT

When Commission Member (and House Minority Leader) Joanna McClinton was asked how Democrats could win control of the Pennsylvania House this year, she responded with one word: "redistricting."[2] The Commission delivered for her, passing an egregiously gerrymandered plan that violates every principle of this Court's landmark decision in *League of Women Voters of Pa. v. Com.*, 178 A.3d 737 (Pa. 2018) ("LWV").

The 2021 Final Plan fails to adhere to the constitutional criteria for reapportionment. The Commission instead followed the blueprint for a Democratic gerrymander: carve up the Commonwealth's cities to spread out Democratic-leaning urban voters into suburban and exurban areas to dilute the votes of Republican-leaning voters. The 2021 Final Plan also contains excessive population deviation that likewise exhibits a partisan skew: it routinely overpopulates Republican-leaning districts and underpopulates Democratic-leaning districts.

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[2] Hon. Joanna McClinton Remarks, Oct. 18, 2021, https://s3.us-east-2.amazonaws.com/pagopvideo/634363247.mp4.

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In *LWV*, this Court struck down the 2011 congressional plan as violating the Free and Equal Elections Clause, Pa. Const. art. I, § 5, because that plan subordinated the constitutional redistricting criteria for partisan gain. Multiple experts, including Leader McClinton's expert, concluded that the 2021 Final Plan is a partisan "statistical outlier" when compared to a similar set of neutral, unbiased maps drawn using only the constitutional criteria. Dr. Michael Barber determined the 2021 Final Plan for the House is predicted to result in 5-10 more Democratic-leaning seats and was more strongly Democratic than **99.998%** of his set of 50,000 simulated plans drawn only with non-partisan criteria. Leader McClinton's expert, Dr. Kosuke Imai, corroborates that the 2021 Final Plan is a statistical outlier. Four years ago, this Court invalidated the 2011 congressional plan based on scientific evidence the plan was a statistical partisan outlier. It must do the same here. Otherwise, the message of this Court is that Republican outliers are unconstitutional, but Democratic outliers are good. That cannot be the holding of this Court.

Worse, the Chairman of the Commission has attempted to defend the 2021 Final Plan by arguing that the partisan characteristics of the

plan were attributed to the Commission's decision to draw districts on the basis of race. In offering that defense, the Commission has admitted that race was a predominant factor in drawing districts. But the Commission record lacks a strong basis in evidence of legally significant racially polarized voting to justify classifying and sorting the Commonwealth's voters based upon their race. The Commission's use of race is unlawful, and its Plan is a racial gerrymander that violates the U.S. Constitution and Article I, Section 29 of the Pennsylvania Constitution. And in a cruel irony, while the Commission contends its cracking of urban areas *enhanced* minority opportunity, in fact the 2021 Final Plan *weakened* the votes of the Latino and Black communities in these areas.

Perhaps the most compelling evidence of the Commission's gerrymander is its rejection of the amendment offered by Majority Leader Benninghoff on February 4, 2022 ("Benninghoff Amendment"). That amendment significantly lowered the population deviation and the number of municipal splits in the House, and treated the Commonwealth's minority voters fairly and in compliance with the law. In the Chair's final report issued just days before briefs were due,

the Chair offered no explanation for rejecting the Benninghoff Amendment other than it allegedly produced a higher level of partisan bias. But that again demonstrates that partisan interests overrode the constitutional criteria.

This Court should hold that the 2021 Final Plan is contrary to law and strike it down to vindicate the rights of Pennsylvania's voters.

STATEMENT OF THE CASE

I. Legal Framework For Reapportionment

Following the 2020 Census, the Commonwealth must redraw its state House and Senate districts to comply with the one-person, one-vote principles enunciated in *Reynolds v. Sims*, 377 U.S. 533 (1964). Since 1968, that task in Pennsylvania has been delegated to the Legislative Reapportionment Commission under Article II, Section 17 of the Pennsylvania Constitution. Specifically, Section 17(a) states that "[i]n each year following the year of the Federal decennial census, a Legislative Reapportionment Commission shall be constituted for the purpose of reapportioning the Commonwealth."

In redrawing the state's legislative districts, the Commission must adhere to the requirements of both federal and state law. In particular, Article II, Section 16 of the Pennsylvania Constitution sets forth the familiar traditional redistricting criteria that govern reapportionment. In addition to these constitutional principles, the Commission must also ensure that any plan complies with the Pennsylvania Constitution's Free and Equal Elections Clause (Article I, Section 5) and Article I, Section 29, together with the Voting Rights Act, 52 U.S.C. § 10101, *et al.*, and

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the Fourteenth and Fifteenth Amendments to the United States Constitutions.

II. **Procedural History**

Pursuant to Section 17(a) of Article II of the Pennsylvania Constitution, the 2021 Legislative Reapportionment Commission ("Commission") was constituted to reapportion the Commonwealth following the 2020 Census. LRC.R000014. Due to delays attributed to the COVID-19 pandemic, the U.S. Census Bureau failed to deliver the decennial census data until August 12, 2021 and the full redistricting toolkit until September 16, 2021.

Under Section 17(c) of Article II of the Pennsylvania Constitution, the Commission must file a preliminary reapportionment plan within 90 days after the Commission has duly certified the population data. For decades, the Census Bureau has counted prisoners as residing at the prison. On August 24, 2021, the Commission, by a vote of three to two, decided to alter the census data to "reallocate" certain prisoners to their address prior to incarceration. LRC.Tr.640-41. This is the first time in history that a commission has reallocated prisoners to addresses different from those contained in the Census data. Thus, while the

Commission received the census data on August 12, 2021, and the data was available for use by the Commission on September 17, 2021, it took several additional weeks to deliver the "reallocated" data; that data was not delivered to the Commission until October 14, 2021, and not certified for use until October 25, 2021. Affidavit of Bill Schaller, App'x A, at ¶¶ 4-7; LRC.R000567. The Commission did not begin holding working meetings for reapportionment prior to certification. *Id.*

Pursuant to Section 17(c) of Article II of the Pennsylvania Constitution, the Commission approved a preliminary reapportionment plan on December 16, 2021 ("2021 Preliminary Plan") by a three to two vote for the House Plan, with Commissioners Ward and Benninghoff dissenting, and a unanimous vote for the Senate. LRC.Tr1018-1020. The Commission held eight public hearings on the 2021 Preliminary Plan between December 16, 2021 and February 4, 2022 and heard objections and other input from many citizens and government officials. Thousands of comments and exceptions to the 2021 Preliminary Plan were submitted by the January 18, 2022 deadline under Article II, Section 17(c) of the Pennsylvania Constitution. LRC.R-Tabs 39 & 40. Petitioner

Benninghoff timely submitted exceptions to the 2021 Preliminary Plan on January 15, 2022. LRC.R.-Tab.39.

On February 4, 2022, the Commission held a public meeting to vote on the 2021 Final Plan. LRC.R-Tab.41a. Before the vote, Petitioner Benninghoff proposed an amendment that addressed many of the issues with the 2021 Final Plan's failure to comply with the Article II, Section 16 criteria, the Voting Rights Act, the Fourteenth and Fifteenth Amendments to the U.S. Constitution, and Article I, Sections 5 and 29 of the Pennsylvania Constitution. *See* LRC.R-Tab.41d. The Benninghoff Amendment was defeated by a party-line three to two vote. LRC.Tr.1773-74.

With a four to one vote, the Commission approved the 2021 Final Plan on February 4, 2022 (the "2021 Final Plan"). LRC.Tr.1793-94. Petitioner was the dissenting vote, and Leader Ward expressed her reservations about the House map in the 2021 Final Plan. LRC.Tr.1791 Under Section 17(d) of Article II of the Pennsylvania Constitution, any aggrieved person may file an appeal from the final plan adopted by the Commission directly to the Supreme Court within 30 days after its filing. Majority Leader Benninghoff filed his Petition for Review in this Court

on February 17, 2022 (his "Petition"). On February 17, 2022, this Court ordered that all Petitions for Review and supporting briefs must be received by March 7, 2022 and the Commission must file any answer as well as a consolidated brief by March 11, 2022. 2.17.22 Order.

III. <u>Statement of Facts</u>

A. <u>The Commission's Plan Fails To Adhere To The Constitutional Criteria Found In Article II, Section 16 Of The Pennsylvania Constitution.</u>

1. <u>The 2021 Final Plan has excessive population deviation.</u>

The total population deviation in the 2021 Final Plan for the House is 8.65%. *See* LRC.R-Tab.42b. That is significantly higher than the 7.87% deviation this Court approved in the current reapportionment plan. *Holt v. 2011 Legislative Reapportionment Comm'n ("Holt II")*, 67 A.3d 1211, 1218 (Pa. 2013); LRC.RTab.42b. The ideal population of a House district is 64,053. Of the 25 most underpopulated districts in the plan, only six are Republican-leaning and 19 are Democratic-leaning. By contrast, of the 25 most overpopulated districts in the plan, 20 are Republican-leaning and only five are Democratic leaning. Pet.Appx.224a-225a.[3]

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[3] "Pet.Appx" refers to the Appendix attached to Petitioner Benninghoff's Petition for Review.

The total population deviation in the 2021 Final Plan for the Senate is 8.11%. LRC.R-Tab.42b. That is higher than the 7.96% deviation this Court approved under the current reapportionment plan. *Holt II*, 67 A.3d at 1218.

2. <u>The 2021 Final Plan unnecessarily divides the Commonwealth's cities and other political subdivisions.</u>

The 2021 Final Plan splits 54 municipalities a total of 92 times in the House. LRC.R-Tab.42b. While the 2021 Final Plan may have split less municipalities than the current plan, the specific municipalities the Commission chose to split are important. Consider the following examples.

(a) <u>Allentown – The Lehigh County Seat</u>

Under the 2012 Plan, Allentown is divided into only two House districts, which has been the case since 1971 in all but one map. Allentown is a heavily Democratic city with a population of 126,364. Updated Report of Dr. Michael Barber ("Updated Barber Rep."), Pet.Appx.22a.[4] Thus, while it must be divided once, the 2021 Final Plan

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[4] Dr. Barber filed a report with the Commission on January 7, 2022 analyzing the 2021 Preliminary Plan. LRC.R-Tab.34a. His updated report is to reflect analysis of the 2021 Final Plan.

divides it unnecessarily into *three* House districts. Dr. Barber illustrated how the 2021 Final Plan uses the extra, unnecessary split of Allentown for Democratic partisan advantage, by combining the Democratic areas in Allentown with more Republican areas in the exurbs to create three safe Democratic seats instead of two more homogeneous Democratic-leaning seats.
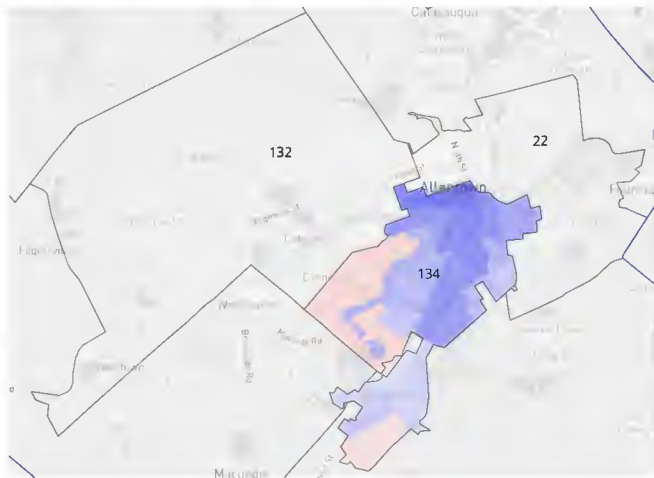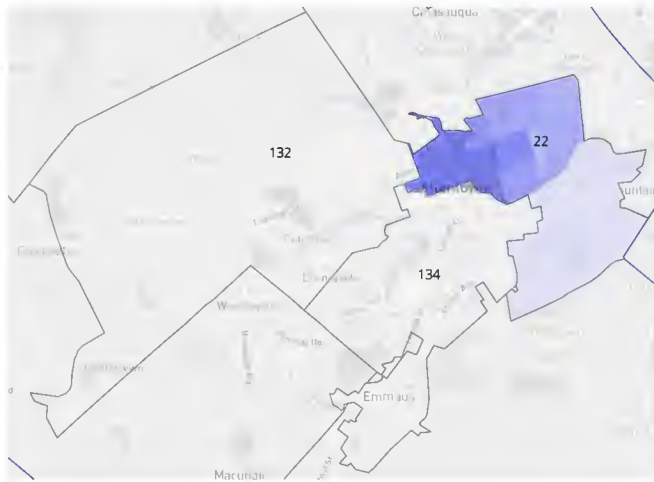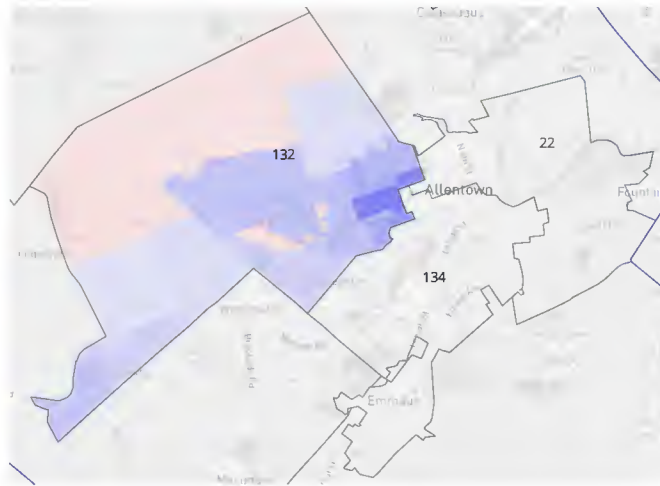
Updated Barber Rep., Pet.Appx.26a, Fig. 9 (depicting HD-22, 132, and 134).[5]

The Senate Plan likewise unnecessarily splits Allentown into two districts—SD-14 and SD-16—not because the population of the City requires such a split (it does not), but rather to carve-up Allentown to create an additional Democratic-leaning district and for partisan political gain. LRC.R-Tab.42c.

  (b) <u>Lancaster – The Lancaster County Seat</u>

Another example is found in the City of Lancaster, population of 58,431, which is divided in half even though its population is small enough that the entire City can be maintained in one House district.

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[5] Each panel in these figures shows one of the districts that intersect the City and are colored to reflect the partisan composition of precincts in the district with darker blue reflecting more Democratic-leaning precincts and red reflecting more Republican-leaning precincts.

Updated Barber Rep., Pet.Appx.28a-32a, Figs. 12-13. And as a result, heavily Democratic precincts in the City are combined with more Republican-leaning precincts in the City's suburbs.
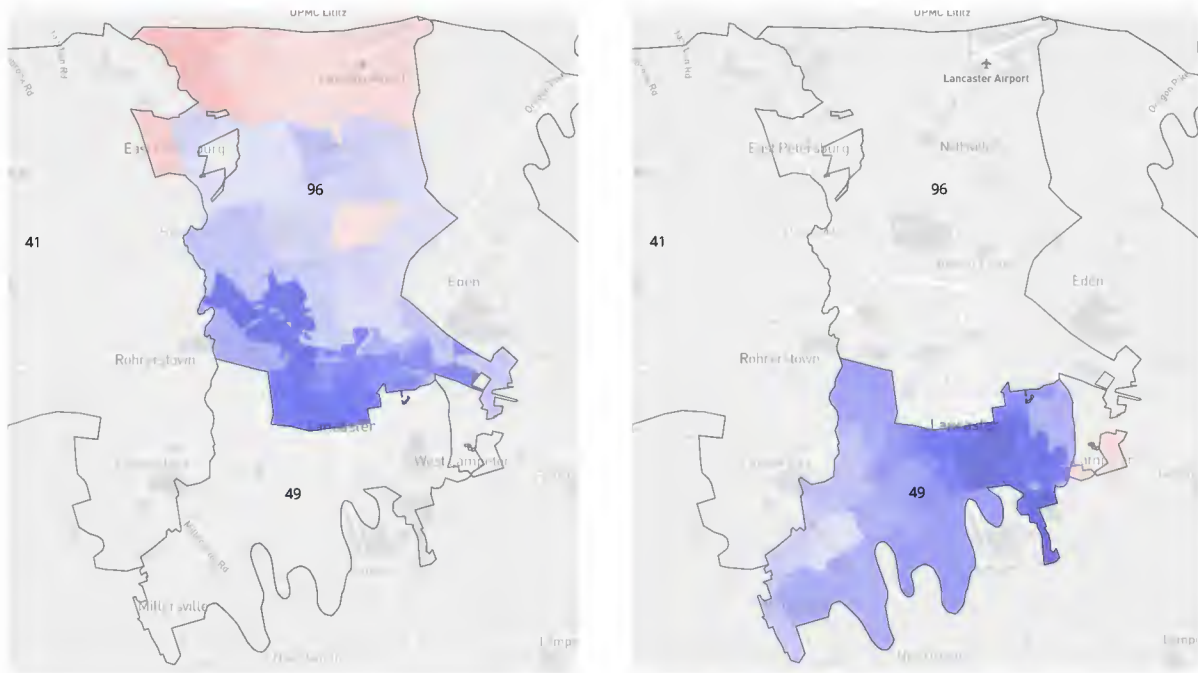
Id. at 32a, Fig. 13 (depicting HD-49 and HD-96). The 2021 Final Plan thus creates two safe Democratic-leaning seats at the expense of historically and unnecessarily splitting the City of Lancaster.

(c)   Reading – The Berks County Seat

The Commission also unnecessarily divided the City of Reading into three House districts even though, based on population, it only needed to be split into two House districts. Updated Barber Rep., Pet.Appx.34a. As

Dr. Barber illustrates, this extra, unnecessary division of Reading was performed for unfair partisan advantage.
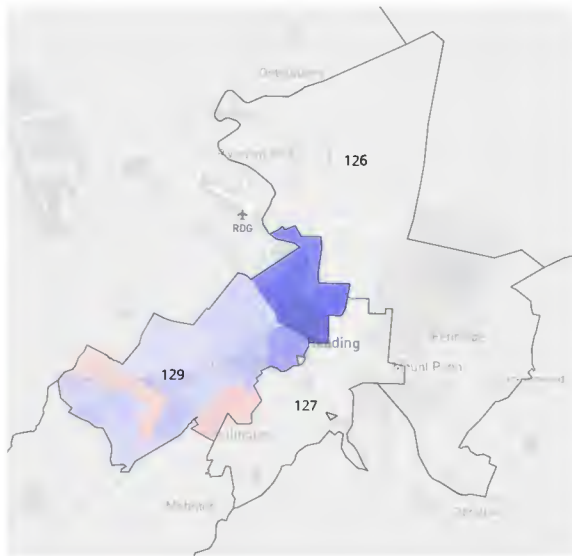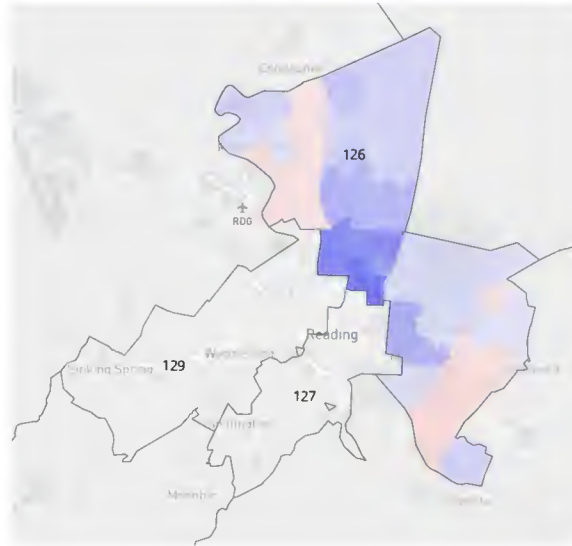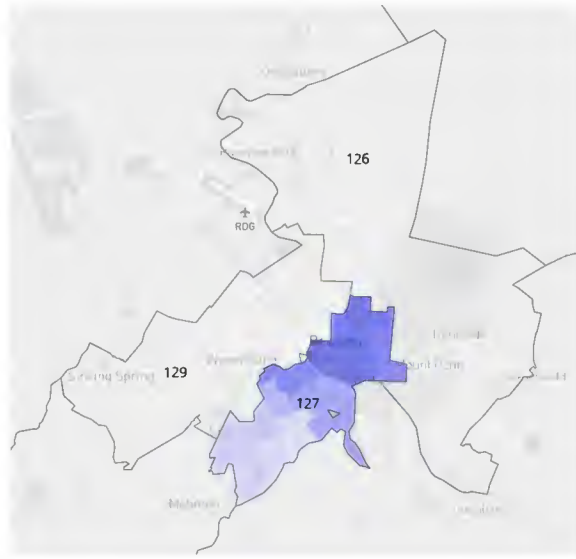
Id. at 34a-36a, Fig. 16 (depicting HD-126, 127, 129). The reason for splitting it into three districts is again to create an additional Democratic favorable seat by combining portions of the City with more Republican-leaning voters in the suburbs. *Id.*

(d) Harrisburg – The Dauphin County Seat

Even the Commonwealth's Capitol City is not spared. Harrisburg, population of 50,679, can easily be contained within a single House district. Yet, the City is split in order to create another Democratic-leaning seat by combining strongly Democratic areas of the City of Harrisburg with more Republican-favoring areas outside the City limits.
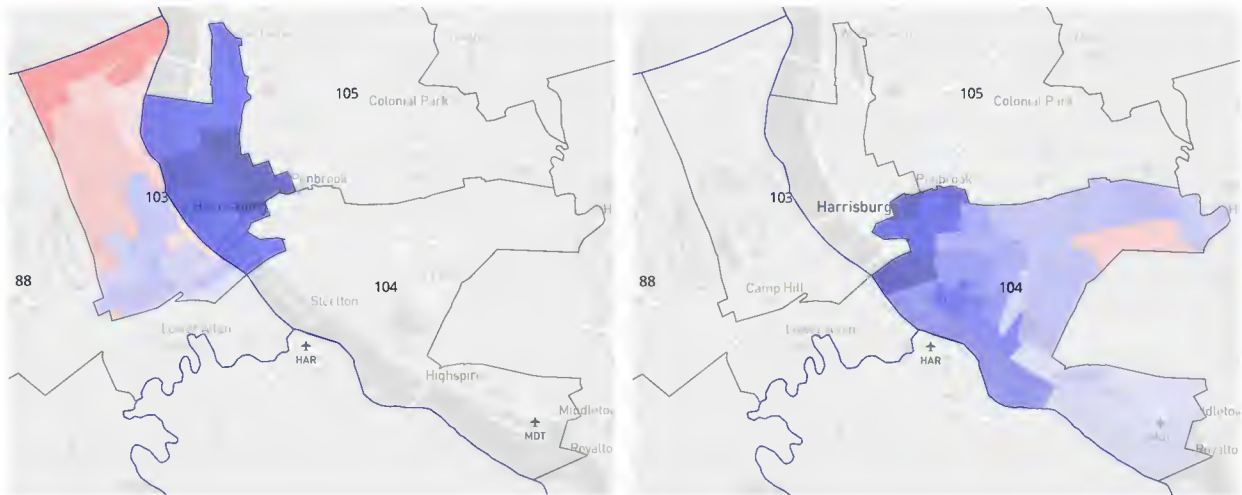
Updated Barber Rep., Pet.Appx.39a-40a, 43a, Fig. 20 (depicting HD-103 and 104). This creates two Democratic districts with comfortable margins at the expense of splitting the state Capitol and a community of interest. *Id.* at 39a-44a.

(e) Pittsburgh – The Seat of Allegheny County

The City of Pittsburgh was also divided into three Senate districts—SD-39, SD-42, and SD-42—for partisan political gain even though, based upon population, it only needed to be split once.

(f) State College

State College, home of Pennsylvania State University, with a population of 40,508 could easily be placed in a single House district but was split into two districts—even dividing the campus of the University—all to draw more and more Democratic districts.
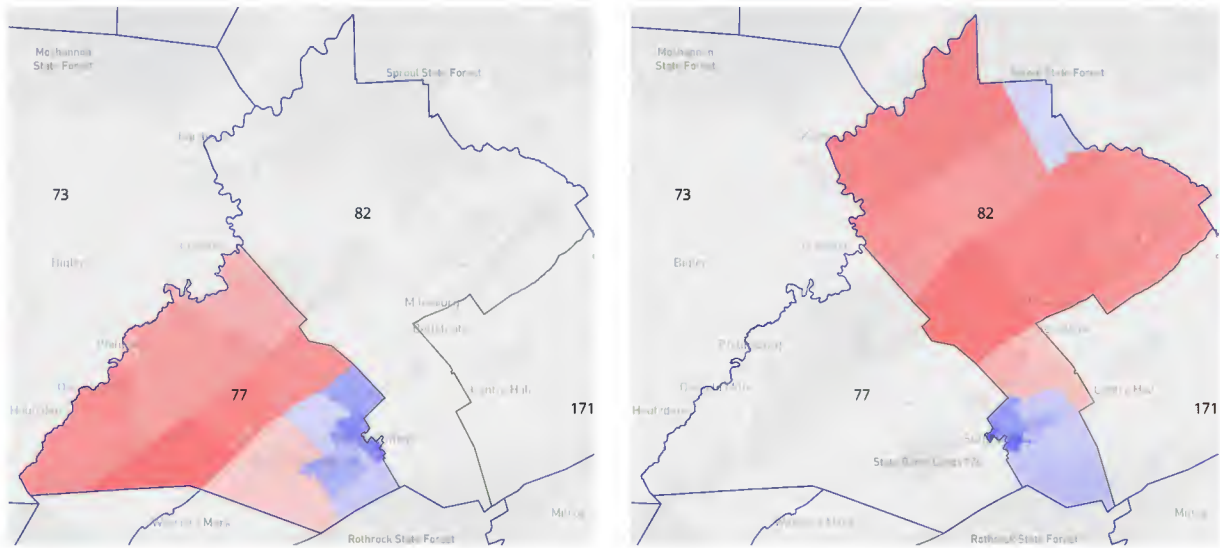
Updated Barber Rep., Pet.Appx.52a, Fig. 26 (depicting HD-77 and 82). The Commission received over 140 comments about State College, and a significant majority that took a position on the split opposed it—feedback the Commission ignored. *See* LRC.R-Tabs 39 & 40.

(g)   Other

South Whitehall Township in Lehigh County was unnecessarily divided into two districts in the Senate Plan—SD-14 and SD-16—even though the Township could have been kept whole inside one district. LRC.R-Tab.42c. In addition, Montgomery Township was unnecessarily split in HD-151 and contrary to requests of numerous Korean citizens. *See* LRC.R-Tab 39.

B.   Statistical Analyses Similar To Those This Court Credited In
     LWV Confirm the 2021 Plan Is an Extreme Partisan Outlier
     Favoring the Democratic Party.

The process of simulating congressional and legislative districting

plans has been recognized and used in redistricting cases, including in

Pennsylvania, to determine whether a plan has an unfair partisan bend

toward one particular party. Dr. Michael Barber, a political scientist at

BYU, used a computer algorithm to simulate 50,000 state legislative

House maps for the Commonwealth that were drawn using only the

Article II, Section 16 criteria. Updated Barber Rep., Pet.Appx.5a. Dr.

Barber's simulated plans do not consider partisanship, race,[6] the location

of incumbent legislators, or other political factors. *Id.* at 5a-7a. Thus, if a

map, like the 2021 Final Plan, "significantly diverges from the set of

simulated maps, it suggests that some other criteria that were not used

in drawing the comparison set of maps may have guided the decisions

made in drawing the proposed map." *Id.*

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[6] As discussed below, while the simulated plans were not drawn using
racial data or criteria, Dr. Barber utilized simulated plans that generate
a similar number of majority-minority districts to demonstrate that
racial characteristics in the 2021 Final House Plan do not explain the
extreme partisanship seen in that Plan.

Notably, this simulation analysis is substantially similar to the simulation analyses utilized by Dr. Chen and Dr. Pegden that this Court credited in LWV, 178 A.3d at 770-77. Dr. Barber's simulation, like those of Drs. Chen and Pegden in *LWV*, uses a set of unbiased alternative maps to compare to a proposed map, like the 2021 Final Plan, to determine if the proposed map is an outlier from the simulated maps.

The 50,000 simulated plans are consistent with the 2021 Final Plan in terms of population deviation, county and municipality splits, and compactness. *See* Updated Barber Rep., Pet.Appx.8a & Tbl. 1. Dr. Barber's analysis concludes the 2021 Final House Plan generates more Democratic-leaning districts than **99.998%** of his 50,000 unbiased simulated plans. *Id.* at 12a, Fig. 3. The most common outcome in the simulations is 97 Democratic seats, yet the 2021 Final Plan is predicted to result in 107 Democratic seats using an index of 2012-2020 elections:[7]

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[7] Dr. Barber analyzed the 2021 Final House Plan using multiple sets of elections and reached the same result. *See* Updated Barber Rep., Pet.Appx.54a, Tbl 3. As one example, the index utilized by Dave's Redistricting (a popular redistricting website) predicts 106 Democratic seats, which occurs in less than .1% of the simulations. *See id.* at 12a, Fig. 3.

Figure 3: Partisan Composition of Commission Proposal and Simulations

Comparison to 50,000 simulated plans in the PA House:
(drawn with population equality, compactness, and minimal political subdivision splits)
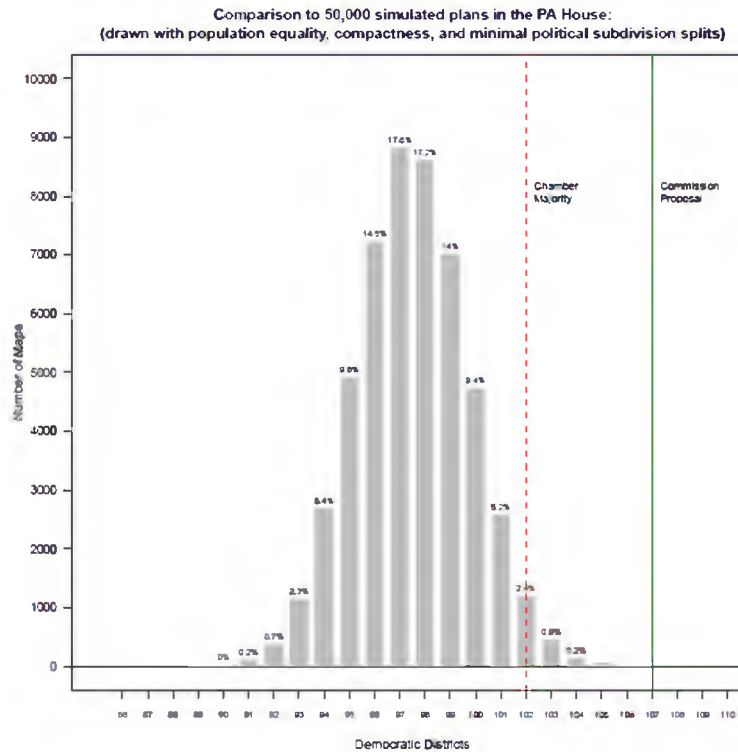
Id. In other words, the 2021 Final Plan creates **5-10 more Democratic-leaning seats** than would be expected in drawing a map just following the constitutional criteria. By any definition, the 2021 Final Plan is an egregious partisan outlier in favor of Democrats. As demonstrated above, the 2021 Final Plan achieves this result by unnecessarily splitting cities and urban areas to more evenly spread out Democratic voters.

C. The 2021 Final Plan Cracks Minority Communities.

In splitting the cities discussed above, the 2021 Final Plan also divides minority communities excessively and unnecessarily.

1.   Setting Latinos Back 10 Years

The City of Allentown has a Latino population of 48.9%, but rather than keeping this Latino community together, the 2021 Final Plan cracks it into three House districts:

HD-22 - Hispanic VAP 53.3%
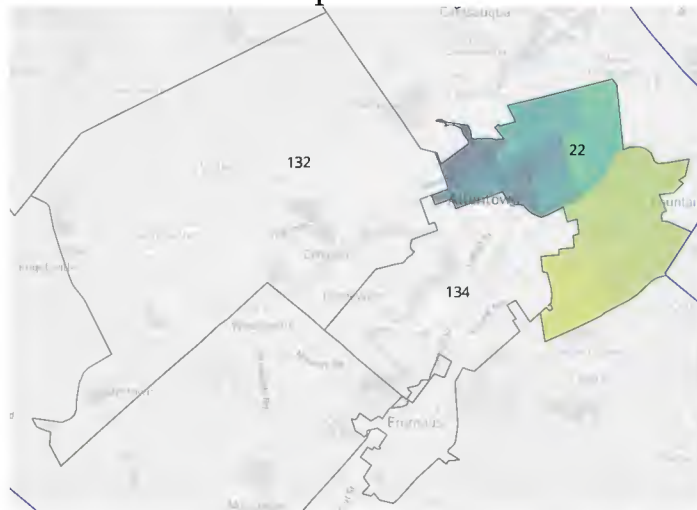
HD-134 - Hispanic VAP 38.4%
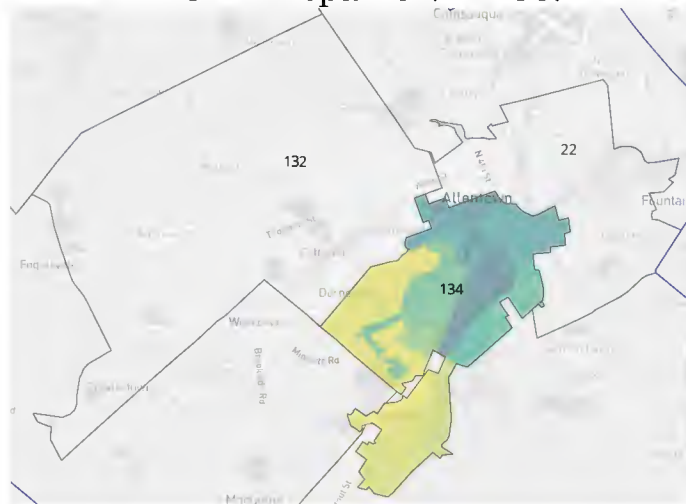
HD-132 - Hispanic VAP 15.1%
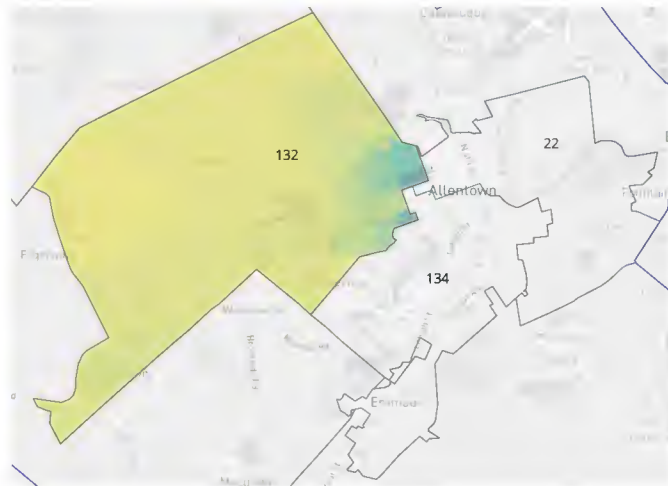
Updated Barber Rep., Pet.Appx.27a, Fig. 10.[8] The excessive, unnecessary split of Allentown therefore dilutes the Hispanic vote—it does not strengthen it. Although HD-22 is a majority-Hispanic district, it has a lower Hispanic voting age population (53.3%) than the current district at 54.5%. *Id.* Thus, despite the growth of the Hispanic population in Allentown and the surrounding area, HD-22 in the 2021 Final Plan has a lower HVAP than the current plan.

The Commission received written testimony from LatinoJustice raising concerns with the Latino community's ability to elect their candidates of choice given the way its members are cracked in Allentown

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[8] Each panel in these figures reflects one of the districts that intersect the City and are color coded according to the Latino composition of precincts with darker shades indicating a greater Latino population.

under the 2021 Preliminary Plan.[9] The Commission received further testimony from the Hispanic community that the 2021 Preliminary Plan fails to create districts that enhance the opportunity of Hispanics to elect the candidates of their choice. LRC.Tr.1102-08. Nothing in the 2021 Final Plan addressed these concerns.

As one example, in the 2020 Democratic primary election in HD-22, Representative Schweyer defeated Enid Santiago – a Hispanic candidate – **by just 55 votes**. LRC.Tr.1105. Yet, the 2021 Final Plan reduces the percentage of HVAP in HD-22 and the remaining two districts which include a part of Allentown and have an HVAP of just 38.4% and 15.1%, respectively. Updated Barber Rep., Pet.Appx.27a, Fig. 10. Shockingly, when Representative Ryan MacKenzie (HD-134) raised this concern with Chairman Mark Nordenberg's consultant, Professor Jonathan Cervas, following a January 15, 2022 Commission meeting, he showed surprise and disbelief. Affidavit of Ryan MacKenzie, App'x B, at ¶6. Professor Cervas acknowledged that VRA compliance was something "they needed to be concerned about." *Id.* at ¶5. Despite this testimony, the 2021 Final Plan failed to address these concerns.

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[9] *See* Written Testimony from LatinoJustice, Pet.Appx.240a-241a.

The same is also true in Lancaster, which has an Hispanic VAP of 35.9%. Instead of keeping Lancaster whole, the 2021 Final House Plan divides it into two districts with *lower* Hispanic voting age populations, as follows:

HD-96 - Hispanic VAP 12.8%   HD-49 - Hispanic VAP: 34.3%
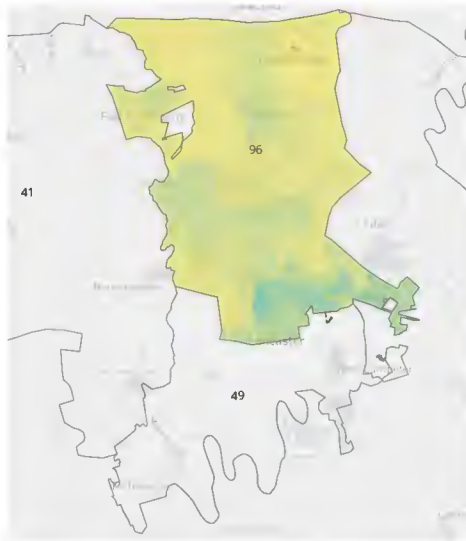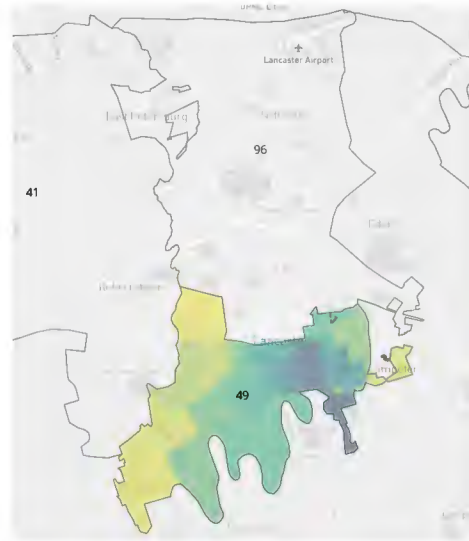
Updated Barber Rep., Pet.Appx.33a, Fig. 14.   Thus, rather than strengthen the minority vote here, the 2021 Final Plan reduces it.

The City of Reading, which has an Hispanic voting age population of 64%, is similarly divided in a way that reduces the voting strength of the Hispanic community. Reading is divided into three House districts, each with a significantly lower HVAP as shown here:

HD-126 - Hispanic VAP 33.2%   HD-127 - Hispanic VAP 52.1%
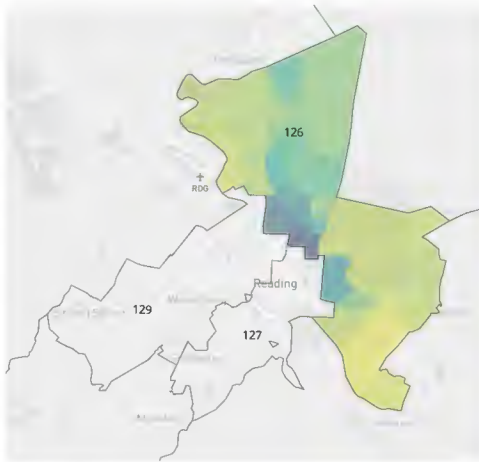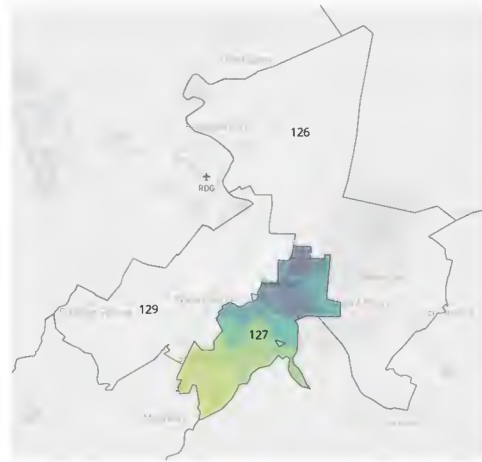
HD-129 - Hispanic VAP 34.4%
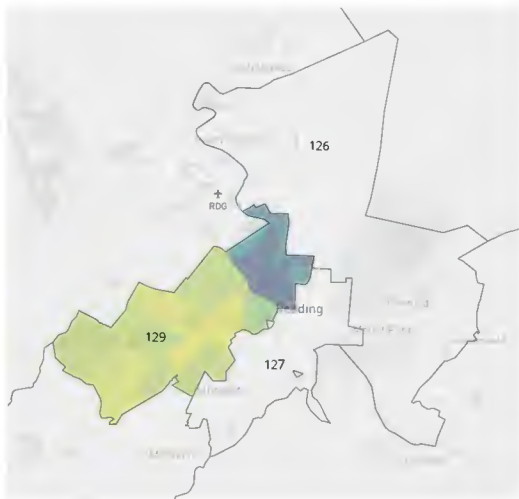
Updated Barber Rep., Pet.Appx.38a, Fig. 17. In particular, the Hispanic voting age population in HD-127 was reduced from 31,822 people in the current plan to 23,915 people in the 2021 Final Plan. As LatinoJustice stated in its written testimony regarding these reductions: "A reduction in the voting age population of Latinos will impede the ability of Latinos to elect a candidate of their choice." Pet.Appx.241a.

In stark contrast to the Benninghoff Amendment, further discussed below, the 2021 Final Plan goes out of its way to ignore the significant growth of Latino communities in the Commonwealth in the last ten years,[10] reducing the influence of Latinos at almost every turn.

2. Cracking the Black Community in Harrisburg

The Black community is likewise cracked in Harrisburg. The City of Harrisburg has a Black voting age population of 47.3%. Yet, despite the fact that the City and its Black population could be contained all in one House district, it is split into two districts with a BVAP of 19.1% and 27.4%, respectively.
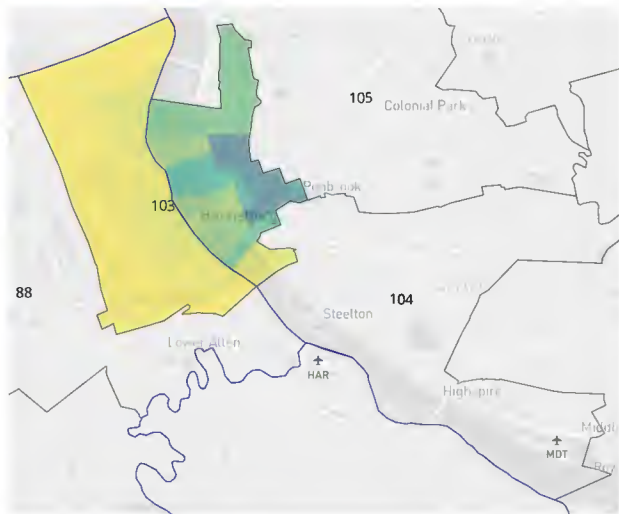
HD-103 - Black VAP 19.1%   HD-104 - Black VAP 27.4%

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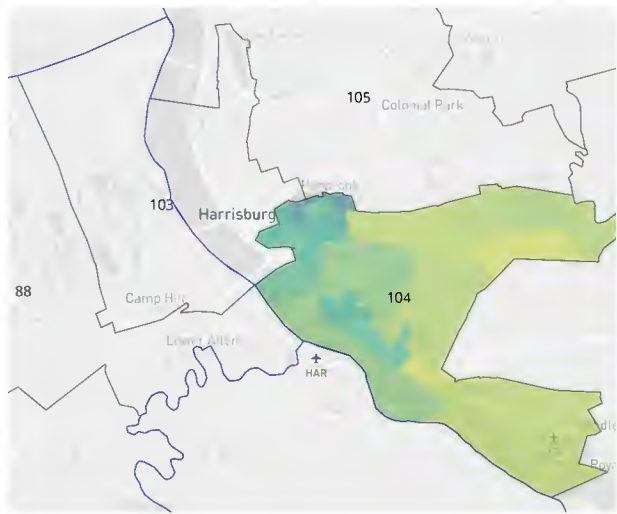
[10] *See* Written Testimony of Will Gonzalez, LRC.R000554.

Updated Barber Rep., Pet.Appx.44a, Fig. 21.[11] This unprecedented
division of Harrisburg's Black community weakens their vote, is not
supported by any Voting Rights Act requirement, and offends Article I,
Section 29 of the Pennsylvania Constitution.

D. Majority Leader Benninghoff's Amendment Substantially Addressed These Concerns, Yet Was Rejected On A 3-2 Party Line Vote.

On February 4, 2022, Majority Leader Benninghoff introduced an
amendment to the 2021 Final Plan that corrected many of the
constitutional issues with the excessive population deviation and
unnecessary municipal splits in the House plan. *See* Benninghoff Am.,
LRC.R-Tab.41d. While utilizing the 2021 Preliminary Plan as a starting
point, it lowered the population deviation from 8.65% to 7.99% without
sacrificing additional municipal splits. *Id.* The Benninghoff Amendment
lowered the total municipalities split from 56 to 42, and eliminated the
unnecessary splits in Allentown, Lancaster, Reading, Harrisburg, and
State College, which also remedied the cracking of Latino and Black
communities in these areas. *Id.*

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[11] Each panel in these figures reflects one of the districts that intersect
the City and are color coded according to the Black composition of
precincts with darker shades indicating greater Black population.

Moreover, although not intentionally drawing districts on the basis of race, the Benninghoff Amendment still contained eight majority Black districts, five majority Hispanic districts, and 26 overall majority-minority districts—more than the 2021 Final Plan—without subordinating traditional redistricting criteria. Updated Barber Rep. at Pet.Appx.62a-63a. It also created 17 minority-opportunity districts, including four Hispanic "opportunity" districts with a Hispanic voting age population between 35% and 50%. And it did so without explicit consideration of race. *Id.*

In all, the Benninghoff Amendment does better on nearly every metric:

Table 4: Commission Proposal, Benninghoff Amendment, and 50,000 Simulations:

	Commission Final Proposal	Benninghoff Amendment	Simulations Range
Population Deviation			
Smallest District:	-4.24%	-4.02%	[-4.25., -3.91]
Largest District:	4.40%	3.97%	[3.93, 4.25]
Boundary Splits			
Counties Split:	45	46	[42, 52]
Total County Splits:	186	186	[184, 208]
Municipalities Split:	56	42	[61, 105]
Total Municipal Splits:	92	76	[98, 140]
Compactness			
Median Polsby-Popper:	0.35	0.36	[0.29, 0.34]

Updated Barber Rep. at Pet.Appx.62a, Tbl 4. Yet, despite these improvements, the Commission voted three to two on straight party lines

to reject the Benninghoff Amendment. LRC.Tr.1773-74. The only criticism the Report of the Chair could offer of the Benninghoff Amendment was that it had higher levels of undescribed "partisan bias." Report of Mark A. Nordenberg ("Nordenberg Rep.") at 74 n. 51. Even after having weeks to review the Benninghoff Amendment, the Chair could not dispute that it performed better on the Article II, Section 16 criteria, or that it did not create adequate opportunities for minorities to elect the candidates of their choice. This further demonstrates that the 2021 Final Plan was adopted for partisan gain and not an attempt to strictly adhere to the constitutional criteria.

ARGUMENT

I. **The 2021 Plan Is A Blatant Partisan Gerrymander and Subordinates the Constitutional Criteria Set Forth In Article II, Section 16 Of The Pennsylvania Constitution For Partisan Gain In Violation of Article I, Section 5 of the Pennsylvania Constitution.**

A. Pennsylvania Law on Partisan Gerrymandering Claims.

The essential constitutional requirements for a legislative reapportionment plan are found in Article II, Section 16 of the Pennsylvania Constitution:

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

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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.

And while the Commission is not prohibited from considering political factors, it may only consider such factors "so long as they do not do violence to the constitutional restraints regarding equal population, contiguity, compactness, and respect for the integrity of political subdivisions." *Holt II*, 67 A.3d at 1235. "In short, the requirements in Section 16 necessarily trump mere political factors that might color or corrupt the constitutional reapportionment process." *Id.*

In addition, "[t]he constitutional reapportionment scheme does not impose a requirement of balancing the representation of the political parties; it does not protect the 'integrity' of any party's political expectations. Rather, the construct speaks of the 'integrity' of political subdivisions, which bespeaks history and geography, not party affiliation or expectations." *Id.* at 1235-36. In other words, the Commission cannot unnecessarily split counties or municipalities to artificially increase the number of Democratic-leaning districts, even if the alleged goal of doing so is to achieve a more "proportional" or "symmetrical" seat share relative

to the statewide two-party vote share or to negate a natural geographic disadvantage. These political goals cannot be used to "excuse a plan that achieves those political ends by doing unlawful violence to the restraints specified in Section 16." *Id*. at 1236.

Moreover, in *LWV*, this Court interpreted the Free and Equal Elections Clause to require that "an individual's electoral power not be diminished through any law which discriminatorily dilutes the power of his or her vote...." 178 A.3d at 816. To help assess that question in the context of a congressional plan, *LWV* recounted the history of the adoption of Article II, Section 16:

> [g]iven the great concern of the delegates over the practice of gerrymandering occasioned by their recognition of the corrosive effects on our entire democratic process through the deliberate dilution of our citizenry's individual votes, the focus on these neutral factors must be viewed, then, as part of a broader effort by the delegates to that convention to establish 'the best methods of representation to secure a just expression of the popular will.' Consequently, these factors have broader applicability beyond setting standards for the drawing of electoral districts for state legislative office.

Id. at 815 (internal citation omitted). It also found in the context of congressional redistricting that

> the use of compactness, contiguity, and the maintenance of the integrity of the boundaries of political subdivisions maintains the strength of an individual's vote in electing a

congressional representative. When an individual is grouped with other members of his or her community in a congressional district for purposes of voting, the commonality of the interests shared with the other voters in the community increases the ability of the individual to elect a congressional representative for the district who reflects his or her personal preferences. This approach inures to no political party's benefit or detriment. It simply achieves the constitutional goal of fair and equal elections for all of our Commonwealth's voters.

Id. at 816.

The Court relied upon the Article II, Section 16 criteria as a basis to strike down the 2011 congressional plan, finding that when "it is demonstrated that, in the creation of congressional districts, these neutral criteria have been subordinated, in whole or in part, to extraneous considerations such as gerrymandering for unfair partisan political advantage, a congressional redistricting plan violates Article I, Section 5 of the Pennsylvania Constitution." *Id.* at 817. This subordination is an effects-based test and does not require proof of intentional conduct. *Id.*

Nothing in *LWV* establishes that the protections of the Free and Equal Elections Clause do not apply with equal force to legislative reapportionment plans. Dr. Barber's report and testimony, as shown above and discussed more fully below, demonstrate that, in fact, the 2021

Final Plan subordinates the constitutional criteria, including splitting cities when far from absolutely necessary for partisan advantage. And his report and testimony demonstrate that the 2021 Final Plan is an extreme Democratic gerrymander that, if approved by this Court, will infringe the rights of millions of Pennsylvania voters.

B. <u>The 2021 Final Plan Subordinates the Constitutional Criteria for Partisan Gain.</u>

1. <u>The 2021 Final Plan contains excessive and unconstitutional population deviation.</u>

Article II, Section 16 states that House districts "shall be ... as nearly equal in population as practicable." Equality of population is the primary directive in the efforts of the Commission. *Holt I*, 38 A.3d at 756. This Court has not "direct[ed] a specific range for the deviation from population equality, or purport[ed] to pre-approve redistricting plans that fall within that range." *Id.* at 761. But it also did not "direct the LRC to develop a reapportionment plan that tests the outer limits of acceptable deviations." *Id.*

The total population deviation in the 2021 Final Plan for the House is 8.65%.[12] LRC.R-Tab.42b. That is significantly higher than the 7.88% deviation under the current plan, *Holt II*, 67 A.3d at 1218, and the 7.99% deviation in the Benninghoff Amendment. Pet.Appx. B; LRC.R-Tab.41d. As such, the total population deviation of the 2021 Final Plan unnecessarily stretches the bounds of what is permissible and does so to allow for the meandering of districts to create more likely seats for Democrats.

Further, there is a strong partisan skew to the population deviation that systematically disadvantages Republican voters. Of the 25 most underpopulated districts in the plan, only six are Republican-leaning and 19 are Democratic-leaning. By contrast, of the 25 most overpopulated districts in the plan, 20 are Republican-leaning and only five are Democratic leaning. See Pet.Appx.224a-225a.

This skew shows that the district lines were drawn for partisan gain and not based on traditional redistricting principles, and also shows a violation of the Equal Protection Clauses of the U.S. and Pennsylvania

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[12] As discussed more fully below in Section III, the 2021 Final Plan has a population deviation of 9.88% for the House when measured with un-reallocated census data.

Constitutions. In *Larios v. Cox,* the state legislative reapportionment plan had a population deviation of less than 10 percent. 300 F. Supp. 2d 1320, 1326 (N.D. Ga. 2004), *aff'd,* 524 U.S. 947. The Court recognized, however, that 10 percent is not a "safe harbor." *Id.* at 1341. Rather, it recognized the "proper judicial approach" to a one-person, one-vote claim is to assess whether, in the state's redistricting process, "there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from the taint of arbitrariness or discrimination.'" *Id.* (citation and internal quotation marks omitted).

The *Larios* court found that, far from deviations being free of taint or discrimination, the state intended to favor certain geographic regions over others in a manner that underpopulated districts in rural areas and overpopulated districts in suburban areas. *Id.* at 1342-47. The court found that "[t]he most underpopulated districts are primarily Democratic-leaning, and the most overpopulated districts are primarily Republican-leaning." *Id.* at 1326. In *Larios,* "the House Plan contains fifty overpopulated and thirteen underpopulated Republican-leaning districts, compared to only twenty-one overpopulated and fifty-nine

underpopulated Democratic-leaning districts." *Id.* at 1331. Thus, the Court concluded that "the population deviations were designed to allow Democrats to maintain or increase their representation in the House and Senate through the underpopulation of districts in Democratic-leaning rural and inner-city areas of the state," *id.* at 1334, and held on this record that the plan violated the Equal Protection Clause. *Id.* at 1353.

The same is true here. The Commission did not attempt to make districts as equal in population as practicable. The Benninghoff Amendment demonstrates that a lower population deviation was possible without sacrificing the other Article II, Section 16 criteria. Rather, just as in *Larios*, the 2021 Final Plan systematically and intentionally disadvantaged Republican voters. That the super-majority of the most overpopulated House districts are Republican-leaning and the super-majority of the most underpopulated House districts are Democratic-leaning demonstrates that the 2021 Final Plan is not free from the taint of arbitrariness or discrimination. The 2021 Final Plan therefore violates the Fourteenth Amendment to the U.S. Constitution and the Free and Equal Elections Clause of the Pennsylvania Constitution.

2.   The Commission followed Professor Rodden's roadmap
to gerrymandering by unnecessarily splitting cities to
more evenly spread out Democratic votes.

It is well recognized that the "spatial distribution of voters throughout a state can have an impact on the partisan outcomes." Updated Barber Rep., Pet.Appx.15a. Numerous studies reflect that Democratic voters tend to be naturally concentrated into urban areas while Republican voters tend to be more spread out in rural areas. *Id.* at 15a-16a. In a single member districting system, that spatial distribution pattern can result in a slight skew. This pattern exists in Pennsylvania, as the below map reflects (Republican-leaning areas shaded red and Democratic-leaning areas shaded blue):
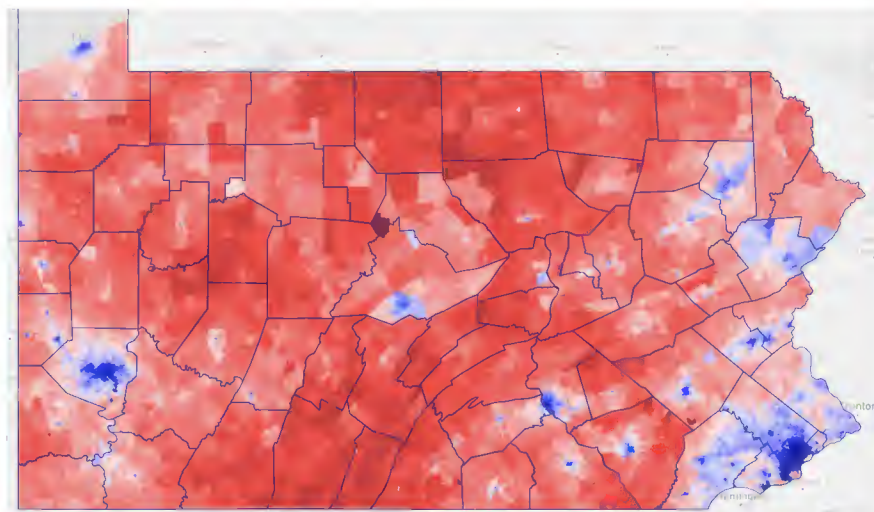
Updated Barber Rep., Pet.Appx.17a, Fig. 5.

In states like Pennsylvania with this type of political geography, scholars have recognized that "Democrats would need a redistricting process that intentionally carved up large cities like pizza slices or spokes of a wheel, so as to combine some very Democratic urban neighborhoods with some Republican exurbs in an effort to spread Democrats more efficiently across districts." *See* Rodden, Jonathan A. Why cities lose: The deep roots of the urban-rural political divide. Hachett UK, 2019.

Dr. Barber's report goes through city after city and demonstrates how the 2021 Final House Plan executes the Rodden blueprint and unnecessarily divides a city to combine highly Democratic areas with Republican suburban areas to spread out Democratic voters and dilute Republican votes. For example, Allentown is split into three House districts when it should be contained in only two. The extra split allows Democratic voters in Allentown (which has a partisan index of 0.72) to be more efficiently distributed and create an additional Democratic-leaning seat. In fact, the 2021 Final Plan creates more Democratic-leaning House seats in Lehigh and Bucks County than any of the 50,000 simulated maps generated by Dr. Barber following only traditional redistricting criteria and not considering partisanship:

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

Lehigh and Bucks Counties
Counties' Population = 16 Districts

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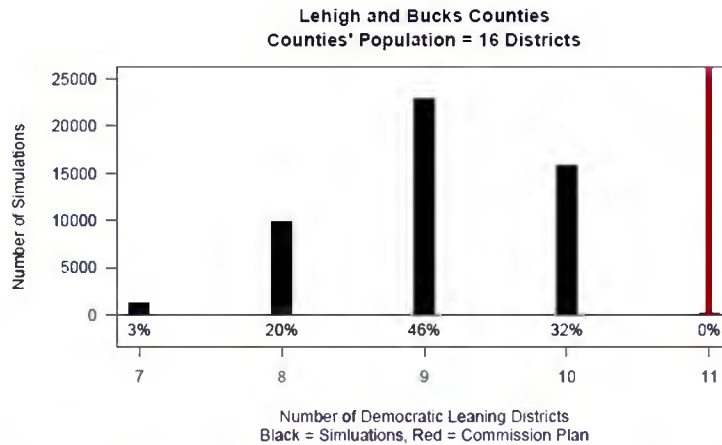
Note: Distribution of likely district partisanship based on the statewide partisan elections index calculated for each of the simulation results. The black bars show the distribution from the simulation results, with the percentage of simulations that generate each of the various possible number of Democratic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

Updated Barber Rep., Pet.Appx.24a, Fig. 7.

The same is true in the City of Lancaster. With a population of only 58,431 people, Lancaster can easily be contained in a single House district. With a partisan index of 0.76, Lancaster has been divided to create additional Democratic-leaning, but still safe seats. Likewise, Reading is divided into three districts when it can be maintained in only two. Again, both Lancaster and Reading contain unnecessary splits to spread out Democratic voters and to generate more Democratic-leaning seats in this area of the Commonwealth than in 81% of Dr. Barber's simulated plans. *Id.* at 40a, Fig. 11.

The same can be said for Harrisburg, which can be contained in one House district but is divided in two. By dividing Harrisburg, the Commission dispersed the city's Democratic votes (0.79 partisan index) to create an additional Democratic-leaning seat compared to the number of seats in this region in 76% of Dr. Barber's simulations. *Id.* at 41a, Fig. 18.

Once again, the 2021 Final Plan is able to draw more Democratic-leaning seats by unnecessarily dividing the Borough of State College. Inexplicably, the 2021 Final Plan not only divides the Borough, but also the campus of Penn State, though both could be in a single House district—a result creating more Democratic-leaning seats than in 72% of Dr. Barber's simulations. *Id.* at 50a, Fig. 24.

Taken in the aggregate, these splits represent an execution of the roadmap Professor Rodden described to overcome the Commonwealth's political geography with surgical precision. In each of these areas, there are more Democratic-leaning seats than in the super-majority of the 50,000 simulated plans. That there are more Democratic-leaning seats created in <u>all</u> these regions is no accident and reflects the systematic

approach of dividing cities to spread out Democratic votes for partisan gain.

The Court need look no further than the Article II, Section 16 criteria to find that the 2021 Final Plan is unconstitutional. Section 16 states: "**Unless absolutely necessary** no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district." (emphasis added). The Commission has not demonstrated that these splits were "absolutely necessary" for any legitimate goal. As this Court recognized in *Holt I*:

> The Holt alternative plan avoided a highly significant percentage of political subdivision splits and fractures while maintaining a lower average population deviation from the ideal than the Final Plan. A concrete showing has been made that political subdivisions were split, even where the population was smaller than the ideal legislative district and a division was avoidable; and that the number of fractures across the Commonwealth was considerably higher in the Final Plan than the Holt plan proved was easily achievable. This powerful evidence, challenging the Final Plan as a whole, suffices to show that the Final Plan is contrary to law.

Holt I, 38 A.3d at 756. The Benninghoff Amendment was able to lower population deviation, eliminate these splits, and lower the overall number of municipalities split from 56 to 42 – a significant reduction. LRC.R-Tab.41d. The Benninghoff Amendment is, like Ms. Holt's plan in

Holt I, "powerful evidence" that the 2021 Final Plan is contrary to law. It is "inconceivable" that the subdivision splits in the 2021 Final Plan were unavoidable because the Benninghoff Amendment so easily avoided them. *Id.* at 757.

3.   The 2021 Final Plan is more Democratic than 99.998% of Dr. Barber's 50,000 simulated House plans, which demonstrates it is an extreme partisan outlier.

Four years ago in *LWV*, this Court relied significantly on scientific analyses that compared the 2011 congressional plan against a set of simulated districting plans drawn using only non-partisan criteria in holding that the 2011 congressional plan was unconstitutional under the Free and Equal Elections Clause. Indeed, the Court stated "[p]erhaps the most compelling evidence concerning the 2011 Plan derives from Dr. Chen's expert testimony." 178 A.3d at 818. Dr. Chen used a simulation analysis to opine that the 2011 congressional plan subordinated the goals of traditional redistricting criteria to other considerations. *Id.* Again, using a simulation analysis, Dr. Chen showed that the 2011 congressional plan consistently resulted in 13 Republican seats, which was an outlier when compared to his set of unbiased simulated maps that had a range with a maximum of 10 Republican seats. *Id.* at 820. The

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Court used this analysis in concluding that the 2011 congressional plan subordinated traditional redistricting criteria in service of achieving unfair partisan advantage. *Id.* at 821.

Dr. Barber's analysis compels that same conclusion about the 2021 Final Plan. The 2021 Final Plan is a blatant partisan outlier when compared to a set of neutral, unbiased plans that follow the criteria in Article II, Section 16. It achieves 107 Democratic House districts—more than is seen in **99.998%** of Dr. Barber's simulations and 10 seats more than the simulations' modal outcome of 97 Democratic-leaning districts. Even Dave's Redistricting, which the Chair references in his Final Report, predicts the 2021 Final Plan is likely to have 106 Democratic seats using its standard 2016-2020 elections index[13]:

Notes
- The average map-wide Democratic two-party vote share is 52.46%, the Republican 47.54%.
- The number of Democratic seats closest to proportional is 106. The likely number of Democratic seats is 105.72. The likely number of unexpected Democratic seats (won) lost is 0.28
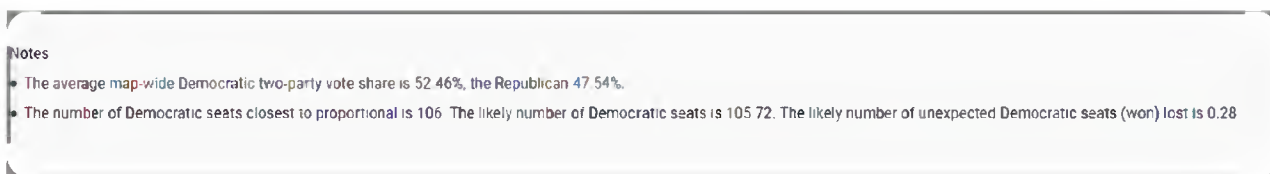
This Court, and many others, have held plans unconstitutional that exhibit more partisan bias than 99%+ of simulated plans drawn using

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[13] Available at https://davesredistricting.org/maps#ratings::12a18072-adf1-48ac-a9d1-12280567b824.

neutral criteria. *See, e.g., LWV,* 178 A.3d at 776 (99.9%); *Common Cause v. Lewis,* 2019 WL 4569584 (Wake N.C. Sup. Ct. Sep. 3, 2019) (passim) (99%+ outlier plans struck down); *Harper v. Hall,* 2022 WL 496215, *44-46 (N.C. Feb. 14, 2022) (99.9%+); *Ohio A. Philip Randolph Institute v. Householder,* 373 F. Supp. 3d 978, 1038 (S.D. Ohio 2019) (only "0.046%" of maps had same partisanship), vacated sub nom, 140 S. Ct. 102. *See also League of Women Voters v. Ohio Redistricting Comm'n,* 2022-Ohio-65, 2022 WL 110261, ¶¶112, 124-25 (Ohio Jan. 12, 2022) (crediting Dr. Imai's finding the plan was a statistical "outlier"). Consistent with *LWV* and these other authorities, this Court must hold that the 2021 Final Plan violates the Free and Equal Elections Clause. Any other holding leads to the conclusion that partisan outliers are only unconstitutional when they favor Republicans and not Democrats. That cannot be the holding of this Court.

But this Court need not rely upon Dr. Barber's conclusions alone. Dr. Kosuke Imai, who testified before the Commission for Leader McClinton and who the Chair credited (LRC.Tr.1751-52), likewise concludes—using the same algorithm as Dr. Barber—that a set of race-blind plans "yields a greater number of Democratic districts than [his]

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simulated plans." LRC.R001094.[14] Dr. Imai admitted that the 2021 Preliminary Plan was a "**statistical outlier**" when compared to a neutral set of unbiased and race-blind plans. LRC.Tr.1508. His own histograms—of both his race-conscious and race-blind simulations—confirm how extreme the Plan's bias is and how the bias persists across a range of elections:

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[14] Dr. Imai claims that his race-blind simulation shows that the difference in the number of Democratic districts between the 2021 Preliminary Plan and the simulated plans is 3-4 districts less than in Dr. Barber's analysis. But Dr. Imai admitted that the difference between his simulated plans and the 2021 Preliminary Plan was statistically significant. LRC.R001094, ¶9. Dr. Imai also claims he was unable to replicate the results of Dr. Barber's work, but Dr. Imai's simulated maps split significantly more municipalities than Dr. Barber's simulations, rending them less comparable to the 2021 Final Plan. *See id.* at LRC.R001149. That Dr. Barber was able to get the algorithm to generate simulated plans with fewer splits than Dr. Imai does not render Dr. Barber's methodology or conclusions unreliable. Without an exchange of the experts' code, which was not a part of the Commission's expert testimony process, neither expert could definitively replicate each other's work.
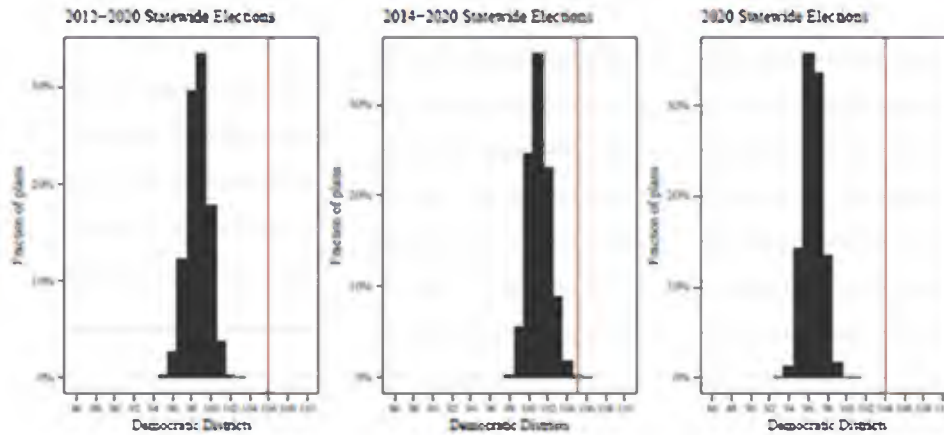
Figure 1: The likely number of Democratic districts across 5,000 *race-blind* simulated plans. Democratic districts are tallied based on an average of statewide elections for the 2012–2020 cycles (left), the 2014–2020 cycles (middle), and 2020 cycle (right). The red vertical lines represent the results under the preliminary plan.
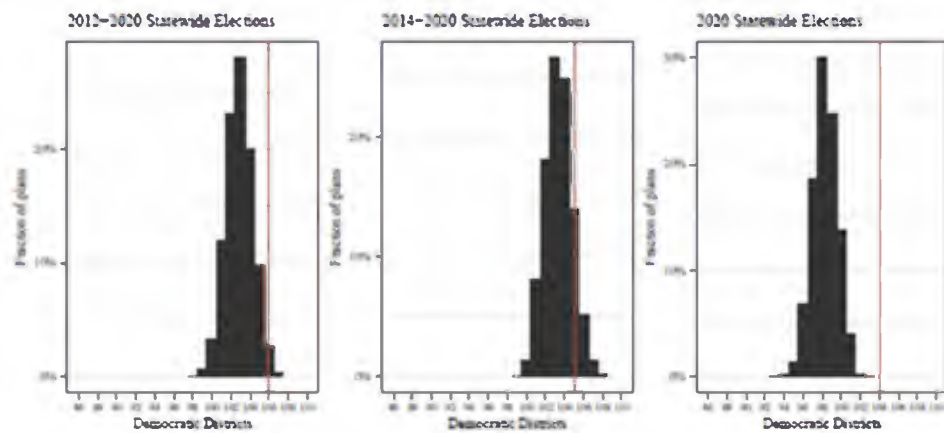
LRC.R001363-67.

As Dr. Imai concluded in his presentation, "the preliminary plan yields **4 to 8** **more Democratic districts** than the *race-blind* simulated plans." LRC.Tr.1502. (Emphasis added). *See also* LRC.R001363. Under both Dr. Barber's and Dr. Imai's analysis, the 2021 Preliminary Plan and the 2021 Final Plan are statistically significant partisan outliers.

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Finally, any criticism that Dr. Barber's analysis is unreliable because it does not consider race is unfounded and misses the point. First, as discussed below, there was no basis for the Commission to draw districts based upon race. But even so, the racial composition of the 2021 Final Plan's House plan does not explain its extreme partisanship. The 2021 Final Plan contains 25 majority-minority districts. Of the 50,000 simulated plans drawn without any partisan or racial data, 17,537 had at least 25 majority-minority districts. In analyzing only these 17,537 plans, the 2021 Final Plan is **still** a statistically significant partisan outlier:

Comparison to 17,537 simulated plans in the PA House:
(drawn with at least 25 majority-minority disticts)
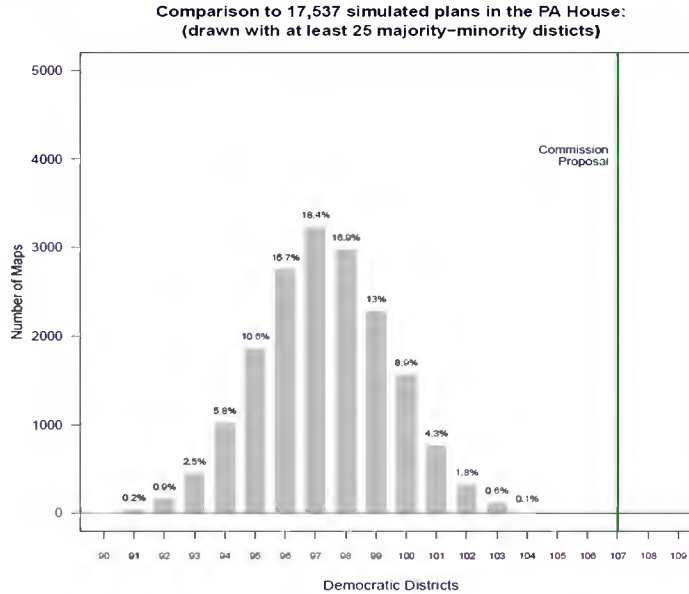
Note: The grey distribution is the number of Democratic seats generated from the 17,537 simulations that contained at least 25 majority-minority districts. The vertical green line is the number of Democratic leaning seats in the Commission's proposal. Even after considering the racial composition of districts, the Commission's proposal remains a statistical outlier. The partisan lean of districts in the simulations and the Commission proposal are calculated as the two-party vote share of statewide partisan elections from 2012-2020.

Updated Barber Rep., Pet.Appx.13a-14a, Fig. 4. In this race-filtered set, the distribution of partisanship does not shift dramatically from the original set. The 2021 Final Plan is still a significant outlier and results in 10 additional Democratic-leaning seats than the most common outcome. Thus, it is entirely possible to draw a plan with 25 majority-minority seats that does not systematically tilt towards Democrats. *Id.* at 13a.

In addition, the Benninghoff Amendment contained eight majority-Black districts, five majority-Hispanic districts, and 26 overall majority-

minority districts (**more than the 2021 Final Plan**) without subordinating traditional redistricting criteria. *Id.* at 62a-63a. It also created 17 minority-opportunity districts, including four Hispanic "opportunity" districts with a Hispanic voting age population between 35% and 50%. And it did so without explicit consideration of race.

That both the simulations and Leader Benninghoff's Amendment could achieve these numbers without deliberately drawing districts based on race demonstrates that a desire to create a certain number of majority-minority or "coalition" districts does not explain the extreme partisan gerrymander adopted by the Commission.

4. The Free and Equal Elections Clause does not permit the Commission to rig the 2021 Plan to "overcome" any natural political tilt in the State's political geography.

The Commission has argued it is fair to intentionally draw the 2021 Final Plan to negate any slight, natural skew resulting from the natural concentration of Democratic voters in cities and urban areas. But such political goals cannot trump the Constitution. Balancing the expectation of political parties has never been part of the equation. As this Court found, "[t]he constitutional reapportionment scheme [of Article II, Section 16] does not impose a requirement of balancing the

representation of the political parties; it does not protect the 'integrity' of any party's political expectations. Rather, the construct speaks of the 'integrity' of political subdivisions, which bespeaks history and geography, not party affiliation or expectations." *Holt II*, 67 A.3d at 1235-36. In sum, redistricting law focuses on the rights of *voters*, not *parties*.

In *LWV*, this Court again recognized the primacy of using *geography*—and not *political preferences*—as the basis for drawing fair representational districts. By focusing on the neutral criteria, a map-drawer "maintains the strength of an individual's vote in electing a congressional representative." 178 A.3d at 816. The Court went on: "[w]hen an individual is grouped with other members of his or her community in a congressional district for purposes of voting, the commonality of the interests shared with other voters in the community increases the ability of the individual to elect a congressional representative for the district who reflects his or her personal preferences." *Id.* Importantly, "[t]his approach inures to no political party's benefit or detriment," but "simply achieves the constitutional goal of fair and equal elections for all of our Commonwealth's voters." *Id.*

But the Commission's attempt to "overcome" any slight, naturally occurring Republican-leaning tilt in the state's political geography places its thumb on the scale for Democrats—an approach that will "inure[]" to the Democratic Party's benefit. "Overcoming" a "tilt" in the state's "political geography" is not an innocuous act akin to putting sugar packets under an unlevel table leg to prevent the table from tilting. It requires conscious state action to treat the voters of urban areas (that are heavily Democratic) differently than voters in suburban areas (that are politically mixed), and both of those groups differently than rural areas (that are Republican-leaning), to give Democrats a partisan advantage. The Commission simply rigs the map to spare the Democratic Party the effort of persuading voters to elect their preferred candidates to the state legislature, and it does so by systematically diluting the votes of millions of Pennsylvanians. That is the very definition of gerrymandering, and it violates the rights of voters as enshrined in the Free and Equal Elections Clause.

The Commission may defend its effort by saying its rigged plan scores closer to "zero" on various "partisan fairness metrics," like the mean-median difference or the efficiency gap, than non-partisan

simulations, and is therefore more "fair." In other words, sometimes partisan outliers are bad, but other times they are good—when they benefit Democrats. The Chair's Final Report even argues (at 59) by analogy that it is "better" for a basketball coach to pick LeBron James as center (a clear outlier) than to choose randomly among 1,000 players—and arguing the Final Plan is tantamount to hiring James. Leader Benninghoff agrees the Final Plan is the LeBron James of partisan gerrymanders, but the map's clear outlier status shows it violates the Free and Equal Elections Clause—not that the plan complies with it.

For one, none of these metrics explain the need to split Allentown, or Lancaster, or Reading, or Harrisburg, or State College in the House Plan; or Allentown and Pittsburgh in the Senate Plan. None of those metrics account for the political geography of the state. *See* Updated Barber Rep., Pet.Appx.55a-59a (describing the metrics).

Moreover, it is incorrect to draw conclusions from the raw scores for these partisan fairness metrics alone because they merely identify potential bias without identifying the cause or source of the bias. Pet.Appx.55a.

To illustrate the point, Dr. Barber calculated the mean-median and efficiency gap for the 2021 Final Plan and compared them to his 50,000 simulated maps. *Id.* at 56a-61a. Strikingly, he determined that the 2021 Final Plan is more favorable to Democrats on the mean-median metric than **all but one** of the 50,000 simulated plans:

Figure 27: Median-Mean Measures of Partisan Bias in Non-Partisan Simulations and Commission Proposal

Median–Mean Measure
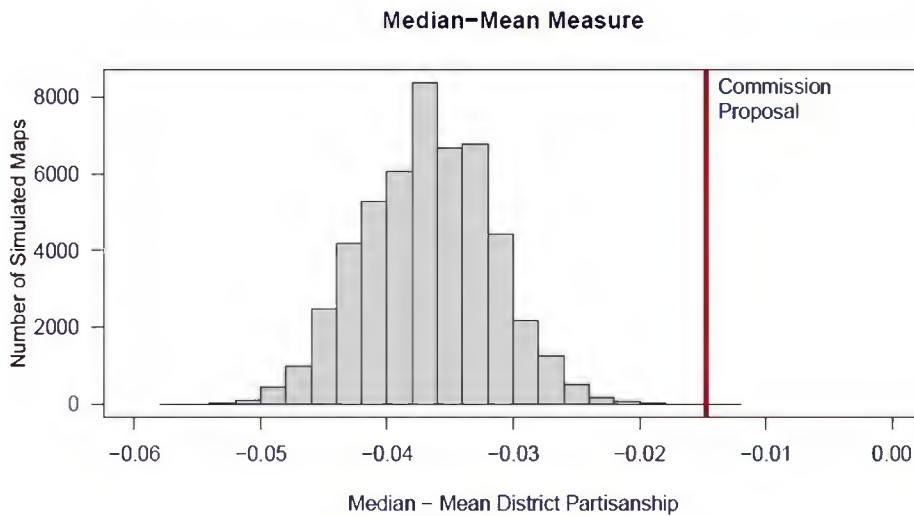
Note: The grey distribution shows the values of the median-mean measure for the 50,000 non-partisan simulations. The solid vertical line shows the value of the median-mean measure for the Commission's proposal. The Commission's proposal has a median-mean value of -0.015, which is more favorable to Democrats than all but 1 of the 50,000 non-partisan simulations.

Id. at 56a-57a, Fig, 27. Similarly, the 2021 Final Plan's efficiency gap is more favorable to Democrats **than all of the 50,000 simulated plans**:

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Efficiency Gap Measure

Note: Distribution of efficiency gap among simulations shown in grey and the Commission's proposed plan shown as the solid vertical line. Negative values indicate plans that are have a Republican advantage and positive values indicate plans that have a Democratic advantage. The Commission's proposed plan has an efficiency gap of -0.027 and is more favorable to Democrats than all 50,000 of the non-partisan simulations. which have larger (more negative) efficiency gap values.

Id. at 60a, Fig. 28. This demonstrates that the 2021 Final Plan was an overt act to "overcome" the contemporary political geography of the state. It was drawn to intentionally benefit one political party over another.

And it is wrong to claim that an outlier is "good" because getting "to zero" on a partisan fairness metric makes a plan more "fair." These metrics are properly treated as ranges, and a plan whose metrics exceed the range may be a suspected gerrymander; metrics are not zero-based targets. *See, e.g.,* Nicholas Stephanopoulos & Eric McGhee, *Partisan Gerrymandering & the Efficiency Gap*, 82 U. Chi. L. Rev. 831, 887 (2015) (recommending that courts not adopt a "zero threshold" for the efficiency

gap and explaining that "plans not be expected, based on sensitivity testing, ever to have an efficiency gap of zero over their lifetimes"); *LWV*, 178 A.3d at 774 (quoting Dr. Chen discussing his simulated plans as having mean-median gaps ranging from "a little over 0 percent" to about "3 percent"). And as Dr. Barber explained, these metrics do not consider political geography and other unique factors of the state, so one cannot say that a plan with a non-zero fairness metric is unfair. Pet.Appx.55a. Rather, a comparison to a set of plans known to be nonbiased (e.g., simulated plans) is required to establish a baseline of fairness. *Id.*

The 2021 Final Plan illustrates this point: an unbiased map is presumptively fair. The 2021 Final Plan generates more Democratic-leaning House districts than the fair baseline of 99.998% of unbiased simulated plans, yet it has "fairness metric" scores slightly closer to zero than the unbiased simulations. This paradoxical result illustrates the fallacy in "getting to zero" on metrics as a way to ensure partisan fairness—especially where, as here, the Article II, Section 16 criteria were routinely subordinated in the plan's construction.

5. The 2021 Final Plan unnecessarily pairs significantly more Republican Members for partisan gain.

As additional evidence that the 2021 Final Plan was drawn to benefit Democrats, it pits eight Republican incumbents against each other and only two Democrat incumbents against each other in the House. *See* Pet.Appx.226a. In addition, it creates five districts where a Republican incumbent is paired against a Democratic incumbent—and gives the Democrat incumbent a significant advantage in each, whether measured by having a greater percentage of that Democrat incumbent's prior district included in the new district or by way of having more registered Democratic voters than registered Republican voters in the district. *Id.*

This cannot have been by accident, and the deliberate and excessive pairing of Republican incumbents is further evidence of discrimination against Republican voters and the subordination of traditional redistricting criteria for partisan favoritism. If the Commission is going to pair incumbents, it should not systematically favor one political party. *See Larios*, 300 F. Supp. 2d 1320. In *Larios*, the Court found that "the policy of protecting incumbents was not applied in a consistent and neutral way" but "was applied in a blatantly partisan and discriminatory

manner, taking pains to only protect Democratic incumbents." *Id.* at 1347. Thus, it could not be used to justify the population deviation. *Id.* at 1349. Again, the same is true here.

II. The 2021 Plan Is A Racial Gerrymander That Violates Article I, Section 29 of the Pennsylvania Constitution And The Fourteenth and Fifteenth Amendments To The U.S. Constitution.

In addition to being an unlawful partisan gerrymander, the 2021 Plan is also a racial gerrymander in violation of the Fourteenth and Fifteenth Amendments to the U.S. Constitution and Article I, Section 29 of the Pennsylvania Constitution. The predominant use of race in the construction of districts within a plan triggers strict scrutiny, and the U.S. Supreme Court has to date only recognized compliance with Section 2 of the Voting Rights Act as a compelling state interest to support racial classifications in redistricting. However, in this case, there was no evidence before the Commission to establish the existence of legally significant racially polarized voting anywhere in the Commonwealth for the VRA to remedy. For these reasons, set forth more fully below, the Commission's documented predominant use of race in the 2021 Final Plan is unlawful and it must be struck down.

A.   Except For Compliance With Section 2 of the Voting Rights Act, the Express Use of Racial Classifications In Redistricting Violates The U.S. Constitution and Article I, Section 29 of the Pennsylvania Constitution.

The use of race in redistricting requires a complex legal and factual analysis demanding a careful approach. "Since the Equal Protection Clause restricts consideration of race and the VRA demands consideration of race, a legislature attempting to produce a lawful districting plan is vulnerable to 'competing hazards of liability.'" *Abbott v. Perez*, 138 S. Ct. 2305, 2315 (2018) (citation omitted). On one hand, the construction of majority-minority districts may be required under Section 2 of the VRA to assure minority voters an equal opportunity to elect. But that requirement has limitations. "[C]ourts may not order the creation of majority-minority districts unless necessary to remedy a violation of federal law." *Voinovich v. Quilter*, 507 U.S. 146, 156 (1993).

On the other hand, "[t]he Equal Protection Clause forbids 'racial gerrymandering,' that is, intentionally assigning citizens to a district on the basis of race without sufficient justification." *Abbott*, 138 S. Ct. at 2314 (citing *Shaw v. Reno*, 509 U.S. 630, 641 (1993)). The Supreme Court has developed a two-part test to evaluate racial-gerrymandering claims. First, a plaintiff must show "that race was the predominant factor

motivating the legislature's decision to place a significant number of voters within or without a particular district." *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788, 797 (2017) (citation omitted). "Where a challenger succeeds in establishing racial predominance, the burden shifts to the State to 'demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest.'" *Id.* at 800–01 (citation omitted) (applying strict scrutiny).

At the predominance stage, the question is whether "the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations." *Miller v. Johnson*, 515 U.S. 900, 916 (1995). A state must not "substantially neglect traditional districting criteria such as compactness." *Bush v. Vera*, 517 U.S. 952, 962 (1996) (plurality opinion).

At the tailoring stage, the question is whether "the legislature [had] a strong basis in evidence in support of the (race-based) choice that it has made." *Bethune-Hill*, 137 S. Ct. at 801 (citation omitted). The only compelling interest the U.S. Supreme Court has assumed justifies race-based redistricting is compliance with the VRA, and, where the state

asserts the VRA as its compelling interest, the question is whether "the legislature has '*good reasons* to believe' it must use race in order to satisfy the Voting Rights Act." *Id.* (citation omitted). In particular, "[i]f a State has good reason to think that all the '*Gingles* preconditions' are met, then so too it has good reason to believe that § 2 requires drawing a majority-minority district. But if not, then not." *Cooper v. Harris*, 137 S. Ct. 1455, 1470 (2017) (citation omitted).

For these reasons, the Fourteenth Amendment places strict limits on the use of race in reapportionment except where required by the VRA. An attempt by a mapmaker to achieve tailored numbers of members of a minority group in a district, especially at the expense of neutral districting criteria like compactness and integrity of subdivision lines, is strong evidence of racial predominance that violates the Fourteenth and Fifteenth Amendments to the U.S. Constitution. *See id.* at 1468-69.

Similar restrictions are also imposed on the use of race under Article I, Section 29 of the Pennsylvania Constitution. This provision, adopted by the Commonwealth's voters just last year, provides that "[e]quality of rights under the law shall not be denied or abridged in the Commonwealth of Pennsylvania because of the race or ethnicity of the

individual." The Pennsylvania Attorney General's Plain English Statement for the amendment describes it as follows:

> Inclusion of this amendment within the Pennsylvania Constitution signifies that freedom from discrimination based on race or ethnicity is an essential principle of liberty and free government. This amendment applies to all Pennsylvania state, county and local governmental entities, and guarantees equality of rights under the law.

Proposed Constitutional Amendment – Article I, Pennsylvania Dep't of State, https://www.dos.pa.gov/VotingElections/Pages/Joint-Resolution-2021-1.aspx (last visited Mar. 7, 2022). Hence, there can be no compelling state interest in Pennsylvania to separate voters into different districts on the basis of their race beyond that necessary for VRA compliance.

B. <u>The Commission Drew Many Districts With Predominant Racial Intent.</u>

The Commission's record demonstrates improper predominant racial intent in the construction of House districts throughout the Commonwealth. Racial predominance is analyzed on a "district-by-district" basis, *Bethune-Hill*, 137 S. Ct. at 800, using "'direct evidence' of legislative intent, 'circumstantial evidence of a district's shape or demographics,' or a mix of both." *Cooper*, 137 S. Ct. at 1464 (citations

omitted). Statewide evidence of a "common redistricting policy toward multiple districts" is also probative. *Bethune-Hill*, 137 S. Ct. at 800.

Here, there is substantial evidence of predominant racial intent. Chairman Nordenberg described "seven minority opportunity districts" in his December 16, 2021 written testimony, HD-9, 22, 54, 104, 116, and 203. LRC.R-Tab.25b at 12.[15] The Chair confirmed at the February 4, 2022 hearing adopting the 2021 Final Plan that it "fashioned districts to create additional opportunities beyond the minimum requirements of the Voting Rights Act." LRC.Tr.1742; LRC.R-Tab.41c at pgs. 21-22. He emphasized that these special districts were created without incumbents. *Id.* During a December 7, 2021 meeting, Chairman Nordenberg explained that he designed the opportunity districts without incumbents to give minorities a chance to elect a candidate without dealing with an incumbent. Schaller Aff. at ¶ 10; *see also* Affidavit of Bob Nye, App'x C, at ¶ 6.

Further, as set forth above, the expert report and analysis of Dr. Barber demonstrates that the traditional districting principles, including

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[15] The Chair only listed six districts, but HD-19 and HD-50 also meet his criteria, bringing the total to eight. Pet. at 24 n.5.

maintaining political-subdivision integrity, were subordinated in the excessive and unnecessary splits of Hispanic communities in Allentown (HD-22, HD-132, and HD-134), Lancaster (HD-49, HD-96), and Reading (HD-126, HD-127, and HD-129), along with the Black community of Harrisburg (HD-103, HD-104). This is powerful circumstantial evidence of intent. But there was also direct evidence of a racial intent in these splits; during a December 9, 2021 meeting discussing a draft of the 2021 Preliminary Plan, Chairman Nordenberg admitted that Lancaster, Reading, Allentown, and Scranton were split for the purpose of creating "VRA or minority-influence districts," though some Scranton splits were later eliminated. Schaller Aff. ¶12; Nye Aff. ¶8. That admission supports that race predominated the construction of the districts in those cities.

The Commission's predominant consideration of race dates back to the earliest days of map-drawing. During a November 16, 2021 meeting of the House Caucuses and the Chairman, staff employed by Leader McClinton circulated an analysis sheet to analyze a proposed districting of Bucks County. Schaller Aff. ¶8; Nye Aff. ¶4. The analysis sheet contained a form that had fields identifying the number of "35% or Higher" Black, Hispanic, or Coalition seats in the proposed drawing of

Bucks County. Pet.Appx.227a. This sheet suggests a systematic target of 35% for minority influence.

Finally, evidence of racial predominant intent is found in the Commission's use of Dr. Imai's partisan-fairness report to rebut Appellant's expert, Dr. Barber, who found the 2021 Final Plan for the House to be a flagrant partisan outlier. Chairman Nordenberg stated that Dr. Imai found the 2021 Final House Plan was "less of a statistical outlier than the [Appellant] had claimed," especially when he "factored in racial data" and concluded that when "majority-minority districts are considered, there is no empirical evidence that the preliminary plan is a partisan gerrymander." LRC.R-Tab41.c at 18. In short: the Commission attempted to rebut a statistical finding that the 2021 Final Plan was a *partisan gerrymander* by arguing the plan could only be fairly compared to one with a certain *racial composition*. The Commission's attempt to defend a partisan gerrymander by implying it is really a racial gerrymander confirms that race was the predominant plan design criterion.

C.   <u>There Is No Evidence of Legally Significant Racially Polarized Voting Anywhere in Pennsylvania to Justify the Commission's Predominate Use of Race In Drawing Race-Based Districts.</u>

The Commission ran afoul of these legal requirements by drawing districts on the basis of race *without* evidence of legally significant racially polarized voting. Section 2 compliance begins with the three *Gingles* preconditions a plaintiff must show to prove a Section 2 claim. Those conditions require the plaintiff to prove that: (1) the minority group in question is sufficiently compact to compose a majority in one or more single-member districts; (2) the minority group must be politically cohesive; and (3) the white majority must vote sufficiently as a bloc to enable it to usually defeat the preferred candidates of the minority group. *Jenkins v. Manning*, 116 F.3d 685, 690-91 (3d Cir. 1997) (discussing *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986)). When <u>all</u> three *Gingles* preconditions are present, the jurisdiction is said to exhibit "legally significant racially polarized voting" and the court must then analyze the totality of circumstances to determine if a Section 2 violation exists. *Gingles*, 478 U.S. at 56-57.

Under the first precondition, a plaintiff "must show...that the minority population in the potential election district is greater than 50

percent." *Bartlett v. Strickland*, 556 U.S. 1, 19-20 (2009) (plurality opinion). Under this standard, states cannot be required to draw minority "crossover" districts, i.e., districts composed of less than a strict 50% voting-age population majority of the relevant minority group. *Id.* at 22-23. *See also, e.g., United States v. City of Euclid*, 580 F. Supp. 2d 584, 594-95 (N.D. Ohio 2008).

Under the second precondition, a Section 2 plaintiff must prove that members of the relevant minority group consistently favor the same candidates, which means consistent support of more than 50% (at a minimum) of members of the relevant group for the same candidates. *See, e.g., Levy v. Lexington County, S.C.*, 589 F.3d 708, 720 n.18 (4th Cir. 2009); *Monroe v. City of Woodville, Miss.*, 881 F.2d 1327, 1331 (5th Cir. 1989), *as corrected*, 897 F.2d 763 (5th Cir. 1990); *Rodriguez v. Pataki*, 308 F. Supp. 2d 346, 388-90 (S.D.N.Y. 2004).

Under the third precondition, a plaintiff must prove that a white voting bloc consistently defeats the candidates of choice of the minority community. Courts have required, as a minimal showing, proof that over the course of many elections, minority-preferred candidates of choice have a failure rate over 50% (i.e., they lose more often than not). *Lewis v.*

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Alamance Cty., N.C., 99 F.3d 600, 616 (4th Cir. 1996) (observing that "a court would ineluctably find" failure on this element in "circumstances" where "minority-preferred candidates were successful fifty percent of the time"). *See also, e.g., Cottier v. City of Martin*, 604 F.3d 553, 560 (8th Cir. 2010) (en banc); *Clay v. Bd. of Educ. of City of St. Louis*, 90 F.3d 1357, 1362 (8th Cir. 1996). This is a vital element of a Section 2 claim, because patterns of "crossover" voting (white voters supporting minority-preferred candidates) can establish a *lack* of racial polarization. *See, e.g., Voinovich*, 507 U.S. at 158 ("[I]n the absence of significant white bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters.") (citation omitted); *Abrams v. Johnson*, 521 U.S. 74, 93 (1997) (finding the third precondition unmet because of "the 'general willingness' of whites to vote for blacks"); *Cooper*, 137 S. Ct. at 1470 (finding no evidence of the third precondition where "a meaningful number of white voters joined a politically cohesive black community to elect that group's favored candidate").

The Commission had *no evidence* of legally significant racially polarized voting anywhere in the Commonwealth. Leader McClinton

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presented expert testimony by Dr. Barreto, who studied a limited set of 2022 elections. LRC.R-Tab.34b. But while Dr. Barreto asserted that white and Black voters supported different candidates, he failed to prove the third *Gingles* precondition because he failed to show that minority-preferred candidates lost a majority of the time due to white-bloc voting (and, indeed, he did not name a *single* minority-preferred candidate that lost). *See generally* LRC.R-Tab.34b. To the contrary, Dr. Barreto reported finding ample evidence of white crossover voting in Philadelphia, Allegheny County, and the Lehigh Valley (including Allentown). *Id.* at pp. 5, 6, 9, 11.[16]

Moreover, Dr. Barreto's analysis was unreliable. As Dr. Jonathan Katz, a nationally recognized VRA scholar, explained, Dr. Barreto's analysis contains "numerous serious statistical flaws and no valid scientific claims about the presence or absence of racially polarized voting

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[16] Dr. Barreto's concession is corroborated by Judge McCullough's conclusion in *Carter v. Chapman* that evidence from Philadelphia suggested that "minority-preferred candidates are not usually defeated by white bloc voting," Feb. 7, 2022 Rep. at 79 (quoting N.T. at 283)), and that no party proved that the *Gingles* requirements were satisfied. *Id.* at 189. Commission Members Joanna McClinton and Jay Costa were intervenors in *Carter* and therefore were aware of that lack of evidence before voting to adopt the 2021 Final Plan.

in Pennsylvania may be drawn from it." LRC.R-Tab.34f at 8. Dr. Barreto fails to systematically study the separate voting behavior of Pennsylvania's Black and Hispanic voters and instead lumps them together in his statistical model. He also fails to conduct a district-level analysis, again instead lumping together multiple election results in regions of the state, which is wrong because he "is assuming that a vote for the Democratic candidate in one legislative or Congressional district is the same choice as voting for the Democratic candidate in another," which is "simply not true." *Id.* at 10.

Further, in his hearing testimony, Dr. Barreto retreated to arguing that the VRA required Pennsylvania to not "decrease" minority voting strength from the 2012 Plan. For example, when asked for his basis to argue for Black-majority districts, Dr. Barreto only claimed that in "any of the existing Black-majority or Black-performing districts, the Voting Rights Act would ask for those to be maintained and not to decrease...influence." LRC.Tr.1544. But Dr. Barreto described the anti-retrogression standard under Section 5 of the VRA, which is fundamentally different than Section 2. *See Reno v. Bossier Parochial School Bd*, 520 U.S. 471, 478-80 (1997) (holding that "[r]etrogression, by

definition, requires a comparison of a jurisdiction's new voting plan with its existing plan," whereas Section 2 uses as its "benchmark" for comparison in vote dilution claims a "hypothetical, undiluted plan."). The proper inquiry is not to compare the 2021 Final Plan against the 2012 Plan, but rather "whether minority opportunity is less under the challenged plan than what it would have been under some other arrangement, one that would comply with § 2." *Little Rock School Dist. v. Pulaski Cty. Special Schol Dist. No. 1*, 56 F.3d 904, 910 (8th Cir. 1995) (finding error in mistaking retrogression for dilution).[17]

The Commission's record is devoid of a strong basis in evidence to support drawing districts on the basis of race. But they did so anyway, proceeding on mere evidence that Pennsylvania's minority voters tend to support different candidates than its white voters. This record is strikingly similar to the one rejected in *Covington*. After finding that the North Carolina legislature engaged in racially predominant redistricting

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[17] On a related point, there is no obligation "to maximize the number of reasonably compact majority-minority districts." *Johnson v. De Grandy*, 512 U.S. 997, 1022 (1994); *see also id.* at 1016 ("to define dilution as a failure to maximize in the face of bloc voting...causes its own dangers, and they are not to be courted."); *Shaw v. Hunt*, 517 U.S. 899, 913 (1996) ("Failure to maximize cannot be the measure of § 2.") (citation omitted).

by purposefully creating majority-minority districts, *Covington v. North Carolina*, 316 F.R.D. 117, 129-65 (M.D.N.C. 2016) (three-judge court), the court concluded that the legislature failed to justify its race-based redistricting under § 2 because the record before it at the time of redistricting did not establish the third *Gingles* precondition, *id.* at 167-74. It concluded this in spite of expert testimony "that there is 'statistically significant racially polarized voting in 50 of the 51 counties' studied." *Id.* at 169 (quoting the report). The *Covington* court held that legislators' choice to draw majority-minority districts based on this analysis "demonstrates their misunderstanding of *Gingles*' third factor," as they bypassed the "crucial difference between <u>legally</u> significant and <u>statistically</u> significant racially polarized voting." *Id.* at 170. The legislature's error was its failure to determine "whether majority bloc voting existed at such a level that the candidate of choice of African-American voters would usually be defeated without a VRA remedy." *Id.* at 168.

Because of this "misunderstanding," the legislature's racially predominant redistricting (creating dozens of majority-minority districts) lacked a Section 2 justification, resulting in "the most extensive

unconstitutional racial gerrymander ever encountered by a federal court." *Covington v North Carolina*, 270 F. Supp. 3d 881, 892 (M.D.N.C. 2017). The U.S. Supreme Court summarily affirmed that decision by a unanimous vote. *North Carolina v. Covington*, 137 S. Ct. 2211 (2017); *see also Covington*, 270 F. Supp. 3d at 892.[18] A three-judge panel in Illinois recently reached a similar conclusion, finding the third *Gingles* precondition unmet because of "significant crossover voting by non-Latino voters...ranging from more than twenty-five to seventy percent non-Latino voter support for the Latino candidate of choice in at least eight [analyzed] elections." *McConchie v. Scholz*, No. 21-cv-3091, 2021 WL 6197318, *8 (N.D. Ill. Dec. 30, 2021). The Commission committed the same error that doomed the North Carolina plan.

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[18] Constitutional challenges to statewide redistricting plans are adjudicated in federal court by three-judge panels, 28 U.S.C. § 2284(a), with appeal of right in the U.S. Supreme Court. 28 U.S.C. § 1253. When the Court summarily affirms, it affords the judgment of the district court binding effect under the doctrine of stare decisis as to holdings "essential to sustain that judgment." *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 183 (1979); *Comptroller of Treasury of Md. v. Wynne*, 575 U.S. 542, 559-60 (2015). *Covington*'s holding on the definition of legally significant racially polarized voting is such a holding, since the result would have been the opposite without it.

D. The 2021 Final House Plan Divides And Dilutes Minority Communities Contrary To the Expressed Wishes of Those Communities.

Finally, the 2021 Final Plan divides and dilutes the strength of the Hispanic community in multiple House districts contrary to the weight of community feedback and testimony before the Commission. The National Association of Latino Elected and Appointed Officials Educational Fund, as just one example, submitted written testimony advocating that "lines must keep communities together that share similar needs and concerns" and that "it is crucial that the maps produced by the Commission reflect the growth of the Latino community; thus, ensuring that Latinos achieve fair representation..." LRC.R.-Tab39 (NALEO-1/15/22 ltr at 2). Yet the 2021 Final Plan systematically divides and dilutes minority communities.

In Allentown, for example, the dilution of the Hispanic vote by the unnecessary division of that City was the subject of vocal criticism by LatinoJustice, who expressed the concern that the cracking of the Hispanic community would impair the community's ability to elect their candidates of choice. Pet.Appx.240a-241a. Other community feedback on Allentown expressed the concern that the plan failed to create districts

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that enhance the opportunity of Hispanics to elect the candidates of their choice. *See* LRC.Tr.1102-1108.

The defeat of Hispanic candidate Enid Santiago in the 2020 Democratic Primary in HD-22 in Allentown – who lost to a white Democrat by just 55 votes – illustrates the point. HD-22's Hispanic voting-age population was reduced in the 2021 Final Plan compared to the current HD-22. Diluting the Hispanic community will not improve the odds of other Hispanic candidates of choice to be elected.

III. <u>The Commission Wrongly Reallocated Only Certain Prisoners On A Party-Line Vote Without Authority Adding Weeks Onto An Already Delayed Reapportionment Process.</u>

For the first time in history, a Legislative Reapportionment Commission altered the census data used to conduct reapportionment. And it did so without any act of the legislature or any authority found in the Pennsylvania Constitution. To the contrary, the text of the Pennsylvania Constitutional repeatedly refers to use of the population data from the federal decennial census. *See* Pa. Const., art. II, § 17. In 2020, the U.S. Census Bureau continued its historic practice of counting incarcerated individuals at their correctional facilities—a practice the United States Supreme Court noted without objection. *See Evenwel v.*

Abbott, 578 U.S. 54, 61 n.3 (2016). *See also Davidson v. City of Cranston, R.I.*, 837 F.3d 135, 145-46 (1st Cir. 2016) (holding that failure to reallocate prison population does not violate the Equal Protection Clause). A bare majority of the Commission, however, decided to ignore this precedent and depart from the status quo.

If a significant decision to adjust federal census data was to be made, it should have been done through a full, deliberative and public process, and not by the votes of three Commissioners on straight party-lines. As Justice Todd recently wrote,

> consistent with the intent of the electorate who ratified the 1874 Constitution, the overarching purpose of ... restrictions on the legislative process contained in Article III was to furnish essential constitutional safeguards to ensure our Commonwealth's government is open, deliberative, and accountable to the people it serves.

Washington v. Dep't of Pub. Welfare of Commonwealth, 188 A.3d 1135, 1147 (Pa. 2018). A unilateral decision concerning this subject by a bare majority of the Commission, bypassing the General Assembly and the Governor as part of the normal constitutional scheme, was a significant and unjustified appropriation of legislative power.

Indeed, nearly every state that has adjusted the Federal decennial census data to reallocate incarcerated individuals has done so based upon

some legislative action.[19] The Pennsylvania Constitution does not contemplate the use of any data other than decennial Census data.[20] Yet, without such authority, and without any act of or direction from the legislature, the Commission voted 3 to 2 on August 24, 2021 to reallocate only certain prisoners to their alleged place of residence prior to incarceration. LRC.Tr.640-41.

Rather than take the time to address the myriad issues that come with reallocating only certain prisoners, the Commission rushed through the decision without due consideration for its impact. First, the use of altered census data to reapportion the General Assembly has resulted in further departures from the population equality requirements of the Pennsylvania and U.S. Constitutions, further violating the rights of voters. If analyzed using the unaltered census data, the total population deviation in the 2021 Final Plan for the House is 9.88% and is 8.49% for

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[19] *See, e.g.*, N.J. Stat. Ann. §52:4-1.5; Colo. Rev. Stat. §2-2-902; Cal. Elec. Code §21003; Wash. Rev. Code §44.05.140. Only California has reallocated prisoners through a resolution proposed by a reapportionment or redistricting commission and it did so at the legislature's specific statutory request. The Montana Redistricting and Apportionment Commission has "taken steps" toward this process but has not yet done so.
[20] The congressional plan this Court adopted in *Carter v. Chapman*, 7 MM 2022, was drawn using unaltered census data.

the Senate. This further stretches the population deviation unnecessarily to the outer limits of acceptable deviation. *See Holt I*, 38 A.3d at 761.

Second, the Commission arbitrarily reallocated only certain prisoners and failed to reallocate similarly situated federal, state, and county prisoners, or other group-quarters populations, raising significant constitutional questions about its decision. At the outset, the Commission did not even reallocate all state prisoners. It did not reallocate prisoners that were serving a life sentence or those with a sentence of 10 years or longer. LRC.R000430. Moreover, the Pennsylvania State Data Center ("PSDC") was not able to locate addresses for nearly 17% of state prisoners even after using geocoding tools. The Commission also declined to reallocate those residing in county or federal prisons, just state prisons. Thus, those prisoners serving their sentences (usually of two years or less) in a county prison were not reallocated. 42 PA.C.S. § 9762(b). The Commission provided no rational basis for treating certain prisoners different from others. If the Commission claims it could not obtain data necessary to do so, that fact simply demonstrates the haste with which the Commission acted.

Moreover, reallocating prisoners is inconsistent with how the Commission treated other group-quarters populations. It did not, for example, reallocate college students residing in dormitories, or nursing home residents. The Commission failed to provide any explanation for singling out one group-quarters population but not others. The Commission's hurried process resulted in an arbitrary reallocation of only selected individuals when a more fulsome and vetted process was warranted.

Moreover, the Commission provided no information on the verification done to confirm the accuracy of the "home" addresses used for such prisoners that were reallocated as provided by the Department of Corrections. Were these addresses provided by inmates at the time of incarceration? Were or are there ever updates to these addresses during the time of incarceration? How was this information collected and stored? How do we know these prisoners are likely to return to these addresses? What is the error rate for this data? These are questions that should have been answered before making the historic decision to reallocate an arbitrary portion of the Commonwealth's population.

Finally, the decision to reallocate certain prisoners caused significant unnecessary delays in the process in a year already fraught with delays due to the COVID-19 pandemic. This Court in *Holt I* reminded the Legislative Reapportionment Commission "that the Constitution specifically authorizes appeals from final plans, and the LRC this year, and whatever entity bears the burden in future years, should thus approach its bipartisan constitutional task with an eye toward affording sufficient time for meaningful appellate review, if appeals are filed." 67 A.3d at 723. In addition, the Court recognized that its decision holding the plan unconstitutional was a disruption to the 2012 primary election landscape and that it "trust[s] that the LRC will avert similar delay as it is called upon to faithfully execute its task upon remand, and ... trust[s] that future such Commissions will act more promptly." *Id.* at 761. The Commission's "hurry up and wait" approach, with a rush to judgment concerning prisoner reallocation followed by weeks of delay trying to implement the decision, failed to adhere to this "trust" and created significantly less time for meaningful appellate review, not more.

Once again, the Commission failed to act promptly here. The delays to adjust the census data took several additional weeks. In doing so, the Commission further crunched the timeframe for a full and meaningful appellate process to play out. In essence, it swiped due process away from aggrieved parties, forcing this Court to order briefs due at the same time as the deadline to file any petition for review in order to resolve any appeals without impacting the primary date. Even just a few weeks was critical time necessary for a more thorough briefing and review process on the constitutionality of the 2021 Final Plan. The Commission's unnecessary and arbitrary decision, however, cut that time to a virtual nullity. This Court, however, should not allow the 2021 Final Plan to skirt meaningful appellate review because of the Commission's negligent decision to reallocate certain prisoners.

CONCLUSION

Appellant respectfully requests that the Court hold that the 2021 Final Plan is contrary to law, strike the 2021 Final Plan down, order that the 2022 elections be conducted using the current 2012 plan districts, and remand to the Commission to draw a new legislative reapportionment

plan that complies with the laws and constitutions of the United States and Pennsylvania.

Dated: Philadelphia, Pa.
      March 7, 2022

/s/ Jeffry Duffy
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(*) *Admitted pro hac vice*

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

CERTIFICATE OF COMPLIANCE (PUBLIC ACCESS)

I hereby certify that this filing complies with the provisions of the

Case Records Public Access Policy of the Unified Judicial System of

Pennsylvania that require filing confidential information and documents

differently than non-confidential information and documents.

/s/ *Jeffry Duffy*
Jeffry Duffy (PA No. 081670)

CERTIFICATE OF COMPLIANCE (WORD COUNT)

I certify pursuant to Pa. R.A.P. 2135(d) that this brief numbers 13,888 words, excluding the portions of the brief that are not counted toward the type-volume limit pursuant to Pa. R.A.P. 2135(a)(1). This word count was calculated using Microsoft Word 365.

/s/ Jeffry Duffy
Jeffry Duffy (PA No. 081670)

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the within BRIEF OF APPELLANT was served this 7th day of March, 2022, by PACFile on all counsel of record.

/s/ Jeffry Duffy
Jeffry Duffy (PA No. 081670)

In the Supreme Court of Pennsylvania
Middle District

No. 11 MM 2022

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

v.

2021 LEGISLATIVE REAPPORTIONMENT COMMISSION,
Respondent-Appellee.

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

AFFIDAVIT OF BILL SCHALLER

I, Bill Schaller, depose and state the following:

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

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

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

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

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

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

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

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

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

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computation of the number of districts in a plan containing populations of racial groups that meet or exceed a specified threshold percentage.

9. On December 7, 2021, I attended a meeting at the Capitol attended by myself, Chairman Nordenberg, Professor Jonathan Cervas (a consultant employed by Chairman Nordenberg), Bob Nye, and others. The purpose of the meeting was to discuss the initial draft of the 2021 Preliminary House Plan that Chairman Nordenberg and Professor Cervas had drawn the prior weekend.

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

11. On December 9, 2021, I attended a meeting at the Capitol attended by myself, Chairman Nordenberg, members of the Chairman's

staff, Bob Nye, Leader Benninghoff, and a few others, to discuss a draft of the 2021 Preliminary Plan.

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

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

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

Dated: March 7, 2022

Bill Schaller
Bill Schaller
Director, Republican Reapportionment Dept.
Pennsylvania House of Representatives

122042.000002 4862-7613-2882

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

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

The files have been placed on the Google Drive (/Redistricting/2020/Phase 3/2021-09-17 LRC Data Release No. 1 (without prisoner adjustments)), at
https://drive.google.com/drive/folders/168PmuvYJ7lZECVX1qBQKjL7hhBZFnDll?usp=sharing

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

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

Thanks,

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

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

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

The files have been placed on the Google Drive (/Redistricting/2020/Phase 3/2021-10-14 LRC Data Release No. 2 (with prisoner reallocations)), at
https://drive.google.com/drive/folders/1TNANDUmD9J8wb7jJmTwENUgcZpwHaVV?usp=sharing. I'll deliver USB drives to you also.

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

We've also included two Excel spreadsheets to assist in your review of the data
- **2021-10-14 DOC_Inmates_BlockInformation.xlsx** is the spreadsheet provided by DOC. PaSDC has added additional columns to indicate the blocks associated with each SCI, and the prisoner's home address. Columns also indicate if the row was reallocated or not, and provides reasons.

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

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

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

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

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

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

APPENDIX B

In the Supreme Court of Pennsylvania
Middle District

No. 11 MM 2022

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

v.

2021 LEGISLATIVE REAPPORTIONMENT COMMISSION,
Respondent-Appellee.

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

AFFIDAVIT OF THE HONORABLE RYAN E. MACKENZIE

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

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

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

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

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

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

6. Professor Cervas said he wasn't sure about my statement that an open seat wasn't the best opportunity for a Hispanic to win a seat though. I explained how Rep. Schweyer had won comfortably when it was an open seat, but just barely won his last Primary against Enid Santiago. He said he wasn't familiar with all the politics, and I explained to him how Ms. Santiago lost by 55 votes and there were even questions surrounding that because of a judge of elections curing ballots inappropriately. He showed surprise and disbelief.

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

Dated: March 4, 2022

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

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In the Supreme Court of Pennsylvania
Middle District

No. 11 MM 2022

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

v.

2021 LEGISLATIVE REAPPORTIONMENT COMMISSION,
Respondent-Appellee.

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

AFFIDAVIT OF BOB NYE

I, Bob Nye, depose and state the following:

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

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

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

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

computation of the number of districts in a plan containing populations of racial groups that meet or exceed a specified threshold percentage.

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

6.   During the December 7, 2021 meeting, Chairman Nordenberg confirmed that his map contained incumbent-less districts in Montgomery County, Philadelphia, Allentown, and Lancaster, along with the 116th House District (in Luzerne County), for the purpose of affording racial minorities a chance to elect a candidate without needing to deal with an incumbent. Further during this meeting, Professor Cervas advised that the split of Harrisburg was intended to create a minority influence district.
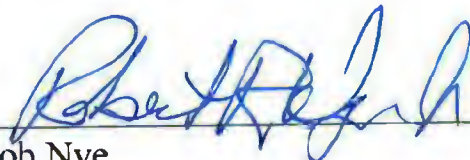
7.   On December 9, 2021, I attended a meeting at the Capitol attended by myself, Chairman Nordenberg, members of the Chairman's

staff, Bill Schaller, Leader Benninghoff, and a few others, to discuss a draft of the 2021 Preliminary Plan.

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

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

Dated: March 7, 2022

Bob Nye
Director of Demographic Information
Pennsylvania House of Representatives

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