

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Nos. 464 & 465 MD 2021 (CASES CONSOLIDATED)

CAROL ANN CARTER, ET AL.,
Petitioners,

v.

LEIGH M. CHAPMAN, ET AL.,
Respondents.

PHILIP T. GRESSMAN,
Petitioners,

v.

LEIGH M. CHAPMAN, ET AL.,
Respondents.

**RESPONSE BRIEF OF GUY RESCHENTHALER, JEFFREY
VARNER, TOM MARINO, RYAN COSTELLO, AND BUD
SHUSTER**

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I. INTRODUCTION

The parties have submitted nine redistricting maps for this Court’s consideration, offering a variety of arguments in support of their plans. Yet, in the end, the Congressional Intervenors have presented the soundest proposal, which not only satisfies the core principles of compactness, contiguity, and respect for municipal boundaries, but also does so in a way that is mindful of the communities that are affected. Although discussed in greater detail in the ensuing sections, this chart aptly summarizes this fact.¹

	Reschen- thaler-1	Car- ter	Gress- man	Gov. Wolf	HDC	SDC
Top 2 in Reock Compactness Measurement Score	X	X				
Top 2 in Polsby-Popper Compactness Measurement	X			X		
Least Total County Splits	X					
Least Total County Segments	X					
Least Total Municipal Splits	X		X			X
Least Total Municipal Segments	X		X			X
Maintains the City of Pittsburgh whole	X	X	X		X	
Maintains Bucks County whole	X	X				

¹ The map approved by the General Assembly with HB 2146 is not analyzed in this chart, or below, because as a duly approved plan of the Legislature, it is entitled to deference.

II. ARGUMENT

Less than four years ago, the State Supreme Court plainly articulated several fundamental principles to which a congressional redistricting plan must adhere to comply with the Free and Equal Elections Clause of the State Constitution. *See League of Women Voters v. Com.*, 178 A.3d 717 (Pa. 2018) (citing Pa. Const. art. I, § 5).

Explaining that “[t]hese standards place the greatest emphasis on creating representational districts that both maintain the geographical and social cohesion of the communities in which people live and conduct the majority of their day-to-day affairs,” the Court identified three core requirements that must be satisfied: contiguity, compactness, and respect for political subdivision lines. In establishing this framework, the Court repeatedly cautioned that the interests of a community cannot be subordinated to other considerations that may have previously affected the process. Yet, as discussed in greater detail below, every party has asked this Court to do precisely that which *League of Women Voters* proscribes.

Moreover, as explained in the expert report of Keith Naughton, Ph.D., attached hereto as Exhibit A, assessed against the regard owed

to communities of interest, which is the only consideration borne out of the Free and Equal Elections Clause—the Reschenthaler proposals are superior.

A. The House Democrats’ Plan is *per se* unconstitutional because it fails One Person, One Vote.

Turning to the most plainly unconstitutional of all plans submitted, the House Democrats’ proposal should be rejected because it violates the fundamental “one person, one vote” principle of the United States Constitution. In this regard, the United States Supreme Court has been undeniably clear that Article I, Section 2 of the United States Constitution “establishes a ‘high standard of justice and common sense’ for the apportionment of congressional districts: ‘equal representation for equal numbers of people.’” *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 18 (1964)). Because mathematical precision is not always achievable, districts must “be apportioned to achieve population equality ‘as nearly as is practicable.’” *Id.* (quoting *Wesberry*, 376 U.S. at 7-8). The Supreme Court has interpreted the “as nearly as practicable” standard to require “the State make a good-faith effort to achieve precise mathematical equality. Unless population variances among congressional districts are shown to

have resulted despite such effort, the State must justify each variance, *no matter how small.*” *Id.* (quoting *Kirkpatrick v. Preisler*, 394 U.S. 526, 530-31 (1969) (internal citations omitted and emphasis added)).

A challenge to a plan’s equal population involves two inquiries. First, the party challenging the redistricting plan bears the initial burden of proof to show that the state did not act in good faith when it failed to submit a plan with equal population, and if the party fails “to show that the differences [in population] could have been avoided the apportionment scheme must be upheld.” *Id.* at 730-31. Second, if the party establishes “that the population differences were not the result of a good-faith effort to achieve equality, the [s]tate must bear the burden of proving that each significant variance between districts was necessary to achieve some legitimate goal.” *Id.* at 731. Importantly, “there are no *de minimis* population variations, which could practicably be avoided, but nonetheless meet the standard of [Article I, Section 2] without justification.” *Id.* at 734.

However, the House Democrats do not abide by this principle. They admit that “there is a population deviation of only two people between the largest and smallest congressional districts.” By contrast,

every other party was able to comply with this constitutional standard. Indeed, as the Supreme Court said in 1983, “[t]he rapid advances in computer technology and education during the last two decades make it relatively simple to draw contiguous districts of equal population and at the same time to further whatever secondary goals the [s]tate has. *Id.* at 733. That sentiment—from 1983 no less—holds even more true today when experts can create millions of maps that comply with this principle with the click of a mouse.

Accordingly, the House Democrats’ redistricting plan fails from the outset. *See, e.g., Colleton Cty. Council v. McConnell*, 201 F.Supp.2d 618, 664 (D. S.C. 2002) (“[T]he court plan complies with the as nearly as practicable population equality requirement of [Article I, Section 2], with a deviation of plus or minus one person.” (internal citation and quotations omitted)). Their plan does not have equal population “as nearly as practicable” and they cannot prove a good-faith effort to comply with that test. For evidence of a lack of good faith and the fact that a more equal distribution was practicable, this Court need look no further than the sixteen maps submitted in this case that comply with the equal population standard. *See In re Colorado Independent*

Congressional Redistricting Commission, 497 P.3d 493, 506 (Colo. 2021)

(“the [redistricting] Commission complied with its obligation to achieve precise mathematical equality” where the districts deviate by one person at most). And, even beyond the maps submitted, the experts in this case have stated that through computer algorithms, they have been able to create thousands of maps that comply with this standard.

Remarkably, moreover, the House Democrats’ map—despite being remarkable in being the *only* plan that violates the core precept of “one person one vote—is remarkable in no other way. For example, it is not (and does not purport to be) the most compact, the most contiguous, the most respectful of political subdivisions and municipalities. It is manifest, therefore, that no other compelling interest required the unconstitutional deviation. In this light, a one person deviation is “as nearly as practicable” to equal population, and such a deviation does not otherwise diminish the House Democrats ability to comply with the other constitutionally required redistricting criteria.

B. The Carter Petitioners’ proposed plan attempts to subordinate the neutral criteria of *League of Women Voters* in support of political considerations.

Splitting more municipalities than necessary—and dividing them into far more segments than would be warranted under any circumstances—the Carter Petitioners insist that their departure from *League of Women Voters* is warranted because their plan would institute the fewest changes to the existing plan. This argument, however, is insufficient to overcome the fact that their plan is inferior by the objective metrics of compactness and respect for municipal boundaries.

First, the Court in *League of Women Voters* made clear that “the preservation of prior district lines” is a factor that must be “wholly subordinate to the neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and maintenance of population equality among congressional districts.” 178 A.3d at 817. As relayed by the Carter Petitioners, however, this consideration, which they describe as the “least-change approach,” was their central focus in reconfiguring Pennsylvania’s congressional map. This alone is sufficient grounds for summarily rejecting the Carter Petitioners’ plan.

Second, the Pennsylvania Supreme Court has been particularly skeptical of this argument, cautioning that “the notion that the Constitution independently, and tacitly, commands special respect for prior districting plans or incumbencies can be a mischievous one.” *See Holt v. 2011 Legislative Reapportionment Comm’n*, 67 A.3d 1211, 1234 (Pa. 2013). Specifically, the Court recognized this approach, in practice is a thinly-veiled argument for entrenching incumbents and the existing political interests:

In the [Legislative Reapportionment Commission]’s view, upheaval or uncertainty in the electoral process must be avoided, and “historical” legislative districts should be preserved out of respect for the choices of the voting public and in the interest of efficiency. However, we are not so naïve as not to recognize that the redistricting process may also entail an attempt to arrange districts in such a way that some election outcomes are essentially predetermined for voters—“safe seats” and the like.

Id. at 1235. Notably, in reaching this conclusion, the Court also explained that *Karcher v. Daggett*, 462 U.S. 725, 740 (1983)—which the Carter Petitioners cite as authority in their brief—was wholly inapposite, noting that “the Court [in *Karcher*] was not speaking of ‘inherent’ constitutional considerations under Pennsylvania state law, or under any state constitution for that matter.” *See id.*

Third, and finally, the Carter Petitioners overlook a key distinction between judicial *adoption* of a redistricting plan and judicial *review* of a redistricting plan. Specifically, redistricting that has been enacted by the General Assembly, or approved by the Legislative Redistricting Commission are entitled to a presumption of constitutionality; thus, in evaluating such plans, the Court has found that reliance on certain partisan considerations in the process is not sufficient to overcome that presumption. Here, however, none of the plans (with exception of the HB 2146) enjoys such deference. Given the Court’s circumspection in this respect, it is doubtful that the preservation of existing district lines should have any bearing on this Court’s analysis—let alone serve as a primary consideration.

The Carter Petitioners’ attempt to justify their unconstitutional proposal based on its “partisan fairness” is similarly unavailing. As the *Holt* Court explained in reiterating the paramount role of compactness, contiguity, and respect for political subdivisions is, “[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.” *Id.* at 1235. Instead, the

Court emphasized, “the construct speaks of the ‘integrity’ of political subdivisions, which bespeaks history and geography, not party affiliation or expectations.” *Id.*

The Carter Petitioners seek to do precisely that which *Holt* prohibits: elevate the “integrity” of their own “political expectations” over the “‘integrity’ of political subdivisions.” *Id.* Accordingly, this Court should reject their proposal.

C. The Senate Democratic Caucus’ proposed plans should be rejected because they violate the Fourteenth Amendment and needlessly split municipalities.

The Senate Democratic Caucus’ proposed plans should be rejected because: (1) they violate the Fourteenth Amendment by creating an unconstitutional racial gerrymander; and (2) their report is based on dubious data.

1. The Senate Democrats’ plans are an unconstitutional gerrymander in violation of the Fourteenth Amendment.

To illuminate, there are two separate strands of federal law relating to racial gerrymandering. One, Section 2 of the Voting Rights Act—which can require a state legislature to create a majority-minority district if the three *Thornburg v. Gingles*, 478 U.S. 30 (1986) factors are

satisfied. And, two, racial gerrymandering that violates the Fourteenth Amendment as developed in *Shaw v. Reno*, 509 U.S. 630 (1993) through *Abbott v. Perez*, 138 S.Ct. 2305 (2018)—which allows state legislatures to draw district lines on the basis of race with a sufficient justification. The Senate Democrats do not develop either a Section 2 or Fourteenth Amendment analysis in their brief. As such, the Senate Democrats redistricting plans appear to violate the Fourteenth Amendment because they fail to provide proof of a significant reason for drawing race-based lines—specifically the self-identified minority-coalition districts. *See* Senate Democrats Brief at 14-15.

A state is required to draw a majority-minority district pursuant to Section 2 of the Voting Rights Act when the three requirements set forth in *Gingles, supra*, are satisfied: “(1) [t]he minority group must be ‘sufficiently large and geographically compact to constitute a majority in a single-member district,’ (2) the minority group must be ‘politically cohesive,’ and (3) the majority must vote ‘sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.’” *Bartlett v. Strickland*, 556 U.S. 1, 11 (2009) (quoting *Gingles, supra* at 50-51).

These three factors are “necessary preconditions for a claim that the use

of multimember districts constitute[] actionable vote dilution under [Section] 2.” *Id.* (internal quotations omitted).

Here, the Senate Democrats cite *Gingles* in passing, see Senate Democrats’ Brief at 10, but do not even mention, let alone develop, any of the three factors. And neither does their expert in his report. The Senate Democrats cite *Bartlett* (again in passing, and without pinpoint citation) in support of drawing coalition districts; however, *Bartlett* did not consider a coalition district. See *Bartlett*, 556 U.S. at 13-14 (distinguishing between “crossover districts”—where minority and majority voters vote for a minority candidate—and “coalition districts” where “two minority groups form a coalition to elect a candidate” of that coalition’s choice, and expressly stating “[w]e do not address . . . coalition district[s] here”). Even if *Bartlett* supported drawing coalition districts, the Senate Democrats would still be required to prove all three *Gingles* factors. But they did not. And that flaw is fatal to their argument.

Because the Senate Democrats did not prove *Gingles* is met, and admitted to drawing districts (in both maps) based on racial considerations, they are required to satisfy the Fourteenth Amendment

line of cases by showing a “significant reason” for drawing district lines based on race. The Senate Democrats fail on this score as well. In *Shaw v. Reno*, the High Court concluded that a race-neutral redistricting plan, which separates voters into separate districts based predominantly on race, violates the Fourteenth Amendment when “that separation lacks sufficient justification.” *Shaw*, 509 U.S. at 650. The Court acknowledged that racial gerrymandering cases might be difficult to prove, but noted in “some exceptional cases, a reapportionment plan may be so highly irregular that, on its face, it rationally cannot be understood as anything other than an effort to segregate voters on the basis of race.” *Id.* at 646-47 (cleaned-up). As an example, the *Shaw* court offered a scenario where “a State concentrated a dispersed minority population in a single district by disregarding traditional districting principles such as compactness, contiguity, and respect for political subdivisions.” *Id.* at 646; *see id.* (these objective factors are important because “they may serve to defeat a claim that a district has been gerrymandered on racial lines”). The Court’s fear was that grouping together individuals who share a common race, but no other commonalities—geography, political boundaries, etc.—“reinforces the

perception that members of the same racial group—regardless of their age, education, economic status, or the community in which they live—think alike, share the same political interests, and will prefer the same candidates at the polls. We have rejected such perceptions elsewhere as impermissible racial stereotypes.” *Id.*

The High Court has since further developed *Shaw*’s holding and elaborated on the requisite showings of proof to establish such a claim. See *Miller v. Johnson*, 515 U.S. 900, 915 (1995), *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254 (2015), *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S.Ct. 788 (2017), *Abbot v. Perez*, 138 S.Ct. 2305 (2018). Particularly relevant here are *Bethune-Hill*’s and *Abbot*’s holdings that race-based districts are narrowly tailored “when the legislature has *good reasons* to believe it must use race in order to satisfy the Voting Rights Act, even if a court does not find that the actions were necessary for statutory compliance.” *Bethune-Hill*, 137 S.Ct. at 801 (internal quotations and emphasis in original). In *Abbott*, the Court explained:

where we have accepted a State’s “good reasons” for using race in drawing district lines, the State made a strong showing of a pre-enactment analysis with justifiable conclusions. In *Bethune–Hill*, the State established that the

primary mapdrawer “discussed the district with incumbents from other majority-minority districts[,] ... considered turnout rates, the results of the recent contested primary and general elections,” and the district's large prison population. [137 S.Ct., at 801]. The State established that it had performed a “functional analysis,” and acted to achieve an “informed bipartisan consensus.” [*Id.*]

Abbot, 138 S.Ct. at 2335.

What these cases make clear is that a state can draw district lines based predominantly on race, and not violate the Fourteenth Amendment, if it has “good reason” to believe it is doing so to comply with the VRA.

Here, the Senate Democrats readily admit their plans “create[] a number of potential coalition districts to increase the voices of minorities.” Senate Democrats Brief at 15; *see id.* at 19 (“Plan 2 provides an example of a map that creates an expanded minority coalition in District 2”). But they cannot establish a “good reason” because they did not even conduct a basic *Gingles* analysis. Their cursory justifications are not anywhere near the “strong showing” made in *Bethune-Hill*. *See Abbott, supra* at 2335.

As such, both plans submitted by the Senate Democrats are fatally flawed because they violate the Fourteenth Amendment.

2. The Senate Democrats' Plan unnecessarily splits several cohesive communities.

In the unlikely event this Court is persuaded that the Senate Democrats' proposal can pass constitutional muster, it should nevertheless be rejected, as it unnecessarily splits cohesive communities that share a common economic and social interests. Specifically, as described in greater detail in the expert report of Dr. Keith Naughton attached to this brief, the most glaring example of this is its division of the Pittsburgh. Simply put, no constitutionally-grounded justification exists for this division and, as evidenced by the fact that their proposal is not superior under any of the neutral criteria established by the Court, none can be fairly divined.

D. The Gressman Petitioners' proposed plan is an unconstitutional racial gerrymander.

The Gressman Petitioners' proposal should be rejected because it is inconsistent with both the United States Constitution and the Free and Equal Elections Clause.² First, the Gressman Petitioners' racially-

² Notably, as well, the Gressman plan compares poorly to both Reschanthaler 1 and 2 under the core standards identified in *League of Women Voters*. In terms of compactness, its average Polsby-Popper Compactness Score is lower than both Reschenthaler 1 and 2. Similarly, with regard to respect for political subdivisions, although their plan has the same number of non-county municipal splits and

driven redistricting scheme—far from complying with Federal law—violates the Fourteenth Amendment. As developed in the Congressional Intervenor’s principal brief and discussed above, the VRA is not implicated and, thus, does not require the creation of majority-minority districts. Of course, even if the creation of such a district is not statutorily mandated, the natural demographics of a certain area may result in the creation of such districts in the ordinary course of redistricting. Indeed, virtually every redistricting plan submitted to this Court naturally results in the creation of a congressional district in Philadelphia that is comprised of. But, where the VRA does not require such an outcome, expressly relying on race to “pack” minority groups into a single district is an impermissible racial gerrymander in violation of the Equal Protection Clause. *See Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788, 797 (2017) (“The Equal Protection clause prohibits a State, without sufficient justification, from separating its citizens into different voting districts on the basis of race.”). As the Supreme Court has recognized, where race is a predominant factor, an

segments, the Gressman proposal splits more counties and has more county segments.

impermissible racial gerrymander can occur not only by splitting minority groups to reduced their influence, but also “by packing them into one or a small number of districts to minimize their influence in the districts next door.” *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994).

Indeed, despite vague references to the VRA, the Gressman Petitioners avoid squarely undertaking the requisite analysis, and with good reason: their racial gerrymander has no grounding in law. To begin, as set forth in the expert report of Dr. Brunell accompanying Congressional Intervenors’ principal brief,³ there no indication of racially polarized voting (*i.e.*, evidence tending to show that a minority group is systemically thwarted in selecting its preferred candidate), thus the final *Gingles* factor is not satisfied.

The Gressman Petitioners, in effect, argue that their proposal creates three districts in which various minority groups—when aggregated—constitute the majority of the district. Applying the *Gingles* rubric, which governs the analysis of such a plan, the Gressman

³ Dr. Brunell’s qualifications are reflected in his *curriculum vitae*, which is attached hereto as Exhibit B.

Petitioners are unable to satisfy any of its prongs. *See Huot v. City of Lowell*, 280 F.Supp. 3d 228, 235 (D. Mass. 2017). With regard to the first factor, the Gressman Petitioners’ expert represents that the Latino and Black voting age populations for the district in question are approximately 41% when taken together. *See Deford Report* at ¶ 135 (22% Latino and 19% Black). Even if it were appropriate to consider these two *distinct* minority groups as one—which, as explained below, it is not—a district with a Voting Age Population of under 50% simply does not satisfy the first *Gingles* factor. *See Bartlett v. Strickland*, 556 U.S. 1 (2009) (reiterating that majority voting bloc is a prerequisite regardless of under *Gingles* in all circumstances, including “crossover” or “coalition” districts). Indeed, even apart from Dr. Brunell’s analysis, the Gressman Petitioners’ failure to meet the first factor necessarily impairs their ability to meet the third factor. Specifically, because there is no majority, it cannot be shown that there is white bloc voting that precludes the minority group from electing the candidate of their choice. *See id.* at 16; *see also McConchie v. Scholz*, ___ F. Supp. 3d. ___, 2021 WL 6197318 (N.D. Ill. Dec. 30, 2021) (finding failure to demonstrate white bloc voting).

As to the second factor, grouping minority groups together in order to form a “coalition district” is appropriate only where the minorities being grouped together are politically and socially cohesive. *See Kumar v. Frisco Indep. Sch. Dist.*, 476 F. Supp. 3d 439 (E.D. Tex. 2020) (finding that the black, Asian, and Latino communities in the area in question were not cohesive because they shared different political ideologies candidate preferences were not consistent across elections). While Dr. Deford discusses similar voting patterns in prior races, he does not offer adequate evidence to show that these two groups are sufficiently cohesive to constitute a singly minority group for the coalition district. *See Holloway v. City of Virginia Beach*, 531 F. Supp. 3d 1015, 1065 (E.D. Va. 2021) (approving of a minority coalition district citing “***substantial qualitative evidence*** showing that Hispanic, Black, and Asian communities are politically cohesive with respect to their shared political advocacy” (emphasis added)). In short, because the Gingles factors are not met, the intentional grouping of minorities into districts proposed by the Gressman plan is not only statutorily unnecessary, but constitutionally prohibited. *Cooper v. Harris*, 137 S. Ct. 1455, 1470 (2017).

E. Governor Wolf's reliance on political considerations violates *League of Women Voters*.

Despite the *League of Women Voters'* admonition that partisan considerations must yield to the goals of compactness, contiguity, and maintenance of municipal boundaries, Governor Wolf has proposed a plan that, like that of the Carter Petitioners, focuses on politics, rather than neutral criteria. Lacking a cogent explanation for proposing a map that splits more municipalities into more segments than any other party, with the exception of the Senate Democrats, Governor Wolf relies on the premise that a “fair” map is one under which, for the next ten years, the partisan makeup of Pennsylvania’s congressional delegation reflects the partisan preferences of the Commonwealth more broadly. Governor Wolf’s political goals, however, are insufficient to overcome the gross infirmity attendant in his unnecessary splits, including the partition of the Commonwealth’s second largest city, which can be easily contained within a single district. *See generally* Naughton Report (Ex. A).

As the *Holt* Court explained in reiterating the paramount role of compactness, contiguity, and respect for political subdivisions is, “[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.

Proposing more municipal splits and segments than any other party, with the exception of the Senate Democratic Caucus, Governor Wolf seeks to elevate “the ‘integrity of [his] party’s political expectations[,]” over the “the ‘integrity’ of political subdivisions, which bespeak[] history and geography[.]” *Id.*

F. Any use of adjusted census data for incarcerated individuals violates the one-person, one-vote requirement.

To the extent that any parties and amici⁴ used a data set for districting that counts incarcerated individuals at their home address rather than their prison address, this is inconsistent with the one-person, one-vote requirement for congressional districting.

⁴ Ali Amici, amici, use a data set that counts prisoners in this manner. Governor Wolf did not use this data set, but his expert nonetheless relies upon this data as part of his analysis.

In redistricting, states must comply with the one person, one vote principle by “designing districts with total equal populations,” *Evenwel v. Abbott*, 578 U.S. 54, 71 (2016), which ensures equality of representation for equal numbers of people. *Reynolds v. Sims*, 377 U.S. 533, 560-61 (1964). Traditionally, states use census numbers as the basis for populations. *Evenwel*, 578 U.S. at 73 (noting that adopting voter-eligible population as the basis for apportionment would “upset a well-functioning approach to districting that all 50 states and countless local jurisdictions have followed for decades, even centuries”). Using census numbers for redrawing congressional districts is consistent with the fundamental understanding that elected officials represent all residents, regardless of their voter eligibility. *Id.* at 74. Relying upon the principles articulated in *Evenwel*, the First Circuit has found that including prisoners as population in the ward where they are incarcerated does not raise a constitutional concern. *Davison v. City of Cranston*, 837 F.3d 135 (1st Cir. 2016). The First Circuit rejected the argument that inclusion of prisoners in the apportionment constituted vote dilution to those outside the district in question, emphasizing that the status quo is to base apportionment on census data. *Id.* at 144.

Ali Amici, who use this adjusted data set, place mistaken reliance upon Section 1302 of the Election Code for doing so. Section 1302 defines the residence of incarcerated electors for election purposes as the place where they were last registered to vote prior to incarceration. 25 Pa.C.S. § 1302. An individual's voter registration address does not necessarily correspond to the individual's residence for census purposes and this does not warrant readjusting the data upon which the maps are drawn. College students, for example, are counted for census purposes in the places where they attend college, but may maintain a different voter registration address. Counting incarcerated individuals in their place of incarceration is consistent with the census, consistent with the one-person, one-vote principle, and is not invalidated by Section 1302 of the Election Code.

Pennsylvania's consistent and traditional approach to counting incarcerated individuals where they are incarcerated for congressional redistricting is the majority view across the country.⁵ Any maps that

⁵ Washington, Nevada, California, Colorado, Virginia, Maryland, and New Jersey are the only states that adjust census data to account for prisoners in home districts in congressional districting and do so pursuant to state statute. *See* Cal. Elec. Code § 21003; Colo Rev. Stat. § 2-2-902; Md. Elec. Law § 8-701; Nev. Rev. Stat. § 360.288; N.J.S.A. 52:4-1.1 – 1.6; Va. Code Ann. § 24.2-304.04; Wash. Rev. Code

are premised upon data that counts prisoners elsewhere violates the one-person, one-vote principle.

III. CONCLUSION

For the foregoing reasons, the Court should adopt Reschenthaler 1 or Reschenthaler 2 as the Court-adopted congressional map.

Respectfully submitted,

Dated: January 26, 2022

/s/ Matthew H. Haverstick
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§ 44.05.140. *See also Davidson*, 837 F.3d at 144 (noting that the decision whether to include or exclude prisoners in apportionment “is one for the political process”).

WORD COUNT CERTIFICATION

I hereby certify that the above brief complies with the word count limit of Pa.R.A.P. 2135(a). Based on the word count feature of the word processing system used to prepare this brief, this document contains 4706 words, exclusive of the cover page, tables, and the signature block.

Dated: January 26, 2022

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Exhibit A

**Responsive Expert Report in *Carter, et al. v. Chapman, et al.*,
Nos. 464 & 465 MD 2021 (Consolidated)**
Keith Naughton, Ph.D.

On behalf of the Congressional Intervenors, I have been asked to review the proposed maps and the submissions in this matter and offer opinions on the same. My curriculum vitae is attached hereto as Appendix 1.

Importance of Representation

Discussions of representation with respect to re-apportionment primarily revolve around ideology and partisanship. However, much of the representational activity of Members of Congress have little to nothing to do with ideology and partisanship.

Constituent Service

All Members provide constituent service on a daily basis. Depending on the geographic size of the district, Members may have multiple offices, all staffed with people dedicated to answering questions, intervening with federal officials, assisting with federal benefits, advocating within the federal bureaucracy and various sundry activities. Refusing service based on an individual's party registration is not common practice, based on my experience.

To provide appropriate and necessary constituent service, the various staff members must become familiar with the particular needs and interests of the people of the District. Each Member has a limited District budget and the more diverse the District, the less able Congressional offices will be to acquire adequate specialization to serve the range of constituent needs. A District containing citizens with more common interests is more likely to benefit from better constituent service.

Legislative Actions

The media focuses a great deal of time bemoaning "gridlock" in Congress. However, Congress passes a large volume of bills every session, including when the chambers are split between the parties and even when the President is of the opposite party. According to Govtrack,¹ since the 106th Congress (1999-2000) over 10,000 pieces of various legislation have passed both Chambers of each Congress. The current 117th Congress has passed over 11,000 pieces of various legislation. From the 114th Congress (Democratic President, Republican House and Senate) through the

¹ Retrieved January 22, 2022: www.govtrack.us/congress/bills/statistics

current Congress has passed over 1000 enacted legislation with merely 18 Presidential vetoes.

Congress has also passed the Federal budget every year – albeit with difficulty at times. The budget, subject to intensive and expansive negotiation includes substantial funding for every Congressional District in every state with both distributive and re-distributive funds. Districts that have common interests within them allow their Member to concentrate on more effective advocacy and negotiation on their behalf.

It is strongly in the interest of all the citizens in a given Congressional District (voters and non-voters) to be properly represented. Proper representation is strongly assisted when the underlying District composes citizens with common interests and connections.

Importantly, the hyper-focus on partisanship is a grievous error and ignores the needs of the residents of the District. A hyper-focus on partisanship ignores that much of a Member's activity is not partisan at all. It also ignores the interests of non-voters and individuals who are only casually interested in politics and the politics of their Member. Partisanship is just one factor, but the various other petitioners treat it as the only factor to the harm of the majority of the public.

The Amplification Effect

The United States Congress is primarily elected in a “first-past-the-post” system. That is to say the top vote-getter in the General Election wins the seat, no matter the percentage. If there is a 3-way race (or more) and the top vote-getter gets just 39% of the vote, that candidate wins. In a race where the margin is 51-49, the loser does not get to serve 49% of the term, nor is the winner obligated to support 49% of the opposing party's agenda. In short, the majority or plurality vote-getter wins 100% of the Congressional seat. (*Note: Some states have run-offs where, if the top candidates fails to clear a majority, then the top two candidates hold a “run-off” election.*)

The Electoral College operates similarly where in 48 of 50 states, the winner of a majority or plurality of votes for President receives 100% of each respective state's electoral votes. First-past-the-post systems amplify results for the majority.

This structural fact presents a severe conundrum for both majoritarian and efficiency gap arguments. Relatively small moves in voter preferences and turnout get amplified by the American election system resulting in larger majorities than would be indicated via the raw voter percentages.

For the Pennsylvania map, this is a considerable problem. With a Congressional delegation of 17 Members, a 9-8 result would be the minimum gap between parties, which translates to a 52.9% to 47.1% split. A 10-7 split would be a 58.8% to 41.2% split. For the Congressional delegation to be majoritarian “fair” the statewide vote a 9-8 split would require the majority party to attain 50.1% to 55.8%. A 10-seat delegation would only be “fair” at a statewide vote of 55.9% to 61.7% and an 11-seat delegate would only be “fair” over 61.7%.

Past statewide election results are rather narrow. In the past 10 years, the best Democratic statewide total was 57.77% by Governor Wolf and the best Republican percentage was Justice Brobson at 53.62%. As a result the maximum “fair” number of Members of Congress permissible under majoritarian principles for Republicans would be 9 seats and the maximum for Democrats would be 10 seats.

But Federal elections have produced significant swings in results in the past. Performance of the President and the state of the economy enormously effect outcomes. Even more significant is the fact that the party of the President mostly performs badly in mid-term elections.

Reaching back to 1946, the President’s party has lost seats in every first-term mid-term with the exception of 2002, in the wake of the 9-11 attacks and very high approval of President Bush. Removing that outlier election, the average loss of the President’s party from 1994 to the present is 53 seats or an average of 21%. In these “wave” elections, the incumbent President’s party will tend to fail to win any opposing party positive PVI seats, lose the even seats and also lose its narrower positive PVI seats.

The implications for the proposed math and “efficiency” based maps could be dramatic in 2022. Barring a significant and successfully navigated foreign policy crisis (see 1962 and 2002 mid-terms), the Democrats are highly likely to lose a significant number of seats. Even if they lose at the low end of the range of recent relevant elections (17.4%), the Democrats would lose roughly 40 seats –likely all R+, even and close D+ seats (keeping with past results).

Should historic patterns continue, and Democrats lose all seats D+4 or lower, their expected delegation deficit would be 12-5. In fact, what currently looks like their “best” map, the Senate Democratic Caucus map (8D, 8R, 1 Even) would give Republicans a 13-4 majority. The Gressman “Math” Map would yield a 12-5 Republican advantage. In a worse than average year where Democrats lose all the way to D+8, the Senate Democrats would hand Republicans 15 of 17 seats.

Furthermore, since incumbency is powerful for re-election, the advantage gained by the Republicans could prove durable through multiple elections with even the loss of a seat or two, leaving the Party with a Congressional delegation far above average statewide totals.

The sum and substance of these structural facts is that the only way to maintain a Congressional delegation which adheres closely to Pennsylvania's partisan mix (majoritarian principle) is to create non-competitive districts that pack in as many Republicans into Republican districts and Democrats into Democratic districts. Such maps would likely violate compactness, municipal splits, and the public policy desire to have competitive elections.

If one draws the maximum number of competitive Districts, then our electoral structure will likely result in swings that violate majoritarianism and create efficiency gaps (even if temporary). In short, the principles of majoritarianism and elimination of the efficiency gap collide directly with the public policy goal of competitive districts and the strong preference for not splitting political units.

This conundrum lays bare the fundamental problem with majoritarianism and efficiency gap: the principles are not suited for a first-past-the-post system, they are suited for proportional parliamentary systems. To analogize, primarily math-based models, like Gressman, are holding a round peg and looking at a square hole. Instead of looking for a square peg, Gressman, et al., are reaching for a hammer.

The Importance of Municipalities As Representative Units (Particularly Philadelphia and Pittsburgh)²

While the Court and most parties in this matter value not splitting municipalities as a vital principle in re-apportionment, there is little discussion of why this is important. Only by understanding its importance can we fully understand why Pennsylvania municipalities – and particularly Philadelphia and Pittsburgh should remain as whole as possible. Further, understanding this concept also underlies how these cities should best be combined with adjacent municipalities, when necessary.

Municipalities themselves are often diverse entities, but they do combine their own diverse demographics and economies into a political unit that is the conduit not only for local government services, but also for federal and state funds. These political units have their own administrative functions, often public authorities, are the bases

² I have, of course, reviewed the maps regarding areas other than Philadelphia and Pittsburgh; however, for purposes of this Report, I have limited my analysis to those two as they are large and commonly treated differently across all submissions.

for school districts and a focal point for community pride and history. They advocate to elected officials on behalf of their constituents.

But size of municipalities is important. Smaller municipalities (in population) have smaller administrative functions, lower professional staff (or none), may not have a police force, volunteer instead of paid fire and rescue, and unpaid or low-paid elected officials. Smaller communities rely on county resources and/or band together with other small municipalities for various services, authorities and joint purchasing arrangements.

The task of keeping as many municipalities as whole as possible in re-apportionment is very difficult, but layering on top of that joint authorities, regional police forces, councils of government and community development corporations would render the task nearly impossible. But it is still important to consider the differences between municipalities along these lines when considering apportionment. Smaller communities have federal needs, but they are a much smaller conduit and are often the recipient via county agencies or the provision of county services to their citizens. As municipalities increase in size, the importance of remaining whole for the purposes of acquisition and administration of federal funds becomes more of a concern.

The Complexity of Diluted Influence

Generally, it can be assumed that a split municipality will have diluted influence. But not all dilutions are created equal. As explained above, smaller municipalities with lesser streams of federal distributive benefits would suffer fewer harms than larger municipalities.³ In the case of a County that contains no large municipalities, the constituent municipalities would be more likely to rely on the County as a conduit for Federal funds. As such, a municipality split off from its host County and attached to a different County could suffer significant loss in advocacy, particularly if the neighboring County has markedly different interests from the “orphan” municipality.

There is a flipside for splitting municipalities and Counties, and it is the opportunity for expanded influence by having two Members of Congress. In the case of municipalities, this is generally unlikely to be the case given the size of the District and the small proportion most municipalities would make up of the larger whole.

³ Distributive benefits are of particular importance as these are benefits allocated based on the discretion of Congress. Re-distributive benefits are allocated based on formula, such as Medicare, Social Security, Section 8 Assistance. In the case of re-distributive benefits, it could be argued that higher poverty communities would benefit from clustering as it would be in the interest of their Member to advocate for more generous formula assistance.

Even the City of Pittsburgh split in several maps would likely cost the City considerable influence depending on who is elected Member.

In the Senate Democratic Map, the 17th District is a modest D +1, leaving Republican representation a distinct possibility. Should a Republican be elected, given that Pittsburgh city voters are reliably Democratic voters, the Republican Member is unlikely to expend effort advocating for the city, instead concentrating on more promising voters in the suburbs. Alternately, a Democratic Member might not be much more help. That Member could consider Pittsburgh city voters already in her column and expend maximal resources on swing suburban voters to the detriment of city interests.

The upshot is that diluted influence is less of an issue for small communities who have lesser influence on the politics of the larger District and less dependence on streams of Federal funds. Dilution is a much greater concern for larger municipalities and for Counties. There are certainly exceptions. A large municipality whose citizens vote as a bloc geographically can have an outsized effect – but only if they are “up for grabs” – or are willing to cross partisan lines.

Importantly, when calculating the harm from splitting municipalities, it is a mistake to focus on the number of municipalities. Townships and borough do not vote. It is not one borough, one vote – it is one person, one vote. As such, harm should be calculated on the total population affected by municipal splits, *not* the number of splits. On this score the Reschenthaler Maps are better than all but House Republicans and Citizens Vote. Removing Philadelphia, as the city must be split, Reschenthaler Map 1 splits communities representing 1.567% of the remaining population, while Reschenthaler Map 2 splits 1.575%.

Philadelphia and Pittsburgh As Unique Political Units

The state’s two largest cities merit particular consideration. Philadelphia is the state’s only first-class city and is also a county. The city has a very large administration, police force and fire protection. Police and fire have specialized units smaller localities do not. The city has full-time, paid elected officials. The city owns its own utility (Philadelphia Gas Works). Its residents heavily use mass transit and occupy dense housing. The city has a very large professional non-profit sector, its own extensive parks system and major cultural institutions. In short, Philadelphia and its needs and structure are very different from its surrounding communities.

Pittsburgh is a smaller version of Philadelphia in its differences between the city and the surrounding communities. Large administration, full-time paid elected officials, specialized public safety and major cultural institutions combine with a large

non-profit sector, including a preponderance of tax-exempt property. Both cities have much higher taxes than their surrounding communities and provide a much wider array of services. The border between city and suburbs is a very important dividing line with respect to interests and needs.

For the above reasons, Philadelphia should wholly contain two Congressional Districts with the remaining “surplus” population preferably attached to a District with maximum commonality – that is to say common interests as the City, such as use of public transit, recipient of federal transfer payments and common commercial and industrial interests. It is for these reasons that the most sensible plan would attach “surplus” Philadelphia residents to Delaware County.

Delaware County, particularly the close-in suburbs, is a high user of public transit. The riverfront is similarly industrial with both the shipping facilities in Delaware County and Philadelphia benefiting from Federal maintenance of the ship channel. The Delaware River Port Authority operates assets in both the city and Delaware County. The airport spans both jurisdictions. The city of Chester is beset by many of the problems of poverty and environmental justice as neighborhoods in Philadelphia. Traditionally Delaware County and Philadelphia have worked more closely together than Philadelphia has with the other suburban counties.

Multiple maps have chosen to extend the Philadelphia CDs into Bucks County, which is a significant error and is an inferior choice as compared to Delaware County. The boundary line between Bensalem Township, Bucks County and the City of Philadelphia is about as stark a contrast as between the city and any other bordering suburb. Cross the line and Bensalem is noticeably less dense and more suburban – there is no doubt you have left the city. Public transit dependence is much lower with only two mass transit rail lines entering Bucks County via the Bensalem border as opposed to six (6) lines entering Delaware.

In addition, Bucks County has been wholly contained within a single District for decades. The county and its residents are used to being a single unit in Congress. As Districts have increased in average population, it has become necessary for Bucks to have additional municipalities attached to it. Historically, municipalities in eastern Montgomery County have been attached to Bucks. These are highly similar communities to their Bucks neighbors in demography, economics and land use. Commerce and commuting flow easily across this boundary. Both Counties have robust open space programs.

Attaching the lower Bucks communities to Philadelphia would render these communities “orphans” from an interest and advocacy standpoint. I would go as far to say they could essentially lose representation. And I repeat, the separation of

Bensalem and, in one map adjacent lower Bucks municipalities, is entirely unnecessary. Note that equally unfair is a map that is based in Bucks and draws in a portion of northeast Philadelphia – which would, in my opinion, “orphan” the residents of the city and dilute the city’s political influence.

The best map for Southeastern Pennsylvania would draw two Districts entirely within Philadelphia, attach the surplus population to Delaware County, draw a Bucks County District attaching bordering Montgomery County municipalities, and then draw an entirely (or near-entirely) Montgomery County District.

Pittsburgh and Allegheny County

As discussed above, the city of Pittsburgh exhibits similar features to Philadelphia as to its separateness from its bordering municipalities. However, there are unique features that should be kept in mind. First, Allegheny County and Pittsburgh have a difficult geography, split not only by three rivers but also by multiple watercourses with their own valleys and ravines, the County is a mix of hills and ridges that have formed barriers to easy travel. In short, Allegheny County is not Kansas. In addition, the city and its suburbs are quite old and established their boundaries following natural topographies, making the borders seem haphazard but, which are, in fact, quite sensible given the terrain and how transit and economic patterns have developed.

As the Pittsburgh area never developed a beltway and the topography is so limiting, the suburban communities developed as a series of blocs. The West Hills bloc is roughly Allegheny County west of the city and south of the Ohio River with Interstate 79 south of Carnegie as a boundary to the South Hills. The South Hills extends east through South Park Township and Baldwin Borough with Pleasant Hills Borough straddling the border with the Mon Valley. The Mon Valley circles around the city and is roughly bordered on the north by Monroeville and the Turtle Creek Valley, including Braddock, North Braddock and Rankin. The East Hills stretches north of the Mon Valley to the Allegheny River. The North Hills is a somewhat less exact region, stretching from the Ohio River in the west to roughly Saxonburg Blvd in the East with the remaining land to the Allegheny River considered the Allegheny Valley. The North Hills itself is separated into the Ohio Valley in the west and the Route 8 corridor in the east.

The above regions are connected by common school districts, social and family ties and commerce with commercial centers like South Hills Village, Ross Park Mall, Monroeville Mall, and other centers functioning as commercial focal points for each region. Any apportionment plan should attempt to keep these blocs together for the purposes of representativeness.

As stated above, keeping Pittsburgh whole is in the strong interest of the city. As for which blocs to attach to the city, the Mon Valley bloc is the most logical first priority. The region has similar challenges with old industrial properties, environmental justice communities and reliance on public transit. In addition, the Lincoln Place and New Homestead neighborhoods are closely integrated with the Mon Valley with Lincoln Place closer to McKeesport than to Downtown Pittsburgh. The new commercial center in Homestead is significantly supported by city residents from Squirrel Hill and Greenfield. The Mon Valley communities themselves face similar challenges and work together to face their daunting economic challenges.

The second priority for attachment to the city is the East Hills bloc. The straight-line eastern boundary of Pittsburgh cuts through a series of common neighborhoods, even going through backyards and buildings. In some sections the only way to notice you have crossed a political boundary is that the street signs change from blue to green. The adjacent city of Wilkinsburg has considered merging with Pittsburgh and its high school students attend the Pittsburgh City School District. Bordering sections of Penn Hills are similarly like the city. Dense public transit routes, including one mass transit route, cross these borders and commercial establishments serve city and suburban residents.

Any map that values representativeness would start in Allegheny County including Pittsburgh, the Mon Valley and the eastern suburbs south of the Allegheny River. In order to attain the necessary population, mapmakers could avoid a split with Westmoreland County by either working west through the South Hills suburbs, or add several close-in suburbs that have similar city characteristics (McKees Rocks, Stowe Township, Millvale, Sharpsburg, Etna) or cross the Allegheny River and include the northeastern portion of Allegheny County.

Alternatives that reach into Westmoreland County are getting fairly far away from common interests with the city. Outside of Murrysville and possible Penn Township, commuting into Pittsburgh shrinks significantly and Westmoreland County north of the Turnpike is centered on the Route 30 corridor. The Alle-Kiski Valley to the north is its own economic and social center. Attaching the city to Washington County, or, much more egregiously, to Butler County is an unrepresentative overreach.

One final potential benefit to a Pittsburgh-Mon Valley-East Hills district is that it would increase the chances of minority representation. Although not a majority-minority District, such a District would have a higher percentage of minority population than practically any other map that would follow the basic principles of compactness. In 232 years of election Members to Congress, western Pennsylvania has never elected a minority Member. A higher proportion of minority population

would increase that opportunity. Pittsburgh, not majority-minority recently elected its first Black mayor, so the possibility is not out of the question.

Response to Controller Lamb

In an essay attached to the State Senate Democratic Caucuses' brief, Allegheny County Controller Lamb attempted to defend splitting Pittsburgh, attaching the portion of the city south of the Monongahela and Ohio to a District that includes the South Hills, Mon Valley and Beaver County.

His argument, such as it is, is not compelling. Mr. Lamb is correct that people in different parts of Pittsburgh do not necessarily mix. But that is a feature of Allegheny County at-large not just city South Side and South Hills residents. Due to topography and the transportation network, much of Allegheny County and Pittsburgh is composed of distinct neighborhoods than can be quite insular. But Mr. Lamb implies that this fact justifies halving the city.

While it may be true that some of his neighbors have not been Downtown in 10 years, I have little doubt that plenty of people in Darlington Township, Beaver County have *ever* been Downtown – a municipality 50 miles away that Mr. Lamb would include with the South Hills. At least Mr. Lamb's neighbors could always catch a bus Downtown, pity the poor souls in Avonmore, Westmoreland County (which would be included in the other Pittsburgh District) who would have to drop a fortune on Uber to traverse their new Congressional District in order to watch the chandelier cleaning in the William Penn. That people confuse Banksville with Green Tree is no more reason to slice the city in two than the fact that unscrupulous real estate agents call the far southwestern corner of Wilkinsburg "Frick Park Area" should be a factor for or against a combination with the city.

The fact is that, as enumerated above, the existence of people within the municipal boundaries of the city gives them a common interest and a District that includes the entire city is, by far, the best insurance that the city is properly and robustly represented by its Member of Congress. It may well be that the residents of Shadyside know as much of Beltzhoover as the far side of the moon (or Moon), but they still share important common interests. The City of Pittsburgh should remain whole, notwithstanding Mr. Lamb's neighbors' aversion to taking the bus.

A Final Note: The Problem of Prediction

“Act 1, the congressional redistricting plan passed by the General Assembly in January 2002 ... creates only five or six districts that Democrats are likely to win out of 19, giving Republicans a 13-6 or 14-5 likely advantage in the Pennsylvania congressional delegation” *Erfer v. Com.*, 794 A.2d 325, 343 (Pa. 2002) (proposed finding of fact number 46 by Judge Pellegrini).

A mere four years after the above finding of fact, Pennsylvania Republicans were routed at the ballot box, ending up with a Congressional delegation deficit of 8-11. So much for seeing the future.

Campaigns and Geography

A global problem for the maps submitted to the Court is the heavy reliance on statistical projection that imputes future electoral outcomes, and several years into the future. It is this quantitative analysis that has, mistakenly, consumed the process in Pennsylvania (and other states). The problem is that such analysis ignores the wide variation in outcomes due to non-quantitative factors. In Pennsylvania, your campaign matters and your geography matters.

The political history of Pennsylvania is full of surprise winners and surprise losers. Democrats win in Republican areas and vice versa. Pennsylvania-10 (2002) was drawn specifically to boost Republican incumbent Don Sherwood (R +8 PVI). In 2006 after an extra-marital affair and credible accusations of assault, Sherwood lost to Democrat Chris Carney – who was re-elected in 2008 with an even larger margin. Pennsylvania-10 was never expected to flip to the Democrats, but it did and was held due to mistakes by the Republican and superior campaigning by the Democrat.

Running a good campaign with a message that resonates with voters remains vital to winning races. Current Governor Tom Wolf was a dark horse candidate in 2014 but used superior strategy and strong messaging to emerge from the Democratic field and then become the first candidate in Pennsylvania history to defeat an incumbent Governor. The campaign matters.

Geography is also critical. I have never gone through a political campaign in Pennsylvania where the residency of the candidate or candidates was not part of the discussion. Geography is a driving force in recruiting candidates and the nomination of a candidate from the “wrong” part of a district is often met with dismay.

Both of these factors come into play locally and statewide. Pennsylvania voters like their hometown candidates, but this preference is especially pronounced in western Pennsylvania and northeastern Pennsylvania. This native candidate preference

is particularly visible in races for the Pennsylvania appellate courts. Pittsburgh candidates do very well in these races as voters in southwestern Pennsylvania rally around their local candidates. Candidates from Scranton and Wilkes-Barre get the same treatment, but the population is not big enough to overcome the Pittsburgh vote.

The result is that the courts have a larger than expected southwestern contingent. The Supreme Court has been dominated by Pittsburgh Justices for decades.

But Pittsburgh candidates do not always win. Candidates from other parts of Pennsylvania can and do win if they have more financial resources, better campaign messages or if the candidate from the southwest is vulnerable on important issues.

Neither of these salient facts is incorporated into the statistical modeling for re-districting. It is just assumed the R+ districts will go Republican forever and vice versa with the D+ districts. Local interests and citizens' preferences are given perfunctory treatment. Instead, incomplete quantitative analysis is substituted for representation.

The Unpredictable Future

When John McCain eked out a 251-vote margin over President Obama in Fayette County in 2008, most political observers were surprised. After all, the previous two Republicans to win Fayette for President were Richard Nixon and Herbert Hoover. Yet, no one would have predicted President Trump getting 64% just 8 years later.

It is widely acknowledged that the Nation is undergoing a significant shift in each respective parties' political coalition. Democrats are winning college-educated voters, who used to support Republicans while union voters are shifting away from Democrats. Geographically, demographically and culturally both parties are in a state of flux. Important voting and donor blocs have lost their political homes and are not sure where they will land.

There is one certainty: Nobody knows how long this upheaval will last and when, if ever, the two parties will settle into a set of stable coalitions. And that is a fatal problem for quantitative models.

All statistical projections are built on the past – that's where the data comes from. No matter how sophisticated any model is, it simply projects a current pattern into the future. When modeling a given political or economic outcome, prediction is reliable only if the underlying pattern is stable because the data used from the past is a

valid indicator for the future. However, when the situation is unstable, past data is not a reliable predictor.

But the statistical models used in forming the new District map rely on election information to this point in time. They assume stable partisanship. They assume that the underlying partisan coalitions will not shift. They ignore the potential of exogenous economic, environmental, or technological changes to dramatically shift the makeup of each party. They assume a static world.

Given the continuing shifts in the electorate and the instability in both political parties, it is rather likely that the political world will be dramatically different in 4-5 years from the world today. Of course, the likelihood a D+40 District will switch to Republican is near zero. But, the districts with PVIs of 10 or less could well shift in unforeseen ways.

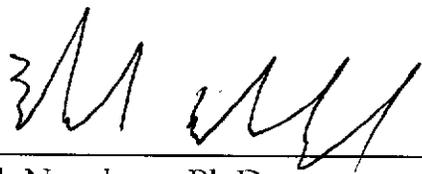
It is for these reasons that the Court should put greater weight on the common interests and preferences of the residents of the Commonwealth. Interests and connections are more stable over time, particularly in a slow-growing state like Pennsylvania. The state's municipal and county boundaries will not change in the next 10 years. The transportation network will not change. The vast majority of communities will retain their current character. Some will grow, some will shrink, but the changes are not likely to be dramatic.

By emphasizing common interests, the Court can establish District boundaries that robustly serve the needs of the Districts' citizens over the full 10-year term of the apportionment. Basing Districts on common interests allows the voters to decide who they want to best represent them from partisan, ideological, public policy issue, geographic and personal viewpoints. And that is the point of democracy, letting the people decide, not a computer algorithm.

Conclusion

Based on a reasonable degree of professional certainty, I hold the foregoing opinions.

Dated: January 26, 2022



Keith Naughton, Ph.D.

APPENDIX 1

Silent Majority Strategies

Keith Naughton, Ph.D.

Dr. Naughton is co-founder and principal at Silent Majority Strategies. He has over 20 years' experience in elective and advocacy politics with candidates at the national, state and local level. His work has included campaign management, communications, media development and placement, grassroots fieldwork and polling. He has worked at the senior management level as a campaign manager, political director or general consultant for several Pennsylvania statewide campaigns and has consulted and provided media services to local, legislative, local judicial, state judicial and Federal candidates. His expertise is in public communications and interest group politics.

Dr. Naughton is the author of the book, *Washington Gold Rush: The Competition for Congressional Earmarks*, which was based on his doctoral thesis at the University of Southern California. The doctoral thesis, which won the Reining Award for best dissertation in public policy, studied the demand-side of Congressional earmarking and was focused on an intensive study of how local, in-district constituencies interact with the Member of Congress in order to secure resources.

He is a regular contributor of analysis and opinion to *The Hill* and American Radio Journal. In addition, he has contributed to *RealClearPolitics*, *San Francisco Chronicle*, *Washington Examiner*, *Pittsburgh Post-Gazette*, *Public CEO*, and *PA Townhall.com*.

In addition to his Ph.D. in public policy from the University of Southern California, he has degrees in public management and policy and economics from Carnegie Mellon University.

Keith Naughton, Ph.D.

Education

Ph.D., Public Policy, University of Southern California, Price School of Public Policy (2013). Dissertation: *Washington Gold Rush: The Competition for Congressional Earmarks*. Subjects: Public Policy, political science, agenda-setting, Congressional politics. Dissertation was awarded the Reining Award for best dissertation in public policy.

M.S., Public Management and Policy, Carnegie Mellon University, Heinz School, December 1988.

B.S., Economics, Carnegie Mellon University, May 1988.

Academic Publications

Washington Gold Rush: The Competition for Congressional Earmarks (Lambert), 2014

The Campaign Matters: A Field Quasi-Experiment in Negative TV Advertising and Election Outcomes. Prepared for the American Political Science Association (2012), co-authored with Dr. Christian Grose

Understanding Commenter Influence During Agency Rule Development, in *Journal of Policy Analysis and Management* (Spring 2009, vol. 28, #2). Co-authored with Dr. Susan Yackee, Dr. Celeste Schmid and Dr. Xueyong Zhan

Other Publications (representative list)

The Federalist

“Yes, The 2020 Polling Was Terrible And There’s No Excuse”

The Hill

“Bernie Sanders’ Wheezing, Sputtering Juggernaut”

“Could Biden Steamroll The Democratic Field”

“DC Statehood Is Bad Policy And Worse Politics”

“Perilous Pennsylvania, Trump’s Non-Strategy Takes Another Hit”

Keith Naughton, Ph.D.

“Retaining The House Will Be Nearly Impossible For Democrats; Trump Will Be The Wildcard”

“Trump’s 2020 Electoral College Math: Searching For 10 Votes”

“Trump Cults – ‘Pro-Trump’ And ‘Anti-Trump’ – Are Not Created Equal”

PennLive

“Here’s Why Pennsylvania Needs To Stop Electing Its Lieutenant Governor”

RealClearPolitics

“Democrats’ Squabbling Vindicates Biden Non-Campaign”

“The Democrats Are Stuck With Kamala Harris, Like It Or Not”

Political Work Experience (representative list)

2015: Campaign Manager, Judge Anne Covey (Supreme Court)

2013: General Consultant (GC), Judge Victor Stabile (Superior Court)

2011: General Consultant (GC), Judge Anne Covey (Commonwealth Court)

2006: Media, Representative Bryan Cutler (State Representative, primary)

2005: Media, GC, District Attorney Frank Cori (Schuylkill County District Attorney)

2004: Direct Mail, US Senator Arlen Specter (US Senate)

2004: Campaign Manager, Craige Pepper (State Treasurer)

2004: Campaign Manager (primary), Joe Peters (Auditor General)

2003: Campaign Manager, Judge Susan Gantman (Superior Court)

2002: Direct Mail (primary): Congressman Bill Shuster (US Congress)

2001: Campaign Manager, Justice Michael Eakin (Supreme Court)

2001: GC, Judge Richard Klein (Superior Court)

2000: Media, State Senator Joe Scarnati (State Senate)

1999: Media, GC, Judge Greg Olson (Indiana County Court of Common Pleas)

Keith Naughton, Ph.D.

1997-8: Political Director, Governor Tom Ridge

1996: Political Director, Bob Dole for President (Pennsylvania)

1995: Campaign Manager, Justice Michael Eakin (Superior Court)

1994: Political Director, Republican State Committee of Pennsylvania

1993: Western Pennsylvania Field Director, Republican State Committee of Pennsylvania

1992: Campaign Manager, Candidate for the 20th Congressional District

Current Experience

Principal, Silent Majority Strategies (2016 to Present). Co-Principal and Founder with Michael Krancer. Silent Majority Strategies is a regulatory affairs, permitting and messaging consulting firm that addresses our clients' federal, state and local regulatory challenges.

Contributing Author (2013 to Present). Contributor of political and policy analysis articles to a variety of national and regional publications, including *The Hill*, *The Federalist*, *Pittsburgh Post-Gazette*, *Harrisburg Patriot-News*, *Times-Leader* (Wilkes-Barre), *Washington Examiner*, *San Francisco Chronicle*, and RealClearPolitics.

Past Work Experience

1990-1: Business Development Consulting, SPEDD. Consulted on the development of small business incubators in western Pennsylvania and southeast Ohio.

1989-90: Director of Economic Development, Armstrong County (PA).

1988: Intern: Mellon Bank Department of Community Affairs and Mellon Bank Foundation.

1986-7: Statistician: MARC, consumer marketing analysis.

Exhibit B

Thomas L. Brunell
Professor of Political Science
School of Economic, Political and Policy Sciences
The University of Texas at Dallas

Education

Ph.D., 1997 Political Science, University of California, Irvine

M.A., 1993 Political Science, University of California, Irvine

B.A., 1991 Political Science, University of California, Irvine

Employment History

The University of Texas at Dallas, Program Head for Political Science and Public Policy Political Economy, 2019-present.

The University of Texas at Dallas. Professor, 2009-present.

The University of Texas at Dallas, Senior Associate Dean, 2010-2012.

The University of Texas at Dallas, Director of Graduate Studies, Political Science Program 2007-2010.

The University of Texas at Dallas. Associate Professor, 2005-2009.

Northern Arizona University. Assistant Professor of Political Science, 2003-2005.

Binghamton University, SUNY. Assistant Professor of Political Science, Fall 1999-2003.

American Political Science Association Congressional Fellow, 1998-1999.

Grants and Awards

“Nursing in the Field: Vector-borne Illness Prevention and Detection Among Migrant and Seasonal Farmworkers.” Co-PIs: Sarah Maxwell and Thomas Brunell. \$50,000 from the Rita & Alex Hillman Foundation.

Visiting Fellowship, Australian National University, \$10,000, Summer 2014

Visiting Fellowship, University of Sydney, United States Studies Centre and The Election Integrity Project, \$10,000, Winter 2013.

EPPS Advisory Board Grant, \$5,000 for research on Redistricting. 2014.

Intramural Grants Program, Northern Arizona University. \$5,000 for a study on the impact of redistricting on House elections. Summer 2004.

Deans Workshop Grant, “Methods and Politics,” \$3000, 2002-2003, with David Clark, David Rueda and Wendy Martinek.

Deans Workshop Grant, "Democratic Institutions, Preference Aggregation and World Politics," \$4000, 2001-2002, with David Clark and Patrick Regan.

Dean's Research Semester Award. Binghamton University, 2001-2002.

American Political Science Association Congressional Fellowship, 1998-99

Order of Merit. Outstanding Graduate Scholarship. School of Social Sciences, University of California, Irvine, 1996-1997

University of California Regents Dissertation Fellowship, Spring 1997.

Scaife Foundation Fellowship to attend ICSPR summer statistical program, 1993.

Books

Brunell, Thomas, Robert Lowry, Banks Miller, and Thomas Gray. 2021. *Introduction to American Government*. Toronto: TopHat.

Brunell, Thomas, Robert Lowry, Banks Miller, and Thomas Gray. 2021. *Introduction to State and Local Government*. Toronto: TopHat.

Brunell, Thomas L. 2008. *Redistricting and Representation: Why Competitive Elections are Bad for America*. New York: Routledge.

Journal Articles

Lublin, David, Lisa Handley, Thomas L. Brunell, and Bernard Grofman. 2020. "Minority Success in Non-Majority Minority Districts: Finding the 'Sweet Spot'". *Journal of Race, Ethnicity, and Politics*. 5: 275-298.

Brunell, Thomas L. and Brett Cease. 2019. "How Do State-Level Environmental Policies Impact the Voting Behavior of National Legislators?" *Social Science Quarterly* 100(1): 289-306.

Brunell, Thomas L. and Bernard Grofman. 2018. "Using US Senate Delegations from the Same State as Paired Comparisons: Evidence for a Reagan Realignment." *PS: Political Science & Politics*. 51(3): 512-516.

Brunell, Thomas L., Bernard Grofman, and Samuel Merrill, III. 2016. "Components of Party Polarization in the U.S. House of Representatives." *Journal of Theoretical Politics* 28(4): 598-624.

Brunell, Thomas L., Bernard Grofman, and Samuel Merrill, III. 2016. "Replacement in U.S. House: An Outlier-Chasing Model." *Party Politics* 22(4): 427-439.

Brunell, Thomas L., Bernard Grofman, and Samuel Merrill, III. 2016. "The Volatility of Median and Supermajoritarian Pivots in the U.S. Congress and The Effects of Party Polarization", *Public Choice*, 166: 183-204.

Bowler, Shaun, Thomas Brunell, Todd Donovan, and Paul Gronke. 2015. "Election Administration and perception of Fair Elections." *Electoral Studies* 38(June): 1-9.

Brunell, Thomas L. and Whitney Ross Manzo. 2014. "The Impact of Cox v. Larios on State Legislative Population Deviations." *Election Law Journal* 13(3): 351-361.

Merrill, Samuel, III, Thomas L. Brunell, and Bernard Grofman. 2014. "Modeling the Electoral Dynamics of Party Polarization in Two-Party Legislatures." *Journal of Theoretical Politics* 26(4): 548-572.

Stone Sweet, Alec and Thomas L. Brunell. 2013. "Trustee Courts and the Judicialization of International Regimes: The Politics of Majoritarian Activism in the European Convention on Human Rights, the European Union, and the World Trade Organization." *Journal of Law and Courts* 1(1): 61- 88.

Brunell, Thomas L. 2012. "The One Person, One Vote Standard in Redistricting: The Uses and Abuses of Population Deviations in Legislative Redistricting." *Case Western Reserve Law Review* 62(4): 1057- 1077.

Grofman, Bernard, Thomas L. Brunell, and Scott L. Feld. 2012. "Towards a Theory of Bicameralism: The Neglected Contributions of the Calculus of Consent." *Public Choice* 152(1-2): 147-161.

Brunell, Thomas L., Bernard Grofman, Samuel Merrill III. 2012. "Magnitude and Durability of Electoral Change: Identifying Critical Elections in the U.S. Congress, 1854-2010." *Electoral Studies* 31(4): 816-828.

Stone Sweet, Alec and Thomas L. Brunell. 2012. "The European Court of Justice, State Non-Compliance, and the Politics of Override." *American Political Science Review* 106(1): 204-213.

Brunell, Thomas L. and Harold Clarke. 2012. "Who Wants Electoral Competition and Who Wants to Win?" *Political Research Quarterly* 65(1): 124-137.

Merrill, Samuel, Bernard Grofman, and Thomas L. Brunell. 2011. "Do British Politics Exhibit Electoral Cycles?" *British Journal of Political Science* 41(1): 33-55.

Smith, David and Thomas L. Brunell. 2010. "Are Special Elections to the U.S. House a General Election Barometer?" *Legislative Studies Quarterly* 35(2): 283-297.

Lublin, David, Thomas L. Brunell, Bernard Grofman, and Lisa Handley. 2009. "Has the Voting Rights Act Outlived Its Usefulness? In a Word 'No'." *Legislative Studies Quarterly* 34(4): 525-554.

Adams, James, Thomas Brunell, Bernard Grofman, and Samuel Merrill, III. 2010. "Why Candidate Divergence Should be Expected to be Just as Great (or even Greater) in Competitive Seats as in Non-Competitive Ones." *Public Choice* 145: 417-433.

Brunell, Thomas L., Chetan Dave, and Nicholas C. Morgan. 2009. "Factors Affecting the Length of Time a Jury Deliberates: Case Characteristics and Jury Composition." *Review of Law & Economics*, 5(1): article 23.

Brunell, Thomas L. and Justin Buchler. 2009. "Ideological Representation and Competitive Congressional Elections." *Electoral Studies* 28(3): 448-457.

Brunell, Thomas L. and Bernard Grofman. 2009. "Testing Since Versus Strategic Split-ticket Voting at the Aggregate Level: Evidence from Split House-President Outcomes, 1900-2004." *Electoral Studies*, 28(1): 62-69.

Brunell, Thomas L., Christopher J. Anderson, and Rachel Cremona. 2008 "Descriptive Representation, District Demography, and Attitudes Toward Congress Among African Americans." *Legislative Studies Quarterly*. 33(2): 223-244.

Merrill, Samuel, Bernard Grofman, and Thomas L. Brunell. 2008. "Cycles in American National Electoral Politics, 1854-2006: Statistical Evidence and an Explanatory Model." *American Political Science Review*, 102(1) 1-17.

Thomas L. Brunell. 2006. What to Do about Turnout Bias in American Elections? *The American Review of Politics*, 27(Fall): 255-260.

Brunell, Thomas L. 2006. "Rethinking Redistricting: How Drawing Uncompetitive Districts Eliminates Gerrymanders, Enhances Representation, and Improves Attitudes Toward Congress." *PS: Political Science & Politics*, 39(1) 77-86.

Brunell, Thomas L. 2005. "The Relationship Between Political Parties and Interest Groups: Explaining Patterns of PAC Contributions to Candidates for the U.S. Congress." *Political Research Quarterly*, 58: 681-688.

Solowiej, Lisa, and Wendy Martinek, and Thomas L. Brunell. 2005. "Partisan Politics: The Impact of Party in the Confirmation of Minority and Female Federal Court Nominees." *Party Politics*, 11: 557-577.

Brunell, Thomas L. and John DiNardo. 2004. "A Propensity Score Reweighting Approach to Estimating the Partisan Effects of Full Turnout in American

Presidential Elections.” *Political Analysis* 12(1): 28-45.

Solowiej, Lisa and Thomas L. Brunell. 2003. “The Entrance of Women to the U.S. Congress: The Widow Effect.” *Political Research Quarterly* 56(3): 283-292.

Brunell, Thomas L. 2001. “Why There is Still a Controversy About Adjusting the Census.” *PS: Political Science & Politics*, 35(1, March): 85.

Brunell, Thomas L. 2001. “Census 2000 – Epilogue.” *PS: Political Science & Politics*, 34(4, December): 813-814.

Brunell, Thomas L. 2001. “Science and Politics in the Census.” *SOCIETY* 39(1): 11-16.

Brunell, Thomas L. and Amihai Glazer. 2001. “Rational Response to Irrational Attitudes: The Level of the Gasoline Tax in the U.S. States.” *The Journal of Policy Analysis and Management* 20(4): 761-764.

Brunell, Thomas L. 2000. “Redistricting in the ‘Aughts’: The Impact of Census 2000.” *The American Review of Politics* 21(Winter): 347-366.

Grofman, Bernard, William Koetzle, Samuel Merrill, and Thomas L. Brunell. 2001.

“Changes in the Location of the Median Voter in the U.S. House of Representatives, 1963-1996.” *Public Choice* 106:221-232.

Brunell, Thomas L. 2000. “Using Statistical Sampling to Estimate the U.S. Population: The Methodological and Political Debate Over Census 2000.” *PS: Political Science & Politics*. 33(4, December): 775-782.

Brunell, Thomas L. 2000. “Rejoinder to Anderson and Fienberg.” *PS: Political Science & Politics*. 33(4, December): 793-794.

Brunell, Thomas L. 2000. “Making Sense of the Census: It’s Political.” *PS: Political Science & Politics*. 33(4, December): 801-802.

Stone Sweet, Alec and Thomas L. Brunell. 2000. “The European Court, National Judges, and Legal Integration: A Researcher’s Guide to the Data Set on Preliminary References in EC Law, 1958–98.” *European Law Journal* 6(2): 117 - 127.

Stone Sweet, Alec and Thomas L. Brunell. 2000. “The European Court, National Judges, and Legal Integration.” *Swedish Journal of European Law* 3(2):179–192.

Grofman, Bernard, William Koetzle, Michael McDonald, and Thomas L. Brunell. 2000. “A New Look at Split Ticket Outcomes for House and President: The

- Comparative Midpoints Model.” *Journal of Politics* 62(1, February): 35-50.
- Brunell, Thomas L. and William Koetzle. 1999. “A Divided Government Based Explanation for the Decline in Resignations from the U.S. Senate, 1834-1996.” *Party Politics* 5(October, 4): 497-505.
- Brunell, Thomas L. 1999. “Partisan Bias in U.S. Congressional Elections. Why the Senate is Usually More Republican than the House of Representatives.” *American Politics Quarterly* 27(July,3): 316-37.
- Grofman, Bernard, Samuel Merrill, Thomas L. Brunell, and William Koetzle. 1999. “The potential electoral disadvantages of a catch-all party - Ideological variance among Republicans and Democrats in the 50 U.S. States.” *Party Politics* 5(April,2):199-210.
- Brunell, Thomas L., William Koetzle, John DiNardo, Bernard Grofman, and Scott L. Feld. 1999. “The $R^2 = .93$. Where Then Do They Differ? Comparing Liberal and Conservative Interest Group Ratings.” *Legislative Studies Quarterly* 24(February,1): 87-99.
- Merrill, Samuel, Bernard Grofman, Thomas L. Brunell, and William Koetzle. 1999. “The power of ideologically concentrated minorities.” *Journal of Theoretical Politics* 11(January,1):57-74.
- Brunell, Thomas L. and Bernard Grofman. 1998. “Explaining Divided Senate Delegations 1788-1996: A Realignment Approach.” *American Political Science Review* 92(June,2): 391-99.
- Stone Sweet, Alec and Thomas L. Brunell. 1998. “Constructing a Supra-National Constitution: Dispute Resolution and Governance in the European Community.” *American Political Science Review* 92(March,1): 63-81.
- Stone Sweet, Alec and Thomas L. Brunell. 1998. “The European Court and the National Courts: A Statistical Analysis of Preliminary References, 1961-95.” *The Journal of European Public Policy* 5(March): 66-97.
- Grofman, Bernard, Thomas L. Brunell, and William Koetzle. 1998. “Why Gain in the Senate. But Midterm Loss in the House? Evidence from a Natural Experiment.” *Legislative Studies Quarterly* 23(February): 79-89.
- Grofman, Bernard, Thomas L. Brunell, and Janet Campagna. 1997. “Distinguishing the Difference Between Swing Ratio and Bias: the U.S. Electoral College.” *Electoral Studies* 16 (December,4):471-487

Grofman, Bernard, William Koetzle, and Thomas L. Brunell. 1997. "An Integrated Perspective on the Three Potential Source of Partisan Bias: Malapportionment, Turnout Differences, and the Geographic Distribution of Party Vote Shares." *Electoral Studies* 16(December, 4):457-470.

Brunell, Thomas and Bernard Grofman. 1997. "The 1992 and 1996 Presidential Elections: Whatever Happened to the Republican Electoral College Lock?" *Presidential Studies Quarterly* Winter: 134-38.

Wuffle, A, Thomas Brunell, and William Koetzle. 1997. "Death Where is Thy Sting: The U.S. Senate as a Ponce (de Leon) Scheme." *PS: Political Science and Politics* 30 (1): 58-59.
Reprinted in the *Journal of Irreproducible Results* 1999. 44(5-6): 25-26.

Koetzle, William, and Thomas L. Brunell. 1996. "Lip-Reading, Draft-Dodging, and Perot-noia: The 1992 Presidential Campaign in Editorial Cartoons." *Harvard International Journal of Press/Politics* 1(4): 94-115.

Book Chapters and Other Articles

Brunell, Thomas L. 2020. "Congress," In *An Introduction to American Government*, Toronto: TopHat.

Brunell, Thomas L. 2020. "Elections," In *An Introduction to American Government*, Toronto: TopHat.

Brunell, Thomas L. 2020. "Legislatures," In *State and Local Government*, Toronto: TopHat.

Brunell, Thomas L. 2020. "Congressional Reapportionment". In *Voting and Political Representation in America*, Mark P. Jones, Editor. Santa Barbara, CA: ABC-CLIO, pp 110-112.

Brunell, Thomas L. 2020. "Gerrymandering". In *Voting and Political Representation in America*, Mark P. Jones, Editor. Santa Barbara, CA: ABC-CLIO, pp 249-251.

Adams, James, Thomas L. Brunell, Bernard Grofman, and Samuel Merrill III. 2013. "Do Competitive Districts Necessarily Produce Centrist Politicians." In *Advances in Political Economy*. Norman Schofield, Gonzalo Caballero, and Daniel Kselman, eds. New York: Springer, pp 331-350.

Wuffle, A, Thomas Brunell, and William Koetzle. 2010. "Death Where is Thy Sting? The Senate as a Ponce (de Leon) Scheme." Eds. Lee Sigelman, Kenneth Newton, Kenneth J. Meier, and Bernard Grofman. Washington D.C.: APSA and ECPR.

Grofman, Bernard and Thomas L. Brunell. 2010. "Redistricting," in *The Oxford Handbook of American Elections and Political Behavior*, ed. Jan E. Leighly. Oxford: Oxford University Press.

Brunell, Thomas L. 2009. "The presidential and congressional election in the USA, November 2008." *Electoral Studies*, 28(4): 322-325.

Brunell, Thomas L. and Bernard Grofman. 2008. "The Partisan Consequences of Baker v. Carr and the One Person, One Vote Revolution," in *Redistricting in Comparative Perspective*, Lisa Handley and Bernard Grofman, eds. Oxford: Oxford University Press.

Brunell, Thomas L. and Bernard Grofman. 2008. "Evaluating the Impact of Redistricting on District Homogeneity, Political Competition, and Political Extremism in the U.S. House of Representatives, 1962-2006." In *Designing Democratic Governments*, Margaret Levi, James Johnson, Jack Knight, and Susan Stokes, eds. New York: Russell Sage Publications.

Grofman, Bernard and Thomas Brunell. 2006. "Extending Section 5 of the Voting Rights Act: The Complex Interaction Between Law and Politics." In *The Future of the Voting Rights Act*, David Epstein, Rodolfo O. de la Garza, Sharyn O'Halloran, and Richard H. Pildes, eds. New York, NY: Russell Sage Publications.

Grofman, Bernard and Thomas Brunell. 2005. "The Art of the Dummymander: The Impact of Recent Redistrictings on the Partisan Makeup of Southern House Seats." In Galderisi, Peter (Ed.) Redistricting in the New Millennium. New York: Lexington Books, pp. 183-199.

Brunell, Thomas L. 2004. "Seeking to Institutionalize a Partisan Electoral Advantage: The Battle Over the Census." *War Stories from Capitol Hill*. Edited by Paul S. Herrnson and Colton C. Campbell. Upper Saddle River, New Jersey: Prentice Hall.

Brunell, Thomas L. 2001. "Congress and the Courts: The Strange Case of Census 2000." In *Congress Confronts the Court*, edited by Colton C. Campbell and John F. Stack, Jr.. Lanham, MD: Rowman and Littlefield Press.

Grofman, Bernard and Thomas L. Brunell. 2001. "Explaining the Ideological Differences Between the Two U.S. Senators Elected from the Same State: An Institutional Effects Model." Galderisi, Peter F., Marni Ezra, and Michael Lyons, eds. *Congressional Primaries and the Politics of Representation*. Lanham, MD: Rowman and Littlefield Press.

Other Publications and Community Involvement

Op-ed “Democrats should focus on state races this year and save their chips for 2020.” Dallas Morning News, July 7, 2018. Co-authored with Paul Diehl.

Quoted in DMN “At 85, Rep. Sam Johnson has rivals’ respect — but still has rivals” by Elizabeth Koh, Feb 15, 2016.

Quoted in:

<http://www.foxbusiness.com/politics/2016/02/25/last-stand-in-texas-for-cruz-before-super-tuesday.html>

Interview for WRLD on Feb 27, March 1, March 2 and throughout March and April

Interview KRLD on Oct 18 about vote rigging and presidential election

KRLD Oct 25 interview early turnout

Oct 26 Interviewed on Channel 8 news about future of GOP

Appeared on McQuisition television show. May 20, 2012. “Redistricting: Do you Know Who Your Congressman is?”

Newsweek story on special elections

<http://www.thedailybeast.com/articles/2011/09/12/david-weprin-vs-bob-turner-the-race-to-replace-anthony-weiner.html>

Nate Silver story on special elections, NY Times

<http://fivethirtyeight.blogs.nytimes.com/2011/09/13/a-guide-to-cutting-through-special-election-spin/>

Appeared on McQuisition TV Show; local PBS talk show. Two episodes, one on the Tea Party and one on the 2010 Election.

Quoted in an Associate Press article “Vulnerable House Dems declare their independence,” by Cristina Silva, September 25, 2010.

Appeared on *Think* with Kryss Boyd on KERA Channel 13 (Dallas) talking about my book.

I wrote the feature op-ed for the Dallas Morning News on June 3, 2008.

http://www.dallasnews.com/sharedcontent/dws/dn/opinion/viewpoints/stories/DN-brunell_03edi.ART.State.Edition1.45fe223.html

Quoted extensively in a Huffington Post story by Tom Edsall on political cycles.

http://www.huffingtonpost.com/2008/06/24/obama-rides-the-wave_n_108848.html

Appeared on local radio station (KRLD 1080 am) as a guest political commentator for a 3 hour election wrap up program for the Texas presidential primary election, March 4, 2008.

Was one of four invited speakers, including one member of Congress, at North Central Texas College's 2nd Annual Conference on American Leadership, April 12, 2008, where I spoke about redistricting and representation.

My research on cycles in American electoral politics was featured on Discovery's website <http://dsc.discovery.com/news/2008/03/13/political-cycles.html>

Quoted in Pittsburgh Tribune Review on Thursday March 27 about jury deliberations.

http://www.pittsburghlive.com/x/pittsburghtrib/news/cityregion/s_559258.html

Quoted in Philadelphia Inquirer on Wednesday April 2 about jury deliberations. <http://www.philly.com/philly/news/local/17215627.html>

My research with Patrick Brandt involving predicting the 2006 Congressional elections was quoted extensively in an article U.S. News and World Report.

Wrote an op-ed for Newsday (New York) on the impact of timing of events for presidential elections. Published 1/4/04. This was reprinted in the Dodge City Daily Globe (Kansas) on 1/8/04 and in the Chattanooga Times Free Press (Tennessee) on 1/25/04.

Spoke to Pi Sigma Alpha meeting on the Presidential Primary Process, February 2004.

Delivered a speech to the League of Women Voters of Broome and Tioga Counties entitled "Redistricting after Census 2000: Playing Political Hardball." September 25, 2001

Appeared as an hour long guest on NPR's "Talk of the Nation" to discuss the decennial census. March 7, 2001.

Stone Sweet, Alec and Thomas L. Brunell. 2000. "The European Court, National Judges, and Legal Integration: A Researcher's Guide to the Data Set on Preliminary References in EC Law, 1958-98." Working paper. Robert Schuman Centre for Advanced Studies. European University Institute.

Brunell, Thomas L. and Amihai Glazer. 1999. "Evidence for the Irrationality of Governmental Policy." Working paper, Center for the Study of Democracy, U.C.

Irvine.

Stone Sweet, Alec and Thomas L. Brunell. 1997. "The European Court and the National Courts: A Statistical Analysis of Preliminary References, 1961-95." Working paper 14/97, Jean Monnet Center, Harvard Law School.

Appeared on News Channel 34 (ABC) on 11/12/00 discussing the process by which we amend the constitution.

Appeared on Fox 40 on election night 11/7/00 as an analyst discussing the election.

Appeared on WBNG TV (CBS) on 11/2/00 discussing voter fatigue.

Appeared on News Channel 34 (ABC) on 11/2/00 discussing the Electoral College.

Quoted in Press and Sun-Bulletin on 10/14/00 in an article about the 26th district Congressional election in New York.

Appeared on WBNG TV (CBS) with students in my class discussing the second Clinton/Lazio debate, 10/8/00.

Appeared on News Channel 34 (ABC) discussing Presidential debate, 10/4/00

Appeared on News Channel 34 (ABC) discussing Presidential debate, 10/3/00

Appeared on News Channel 34 (ABC) discussing the 2000 NY Senatorial primary, 9/12/00.

Appeared on WBNG TV (CBS) News discussing the 2000 presidential primaries. March 7, 2000.

Appeared on WBNG TV (CBS) News discussing Census 2000 and its likely impact on New York. January 20, 2000.

Appeared on WBNG TV (CBS) and News Channel 34 (FOX) talking about turnout in local elections. October 2, 1999.

Brunell, Thomas L. "Accurate Census Count Vital for New York." The Press & Sun-Bulletin. July 25, 1999. Page 6E.

Invited Talks

Census 2020

Triple Play: Election 2018, Census 2020, and Redistricting 2021. Conference at University of Houston, Dec. 7 2018

Census 2020 and Redistricting

Common Cause Democracy Works Summit

Philadelphia, May 21, 2018

Keynote on Redistricting

North Carolina State Political Science Associate Meeting. Raleigh, NC Feb 23, 2018

Reforming Redistricting

Political Discourse Conference, University of Iowa, December 4, 2015

“The Impact of Competitiveness on Attitudes Towards Government, a Comparative Perspective.” Australian National University, August 21, 2015.

“Asymmetrical Polarization in the U.S. Congress” Australian National University, July 14th, 2015.

“Population Deviations: A Subtle Form of Gerrymandering in the U.S. States”

March 2014, The University of Sydney, Electoral Integrity Project.

“The Uses and Abuses of Population Deviations in State Legislative Redistricting.” Case Western Law School, November 4, 2011.

Why Electoral Competition is Bad for America

Political Science Department at Duke University. February 10, 2009.

“Why We Need Fewer Competitive Elections in the U.S. House of Representatives.” Department of Government, University of Texas, Austin, January 27, 2006.

“Why Fewer Competitive Elections are Better in Single Member District Electoral Systems.” May 27, 2005, Nuffield College, Oxford University.

”Parsing Sincere Versus Strategic Interest Group Behavior: Explaining Patterns of Hard Money Contributions to Candidates for the U.S. Congress.” January 9, 2003, Dept. of Political Science UC Riverside.

“Party Polarization and Divided Government.” American Politics Research Group, University of North Carolina, Chapel Hill. December 1, 2000.

“The Politics of Census Taking in the United States. Nuffield College, Oxford University, September 28, 1999.

“The Statistical Adjustment of the 2000 U.S. Census. The George Washington University, June, 1999.

Conference Activity

“Assessing Proportionality as a Standard for Redistricting” Presented at the Annual Meeting of the Western Political Science Association, San Diego, CA, April 2019.

“Assessing Proportionality as a Standard for Redistricting” Presented at the Annual Meeting of the Southern Political Science Association, Austin, TX, January 2019.

“Do Environmental State Policies Impact National Legislators’ Voting Behavior?” T. Brunell and B. Cease. Presented at American Political Science Association, San Francisco, August 3-September 3, 2017

“Democratic Renewal: The Positive Effects of Elections on Voters Attitudes Towards Government.” T. Brunell, S. Bowler, T. Donovan, J. Karp Presented at Southern Political Science Association, San Juan, Puerto Rico, January 7-10, 2016.

“State Election Administration and Voters’ Perceptions of Electoral Integrity.” T. Brunell, S. Bowler, T. Donovan, P. Gronke Presented at State Politics and Policy Conference, Sacramento, CA

“Electoral Engineering and the Representation of Underrepresented Groups” Elin Bjarnegard, Thomas L. Brunell, and Par Zetterberg Annual Meeting of American Political Science Association, San Francisco, August 2015

“Median and Supermajoritarian Pivots in Congress and Conditional Party Government” Thomas L. Brunell and Samuel Merrill, III Annual Meeting of American Political Science Association, San Francisco, August 2015

“Election Reforms and Perceptions of Fair Elections.” Shaun Bowler, Thomas Brunell, Todd Donovan, and Paul Gronke State Politics and Policy Conference, Sacramento CA, May 2015.

“Replacement Effects and the Slow Cycle of Ideological Polarization in the U.S. House.” Presented at the Annual Meeting of the American Political Science Association, Washington D.C., September 2010.

“Putting Critical Elections in Historical Perspective” Thomas L. Brunell, Samuel Merrill III, and Bernard Grofman

Midwest Political Science Association Annual Meeting. Chicago, IL April 2-5, 2009.

“Do Special Elections Foretell the Results of General Election Outcomes in the U.S. House of Representative.” Thomas L. Brunell and David Smith
Midwest Political Science Association Annual Meeting. Chicago, IL April 2-5, 2009.

“Who Wants Electoral Competition and Who Wants to Win?” With Harold Clarke. Presented at the Annual Meeting of the Midwestern Political Science Association,
Chicago, April, 2008.

“The Impact of Electoral Competitiveness on Voters’s Attitudes Toward Government: Evidence from the U.S., Great Britain, and Canada.” With Elizabeth Clausen.
Presented at the Annual Meeting of the Western Political Science Association, Las Vegas, NV, March 2007.

“The Impact of Electoral Competitiveness on Voters’s Attitudes Toward Government: Evidence from the U.S., Great Britain, and Canada.” With Elizabeth Clausen
Presented at the Annual Meeting of the Midwestern Political Science Association, Chicago IL, April 2007.

“Time to Deliberate: Factors Affecting the Length of Jury Deliberations” With Chetan Dave and Nicolas Morgan. Presented at the Annual Conference on Empirical Legal Studies, New York Law School, November 2007.

“Move to the Center or Mobilize the Base? Effects of Political Competition, Voter Turnout, and Partisan Loyalties on the Ideological Convergence of Vote-Maximizing Candidates in Two-Party Competition.” With Bernard Grofman, Sam Merrill, and Jim Adams. Presented at the Annual Meeting of the American Political Science Association, Philadelphia, PA August 30 - September 3, 2006.

“Rethinking Redistricting: How Drawing Districts Packed with Partisans Improves Representation and Attitudes Towards Congress.” Presented at the Annual Meeting of the American Political Science Association, Washington, DC, September 1-4, 2005.

“Evaluating the Political Effects of Partisan Gerrymandering.” With Bernard Grofman.
Presented at the Annual Meeting of the American Political Science Association, Washington, DC, September 1-4, 2005.

“The Impact of Primary Type on Competitiveness of U.S. Congressional Primary

Elections.” Presented at the Annual Meeting of the American Political Science Association, Chicago, IL, September 1-5, 2004.

“The Relationship Between Descriptive Representation of African Americans in Congress and Attitudes Toward Government.” With Rachel Cremona and Chris Anderson, presented at The Annual Meeting of the Midwestern Political Science Association, Chicago, IL, April 14-17, 2004.

“Do National Tides Affect Governors?: Midterm Loss in Gubernatorial Elections .” With Robin Best, presented at The Annual Meeting of the Midwestern Political Science Association, Chicago, IL, April 14-17, 2004.

“The Relationship Between Parties and Interest Groups: Explaining Interest Group Donations.” Presented at the Annual Meeting of the American Political Science Association, Boston, MA August 26-September 1, 2002.

“The Entrance of Women into the U.S. Congress: The Widow Effect.” with Lisa Solowiej. Presented at the Annual Meeting of the Southern Political Science Association. Atlanta, GA November 7-10, 2001.

“Before Election Day: The Effect of Timing of Elections in U.S. Presidential and Congressional Elections.” Presented at the Annual Meeting of the American Political Science Association, San Francisco, CA August 30-September 2, 2001.

“Ideological Swing Districts in the U.S. House of Representatives,” with A.J. Quackenbush. Presented at the Annual Meeting of the American Political Science Association, San Francisco, CA August 30-September 2, 2001.

”The Effect of District Diversity on Party Loyalty Voting in the U.S. Congress.” Presented at the Annual Meeting of the Western Political Science Association, Las Vegas, March 15-17, 2001.

“Explaining the Proportion of Split House-President Outcomes, 1900-1996,” with Bernard Grofman and Samuel Merrill. Presented at the Annual Meeting of the Public Choice Society, San Antonio, Texas, March 9-11, 2001.

“Congress and the Courts: The Strange Case of the Census.” Florida International University, Miami, Florida. April 7-9, 2000. Conference on Congress and the Courts.

“The Link Between Primary Type and Representation in the U.S. Senate.” Presented at the 1999 Annual Meeting of the American Political Science Association, Atlanta GA.

“The Power of Ideologically Concentrated Electorates.” Presented at the 1997 Annual Meeting of the American Political Science Association, Washington D.C, August 28-31.

“Rethinking the Link Between District Diversity and Electoral Competitiveness.” Presented at the 1997 Annual Meeting of the American Political Science Association, Washington D.C, August 28-31.

“Comparing Electoral Competition, Responsiveness, and Change in the House and Senate: The Senate Really is Different.” Presented at the 1997 Annual Meeting of the Southwestern Social Science Association, New Orleans, March 26-30.

“Explaining the Ideological Differences Between the Two U.S. Senators Elected from the Same State: An Institutional Effects Model,” with Bernard Grofman. Presented at the 1997 Annual Meeting of the Public Choice Society, San Francisco, March 21-23.

“The Power of Concentrated Ideological Minorities,” with Bernard Grofman and William Koetzle. Presented at the 1997 Annual Meeting of the Public Choice Society, San Francisco, March 21-23.

“Why Do Voters Split Their Tickets? A Comparative Midpoints Approach,” with Bernard Grofman, Michael McDonald, and William Koetzle. Presented at the 1997 Annual Meeting of the Public Choice Society, San Francisco, March 21-23.

“Explaining Divided Senate Delegations 1788-1994, A Realignment Approach.” Presented at the 1996 Annual Meeting of the American Political Science Association, San Francisco, August 28 - September 1, 1996.

“Toward a Realignment-Based Theory of Divided Senate Delegations” presented at 1995 Western Political Science Association Meeting, San Francisco, March 1996. And at the 1996 Annual Meeting of the Public Choice Society, Houston, Texas, April 1996.

“Split-ticket Voting and Divided Government” with Bernard Grofman, Michael McDonald, and William Koetzle. Presented at the Conference on Strategy & Politics, Center for the Study of Collective Choice, University of Maryland, April 14, 1996.

“Comparing Midterm Elections in the U.S. House and Senate,” with William Koetzle and Bernard Grofman. Presented at the 1996 Annual Meeting of the Public Choice Society, Houston, Texas, April, 1996.

“Explaining Seat Change in the United States Senate, 1922-1994,” with William Koetzle. Presented at the 1995 Midwestern Political Science Association Annual Meeting in Chicago, Illinois, April 1995.

“Lip-Reading, Draft-Dodging, and Perot-noia: The 1992 Presidential Campaign in Editorial Cartoons,” with William Koetzle. Presented at the 1994 Western Political Science Association Annual Meeting in Albuquerque, New Mexico, March 1994.

Teaching Experience

Introduction to U.S. and Texas Government
Political Parties and Interest Groups
American Political Institutions
Race and Redistricting
Congress
Campaigns and Elections
Statistics
Computer Based Research in Social Science
Graduate seminar in American Politics
Graduate seminar in Electoral Systems
Graduate seminar in American Political Institutions
Graduate seminar in Comparative Institutions
Graduate seminar in Election Law and Electoral Systems

Service & Professional Activities

2013-14 Executive Committee, Political Science, UT Dallas

2010-2012 Senior Associate Dean, in charge of graduate studies for the School of Economic, Political, and Policy Sciences.

2007-2010 Associate Program Head and Director of Graduate Studies, Political Science, UT Dallas.

2005-2007 Executive Committee, Political Science, UT Dallas.

2006 American Politics search committee, UT Dallas.

2003-2005 Faculty Senate, Northern Arizona University.

2000-2001 Faculty Senate, Binghamton University.

2000-2001 Graduate Committee, Department of Political Science, Binghamton University.

2000-2001 American Politics Search Committee, Binghamton University.

1999-2000 American Politics Search Committee, Binghamton University.

1999-2000 Graduate Committee, Department of Political Science, Binghamton University.

Reviewer, National Science Foundation, American Political Science Review, American Journal of Political Science, Journal of Politics, Legislative Studies Quarterly, Journal of Theoretical Politics, American Politics Review, National Science Foundation, Public Choice, Political Research Quarterly, Electoral Studies, British Journal of Political Science, Journal of European Public Policy, European Journal of Political Research, and Party Politics.

Ph.D Students

finished

Paul Collins, faculty at University of North Texas
DeWayne Lucas, faculty at Hobart and William Smith Colleges
Marcus Allen, faculty at Wheaton College
Billy Monroe, faculty at Stephen F. Austin State College
Amy Gould, faculty at Evergreen State College
Walt Borges, faculty at UNT Dallas
David Smith, faculty at Texas A&M University, Corpus Christi
Whitney Manzo, faculty at Meredith College
Adrianna Smith

Redistricting and Litigation Experience

Texas Congressional, 2001, testified in state court
Pennsylvania Congressional, 2002, testified in state and federal court
Alabama Congressional, 2002, testified in federal court
Alaska State Legislative, 2002 testified in state court
Virginia State Legislative (wrote a report but did not testify), 2001
Nevada State Legislative (Guy v. Miller), 2011 testified in state court
New Mexico State Legislative (Egolf v. Duran), 2011 testified in state court
Colorado Congressional (Moreno v. Gessler), 2011
South Carolina Congressional (Backus v. South Carolina), 2012 testified in federal court
North Carolina Congressional and Legislative (Dickson v. Rucho), 2012
Florida Congressional (Romo v. Detzner)
Alabama Legislative (ALBC v. Alabama), 2013 testified in federal court
South Dakota Voting Rights Act case (Brooks et al. v. Gant et al.), 2014
Galveston County Texas (Petteway et al. v. Galveston County), 2016
Kern County Districting (Luna v. County of Kern), 2017
Ohio Congressional (Ohio A. Philip Randolph Institute v. Smith), 2018
Michigan Congressional (League of Women Voters Michigan v. Johnson), 2018