

Opening Remarks of Chairman Mark A. Nordenberg
Pennsylvania Legislative Reapportionment Commission Hearing
January 6, 2022
Hearing Room #1, North Office Building, State Capitol Complex

Happy new year, everyone, and welcome to the first in a series of hearings that will focus on the Preliminary Plan that was approved by the Legislative Reapportionment Commission last month. Let me begin by noting that this is the Commission's 10th hearing and that we also have conducted seven public meetings.

I am joined today by three other Commission members. They are: Senator Kim Ward, the Majority Leader of the Senate; Senator Jay Costa, the Democratic Leader of the Senate; and Representative Kerry Benninghoff, the Majority Leader of our House of Representatives. Representative Joanna McClinton, the Democratic Leader of the House, could not be with us, but she is ably represented by Representative Matt Bradford, the Democratic Chair of the House Appropriations Committee.

In the language of the state Constitution, the thirty-day period through which we now are moving provides an opportunity for "any person aggrieved by the preliminary plan . . . to file exceptions." Phrased in a somewhat different way, this period provides us with the opportunity to hear from the public and make improvements to the plan. Some ideas will come to us through these hearings, and others are being shared through our website portal, where we already have received some 1,800 comments, 1,000 of which have been submitted since we approved and released our preliminary plan.

As we move into this important stage of the process, it is important to remind ourselves, and the public, of our basic mission and to take stock of our current context.

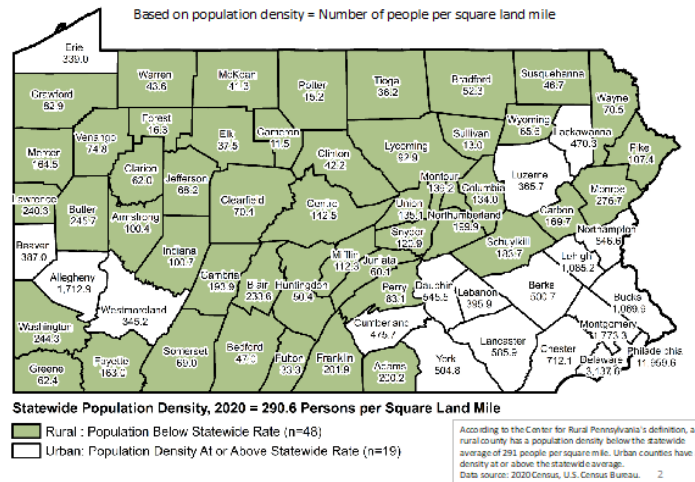
Population Shifts

Article II, Section 16 of the Pennsylvania Constitution provides that the “Commonwealth shall be divided into 50 senatorial and 203 representative districts . . . as nearly equal in population as practicable.” Section 17 (a) of that same article goes on to provide, “In each year following the year of the Federal decennial census, a Legislative Reapportionment Commission shall be constituted for the purpose of reapportioning the Commonwealth.”

Two unmistakable trends have driven the population changes that inevitably will shape the work of this Commission. One is the ongoing shift in population from rural to urban areas, particularly from the North and West to the South and East, and the other is the increase in Pennsylvania’s non-white population.

To give further meaning to those trends, I want to return to the work of Dr. Kyle Kopko, the Executive Director of the Center for Rural Pennsylvania, who appeared at one of our first hearings last summer and who was kind enough to present us with updated slides when census data later became available. The first several slides that I want to share are his.

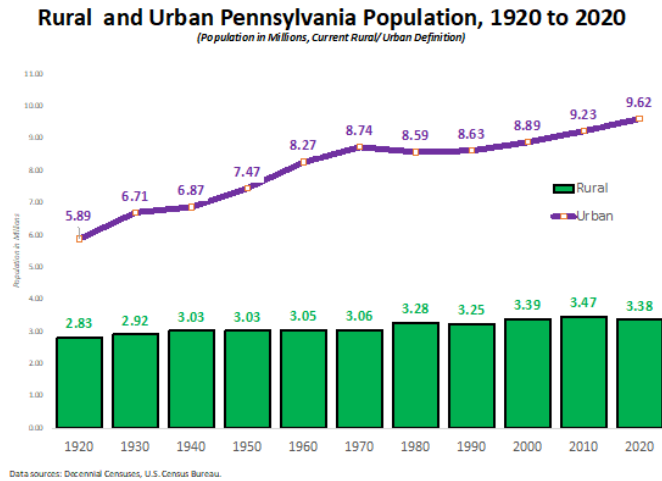
This is Rural Pennsylvania in 2020



The first is a slide showing which counties of the state are classified as “rural,” using the convention that those counties with a population density less than the state average of 291 persons per square land mile are rural, and those with a population density equal to or higher than 291 persons per square land mile are not. There are two things, in particular, to note about this slide.

- First, most of the land mass of the state is classified as rural, with some non-rural counties located in each of the four quadrants of the state.
- Second, the variation in population density is striking. One comparison that quickly caught my attention is the fact that Cameron County, in the North Central region of the state, has a population density of 11.5 people per square

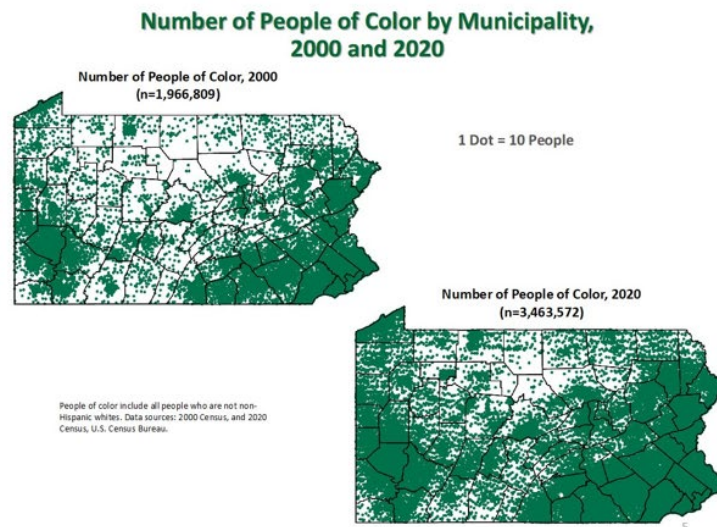
mile, while Philadelphia County has a population density of 11,960 people per square mile . . . that is, a population density more than 1,000 times greater.



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On this second screen, Dr. Kopko shows Pennsylvania population trends over the last century – basically, low or no growth in our rural areas and more robust growth in our urban areas. Because the focus of our work is on the decade since the last reapportionment – it is particularly noteworthy that, over that ten-year period, Pennsylvania’s rural population actually declined, while its non-rural population grew.

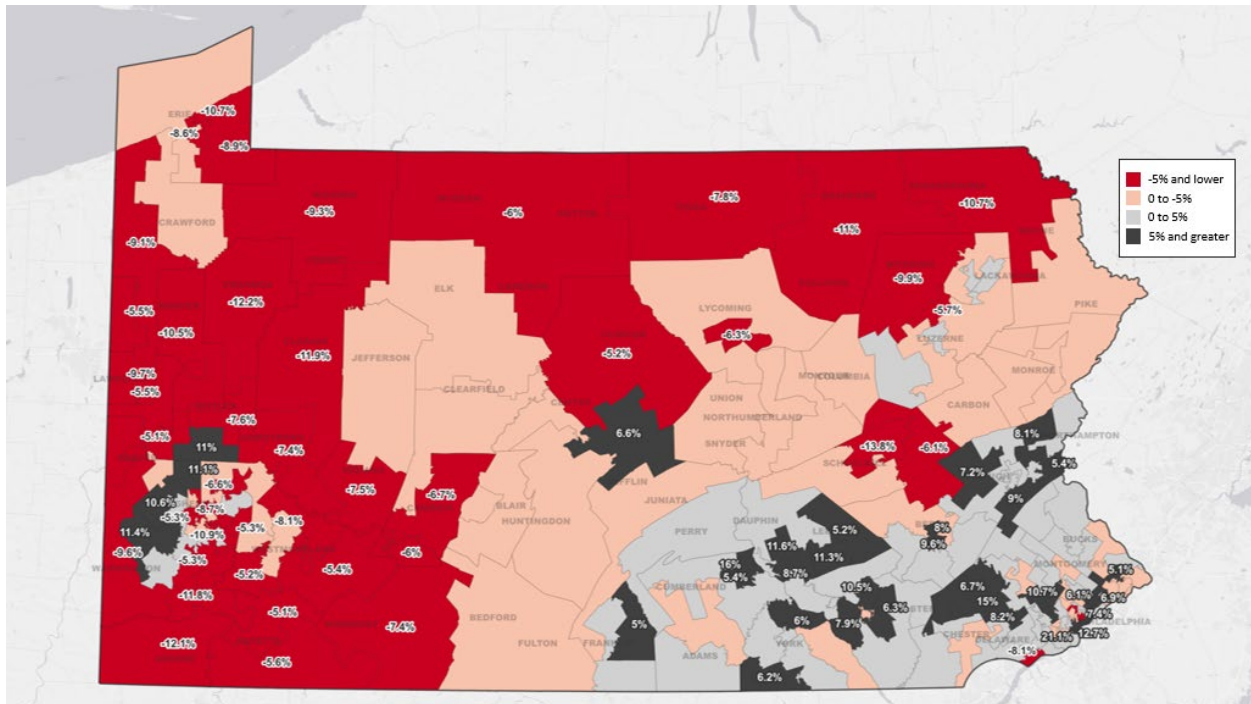
County's percentage growth of 5.1%, though just half of Cumberland County's percentage increase, translates into a population increase of about 85,000 or nearly 4 times as much.



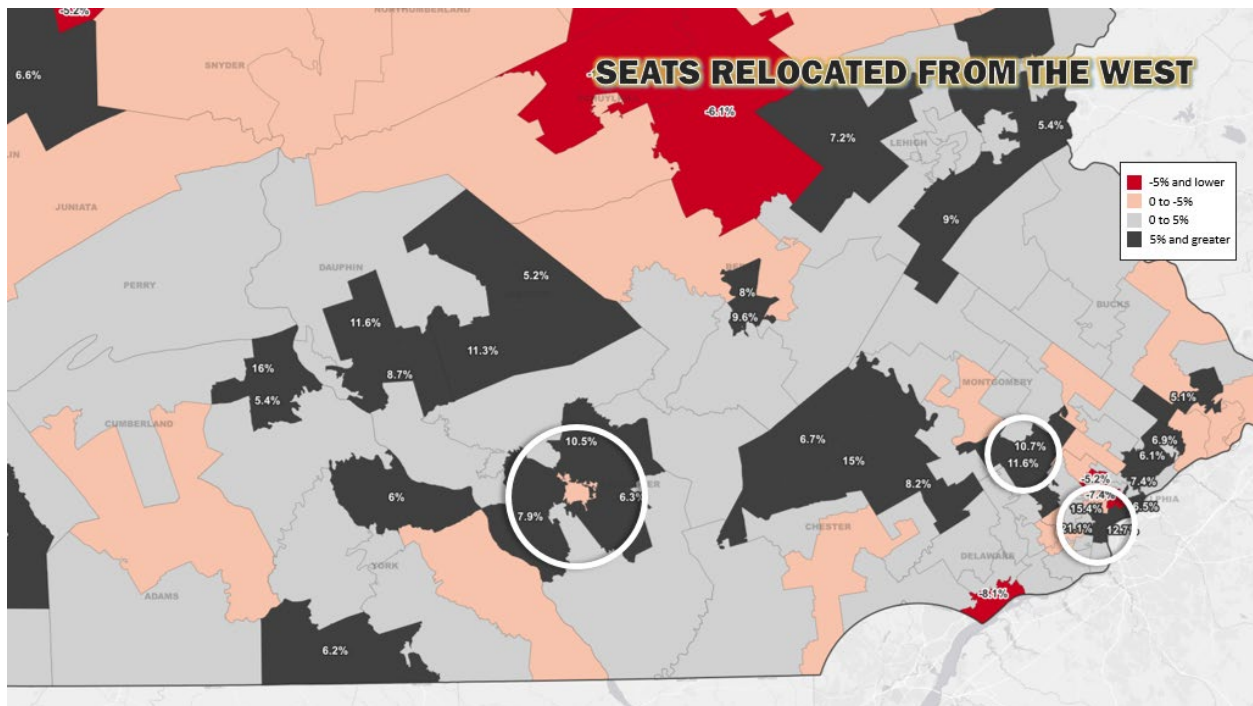
Dr. Kopko also underscored the fact that increases in the population of people of color have occurred across the state, including in rural areas. However, the bulk of that growth in absolute numbers also came in urban areas, particularly in the Southeast.

The key to our work, of course, is the extent to which these trends resulted in population deviations in legislative districts that we need to address to meet our constitutional charge of creating districts “as nearly equal in population as practicable.” Because it is our preliminary House map that has generated the most attention, I am going to focus on the House moving

forward, and this next slide, which is one that we have created, provides a clear sense of the impact of that population shift.



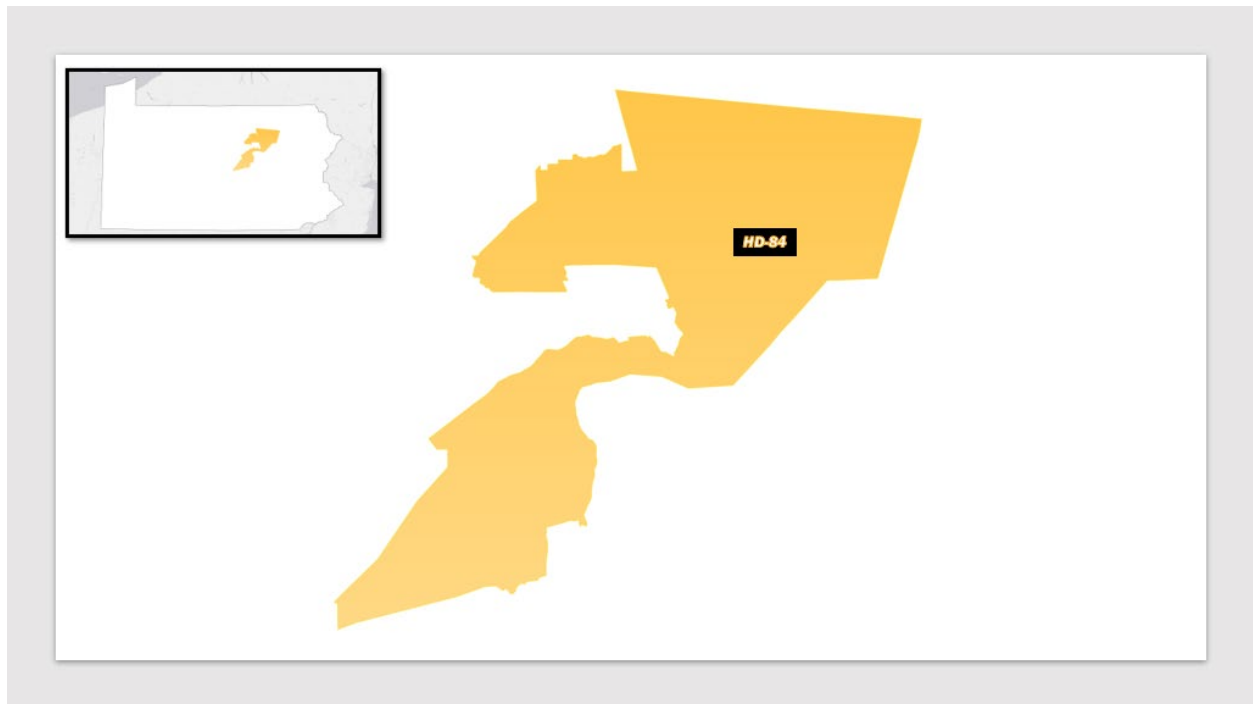
- If we start in the Northwest corner of the Commonwealth, we see that the northern-most tip of Pennsylvania includes a House district that is underpopulated by 10.7%. If you work your way across our northern border, that pattern continues, with districts that are 8.9%, 9.3%, 6%, 7.8%, 11% and 9.9% underpopulated.
- If you start at that same spot in the Northwest corner and head South, you confront the same general pattern, with two exceptions: (1) there are some areas of population growth in the Greater Pittsburgh area, and (2) the negative population deviations are even larger, so that we see districts that are underpopulated by 9.1%, 12.2%, 11.9%, 10.5%, 9.7%, 9.6%, 11.8% and 12.1%.



Responding to these population shifts, we have proposed that new House districts be placed in Lancaster, Montgomery, and Philadelphia Counties, all places where there has been significant population growth.

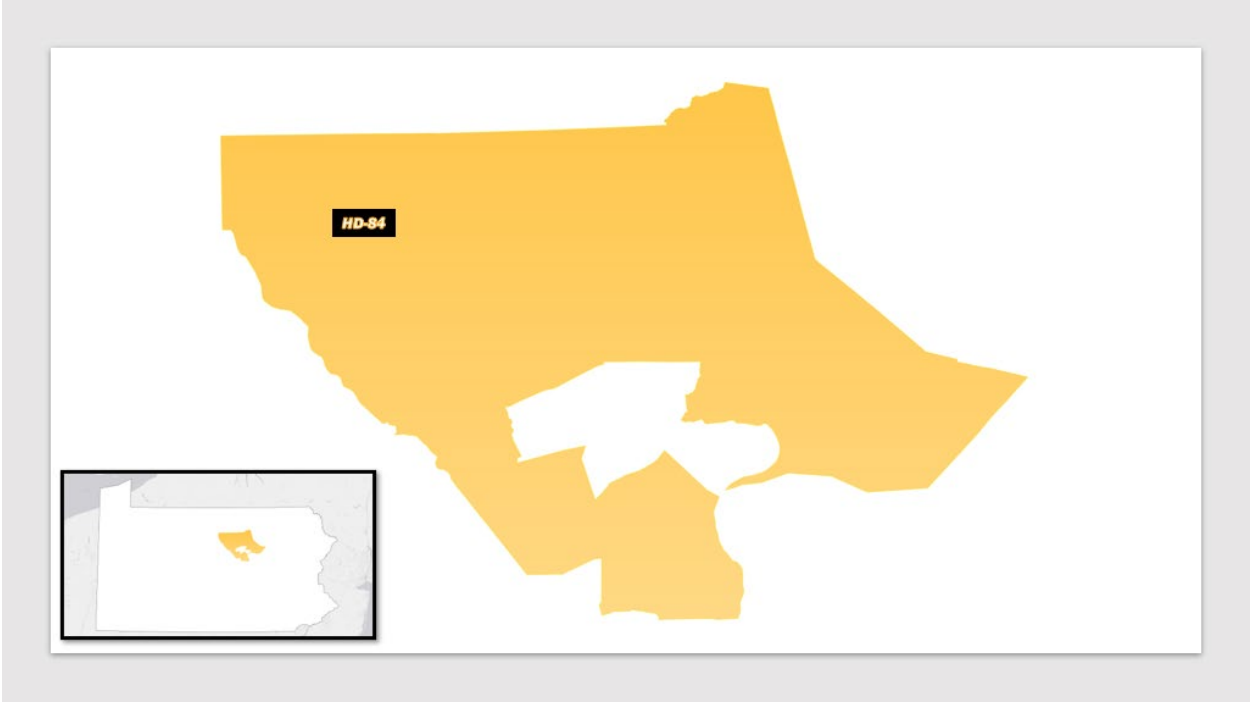
To achieve that goal, we had to consistently overcome the contention persistently asserted by members of the House Republican team that if a district now occupied by a member of their caucus needed to be moved, because of population trends, to another part of the state, they should have the right to determine where that seat would go and to draw the new district. It is hard to imagine a position more contrary to the foundation for reapportionment – that legislative districts do not belong to either politicians or their parties but, instead, belong to the people.

The Salamander

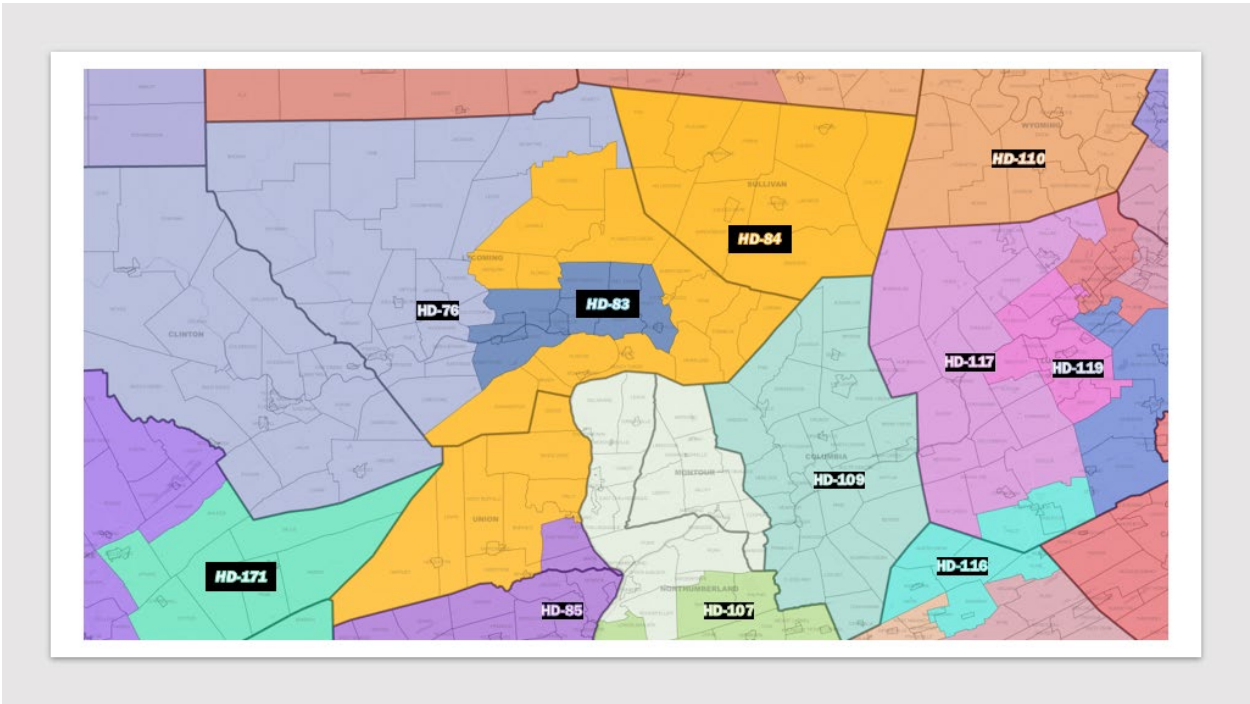


Moving from the macro to the micro, no single district has received more attention than District 84, which has been labeled Pennsylvania's salamander and dramatically offered as evidence that the entire House map is a partisan gerrymander. To repeat a basic point, that is a Republican district, which is surrounded by Republican districts, so its configuration does nothing to benefit any Democrat and, by definition, is not a gerrymander.

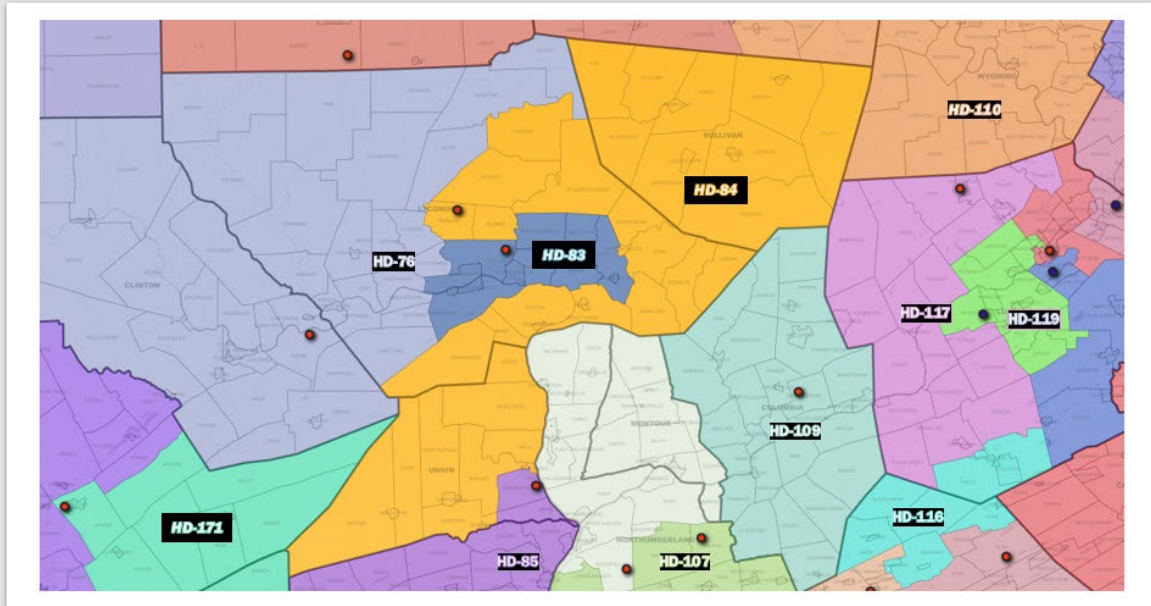
Within the Commission's staff, we actually called this redrawn District 84 the "question mark," rather than the "salamander," a reflection of the fact that it had attracted our attention and that we, too, thought it probably could be better drawn.



However, as you can see, the current map of that district is not a work of art either, something that we have called “the donut hole.”



With Pennsylvania's topography and irregular municipal and county boundaries, there necessarily will be districts that are far from symmetrical.



In this particular case, when incumbent locations are added to District 84 and its neighboring districts on this preliminary map, it becomes somewhat clearer that one reason the district lines were drawn as they were was not to disadvantage Republican incumbents but to shield them from being paired with other Republican incumbents. For example, one obvious pairing might have been the incumbents in House Districts 83 and 84. Beyond that, you also can see how HD 85 extends up in a somewhat unusual way to keep that incumbent out of HD 84. Similarly, you can see how HD 108 dips down so that its incumbent is not paired with the incumbent in HD 107.

My basic point is that, if it had been our intention to match-up as many Republican incumbents as possible, we could easily have added to that list right here in this one small part of the state. However, though some pairings are inevitable, this Commission team has moved through this process extending a measure of deference to incumbents. As I said at our last public meeting, this probably is inevitable when four of the five Commission members are caucus leaders who naturally are going to be protective of the incumbents in their caucuses, but it also reflects genuine respect for incumbents and those who have elected them, as well as a desire to avoid being unnecessarily disruptive.

Incumbent Pairings

At the other end of the spectrum, when we last met, I referred to the number of incumbents who were matched against each other by the special master's report that now has been approved unanimously by the Virginia Supreme Court. Earlier this week, a *Washington Post* editorial commented on that plan. This is part of what was said:

The decades-long incumbent-protection scheme known as redistricting is finished in Virginia, at least for now. Good riddance. . . .

Nearly half of sitting state senators and delegates have been doubled or tripled up in redrawn districts. . . .

[T]he bottom line is this: The state's new maps, the products of a radically more transparent process, are fairer. They are fairer to voters, and to the ideals of representative democracy, than any conceivable competing plan that might have been redrawn by lawmakers themselves. . . .

The strong reaction triggered by our far more modest pairing of a dozen Republican incumbents in our preliminary House map led me wonder whether our approach was as far out of line as it was being portrayed by some. So, I started to think about relevant comparisons, and I identified two. The first is the People's Map developed, after a lengthy process involving large numbers of citizens, by Fair Districts. The second is the map earlier submitted to us by Amanda Holt -- who is Pennsylvania's most famous mapper, who has appeared before this Commission on a number of occasions and whose Congressional map was adopted by House Republicans themselves as the foundation for their own preliminary Congressional map.

So that the record is clear, the two maps that I am describing are the two that were discussed by Dr. Kuniholm and Ms. Holt at our November 15 hearing. I know that Ms. Holt has sent us an updated Senate map and believe that she still is working to improve her House map, and Fair Districts may be as well. Still it seemed instructive to compare our preliminary House map to their preliminary maps.

Same-Party Incumbent Pairings

	Republican v. Republican	Democrat v. Democrat	Difference
LRC Preliminary Map	12	2	10
Fair Districts People's Map	36	24	12
Amanda Holt Map	36	24	12

Note: Number of representatives who will have to face another in a primary. Holt and Fair Districts PA maps presented to the commission at the November 15th hearing.

The results are revealing. The Fair Districts map and the Holt map each paired 36 incumbent Republican House members against each other. That is, in each case, three times more than the 12 incumbents who would be paired under the Commission's preliminary map. In fairness, I want to point out that each of these maps also paired 24 incumbents from the other side of the aisle against each other – which, for better or for worse, necessarily would generate a higher level of disruption.

But we also should look at the comparative partisan advantages that might result from the implementation of these maps. Simple math tells you that our differential is twelve Republican incumbents versus two Democratic incumbents paired, or ten more Republicans put at risk. The differential for the Fair Districts and Holt maps is slightly larger, thirty-six Republican incumbents versus twenty-four Democratic incumbents paired,

or twelve more incumbents put at risk. My point, though, is that all three of these maps reflect the fact that to redraw these maps in ways that are consistent with both population changes and constitutional requirements, incumbents will need to be paired and more of those pairings will involve Republicans.

Dave's Redistricting App

A different charge of unfairness recently has been lodged against the preliminary plan. In fact, it was the subject of an op-ed published on Tuesday of this week. This is part of what was said:

[T]he map is drawn in such a convoluted way that the only conclusion one can come to is that it must have been drawn to cement House Democrats in the legislative majority for the coming decade.

If you do not believe me, run the map through Dave's Redistricting App – a citizens mapping tool, which speculates that the current preliminary map will give House Democrats a legislative majority of 106 seats, up from their current total of 90 seats.

That statement is so incomplete that it is very misleading.

Default Settings in DRA

“To evaluate the likely future election outcomes for a set of districts, you need actual past election results.”

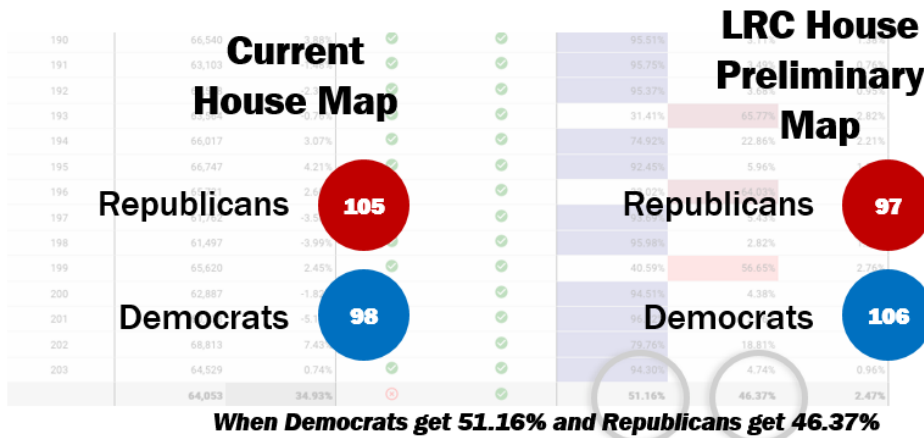
190	66,540	3.88%	✓	✓	95.51%	3.11%	1.38%
191	63,103	-1.48%	✓	✓	95.75%	3.49%	0.76%
192	62,578	-2.30%	✓	✓	95.37%	3.68%	0.95%
193	63,564	-0.76%	✓	✓	31.41%	65.77%	2.82%
194	66,017	3.07%	✓	✓	74.92%	22.86%	2.21%
195	66,747	4.21%	✓	✓	92.45%	5.96%	1.59%
196	65,721	2.60%	✓	✓	33.02%	64.03%	2.95%
197	61,762	-3.58%	✓	✓	93.69%	5.43%	0.88%
198	61,497	-3.99%	✓	✓	95.98%	2.82%	1.20%
199	65,620	2.45%	✓	✓	40.59%	56.65%	2.76%
200	62,887	-1.82%	✓	✓	94.51%	4.38%	1.11%
201	60,738	-5.18%	✓	✓	96.22%	2.76%	1.01%
202	68,813	7.43%	✓	✓	79.76%	18.81%	1.43%
203	64,529	0.74%	✓	✓	94.30%	4.74%	0.96%
	64,053	34.93%	⊖	✓	51.16%	46.37%	2.47%

<https://medium.com/dra-2020/election-composites-13d05ed07864>

It is true that if you run the preliminary House map through Dave’s Redistricting App, it will produce a 106-seat majority for Democrats. However, you have got to go further to accurately report what that means. The default setting in Dave’s Redistricting App – which is based on a composite of state-wide elections from 2016 to 2020, including blow-out wins by Governor Wolf and Attorney General Shapiro – is an election in which Republicans win 46.37% of the vote and Democrats win 51.16% of the vote, or nearly 5% points more.

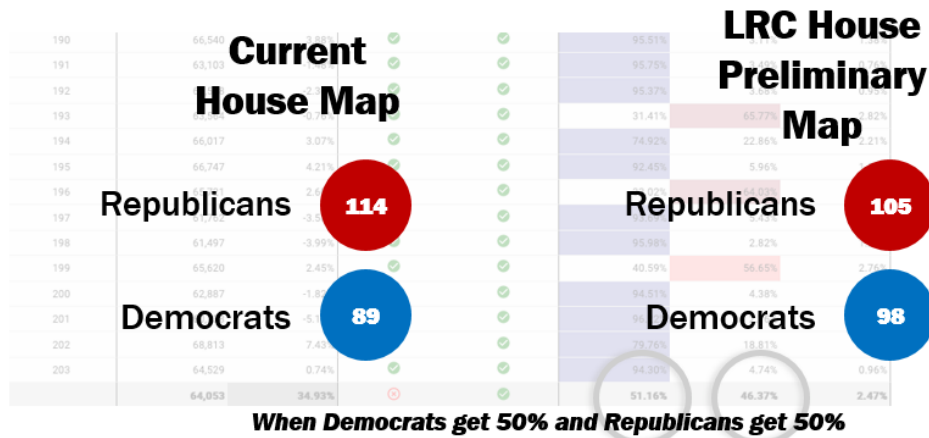
If you run both the 2011 House map and the Commission’s preliminary House map through the app with those default settings in place, this is what you find.

Default Settings in DRA



- Under the 2011 map, Republicans win 105 House seats, and Democrats win only 98 House seats, even when the Democrats win 5% more of the vote.
- Under the Commission’s preliminary map, if the Democrats win 5% more of the vote, they win 106 seats to the Republicans 97. That is a result that most people would view as fair – that is, if you win a substantial majority of the vote, you also ought to win a majority of the seats.

DRA (adjusted to 50/50 election)



Turning to what may be a more easily understood comparison, you also can recalculate to see what would happen under a particular map if there was an evenly-split 50 / 50 vote. Here you see that:

- In a perfectly equal election conducted under the 2011 map, the map now in place, Republicans are predicted to win 114 seats to the Democrats 89, an excess of 25 seats in a perfectly equal election.
- In a perfectly equal election conducted under the Commission's preliminary map, the Republicans still are at an advantage, projected to win 105 seats, while the Democrats are projected to win 98 seats.

That, of course, supports what we have been saying about the preliminary House map – that it continues to favor Republicans but not by as much as the current map.

Righting Past Wrongs

It also has been charged that the preliminary map is one gerrymander designed to make up for an earlier gerrymander and that two wrongs do not make a right. First, let me say that this does not constitute a gerrymander – which typically is considered to exist when the party in power draws maps that are designed to prevent the other party from ever getting into power. In the case of this preliminary map, as was just discussed, control of the House will vary, depending on the vote-share that each party receives in any given election.

Perhaps more to the point, I never have felt that it was my mission to right past wrongs. The person I know who feels most wounded by the maps of ten years ago is Senator Costa, who served on the Legislative Reapportionment Commission and then sued to keep its preliminary maps from going into effect. I feel quite certain that Senator Costa will verify the fact that I told him in one of our very first meetings and repeated at several subsequent points along the way that I did not want to talk about ten years ago, that we had no ability to go back and change that history. Instead, we should be forward-looking and focused on developing fair maps for the next decade.

Who Did the Mapping?

Questions also have recently been asked about who did the mapping. I addressed that topic in our last meeting but let me do so again.

Each caucus had the same ability to be involved in the development of maps as every other caucus. When we took the initiative to schedule meetings, we did that in a very uniform, even-handed way. Each caucus also was equally free to request meetings with us and to submit materials in whatever form and at whatever time they believed would advance their case. For example, it was the House Republicans who first asked if they could provide our Chief Counsel and me with legal memoranda on a confidential basis. We agreed to accept their documents on those terms, as we later did from other caucuses.

When it came to the mapping process, as I did indicate in our last meeting, very different approaches were taken in the Senate and the House. I might describe the Senate approach as the pursuit of a consensus map. The two leaders and their teams were meeting on a regular basis – in Harrisburg, Greensburg and Pittsburgh, I believe -- and were committed to trying to work out as many things as they possibly could. Near the end of that process, after identifying the things that they

could not negotiate, they came to us for resolution. Even then, we were largely working with their proposed alternative maps and not with maps of our own.

In the House, as I already have reported, there was very limited caucus-to-caucus interaction. Instead, we were dealing with the two caucuses separately and trying, without much success, to bridge the gaps between them. So, rather than having a consensus map, we had more of a composite map, with our team taking what we thought were the best features of each caucus submission and knitting them together. That, of course, does require some small measure of independent work, but it hardly amounts to taking over the mapping process, as some seem to be suggesting.

We received binders of map proposals from the House Republican team, and we had frequent meetings with them to discuss issues that they raised, as well as issues that we identified. In fact, last evening, we identified twenty counties in the Commission's preliminary map that are identical to submissions made by the House Republicans. That list includes Armstrong, Cameron, Clarion, Clinton, Blair, Butler, Carbon, Bedford, Elk, Forest, Fulton, Huntington, Indiana, Jefferson, McKean, Potter, Susquehanna, Sullivan, Union, Warren and Westmoreland.

If the Republican team's submissions had less impact on the final map than the submissions of the Democratic team, that is because we found the submissions from the Democrats to be

more persuasive and better supported. In assessing them, of course, we were discharging the responsibilities described by all four caucus leaders in their letter to the Supreme Court – calling balls and strikes . . . and, I might add, sometimes dealing with wild pitches.

Secret Agendas

I first was asked if I would serve as Chair of the Legislative Reapportionment Commission at the time of the 1990 census, now more than thirty years ago. I was the Dean of Pitt's law school at the time, and I was approached by representatives of both parties. The Republican inquiry was made by Mike Fisher, then a member of the Senate majority's leadership team and someone who later became both the state's Republican Attorney General and the Republican candidate for Governor. He now is a Judge of the United States Court of Appeals for the Third Circuit, and I am quite sure that Judge Fisher is one of many who would vouch for my fairness and integrity.

Going back to that now thirty-year-old experience, I had been told that there was an agreement between the two parties that I would be the Chair. However, on the day of the vote, something historic happened – the two Republican majority leaders voted for me, the Democratic leader from the House voted against me, and the Democratic leader from the Senate abstained. After giving it some thought, the Senate majority leader, who had been chairing the meeting, took the position that I had been elected Chair because a 2 to 1 to 1 vote was a

majority vote. A few days later, he came to Pittsburgh to request that I litigate that issue.

Though I declined that invitation, that was the beginning of a long and positive relationship with Republican caucuses in both the House and Senate. In fact, there has not been a census since 1990 when some Republican legislative leader has not reached out to ask me if I would consider serving as Commission chair. To the best of my recollection, no Democratic legislative leader, on the other hand, has inquired about my interest or availability since 1990, and the Democrat's inquiry that year came from a very junior House member who had been my student..

Shortly after I became Chancellor, in the mid-1990's, I was asked by that same House majority leader to co-chair a special legislative commission on the problems facing Pennsylvania's urban schools, which really was the launch of my state-wide public service activities.

This was during the administration of Republican Governor Tom Ridge -- with whom I did a lot of work, particularly on technology-based economic development. Because I do admire him greatly, I was pleased when Governor Ridge reacted to my appointment as Commission Chair by tweeting: "The appointment of former Pitt Chancellor Mark Nordenberg to PA's Legislative Reapportionment Commission is good news for all Pennsylvanians. Mark's integrity, thoughtfulness &

dedication to the future of the Keystone State will serve us all well.”

I served as co-chair of the Education subcommittee of the transition committee for Republican Governor-Elect Tom Corbett. As some have noted, he and I subsequently had disagreements about funding for higher education. However, those differences always were handled very professionally on both sides, and, in fact, he named me to his special advisory commission on post-secondary education. Far more recently, I served as an honorary co-chair of the transition committee for Republican Auditor General-Elect Timothy DeFoor.

When I was about to step down as Pitt’s Chancellor, one part of a Senate session-day was devoted to paying tribute to me on the Senate floor. While that was a bipartisan occasion, the principal organizers and speakers included both the then-Republican President Pro Tempore and the then-Republican Majority Leader. Until Majority Leader Ward directed me to put it away, I occasionally would brandish a very large ceremonial gavel that had been presented to me by Sam Smith, who served as both the Republican Majority Leader and as Speaker of the House. And when I was appointed Chair of this Commission, one of the first messages I received was from Mike Turzai, who served on this Commission as the House Republican Majority Leader ten years ago and who subsequently became Speaker. He not only congratulated me but reminded me that he had wanted me to serve as Chair ten years ago.

It is awkward to talk about myself, but I do not have teams of public relations professionals at my disposal as caucus leaders do, and there have been so many baseless claims made about the maps, the process that produced them, my team and me that I felt it was important to respond, because the work of the Commission is so important. Now having been forced to reflect on the past thirty years, I guess that if I had been going to embark on this assignment with a secret agenda, perhaps that agenda should have been driven by a grudge against the Democrats, both for voting against me in 1991 and for slighting me by not expressing more interest in my service in this role during the intervening three decades.

But I did not agree to serve because I had some secret agenda or because of any other kind of personal motivation. Instead, when I was asked by the Supreme Court, I saw this as a way to make an incredibly important form of public service contribution -- to the state that has provided me with a wonderful home for most of my adult life and to the democratic ideals that have made this country great and in which I believe.

At earlier points in time, we have talked about the great Supreme Court decisions that enshrined the “one person / one vote principle,” which stands at the heart of the reapportionment process, as a hallmark of American democracy. One of those cases, Reynolds v. Simms, put it this way:

Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.

Perhaps others consider expressions like that one to be just so many words, but that is not the way that the other members of the Commission team or I view it. We have been asked to discharge a very special set of responsibilities, and we have worked to do that fairly, tirelessly, and to the best of our ability, and we will continue to do so.