Good afternoon. My name is Mark Nordenberg. As Chair of the Pennsylvania Legislative Reapportionment Commission, it is my privilege to call this meeting to order. It has been my habit to welcome those in attendance, either here in the Capitol or through our livestream, not only for myself but for the distinguished legislative leaders who serve as members of the Commission. They are: Senator Kim Ward, the Senate Majority Leader; Senator Jay Costa, the Democratic Leader of the Senate; Representative Kerry Benninghoff, the Majority Leader of the House of Representatives; and Representative Joanna McClinton, the Democratic Leader of the House. Today, I also want to take this opportunity to thank them, both for all that they have contributed to this effort and for the many courtesies that they each have extended to me.

I also want to thank the talented and dedicated members of their caucus teams, people I have come to know and respect and with whom I have enjoyed working. Of course, we never would have reached this point in the process except for the work of the Commission's own team, which includes: Rob Byer, our Chief Counsel; Jonathan Cervas, our Redistricting Consultant; Renny Clark, our Executive Director; Ann-Marie Sweeney, our Director of Administration; and Cheri Mizdail, our Administrative Assistant. Also indispensable to so much of

what we have accomplished are Brent McClintock, the Executive Director of the Legislative Data Processing Center and Leah Mintz – who, like Rob Byer, is an attorney with the Duane Morris law firm. Without going into more detail, let me simply describe this team as both talented and tireless.

Though the other Commission members had done some work before then, it might be said that the journey that the five of us have made together began at our Organizational Meeting on May 26, 2021. Since that time, we have conducted seven public meetings and hosted sixteen public hearings. At those hearings, we heard from thirty-six invited witnesses, typically experts, and from 145 citizen-witnesses, who offered both perspectives on this process and information about their home communities. We created a website portal to receive citizen comments, which attracted 5,856 submissions. We also received 155 submissions that came to us through mail or email, for a grand total of more than 6,000 submissions. All of them were read by at least two members of the Commission team, and they were organized to make them accessible to us as we moved forward with our work.

As I have indicated in past meetings, a Legislative Reapportionment Commission is convened every ten years to redraw Pennsylvania House and Senate districts in ways that reflect population changes as revealed in census data, that comply with constitutional and statutory requirements and that advance the democratic ideal of one person / one vote. The

most significant changes revealed by the most recent census were: declining population in Pennsylvania's rural areas; substantial population growth in the Commonwealth's urban areas, particularly in the Southeast; and a marked increase in our state's non-white population.

On December 16, 2021, the Commission met to vote on its preliminary plan. Though we will vote on our proposed final plan as a whole today, consistent both with past practice and with the language of the state Constitution, in that session we took separate votes on the preliminary House map, which passed by a 3 – 2 majority, and the preliminary Senate map, which was approved on a 5 – 0 vote. Today, I plan to provide an overview of the current state of both maps, including a comparison to the 2012 plan, which was found by the Pennsylvania Supreme Court to meet constitutional standards.

In doing so, let me begin with an overarching statement. In drafting the preliminary and final reapportionment plans for the House of Representatives and Senate, our predominant purpose has been to create districts that comply in all respects with the requirements of the Pennsylvania Constitution, most notably, Article II, Section 16 (which sets forth requirements for legislative districts); Article I, Section 5 (also known as the "Free and Equal Elections" clause); and Article I, Section 29 (the racial and ethnic equality clause). Of course, we also were attentive to the requirements of the 14th Amendment to the United States Constitution and the Federal Voting Rights Act. In fact,

we heard from a sizable array of experts about the Voting Rights Act, both before and after we approved the preliminary plan.

When circumstances permitted us to do so, and after ensuring compliance with state and federal law, we fashioned districts to create additional opportunities beyond the minimum requirements of the Voting Rights Act, positioning voters in racial and ethnic minority groups to influence the election of candidates of their choice. Going beyond those minimum requirements not only is consistent with the Voting Rights Act but is consistent with, and possibly required by, both the Free and Equal Elections clause and the Racial and Ethnic Equality Clause of the Pennsylvania Constitution.

Where we were able to do so, we drew those minority opportunity and influence districts without an incumbent, thereby providing the greatest potential for racial and ethnic minority voters to influence the election of candidates of their choice. Again, we did so while being mindful of the traditional redistricting criteria of Article II, Section 16 and other constitutional mandates.

Measuring the Maps

My starting point in this presentation, then, is the same starting point that we used in all of our work, the language of Article II, Section 16 of the Pennsylvania Constitution, which provides:

The Commonwealth shall be divided into 50 senatorial and 203 representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. . . . Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or a representative district.

That seemingly simple, straightforward language actually frames a daunting task. There are 2,560 municipalities in Pennsylvania, and when the assignment is to draw 253 House and Senate district lines through them, there are boundaries that will need to be cut. And even though school districts are not listed in the Constitution, they often function as communities of interest that also may be entitled to a level of deference. Since there are 500 school districts within the Commonwealth, that further complicates the process.

Plan Comparisons

	Current House	LRC-H-Final		Current Senate	LRC-S-Final
Counties Split	50	45		25	23
Number of County Splits	221	186		53	47
Municipalities Splits	77	54		2	4
Number of Municipality Splits	124	92		11	10
Reock	0.39	0.42		0.38	0.39
Polsby-Popper	0.28	0.35		0.27	0.33
Overall Deviation	7.87%	8.65%		7.96%	8.11%
Average Deviation	2.0%	2.1%		2.3%	2.1%

The chart now on the screen displays the relevant comparisons between the plan being considered today and the plan that was approved by the Pennsylvania Supreme Court in 2012. As you will see, both our House and Senate maps compare very favorably to that 2021 map.

Looking first at the House map, both county and municipal splits are markedly lower, and our districts are more compact, though our overall and average deviations are somewhat higher, something that very often happens when splits are reduced. The Senate map, too, has a reduction in counties split, number of county splits and number of municipality splits, with a slight increase in municipalities split. It also has a reduction in average deviation and a slight increase in overall deviation.

The House of Representatives Map

Let me next comment on our House and Senate maps separately to highlight some of the changes that have been made since the preliminary maps were approved on December 16. In doing so, I will begin with the House, to some considerable extent, framing my comments around issues that have been raised by the House Majority Leader, who may have been the most vocal critic of it. In his remarks at the time the preliminary plan was approved, he stated that it had been his desire to support the Commission's plan; indicated that, because of the problems he saw in the House plan, he could not support it; but expressed the hope that "we can make changes before this thing is cemented permanently and finalized" and that we would take the time to listen to the people.

From my earlier comments, you already know that we did a great deal of listening, attracting an historic number of citizen suggestions, through our website portal and through our hearings. What may be less clear is the extent of the changes that have been made. However, we also have tried to be responsive, so let me update you on some of those changes.

The Well-Fed Salamander.
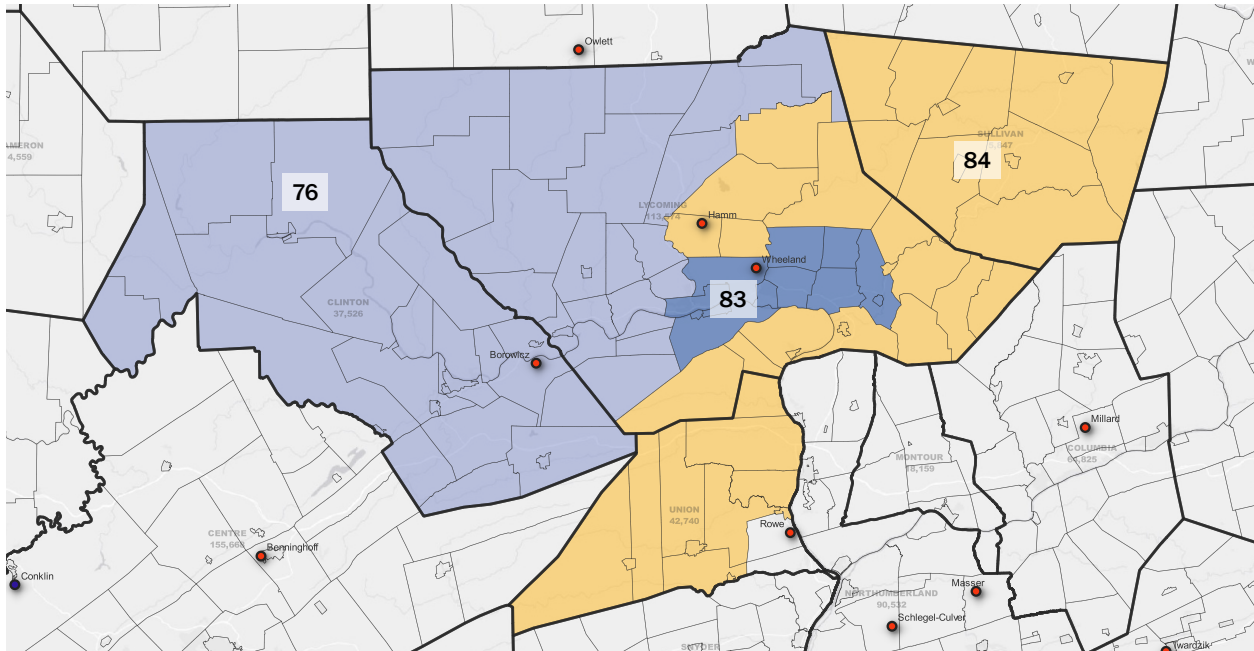
The most compelling visual from the meeting to approve the preliminary plan was the side-by-side presentation of the outline of Pennsylvania House District 84 and the salamander that has become a widely recognized symbol of gerrymandering. As I already have stated publicly, District 84 is a Republican district that is completely surrounded by other Republican districts. The way that it is drawn, then, cannot possibly benefit any Democrat, meaning that, by definition, this is NOT a partisan gerrymander.

However, I also did agree that there almost certainly would be more aesthetically pleasing ways to draw District 84 and the districts adjacent to it.
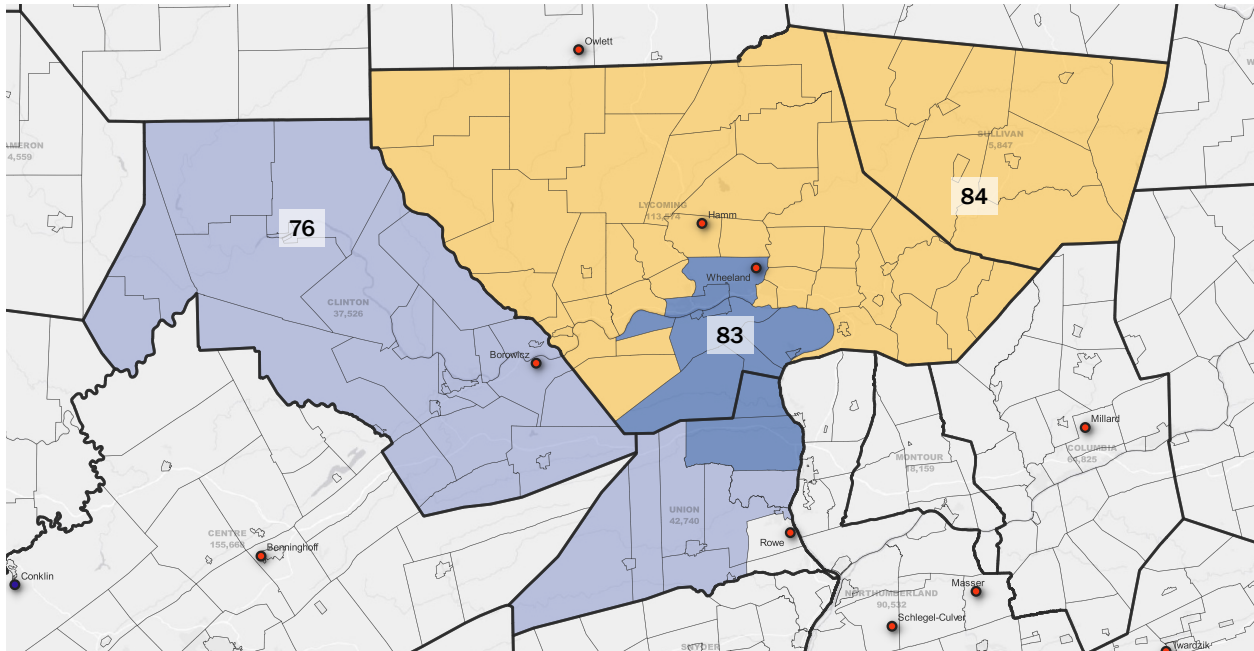
That now has been done, and in showing you the proposed final map of Districts 76, 83 and 84, let me acknowledge the assistance of Rep. Hamm, the Republican House member who represents the 84th District and who shared his thoughts, particularly regarding the communities of interest in Union, Lycoming and Sullivan Counties.

The Pairing of Republican Incumbents.

Probably the most vocal criticism of the preliminary map was directed at what was labeled the disproportionate pairing of Republican incumbents – which, in that map, involved six such pairings or twelve Republican incumbents. In earlier meetings, I explained that a majority party naturally would experience a higher level of pairings; I showed, because so many Republican

incumbents live very near district lines, how easy it would have been to target more of them if that had been our goal; and I offered two different points of comparison. The first was the redistricting plan that had been recently approved by the Virginia Supreme Court and pitted nearly half of the sitting legislative members against each other; and the second was the preliminary maps that had been submitted by Fair Districts PA and Amanda Holt, each of which pitted 36 Republican incumbents against each other, compared to the twelve in our preliminary plan.

Today, though, I want to talk about what has happened since then, and to do so, I want to return to the preliminary House map and look, in particular, to the western part of the state.
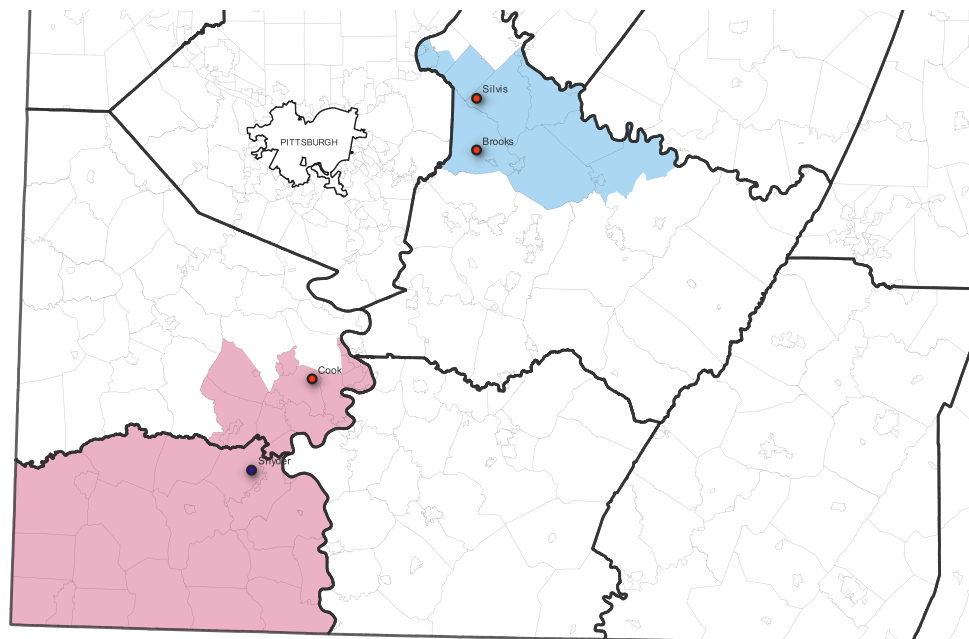
- Let me first call your attention to the Southwest corner of the state, where you will see the pairing of a Democrat

and a Republican in Greene and Washington Counties and a pairing of two Republican incumbents in Westmoreland County. Creating such pairings was necessary to deal with populations losses in that region – which, after all, is the principal purpose of reapportionment. However, let me be clear in saying that the particular pairings were not made by the Commission but came from the caucuses.
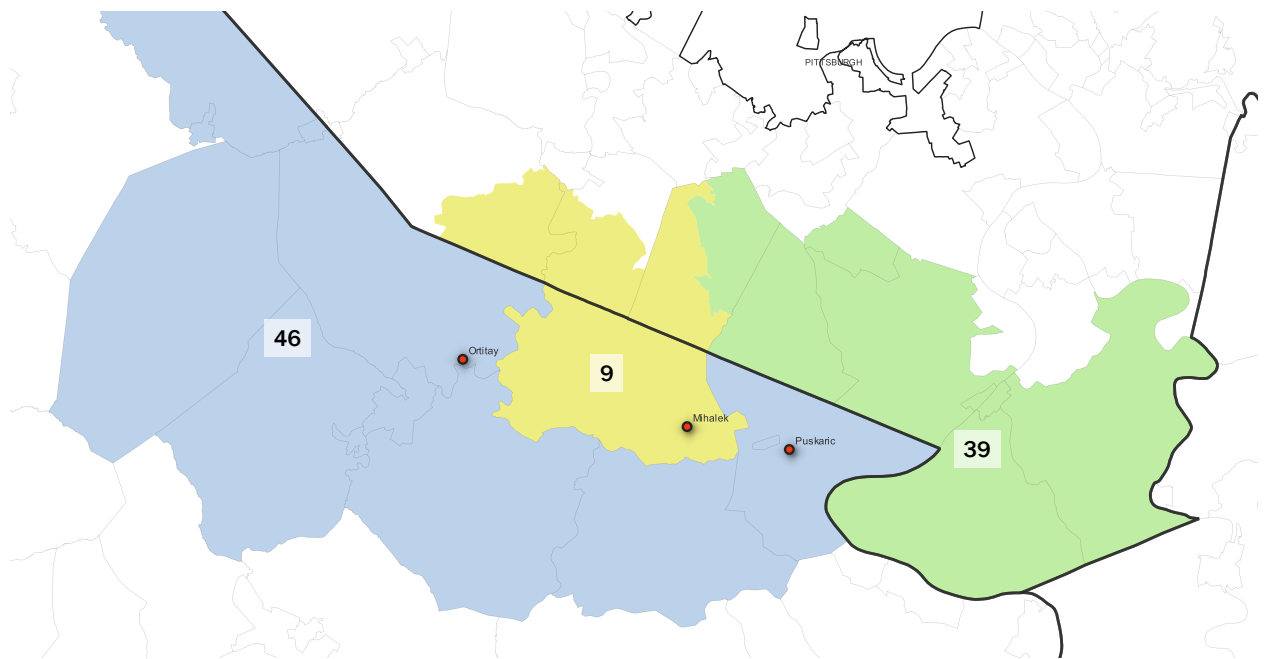

- The preliminary map also paired two Republican incumbents in northern Washington County, and that <u>was</u> done by my team and me, as part of an effort not to split the border between Allegheny and Washington Counties. However, a bipartisan group of four members of the House – Representatives Gaydos, Ortitay, Kinkead and Kulik -- made a persuasive, professional presentation, supported by submissions from local officials, about the damage that might be done unless we retreated from that

decision. To be clear, this was not a generic plea but one that focused on distinctive regional needs, including coordinated responses to flooding, key economic development initiatives that cross county lines, and the needs of the Greater Pittsburgh International Airport. I will say that, for me, their approach was one of the high points of this entire process.
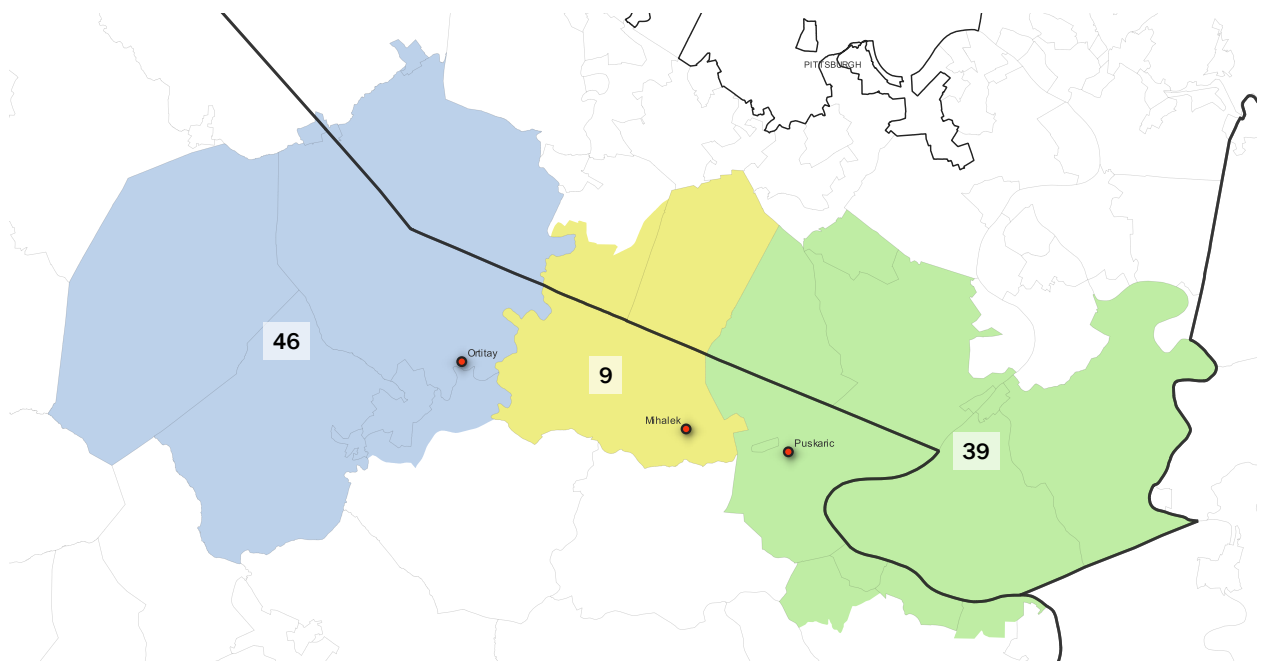

We found it to be persuasive, so we re-designed our plan for that region, permitted the cut of the border between the two counties – and, in the process, unpaired the Republican incumbents and also were able to eliminate some municipal splits.
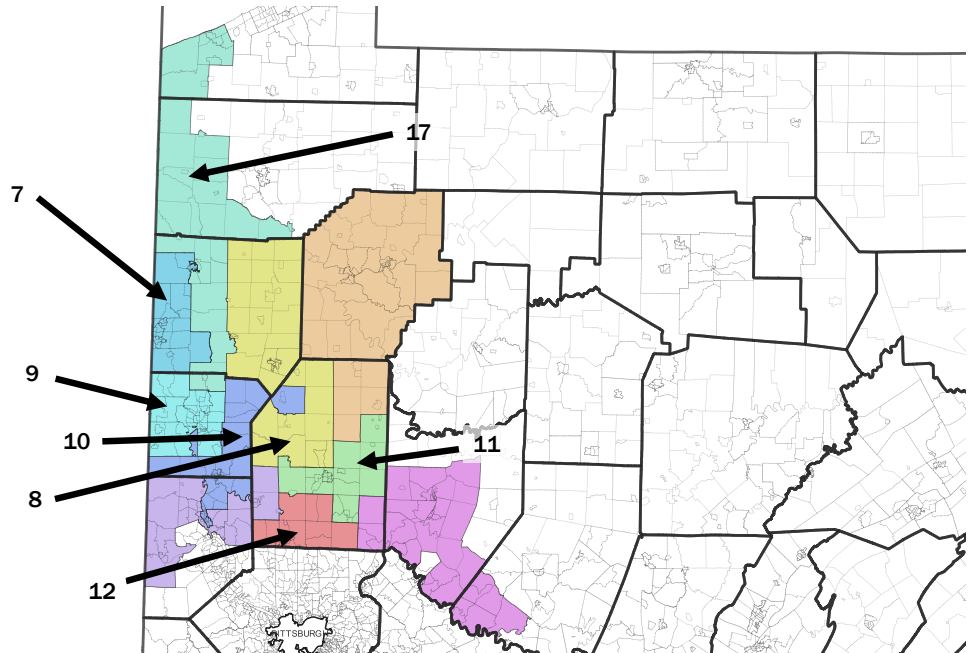
- Moving north to the area of Butler, Lawrence and Mercer Counties, I first need to show you what a "mapping mess" this region is in the map that was enacted ten years ago. Butler County is an area that has experienced strong growth and is perfectly sized for three full House districts. However, under the 2012 plan, Butler County was divided into seven House districts, with only two of those representatives living within the County. Similarly, Mercer and Lawrence Counties together are perfectly sized for three full House districts. However, under the 2012 plan, those two counties were divided into five districts and partial districts, including a district that stretches from Lawrence County through Mercer, Crawford and Erie Counties to Lake Erie.
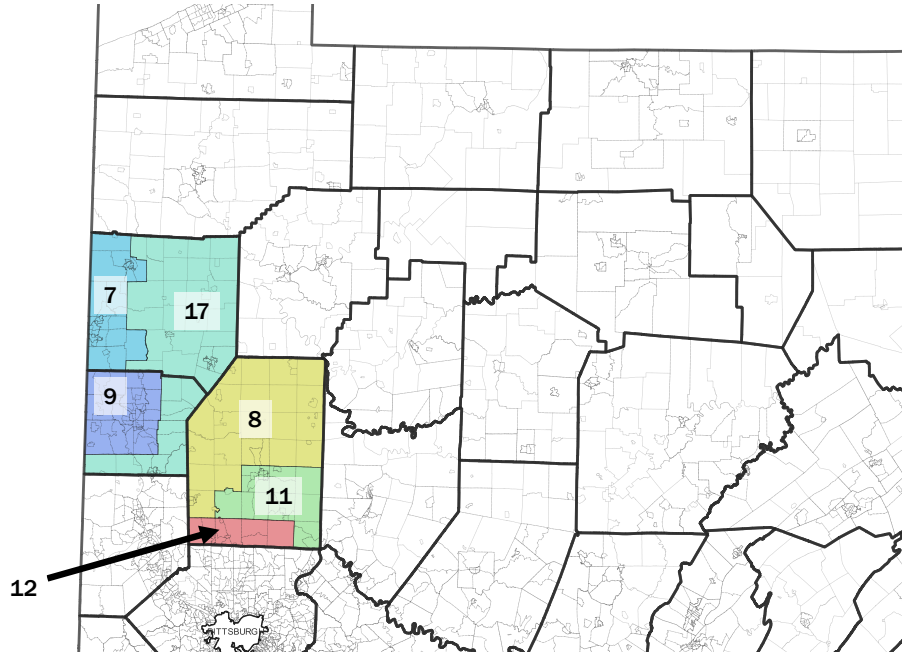
In our preliminary plan, we treated Butler County alone and treated Lawrence and Mercer together as a two-county unit and made maps accordingly. However, after the preliminary map was released, we did begin to receive comments explaining that there were communities of interest that crossed county lines in that region and, with the encouragement and help of the Republican caucus leadership, we ultimately treated the area as a three-county unit, producing this map and eliminating another pairing of Republican incumbents.
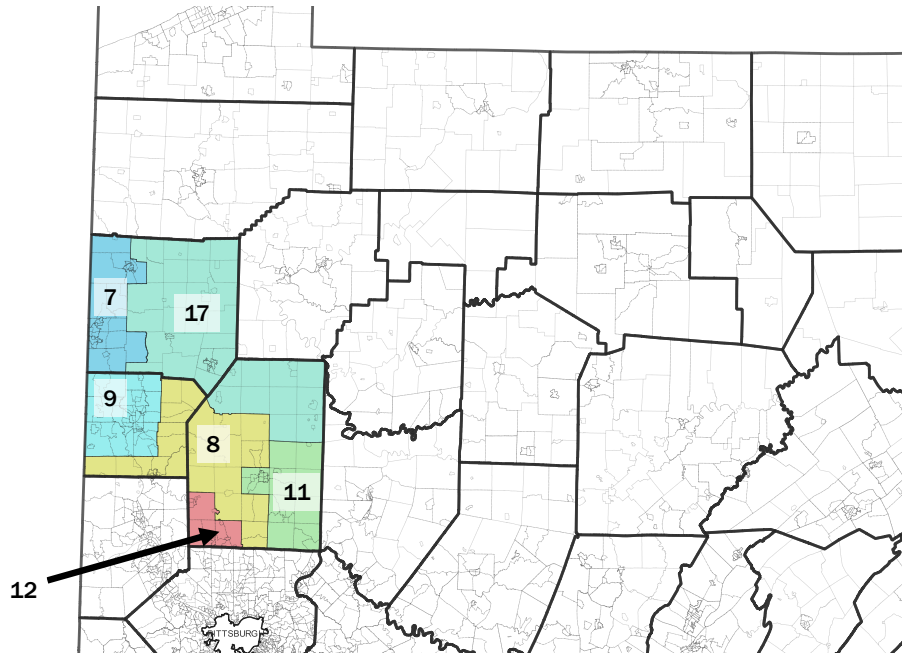
I hope this conveys some sense that this was a thoughtful process, not an exercise in targeting incumbents of either party. To summarize where we stand on the pairings of Republican incumbents, there are some pairings that were suggested to us because one incumbent of the pair has announced plans to retire. Putting those to the side, there are at most three sets of Republican incumbents paired against each other in the House map that is being advanced as our final plan – which, given the size of the House, by most standards, certainly is not out-of-line.

Community Impact

Beyond being responsive to incumbent pairings, we also were attentive to expressed community needs. Perhaps the most easily understood example of that part of the process can be traced to hearings held by the House Republican caucus in

McCandless and Mechanicsburg, as a way of highlighting their opposition to the splits in those communities and others in the preliminary plan. Those hearings, quite predictably, generated citizen comments directed to those issues.

Among them was a request for information from a North Allegheny High School student who was writing an article for her school newspaper about the splits of the Town of McCandless and the North Allegheny School District. She did not realize that, when I was her age, I lived in McCandless Township and attended North Allegheny. And I am sad to say that while we were able to cure the municipality split, the final plan could not make the school district whole.

So, we eliminated the McCandless and Mechanicsburg splits, as well as some of the other municipal splits in our preliminary plan. Other examples include Moon, Murrysville and Horsham, all of which had been the subject of comment. But what everyone needs to understand about this process is that when a cut is eliminated in one municipality, it most often is just moved to another municipality. As I noted earlier, there are 2,560 municipalities in Pennsylvania and inevitably some will need to be split.

Statistical Unfairness

The effort of the House Republican caucus to discredit the Commission's preliminary plan rested heavily on the report and

testimony of the only witness they presented during the hearing devoted to expert witnesses. The two main themes of his testimony were the use of statistical simulations in an attempt to establish that our plan was an unfair partisan gerrymander and the offering of general and unsupported conclusions about the dilution of the voting influence of minority groups.

A half-century ago, I was a math major, but I claim no expertise in statistical simulations. A quarter-century ago, I taught courses in civil procedure, evidence and trial advocacy, each of which dealt with the qualifications and testimony of expert witnesses, but that work, too, is dated and I would not claim any current expertise.

However, I have decades of distinctive experience that is directly relevant to this particular dimension of the Commission's work – for much of my career, one of my most important responsibilities was to review the academic work of faculty members -- at all levels and across all disciplines, in one of this country's leading research universities -- in connection with such important professional decisions as recruitment, promotion, the award of tenure, and elevation to the ranks of distinguished faculty.

When I reviewed the resume of the young faculty member called as an expert by the House Republican caucus, there were positive features of his record that stood out, including the fact that he has written articles in areas of interest to me. However,

what really caught my attention is that this academic expert has not published a single academic article in the areas for which his expert testimony was being presented.

Contrast that with the truly amazing record of Prof. Kosuke Imai, who was the House Democrats' first witness and is regarded by many to be the world's leading quantitative political scientist. He was on the Princeton faculty for fifteen years, where he was the founder of its Program in Statistics and Machine Learning. He now is at Harvard, where he is the first faculty member in that university's history to hold appointments in both the Department of Government and the Department of Statistics. Not only does he have an outstanding publication record in the field that was the subject of his testimony, but he actually developed the algorithm used by the House Republicans' witness to analyze our preliminary plan.

Prof. Imai found three things when he analyzed the study that was conducted by the House Republicans' witness: (1) he could not replicate the results, which raises questions; (2) when he used the algorithm that he had developed to assess the preliminary plan himself, he found that plan to be less of a statistical outlier than the House Republicans had claimed; and (3) that became even more true when he factored in racial data. In fact, he concluded that when "majority-minority districts are considered, there is no empirical evidence that the preliminary plan is a partisan gerrymander."

Also called by the House Democrats was Prof. Christopher Warshaw, a faculty member from the George Washington University Department of Political Science, who also held an appointment at MIT. Prof. Warshaw is a Pennsylvania native whose expert opinion was cited by the Pennsylvania Supreme Court in the 2018 League of Women Voters case. He has published papers directly related to his testimony and also is a member of the Advisory Board of Plan Score. His three conclusions about the Preliminary Plan all were very positive. This is what he said:

- The plan is likely to be responsive to shifts in voter preferences;
- On this plan, the party that wins the majority of the votes is likely to usually win the majority of the seats; and
- Based on three methods of projecting future elections and four different, generally accepted partisan bias metrics, I find that the plan is fair, with just a small pro-Republican bias.

John Nagle, a professor emeritus from Carnegie Mellon University, had appeared as a citizen-witness at one of our earlier hearings and returned in that role in January. Dr. Nagle was a professor of physics and the biological sciences at Carnegie Mellon and used statistical simulations extensively in his work. Interestingly, though this was not his original field, he now has published four directly relevant papers in *Election Law,* a top-ranked, peer-reviewed political science journal. He also

has invented two of the partisan bias metrics used by Dave's Redistricting App.

In addition to his more scientific observations, Dr. Nagle offered a down-to-earth, but thought-provoking, perspective on the methods employed by the House Republicans' witness. To quote: "The fallacy of averaging the ensemble of simulations can be revealed by an analogy. A professional basketball coach could consider 1,000 people who know how to play the game and then randomly choose an average one to play center. That is like choosing a plan from many simulated plans in the middle of the ensemble of simulated plans. Or the coach could hire Lebron James. That is like picking the LRC proposed plan."

The Use of Racial Data

At the very beginning of his report, the House Republicans' witness declared that his "simulation process ignores all . . . racial considerations when drawing districts."   That is a puzzling choice, since, under certain circumstances, the Commission is <u>required</u> to take account of racial considerations and in a broader set of circumstances is <u>permitted</u> to do so. Presumably, that is why Prof. Imai included such data in his simulations.

Neither the fact that his simulations included no racial data nor the fact that this is another area in which he has no academic publications to his credit kept the House Republicans' witness from basing much of his analysis on the sweeping theme that, if minority-group voters are spread across multiple legislative

districts, their influence is inevitably diluted. Of course, all of us know that voter-influence can be diluted either by cracking or by packing and, under the law, knowing where the correct balance can be struck requires an intensive local appraisal, which the Republicans' witness did not perform.

To conduct such an analysis, the House Democrats retained Dr. Matt Barreto, one of the country's leading scholars of Latino politics and of the Voting Rights Act. Prof. Barreto is a faculty member with appointments in both Political Science & Chicana / Chicano Studies at UCLA, where he also is the Faculty Director of the UCLA Voting Rights Project. In analyzing the 2012 House map that currently is in place, Dr. Barreto said this:

- Multiple Black-performing and Latino-performing districts are packed and exhibit wasted Minority votes, which results in vote-dilution; and
- Given growth of the Minority population in certain regions of the state, it is clear that existing Minority districts should be unpacked and that new Minority-performing districts [should be] created to comply with the [Voting Rights Act] VRA.

In analyzing this Commission's preliminary plan, Dr. Baretto concluded, "Minority-performing districts in the preliminary plan will perform for minority voters." That, of course, was very important to us because, as I said when the Commission approved the preliminary plan, "This plan includes seven minority opportunity districts – true VRA districts, minority

influence districts, and coalition districts – in which there is not an incumbent, creating special opportunities" for the election of minority-preferred candidates.

I probably should add, for the record, that the House Republican caucus did belatedly offer the written report of a second expert who took issue with some of Prof. Baretto's work. However, even though they had earlier identified this expert as a witness they did not deliver his report as scheduled or make that witness available for questioning by the Commission, but Prof. Baretto did offer his own powerful and persuasive reply.

The Commission's efforts to create these districts also were hailed by those who probably have the best-informed insights – the three Latino members of the current House of Representatives and the leadership of the Pennsylvania Legislative Black Caucus, which has served, since 1973, as "an information and advocacy vehicle to advance the interests of African American, Latino, and other people of color of the Commonwealth of Pennsylvania."

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House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

January 14, 2022

Pennsylvania Legislative Reapportionment Commission
209 Irvis Office Building
Harrisburg, PA 17120

Dear members of the Legislative Reapportionment Commission,

Since the approval of the preliminary plan for Pennsylvania's state House of Representatives on December 16, 2021, there has been a significant amount of discussion about how this map impacts communities of color across the Commonwealth. As Latino members of the House we feel compelled to address these important concerns.

We applaud the work that you have done to ensure these communities, which have been underrepresented in the legislature for far too long, are fairly represented.

As you know, since the 2010 Census, while the population of White Pennsylvanians declined by 500,000 people, the Latino population grew by 45.85% or 329,955 people. This is a seismic shift in the racial composition of the Commonwealth, with people of color now making up nearly a quarter of the overall population.

The LRC's Preliminary House Plan is responsive to this growth of the Latino population in many important ways. Statewide, this plan creates nine districts in which Latino communities should be able to elect their candidates of choice. Three of those districts will be open seats with no incumbent member, meaning a Latino candidate of choice would not need to overcome the power of incumbency in order to be elected.

In the last decade, all population growth in Lancaster County occurred in communities of color, and today 11% of Lancaster County is Latino. This growth is reflected in the map by moving a House District from southwestern Pennsylvania, where population was lost, to Lancaster City. As proposed, this House District will have a minority population of 50%, nearly 33% of which identifies as Latino, and no incumbent member. This district is a clear opportunity for the Latino community to gain representation.

In Reading, the Latino population grew by more than 25% since 2010 and now makes up 68% of the city's total population. The preliminary plan for the House unpacks the Latino population in House Districts 126 and 127 and increases the Latino population in House District 129 to more than 35%. The effect of these changes is that the Latino community in Berks County will now have three opportunities to elect candidates of choice.

This is some of what Representatives Danillo Burgos, Angel Cruz and Manuel Guzman said in their letter to the Commission:

"Since the approval of the preliminary plan for Pennsylvania's state House of Representatives on December 16, 2021, there has been a significant amount of discussion about how this map impacts communities of color across the Commonwealth. As Latino members of the House we feel compelled to address these important concerns.

"We applaud the work that you have done to ensure these communities, which have been underrepresented in the legislature for far too long, are fairly represented. . . .

"The LRC's Preliminary Plan is responsive to [the] growth of the Latino population in many important ways. Statewide, this plan creates nine districts in which Latino communities should be

able to elect their candidates of choice. Three of those districts will be open seats with no incumbent member, meaning a Latino candidate of choice would not need to overcome the power of incumbency in order to be elected. . . .

" . . .Latino representation is lacking in Pennsylvania, particularly when you consider the growth that has occurred across Pennsylvania over the last decade. The Preliminary Plan for House Districts makes major strides in correcting this injustice and restoring fairness in representation in Pennsylvania. As Latino members of the House, we embrace the goal of the LRC and applaud their work. We look forward to serving in a more diverse legislature."

Representative Donna Bullock, the Chair of the Pennsylvania Legislative Black Caucus, sent a letter that, though addressed to

me, really was intended for the entire Commission. Let me quote briefly from it.

"I have watched the reapportionment process closely. I am truly impressed by the process . . . and the commitment to fairness and transparency that you have demonstrated in the creation of a preliminary map. I am pleased to fully endorse this preliminary plan [as] responsive to the growth of communities of color across the Commonwealth.

"As many have noted, statewide the number of Pennsylvanians who identify as Black, Hispanic, Asian or multi-racial increased by more than 800,000 since the last census, while the White population decreased by more than 540,000. . . .

"In addition to preserving and expanding districts in which a racial minority group makes up the majority of the population, the preliminary plan takes the important step of including coalition districts.

"These districts, in which diverse communities of color make up a majority or plurality of the population, recognize the commonalties of Black, Latino, Asian and Indigenous Pennsylvanians and will allow these communities to fully realize their political power. . . .

"I want to thank you . . . for your tireless efforts in the redistricting-cycle and for recognizing that the diversity of this Commonwealth is a strength. Your efforts have led to a plan that will uplift – rather than dilute – our voices."
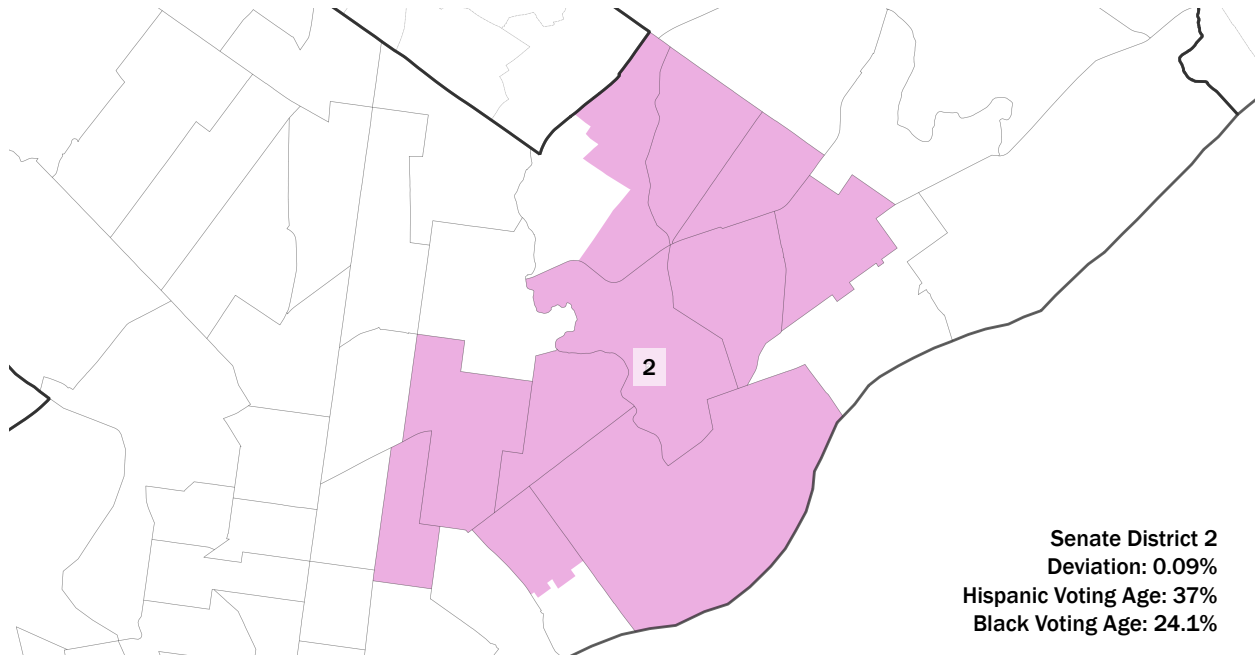
The Senate Map

Similar efforts were undertaken in our work on the Senate map. Because Senate districts are so much larger, though, that process is far more challenging.

Our preliminary Senate map included the foundation for what was an inspiring idea advanced by Majority Leader Ward – moving a district into the Lehigh Valley to create a Hispanic-influence district there. To maximize the Hispanic population in that district would have required stretching the district from Allentown in Lehigh County to include Bethlehem and other communities in Northampton County. Taking that step drew questions and criticisms from the involved communities, from elected officials and from some good-governance groups, so we decided not to take that step now.

Senate District 14
Deviation: 2.78%
Hispanic Voting Age: 26.4%
Black Voting Age: 6.4%
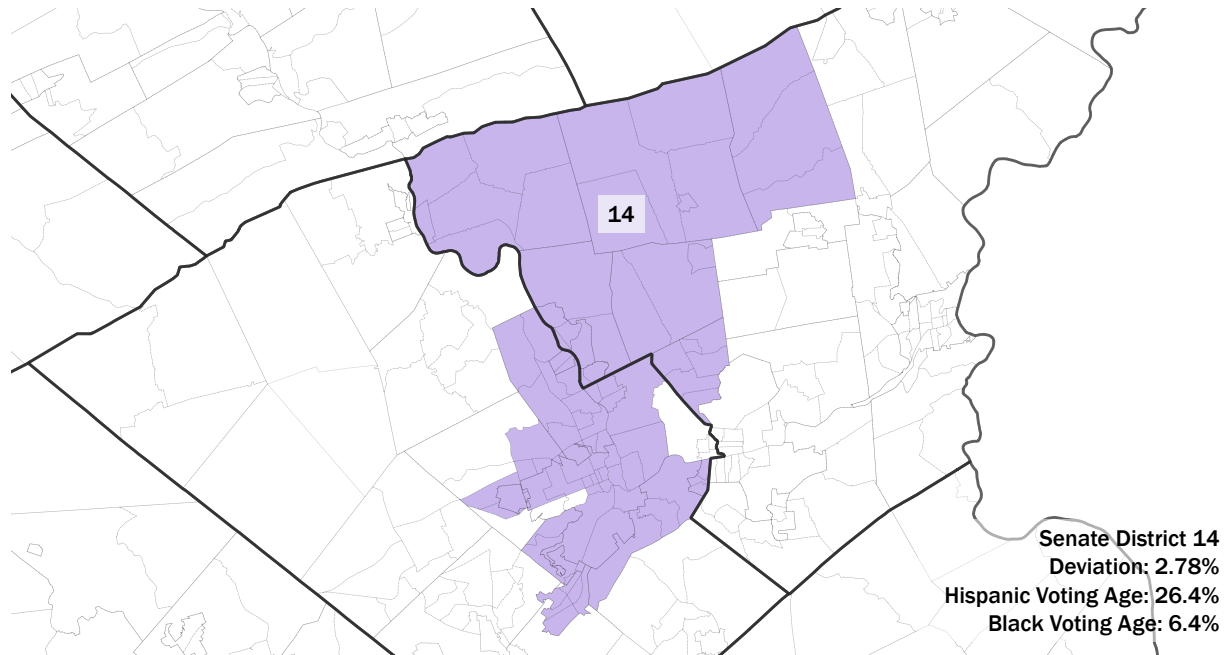
However, our new Senate District 14 does already present opportunities for influence. Its Hispanic voting age population is 26.37%, and its Black voting age population is 6.37%. From population growth trends, state-wide and in that region, those numbers will only continue to grow. Consistent with our efforts in the House, it also is a district with no incumbent.

Senate District 2
Deviation: 0.09%
Hispanic Voting Age: 37%
Black Voting Age: 24.1%

The most dramatic change in the Senate map, since our approval of the preliminary plan, is the creation of a new Hispanic-influence District in Philadelphia. District 2 has a Hispanic voting age population of 36.75% and a Black voting age population of 24.1%.

Conclusion

Because the Super Bowl is coming soon, I thought it might be appropriate to close with a quote from Vince Lombardi – the late, legendary Hall of Fame coach and the person after whom the Super Bowl trophy is named. Coach Lombardi said, "Perfection is not attainable, but if we chase perfection, we can catch excellence."

As has been said before, there is no such thing as a perfect map. There also is no such thing as a perfect process. What I can say, though, is that no one involved in this effort just wanted to get the job done. Instead, we wanted to do the job well, and I believe we have succeeded. By virtually any measure these are very good maps that are fair, that responsive to the requirements of the law, and that will serve the people of Pennsylvania well for the next ten years.