

Howard Wiener

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My name is Howard Wiener, I live in Philadelphia, and I am speaking on behalf of myself and CCFD, a nonpartisan think tank whose goal is to end partisan gerrymandering. A few other CCFD members will be addressing the LRC today, but we've worked together so that, to avoid redundancy, we each will talk about different aspects of gerrymandering and the LRC's responsibility or job, that is, to draw a state legislative district map. I'm a retired federal prosecutor, so I will focus on the legal aspects of the LRC's job. First, we believe the polestar for the LRC's job is the PA Supreme Court 2018 decision in the LWV case. CCFD participated in that case as an amicus, and we submitted a map similar to the one the Court ultimately approved. My presentation relies heavily on what the Supreme Court said in that opinion. You are welcome to ask me at any time for the page citations in the opinion that support anything I say today. Although that case dealt with Congressional redistricting, we believe the Supreme Court's ruling applies equally to both Congressional and state legislative redistricting. The ruling is based on a PA Constitutional provision, the Free and Equal Elections Clause (FEEC), so it applies to all PA residents and institutions, including the state legislature and the LRC. Therefore, the ruling should apply to both types of redistricting. And therefore, we urge the LRC to use that ruling as the basis for its actions. That ruling basically adopted objective neutral criteria. It stated that the Constitution requires districts to be compact and contiguous, with minimal division of political subdivisions unless necessary to ensure equal population. The exact formulation of the Court's criteria is set forth on page 123 of its opinion and its accompanying Order. It is clear and concise. Therefore, we urge the LRC to use and apply it. Significantly, the Court said: any other factors are wholly subordinate to these neutral criteria. If these primary neutral criteria are utilized, then there cannot possibly be partisan intent in the creation of the map. And the map that results likely will not result in a partisan effect. The best way to eliminate the possibility of partisan intent is to explicitly adopt and apply these neutral criteria. Furthermore, such objective criteria also provide a judicially manageable standard. Our group has devoted much time to developing a specific and explicit methodology to apply and implement the Court's neutral criteria. We both use the same criteria. But our methodology utilizes a simple step by step approach to drawing a map. If and when our methodology is applied, the resulting map will satisfy these criteria. And applying our methodology will essentially eliminate any opportunity for partisan gerrymandering. We already have sent a short memo detailing our methodology to the LRC, and we intend to submit it again to the LRC to make it a permanent part of the record of its proceedings. Judicial Scrutiny Most importantly, it is self-evident that the map the LRC devises can and likely will be contested in the PA Supreme Court. Not only is the Supreme Court authorized to consider a challenge to the LRC's map, the Court made it clear that it will intervene in the redistricting process whenever that process goes off the rails. It is in the interest of the LRC, the legislature, and the public for the LRC's map to pass judicial scrutiny. Respectfully, there is no point to serving as a member of a public commission that a court someday rules operated in a partisan fashion. The best way to avoid an adverse judicial ruling is for the LRC to both (a) explicitly adopt the Supreme Court's criteria and our group's methodology into the report it eventually publishes along with its legislative map, and (b) explicitly apply our methodology. That way, the Court will be able to clearly see what the LRC has done. The LRC's process will be transparent. It will be much easier for you, the members of the LRC, to defend your map before the Court. The Court will want to know the basis for the LRC's map, that is, both the criteria and methodology it utilized and whether and how it applied that methodology. And the Court will more likely approve your map if it views that map as based on clear, judicially manageable standards that were implemented in a nonpartisan fashion. The bottom line: we respectfully

ask you to ask yourselves the following: What is the point in devoting hours of effort to creating a map, only to have the PA Supreme Court throw it out? Thank you for your attention and for giving me the opportunity to speak.