

# Amanda Holt Testimony 4/24/2018

In June 2011, I testified before the State Government Committee regarding congressional districts. It is an honor to nearly 7 years later be once again before the State Government Committee providing testimony related to redistricting.

My 2011 testimonies included detailed information on how the constitution might be followed and provided multiple statewide map illustrations for each chamber. With great persistence, I pursued my redistricting concerns all the way to the Pennsylvania Supreme Court and won in 2012!

Justice Castile, in the majority opinion, praised the strength of the proof presented to the court. He said: "Indeed, the proof is strong enough that we view it as inconceivable . . . that the magnitude of the subdivision splits here was unavoidable.

After this victory, a second set of maps were drawn. My second challenge against these revised maps failed in 2013. Ultimately, the flaws in the State Senate and State House maps **adversely impacted over 7 million people** (more than 50% of the state population). As you are aware from the last hearing, Berks County is among those which found more districts did not equate to better representation.

The renewed interest this past year provided another opportunity to discuss redistricting concerns. While there was no public hearing, I still published analysis of the decision and maps. I also demonstrated with my own maps how **traditional redistricting principles continue to be ignored.**

In the last 7 years and thousands of hours I've spent engaging in redistricting, I've asked a question many of you are likely asking today: **how does the legislature restore public trust and integrity to the redistricting process?**

The answer is critical to protecting the voice of the people, to addressing overreaches in government, and to ensuring the rule of law prevails. It is essential to preserving our free government.

Today, I seek to begin a redistricting conversation with the Senate State Government Committee, which I hope will continue past this hearing.

## Who draws the maps?

As this committee is aware, currently legislatures and commissions do not actually draw legislative district maps. They give instructions to another person(s) regarding how the maps should be drawn.

Take for instance the Vieth case, in the testimony provided it was clear the legislature did not draw the map but Dr. John Memmi did under the instructions of his supervisors (<https://law.justia.com/cases/federal/district-courts/FSupp2/195/672/2485298/>).

Everyone knows the Pennsylvania Supreme Court did not actually draw their maps, Nathaniel Persily did under their instructions. This committee understands that even the members of the Legislative Reapportionment Commission do not literally draw maps, they have staff performing this task.

Yet when criticisms are made of the process, it is generally not the map drawer that is the subject of discussion, but those providing the instructions to the person(s) drawing the map. **The matter of greatest concern is then not the person drawing the maps, but the instructions they are given.**

So then essentially, these instructions are the criteria used to create legislative district maps. Because the current criteria at best is broad and vague, it opens the door to at least 531 discretionary instructions to the map drawer.

This means measurable standards are of paramount importance. They protect any semblance of integrity in the process and determine if and how to hold accountable the map drawer as well as those providing instructions, whether a citizen commission or legislative process.

## **Review of Senate Bills: Commissions**

After researching and reviewing state constitutions and statutes, extensive case law, what has happened both in Pennsylvania and other states, it is my opinion that there are shortcomings in the bills currently being presented to your committee.

### **Is it impossible to legislate impartiality?**

- Everyone is capable of bias.
- By what formula might you identify members who will set aside their bias and behave impartially? I can think of no formula.

### **Is it impossible to legislate partisan balance?**

- If they are not an elected official, there is no record (through their votes) of their commitment to their party or stand on issues.
- People do not always register with the party that reflects their voting preferences or political ideology. For instance:
  - They register with a particular party to have a voice in the primary (especially in areas where one party dominates -- like the Democratic Party in Philadelphia or the Republican Party in certain rural counties).
  - As a Judge of Election, I learned some are unaware their party registration.
  - Others remain registered with a party because of family loyalty.
- Voters not affiliated with a major party still have a political philosophy, which may favor one of the two major parties.

### **Are the timetables realistic or adequate?**

- In many of the proposals, there is little time for public comment to be incorporated into the map revisions.
- Little time is left for maps to be reviewed by courts and a remanded map developed if the final map is found unconstitutional.

## **Suggested Map Drawing Criteria**

When our Commonwealth receives a reputation as having some of the worst gerrymandered legislative districts in the nation, public trust reaches an all-time low. When obvious district manipulations are given a pass, the integrity of the whole system comes into question.

None of the proposed bills really address the root cause of this redistricting quandary – the truth from James Madison that all are susceptible to bias, self-interest, and manipulation (see page 7). While

shifting the map-drawing power to a group which is not dependent on the districts for their livelihood is worth considering, it still fails to address the human element which started this conversation.

Why settle for a proposal which leaves the voice of the people so blatantly open to be preyed on by human nature? Why leave in place a process which requires extreme and egregious visual examples before the people may receive a remedy?

My experience in the past 7 years as a redistricting enthusiast suggests the best criteria would be limited, specific, and clearly measurable. I share why this is critical on my video "The Most Important Redistricting Standard" (view at <http://amandae.com/april Exhibits>).

Benefits of a measurable standard is it protects the voice of the people from those who might try and manipulate it. The consequence of no measurable standard is no accountability, which I discuss in my video "Redistricting: Deconstruction of a Map" (view at <http://amandae.com/april Exhibits>).

#### **State:**

1. Equality: The districts must be as equal as practicable, meaning at or within an overall range of deviation of 10 percent. A lower overall range of deviation shall not be used unless doing so would not cause any additional political subdivision to be divided.
2. Except where necessary to meet the equal population requirements of Section 1, no county, municipality, or ward shall be divided in forming a Senate or Representative district.
  - a. Divisions to counties and municipalities should be avoided whenever possible. The number of counties and municipalities in more than one district shall be as small as possible.
  - b. If it is necessary to break a municipal line, the number of wards contained in more than one district should be the smallest number possible.
3. No voting precinct may be divided in forming a Senate or Representative district.

#### **Congressional:**

1. Equality: The districts must be as equal as practicable, meaning to the greatest extent possible with an overall range of deviation at or approaching zero percent.
  - a. Any deviation from the ideal population of a district must be used to the extent necessary to keep political subdivisions whole as provided for in sections 2 and 3.
2. No municipality shall be divided in forming a congressional district unless it exceeds the size of a congressional district, in which case:
  - a. No voting precinct may be divided
  - b. All wards must remain whole to the extent possible (meaning the number of wards contained in more than one district should be the smallest number possible).
3. Whole counties should be in the same congressional district to the extent possible while achieving population equality. Congressional district lines shall break the fewest county boundaries possible.

## **The Need for a Measurable Standard: Amanda Holt's Testimony, 3/27/18**

The legislation before you proposes to take the map drawing power away from the legislature and place it in the hands of citizens. But I ask you: how would this change improve the checks and balances in redistricting?

James Madison noted in 1788 how **human nature leads to abuses in government**:

“What is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself.”

The founders acknowledged the **need for controls in government** by creating a system of checks and balances. These controls were not only through a separation of powers, but also through the laws they enacted. They referred to the absence of these checks and balances as tyranny, usurpation, and the end of free government.

So, when it comes to redistricting, **how are the checks and balances working?** Do those involved have a sufficient legal obligation to control their actions in the redistricting process?

Some are concerned the legislature overstepped its bounds in drawing the 2011 congressional map. Others are concerned that the Pennsylvania Supreme Court overstepped its bounds in finding the map unconstitutional and in how it provided for a remedy. All of these concerns point to the same missing piece in the redistricting process – the **absence of a clear and measurable standard**.

And this is a significant shortcoming in the legislation before you. Citizens, like politicians, are people too. So where is the obligation for the map drawers to control their actions?

Other states have proven a **measurable standard is a win for both legislators and citizens**. They protect map drawers who adhere to the standard from a court challenge. But the measurable rule also protects the people by allowing them to hold accountable map drawers who violate the standard.

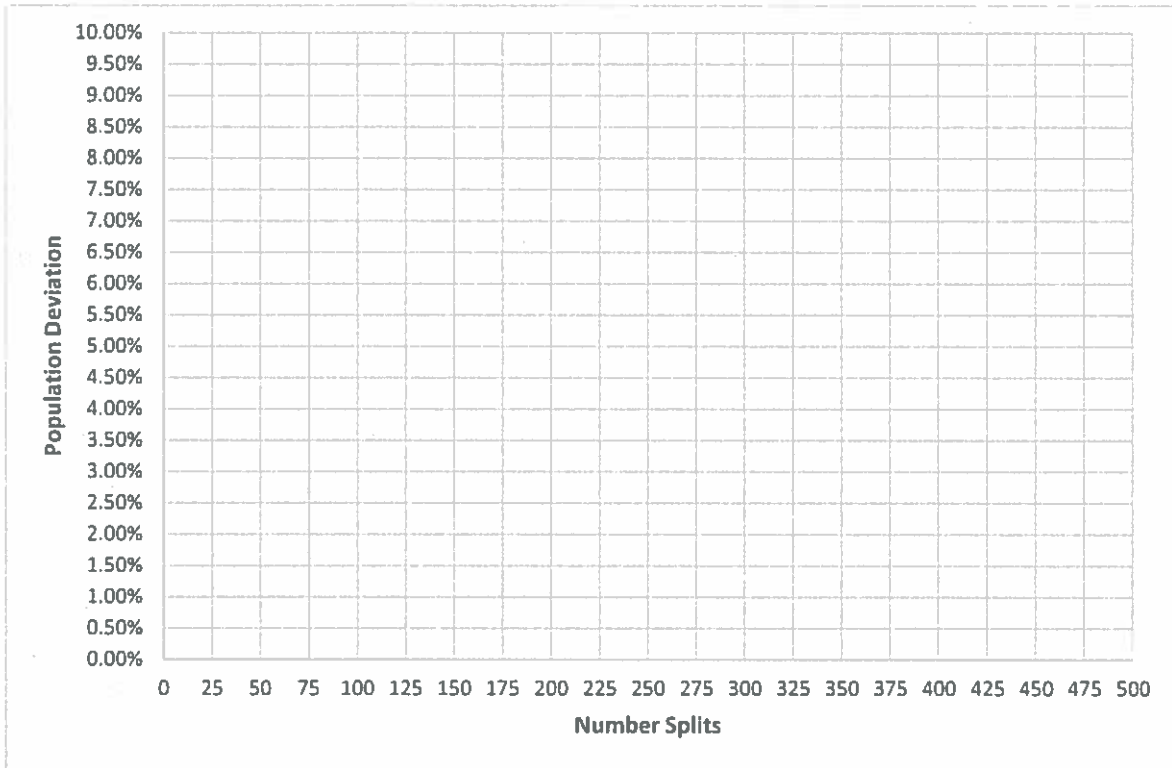
I urge you to first **address the underlying, more fundamental flaw** exposed in redistricting in recent times before turning your attention to other reforms. If the same flawed redistricting process is handed off to another body, what has been gained?

It is up to each one of you to promote good governance. Will you take the advice of James Madison and other founders by inserting a redistricting control which map drawers will be obliged to follow? Or will you leave the redistricting process without adequate checks and balances, exposing the people to tyranny, usurpation, and the end of free government?

I ask you to set aside self-interest and personal ambition. I ask you to follow the example of the great founders of our nation and commonwealth. I ask you to choose to defend the people and their voice in your decision on this important topic.

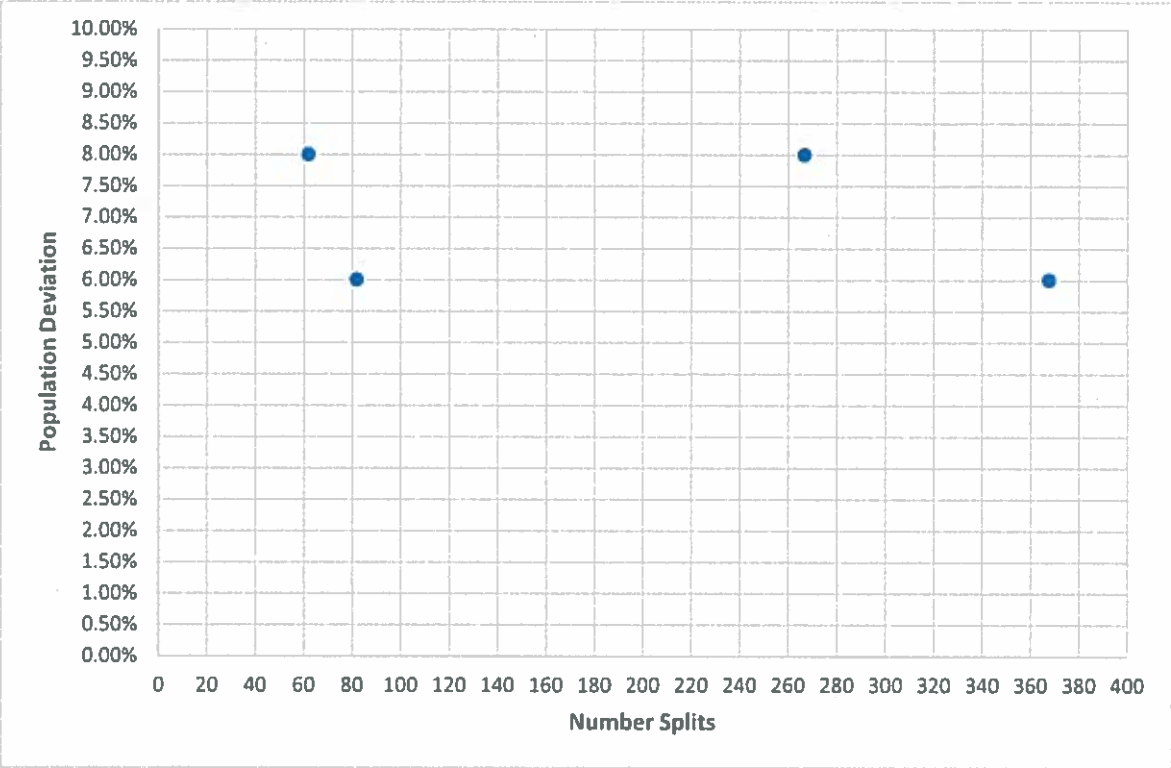
## Illustration of Need for Standard

Think of map drawing like placing a dot on a grid. Where will the dot go on this grid?



Now, how would another person determine if your dot was placed in an allowable location?

How would you decide which dot is in the constitutional place?



What if the rule was the dot had to be on at 8% and as close to 0 as possible? Which dot would be allowable?

Current laws allow the dot to be placed almost anywhere, making accountability difficult.

# Reference Materials

## Review of Senate Bills: Map Criteria

**Do the proposals eliminate existing loopholes which hinder and prevent accountability?** The two bills which include map-drawing criteria (SB 243 and SB 767) fall short of being a limiting and enforceable standard. Generally speaking, SB 767 includes standards more limited and defined than SB 243.

- Population equality:
  - SB 243
    - Congressional wording is flexible (which is good) but also fails to make it clear which criteria are acceptable reasons to use flexibility.
    - Legislative: why use a lower standard than allowed under federal law? Federally, 10% is acceptable without review, and even higher deviations might be allowed with appropriate state justification.
  - SB 767 – How will “otherwise allowed by law” be interpreted? Under federal case law, population deviations of over 3,000 persons was allowed in 2012. Based on this wording, what are acceptable reasons to deviate? I do not see keeping counties/municipalities whole among those reasons.
- Compactness:
  - SB 243 – How will it be known what ideal measurement is reasonable given the geographic confines of the state? A specific measurement will create divisions not required for any other reason.
  - SB 767 – attempts to avoid this by remaining vague on measurement (“to the extent possible”) and making it clearly secondary to other criteria (for instance, splits are not allowed to create compact district). A better approach.
- Federal rules / VRA:
  - SB 243 – silent
  - SB 767 – How has case law indicated VRA considerations should be considered in redistricting? Race-conscious redistricting can be unconstitutional (Shaw v. Reno 1993 and Miller v. Johnson 1995). How might the legislation avoid making race the primary consideration and instead keep the neutral redistricting principle of respecting local government boundaries predominant?
- Respect local government boundaries:
  - SB 243
    - How does it define absolute necessity (the term courts have found ambiguous)? It does not.
    - While requiring rationale for the divisions, where is the legal measurement for determining if the rationale is sound?
    - It does require voting precincts remain whole, which is excellent.
  - SB 767
    - How will courts interpret “to the extent possible”? I believe the definition offered in the subsequent point (which references “fewest number possible”) points to a numeric minimum. But does it need to protect against a map drawer who excessively splits one county to avoid any splits in a neighboring county?
    - Doesn’t the phrase “this section” then include the point on compactness? I do not believe this is the intent.
    - Where are the requirements for certain types of places to remain whole? For instance, voting precincts or municipalities.

## Cases of Interest

*Cases where state districts were overturned for failure to create map with fewest splits possible or upheld for having created fewest splits possible*

<http://www.ncsl.org/research/redistricting/redistricting-case-summaries-2010-present.aspx>

From the cases below, it is clear an independent commission does not make redistricting problems go away. Independent Commissions have been found to draw maps that violated their state's constitution. It is proven measurable standards make it possible to hold accountable whoever draws the maps and protects those who draw constitutional maps.

- **Tennant v. Jefferson County, No. 11-1184, 567 U.S. \_\_\_\_ (Sep. 25, 2012)**
  - The Jefferson County Commission and residents of Jefferson County alleged that West Virginia's 2011 congressional plan violated the "one-person, one-vote" principle of Article I, § 2, of the U.S. Constitution. West Virginia created a redistricting plan that had a maximum population deviation of 0.79 percent (the variance between the smallest and largest districts). The State conceded that it could have made a plan with less deviation, but that other traditional redistricting principles such as not splitting counties, avoiding contests between incumbents, and preserving the cores of prior districts were legitimate state objectives. The district court held that "the State's asserted objectives did not justify the population variance." The U.S. Supreme Court held that the legislature did provide a sufficient record connecting the State's interests and the necessary deviation needed to sustain those interests. The court reversed and remanded the case to the district court.
- **Twin Falls County v. Idaho Comm'n on Redistricting, No. 39373, 2012, 271 P.3d 1202 (Idaho 2012).**
  - The Idaho Supreme Court interpreted the requirements of art. III, § 5, as being mandatory, thus holding that the only permissible reason to deviate from art. III, § 5, was to comply with the Equal Protection Clause, and only then to the smallest extent necessary. Because the commission had considered plans that split fewer counties and also complied with the Equal Protection Clause, the plan the commission ultimately adopted did not split as few counties as was practicable. Thus, the commission's plan violated the Idaho Constitution. The court directed the commission to reconvene and adopt new maps that complied with the mandates of both the federal and state constitutions.
- **In re Reapportionment of the Colo. Gen. Assembly, No. 11SA282, 332 P.3d 108 (Colo. Nov. 15, 2011).**
  - The commission's plan that the legislature ultimately adopted split several counties around Denver into multiple districts, claiming this was necessary to comply with the Voting Rights Act. The challengers to the maps said there was no evidence indicating a need to create majority-minority districts in either of the contested counties (Jefferson and Arapahoe), and thus the commission needlessly violated art. V, § 47(2)'s prohibition on minimizing the number of cities and towns with multiple districts. The Supreme Court held that the commission had not established a need to comply with the Voting Rights Act, and thus it improperly infringed on the commands of § 47(2). The districts were remanded to the commission to be redrawn correctly.



- **Legislative Research Commission v. Fischer, No. 2012-SC-000091 (Ky. Apr. 26, 2012)**
  - On appeal, the Kentucky Supreme Court noted that it had previously adopted a limit on population deviations of plus or minus 5 percent from the ideal, rather than the federal limit of 10 percent on the overall range of deviations. At least one district in each plan had a deviation of more than 5 percent, which was not saved by having other districts less than 5 percent. The court held that the Legislative Research Commission had not carried its burden of proving the excessive population deviation was a result of a consistently applied rational state policy. Since plaintiffs had demonstrated that fewer county splits and population deviations of no more than five percent could be achieved in both the House and Senate, the new maps adopted by the legislature in 2011 were unconstitutional.
- **Moore v State, 436 S.W. 3d 775 (Tenn. Ct. App. 2014)**
  - Article II, § 6 of the Tennessee Constitution prohibits splitting counties to form senatorial districts. In 2012, the General Assembly adopted a Senate redistricting plan splitting eight counties with an overall population range of 9.17 percent. Plaintiffs challenged the constitutionality of the plan based on county splitting and offered a plan that split five counties with an overall population range of 10.05 percent as a plan more compliant with the Tennessee Constitution. No plan splitting fewer counties with an overall population range under either 9.17 percent or 10 percent was offered as an alternative. Affirming summary judgment in favor of the state, the Tennessee Court of Appeals found that the state demonstrated that crossing county lines was necessary to best achieve population equality on balance with the state constitutional interests.
- **Bingham County v. Comm'n for Reapportionment, 2002 Opinion No. 30, 137 Idaho 870, 55 P.3d 863 (Idaho Mar. 1, 2002)**
  - On remand, the Commission adopted a new plan, L91, on January 8, 2002. The plan had an overall range of 11.79 percent and detailed Findings and Conclusions. The Court found that the rational state policies used by the commission—preserving whole counties and preserving traditional neighborhoods and communities of interest—were not applied consistently statewide. It also found that the plan violated the Idaho Constitution by dividing counties more than was necessary to meet equal-population requirements. Following the statutory policy of preserving traditional neighborhoods and communities did not justify violating the constitutional prohibition against splitting counties. The Court directed the Commission to reconvene and adopt a new legislative plan.
- **Bonneville County v. Ysursa, 2005 Opinion No. 138, 142 Idaho 464, 129 P.3d 1213 (Idaho Dec. 28, 2005)**
  - In March 2002, the Commission adopted plan L 97. The plan had a “maximum deviation” (overall range) of 9.71 percent. Various counties, voters, and state representatives challenged the plan as a violation of both the federal one person, one vote requirement and state constitutional and statutory requirements for the district-drawing process. The Supreme Court appointed a special master to develop a factual record. The special master submitted his report in September 2004. In December 2005, the Court rejected all challenges. It found that the underpopulation of districts in “north” Idaho did not discriminate against voters in not-“north” Idaho, since the population deviations were within tolerable limits and there was no evidence of an intent to discriminate against not-“north” Idaho. It found that the Commission had not abused its discretion in deciding which counties to split and in what ways in order to meet equal-population requirements.

## Measurable Criteria in Other States (selected highlights)

	Rule on Population	Rules on No Splits
<b>Colorado</b>	The state shall be divided into as many senatorial and representative districts as there are members of the senate and house of representatives respectively, each district in each house having a population as nearly equal as may be, as required by the constitution of the United States, but in no event shall there be more than five percent deviation between the most populous and the least populous district in each house. (Constitution)	Except when necessary to meet the equal population requirements of section 46, no part of one county shall be added to all or part of another county in forming districts. Within counties whose territory is contained in more than one district of the same house, the number of cities and towns whose territory is contained in more than one district of the same house shall be as small as possible. When county, city, or town boundaries are changed, adjustments, if any, in legislative districts shall be as prescribed by law. (Constitution)
<b>Idaho</b>	Districts shall be substantially equal in population and should seek to comply with all applicable federal standards and statutes. (Code)	<p>Division of counties should be avoided whenever possible. Counties should be divided into districts not wholly contained within that county only to the extent reasonably necessary to meet the requirements of the equal population principle. In the event that a county must be divided, the number of such divisions, per county, should be kept to a minimum. (Code)</p> <p>Division of counties should be avoided whenever possible. Counties should only be divided into districts not wholly contained within that county to meet the requirements of the equal population principle or the Voting Rights Act. Sometimes, it will be necessary to divide a county into districts not wholly contained within that county. The number of such divisions, per county, should be kept to a minimum. (1991 Instructions)</p>
<b>Kansas</b>	Districts should be numerically as equal in population as practical within the limitations of Census geography and application of guidelines set out below. Deviations should not exceed plus or minus 5 percent of the ideal population (Legislative State Committee Guideline)	<p>The integrity and priority of existing political subdivisions should be preserved to the extent possible [under the population guideline]. (Legislative State Committee Guideline)</p> <p>Congressional: Whole counties should be in the same congressional district to the extent possible while achieving population equality among districts.</p>
<b>Kentucky</b>		Counties should be used as district building blocks where possible, and to the extent consistent with other aspects of these criteria, recognizing that some counties will of necessity be split in order to achieve stated equality of population goals.

<b>Michigan (congressional)</b>	The constitutional guideline is that each congressional district shall achieve precise mathematical equality of population in each district. (Code)	<p>Congressional district lines shall break as few county boundaries as is reasonably possible. If it is necessary to break county lines to achieve equality of population between congressional districts as provided in subdivision (a), the number of people necessary to achieve population equality shall be shifted between the 2 districts affected by the shift.</p> <p>Congressional district lines shall break as few city and township boundaries as is reasonably possible. If it is necessary to break city or township lines to achieve equality of population between congressional districts as provided in subdivision (a), the number of people necessary to achieve population equality shall be shifted between the 2 districts affected by the shift. (Code)</p>
<b>Michigan (state)</b>	(d) Senate and house of representatives districts shall have a population not exceeding 105% and not less than 95% of the ideal district size for the senate or the house of representatives unless and until the United States supreme court establishes a different range of allowable population divergence for state legislative districts. (Code)	<p>(e) Senate and house of representatives district lines shall preserve county lines with the least cost to the principle of equality of population provided for in subdivision (d).</p> <p>(f) If it is necessary to break county lines to stay within the range of allowable population divergence provided for in subdivision (d), the fewest whole cities or whole townships necessary shall be shifted. Between 2 cities or townships, both of which will bring the districts into compliance with subdivisions (d) and (h), the city or township with the lesser population shall be shifted.</p> <p>(g) Within those counties to which there is apportioned more than 1 senate district or house of representatives district, district lines shall be drawn on city and township lines with the least cost to the principle of equality of population between election districts consistent with the maximum preservation of city and township lines and without exceeding the range of allowable divergence provided for in subdivision (d).</p> <p>(h) If it is necessary to break city or township lines to stay within the range of allowable divergence provided for in subdivision (d), the number of people necessary to achieve population equality shall be shifted between the 2 districts affected by the shift, except that in lieu of absolute equality the lines may be drawn along the closest street or comparable boundary.</p>
<b>Missouri</b>		<p>(1) does not divide counties, except in large metropolitan areas</p> <p>(2) does not divide cities, except in large metropolitan areas and except when cities are in more than one county (House Committee Guidelines)</p>

<p><b>Montana</b></p>	<p>The districts must be as equal as practicable, meaning to the greatest extent possible, within a plus or minus 1% relative deviation from the ideal population of a district as calculated from information provided by the federal decennial census. The relative deviation may be exceeded only when necessary to keep political subdivisions intact or to comply with the Voting Rights Act. (Code)</p> <p>Population equality and maximum population deviation. All legislative districts must be as nearly equal in population as is practicable within a maximum deviation of no more than plus or minus 5% from the ideal population (Guideline)</p>	<p>District boundaries must coincide with the boundaries of political subdivisions of the state to the greatest extent possible. The number of counties and cities divided among more than one district must be as small as possible. When there is a choice between dividing local political subdivisions, the more populous subdivisions must be divided before the less populous, unless the boundary is drawn along a county line that passes through a city. (Code)</p>
<p><b>Nebraska</b></p>	<p>Congressional: Population among districts shall be as nearly equal as practicable, that is, with an overall range of deviation at or approaching 0%. No plan will be considered which results in an overall range of deviation in excess of 1% or a relative deviation in excess of plus or minus 0.5%, based on the ideal district population. Any deviation from absolute equality of population must be necessary to the achievement of a legitimate state objective as that concept has been articulated by the United States Supreme Court. (Legislative Resolution)</p> <p>State: In establishing new legislative district boundaries, the Legislature shall create districts that are as nearly equal in population as may be. No plan will be considered which results in an overall range of deviation in excess of 10% or a relative deviation in excess of plus or minus 5%, based on the ideal district population. (Legislative Resolution)</p>	<p>District boundaries shall follow county lines whenever practicable and shall define districts that are compact and contiguous as these terms have been articulated by the United States Supreme Court. Should adherence to county lines cause a redistricting plan, or any aspect thereof, to be in violation of principles set forth by the United States Supreme Court in interpreting the United States Constitution, that requirement may be waived to the extent necessary to bring the plan or aspect of the plan into compliance with these principles. (Legislative Resolution)</p>