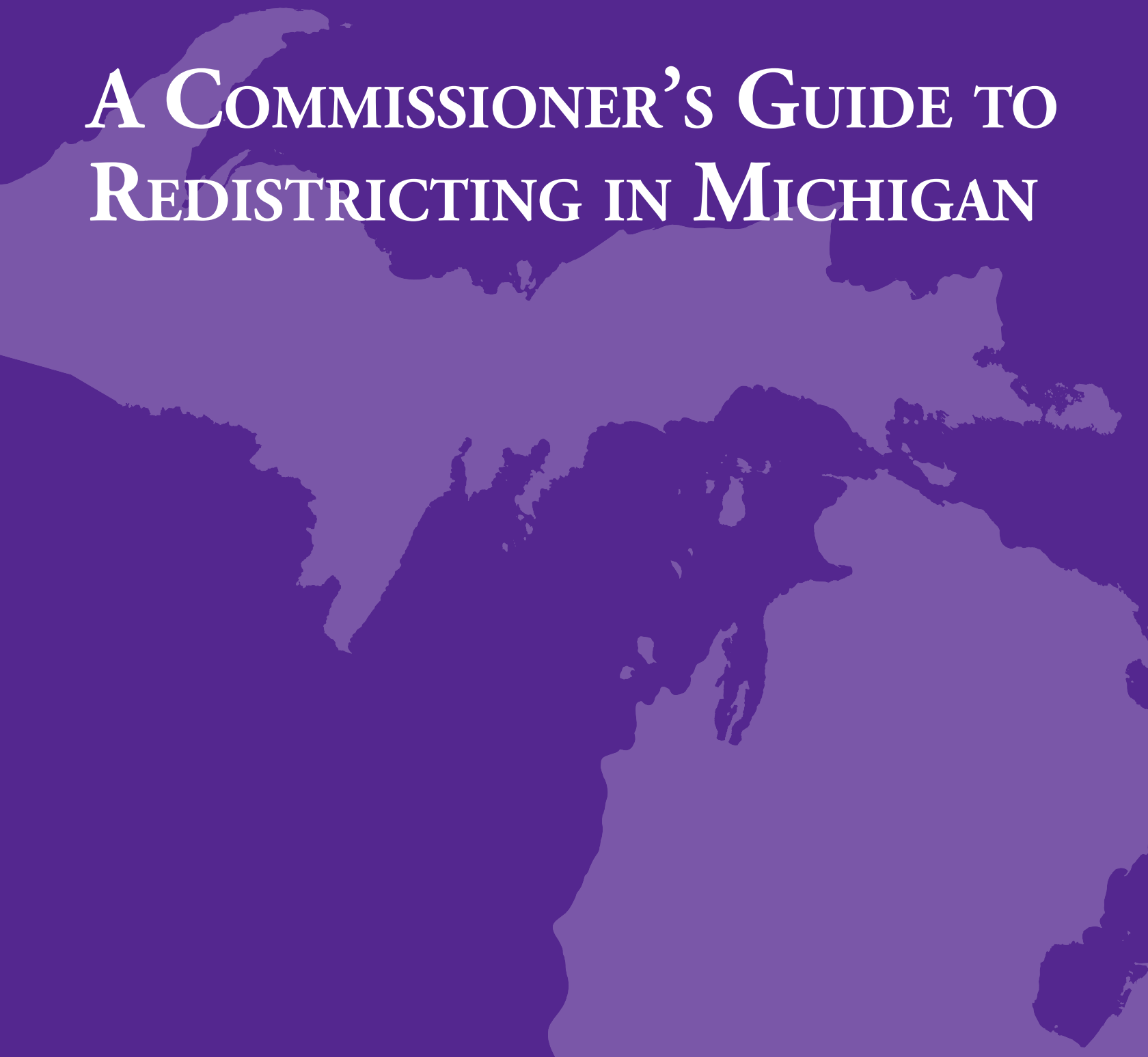
A Commissioner's Guide to Redistricting in Michigan



A report prepared by graduate students at the Woodrow Wilson School of Public and International Affairs, Princeton University

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About the Woodrow Wilson School

Founded in 1930, the Woodrow Wilson School of Public and International Affairs at Princeton University is an international center of advanced training and research in public and international affairs. The school provides an array of comprehensive coursework in the fields of international development, foreign policy, science and technology, and economics and finance through its undergraduate, Master of Public Affairs, Master of Public Policy, and Ph.D. degrees.

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About the Princeton Gerrymandering Project

The Princeton Gerrymandering Project (PGP) combines math, law, and data science to support state- and federal-level reform efforts to eliminate partisan gerrymandering. The PGP staff is made up of full- and part-time researchers with expertise in election law, computational analysis, and statistics. The authors thank Ben Williams, Will Adler, Hannah Wheelen, and Rick Ober for expert assistance.

Foreword

On November 6, 2018, Michigan voters went to the polls and passed Proposal 18-2, which amends the state constitution to restructure the state's legislative redistricting process and gives the power of redistricting to the people of Michigan. The Amendment, brought to the polls by Voters Not Politicians, creates an Independent Citizens Redistricting Commission (the Commission) that will draw Michigan's legislative and congressional boundaries, as is required by federal law after each decade's Census. Previously, the redistricting process was under the control of Michigan's legislators, who deliberated out of the public eye and were not obligated to provide transparency. Evidence recently brought to light shows that this process allowed districts to be drawn in ways that favored incumbent legislators and whole political parties.

The passage of Proposal 18-2, with 61 percent of the vote, was an historic moment. Michiganders sent a clear signal that they considered fair redistricting to be an essential component of representative democracy. The Amendment requires legislative boundaries to be drawn in an open and transparent process with public input. The Amendment also ensures that the redistricting process reflects Michigan's political spectrum by requiring that the Commission be drawn from the two majority parties (currently Democratic and Republican) and unaffiliated Michiganders, and that votes from all three groups be required for passage of any plan. Commissioners must also reflect the demographic and geographic diversity of the state. It mandates that the Commission obtain input through public hearings and safeguards against backdoor influence. In summary, the Amendment creates an opportunity for Michigan's maps to be drawn in a more open and neutral way.

With great opportunity will come great challenges. Commissioners will need thorough training and must set up a new state agency, all in a charged political environment. They will need to learn about complex topics including federal voting rights law, state geography and demography, and ways to measure partisan fairness. They will need to understand their individual roles as laid out by the Amendment, as well as how to adhere to strict transparency requirements and decision-making procedures. They will need to do all of this within a short timeframe, from the start of public hearings on October 15, 2020 to the adoption of final maps by November 1, 2021.

As redistricting commissions in other states have found, the Michigan Commission is likely to receive criticisms of bias even if its conduct is above reproach. Commissioners can protect the integrity of their work against legal challenges by following best practices and documenting their actions.

This report is intended to aid Commissioners in their work and provide them with the tools to best serve the people of Michigan. It contains rules of thumb for a successful process, specific management recommendations, and example maps. The report begins with essential background on the history of redistricting in the United States and Michigan, including useful federal and state standards. It then moves on to operational aspects of independent redistricting commissions, drawing from nationwide expertise and lessons learned by independent commissions. The report concludes with an analysis of the seven individual criteria set by the Amendment for drawing maps and offers recommended tests for compliance, as well as example maps to demonstrate key tests.

Executive Summary

In November 2018, Michigan voters passed a constitutional amendment establishing an Independent Citizens Redistricting Commission to draw new congressional and state legislative boundaries, as required after each decennial census. By creating a transparent redistricting process that is independent of elected officials, voters sent a strong message that fair and representative elections remain a core component of American democracy.

From the start, the Commission must ensure that it will operate effectively. By establishing explicit guidelines and hiring bipartisan or nonpartisan staff, the Commission will build trust in a new political institution. Commissioners will become experts in organizing hearings, handling public comment and balancing partisan interests with those of communities across the state. They must be prepared to face public scrutiny, legal challenges, and accusations of bias. The Commission can meet these challenges through civic engagement, public education, and a transparent process. Finally, Commissioners must draw, disseminate, and explain maps in an effective and understandable manner.

In drawing Michigan's new district boundaries, the Commission must meet the seven criteria enumerated in the constitutional amendment. Districts must be of equal population and avoid bias against protected communities, as required by federal law. Districts must also be contiguous. In addition, the Amendment requires protection for Michigan's diverse communities of interest and prohibits giving an unfair advantage to any political party. Further lower-ranked criteria include not favoring or targeting individual officeholders, preservation of administrative boundaries where possible, and compactness. Meeting these criteria will involve making tradeoffs. Prioritization should be done within a central framework of avoiding bias against parties or communities of interest.

Unaffiliated Commissioners will play a key role in this process, as they will be well-positioned to consider the interests of all groups and parties. The Commissioners' work will be greatly facilitated by building trust, particularly between Commissioners of opposing parties. It is essential to hire staff with proper expertise to implement the Commission's priorities. Measures should be taken to ensure staff are either nonpartisan or represent a bipartisan balance. Final hiring decisions should be done by consensus across party affiliations and unaffiliated members.

This report makes recommendations to assist Commissioners in what are likely to be key challenges. We hope that this report will serve as a guidebook and regular point of reference as Commissioners engage in this new endeavor.

RECOMMENDATIONS FOR MICHIGAN'S REDISTRICTING CRITERIA

CRITERION 1: FEDERAL REQUIREMENTS

- Hire expert counsel on voting rights and the use of race in redistricting.
- Receive onboarding training to build Commissioners' confidence in asking counsel the right questions on Voting Rights Act compliance, the use of race in redistricting, and other legal issues.
- Congressional districts are held to a tighter legal standard of population equality than legislative districts. Excessive emphasis on population equality for legislative districts may interfere with fair representation.
- Current interpretations of the Voting Rights Act Section 2 may require the creation of opportunity-to-elect districts. These do not necessarily need to be majority-minority districts.

CRITERION 2: CONTIGUITY

- Districts must be drawn such that all parts of a district are connected.

CRITERION 3: COMMUNITIES OF INTEREST

- Structure requests for public input to encourage standardized feedback, including maps.
- Provide software tools for the public to contribute maps showing communities of interest.
- Seek out and evaluate public input on communities of interest.

CRITERION 4: PARTISAN FAIRNESS

- Create first-draft maps that give the two major parties similar opportunities to elect representatives, using historical voting data as needed.

- Adopt statistical measures that partisan fairness on a statewide rather than a district-by-district basis.
- Avoid partisan packing of districts to the greatest extent practicable.

CRITERION 5: INCUMBENCY

- The incumbency criterion is a central mandate to disregard incumbents' political considerations. Individual legislators and their political allies should not influence how the Commission draws redistricting plans.
- Use a clean-slate approach in which district lines are drawn from scratch and according to an agreed-upon process.
- Avoid drawing maps that intentionally strengthen or weaken individual incumbents.
- Do not discuss or appear to consider incumbency in Commission proceedings or communications.

CRITERION 6: POLITICAL BOUNDARIES

- Use county, city, and township political boundaries and equal population restrictions in the initial phase of map-drawing. Break units specifically to satisfy higher-ranked criteria.
- Review prior district maps to understand historical precedent.
- To assess a map, use an indicator that quantifies the degree of political boundary splitting.
- Smaller districts may be nested within larger districts to reduce election complexity. Alternatively, they can be used to represent different communities of interest.

CRITERION 7: COMPACTNESS

- Compactness may have to be sacrificed to comply with other criteria, particularly in densely populated areas.
- Compactness can be quantified, but it is also important to consider how the public will perceive districts.
- If oddly shaped districts are unavoidable, be prepared to justify them in terms of higher ranked criteria.

COMMISSION LOGISTICS AND OPERATIONS

SETTING UP A GOVERNMENT AGENCY

- Seek a bipartisan statement of support from the state legislature.
- Establish and publish a signed statement of intent, code of conduct, and civility pledge.

HIRING

- Hire legal counsel, an executive director, a consulting firm, and a communications person.
- Conduct the hiring in a transparent process that limits partisan gamesmanship.

TRAINING

- Run a "Redistricting 101" training that covers Census information, the Voting Rights Act, Michigan criteria, how to conduct public hearings, and organizing logistics.

RESPONSIBILITIES AND CULTURE

- Elect a chairperson or chairpersons.
- Create team-building opportunities. Make sure that decisions and meetings are well balanced between Commissioners from each pool.

EDUCATION AND CIVIC ENGAGEMENT

- Incorporate a public educational component into public hearings.
- Set rules and best practices for handing public comment and engagement.

TRANSPARENCY

- Draw lines in public. Make all public comment available to Commissioners and the general public.

HOW TO DRAW MAPS

- Focus on the fairness of the process, not just the outcome.
- Start with more challenging areas and try drawing maps before giving instructions to consultants.

DATA VISUALIZATION

- Focus on what the map does—not how it looks. Remember that a nice-looking map is not necessarily the best map.
- Use good visualizations to see how communities of interest and political boundaries fit into the process.

Background

FEDERAL LAW AND THE DEVELOPMENT OF VOTING RIGHTS

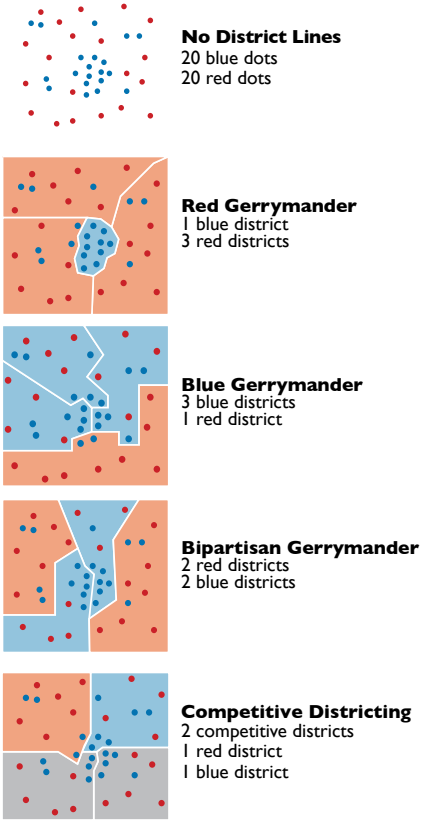
Following the federal census, which is conducted every ten years, a formula assigns each state's number of congressional seats based on the new population count, a process known as **apportionment**.[1] The total number of representatives in the United States Congress is 435. As populations shift over time, the number of representatives each state sends to Congress may change. From 2000 to 2010, the population of Michigan fell while other states grew; as a result, Michigan lost a congressional district, falling from 15 to 14 districts. Although Michigan's population has begun to grow once again, that growth is slower than the rest of the nation. As a result, after the 2020 Census, Michigan is projected to lose another congressional seat. Therefore in 2021, the congressional map will likely have to be redrawn to contain only 13 districts. The redrawing process is known as **redistricting**.

Even without a change in the number of seats, redistricting is required because federal law mandates that districts be of equal population; very nearly equal for congressional districts, with a bit more latitude for state Senate and House districts, also known as state legislative districts. As a result, all the lines delineating political districts must be re-examined after every decennial census. In Michigan, as across the nation, population patterns have shifted, generally away from rural areas and toward cities and suburbs. The lines on state maps must change accordingly.

Under federal and state law, all congressional and state legislative districts in Michigan elect one representative each. The composition of districts strongly influences what kind of candidates get voted into office. In a district dominated by farm country, the legislator will tend to represent farming interests. In an urban district, the legislator stands up for the interests of that city. Districts can also group different communities together and sometimes divide communities. In these cases, district lines affect the ability of each community to be represented. Because the route to representation goes through individual legislators, redistricting is a crucial step in American democracy.

Redistricting can be used to enhance or reduce a community's representation, and certain kinds of discrimination in redistricting are prohibited by federal voting rights law. The new Michigan state law additionally protects against bias favoring one political party over the other.

LINES MATTER: SAME VOTERS, DIFFERENT OUTCOMES



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In many states, the state legislature draws the lines and, in so doing, selects each district's voters. Careful manipulation can provide one party or group an advantage in subsequent elections. Lines can be drawn to ensure that an incumbent politician stays in power. A map can also be drawn to protect an entire political party. **Gerrymandering** arises when redistricting provides an undue advantage or disadvantage to an individual candidate, community, or political party.

Gerrymandering insulates legislators from their voters. If a legislator's district gives a guaranteed win, the officeholder is under less pressure to respond to specific concerns of constituents.[2] Any map will include some safe seats, but gerrymandering shields even more politicians from public opinion. In addition, in a safe district the only remaining competitive election is the primary, shifting power away from all voters and toward the most active partisan voters.

The "independent" in the Commission's name does not refer to party affiliation, as the Commission includes members of both major parties and voters who do not affiliate with either party, but rather to independence from the legislature.

When legislators draw their own districts, they can build themselves an advantage which can carry them all the way to the next round of redistricting—potentially an endless cycle. The creation of the Independent Citizens Redistricting Commission in Michigan breaks this cycle by removing legislators from the redrawing process.

DISTRICTS MUST HAVE THE SAME NUMBER OF PEOPLE

- Congressional districts must be of nearly equal population.
- State districts must be approximately equal in population.

Until a series of court cases in the 1960s, districts did not need to contain the same number of people. Thus, in districts with smaller populations, each voter had more power than those in districts with larger populations. For example, the largest state senate district in California contained over 400 times more people than the smallest state senate district. Such extreme differences are no longer allowed because the Supreme Court ruled that districts must be of equal population. This ruling was a pioneering step in ensuring equal voting rights by ensuring equal voting rights and an idea of equal representation. This is sometimes referred to as the one person, one vote principle.

Congressional and state legislative districts may vary in population – with justification.

The **equal representation principle** manifests itself differently in congressional districts and state legislative districts. The population of congressional districts must be equal population "as nearly as is practicable."[3] This is now interpreted as quite close to exact equality.[4] Only in rare cases has the population of a congressional

district been allowed to differ by a greater amount, and any difference had to be explained by the line-drawers.

For state legislative districts, populations can differ more. The largest district usually can have up to 10 percent more people than the smallest district without provoking constitutional scrutiny. Variation is allowed in order to maintain the unity of cities, counties, and other communities. The 10 percent rule allows exceptions if the line-drawers have a compelling reason. However, no matter how small the population deviations are, if a court considers the reasons for the deviations to be inadequate, a state map can still be overturned.

Federal law requires that congressional districts use the Census count of the entire population. Most states, including Michigan, also use the total Census count for state legislative districts. A few states have proposed using alternative kinds of population counts when drawing state legislative districts, such as counting only citizens. These alternative methods would likely trigger federal litigation.

THE USE OF RACE AND THE EXPANSION OF MINORITY VOTING RIGHTS

After the establishment of equal representation, the next level in the evolution of voting rights was fair representation for racial groups. Limitations on race-based discrimination in redistricting started in the 1960s with the passage of the Voting Rights Act and subsequent Supreme Court rulings.

Methods for suppressing the ability of members of minority groups to elect representatives are collectively called vote dilution. For example, vote dilution once occurred through the use of multimember legislative districts, in which a majority or plurality of votes elected all of a district's legislators. This system can pose a significant drawback for minorities because as a small share of the total population, they cannot form a bloc large enough to elect a candidate of their choice when a polarized majority seeks all of the available seats for itself.

Today, federal law recognizes and limits additional forms of vote dilution. A minority group can be split into several majority-white districts ("**cracking**") so that they cannot win anywhere. Conversely, minorities can be concentrated into a district to minimize the overall number of seats from which they can elect candidates of their choice ("**packing**").

The U.S. Supreme Court has outlined several tests to decide if a state failed to abide by federal law in the redistricting process. Most claims to protect the voting rights of minorities fall under Section

2 of the Voting Rights Act or the Fourteenth Amendment of the Constitution.

The Voting Rights Act, passed in 1965 and amended in 1982, prohibits discrimination against ethnic and racial minorities and was designed to protect minorities' right to vote. It requires that line-drawers must, in certain cases, provide minorities the opportunity to elect a candidate of their choice.

Two sections of the Act have been important for redistricting.

1. Section 2 of the Voting Rights Act prevents a state from any practice that results in the denial or abridgment of anyone's right to vote based on race, color, or minority language status. It protects against vote dilution and cracking.
2. Section 5, which is currently not in effect (see sidebar), required that certain jurisdictions with a history of racial discrimination get preclearance from the federal government for their maps before they went into effect. Under preclearance, the state had to show that minority voters in covered areas were no worse off than in the previous map. Such backsliding is called retrogression.

One possible remedy to minority vote dilution is the construction of a **majority-minority district.** They are called majority-minority districts because in them, the minority group constitutes at least 50 percent plus one person of the voting-age population. A majority-minority district is designed to satisfy Section 2 of the Voting Rights Act by creating an opportunity to elect a representative.

A majority-minority district is not the only way to satisfy the mandate. The real measure of opportunity to elect is for the minority community to reliably win elections for the candidates of its choice. In cases where majority and minority voters overlap sufficiently in their candidate preferences, it can happen with a district that is less than 50 percent minority. For example, Section 2 could potentially be satisfied by creating an **opportunity-to-elect district**, in which the minority group is large enough to play a dominant role in the primary election of a party that is likely to win at least 50 percent of the vote in the general election. Research in political science shows that a minority group will typically have the opportunity to elect in a district if the percentage of minority voting age population falls between 30 and 50 percent. The range depends mostly on the percentage of white people that also vote for the candidate that the minority group prefers. The percentage can go as low as 30 percent because of primary elections, in which a minority group can exert its influence at an earlier stage in the election process.

In the section on Criterion 1: Federal Requirements, we discuss the **Gingles rules** (pronounced "jingles") defined by the U.S. Supreme

THE VOTING RIGHTS ACT SECTION 2 AND SECTION 5 PROTECTIONS

Section 2 makes it easier for minorities in certain circumstances to elect a representative (*Thornburg v. Gingles 1986*).

Section 5 acted as a backstop to prevent retrogression.

For now, Section 5 preclearance is not in effect because of the *Shelby County v. Holder (2013)* decision holding that it is inapplicable until Congress approves a new coverage formula saying where it applies.

In the old formula, Michigan had two townships covered under Section 5: Clyde in Allegan County and Buena Vista in Saginaw County.

Court, which mandate when Voting Rights Act Section 2 districts must be drawn.

In the 2010 redistricting cycle, Michigan established two majority-minority districts, which are protected by Section 2 of the Voting Rights Act. In the 2020 cycle, the exact number, as well as the number of opportunity-to-elect state legislative districts, must be determined by the Commission's counsel and technical staff under the direction of the Commission.

IN MICHIGAN, RACE, ETHNICITY, AND OTHER COMMUNITIES OF INTEREST ARE STRONGLY PROTECTED

Racial and ethnic groups are protected by a combination of the Constitution, the Voting Rights Act, and the law establishing Michigan's Commission. Together, these provisions protect a broad range of communities of interest.

The Fourteenth Amendment's Equal Protection Clause in the U.S. Constitution also regulates the use of race. It establishes that race and ethnicity cannot predominate over other factors in redistricting except to comply with the Voting Rights Act. If, when drawing its lines, a state uses race or ethnicity predominantly for any other purpose, it is presumptively unconstitutional unless the state can produce a compelling reason.

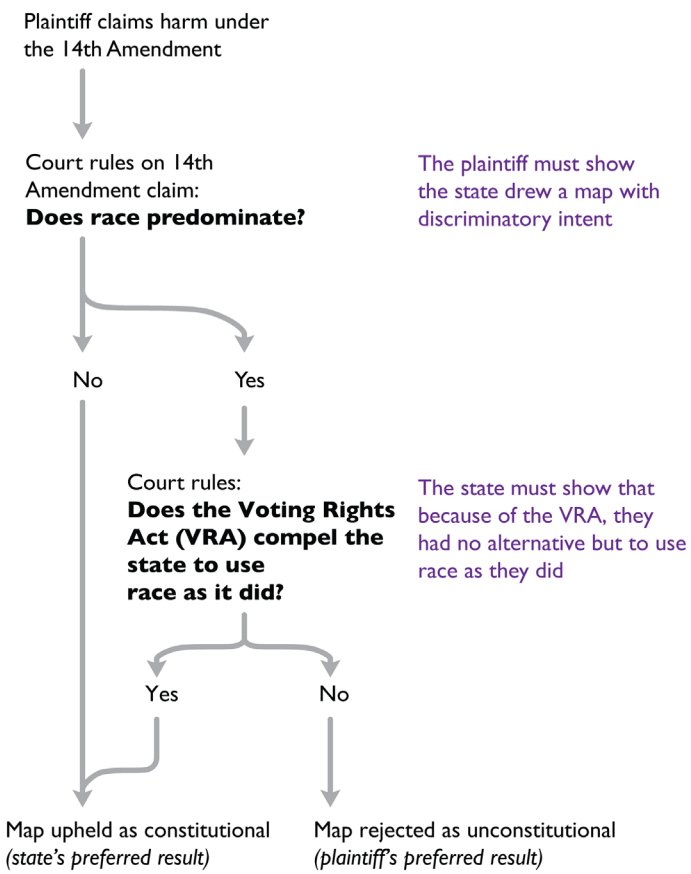
Proof of discrimination under the Fourteenth Amendment requires proof of intent. Compliance with the Voting Rights Act is the only compelling reason for the predominant use of race in redistricting ever accepted by the Supreme Court.

A citizen from the district who believes he or she has been racially discriminated against must demonstrate to a court that the government did so intentionally. Evidence of discriminatory intent can include statements from legislators or their staff, bizarrely shaped districts, or highly targeted use of data. The court may then assume that the district is unconstitutional unless the state can show that the Voting Rights Act compelled it to use race as it did. Without such proof, the district must be redrawn. As a result, it is safest to consider race in combination with other factors when drawing district lines, so that race works alongside other factors, but does not predominate, in deciding which voters to place within or without a district.

Proof of discrimination under Section 2 of the Voting Rights Act focuses to a greater extent on discriminatory impacts. Redistricting decisions that have the effect of discriminatorily impacting minorities, for instance the cracking of voters between multiple districts, may be subject to a Section 2 claim.

Even if a community of voters does not meet the criteria for protection under the Voting Rights Act, it can still qualify as a community of interest under Michigan's new law. In Michigan, such categories may, for example, include Arab-Americans, Chaldean-Americans, and Native Americans. These communities may especially benefit at the level of state legislative districts, which contain fewer people than congressional districts. Smaller-population districts make it easier for a group to play a dominant role. Multiple communities of interest can also be placed together to form a **coalition district**.

DETERMINING IF A MAP IS AN UNCONSTITUTIONAL RACIAL GERRYMANDER



Both Fourteenth Amendment claims and Section 2 claims must focus on specific districts. A useful rule of thumb is that Section 2 of the Voting Rights Act protects against vote dilution (cracking), while the Fourteenth Amendment protects against excessive concentration of minority voters (packing).

IN AN AGE OF POLARIZED POLITICS, PARTISAN GERRYMANDERING HAS EMERGED AS A THREAT TO REPRESENTATION

Over the years, race and class have become better predictors of party voting preference. This trend is called **conjoined polarization**. This increasingly tight link creates incentives for partisans to commit racial gerrymanders by racial packing or cracking as a means of achieving an advantage for their own party.

On the other side of the coin, legislators of a specific racial or ethnic group may wish to protect the safety of their own seats via packing. In this case, the party as a whole may want all wins to be narrower, but a representative of a racial or ethnic community may not agree. This can put individual legislators at cross purposes with their own party.

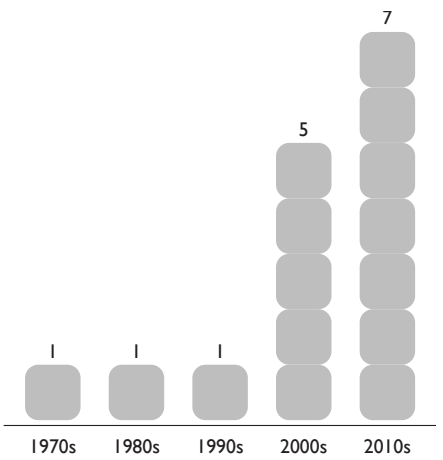
The establishment of an Independent Citizens Redistricting Commission takes the focus away from parties and legislators, focusing instead on the best way to represent voters and communities. By placing decision-making in the hands of citizen Commissioners and emphasizing public input, the new Michigan law can minimize the risk of partisan and race-based self-dealing by legislators.

Even without racial factors, incentives for partisan gerrymandering have become larger than ever. National politics has become more polarized in the last few decades, and the two major parties have gone through a longer period of near-equal strength than at any time in the last hundred years. Under these circumstances, the incentives to gain seats at any cost are great. The current redistricting cycle has seen the largest number of extreme congressional gerrymanders recorded since the early 1960s.[5]

Although racial gerrymandering has become limited by decades of federal law, partisan gerrymandering is a considerably less-decided question. Legislators in North Carolina have even used their quest for partisan advantage as a defense against claims of gerrymandering on the basis of race. Unless the Supreme Court reins in partisan gerrymandering, it is possible to defend a district plan in federal court against some racial challenges on the grounds that it was drawn out of partisanship.

Scholars have defined multiple ways to measure overall partisanship in a statewide district plan. These methods work well with Michigan's new law prohibiting partisan advantage.[6] In this way, the Amendment to Michigan's constitution fills a gap left by federal law. Similar protections against partisanship are in place in over ten

THE NUMBER OF EXTREME PARTISAN GERRYMANDERS IS INCREASING



Source: Wang and Remlinger. "Slaying the Partisan Gerrymander." American Prospect (2017).

states around the nation, including California, Colorado, Florida, New York, and Utah.

THERE ARE VARIOUS KINDS OF STATE COMMISSIONS

Independent commissions, such as those in California and Arizona, and now Colorado and Michigan, are independent from the legislature and have the power to enact maps.

Advisory boards, such as those in Iowa, New York, and now Utah and Missouri, suggest maps that state legislators can accept or reject, but do not have independent power to enact maps.

Politician commissions, such as those in New Jersey and Washington, are made up of elected officials or their designees and have the power to enact maps.

THE RISE OF INDEPENDENT REDISTRICTING COMMISSIONS

Independent redistricting commissions like Michigan's are part of a recent trend to separate redistricting from influence by elected officials and to grant those independent commissions the power to enact final maps. To date, there are eight redistricting commissions, including those passed by initiative in Michigan and Colorado in 2018.[7] The Arizona Independent Redistricting Commission and the California Citizens Redistricting Commission are the most independent commissions, with the power to draw both congressional and state legislative districts.[8] Both rely on an explicit set of criteria, a transparent process, and public hearings to increase the legitimacy of the redistricting process. These commissions provide examples of successes and lessons learned.

The Arizona Commission, approved in 2000, has now gone through two redistricting cycles. It was enacted by ballot initiative after successive redistricting cycles failed to reach a bipartisan compromise or adequately comply with Voting Rights Act requirements.[9] Composed of two Republicans and two Democrats nominated by elected officials and one independent member, the Arizona Commission also explicitly prioritizes drawing competitive districts. Arizona requires a simple majority to pass final maps, which gives the unaffiliated commissioner a prominent role, subjecting that commissioner to more scrutiny.

Though the Arizona Commission's work did not attract a high degree of comment in the 2001 redistricting cycle, polarization and accusations of partisan bias became prominent in 2011.[10] The draft 2011 maps were also challenged by the Justice Department for failing to draw enough Voting Rights Act Section 2 districts and subsequent maps were challenged in court for failing to be "competitive when possible." These challenges were ultimately rejected by the Arizona Supreme Court. In a 2015 ruling in *Arizona State Legislature v. Arizona Independent Redistricting Commission*,[11] the U.S. Supreme Court upheld the use of an independent commission for congressional redistricting.

The California Commission was approved in 2008 after several decades of complaints of maps that protected incumbents and failure of the legislature to agree on final maps.[12] The California Commission uses a multi-step selection process that includes extensive applications, interviews, and randomization to produce a commission of five Democrats, five Republicans, and four

commissioners who do not affiliate with either party. The California Commission requires final maps to be approved by a supermajority that must include three commissioners from each party and three decline-to-state commissioners as a means of promoting consensus and compromise.

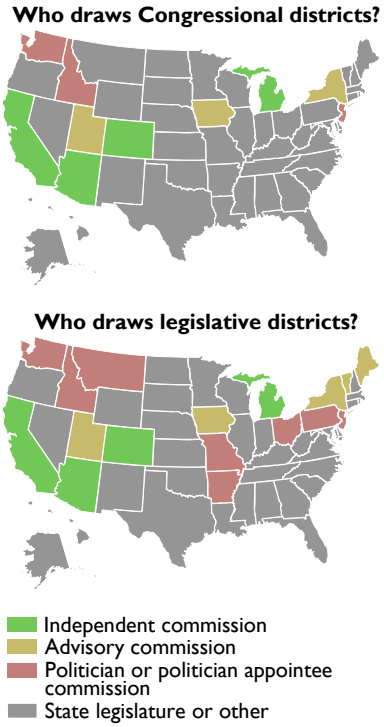
Though the larger commission and supermajority rules helped foster a more collaborative environment, the California model gives decline-to-state commissioners slightly more power. Under these rules, as few as two decline-to-state commissioners could potentially stall the process. Although such a stalemate did not appear in the first round, the California Commission may face future attempts at gamesmanship or sabotage.[13] The California Commission also cleared legal challenges, with the California Supreme Court finding that the commission complied with its legally mandated criteria.

Both the Arizona and California Commissions successfully drew maps through a transparent and open process that limited conflicts of interest. It remains to be seen whether independent commissions can draw less partisan maps over time, especially as partisans become savvy to the process.[14]

THE RANKING OF CRITERIA VARIES BY STATE

Michigan	California	Arizona
Ranked	Ranked/Unranked	Unranked
Equal Population *(1)*	Equal Population *(1)*	Compactness
Federal Requirements/VRA *(1)*	Federal Requirements/VRA *(2)*	Competitive
Geographic Contiguity *(2)*	Geographic Contiguity *(3)*	Contiguity
Communities of Interest *(3)*	Political Boundaries *(4)*	Equal Population
Partisan Fairness *(4)*	Communities of Interest *(4)*	Federal Requirements/VRA
Incumbency *(5)*	Compactness *(5)*	Grid-like Pattern
Political Boundaries *(6)*	Nesting *(6)*	Incumbency
Compactness *(7)*	Cannot intentionally favor party or incumbent *(unranked)*	Partisan Fairness
		Political Boundaries

COMMISSION TYPES ACROSS STATES



Eight states have established independent redistricting commissions for their state legislative districts, with some also establishing independent commissions for congressional redistricting.

Sources: Brennan Center, Ballotpedia

PAST MICHIGAN REDISTRICTING CYCLES HAVE ENDED IN GRIDLOCK AND PARTISANSHIP

Since the drafting of Michigan's first constitution in 1835, the state has ratified four constitutions, including the current one in 1963. Article IV, Section 6 of the 1963 constitution established a "Commission on legislative apportionment" to draw district lines after each decennial census in accordance with guidelines specified in the constitution.[15] The commission was composed of eight electors, four of whom were selected by the state Democratic party and four by the state Republican party. The commission convened in 1964, 1972, and 1982, each time stalling in partisan gridlock and requiring state Supreme Court involvement.

LEARNING FROM PREVIOUS COMMISSIONERS

Michigan Commissioners can gain insights into the challenges, opportunities, and pitfalls of the process by taking part in meetings and official training sessions with former Commissioners from Arizona and California.

In 1964, the year following ratification of Michigan's present constitution, the U.S. Supreme Court ruled in favor of equal representation. The rulings rendered Michigan's method of apportionment in violation of the Fourteenth Amendment's Equal Protection Clause. The crux of the violation was the use of weighted land area/population apportionment factors, which resulted in some districts having greater or fewer individuals than others. In 1982, the Michigan Supreme Court ruled that the apportionment guidelines were unconstitutional and struck down the state constitutional provision, including the commission.

THE APOL STANDARDS

As part of the 1982 ruling, the Michigan Supreme Court appointed Bernard J. Apol as special master and charged him with the task of supervising the drawing of new district maps in accordance with criteria outlined by the court. The court's criteria required the following:

- Districts must preserve county lines to the extent possible under equal population restrictions.[16]
- If necessary, county line breaks must shift the fewest possible number of cities or townships.
- Breaks at the city or township level must shift the fewest number of people necessary to achieve population equality.[17]
- Breaks at the city or township level must maintain the "maximum compactness possible within a population range of 98-102 percent."

USING COUNSEL

The Amendment adds new standards to the state constitution. The Commission should consult with legal counsel to confirm that previous standards have been superseded by the Amendment.

These criteria prioritizing fewest breaks of county, city and township boundaries in compliance with federal and court equal population requirements became known as the Apol Standards.

In addition to establishing the Apol Standards in the 1982 ruling, the state Supreme Court authorized the state legislature to conduct future redistricting in accordance with the Standards. In

1992, however, the legislature was unable to agree on a new set of maps, and the state Supreme Court again appointed a special master to draw the lines. In 1996, the state legislature passed Act 463, establishing redistricting guidelines for the state Senate and House of Representatives. The guidelines incorporated much of the Apol Standards, including the principle of fewest breaks of counties, cities, and townships in compliance with equal population requirements within a range of 95-105 percent.[18] Act 463 added a specific definition of compactness not outlined in the original Apol Standards (see Criterion Seven: Compactness for more details). In 1999, the state legislature enacted equivalent legislation for congressional redistricting.[19] The statute incorporates the Apol Standards criteria as well, with the exception of including contiguity as a principal criterion after adhering to federal requirements and before the "fewest breaks" principle and containing the 1996 definition of compactness.

Though the Apol Standards served as the nominal guidelines for redistricting in Michigan over the past several decades, they have not been legally binding on any subsequent redistricting process. In 2002, plaintiffs challenged the congressional maps drawn after the 2000 census, arguing that they failed to adhere to the criteria outlined in the 1999 statute. The Michigan Supreme Court overruled the plaintiffs, asserting that statutes enacted by past legislatures cannot legally bind future legislatures and that the 2001 legislature was free to "repeal, amend, or ignore" the 1999 criteria as it pleased.[20] The 2002 ruling implied that in the redistricting process, the state legislature was legally bound only to the provisions of the U.S. Constitution, federal statutory redistricting requirements, the few remaining operative state constitutional requirements, and state and federal court precedents.

GROWING INTEREST IN REDISTRICTING REFORM

In the wake of the 2001 and 2011 redistricting cycles, concerns grew louder about partisan gerrymandering and the secretive nature of the redistricting process. In response, lawmakers of both major parties proposed legislation to reform the redistricting process, including measures to increase transparency and public involvement. In 2010, Republican and Democratic representatives separately proposed legislation that would delegate redistricting responsibilities to the nonpartisan Legislative Service Bureau (LSB).[21,22] In 2015 and 2017, Democrats in the Michigan House and Senate proposed legislation to establish an independent redistricting commission.[23] None of these proposals became law.

THE 2010 MAPS HAVE BEEN LITIGATED ON GROUNDS OF PARTISAN GERRYMANDERING

In 2017 the League of Women Voters of Michigan and individual voters filed a lawsuit in federal district court challenging the 2011 state legislative and congressional maps on grounds of partisan gerrymandering in violation of the First and Fourteenth Amendment.[24] The case is ongoing.[25]

PROPOSAL 18-2

In 2016, a group of Michigan citizens launched a volunteer-based movement to establish an Independent Citizens Redistricting Commission. After collecting over 425,000 signatures across the state of Michigan and withstanding a legal challenge at the Michigan Supreme Court, the proposed amended constitutional language was included on the ballot for the November 6, 2018 election. The proposal passed with 61 percent of the vote,[26] drawing widespread support from both Republican- and Democratic-leaning counties across the state.[27] The amended redistricting process, the subject of this report, will be used for 2020 congressional and legislative redistricting.

Setting Up and Running an Independent Commission

NEW COMMISSION, FRESH START: REBUILDING PUBLIC CONFIDENCE IN REPRESENTATIVE GOVERNMENT

Citizen-led redistricting can help restore confidence in government.

The Commission is tasked with drawing congressional and legislative maps for the State of Michigan. This is the most important responsibility of the Commission. The Commission has the opportunity to be a model for civic engagement, bipartisanship, and well-functioning government, both for Michigan and for the nation.

RECOMMENDATIONS:

- Establish a signed statement of intent for the Commission, describing the intent of commissioners to carry out their duties in a transparent and collaborative manner on behalf of all Michiganders.
- Establish a code of conduct detailing ethical and procedural standards for Commissioners and staff.
- Build a culture of civility among Commissioners, including personal connections across partisan divides.
- Meet with majority and minority leadership from the State House and Senate and encourage them to sign a bipartisan statement of support for the Commission.

The rest of this section outlines the sequential steps and challenges that Commissioners will face in executing their duty, with recommendations and potential risks.

LEARNING FROM STAFF

Commissioners, consultants, and staff from the California and Arizona Commissions will be a rich source of information.

GETTING THE COMMISSIONERS UP TO SPEED

Though Commissioners should not be expected to become experts in all topics related to redistricting, they should be able to understand (a) the key steps to setting up a government agency, (b) how to make use of expert staff, (c) best practices for conducting public hearings, and (d) the legally required criteria for redistricting. Training should start soon after the appointment of Commissioners and will take at least five full days.

PROVIDE A CRASH COURSE, REDISTRICTING COMMISSIONS 101

Commissioners need sufficient background and understanding of redistricting issues in order to be effective. Topics that should be covered in the training are:

TECHNICAL SERVICES THAT OTHER COMMISSIONS FOUND USEFUL

- Adequate onboarding support with Human Resources, budgeting and finance support, and information technology services (email, phone, computers, meeting live-streaming and archival capacity, website platform development, data and redistricting map archival, and other services).
- Logistical support for office space and transportation.
- Support for preparing Requests for Proposals (RFPs).

- Census information: Commissioners need to be familiar with the Census and the data it produces. This portion of the training should be led by an expert familiar with redistricting.
- Voting Rights Act (VRA) Compliance: All district maps must comply with the federal Voting Rights Act (see Background: Federal Law and Development of Voting Rights). An academic expert on the Voting Rights Act should conduct several days of training. The aim of the training should be that Commissioners understand key concepts and have sufficient knowledge to work with their Voting Rights Act counsel.
- Michigan criteria: Training should also include a deep dive into the seven redistricting criteria established in the Amendment, and the trade-offs that come with each. Commissioners will benefit from focused training with a redistricting expert. Commissioners can try to draw districts to get a feeling for the challenges of meeting the criteria. The training should include ways to detect when the criteria are being gamed for partisan advantage.
- How to conduct hearings and public meetings: Commissioners should receive training on how to conduct and manage hearings and large public meetings. They may want to look to resources like Robert's Rules of Order for an organizing framework. Commissioners from other states are a valuable source of advice.
- Organizing logistics: Numerous decisions need to be made about where in the state meetings should be held, how the public will be notified, hearing locations and times, and what kind of security is needed. Commissioners should be aware of the logistical, financial, and personal demands on them resulting from these hearings. A state employee or previous Commissioner may conduct this portion of the training.

SETTING UP A GOVERNMENT AGENCY TO SUPPORT THE COMMISSION

The first task of the Michigan Commission will be to set up an independent government agency. Commissioners should have an understanding of how this process works. The Commission has the authority to decide what technical services it needs, and the Secretary of State may help provide support.

The Commission should ask firms to submit an expected budget as part of the RFP. Commissioners should be prepared for a range of budget proposals. Although cost is a factor, the Commission should avoid the temptation to automatically accept the lowest bid.

HIRING CONSULTANTS, COUNSEL, AND STAFF

A first and critical step is to hire an **Executive Director (ED)**. The ED will help the Commission complete its business in a timely manner, run hearings smoothly, and support staff in day-to-day operations. Commissioners can also work with the ED to help select and hire staff, although final hiring decisions must be made through consensus. The ED should manage the staff, and instructions for staff from Commissioners should flow through the ED. It would be beneficial for the ED to have experience working in state government and have some familiarity with agencies and groups that the Commission is most likely to interact with. Experience with redistricting is a plus. The ED should be held to the same conflict of

interest standards as the Commissioners. The Commission may call upon stakeholders such as universities, nonprofit organizations, and businesses for help in identifying suitable candidates.

The Commission must hire **legal counsel**, either an attorney or a firm. Some commissions have decided to hire counsel with special expertise on the Voting Rights Act. The Commission should also hire a separate general counsel to help deal with other issues that may arise in the daily function of the Commission as well as help with potential court challenges. The Commission should hire counsel that has previous experience working with boards or commissions, especially in redistricting. It is recommended that the Commission hire counsel for the Commission as a whole, rather than individual Commissioners hiring their own counsel.

The Commission must hire **professionals to assist in the technical aspects and creation of the maps**. The Commission should be actively involved in writing the request for proposals, which means that this must occur early in the process. Consulting firms should also be subject to conflict of interest standards. Many firms will appear to have political labels, because once a professional is hired by one party, he/she tends to get future work from the same party. Sources of expertise with minimal partisan experience include academics and special masters retained by courts. For both counsel and technical staff, issues of bias can be handled by periodic audits by a second expert, i.e. by hiring shadow counsel or staff.

It is critical for a Commission to find a firm that is committed to working under the direction of the Commission, rather than according to its own preferences. While interviewing candidates, it may be helpful for Commissioners to ask about a firm's perspective on the various criteria, how it sees their role, and how it will deal with competing interests or directions.

The Commission should hire a **public relations (PR) manager** to manage the flow of public communication, coordinate outreach with community groups and constituents, and drive the public message about the work of the Commission. Commissioners should look for someone with experience in both traditional and social media. The PR manager must have a plan and experience with reaching out to underrepresented communities. Getting their input will be critical for drawing successful maps.

DEALING WITH PARTISANSHIP IN HIRING

- Find additional counsel of differing partisanship to assist in the work if general counsel or Voting Rights Act counsel have one political inclination.
- Hire shadow counsel or professional redistricting staff to review work and give comments and feedback.

These strategies will help Commissioners feel secure that they are getting assistance that reflects their own priorities.

ESTABLISHING RESPONSIBILITIES FOR COMMISSIONERS AND SUPPORT STAFF

After the 13 Commissioners have been selected, the Commission shall elect its own chair (§6.4). The process by which the

Former Commissioners reported that a positive group dynamic was critical to working on a contentious topic under pressure.

Commission shall perform this responsibility is under the sole authority of the Commission (§6.4).

RECOMMENDATIONS:

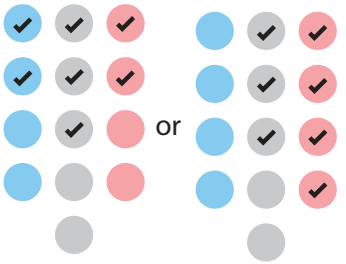
- Prior to establishing a full set of rules of procedure, the Commission should first elect a chairperson.
- The Commission should clearly designate the responsibilities and role of the chair (for example, lead the process to develop rules of procedure).
- Document publicly the process by which a chair will be elected, what his/her responsibilities shall be, and the vote count.
- Follow the California model of a rotating chair with set terms, which creates logistical challenges but builds trust and balance.

RISKS:

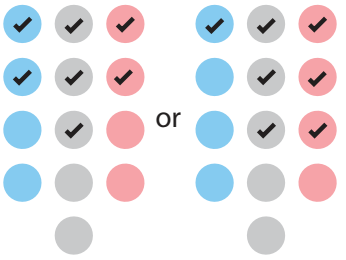
- If the chair is affiliated with a political party, he/she may be seen as biased.
- There is a risk that Commissioners will not have had ample time to judge the quality or character of the first chair.

MAKING DECISIONS IN THE COMMISSION

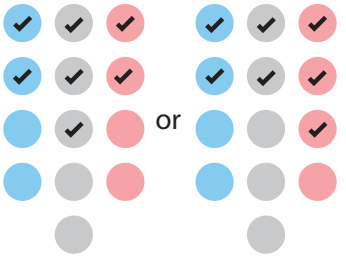
4 Democrats
4 Republicans
5 Unaffiliated



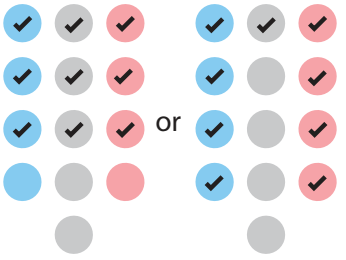
All decisions require a simple majority



Hiring consultants or staff requires a majority and at least one from each group



Adopting a plan requires a majority and at least two from each group



A quorum is formed when at least nine Commissioners are present, including at least one from each group

BUILDING TRUST AND COLLABORATION

It is essential for Commissioners to establish a collegial environment. This will make the process run more smoothly and will decrease the chances of later conflict. It is highly recommended that the Commission and Commissioners commit to a set of processes to foster trust, openness, and bipartisanship. This is important for both effective deliberation and to reassure the public of the Commission's integrity and intent.

MEETINGS AND INFORMAL GATHERING

Under the Amendment establishing the Commission, public meetings require a quorum of at least nine Commissioners, including at least one from each category, Republican, Democrat, and unaffiliated. However, the 1976 Open Meetings Act Section 15.263(10) provides an exemption for a "social or chance gathering or conference not designed to avoid [the] act."

RECOMMENDATIONS:

- When traveling to meetings, hearings, or other official Commission events, ensure that there is a balance from the three pools of Commissioners in each vehicle (for example Republican, Democratic, and unaffiliated).
- Organize informal and after-hour dinners and socializing events to enhance camaraderie and bonding. It is permissible for Commissioners to gather outside of their working time to bond socially. As required by the Open Meetings Act, Commissioners should reserve this time such that it is strictly social, and that it includes no discussion related to the work of the Commission.
- Hire a professional team-building consultant to provide at least half a day of training. Seek guidance on resolving conflict and establishing trust.
- When possible, ensure that all public documents are signed and endorsed by a balanced representation of Commissioners from each of the three pools.
- When conducting meetings, hearings, or other official events, seat Commissioners in mixed order according to the three pools of Commissioners.

ENGAGING AND EDUCATING FELLOW CITIZENS

CITIZEN OUTREACH

The James Irvine Foundation granted funds to help set up outreach centers across the state. These centers allowed citizens to map out their community of interest with the assistance of trained technical staff.

The Commission is tasked with informing the public about the redistricting process and the purpose and responsibilities of the Commission (§6.8). Outreach makes sure that the process reflects publicly expressed priorities and builds the legitimacy of the Commission. The Commission must create a plan (to be executed by the public relations manager) on best practices for public and media engagement. This process should give access to communities across the state for public comment, access to hearings, and online maps and data.

RECOMMENDATIONS:

- Organize a course taught by experts from Michigan public universities about the new redistricting process and the responsibilities and timelines for the Commission. Make this course available to the public.
- Conduct the minimum ten public hearings (§6.8) at accessible venues (for example high schools, universities, public libraries, or town halls).

- Structure each hearing to include a component that informs about the process and responsibilities of the Commission.
- Incorporate an internship program to allow undergraduate and graduate students to support the work of the Commission.
- Publish a collection of resources for citizens to learn about redistricting.
- Provide tools for citizens to examine data and contribute maps of their own communities of interest.
- Conduct outreach to call attention to the Commission and its work.
- Issue guidelines for public comment in advance of hearings. This will make the experience more fruitful for both Commissioners and community members. The California Commission released comment guidelines which aided their process.[28]
- When giving comment at a public hearing, citizens should always be asked to state their name, county of residence, and any group that they represent.
- Comments should be kept to a maximum two-minute time limit.
- Citizens should seek to create comments that are as concrete as possible. Indicating where lines should be, or what they consider the boundaries of their neighborhood, is significantly more useful than vague or general comments.
- Whenever possible, maps or drawings of maps should be submitted, particularly ones delineating communities of interest. Even a hand-drawn map is more useful to Commissioners than comments alone. Maps also save time.
- The Commission should set up locations where the public draw its own maps with the help of technical experts. Citizens should also be encouraged to draw maps using free software or by hand.
- Set rules for how the Commission will handle emails, social media input, and contributed testimony and maps. For example, Commissioners could set a standard that they do not directly respond to any message, and notify citizens that correspondence becomes part of the public record.

RISKS:

- Public comment may be exploited by partisan or incumbent interests in the guise of a concerned citizen group. Commissioners should ask questions to determine if comments are disproportionately driven by one or a few interest groups.
- The Commission must be prepared to deal with a large volume of comments. For example, during the 2010 redistricting cycle, the California Commission received over 20,000 pieces of public comment.

KNOW WHO IS SPEAKING

Commissioners may ask during public hearings for information about who is providing comment.

"Did you have a community meeting?"
"How long have you been a group?"
"Who funds you?"

Another sign that comments may be coming from an adverse source is if the same individual citizens are showing up at multiple hearings across the state and making the same comments. Commissioners should use their knowledge and experience of the areas that they are familiar with to help assess credibility.

TRANSPARENCY AND ACCOUNTABILITY

Transparency is crucial. Not only does transparency serve as an internal check to prevent Commissioners from becoming excessively biased, it also affords the public a watchdog mechanism. By law, the Commission shall use technology to provide contemporaneous public observation of the public hearings (§6.10), shall preserve for public record all information and submissions from the public

(§6.8), and shall publish all proposed redistricting plans with accompanying materials (§6.9).

RECOMMENDATIONS:

When working on a particular section of a map, Commissioners may want to instruct consultants and staff to utilize one or a few maps as an initial reference for the start of the public meeting. Additional adjustments should be made in a public setting. Consultants should sit with a screen in public view and follow the directions of Commissioners to move specific lines. Though this can be a time-intensive process, previous Commissions have found that it provides transparency and allows for the public to witness the complexities of drawing fair districts. When Commissioners struggle with a particularly challenging portion of the map, they can solicit public input—either through live comment or a chat thread. Transparency may reduce the threat of future legal challenges by making it harder to challenge the process.

The Commission should build a comprehensive web platform with a Michigan government URL that will serve as a repository for all relevant information produced by the Commission. The web platform must provide the same opportunity for input that citizens who attend the in-person hearings receive. Sections on this website should include, but are not limited to:

- Biographies of each Commissioner.
- Contact information with guidelines for submitting non-anonymous feedback, information, and comments.
- Meeting notes, agendas, and documentation of all correspondence and information subject to the Freedom of Information Act.
- An integrated platform where citizens can view official maps and search for their respective congressional and legislative districts.
- An integrated mapping platform where citizens can suggest communities of interest.
- Copies of codes of conduct, civility pledges, press releases, audio recordings, contracts, and consultancy information.
- Budget allocations and expenditures.
- Video and audio archives of meetings, public hearings, and other relevant recordings.

If members representing a particular political party—either a member of the public or Commissioners—propose conflicting plans, let other members of the public and Commission review the plans and submit public comment. Then, the Commission should allow the original group to respond to those comments. This process gives people a chance to weigh in on the process and express concerns about choices they feel unduly disadvantage their party. Responses to comments leave room for judgment about which comments are justified and which may be a result of gamesmanship.

ASK COMMENTERS TO BE SPECIFIC

For example "drawing the border on Main Street will separate downtown and will thus split up an important economic community of interest of small vendors," rather than generalized comments, for example, "I don't like this map."

Comments from major communities of interest should also be encouraged, for instance from community groups with contrasting views on how their geographic area should be divided.

Every public meeting and hearing should be transcribed, recorded, and on live streamed, if possible. The Commission could also set up a Twitter hashtag or another mechanism for the public to respond with feedback in real time. Having a full transcript of meetings has also helped in court challenges faced by other Commissions because it can provide solid evidence whether or not partisan factors influenced the process.

It is critical for the Commission to set up a system for managing and analyzing the volume of public comment.[29] The Commission should record and tag all comments in a database. For example, comments could be tagged based on which criteria they address (for example partisan fairness, communities of interest), what region of the state they are addressing, and the group or citizen responsible for the comment.

The system should also have a way to show how many times a comment was submitted. For example, if the same form comment was submitted 20 times, the system should show the comment and indicate that it was submitted 20 times, rather than showing the comment 20 times. This will mitigate the sheer volume of comments (and especially form comments—identical comments submitted by multiple people) overshadowing individual comments. Overall, the system should allow Commissioners to search and view comments so that they can see the body of feedback for themselves. The database of comments should be available to the public, so that the public can also see what kinds of comments are being submitted and who they are coming from. This extra transparency will help ensure that the Commission adequately considers and judges the comments that it receives.

RISKS:

- Overreliance on a web platform to deal with transparency, accountability, and publicity concerns may unintentionally exclude input or concerns from citizens who do not have access to the internet or computers.
- Maintaining a web platform requires significant time and money.

DRAWING MAPS

A key task for the Michigan Commission will be to agree on its process for researching, drafting, and finalizing maps. The following are some recommendations for the actual map-drawing process.

RECOMMENDATIONS:

- Commissioners should practice drawing maps during training.

PRACTICE DRAWING MAPS

- Commissioners should practice drawing maps during training.
- Commissioners may want to draw draft maps on their own using free tools like Dave's Redistricting App or DistrictBuilder, which can analyze partisanship and other important measures.

- Commissioners may want to draw draft maps on their own using free tools like Dave's Redistricting App or DistrictBuilder, which can analyze partisanship and other important measures. They can give a draft map to staff with instructions on how to move forward. Staff can then use more sophisticated tools like ESRI or Maptitude to finalize maps and meet population-equality and federal requirements.
- Map drawing should start with areas subject to Voting Rights Act requirements.
- Commissioners should establish transparent procedures for the iterative process of drafting and re-drafting maps.
- Communities of interest play a central role in drawing maps. Where possible, they should be established following the public comment period and before district-drawing begins. This discourages their use as after-the-fact rationalizations for line-drawing decisions.
- Map drafts should be scored according to an agreed-upon list of statistical measures of partisanship.
- Commissioners should prioritize the measures and criteria for proposing and adopting each plan, including how to resolve instances when two or more criteria are in conflict.
- After initial drafts are created and refined by staff, additional choices and edits should be made in a public setting. No challenging or potentially controversial decisions should be made outside of the public eye.

AUTOMATED MAPS

A recent trend in redistricting has been automation, where algorithms draw thousands to millions of potential maps and then select from the options. Automation is seemingly less biased than human-drawn maps. However, rules used by an algorithm can contain hidden biases and do not take public input into account. This report recommends against an algorithmic approach.

DATA VISUALIZATION AND GRAPHICS

The importance of maps and data visualization cannot be overemphasized in understanding the redistricting process. Both maps and numerical measures provide rapid ways for evaluating a plan. Good visualizations also allow Commissioners to see communities of interest and political boundaries and how they fit into the process.[30]

Much of how the public perceives a redistricting plan will be based on the map's appearance. Commissioners should consider the way that color choice and fonts present a map and instruct the consulting staff to try various options. Maps should let citizens locate their homes to understand which district they are in. Therefore the Commission should overlay major roads, counties, cities, other political subdivisions, or some combination onto the maps.

Commissioners themselves should initially avoid focusing on how a district map looks superficially. This is especially the case in densely populated areas such as metropolitan Detroit and Grand Rapids, where achieving partisan balance and accommodating communities of interest can lead to uneven district shapes.

Michigan's Redistricting Criteria

Michigan's constitutional amendment lays out seven redistricting criteria that the Commission must abide by when drawing its Congressional, state Senate, and state House maps. The following sections explain each criterion in descending order of priority. We focus on tests for compliance, tradeoffs between criteria, and potential pitfalls.

CRITERION 1: FEDERAL REQUIREMENTS

"Districts shall be of equal population as mandated by the United States Constitution, and shall comply with the Voting Rights Act and other federal laws." (§6.13.A)

RECOMMENDATIONS

- Hire expert counsel on voting rights and the use of race in redistricting. Legal counsel is crucial for compliance and reduction of legal risk.
- Receive onboarding training to build Commissioners' confidence in asking counsel the right questions on Voting Rights Act compliance, the use of race in redistricting, and other legal issues.
- Congressional districts are held to a tighter legal standard of population equality than legislative districts. Excessive emphasis on population equality for legislative districts may interfere with fair representation.
- Current interpretations of the Voting Rights Act Section 2 may require the creation of opportunity-to-elect districts. But despite common nomenclature, these do not necessarily need to be majority-minority.

TARGET DISTRICT POPULATIONS (2010 CENSUS)

Congress	MI Senate	MI House
705,974	260,096	89,851

BACKGROUND

The most meaningful federal constraints on redistricting are equal population requirements and the Voting Rights Act.

Federal voting rights compliance is fairly settled law. A good-faith effort to comply with Voting Rights Act requirements is likely to hold up against a legal challenge. The following subsection highlights questions that members of the Commission should ask counsel. [31]

TRADEOFFS

In state legislative districts, excessive attention to equal population leaves less flexibility to satisfy other criteria. For example, it can become harder to preserve a community of interest if the Commission decides to maintain strict population equality. Allowing population to vary within the legal range provides flexibility to meet the other criteria.

It is desirable to let the population of state legislative districts vary somewhat.

Under current federal law, it is not always mandatory for opportunity-to-elect districts to have a majority of minority voters. This is why this report uses the term "Voting Rights Act Section 2 Districts." Indeed, a map composed of majority-minority districts in Virginia was found to be a racial gerrymander because it packed black voters more than necessary to elect representatives.

Voting Rights Action Section 2 districts provide minorities an opportunity to elect representatives of their choice.

Majority-minority districts, opportunity-to-elect districts, and Voting Rights Act Section 2 Districts all refer to the same goal: minorities ought to have the opportunity to elect a candidate of their choice. However, the term majority-minority district may leave the false impression that the Voting Rights Act always requires a district created under the Act to consist of at least 50 percent of voting age persons of the protected minority group.

The Commission can draw a congressional or state legislative district in compliance with Section 2 where the minority voting age population of the district falls below half of the population as long as enough non-minority voters are also likely to vote for a candidate who is the minority's preferred choice. Consider, for example, a district composed of 40 percent minority voters who tend to support candidate A and 60 percent white voters who mostly–but not entirely–support candidate B. If enough white voters tend to vote for candidate A, then the minority group has the opportunity to elect its preferred candidate and the district may be an appropriate remedial district under Section 2 grounds.

COMPLYING WITH THE LAW

Majority-minority districts are not necessarily compliant with federal law.

However, even though the district is legal, the state may need to defend the plan in court. If someone can draw a district with more than half of the district's population from the same minority group in a place where a VRA Section 2 District does not exist, then he/she can take the plan to court. The court could overturn the map on these grounds – or alternatively decide that no changes need to be made because the voters are not too racially polarized.

TESTS FOR COMPLIANCE

Population

MARGINS OF ERROR

During the course of our interviews, one legal expert noted that the Census population count itself may have inaccuracies as great as 2 percent. It would not be logical to require population counts to adhere precisely to an inherently uncertain count. On these grounds alone, the Commission may justifiably go beyond a 2 percent population deviation standard for state legislative districts.

Congressional districts must be close to equal in population size.[32] A district's population can only deviate by more than one person from the ideal population with good reason.

The federal requirements for state legislative districts are looser. The rule of thumb is that the population of the largest district is unlikely to be a problem if it is no more than 10 percent larger than the smallest district. Consistent with this, current Michigan law encourages state legislative districts to be within 5 percent of the average-sized district.[33] The Commission may also choose a stricter standard, but this will constrain other objectives.

How do Courts Evaluate a Voting Rights Act Section 2 Claim?

Generally, one must go through two steps. In the first step, one must answer yes to the following questions—commonly called the Gingles criteria—to create an opportunity-to-elect district:

1. Are half of the potential voters in a concentrated area minorities?
2. Would they generally vote together?
3. Would the rest of the voters in the area generally choose different candidates?

The first question aims to understand if the minority population is big enough in a compact area to merit an intervention. For example, African-American voters in the Detroit area qualify when creating congressional districts.

The second and third questions aim to understand if voters are racially polarized. The extreme scenario would be that all white voters vote for one party and all minority voters vote for an opposing party. A less extreme example of racially polarized voting would be if 70 percent of white voters choose candidate A and 70 percent of minority voters choose candidate B. Experts use several statistical measures that capture the degree of racial polarization.

In the second step, a court asks if the minority voters are otherwise protected in the "totality of the circumstances." If not, the opportunity-to-elect district is needed. As Congress passed the 1982 VRA Amendment, the Senate Committee on the Judiciary suggested the court consider the following circumstances to understand whether an opportunity-to-elect district is necessary. The courts use these so-called "Senate Factors":

- Has there been a history of voting-related discrimination?
- What is the extent of existing discriminatory voting practices?
- How racially polarized is the vote?
- Are minority groups excluded from how the party candidate gets chosen?
- How much does the minority group bear the effects of past discrimination for education, employment, and health which hinder their ability to participate in the political process?
- How many minority members have been elected in the past?
- How responsive are current elected officials to the specific needs of the minority group?

The three numbered questions above combined with the "Senate Factors" constitute the Gingles standard. Any voting rights analysis will ask the kind of questions shown above.

If a state plan discriminates against a minority group, it does not matter if the discrimination was intentional or not. In either case, what matters is if the plan has the effect of discrimination. This is easier to demonstrate to a court than proving discriminatory intent.

LEARNING FROM THE PAST

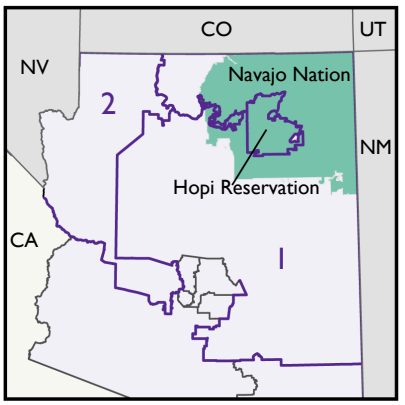
In the 2010 redistricting cycle, Michigan had two VRA districts at the congressional level, both in the Detroit area. The Commission should conduct a full analysis of the entire state to see if any other areas may qualify for a new VRA Section 2 District.

ISLANDS ARE CONTIGUOUS BY LAND TO THE COUNTY OF WHICH THEY ARE A PART.

In 2011, the entirety of Charlevoix County, including Beaver Island, was included in State House District 105.

Source: U.S. Census

IF NECESSARY, TWO SEPARATE AREAS CAN SOMETIMES BE MADE INTO ONE CONTIGUOUS DISTRICT WITH A THIN CONJOINING STRETCH.



In 2001, Arizona's Redistricting Commission connected the Hopi reservation to the 2nd Congressional District via a thin, contiguous stretch of land, only as wide as the Colorado River in some sections so that the Hopi reservation and Navajo Nation could be assigned to different Congressional Districts.

Source: U.S. Census

CRITERION 2: CONTIGUITY

"Districts shall be geographically contiguous. Island areas are considered to be contiguous by land to the county of which they are a part." (§6.13.B)

RECOMMENDATIONS:

- Districts must be drawn such that all parts of a district are connected.

BACKGROUND

Contiguity is the most straightforward criterion in redistricting. Simply put, all parts of a district must be connected. Nearly every state requires state legislative districts to be contiguous. Contiguity is understood as a traditional redistricting principle by the U.S. Supreme Court, and this idea aligns with most people's common-sense notion of what a legislative district should look like.[34]

Minimum Contiguity

Portions of a district should generally be connected by more than a single point. Two areas that touch only at a corner may not be considered contiguous.[35]

Contiguity Over Water

Usually, districts are considered contiguous over water as long as both sides of the district are connected by a bridge (or less commonly, a ferry route).[36] Michigan's constitutional language makes clear that islands are part of the mainland county to which they belong. For example, Beaver Island in Lake Michigan is part of Charlevoix County. Therefore, it should be included with the rest of Charlevoix County. As seen in the map, Beaver Island maintained contiguity with the county in the 2011 map of State House District 105.

TRADEOFFS

There may be times when it is acceptable to draw a district that is just barely contiguous in order to comply with other criteria. In 2001, Arizona's Commission prioritized providing the people of the Navajo Nation and those of the Hopi reservation with two separate districts due to differences in political priorities. The Arizona portion of Navajo territory entirely surrounds Hopi territory, but the Commission connected the Hopi reservation to the 2nd Congressional District via a thin, contiguous stretch of land, only as wide as the Colorado River in some sections. This slender connector ensured that the 2nd District met the contiguity requirement.

TESTING FOR COMPLIANCE

Commissioners can visually inspect a map to verify that it complies with the contiguity criterion.

CRITERION 3: COMMUNITIES OF INTEREST

"Districts shall reflect the state's diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates." (§6.13.C)

RECOMMENDATIONS

- Seek out and evaluate public input on communities of interest.
- Structure requests for public input to encourage standardized feedback, including maps.
- Provide software tools for the public to contribute maps showing communities of interest.

BACKGROUND

Communities of interest are a top criterion for drawing districts in Michigan. Defining them will require more investigative work by the Commission than any other criterion.

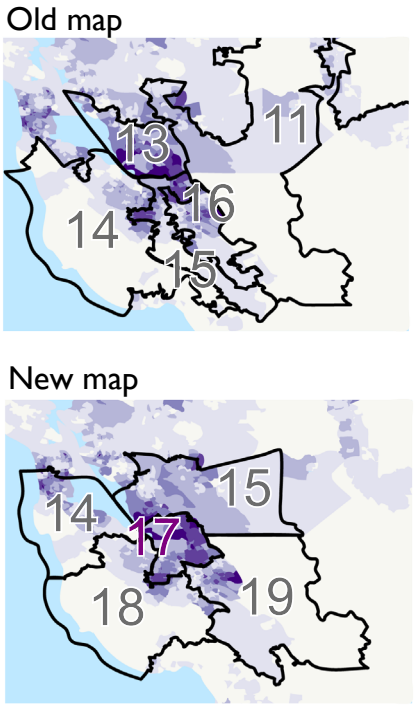
Communities of interest generally refer to groups of residents with common legislative interests that may be, but are not necessarily, captured by geographic or administrative boundaries, such as counties or cities. The definition of "communities of interest" varies greatly by state. Some state constitutions and legislative guidelines include the term without further explanation. Others explicitly list social, historic, cultural, racial, ethnic, media, transportation, or economic factors that could qualify a group as a community of interest.[37] Including Michigan, 30 states consider communities of interest in legislative redistricting, and 15 states apply this criterion in congressional redistricting.[38]

The Commission's role in identifying communities of interest is subjective, but must also be based on reason and evidence. Through public hearings, citizens can provide testimony explaining where their communities are located and how their interests are relevant to legislative representation. In recognizing these communities, the Commission can give a voice to local groups who might otherwise have little power.[39]

TRADEOFFS

Grouping residents with common interests into one district increases the incentive for an individual legislator to be more responsive to that community's needs. However, this approach also creates more homogenous districts and concentrates a given group's power into fewer overall districts. Concentration, or packing if done intentionally, can reduce the number of representatives that

THE CALIFORNIA COMMISSION CREATED AN ASIAN-AMERICAN OPPORTUNITY DISTRICT IN THE BAY AREA



Redistricting after the 2010 Census (bottom) led to the creation of an opportunity-to-elect 17th district and the election of an Asian-American representative. It also led to the first-ever majority Asian-American State Assembly district, the 49th.

Sources: American Community Survey, U.S. Census, California Statewide Database

Communities of interest is an area where the Commission is susceptible to manipulation.

advocate on that community's behalf, thus minimizing its influence in the legislature.

The Commission may need to strike a balance between providing representation for multiple communities of interest at once.

In the new Michigan law's listed criteria, communities of interest take precedence over compactness. Therefore a district may take on an unusual shape in order to ensure representation of a community. For example, the Arab-American population of metropolitan Detroit is spread across Dearborn and several neighboring towns. One way of representing this community could require joining parts of multiple towns.

Given Michigan's demographic and geographic diversity, this criterion will take on new meaning in different parts of the state. Religious communities, ethnic and minority groups, transportation corridors, industrial areas, school boards, and economic development zones could all be considered communities of interest. Due to the high ranking of the communities of interest criterion, the Commission's interpretation will be critical.

TESTS FOR COMPLIANCE

The new Michigan law requires that the Commission draw districts that reflect Michigan's diverse population and communities of interest by using input from communities themselves through public hearings and input submissions. As a result, this criterion is oriented toward process rather than outcome. Public records will reveal to what extent the Commission took communities of interest into account in creating its final maps.

RISKS

Ambiguity

How the public sees a community of interest will likely vary. Input from the most vocal and organized residents may command the most attention. The Commission has the discretion and should seek to identify communities that are less vocal. The Commission can solicit multiple rounds of public input before and after drafting district maps to incorporate maximum feedback.[40]

The Commission may have to incorporate potentially contradictory communities when drawing district lines. One possible solution to this problem is to honor one community of interest when drawing Senate lines, and another when drawing House lines.

The Commission should structure requests for public input to encourage standardized feedback and visualizations. The Commission should develop a standardized system to manage large volumes of input electronically. The Commission could describe

DEFINING COMMUNITIES OF INTEREST

It may seem logical for the Commission to try to develop a specific definition of communities of interest before inviting public input. However, a predetermined definition could unintentionally exclude some communities. Creating a set definition restricts the Commission's flexibility. Both the Arizona Commission and California Commission decided against defining communities of interest in order to avoid these types of complications.

the most useful kinds of input or structure its website to categorize input upon submission (see section on Setting Up and Running an Independent Commission: Engaging and Educating Your Fellow Citizens). The Commission could also consider a process by which the public presents or submits maps along with testimony.

Each Commissioner will have individual regional expertise and demographic knowledge. Such knowledge will help assess legitimate communities of interest.[41] Finally, Census information and Michigan state agency data can provide essential context.

The Commission should provide tools for citizens to draw and see their communities of interest. Access to redistricting software will allow citizens to draw their own communities of interest. The California Commission set up six access centers across the state where residents could sit down with technical experts to use redistricting software to create maps of their own communities of interest. In addition, some citizens drew maps by hand or used Google Maps. In all cases, defining the boundaries was an efficient way to provide input to the Commission.

Partisanship

Because communities of interest rank high among the criteria, incumbents and political parties may attempt to manipulate public input to create advantageous districts. For a new commission traveling across the state for the first time, it may be difficult to distinguish genuine community concerns from political self-dealing.

Drawing on their diverse regional backgrounds and professional experiences, Commissioners can offer insight on the legitimacy of information presented by the public about their communities. The Commissioners can also probe the information presented in public hearings to understand both the content and the source of the testimony.

Key questions could include but are not limited to whether a given community of interest holds regular meetings, how long it existed, whether it receives external funding, and whether that funding may be from partisan sources. Open evaluation by other local groups may also expose partisan interests posing as community concerns. In this way, the Commission may choose to use local knowledge to flush out partisan interests.

The Arizona Commission had to consider communities of interest as one of four unranked criteria. The Arizona Commission started its work with a set of public hearings to solicit citizen perspectives on the criterion's meaning. In soliciting public input before starting to draw individual districts, the Arizona Commission engaged the public in thinking critically about redistricting without having to defend specific district-drawing choices.

CRITERION 4: PARTISAN FAIRNESS

"Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political party shall be determined using accepted measures of partisan fairness." (§6.13.D)

RECOMMENDATIONS

- Create first-draft maps that give the two major parties similar opportunities to elect representatives, using historical voting data as needed.
- Adopt statistical measures that evaluate partisan fairness for statewide maps as a whole, not on a district-by-district basis.
- Avoid partisan packing of districts to the greatest extent practicable.

BACKGROUND

The fourth criterion the Commission must consider while drawing district maps is partisan fairness. Thus, in addition to a stringent process for drawing lines, not only is the redistricting process now designed to remove partisan advantage from any one party, but also the outcome of the process—the district maps—cannot provide unequal benefit to either party.

As the Commissioners set to the task of drawing district maps, they should be aware of several interrelated ideas that affect partisan fairness. Two concepts, symmetry and responsiveness, have emerged as ways to identify undue partisan advantage.[42]

Symmetry is the extent to which voter success for both parties translates to the same electoral success. For example, in a state where Republicans won 53 percent of the statewide vote and 9 out of 13 congressional races, would the same outcome occur for Democrats if they won 53 percent of the statewide vote? If not, then this hypothetical map would be said to provide asymmetric opportunities to the two parties. In a state such as Michigan where both parties win around 50 percent of the vote, a partisan map can be identified by its lack of symmetry toward the parties.

Responsiveness is defined as how much electoral outcomes change with shifting voter preferences. In a responsive map, if a party wins an increased share of votes statewide, its share of seats will also increase. However, if voters of that party have been concentrated in a few districts, as occurs in a partisan gerrymander, an increase or decrease in overall votes for that party would not alter the number of seats won.

This report will emphasize several statewide measures, appropriate to Michigan, which can be used to identify undue partisan advantage. Additional measures may be suggested to the Commission by technical staff.

Look at Maps as a Whole

Partisan fairness must be determined by looking at maps as a whole. If one district is particularly favorable or competitive to either major party, this may have arisen incidentally from party-blind factors such as population patterns or the intent to honor a community of interest. An advantage to a whole political party can only be identified by examining the map in totality. Therefore, tests for partisan advantage almost always focus on statewide measures. Are one side's winning districts systematically packed to be enormously lopsided? Are the other side's wins closer but more numerous? These questions can be answered by well-established mathematical tests, some of which have been in use by the scientific community for over a hundred years.

Examine Tradeoffs between Partisan Fairness and Superseding Criteria

In the Commission's efforts to obey federal law and represent communities of interest, it may inadvertently introduce partisan bias. For example, a statewide pattern of partisan advantage may arise if some districts are drawn to be excessively majority-minority.[43] This arises because a majority-minority district with some white voters who vote with the minority is packed with voters of a single party. In several federal lawsuits, partisans have defended their packing of opposing voters into a few districts by saying they were attempting to comply with federal law. This defense has not prevented court-ordered redrawing of congressional and legislative maps. Commissioners must be wary of the potential to provide unintentional partisan advantage by creating excessively concentrated communities of interest.

Based on the natural sorting of voters, it is inevitable that some congressional and legislative districts will be safely Republican or Democratic.[44] The Commission should not amplify partisan asymmetry by creating even more uncompetitive districts for one side where unnecessary to satisfy other criteria.

TESTS FOR COMPLIANCE

Statistical measures can be used to measure partisan fairness after a map has been drawn. These tests focus on determining fairness at a statewide level. In a map without substantial partisan bias, both parties will have similar opportunities to win elections. Certain tests are well suited for Michigan, where statewide levels of partisan vote share have tended to be close to even- that is, roughly split evenly between Democrats and Republicans.

In a map where elections have not yet been held, these measures can be estimated by using precinct-level results from past elections.

These measures work particularly well for state legislative districts, which are so numerous that small happenstance differences will average out when the map is considered at a statewide level.

Lopsided Wins[45]

In a closely-divided state, inequality of opportunity would be evident in the form of excessively large wins for one party, a sign that its voters have been packed into a few districts. This can be tested using the lopsided wins test. For example, if party A typically wins elections with an average of 71 percent of the vote, while party B wins with an average of 61 percent, then party A's wins are lopsided.[46]

Mean-Median Difference (Consistent Advantage)[47]

In Michigan, a pattern of artificially engineered advantage would have the feature that the median district will have a substantially different vote from the statewide average (also known as mean) vote. For Michigan's 14 congressional seats, the median vote-share is the midpoint between the 7th and 8th district in that list, sorted by partisan margin. Perhaps surprisingly, it is possible through partisan actions for more than three-fourths of the districts of a state to be above average for one party—an anomalously consistent advantage.[48] If a map treated the two major parties symmetrically, the difference between the mean and median would be close to zero percent.

Efficiency Gap[49]

The efficiency gap is a measure of the net fraction of "wasted" votes that parties receive across districts in a given map, divided by the total votes. Political scientists have defined wasted votes as those cast in a losing election or those cast for winners in excess of the minimum 50 percent (plus one vote) required to win. For any given map of districts, both parties will receive wasted votes; the net difference is used to calculate the efficiency gap. In maps that are biased to favor one party, the more the victimized party's votes are wasted through both packing and cracking.

Commissioners should make an effort to minimize the degree of lopsided wins, mean-median difference, and the efficiency gap while being consistent with other higher-ranked criteria.

EVEN IN A FAIR MAP, VOTE SHARE WILL NOT NECESSARILY EQUAL SEAT SHARE

In a map without substantial partisan bias, the majority of a congressional delegation or legislative chamber will broadly reflect the statewide partisan vote. However, the seat share will generally not be exactly proportional to the vote share. The reason is that in a system with winner-take-all elections, even a moderate overall advantage will translate to many individual wins. For example, in a neutral plan, it would be historically reasonable for one party to win 60 percent of the statewide vote and 70 percent of the seats.

CRITERION 5: INCUMBENCY

"Districts shall not favor or disfavor an incumbent elected official or a candidate." (§6.13.E)

RECOMMENDATIONS

- The incumbency criterion is a central mandate to disregard incumbents' political considerations. Individual legislators and their political allies should not influence how the Commission draws redistricting plans.
- Use a clean-slate approach in which district lines are drawn from scratch and according to an agreed-upon process.
- Avoid drawing maps that intentionally strengthen or weaken individual incumbents.
- Do not discuss or appear to consider incumbency in Commission proceedings or communications.

BACKGROUND

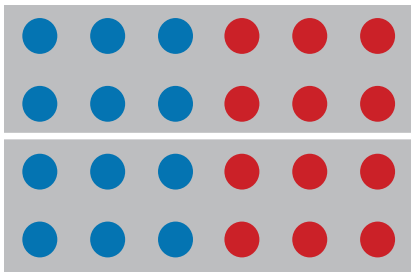
This criterion lies at the heart of the Commission's role: to be independent of political considerations. Most states continue to give their legislatures the power to draw maps, allowing redistricters the opportunity to favor their own job security over constituent interests. It is commonplace for elected officials to include favorable neighborhoods in their districts or to trade away underperforming areas to neighboring districts.

The manipulation of district maps to protect sitting politicians can occur whether one or both parties are in charge of redistricting. It is widely understood that a majority political party can protect its own legislators from competition. It is less widely known that a party may offer legislators of the opposing party a small number of "safe" districts. The opposing party would end up losing overall since their opportunities to win would be limited to those few seats. In this way, self-interested legislators may undermine both competition and partisan balance. There is also the risk of a bipartisan gerrymander, in which representatives from both parties draw lines to safeguard most or all of their own seats, minimizing serious competition in a general election.

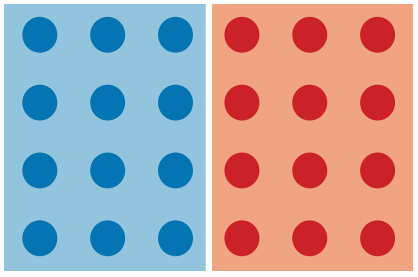
Citizen control over redistricting removes these forms of self-dealing. By neither favoring nor disfavoring incumbency, the Commission can shift the focus of drawing districts away from politicians and toward the citizens they represent.

Some argue that independent commissions should also eliminate incumbent gerrymandering by increasing electoral competitiveness. The Arizona Commission, for example, lists competitiveness as an explicit criterion in their constitutional amendment, whereas Michigan's new law contains no such provision. A competitive district is one in which the expected electoral outcome is close

BIPARTISAN GERRYMANDER



Before redistricting, there are two toss-up districts.



The parties negotiate a bipartisan gerrymander, with one safe D district and one safe R district.

enough that the party (and therefore incumbent) is likely to change on a regular basis. The problem with this interpretation for the Commission is that increasing competitiveness inherently disfavors incumbents and therefore runs contrary to the text of the new law.

Existing boundaries generally favor incumbents. Therefore the Commission should take a fresh start when developing redistricting plans. Starting from scratch eliminates the risk that incumbency considerations will affect the Commission's decision-making process at the start.

TESTS FOR COMPLIANCE

The incumbency criterion is satisfied by maintaining a process that is independent of legislators and their political allies. Recommendations for such a process receive discussion at length in the Setting Up and Running an Independent Commission section.

RISKS

Competitiveness

Some scholars have associated redistricting with the decline of competitive congressional elections over the past 50 years. They argue that independent commissions contribute to improved democratic outcomes by improving electoral competitiveness. There is a risk that the public, including media and political commentators, will expect the Commission to lead to more competitive elections, despite no reference to this outcome in the language. However, a more likely outcome is a mix of competitive and uncompetitive seats.

The Commission should both recognize and explain to the public that maintaining incumbents or promoting competitiveness entails both advantages and disadvantages. For incumbents, experience can be a good thing as it may take time for a politician to learn about their district and constituents. Incumbents may be better able to perform their representative function as they gain additional information and insight into the preferences of their electorate. On the other hand, competitive districts may incentivize political representatives to compromise on issues, leading to improved outcomes for most citizens.

Ensuring Commission Independence

In addition to adhering to the incumbency criterion, the Commission will need to establish governance mechanisms and communication channels that prove this process to outside stakeholders. This should involve transparency in decision-making and communications, as well as proactive measures to prevent external parties from influencing the process.

INFORMAL INFLUENCE

A more difficult proposition may be avoiding attempts at exerting influence through informal channels. These could include, but are not limited to, conversations with social acquaintances, direct overtures from legislators, pressure from co-workers, or targeted advertising. As it may be impossible to avoid all such interactions, the Commission should set internal guidelines (See Setting Up and Running an Independent Commission) that require any such attempts be recorded in the event of future legal or reputational challenges.

As described within the text of Michigan's new law, as well as in previous sections of this report, maintaining transparency will be of utmost importance to the effective function of the Commission. In the case of the incumbency criterion, a well-documented record of every meeting, decision, and internal or external communication can be later used as proof against accusations that the Commission considered incumbency in drawing its maps.

The Commission can take steps to avoid being influenced by outside stakeholders who may have an interest in securing the election of an incumbent. In particular, the Commission should make it clear to all involved parties, including its legal team and map-making consultants, as well as the public during hearings, that incumbency will not be considered and should be avoided in discussion. Political interests may wish to promote incumbents by using the public hearing process, a risk that can be mitigated by requiring that previous boundaries not be discussed in public meetings.

CRITERION 6: POLITICAL BOUNDARIES

"Districts shall reflect consideration of county, city, and township boundaries." (§6.13.F)

RECOMMENDATIONS

- Use county, city, and township political boundaries and equal population restrictions in the initial phase of map-drawing. Break units specifically to satisfy higher-ranked criteria.
- Review prior district maps to understand historical precedent.
- To assess a map, use an indicator that quantifies the degree of political boundary splitting.
- Smaller districts may be nested within larger districts to reduce election complexity. Alternatively, smaller districts may be used to achieve goals such as representing different communities of interest.

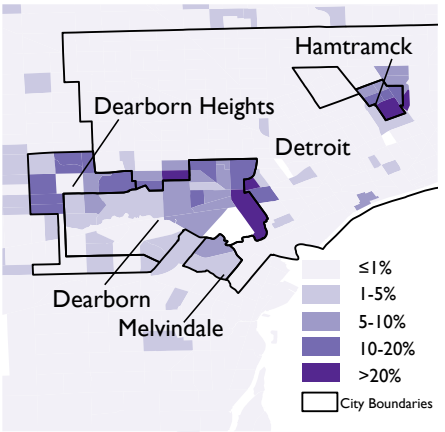
BACKGROUND

Counties, cities, and townships are the primary political subdivisions of a state. They serve as administrative centers for government services, ranging from courts and law enforcement to veterans' services and public record-keeping. In Michigan, the smallest political unit is a township. Prior to the Supreme Court's equal population rulings in 1964, most states prioritized county lines in the redistricting process, including Michigan (see Background: Past Michigan Redistricting Cycles have Ended in Gridlock and Partisanship). Using county lines and other political boundaries to form districts may appeal to common sense, but as with each of the redistricting criteria under consideration, there are distinct tradeoffs that will need to be weighed over the course of the redistricting process.

Given that counties and other political boundaries are long-established and well-defined administrative units, they can serve as an indicator of shared interests among individuals living within their boundaries–though, as noted below, these indications can be imperfect. Because voting precincts fall within political boundaries, aligning districts with political boundaries where possible will make elections less complicated, less costly to administer, and less confusing for voters. Aligned administrative and electoral districts also optimize potential cooperation between local administrators and elected officials. Voters in districts composed of whole political units can expect elected officials to better represent local shared interests, as opposed to representatives whose district spans portions of several political units.

Districts that adhere to political boundary lines are more conducive to **nesting**, meaning that the lines of state legislative districts align with those of congressional districts, or House districts with

ARAB-AMERICANS IN MICHIGAN



In 2016, there were 179,000 Arab-Americans in Michigan, primarily concentrated in a few areas of Detroit and southwest of the city.

Sources: American Comunity Survey, Michigan Open Data

Senate districts.[50] Nesting can reduce the administrative burden of elections. But it cannot be achieved in all cases. For example, there are 110 House districts, which is not a perfect multiple of the number of Senate districts, 38. In situations where multiple communities of interest live in the same region, overlapping House and Senate districts may be of use in ensuring that each community of interest gets representation in at least one legislative chamber.

The extent of divergence from existing political boundaries can be quantified, which will be useful in establishing compliance metrics.

TRADEOFFS

Using political boundaries to form districts must be weighed against other, higher-ranked criteria. As discussed earlier, communities of interest do not always fall within one county, city, or township (see Criterion Three: Communities of Interest). In this way, political boundary lines do not always serve as neutral guidelines—they may divide communities with shared interests. Drawing district lines in public and soliciting public comment will be critical components for understanding where communities of interest are located and for securing public trust in the independent redistricting process.

Sorting of voters across the rural-urban divide means that adhering to political boundaries could facilitate partisan gerrymandering. Under the pretext of following political boundaries in densely populated urban areas, partisan interests could dilute the impact of a group's vote. The Apol Standards failed to serve as a neutral redistricting standard for this reason.

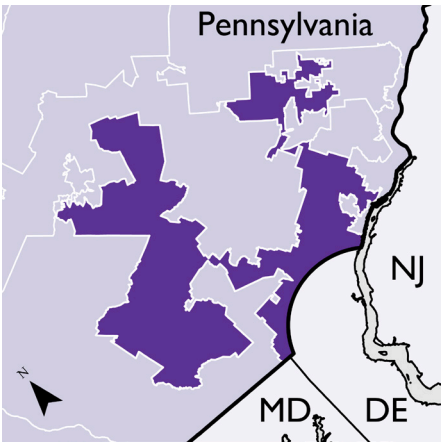
TESTS FOR COMPLIANCE

A visual comparison of political boundary lines and district lines can serve as an initial approach to determining compliance. However, a district that appears irregular at first glance is not necessarily a gerrymander. Congressional districts are more conducive to a visual comparison of political boundary and district lines as they are fewer in number and larger in size. But when legislative districts are considered, the level of analysis is more complex. Divergence from political boundary lines can be measured by counting the number of splits at each administrative level (county, municipal, township).

RISKS

A higher number of splits can serve as a red flag that triggers closer scrutiny of the regions in question. Areas with high levels of deviation from political boundaries can be highlighted, and then investigated as to compliance with criteria one through five. Given that political boundaries are the penultimate criteria in order of priority, compliance with political boundaries must be secondary to the considerations and criteria discussed earlier.

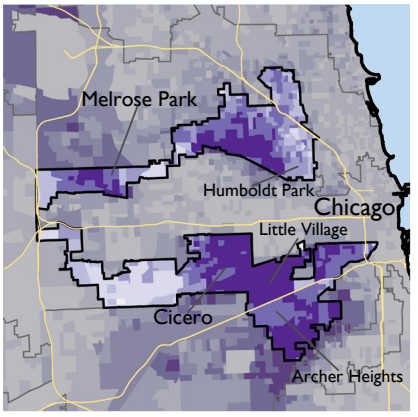
CARTOONISH DISTRICTS ATTRACT NEGATIVE ATTENTION



Pennsylvania's 7th Congressional District was nicknamed "Goofy Kicking Donald Duck" and was commonly used to highlight Pennsylvania's highly gerrymandered Congressional map, deemed unconstitutional by the State Supreme Court in 2018.

Source: U.S. Census

NOT ALL STRANGE SHAPES ARE GERRYMANDERS



The 4th Congressional District of Illinois protects the voting interests of Hispanics in Chicago.

Source: U.S. Census

CRITERION 7: COMPACTNESS

"Districts shall be reasonably compact." (§6.13.G)

RECOMMENDATIONS

- Compactness may have to be sacrificed to comply with other criteria, particularly in densely populated areas.
- Compactness can be measured quantitatively, but it is also important to consider how the public will view or perceive districts.
- If oddly shaped districts are unavoidable, be prepared to justify them in terms of higher-ranked criteria.

BACKGROUND

One intuitive way to define compactness is in terms of geometric shape, where a square or a circle is considered most compact. Other measures of compactness also take into account where people live, thus defining a district's compactness in terms of how close its residents live to one another. Though there is no federal requirement for compactness and the number of definitions of compactness are legion, the U.S. Supreme Court has long considered compactness to be a traditional redistricting criterion. A majority of states require legislative districts to be reasonably compact.

TRADEOFFS

Compact shapes are not necessarily a sign of fairness. Districts drawn in the shape of a "creepy lizard"[51] or "Goofy kicking Donald Duck,"[52] attract ridicule, but visual shapes alone do not provide information about whether districts are drawn fairly. With current technology it is entirely possible to gerrymander a map while maintaining compact districts.[53]

Compactness is not a panacea. Even a pretty map can disenfranchise certain voters or benefit a political party, and some maps that look strange when viewed as wall art actually produce superior representation.

It may be necessary and even justifiable to sacrifice some degree of compactness to comply with higher-ranked criteria. Ensuring that districts reflect communities of interest and do not provide disproportionate advantages to any political party may mean that some districts are not as compact as they otherwise could be. For example, Chicago, Illinois's 4th Congressional District, sometimes termed the "earmuffs" district, looks quite strange at first glance. However, the district was drawn in this way to ensure that Latinos in Chicago had a political voice. The 4th District connects Humboldt Park, a neighborhood with many Puerto Rican voters, to Pilsen and Little Village, areas with large numbers of Mexican-American voters, without cutting through the heart of an African-

American neighborhood.[54] By including them in a single district, voters were afforded the opportunity to elect a representative responsive to their needs.

If it is impossible to comply with the other criteria while drawing compact districts, less compact shapes can be justified. While it may be simple to draw compact districts in less dense parts of Michigan such as the Upper Peninsula, it may be more challenging in more dense and diverse areas such as metropolitan Detroit.

Still, it will serve the Commission well to make every effort to draw districts that pass the compactness compliance tests and, perhaps more importantly, look good to a reasonable person. Non-compact districts will be subject to a greater degree of scrutiny by citizens, politicians, and the courts. Aesthetically pleasing maps without strangely shaped districts are more likely to be supported by the general public and less likely to be challenged in the courts as contradictory to traditional redistricting principles.

TESTS FOR COMPLIANCE

Though most states require the principle of compactness in redistricting, few formally define compactness. There are at least thirty different methods for testing the compactness of a district or redistricting plan. The most important test for compliance may be the visual 'common sense' test to see if a district is likely to create unnecessary controversy.

Below are two popular tests for compactness.

Reock Score

Coming into broad use in the 1990s, the Reock (REE-ock) score compares the area of a district to the area of the smallest possible circle that can be drawn around it. This compares the district to a perfectly compact shape, a circle. Scores range from 0.00 to 1.00, with 1.00 being most compact.

Polsby-Popper Score

The Polsby-Popper Score measures the smoothness of the perimeter. It compares the area of a district to the area of a circle of equal perimeter. Districts with smooth borders and regular shapes score higher, and districts with squiggly borders will score lower. Scores range from 0.00 to 1.00, with 1.00 being the most compact.

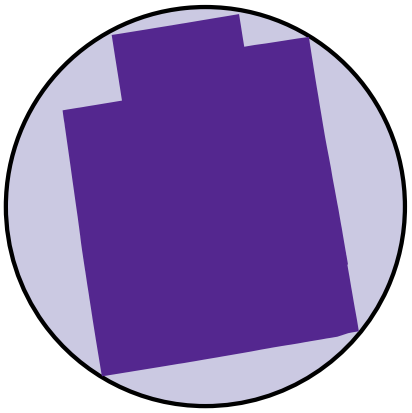
RISKS

To avoid potential controversy, if the Commission believes it is important to draw a district in an unusual shape to comply with other redistricting criteria, it should clearly articulate why such a shape is necessary.

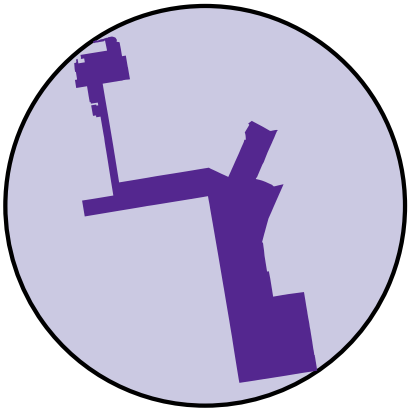
DEFINING COMPACTNESS

Michigan's 1996 redistricting laws included a specific definition for compactness: "Compactness shall be determined by circumscribing each district within a circle of minimum radius and measuring the area, not part of the Great Lakes and not part of another state, inside the circle but not inside the district." This variation of the Reock score does not penalize districts for being near water or a neighboring state.

EXAMPLE REOCK SCORES



Michigan's 82nd State House District is highly compact (Reock=0.65)

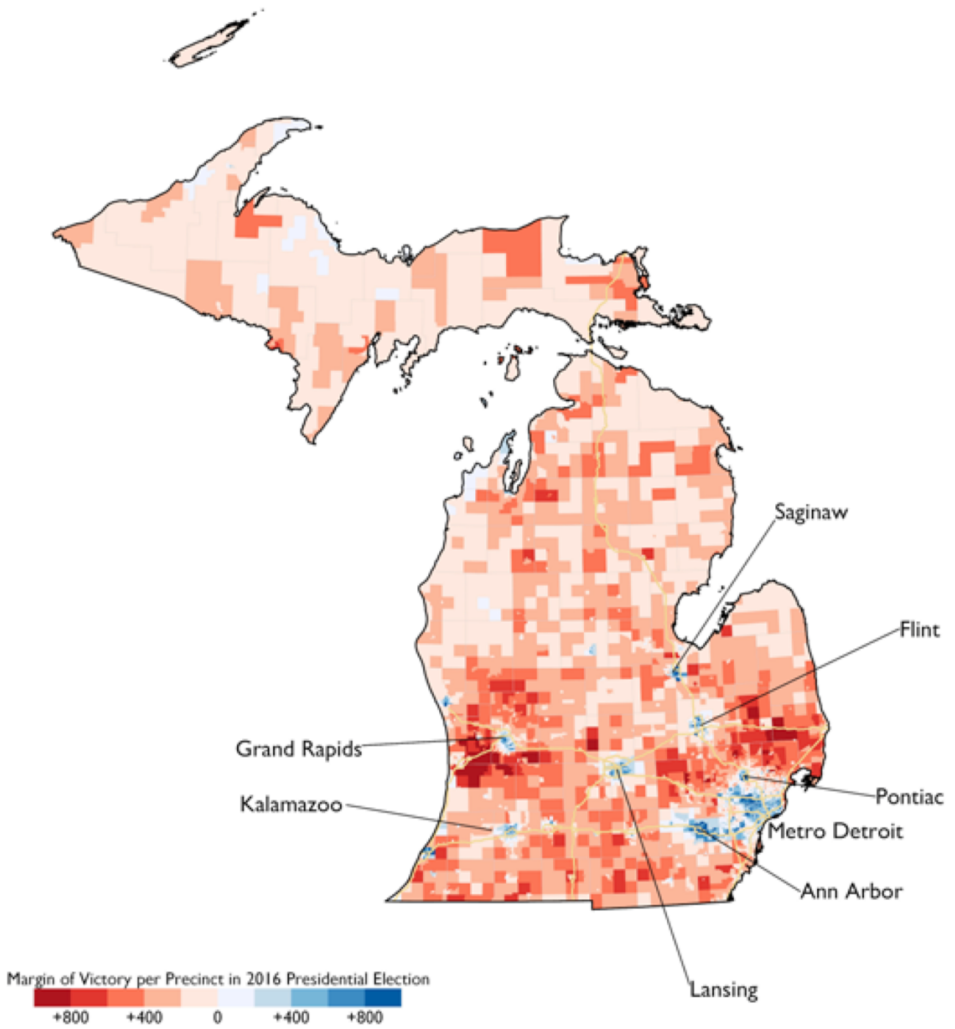


Michigan's 13th State House District is not compact (Reock=0.16)

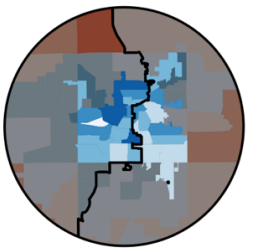
The Political Geography of Michigan

Michigan's complex political geography calls for careful redistricting to avoid disenfranchising voters.

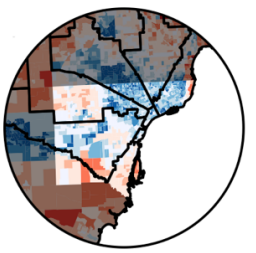
In 2016, nearly equal numbers of voters cast ballots for each party—2.28 million for Donald Trump and 2.27 million for Hillary Clinton—but each party's voters live in different parts of the state. The State's Democrats tend to be clustered in urban areas, particularly Metro Detroit, while Republicans live in the state's more rural areas, as well as suburbs of Detroit and Grand Rapids.



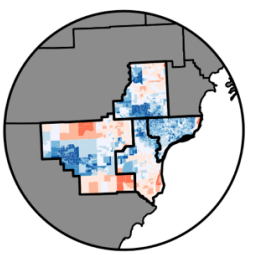
Slicing up Michigan's political map can create electoral advantages for both parties, intentionally or unintentionally



In a possible Republican gerrymander, Kalamazoo is split into two separate districts, ensuring that the total number of Democrats in both districts is low.



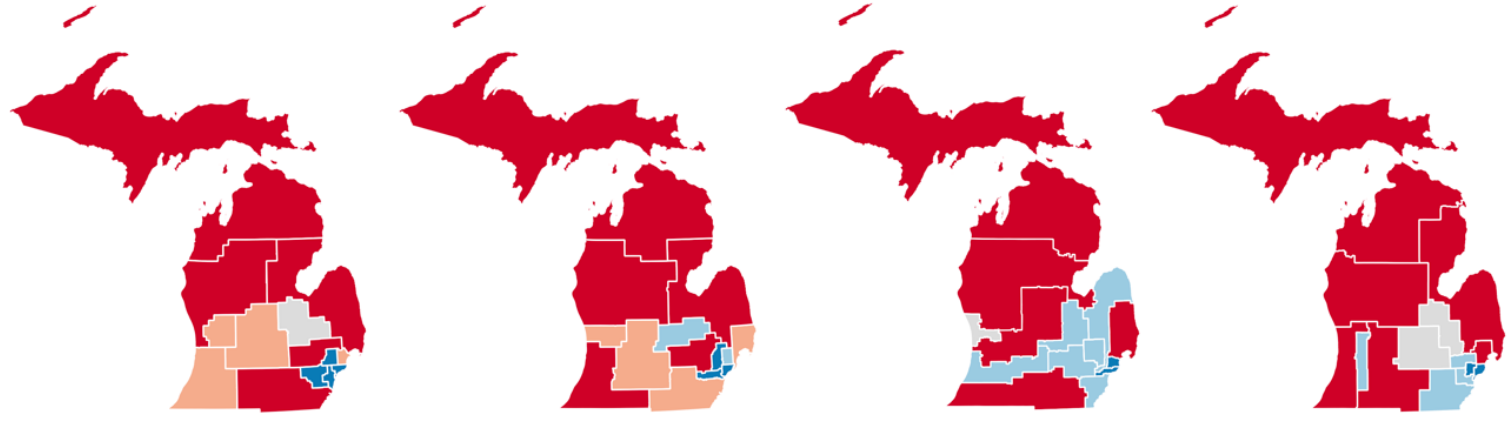
In a possible Democratic gerrymander six different districts cut into Wayne County, creating a fan of reliably Democratic districts which all include portions of Metro Detroit.



A compact map may unintentionally benefit Republicans by packing Democratic voters in the Metro Detroit area into a few districts.

Demonstrative Congressional Maps

There are many different ways to draw district maps. These four maps show the diversity of maps that can be drawn to accomplish different goals.[55] Republican Gerrymander, Democratic Gerrymander, and Partisan Balance maps were created by the report authors and Princeton Gerrymandering Project in Dave's Redistricting App (DRA2020). Compact Map was drawn by FiveThirtyEight and is licensed under the Creative Commons Attribution ShareAlike 3.0 Unported License. To download shapefiles, visit http://gerrymander.princeton.edu/michigan.



	Compact	Republican Gerrymander	Democratic Gerrymander	Partisan Balance
Partisan Breakdown Safe: 15+ point advantage Lean: 5–15 point advantage Toss-up: 0–5 point advantage (using 2016 presidential vote)	4 Safe D 1 Toss-up 4 Lean R 5 Safe R	3 Safe D 2 Lean D 4 Lean R 5 Safe R	2 Safe D 6 Lean D 1 Toss-up 5 Safe R	2 Safe D 4 Lean D 2 Toss-ups 6 Safe R
Number of districts where majority of the voting-age population is black	1	1	1	2
Number of split counties	9	20	62	9
Compactness Mean Reock score (higher is more compact)	0.45	0.42	0.43	0.41
Mean-median difference	11.1 % pts. R	7.6 % pts. R	2.2 % pts. D	0.4 % pts. R
Difference in average win margin	4.3 % pts. R	5.6 % pts. R	5.4 % pts. D	0.7 % pts. R
Efficiency gap	20.9 % pts. R	15.0 % pts. R	13.6 % pts. D	0.4 % pts. R

Conclusion

The Michigan Independent Citizens Redistricting Commission faces a challenging task. The legal and technical learning curve faced by Commissioners will be steep. The timeline for gaining public input and reaching consensus is short, and every Commissioner has a burden of individual responsibility. Commissioners will need to execute their duties with the highest standards of integrity and accountability.

At the same time, the Commission has a unique opportunity to restore faith and trust in governance. For decades, the system of legislators drawing district lines has lacked accountability and often required court intervention. By creating the Commission, Michigan has taken a first step in repairing a flaw in the U.S. democratic system. By carrying out the new Michigan law's mandate, the Commission can create an electoral system that is responsive to all Michiganders.

ENDNOTES

1. The formula is called the Huntington-Hill Method and was passed into law by the United States Congress in 1941. U.S. Census Bureau. "Apportionment Legislation 1890 - Present - History - U.S. Census Bureau," U.S. Census Bureau. https://www.census.gov/history/www/reference/apportionment/apportionment_legislation_1890_-_present.html.
2. Beitz, Charles. "How Is Partisan Gerrymandering Unfair?" Philosophy and Public Affairs, forthcoming.
3. Wesberry v. Sanders, 376 U.S. 1. 1964
4. Until 2011, congressional districts had to be of equal population to within one person. However, a unanimous 2012 decision in Tennant v. Jefferson County (Tennant v. Jefferson County, 567 U.S. __ (2012)) held that slight deviations could be allowed for a variety of reasons.
5. Wesberry v. Sanders, 376 U.S. 1. 1964; Wang, Sam and Brian Remlinger. "Slaying the Partisan Gerrymander." American Prospect. Sept 25, 2017. https://prospect.org/article/slaying-partisan-gerrymander
6. Wesberry v. Sanders, 376 U.S. 1. 1964: Wang et al., "An Antidote for Gobbledygook: Organizing the Judge's Partisan Gerrymandering Toolkit into Tests of Opportunity and Outcome," 17 Election L.J. 302 (2018).
7. Lo, Annie. "Citizen and Legislative Efforts to Reform Redistricting in 2018." Brennan Center for Justice. Last modified November 7, 2018. https://www.brennancenter.org/analysis/current-citizen-efforts-reform-redistricting
8. Cain, Bruce. "Redistricting Commissions: A Better Political Buffer?" The Yale Law Journal. No. 121: 1808-1844. May 10, 2012.
9. Ibid.
10. Ibid.
11. This case was decided by a 5-4 decision prior to Justice Kavanaugh's seating and may be litigated in upcoming cycles.
12. Cain, Bruce. "Redistricting Commissions: A Better Political Buffer?" The Yale Law Journal. No. 121: 1808-1844. May 10, 2012.
13. Sonenshein, Raphael. "When the People Draw the Lines: An Examination of the California Citizens Redistricting Commission." League of Women Voters. 2013. https://cavotes.org/sites/default/files/jobs/RedistrictingCommission%20Report6122013.pdf
14. For more analysis on whether independent commissions are more or less effective than other forms of commissions see: (1) Cain, Bruce. "Redistricting Commissions: A Better Political Buffer?" The Yale Law Journal. No. 121: 1808-1844. May 10, 2012, (2) "Redistricting Commissions: What Works." Brennan Center for Justice. July 31, 2018. (3) McGhee, Eric. "Assessing California's Redistricting Commission: Effects on Partisan Fairness and Competitiveness." Public Policy Institute of California. March 2018.
15. The apportionment guidelines required single member districts and prioritized apportionment at the county level using a system of "apportionment factors," determined by population ratios. If a county had to be divided in keeping with the proportional population requirements, the guidelines prioritized the use of city and township lines, compactness, contiguity, and rendering the districts "as rectangular in shape as possible" (Michigan Constitution, Article IV, §2(2)).
16. A 16.4 percent deviation in the equal population requirement at the state legislative level was permitted (91.8-108.2 percent).
17. In Re Apportionment of State Legislature 1982, 413 Mich. 96 Section IV C (a)-(c). Michigan Supreme Court. 1982. https://law.justia.com/cases/michigan/supreme-court/1982/68777-3.html
18. State of Michigan. Public Act 463 of 1996 §§ 3.63, 4.261.
19. State of Michigan. Public Act Act 221 of 1991 § 3.63.
20. LeRoux v. Secretary of State, 640 N.W.2d 849 Michigan Supreme Court. 2002.
21. State of Michigan. House Bill 5908. 2010.
22. State of Michigan. House Bill 5914. 2010.
23. State of Michigan. House Bill 4800, 2015. House Bill 4122, 2017. Senate Bill 0082, 2017. Senate Bill 0206, 2017.
24. League of Women Voters of Michigan v. Johnson. "Complaint for Declaratory and Injunctive Relief." December 2017. https://www.brennancenter.org/sites/default/files/legal-work/LWV_v_Johnson_Complaint_12.22.17.pdf
25. "League of Women Voters of Michigan v. Johnson: Case Background." Brennan Center for Justice. December 14, 2018. https://www.brennancenter.org/legal-work/league-women-voters-michigan-v-johnson
26. "Michigan Proposal 2, Independent Redistricting Commission Initiative," Ballotpedia https://ballotpedia.org/Michigan_Proposal_2,_Independent_Redistricting_Commission_Initiative_(2018)
27. Wilkinson, Mike. "Proposal to end gerrymandering resonated in red and blue Michigan," Bridge Magazine. November 9, 2018. https://www.bridgemi.com/public-sector/proposal-end-gerrymandering-resonated-red-and-blue-michigan
28. "Public Input Hearings," California Citizens Redistricting Commission. 2011. https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2011/04/learnmore_20110614_worksheet.pdf
29. The Commission's database could be modeled after existing databases. The Digital Democracy Initiative at California State University has created a digital archive of all California legislative statements. This database was built by and continues to be improved by students, making it a relatively low-cost endeavor compared to other alternatives. The Michigan Commission could build a smaller-scale model similar to this database to manage public comments.
30. For examples, see http://gerrymander.princeton.edu/michigan

31. National Conference of State Legislatures. "2010 Redistricting Deviation Table." National Conference of State Legislatures. Last modified July 6, 2018. http://www.ncsl.org/research/redistricting/2010-ncsl-redistricting-deviation-table.aspx
32. Tennant v. Jefferson County, 567 U.S. __ (2012) (holding that minor deviations from exact population equality in a congressional districting plan are permissible to achieve a legitimate state objective, such as maintaining preexisting county boundaries).
33. State of Michigan. Public Act 463 of 1996 §§ 3.63, 4.261.
34. For example, in the majority decision for Shaw v. Reno (1993), Justice Sandra Day O'Connor highlighted the fact that "at one point," North Carolina's 12th Congressional District "remains contiguous only because it intersects at a single point with two other districts before crossing over them" as evidence that the district was "unusually shaped" and an "unconstitutional racial gerrymander."
35. State of Michigan. Public Act 463 of 1996. § 4.261(1)(c).
36. Levitt, Justin. "A Citizen's Guide to Redistricting." Brennan Center for Justice. July 2008. https://www.brennancenter.org/publication/citizens-guide-redistricting.
37. MacDonald, Karin and Bruce Cain. "Communities of Interest Methodology and Public Testimony". UC Irvine Law Review. 3, no. 3 (2013): 609-636. https://www.law.uci.edu/lawreview/vol3/no3/mac_donald_cain.pdf
38. Levitt, Justin. "All About Redistricting Guide". http://redistricting.lls.edu/mywork.php
Ballot initiatives in Utah, Colorado, and Michigan accessed via Ballotpedia.
39. Ibid.
40. As per the constitutional amendment, the commission is required to conduct ten public hearings prior to drafting proposed maps and five after drawing proposed maps.
41. Sonenshein, Raphael J. "When the People Draw the Lines: An Examination of the California Citizens Redistricting Commission." League of Women Voters. 2013. https://cavotes.org/sites/default/files/jobs/RedistrictingCommission%20Report6122013.pdf
42. Campaign Legal Center. "Designing Independent Redistricting Commissions." July 2018. https://campaignlegal.org/sites/default/files/2018-07/Designing_IRC_Report2_FINAL_Print.pdf
43. Lublin, David, The Paradox of Representation: Racial Gerrymandering and Minority Interests In Congress. Princeton, N.J.: Princeton University Press. 1997.
44. Avoiding partisan packing while respecting communities of interest come into conflict because communities of interest often vote along the same lines and, in conjunction with majority-group voters within a district may lead to partisan packing of the district. After drawing individual districts that honor communities of interest, it is also necessary to avoid inadvertent creation of a statewide partisan advantage for one party.
45. Wang, Samuel and Brian Remlinger. "An Antidote for Gobbledygook: Organizing the Judge's Partisan Gerrymandering Toolkit into a Two-Part Framework." April 15, 2018. https://prospect.org/article/slaying-partisan-gerrymander
46. Wang, Samuel. "Three Tests for Practical Evaluation of Partisan Gerrymandering." Stanford Law Review. 68, no. 6. 2016: 1263.
If it appears that one party's wins are more lopsided than the other's, a well-established statistical test, "Student's t-test," has been proposed to demonstrate in court that the difference is unlikely to have arisen by chance. However, the Commission does not have to simply avoid setting off this test; it can go further. To minimize partisanship, the Commission can work toward drawing a map that leads the two parties to achieve near-equal-sized wins when averaged across all districts. This allows some districts to be big wins and others to be smaller wins, while still maintaining overall equality of opportunity between the parties on a statewide level.
47. Wang, Samuel and Brian Remlinger. "An Antidote for Gobbledygook: Organizing the Judge's Partisan Gerrymandering Toolkit into a Two-Part Framework." April 15, 2018. https://ssrn.com/abstract=3158123
48. Emamdjomeh, Armand, Ann Gerhart, and Tim Meko. "Why North Carolina's House district lines have been upended – again." The Washington Post. August 31, 2018. https://www.washingtonpost.com/graphics/2018/politics/north-carolina-redistricting/?noredirect=on&utm_term=.3ae9c6a5a1f4
49. Stephanopoulos, Nicholas, and Eric McGhee. "Partisan Gerrymandering and the Efficiency Gap." Public Law and Legal Theory Working Paper. No. 493, 2014. http://ssrn.com/abstract=2457468
50. Levitt, Justin. "A Citizen's Guide to Redistricting." Brennan Center for Justice. July 2008. https://www.brennancenter.org/publication/citizens-guide-redistricting; Levitt, Justin. "Where are the lines drawn?" All About Redistricting. http://redistricting.lls.edu/where-state.php
51. Gray, Kathleen. "Redistricting Debate: Creepy Lizard or Compact Lines?" Detroit Free Press. April 2, 2017. https://www.freep.com/story/news/politics/2017/04/02/redistricting-michigan-districts-census/99881080
52. Weiss, Brennan. "This Pennsylvania Congressional District Looks Like 'Goofy kicking Donald Duck." Business Insider. January 27, 2018. https://www.businessinsider.com/pennsylvania-7th-district-goofy-kicking-donald-duck-shows-gerrymandering-2018-1
53. In a concurring opinion to Gill v. Whitford (2018), Supreme Court Justice Elena Kagan remarked that modern software makes it possible to "capture every last bit of partisan advantage" in the redistricting process while still meeting traditional redistricting requirements.
54. Puente, Michael. "Illinois' 4th Congressional District: Fight For the 'Latino Earmuffs.'" WBEZ News. March 19, 2018. https://www.wbez.org/shows/wbez-news/illinois-4th-congressional-district-fight-for-the-latino-earmuffs/da984dc6-9325-4e25-b506-33adc1045f37.
55. 2010 Census data was used to achieve approximate population equality across districts.

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