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CONGRESSIONAL AND LEGISLATIVE REDISTRICTING REFORM

MAY 2011

REPORT 370

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Contents

Summary	v
Introduction	1
Apportionment vs. Redistricting	2
Reapportionment	2
State Approaches to Redistricting	5
Considerations of the Various Approaches	
Michigan's Approach to Redistricting	9
Federal Requirements for Redistricting	11
Population	11
Equal Opportunity	13
State Requirements for Redistricting	15
Commonly Used Requirements	
Political Boundaries	15
Communities of Interest	15
Contiguity	17
Compactness	17
Lesser Used Requirements	18
Data	18
Competitive Districts	18
Geographic Boundaries	19
Nesting	19
Transparency and Public Engagement	19
Multi-Member Districts	20
Approval Threshold	21
Frequency	21
Prioritizing among Requirements	22
Schedule	22
Recommendations	26
Redistricting Commission	26
Frequency	28
Process	28
Transparency and Public Engagement	29
Legal Standing	
Standards	29
Conclusion	31
Appendix A: 2001 Congressional, Michigan House of Representatives	
and Michigan Senate Districts	32
Appendix B: Method of Equal Proportions	35

CONGRESSIONAL AND LEGISLATIVE REDISTRICTING REFORM

Tables		
Table 1	Comparison of District Size and Variation by State, 2000	2
Table 2	Redistricting Criteria by State, 2000	6
Table 3	Michigan's 2012 Election Deadlines	7
Charts		
Chart 1	Michigan Congressional Representation and Population, 1900-2010	3
Maps		
Мар 1	Michigan County Population Changes: 2000-2010	4
Map 2	Entity Responsible for Congressional Redistricting	6
Мар 3	Entity Responsible for Legislative Redistricting	7
Map 4	Section 5 Covered Jurisdictions	4
Map 5	New York State Senate District 60: An Example of a Noncontiguous District 1	7
Map 6	Laws Determining Frequency of Redrawing State Legislative Districts	1
Map 7	Laws Determining Frequency of Redrawing Congressional Districts	2
Map 8	New York Assembly District 131 after the 2000 Redistricting	3
Map 9	Michigan's 15 Congressional Districts	3
Map 10	Michigan's 110 State House of Representative Districts	4
Map 11	Michigan's 38 State Senate Districts	5

Congressional and Legislative Redistricting Reform

Summary

With the U.S. Census Bureau's release of the 2010 population counts, states are set to begin the process of redrawing electoral district boundaries. Voters elect members to the U.S. House of Representatives and to both chambers of the state legislature from districts. How voters are grouped into these districts therefore affects who the representatives are and what policies representatives implement.

As a fundamental part of our democracy, federal and state laws govern the redistricting process. The U.S. Constitution mandates equal representation among districts, and the Voting Rights Act of 1965 requires that states provide minority groups an equal opportunity to elect candidates of their choice. Most states have secondary guidelines to govern and constrain the redistricting process. The most common requirements are that districts adhere to political boundaries, preserve communities of interest, and be contiguous and compact.

Michigan's legislative redistricting laws have undergone a number of changes since adoption of the 1963 Michigan Constitution. Article IV, Sections 2 through 6, of the Constitution originally defined Michigan's legislative redistricting approach. However, in 1964, the U.S. Supreme Court found that standards used to create districts based on anything other than population were in violation of the "one man, one vote" provisions of the federal Constitution, and in 1982, the Michigan Supreme Court invalidated Michigan's redistricting provisions because one requirement violated the Equal Protection Clause of the U.S. Constitution and the other provisions were non-severable from the violating section. Although the Michigan Supreme Court prescribed criteria that a special master used to draft the redistricting plan after the 1980 census, it was not until 1996, when the state legislature passed Public Act (PA) 463, that Michigan again had guidelines for legislative redistricting. These requirements comprise provisions for a population variance of five percent above or below the ideal district size,1 upholding precedents reBecause the state legislature, with gubernatorial approval, has the authority to change state statute but cannot change the state Constitution without a vote of the people, redistricting provisions outlined in statute do not bind the legislature. Case in point: PA 221 of 1999, the Congressional Redistricting Act, established guidelines for drawing Michigan's congressional districts. The guidelines comprised provisions for strict population equity, upholding the Voting Rights Act, preserving political boundaries, contiguity, compactness, single-member districts, and numbering districts. In 2002, a group of voters challenged the redistricting plan that the 2001 legislature passed, contending in part that the plan failed to comply with PA 221 of 1999. The Michigan Supreme Court, however, opined that PA 221 of 1999 is not binding beyond the 1999 legislature because, in essence, when the 2001 legislature approved the congressional redistricting plan, the statute they passed superseded the provisions of PA 221 of 1999. Thus, this opinion also puts PA 463 of 1996 in question.

Given how critical redistricting is to representative democracy, Michigan legislators should use this redistricting cycle to do more than redraw boundaries. Legislators should draft a constitutional amendment to reform the process and provide clear guidelines for future redistricting. The Citizens Research Council of Michigan recommends that the legislature introduce a constitutional amendment to amend Sections 2 through 6 of Article IV of the 1963 Michigan Constitution and enshrine in the constitution provisions to:

- Recreate a redistricting commission,
- Limit redistricting to once per decade,
- Describe the appropriate redistricting procedures and timeline,
- Increase transparency and public engagement,
- Protect electors' right to challenge redistricting plans,

lated to the Voting Rights Act, preserving political boundaries, contiguity, compactness, and single-member districts.

¹ The total state population, typically per the decennial census, divided by the number of seats in a legislative body.

- Minimize population variance among districts,
- Ensure contiguous single-member districts,
- Create district boundaries that adhere to political boundaries, and
- Protect communities of interest.

To ensure that the process occurs in a way that minimizes bias and to ensure that districts have the preferred characteristics, it is necessary to amend Michigan's Constitution with valid and binding language. District boundaries determine from which voters a candidate must gain support, creating an incentive for a redistricting entity to try to bias districts to advantage one group over another—called gerrymandering. While it may be too difficult to isolate the effects of gerrymandering to measure them,

most experts agree that gerrymandering distorts voters' choices and undermines the legitimacy of our democracy. These experts argue that a transparent redistricting process—outlined in a state's constitution, offering opportunities for public engagement and minimizing political control—can do much to deter gerrymandering and uphold the integrity of the political system.

Unless valid constitutional provisions are adopted, redistricting in Michigan will continue to occur in a legislatively-devised and legislatively-adjustable framework. This paper recommends that the legislature take advantage of this redistricting cycle to put in place constitutional standards to guide the redistricting process for future years.

Congressional and Legislative Redistricting Reform

Introduction

It has been 29 years since Michigan had constitutional redistricting guidelines. With Michigan having lost population for the first time since the U.S. government began the census and significant population shifts throughout the state redistricting will result in significant changes to the maps of Michigan's legislative and congressional districts. Michigan legislators should use this redistricting cycle to do more than redraw boundaries. Legislators should draft a constitutional amendment to reform the process and provide clear guidelines for future redistricting. This paper suggests a comprehensive policy to do just that, including provisions to recreate a redistricting commission; increase transparency and public engagement; and to minimize population variance, protect minorities, adhere to political boundaries, ensure contiguity, and protect communities of interest.

With the U.S. Census Bureau's release of the 2010 population counts, states are set to begin the process of redrawing electoral district boundaries. Voters elect members to the U.S. House of Representatives and to both chambers of the state legislature from districts. How voters are grouped into these districts affects the selection of representatives and the policies that ultimately are implemented.

As a fundamental part of our democracy, federal and state laws govern the redistricting process. The U.S. Constitution mandates equal representation among districts, and the Voting Rights Act of 1965 requires that states provide minority groups an equal opportunity to elect candidates of their choice. Most states have secondary guidelines to govern and constrain the redistricting process. The most common requirements are that districts adhere to political boundaries, preserve communities of interest, and be contiguous and compact.

Michigan's legislative redistricting laws have undergone a number of changes since adoption of the 1963 Michigan Constitution. Article IV, Sections 2 through 6, of the Constitution originally defined Michigan's legislative redistricting approach. How-

ever, in 1964, the U.S. Supreme Court found that standards used to create districts based on anything other than population were in violation of the "one man, one vote" provisions of the federal Constitution, and in 1982, the Michigan Supreme Court invalidated Michigan's redistricting provisions because one requirement violated the Equal Protection Clause of the U.S. Constitution and the other provisions were non-severable from the violating section. Although the Michigan Supreme Court prescribed criteria that a special master used to draft the redistricting plan after the 1980 census, it was not until 1996, when the state legislature passed Public Act (PA) 463, that Michigan again had guidelines for legislative redistricting. These requirements comprise provisions for a population variance of five percent above or below the ideal district size, 1 upholding precedents related to the Voting Rights Act, preserving political boundaries, contiguity, compactness, and singlemember districts.

Because the state legislature, with gubernatorial approval, has the authority to change state statute but cannot change the state Constitution without a vote of the people, redistricting provisions outlined in statute do not bind future legislatures. Case in point: PA 221 of 1999, the Congressional Redistricting Act, established guidelines for drawing Michigan's congressional districts. The guidelines comprised provisions for strict population equity, upholding the Voting Rights Act, preserving political boundaries, contiguity, compactness, single-member districts, and numbering districts. In 2002, a group of voters challenged the redistricting plan that the 2001 legislature passed, contending in part that the plan failed to comply with PA 221 of 1999. The Michigan Supreme Court, however, opined that PA 221 of 1999 is not binding beyond the 1999 legislature because, in essence, when the 2001 legislature approved the congressional redistricting plan, the statute they passed superseded the provisions of PA 221 of 1999. Thus, this opinion also puts PA 463 of 1996, the statute defining legislative redistricting guidelines, in question.

Apportionment is the pro-

cess of determining how

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To ensure that the process occurs in a way that minimizes bias and to ensure that districts have the preferred characteristics, it is necessary to amend the Michigan Constitution with valid and binding lan-

guage. District boundaries determine from which voters a candidate must gain support, creating an incentive for a redistricting entity to try to bias districts to advantage one group over another called gerrymandering. While it may be too difficult to isolate the effects of gerrymandering to measure them, most experts agree that gerrymandering distorts voters' choices and undermines the legitimacy of our democracy. These experts argue that a transparent redistricting process—outlined in a state's constitution, offering oppor-

tunities for public engagement and minimizing political control—can do much to deter gerrymandering and uphold the integrity of the political system.

Apportionment vs. Redistricting

Apportionment is the process of determining how many members of the U.S. House of Representatives will represent each state, and redistricting is the process of drawing the districts for those members as well as for the members of the state legislature. Therefore, reapportionment is the reallocation of seats, typically following an updated population count. The federal government apportions congressional seats among states and the states, in turn,

are responsible for ensuring that there are set boundaries for each seat's district and that those districts fulfill federal and, where applicable, state requirements. States fulfill this obligation through redistricting, the process of redrawing the geographic boundaries of districts. States usually redistrict legislative districts at the same time as congressional districts. Maps of Michigan's congressional and legislative districts that legislators drew after the 2000 census can be found in **Appendix A**.

Reapportionment

The U.S. Constitution prescribes for the reapportionment of congressional districts among the states. There are 435 seats in the U.S. House, a number that has not changed since taking effect in 1913,² except for a temporary increase to 437 when Alaska and Hawaii joined the union in 1959.³ Article I, Section 2 of the U.S. Constitution guarantees each state at least one seat in the House of Representatives and, following each decennial census, requires Con-

The 2010 Census Processa

In March 2010, the Census Bureau sent census forms to over 130 million addresses; and households completed and returned the forms. In December 2010, the Census Bureau delivered to the President the 2010 state resident and apportionment populations. The Census Bureau then distributed the data to the states. It shipped the first data sets to the States of Louisiana, Mississippi, New Jersey, and Virginia on February 2, 2011 and the final data sets to the District of Columbia, Maine, and New York on March 22, 2010, using internal state deadlines to determine the order. Michigan was one of the last states to receive its census data; the Census Bureau sent the data on March 21, 2010.

^a U.S. Census Bureau, How People Are Counted. 2010: 2. Web. 30 Mar 2011. http://2010.census.gov/partners/pdf/brochure-HowPeopleAreCounted.pdf.

^b U.S. Census Bureau. "2010 Census Redistricting Data: Determining Order of Release." Question & Answer Center. 16 Feb 2011. Web. 11 Apr. 2011. https://ask.census.gov/app/answers/detail/a_id/8843/related/session/ <a href="https://ask.census.gov/app/answers/detail/a_id/8843/related/session

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congressional representa-

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Michigan has lost congres-

sional districts following

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result of population growth

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states.

gress to reapportion the remaining 385 seats among the states based on population. Since 1941, Con-

gress has used the Method of Equal Proportions to reapportion seats. See **Appendix B** for a description of this method.

The population that Congress uses comes from the U.S. Census Bureau and sums each state's decennial census resident population with its portion of overseas U.S. military and federal civilian employees and their dependents living with them—data that employing federal departments and agencies provide. ⁴ The number of seats as-

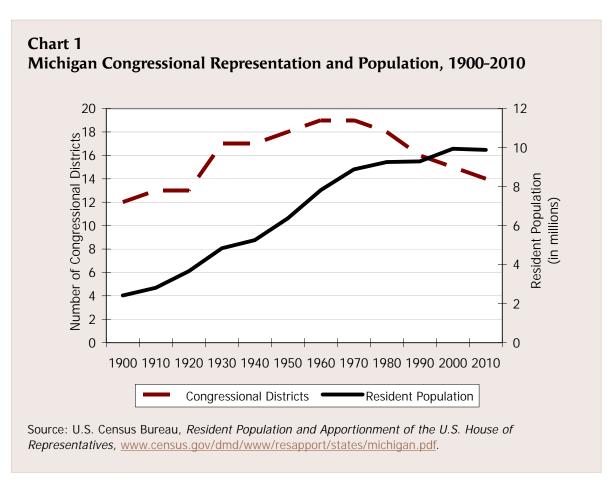
signed to each state ranges from one in Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont, and Wyoming to 53 in California.

Because of a quickly growing population, Michigan's number of congressional districts climbed from 12

in 1900 to a high of 19 in 1960 and 1970 (see **Chart 1**). Since then, Michigan has lost congressional dis-

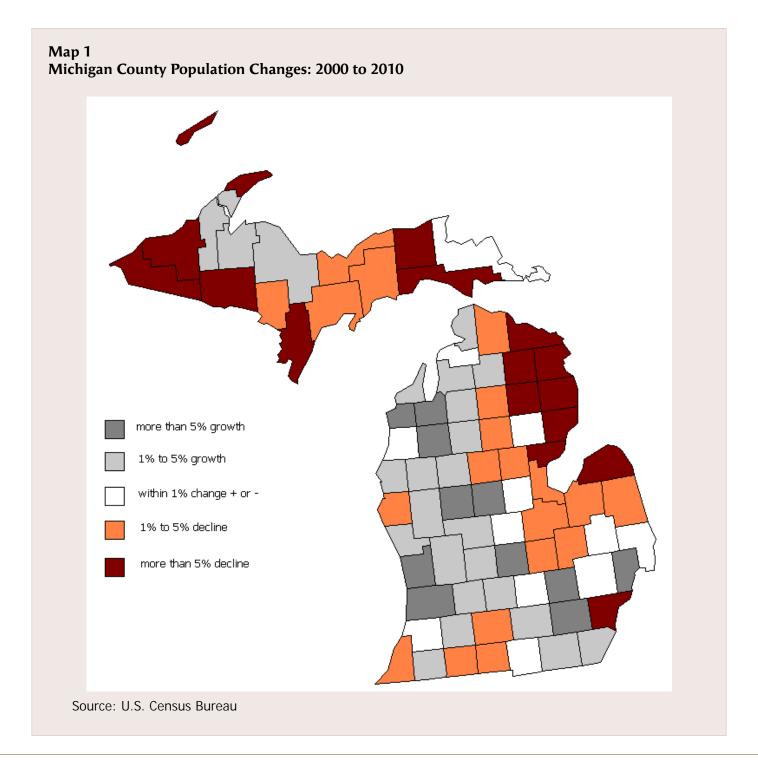
tricts following each decennial census as a result of population growth that lagged that of other states. Following the 2010 census, Michigan was the only state to have a net population loss and, as a result, lost one congressional district. Thus, at the November 6, 2012 general election Michigan voters will elect just 14 members to the U.S. House. Despite the change, Michigan will still rank eighth in the number of seats in the House. Illinois, Iowa, Louisiana, Massachu-

setts, Missouri, New Jersey, and Pennsylvania also each will lose a seat, and New York and Ohio will each lose two seats. Meanwhile, Texas will gain four seats; Florida will gain two seats; and Arizona, Georgia, Nevada, South Carolina, Utah, and Washington each will gain one seat.



The Michigan legislature will redraw district boundaries in 2011 to better reflect the number and location of Michigan residents. **Map 1** describes the significant Michigan county population changes since the 2000 census. Because southeast Michigan has experienced the largest decline in population relative to other regions in the state, congressional dis-

tricts in this region are most likely to be affected by the state's loss of a seat in the U.S. House. Although the number of Michigan House and Senate districts is constitutionally fixed, population changes within the state over the last decade will require redistricting that shifts the distribution of seats from less- to more-populous areas within the state.



State Approaches to Redistricting

The entity responsible for

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stantially from state to

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redistricting processes.

The entity responsible for redistricting varies substantially from state to state and between congressional and legislative redistricting processes. To summarize the approaches, this paper uses categorizations for both congressional and legislative redistricting processes that the Rose Institute of State and Local Gov-

ernment created.⁷ Based at Claremont McKenna College in California, the Rose Institute conducts and publishes research on issues related to the governance and politics of California. CRC uses the Rose Institute's categorizations because of their attention to the subtle differences among processes. In addition to the category descriptions, U.S. maps that the Rose Institute

created provide a visual reference for understanding the variation of approaches among states (see **Maps** 2 and 3).

Standard Legislative Process. A legislative committee creates a redistricting plan and submits it, in the form of a bill, to the full legislature. Upon final legislative approval, the redistricting plan is subject to gubernatorial veto. This is the process that Michigan and 19 other states use for legislative redistricting.

Legislature. The legislature, not a legislative committee, creates and passes a redistricting plan in bill form that is subject to gubernatorial veto. This is the most common redistricting approach. Forty states use this process for congressional redistricting.

Total Legislative Control. The legislature creates and passes a redistricting plan; the governor may not veto it. Two states use this process for both congressional and legislative redistricting.

Legislative System with Back-Up. The legislature is responsible for creating and passing a redistricting plan that is subject to gubernatorial veto. If the legislature fails to pass a plan by a certain date, the governor vetoes the plan, or the state supreme court rules the plan invalid, a non-judicial entity—secretary of state, a commission, etc.—assumes responsibility for creating the redistricting plan. Ten states use this process for legislative redistricting.

Non-Legislative Political Control. A group of public officials create a redistricting plan that may or may not be subject to legislative or gubernatorial approval. In Arkansas this group comprises the governor, secretary of state and attorney; in Ohio, it is a board of legislative appointees and executives;

in Maryland, it is the governor and an advisory committee of legislators.

Advisory Commission. The advisory commission drafts a redistricting plan or advises the legislature on the creation of a plan that is subject to legislative approval and may or may not be subject to qubernatorial veto, depending on

the state. In some states, the legislature may amend the plan. The advisory commission comprises leaders from each legislative chamber or individuals that legislative or political leaders appoint and, at times, individuals that the commission members elect. Two states use this process for congressional redistricting; two for legislative redistricting.

Legislature-Appointed Commission. The legislature-appointed commission comprises individuals that members of the state legislature appoint and, in some states, also individuals that the appointed individuals elect. The committee creates a redistricting plan that may or may not be subject to legislative approval, depending on the state, and that is not subject to gubernatorial approval. In some states, the legislature may provide recommendations to the commission and/or may amend the plan. Four states use this process for both congressional and legislative redistricting.

State-Appointed Commission. The state-appointed commission comprises individuals that the governor and chief justice appoint and the majority and minority leaders of each chamber—or individuals that the majority and minority leaders of each chamber appoint. The state-appointed commission creates a redistricting plan that is not subject to legislative or gubernatorial approval. Three states use this process for legislative redistricting.

Entity Responsible for Congressional Redistricting

Legislature
Legislature Control
Total Legislative Control
Advisory Commission
Independent Commission

Source: Rose Institute of State and Local Government, *Who Draws the Lines: A National Review of Congressional Redistricting Methods. Rose Institute of State and Local Government*, http://rosereport.org/congress/.

Party-Appointed Commission. The majority and minority leaders from each chamber appoint individuals to the commission and the appointed individuals elect additional individuals to the commission, or the state Republican and Democratic parties appoint individuals to the commission—in some states with input from the governor. The party-appointed commission creates a redistricting plan that is not subject to legislative or gubernatorial approval. One state uses this process for congressional redistricting; two for legislative redistricting.

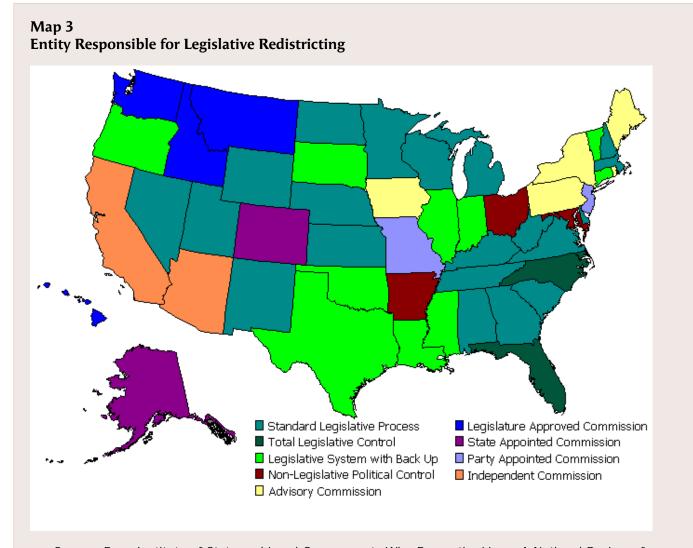
Independent Commission. An existing independent state entity (i.e. Appellate Court Committee or Auditor Committee) creates a list of candidates with an equal number of Republicans and Democrats and a number of independents. Party or legislative lead-

ers then choose or strike, respectively, names from each political subpool. In California, a lottery is used to select eight members from the list, with representation from each political party; these members elect six additional members. The independent commission creates a redistricting plan that is not subject to legislative or gubernatorial approval. One state uses this process for congressional redistricting; two for legislative redistricting.

Considerations of the Various Approaches

While no approach is ideal, entrusting redistricting responsibilities to the legislature, the same entity that is the chief beneficiary of the process, fosters a process that seems to many to be inappropriate. District boundaries determine from which voters a

Map 2



Source: Rose Institute of State and Local Government, *Who Draws the Lines: A National Review of State Legislature Redistricting Methods*, http://rosereport.org/stateleg/. (CRC edited this map. The Rose Institute had characterized Michigan's approach as "Total Legislative Control." However, because Michigan's governor has veto power over the enactment of public acts, including redistricting plans, CRC recharacterized Michigan's approach as "Standard Legislative Process.")

candidate must gain support, creating an incentive for a legislature with redistricting authority to try to draw districts that advantage incumbent legislators. Additionally, conferring redistricting authority to the legislature, a partisan entity by design, tempts the majority legislative party to try to create a redistricting plan that advantages its party. At the same time, independent redistricting bodies with equal representation among political parties often deadlock: not once during its 18-year existence did a majority of the eight-member Michigan Commission on Legisla-

tive Apportionment agree on a redistricting plan; following the 1960, 1970, and 1980 censuses, the Commission split along partisan lines. And yet there may still be benefits in using a non-legislative redistricting entity in that it minimizes incumbent legislators' ability to draw their own districts. Whatever the responsible entity, if it does not agree on a plan, another entity—in Michigan, the state Supreme Court—will ultimately finalize the redistricting plan. But even these secondary entities often have partisan leanings. For example, in Michigan political par-

The Michigan Supreme Court and Partisan Concerns

Given the Michigan Supreme Court's critical role in redistricting, it is important to consider whether the court is free from partisan influences when it considers redistricting questions. While the justices are elected in nonpartisan elections, political parties nominate the candidates at the parties' state conventions. Because the court has seven members, one of the two main political parties generally will have nominated a majority of the justices serving on the court. If the court decides a redistricting case in a way that favors the political party that nominated the majority of the justices, it can raise concerns that the court was not fully objective and fair in representing the interests of all Michigan citizens.

This problem is not easily resolved. It is extremely important that Michigan citizens feel that their interests are impartially considered in a dispute over redistricting or any other matter. Removing the political parties from the judicial nomination process could help address these concerns.

ties nominate Supreme Court candidates, who, if elected, ultimately hold office without explicit political affiliations.

In choosing the type of entity responsible for creating redistricting plans, states make decisions about the size of those bodies. According to the Brennan Center for Justice, "Redistricting bodies range in size from 424 legislators in New Hampshire to just three executive officials in Arkansas." There is no magic number; and if a state assigns redistricting responsibility to an existing entity, such as the legislature, there may be no flexibility in the size. However, if a state creates a unique entity, a size of 7 to 15 individuals may be ideal to foster productivity while having enough members to represent the state's diversity in terms of geography, ethnicity, race, etc.8

The size of the redistricting entity is also important because it can dictate the challenges the entity will face. An odd number prohibits deadlocked decisions, but it may also result in one political party holding a majority. In states in which the responsible entity is the legislature, the legislature and governor (if controlled by the same party), or a commission with unequal political representation, a single party will dominate the redistricting process. If the responsible entity has an even number of members, it is possible to achieve equal political representation but it is also more likely that there will be a stalemate. To avoid gridlock, some states that use an entity with equal political representation also appoint a tiebreaker acceptable to both parties, which in practice will be someone nonpartisan or willing to act in a nonpartisan fashion.

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tution directs-violates the

Equal Protection Clause of the

U.S. Constitution.

Michigan's Approach to Redistricting

Although today the Michigan legislature creates congressional and legislative redistricting plans, this has not always been the case. Article IV, Section 6 of the Michigan Constitution creates an independent Commission on Legislative Apportionment and assigns it the responsibility for drawing districts for the state's 38 Senate and 110 House seats. However, in 1982 the U.S. Supreme Court ruled that appor-

tionment based, to any extent, on land area—as Article IV, Section 2 of the Michigan Constitution directs—violates the Equal Protection Clause of the U.S. Constitution.⁹ Because of the non-severability

between Sections 2 through 6 of Article IV, in 1982

the Michigan Supreme Court invalidated the redistricting provisions of all five sections. ¹⁰ Since then, the state legislature has attempted to carry out both congressional and legislative redistricting.

When legislators propose a redistricting plan, they do so by introducing in the House or Senate a bill that includes the details of one or more plans. The bills are referred to the House and Sen-

ate committees responsible for redistricting; in 2011 these committees are the House Redistricting and Election Committee and the Senate Redistricting Committee. Each committee comprises nine mem-

Michigan Redistricting Laws

- Michigan Constitution Article IV, Sections 2 to 6 defines Michigan's legislative redistricting approach. These sections create the Commission on Legislative Apportionment and assign to it the responsibility for drawing legislative districts that have population variances of 25 percent above or below the ideal district size, preserve political boundaries, are contiguous and compact, and have single-member districts. In 1982, the Michigan Supreme Court invalidated the redistricting provisions in these sections because one requirement violates the Equal Protection Clause of the U.S. Constitution and the others were non-severable from the violating section.
- Public Act 463 of 1996 establishes guidelines for drawing Michigan's legislative districts and confers jurisdiction on the Michigan Supreme Court to review redistricting plans for compliance with those guidelines, which comprise provisions for a maximum 10 percent total population variance, upholding precedents related to the Voting Rights Act, preserving political boundaries, contiguity, compactness, and single-member districts. The LeRoux v. Secretary of State opinion (described in the next bullet) suggest that PA 463 of 1996 does not bind the legislature when creating redistricting plans.
- While Michigan has no binding guidelines for congressional redistricting, Public Act 221 of 1999, Congressional Redistricting Act establishes guidelines for drawing Michigan's congressional districts. The guidelines comprise provisions for strict population equity, upholding the Voting Rights Act, preserving political boundaries, contiguity, compactness, single-member districts, and numbering districts. In LeRoux v. Secretary of State, 465 Mich. 594; 640 NW 2d 849 (2002), the Michigan Supreme Court opined that PA 221 of 1999 is not binding beyond the 1999 legislature because, in essence, when a legislature approves a congressional redistricting plan, the statute it passes supersedes the provisions of PA 221 of 1999.
- Public Act 222 of 1999 confers jurisdiction on the Michigan Supreme Court to hear and decide cases on congressional redistricting and to review and order congressional redistricting plans.
- Public Act 282 of 1964, as amended by PA 115 of 2001, describes Michigan's current congressional districts.
- Public Act 116 of 2001 describes Michigan's current legislative districts.

bers, who the respective majority leaders appoint to two-year terms. Within 60 days of the enactment of a congressional or legislative redistricting plan, any elector may apply to the Michigan Supreme Court for review of the plan.¹¹ If the plan fails to comply with existing laws, the Michigan Supreme Court may modify or remand that plan to a special master for further action.¹²

If the state legislature and governor have not adopted congressional and legislative redistricting plans by November 1st of the year following the decennial census, the majority or minority leaders of either chamber or a political party may request that the

Michigan Supreme Court create the plan. The Michigan Supreme Court then has until April of the following year—the second year after the decennial census—to develop a plan. Following the 1990 census, political control of the Michigan Legislature was divided and the legislature was unable to reach consensus on a redistricting plan; therefore the Michigan Supreme Court created the legislative redistricting plan. After the 2000 census, the same political party controlled the state legislature and the governor's office, a redistricting plan was adopted and the Michigan Supreme Court upheld the plan against legal challenges.

Michigan's Unconstitutional Constitutional Provisions

Article IV, Section 6 of the 1963 Michigan Constitution creates the Commission on Legislative Apportionment and assigns to it the responsibility of drawing legislative districts. However, when the Commission repeatedly failed to reach agreement on redistricting plans – based on the 1960, 1970, and 1980 censuses – the Michigan Supreme Court assumed responsibility. In doing so in 1982, the Court took things a step further.

Article IV, Section 2 of the 1963 Michigan Constitution includes provisions to apportion legislative districts based on each county's share of the state's population and the state's land area. However, in 1982 the Michigan Supreme Court opined that principle is unconstitutional based on the 1964 U.S. Supreme Court "one person, one vote" ruling.¹ Because of the non-severability among Sections 2 through 6 of Article IV, the Court ruled that the redistricting provisions of all 5 sections became null and void with the "one person, one vote" ruling.² The Court found that both standards and process are "inextricably intertwined" and the Commission cannot survive without redistricting rules.

Removing the invalidated language from the Constitution requires a constitutional amendment, which can occur as the result of legislative-referred or voter-initiated proposals, or a constitutional revision, which can occur by means of a constitutional convention.³ Yet, neither the legislature nor voters have used their power to propose such a constitutional amendment, and there has been no constitutional convention since the 1960s. Upon removing the "land area" language, the remaining, previously invalidated language (on the basis of non-severability), may become valid.

It is noteworthy that each of the four Michigan Constitutions adopted since 1835 has contained specific legislative apportionment provisions. This suggests that voters have deemed it unwise to leave the matter to the discretion of any branch of state government, including the judiciary. Given the historical preference of Michigan voters, and due to the fundamental importance of redistricting, state constitutional provisions specifying what entity should bear responsibility for the process and what standards should govern the process would seem a prudent recourse. A new redistricting process designed to produce districts that are drawn in conformance with specific standards is imperative to ensure the unbiased and effective representation of Michigan citizens.

¹ Reynolds v Sims, 377 US 533; 84 S Ct 1362; 12 L Ed 2d 506 (1964)

² 413 Mich. 96; 321 NW 2d 565 (1982)

³ Michigan Constitution Article XII, §§ 2-3

Federal Requirements for Redistricting

The U.S. Constitution man-

dates equal representation

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Voting Rights Act requires

that States provide minor-

ity groups an equal oppor-

tunity to elect candidates of

their choice.

The federal government provides minimal restrictions on states' redistricting processes. The U.S. Constitution mandates equal representation among districts, and the Voting Rights Act requires that States provide minority groups an equal opportunity to elect candidates of their choice.

Population

The Equal Protection Clause of the Fourteenth

Amendment to the U.S. Constitution requires that every U.S. citizen receive equal congressional and legislative representation. However, defining "equal" presents challenges. The U.S. Supreme Court has ruled that the only permissible deviation from strict equity among congressional district population within a given state is the deviation necessary to comply with the Voting Rights Act and state requirements, such as compact or contiquous districts. ¹⁵ One

might imagine that such a rule could lead to wide variation among district sizes in a state, but existing technology and congressional districts' large sizes make it possible to create districts with little to no population variation. Following the last two censuses, most states drew congressional districts with variations of just one person. Current congressional districts have total variations for no more than 0.6 percent from the ideal district size within a given state (see **Table 1** on page 12). However, because the U.S. Constitution apportions at least one congressional seat to even the smallest state, congressional districts among states have a total variation of 38 percent.

To provide flexibility in drawing legislative districts that fulfill other federal and state requirements, the U.S. Supreme Court has held that, when there exists meaningful state requirements or unique geographical features, legislative districts may have variations larger than those permitted for congressional districts.¹⁸ The U.S. Supreme Court generally requires justification for legislative districts that have

a total variation of more than 10 percent¹⁹ and has indicated that a total variation of 16.4 percent may "approach tolerable limits."²⁰ On average, current legislative districts have a total variation of seven percent (**Table 1** on page 12). Michigan statute permits legislative districts to be greater or less than the ideal district size by up to five percent, for a total variation of up to 10 percent.²¹

In addition to the ambiguity regarding equity in size,

there may exist ambiguity regarding the population on which size is based. The federal government uses the apportionment population described previously to apportion congressional seats, while most states, including Michigan, use the decennial census resident population as the base for redistricting. States may use alternative population bases for redistricting as long as the state uses the alternative base uniformly²² and the resulting districts reflect districts that could

be produced using the census resident population.²³ Alternative bases include the population of residents of voting age, the population of citizens of voting age, the population of registered voters, the population of voters who participated in a recent election or set of elections, and the population determined by a state-conducted census.²⁴

Regardless of the population base that a state uses, because federal and state laws limit the right to vote—based on, for example, age, citizenship, criminal conviction, etc.—and because enfranchised and non-enfranchised people do not reside evenly among geographic areas, the ratio of people to eligible voters varies among districts. ²⁵ This variation combined with use of the decennial census resident population can significantly impact the weight of individual votes in some districts. For example, the census counts incarcerated individuals in the locations where they are imprisoned. Because not all prisoners are enfranchised, this inflates the voting power of districts that have prisons, and because some prisoners are enfranchised, this reduces the voting power

Table 1 Comparison of District Size and Variation by State, 2000

	Congressi	onal Districts	State House Districts		State Senate Districts	
	Ideal Size	Total Variation	Ideal Size	Total Variation	Ideal Size	Total Variation
Alabama	636,300	0.00%	42,353	9.93%	127,060	9.73%
Alaska	N/A	N/A	15,673	9.96%	31,346	9.32%
Arizona	641,329	0.00%	171,021	3.79%	171,021	3.79%
Arkansas	668,350	0.10%	26,734	9.87%	76,383	9.81%
California	639,087	0.00%	423,395	0.00%	846,792	0.00%
Colorado	614,465	0.00%	66,174	4.88%	122,863	4.95%
Connecticut	681,113	0.00%	22,553	9.20%	94,599	8.03%
Delaware	N/A	N/A	19,112	9.98%	37,314	9.96%
Florida	639,295	0.00%	133,186	2.79%	399,559	0.03%
Georgia	629,727	0.00%	45,480	1.95%	146,187	1.93%
Hawaii	605,769	0.31%	22,046	20.10%	44,973	38.90%
Idaho	646,977	0.60%	36,970	9.71%	36,970	9.71%
Illinois	653,647	0.00%	105,248	0.00%	210,496	0.00%
Indiana	675,609	0.02%	60,805	1.92%	121,610	3.80%
Iowa	585,265	0.02%	29,263	1.89%	58,526	1.46%
Kansas	672,105	0.00%	21,378	9.95%	66,806	9.27%
Kentucky	673,628	0.00%	40,418	10.00%	106,362	9.53%
Louisiana	638,425	0.04%	42,561	9.88%	114,589	9.95%
Maine	637,462	0.00%	8,443	9.33%	36,426	3.57%
Maryland	662,060	0.00%	37,564	9.89%	112,692	9.96%
Massachusetts	634,910	0.39%	39,682	9.68%	158,727	9.33%
Michigan	662,563	0.00%	90,350	9.92%	261,538	9.92%
Minnesota	614,935	0.00%	36,713	1.56%	73,425	1.35%
Mississippi	711,165	0.00%	23,317	9.98%	54,705	9.30%
Missouri	621,690	0.00%	34,326	6.08%	164,565	6.81%
Montana	N/A	N/A	9,022	9.85%	18,044	9.81%
Nebraska	570,421	0.00%	N/A	N/A	34,924	10.00%
Nevada	666,086	0.00%	47,578	1.97%	95,155	9.91%
New Hampshire	617,893	0.10%	3,089	9.26%	51,491	4.96%
New Jersey	647,257	0.00%	210,359	1.83%	210,359	1.83%
New Mexico	606,349	0.03%	25,986	9.70%	43,311	9.60%
New York	654,361	0.00%	126,510	9.43%	306,072	9.78%
North Carolina	619,178	0.00%	67,078	9.98%	160,986	9.96%
North Dakota	N/A	N/A	13,664	10.00%	13,664	10.00%
Ohio	630,730	0.00%	114,678	12.46%	344,035	8.81%
Oklahoma	690,131	0.00%	34,165	2.05%	71,889	4.71%
Oregon	684,280	0.00%	57,023	1.90%	114,047	1.77%
Pennsylvania	646,371	0.00%	60,498	5.54%	245,621	3.98%
Rhode Island	524,160	0.00%	13,978	9.88%	27,587	9.83%
South Carolina	668,669	0.00%	32,355	4.99%	87,218	9.87%
South Dakota	N/A	N/A	21,567	9.71%	21,567	9.69%
Tennessee	632,143	0.00%	57,468	9.99%	172,403	9.98%
Texas	651,619	0.00%	139,012	9.74%	672,639	9.71%
Utah	744,390	0.00%	29,776	8.00%	77,006	7.02%
Vermont	N/A	N/A	4,059	18.99%	20,294	14.73%
Virginia	643,501	0.00%	70,785	3.90%	176,963	4.00%
Washington	654,902	0.00%	120,288	0.30%	120,288	0.30%
West Virginia	602,781	0.22%	18,083	9.98%	106,374	10.92%
Wisconsin	670,459	0.00%	54,179	1.60%	162,536	0.98%
Wyoming	N/A	N/A	8,230	9.81%	16,451	9.51%

Note: Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont and Wyoming received only one seat in the U.S. House so their congressional plans did not have an overall range. Also, Nebraska has a unicameral legislature, so it had no House plan.

Source: National Conference of State Legislatures, Redistricting Law 2010. 47-48.

Ensuring minority groups

an equal opportunity to

elect candidates of their

choice is one requirement

that may induce variation

among district populations.

in districts whose residents are incarcerated. The Equal Protection Clause does not prohibit redistricting plans with equal populations and yet unequal numbers of enfranchised people.

Equal Opportunity

Ensuring minority groups an equal opportunity to elect candidates of their choice is one requirement that may induce variation among district populations. Passed in 1870, the Fifteenth Amendment to the U.S. Constitution prohibited voting restrictions based on race. However, southern states used poll taxes, literacy tests and other means to continue to disenfranchise African

Americans. It was not until passage of the Voting Rights Act of 1965 that minorities received protection from discrimination in voting practices.

Sections 2 and 5 of the Voting Rights Act are particularly relevant to the redistricting process. Section 2 requires that states provide minority groups an equal opportunity to elect candidates of their choice. Three determinants, called the Gingles factors, describe for which groups states must provide equal opportunity:

- Minority groups that are large enough and geographically compact enough to constitute a majority of the voting age population in a single-member district;²⁶
- Minority groups whose members have a history of voting for the same candidate; and
- Minority groups in districts where the majority group votes as a bloc to the extent that it usually defeats the minority's preferred candidate.²⁷

Minority groups may comprise individuals of a racial or language group, but there is no consensus on

whether a minority group may comprise individuals of multiple racial groups if they do not share a common language.²⁸

Section 2 concerns whether equal opportunity exists, not whether the redistricting entity intends to provide or deny equal opportunity. Thus, rather than

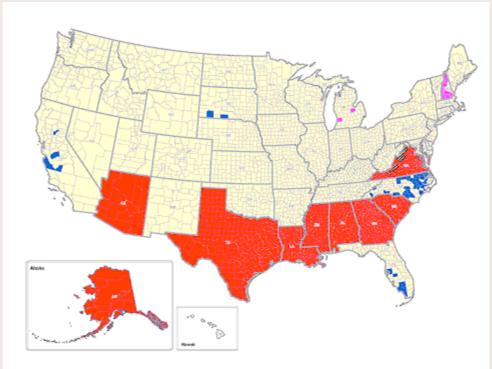
focusing on a redistricting entity's motivations, the extent to which members of a minority group have been elected to public office can indicate whether or not a government has violated the Voting Rights Act with its redistricting plan. If, in a given district, there is a history of the minority group's preferred candidate being defeated after receiving the major-

ity of votes in the predominantly minority precincts and few votes in the predominantly majority precincts, then it is likely that the district violates the Voting Rights Act.

Similarly, Section 2 concerns elections in which minority and majority groups prefer different candidates, not the reasons for voters' preferences. Thus, a minority group's preferred candidate does not need to be of the same race or language as the group.²⁹ If the candidates in a given election are of the same race and language and yet the candidate that the minority group prefers loses, this could be evidence of a violation. In determining whether a minority group's vote has been diluted, the courts must consider the totality of circumstances.³⁰

While there is no single quantitative way to prove that a redistricting plan provides equal opportunity to minority groups, proportionality may provide evidence in support of a plan. Proportionality is the percent of districts in which the minority group is the predominant group compared to the percent of the total population that the minority group represents. This measure is also used in Section 5 of the

Map 4
Section 5 Covered Jurisdictions



Source: U.S. Department of Justice, Section 5 Covered Jurisdictions, 2008 www.justice.gov/crt/voting/

Voting Rights Act to help identify jurisdictions in which minority groups are at risk of experiencing discrimination. The jurisdictions covered under Section 5 (see **Map 4**) may only change their election practices, including district boundaries, with the approval of the U.S. Attorney General. This means that the U.S. Attorney General must review all redistricting plans affecting these jurisdictions before such plans may be implemented. In Michigan, only Clyde Township in Allegan County and Buena Vista Township in Saginaw County are subject to these restrictions.³¹

Although progress has been made over time, minorities still struggle to win elections in districts that majority groups dominate. According to the American Civil Liberties Union, "Throughout the 1970s and 1980s, only about 1% of majority white districts elected a black candidate.... The number of blacks elected to state legislatures increased after the 1990 redistricting, but the increase was the result of the increase in the number of majority black districts." In 2000, majority white districts elected only four of the 38 black members of Congress, and majority white districts elected none of the Latino members of Congress.³²

State Requirements for Redistricting

The most common require-

ments are that districts ad-

here to political boundaries,

preserve communities of

interest, and be contiguous

and compact.

In addition to the federal population and equal opportunity requirements, states may adopt secondary guidelines to govern and constrain the redistricting process. The most common requirements are that districts adhere to political boundaries, preserve communities of interest, and be contiguous and com-

pact (see **Table 2**). These requirements are based on the idea that a single elected official should represent those with shared characteristics and interests, and, in doing so, the representative may be more responsive to local needs. Additionally, such requirements can decrease the time it takes for candidates and voters to travel to the various parts of the district.

While requirements can make gerrymandering more difficult, adding state requirements may make it more difficult to abide by federal requirements, and fulfilling one state requirement may require neglecting other state requirements.

Commonly Used Requirements

Michigan and many other states use the following common redistricting standards as guidelines for redistricting plans.

Political Boundaries

Many states require redistricting plans to respect political boundaries, such as the boundaries of a county, township, or city. This type of requirement may take a number of forms:

- Preserve all county boundaries;
- Break no more than a specific number of county boundaries;
- Maintain county boundaries; if the redistricting plan must break a county boundary, maintain city and township boundaries; if the redistricting plan must break a city or township boundary, do so in such a way that maximizes compactness this is Michigan's approach.³³

Adhering to political boundaries minimizes the burden on local governments to administer elections while simplifying the organization of political jurisdictions for voters. However, it also may make it more difficult to provide opportunities for minorities, preserve communities of interest, and create

competitive districts. Similarly, because of residential patterns of political segregation and the compact nature of predominantly Democratic urban jurisdictions, preserving political boundaries may create a Republican bias;³⁴ this phenomenon is discussed in more detail later in this paper.

Communities of Interest

A redistricting plan that preserves communities of interest places into the same districts individuals within close proximity to one another, who share cultural, economic, ethnic, political, religious, or social ties. Communities of interest may be difficult to define, because shared interests may not be obvious and people's interests change. To preserve communities of interest, some suggest preserving census tracts, which generally have populations that share meaningful characteristics; others suggest asking communities to identify themselves.³⁵

In every census between 1940 and 2000, about one in every six households received a long form, which asked approximately 50 questions more than the short form.³⁶ While the short form's questions center on basic demographics (gender, age, and race), the long form's questions generated information about households' socioeconomic and housing characteristics, information that may be useful in identifying communities of interest. Although the 2010 census did not use the long form, those states that have used the long form data in the past to identify communities of interest may now use the American Community Survey, which provides comparable data based on sampling rather than a full census and available on a more frequent schedule—annually

Table 2		
Redistricting Criteria	by State,	2000

	Political Boundaries	of Common Interest	<u>Contiguous</u>	<u>Compact</u>
Alabama	C, L	C, L	C, L	C, L
llaska	L	L	L	L
rizona	C, L	C, L	C, L	C, L
ırkansas	C, L			
California	L	L	L	L
Colorado	L	L	L	L
Connecticut	L L	_	L	_
)elaware	L		L I	
			L	
Torida	0.1		-	
Georgia	C, L		C, L	
ławaii	L	L	L	L
daho	C, L	C, L	C, L	C, L
llinois			L	L
ndiana			L	
owa	C, L		C, L	C, L
ansas	C, L	C, L	C, L	C, L
entucky	C	C	C	
ouisiana	L		Ĺ	
Maine	Ī		L	L
Maryland	L L		C, L	L I
•	L			L
Massachusetts	L		L	41
Michigan 	*L		*L	*L
/linnesota	C, L	C, L	C, L	C, L
/lississippi	L		C, L	L
Missouri	L	L	C, L	C, L
Montana	L		L	L
Nebraska	C, L		C, L	C, L
levada	C, L	L	Ĺ	C, L
New Hampshire	Ĺ		L	
lew Jersey	_ L		C, L	L
lew Mexico	C, L	C, L	C, L	C, L
lew York	L	5, 2	L	L
lorth Carolina	C, L		C, L	L
lorth Dakota				
	L		L	L
Ohio	L		L	L
Oklahoma	L	L	L	L
Oregon	C, L	C, L	C, L	
Pennsylvania	L		L	L
Rhode Island				L
South Carolina	C, L	C, L	C, L	C, L
outh Dakota	L	L	L	L
Tennessee	L		L	
exas	L		L	
Jtah			C, L	C, L
/ermont	L	L	L	L
'irginia	AC, AL	AC, AL	C, L	C, L
-				
Vashington	C, L	C, L	C, L	C, L
Vest Virginia	C, L		C, L	C, L
Visconsin	L		L	L
Vyoming	C, L	L	C, L	C, L
C: required in con	gressional plans	AC: allowed in co	ngressional plans	
L: required in legi-	-1-45	AL: allowed in leg	ialativa plana	

[^] The original table stated that Michigan required these criteria for congressional districts. However, as mentioned in, *LeRoux v. Secretary of State the Michigan Supreme Court opined* that the criteria are not binding beyond the 1999 legislature.

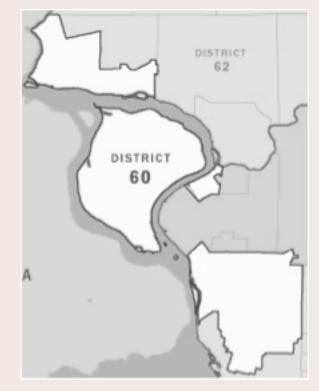
Source: National Conference of State Legislatures, Redistricting Law 2010. 106-108.

rather than once per decade. Even without the American Community Survey, the type of information that the Census Bureau provides states for redistricting purposes—commonly referred to as PL 94-171, the public law that required the Census Bureau to distribute the information—will not change. PL 94-171 was based on the short form in 2000.³⁷ Thus, the 2010 census data that states use in 2011 redistricting will have a similar level of detail as the 2000 census data that states used in 2001 redistricting.

Contiguity

In a contiguous district, there is the ability to move to any location within the district without leaving it. If a body of water separates land in a district, the district is contiguous if a bridge runs across the water. A district with an island is contiguous if the island is

Map 5 New York State Senate District 60: An Example of a Noncontiguous District



Source: University of Buffalo, *Reference Maps* http://rkn.buffalo.edu/maps/reference.cfm.

part of the same district as the closest mainland or, in Michigan, if the island is part of the same district as the county in which the island is located.³⁸ Because political boundaries are not always contiguous, preserving political boundaries may lead to noncontiguity. New York State Senate District 60 is one example of a noncontiguous district. It comprises an island and three separate geographic areas on the mainland, the white sections indicated in **Map 5**.

Compactness

Districts that are compact minimize the distances among district residents. Although most states that require compact districts do not specify how to measure compactness, ³⁹ there are many such measures. Applying multiple measures to the same district may lead to different conclusions about the district's compactness. Some popular measures include:

- Shape: Districts in the shape of a circle, square, or hexagon are more compact.⁴⁰
- Boundaries: Districts with smoother rather than squiggly boundaries are more compact.
- Perimeter: Districts with smaller perimeters are more compact.
- Area: The closer a district's area is to the area of the smallest circle or polygon that can be drawn around the district, the more compact the district. This is the measure that Michigan uses.⁴¹
- Perimeter and area: The closer the area of a district is to the area of a circle with the same perimeter, the more compact the district.
- Dispersion: The more equal the height and width of a district, the more compact the district.
- Shape and population: The closer a district's population center is to the geographic center of the district, the more compact the district.

Because maximizing compactness may prohibit meeting other requirements, states may require that each district individually, the sum of all the districts, or the districts on average simply meet some compactness threshold.⁴² As previously mentioned and as discussed in more detail later in the paper, requiring compactness may create a Republican bias in a redistricting plan.

Lesser Used Requirements

While Michigan and many other states use the most common redistricting standards as guidelines for redistricting plans, a few states use a number of less common principles: limiting the use of certain data, drawing competitive districts, respecting geographic boundaries, nesting house districts in sen-

ate districts, engaging the public, avoiding multi-member districts and redistricting on a decennial basis.

Data

A few states, not including Michigan, have redistricting requirements specifying what data a redistricting entity may reference in drawing district boundaries. Some states prohibit consideration of any person's residence; others only prohibit considering incumbents' residences but not the residences of potential candidates.⁴³ Arizona prohibits the use of incumbents'

residence data but permits the use of party registration and voting history data after the "initial phase of mapping." Similarly, Montana prohibits "in the development of a plan" the use of data on incumbents' residences, registered voters' political affiliations, previous election results, and partisan political voter lists. Iowa prohibits the use of data on incumbents' residences, previous election results, and demographics other than population, unless required by federal law. Idaho only allows its redistricting entity to consider population data.

In restricting a redistricting entity's use of data, these requirements seek to minimize district boundaries that disproportionally advantage specific individuals or groups. District boundaries determine from which residents a candidate must gain support. A redistricting entity may stretch or contract district boundaries to place a given incumbent among his preferred constituency, to separate an incumbent from his preferred constituency, or to place two incumbents in the same district, forcing them to compete against one another. Requirements to prohibit the

use of incumbent residence addresses attempt to eliminate these types of gerrymandering.

While these requirements attempt to instill integrity into redistricting processes by minimizing political motivations, there is no reliable evidence of their effectiveness. First, members of redistricting bodies likely know the location of legislators' residences

and may consider those locations regardless of provisions instructing otherwise. Second, such efforts are not foolproof because voters move. Thus, with time, the effects of redistricting based on the location of individual residences fades. Term limits compound this challenge because they make it difficult to anticipate the optimal boundary lines given that future candidates are unknown.

Although researchers have not achieved consensus on the effects of competitive district requirements, proponents of competitive districts cite many benefits, including more responsive and moderate elected officials, decreased political corruption, basic fairness, and increased participation in elections.

Competitive Districts

A competitive district is one in which candidates from each of the dominant political parties have a

reasonable chance of winning the general election. Districts with relatively equal numbers of Democrat and Republican voters may breed competition by building confidence among members of the party that is not in power that they have a chance of electing their preferred candidate and by instilling insecurity in members of the incumbent party that their preferred candidate may not be elected.

Although researchers have not achieved consensus on the effects of competitive district requirements (see "Competitive Districts and Political Polarization" on page 24), proponents of competitive districts cite many benefits, including more responsive and moderate elected officials, decreased political corruption, basic fairness, and increased participation in elections. Competition may incent incumbent representatives to respond to constituents' preferences, because voters can hold them accountable at the next election. Competitive districts may discourage extreme political candidates because they have difficulty appealing to centrist swing voters. At the same time, competitive districts may limit political corrup-

tion by limiting one party's control of a given district. Perhaps most importantly, though, "competitive districts appeal to our sense of fairness." For all these reasons, some believe that competitive districts may improve voter turnout. 49

In addition to disagreeing about the benefits, opponents of competitive districts argue that competitive

districts do not necessarily foster competitive elections. In the short run, the advantages of incumbency—such as name recognition and an existing public platform—may clinch a wide-margin victory for the incumbent despite competitive-district engineering. Over the years, voters may change their preferences or move, rocking the political balance of a district designed to be competitive.

States pursue competitive districts

using a variety of approaches. Some states require the redistricting entity to consider district competitiveness as one of a number of priorities. Others prefer to let competitive districts evolve more organically by simply prohibiting their redistricting bodies from using data about voter political affiliations, except when necessary to adhere to the Voting Rights Act and even though members of redistricting bodies likely understand voting patterns without data. Still another approach is setting a threshold of the number of districts that must be competitive or the minimum level of competitiveness required in each district. Michigan has no requirement encouraging or discouraging competitive districts.

Geographic Boundaries

Although Michigan does not, some states require that district boundaries follow geographic boundaries. This is the most impartial redistricting requirement that a government can use because, for the most part, governments do not set the location of natural features like mountain ranges, rivers, and lakes. However, if a government values districts that provide opportunities for minorities, are competitive, etc., random assignment may not foster such districts. And yet requiring district boundaries to align

with geographic boundaries results in districts that comprise individuals who live near, in, or on a common natural feature, share a common interest, and, therefore, may merit a common representative.

Nesting

Nesting is the process of drawing lower legislative

chamber districts within higher legislative chamber districts. It requires the number of lower legislative chamber seats to be a multiple of the number of higher legislative chamber seats. Because of this, nesting currently is not possible in Michigan. While nesting simplifies the organization of political jurisdictions for voters, it may also limit variety in representation by using the same constituency groupings for both chambers.

Efforts to instill transparency and public engagement in the redistricting process educates the public about the redistricting process while also serving as evidence when defending the plan in court.

Transparency and Public Engagement

An open redistricting process can develop trust between redistricting entities and the public, possibly minimizing lawsuits and increasing participation in the democratic process. As of 2006, 35 states required some form of transparency in their redistricting processes, usually through public hearings. Because the Michigan legislative committees responsible for redistricting are standing committees, their meetings are open to the public. Open meetings are the extent of Michigan's redistricting transparency requirements.

States may engage the public in many other ways. Some states solicit feedback on redistricting plans while others consider plans that members of the general public design. States can also require redistricting bodies to report the motivations for their plans or distribute a record of all redistricting meetings. This type of information educates the public about the redistricting process while also serving as evidence when defending the plan in court. However states engage the public, it comes at the cost of time. Moreover, public engagement may make it more difficult for redistricting entities to make good policy decisions that are politically unpopular.

Multi-Member Districts

Multi-member districts are districts with two or more representatives. Federal law prohibits multi-member congressional districts, but some state and many local governments still use multi-member districts.⁵⁴ Michigan does not use multi-member districts for state legislative offices.

Governments that use multi-member districts may require that each district has the same number of representatives, or they may allow the number of representatives to vary by district. Multi-member districts are very compatible with nested districts in that the higher and lower legislative chamber districts may have the same boundaries, but the higher legislative chamber district will have one representative while the lower legislative chamber district will have more than one representative.

Using multi-member districts may help preserve po-

litical and geographic boundaries as well as communities of interest, but it can make it more difficult to abide by the provisions of the Voting Rights Act. Because multi-member districts are larger than single-member districts, redistricting entities may divide fewer political boundaries, geographic boundaries, and communities of interest than single-member districts. At the same time, combining multi-member districts with a typical voting method, in which each elector submits one vote for each preferred candidate, may make it more difficult for minority groups to elect a candidate of choice. This is because the majority group's preferences can dominate repeatedly, electing the majority group's preferred candidates for every open seat.

One adaptation of multi-member districts is the floterial district, which is a district layered on top of portions of multiple single-member districts such that parts of each of the single-member districts have

Alternative Voting Methods

Alternative voting methods—such as cumulative, instant runoff, or limited voting—may resolve problems of majority group dominance in multi-member district elections.¹ Lists of state and local governments that use these voting methods can be found at FairVote.org.²

- Cumulative. Each elector has a certain number of votes that may be distributed equally or unequally among candidates—one vote for each candidate or more than one vote per candidate—until the elector has used up the votes. For example, if there are five candidates and three seats, each elector may submit three votes, one vote for each of three candidates; two votes for one candidate, and one for a second candidate; or three votes for one candidate.
- Instant Runoff. Each elector ranks the preferred candidates for the available seats. For example, each elector ranks the first choice as 1, the second choice as 2, the third choice as 3, etc. A candidate requires a certain minimum number of votes to be elected, most commonly one vote more than the number of votes equally divided among one more than the number of open seats. For example, if electors cast 100,000 votes to fill three seats, a candidate needs 25,001—(100,000/4)+1—votes to be elected. Election officials count all of the '1' votes. If a candidate has more than 25,001 votes, that candidate is elected and the surplus votes are transferred to the candidates listed as '2' on the ballots. If, even after transferring votes, no candidate has more than 25,001 votes, election officials eliminate the candidate with the fewest votes and transfer that candidate's '3' votes. This process repeats until every seat is filled.
- Limited. Each elector has fewer votes than there are open seats and may only submit one vote per preferred candidate. For example, if there are five candidates and three seats, each elector may submit two votes and the top three vote getters are elected.

¹ Levitt, Justin. A Citizen's Guide to Redistricting. Brennan Center for Justice. 2010: 67.

² Cumulative and limited: http://archive.fairvote.org/?page=2101, Instant runoff: www.fairvote.org/where-instant-runoff-is-used

more than one elected official.⁵⁵ Floterial districts are useful in fulfilling competing redistricting requirements. For example, if a state requires the preservation of political boundaries, has an ideal district size of 100,000, and has contiguous cities with populations of 150,000 each, the state can fulfill both federal and state requirements by creating a singlemember district in each city and a floterial district of 150,000, comprising 75,000 from each city.⁵⁶ Each district meets the federal requirement of equal population and the single-member districts maintain political boundaries. Moreover, the 300,000 voters cooperatively elect three representatives, conforming to the voting power standards that the ideal district size establishes.

Approval Threshold

Although most states require a simple majority of the redistricting entity's members to vote in support of the redistricting plan for it to take effect, some require a super-majority. California, Connecticut and Maine require two-thirds super-majorities, while Mis-

souri requires a 70 percent supermajority.57 Supermajority requirements may create an incentive for bipartisanship in drafting redistricting plans, but they do not safeguard against gerrymandering. Instead, members of the redistricting entity, particularly if the redistricting entity comprises legislators, may collude to protect all incumbents, regardless of political party. Supermajority requirements also make a stalemate more likely.

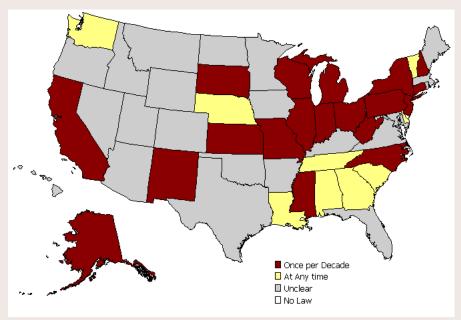
Frequency

While most states redistrict once per de-

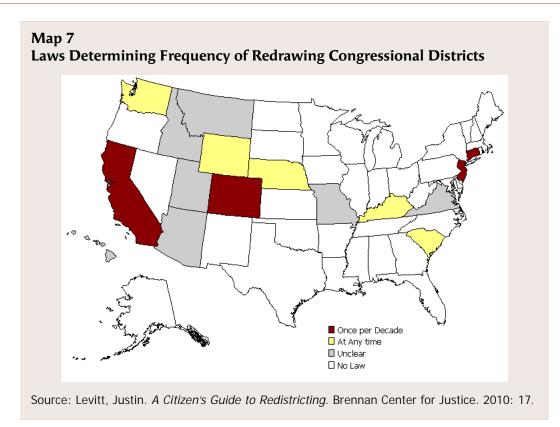
cade, a few states redistrict more often (see Maps 6 and 7). Michigan law requires legislative redistricting once every ten years, beginning November 1, 2001,58 to coordinate with the decennial census. PA 221 of 1999 stated the same requirement for congressional redistricting, but the Michigan Supreme Court ruled in 2002 that this law was not binding beyond the 1999 legislature, 59 leaving the legislature free to redistrict more than once per decade. Nineteen states prohibit redistricting more than once per decade for state legislative districts, and four do the same for congressional districts. Requirements permitting redistricting more than once per decade may only allow mid-decade redistricting under special circumstances, or they may allow redistricting as often as the responsible entity prefers.

The most famous case of mid-decade redistricting may be the 2003 Texas congressional plan. In 2002, for the first time in 130 years, Republicans won majorities in the Texas House and Senate.⁶⁰ Upon taking office in 2003, the legislature redrew Texas's congressional districts, which the Democrat-controlled legis-

Map 6 Laws Determining Frequency of Redrawing State Legislative Districts



Source: Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 17. Note: the original map stated that Michigan had no laws regarding the frequency of redrawing legislative districts. However, PA 463 of 1996 requires legislative redistricting once per decade.



lature had drawn in 2001. The U.S. Supreme Court upheld all but one of the redrawn districts.⁶¹

There are advantages and disadvantages to redistricting more than once per decade. The advantage is the ability to maintain districts that reflect federal and state requirements. The disadvantage is that it enhances gerrymanders' abilities to respond to new threats and opportunities. Frequent redrawing also distorts elected officials' accountability to their constituents given the potential for ongoing shifts in voters among districts.

Prioritizing among Requirements

There is no standard among states for prioritizing the various redistricting requirements, and many states do not formally prioritize their requirements. Redistricting requirements often conflict, so identifying a formal prioritization builds consistency into the redistricting process and protects against gerrymandering that selectively fulfills some requirements over others. At the same time, there is no best way to prioritize among the various requirements. Michigan does not prioritize among its legislative district guidelines, but, when in effect, PA 221 of 1999 used

the following prioritization for congressional district guidelines, in order of preeminence: equal population, equal opportunity to elect candidates, contiguity, adherence to political boundaries, and compactness.

Schedule

States generally have similar start and end dates for their redistricting processes, although exact deadlines may vary. By April 1st of the year following the census year, the U.S. Census Bureau releases to the states block-level data. Some states wait

until this point to begin the redistricting process, while others, particularly those that create unique redistricting commissions, may begin selecting commission members before they receive their census data.⁶² The filing deadline for a state's primary election in the second year after the decennial census is the most common deadline for finalizing redistricting plans.⁶³ In Michigan, the deadline for legislatively created plans is November 1st of the year following the decennial census. However, it may behoove a state to finalize plans before its deadline in an effort to address legal objections before plans are needed.

Interim deadlines are also helpful and important. According to the Brennan Center for Justice, "The amount of time that each state devotes to each part of the redistricting process can affect the resulting district lines. For example, states that allow relatively little time for the primary redistricting body to negotiate over various proposals may be more prone to deadlock, leaving responsibility for the final district lines to the courts or other backup institutions. In states with more time, on the other hand, public hearings may reveal unintended consequences of a particular proposal, and allow the primary redistricting body to adjust the map accordingly." 64

Gerrymandering

Redistricting is fundamental to democracy because district boundaries determine from which voters a candidate must gain support and, ultimately, which individuals an elected official represents. Thus, the ways in which redistricting bodies may bias district boundaries to advantage specific individuals or groups is of great concern. Although there is no single measure to prove a district has been gerrymandered or to estimate the extent of gerrymandering, that does not mean that gerrymandering does not occur. Rather, it speaks to the complicated, often opaque process of redistricting. Similarly, the lack of reliable evidence demonstrating the effects of gerrymandering does not mean that gerrymander does not affect communities; it just may be too difficult to isolate the effects of gerrymandering to measure them. In order to assess and improve the redistricting process, it is important to understand how gerrymandering manifests so that changes to the process minimize opportunities for biasing boundaries and put in place controls for identifying and remedying gerrymandering when it occurs.

Techniques

Gerrymanderers use a variety of techniques in biasing district boundaries. They can draw boundaries to move from one district to another resident's who historically vote with certain partisan leanings or who are likely candidates for certain public offices, manipulating the choices that voters face. Gerrymandering techniques include packing, cracking, tacking, hijacking, kidnapping, and eliminating competitors.

Packing. Placing as many voters of one type in a single district to minimize the number of elections they can influence. For example, after the 2000 census, Republicans controlled both the Michigan legislature and the governor's office. In redistricting, they were alleged to have packed Democrats into Michigan's already heavily Democratic Fifteenth and Twelfth Congressional Districts to free up Republicans for the Eighth and Ninth districts.^a

Cracking. Spreading voters of one type over many districts where they will comprise minorities that are unable to influence elections.^b In 1992 Koreatown, a predominantly Korean American neighborhood comprising just more than a square mile of land in Los Angeles, was divided into five state assembly districts, with no single legislator accountable to the Korean American community.^c If this was the result of gerrymandering, as many charge, it is an example of cracking.

Tacking. Reaching out from a district to grab a distant area with desired demographics. This is alleged to have been the technique that New York Democrats used to draw Assembly District 131 in 2002 (see **Map 8**). Because most of the district is in the predominantly Republican suburbs, the redistricting entity added a trail of heavily Democratic

residences (northeast corner) to keep the Democratic incumbent in office.^d

Hijacking. Separating an incumbent candidate from the candidate's constituents, and creating a district in which the candidate has no name recognition. Following the 2000 census, Michigan lost a congressional seat. The redistricting plan that the Republican Michigan legislature created and that the Republican governor approved shifted Democrat Congressman David Bonior's residence from the Tenth District to the more conservative Twelfth District; Bonior did not run for reelection but instead ran unsuccessfully to be the Democratic candidate for governor. If this shift was the result of gerrymandering, as the *Harvard Law Review* alleges, then it is an example of hijacking.

Kidnapping. Drawing two incumbent candidates into the same district so they must run against each other. Also in 2000, the Michigan Republicans' redistricting plan moved the district boundaries of Democratic members of the U.S. House John Dingell and Lynn Rivers, resulting in a primary election in which the two ran against each other. John Dingell, who had served 23 terms in the U.S. House by that time, beat out Lynn Rivers, an eight-term member. If Michigan Republicans gerrymandered these districts, as the Harvard Law Review implicates, then the technique that was used is kidnapping.

Eliminating Competitors. Shifting district boundaries to move an incumbent's potential competitor to another district. In 2000, 13-term incumbent Roger Green narrowly defeated his opponent in the primary election for New York's 57th legislative seat. The redistricting that took place in New

Map 8 New York Assembly District 131 after the 2000 Redistricting



Source: Citizens for a Better New York, Inc. *Current Gerrymandering*, www.cbgny.org/gerry.htm.

York after the 2000 census changed the boundaries of the district such that Green's competitor no longer lived in the district, a change that many believe to be the result of gerrymandering. In 2004, Green had no primary election opponent. Two years later, Green's challenger moved back into the 57th legislative district and defeated Green in that year's primary election, going on to win the general election as well.⁹

Fvidence

Although there is no single measure to prove a district has been gerrymandered or to estimate the extent of gerrymandering, some point to characteristics such as irregular district shape, political boundary breaks and skewed election results as helpful indicators. However, caution is necessary when using these measures as a basis for a gerrymandering accusation.

Irregular Shape. Gerrymandering that includes or carves out specific precincts, blocks, or houses may distort the shape of an otherwise compact district with smooth boundaries. Yet federal and state requirements often induce irregularity. Additionally, the last district that a redistricting entity draws and districts on a state's border tend to be irregularly shaped. Unless the irregularity is excessive and correlates with a significant shift in the political makeup of the district's voters, as was the case with New York Assembly District 131, it is usually difficult to differentiate between gerrymandered and legitimate variation in a district's shape. What's more, today's redistricting software often makes it unnecessary to draw irregularly shaped districts in order to gerrymander desired voter compositions.

Political Boundary Breaks. For states that require preserving political boundaries, the number of boundary breaks may indicate the extent to which the redistricting entity gerrymandered the districts. However, as with shape irregularity, other federal and state requirements may induce political boundary breaks. What's more, while gerrymanders may cross political boundaries in order to include or exclude specific areas, doing so may not be necessary. Before the 2000 redistricting, Michigan congressional districts had 17 county and 15 municipal boundary breaks. After the 2000 redistricting, which resulted in a plan that some Republicans have admitted was gerrymandered, congressional districts had just 11 county and 14 municipal boundary breaks.

Election Results. When a political party's share of legislative seats is significantly greater than the party's share of votes, there are often allegations of gerrymandering. For example, between 2002 and 2010, Democrats received 49.5 percent of the votes for seats in the Michigan Senate but received just 39.5 percent of the Senate seats; similarly, Democrats received 52.0 percent of the votes for seats in the Michigan House but received only 49.3 percent of the House seats.^k Many people have since used these statistics as evidence that Republicans gerrymandered the 2001 redistricting plan.

There are two reasons why this type of argument might not hold. First, combining single-member districts with majority voting naturally results in representation that does not align with the distribution of votes. For example, consider a hypothetical election in which Party A receives 41 percent, 51 percent, and 61 percent of votes, respectively, in three separate districts that have not been gerrymandered and that have an equal number of voters and equal populations. Party A has won two of the three districts (67 percent) but just 51 percent of the vote. The disproportionate representation is not the result of gerrymandering but rather the result of the electoral system. Second, according to researchers at the University of Michigan and Stanford University, "...Urban districts tend to be homogeneous and Democratic while suburban and rural districts tend to be moderately Republican. Thus in Florida and other states where Democrats are highly concentrated in cities, the seemingly apolitical practice of requiring compact, contiguous districts will produce systematic pro-Republican electoral bias."m This means that redistricting entities' commitment to upholding state requirements, not gerrymandering, may cause disproportionate election results.

Another measure that some point to as evidence of gerry-mandering is a lack of district turnover. Such accusations usually center on the frequency with which voters of a given district elect a representative from the opposite political party as that of the individual currently holding the office. The argument is that a pattern of districts that do not turn over is evidence of gerrymandering, but evidence does not support such a hypothesis. Data show that gerrymandering may contribute to a lack of turnover, but its impact is relatively minor.ⁿ

Adjudication. Regardless of the evidence, political gerry-mandering claims against redistricting plans that fulfill federal and state requirements are not justiciable because there are no "judicially discernible and manageable standards" for adjudication. Neither the Equal Protection Clause nor the Voting Rights Act provides limits for the political considerations that states may take into account when redistricting.

Alleged Consequences

There is no reliable evidence to support arguments that gerry-mandering reduces the number of competitive districts, increases political polarization, fosters political corruption, discourages participation in elections, or erodes public trust in government. However, this does not mean that there are no consequences; it just may be too difficult to isolate the effects of gerrymandering to measure them.

Competitive Districts and Political Polarization. There is a theory that gerrymandering creates less competitive districts and that a lack of competitiveness encourages extreme political candidates because they do not need to appeal to centrist swing voters. While there is evidence that congressional elections are historically uncompetitive and

members of the U.S. House and Senate are increasingly politically polarized, there is no evidence that the two issues are linked or that gerrymandering is the cause of either issue. The trend of increasing congressional political polarization began well before the trend of noncompetitive elections, meaning that gerrymandering noncompetitive districts did not create the polarization problem. Rather, researchers from Princeton University, the University of California, and New York University have shown that increasing polarization is largely a result of the fact that, "...For a given set of constituency characteristics, a Republican representative compiles an increasingly more conservative record than a Democrat does." They also show that "Some of the increase in polarization is due to an increase in the congruence between a district's characteristics and the party of its representative." P Similarly, Thomas Mann of the Brookings Institution has found gerrymandering's role in electoral competition to be minor, if not insignificant. Rather, he blames the alignment of political parties with ideology, residential patterns of political segregation, and a lack of bipartisanship in legislative voting.q

Corruption, Voter Turnout, and Public Trust. There appears to be no evidence that gerrymandering affects corruption, voter turnout, or public trust either positively or negatively.

The lack of statistically significant evidence demonstrating the effects of gerrymandering may have to do with its self-limiting nature as well as the difficulty in measuring such effects. First, in order to gerrymander, a redistricting entity must weaken safe districts to shift voters to other districts. In doing so, they increase the risk of losing formerly safe districts. Term limits compound this challenge because they make it difficult to anticipate the optimal boundary lines given that future candidates are unknown. Second, it may be difficult to discern gerrymandering let alone separate the effects of gerrymandering from other factors such as political scandals. Despite the lack of evidence for more sensational effects, gerrymandering at minimum affects representation through the choices that voters face and therefore undercuts the legitimacy of our democracy.

^a "Political Gerrymandering 2000-2008: 'A Self-Limiting Enterprise'?" Harvard Law Review. 122 (2009): 1476.

^b There is some evidence that, if a state has geographic redistricting constraints—such as requiring continuity—packing and cracking are ineffective forms of gerrymandering. Puppe, Clemens, and Attila Tasnadi. "Optimal Redistricting under Geographical Constraints: Why 'pack and crack' does not work." July 2008: 93.

^c Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 13.

^d "Gerrymandering, Pure and Corrupt." Editorial. *The New York Times.* 11 Nov. 2009. Web. 6 Feb. 2011. www.nytimes.com/2009/11/12/opinion/12thu1.html.

^e "Political Gerrymandering 2000-2008: 'A Self-Limiting Enterprise'?" Harvard Law Review. 122 (2009): 1476 and 1487.

^f "Political Gerrymandering 2000-2008: 'A Self-Limiting Enterprise'?" Harvard Law Review. 122 (2009): 1476 and 1487.

⁹ "Political Gerrymandering 2000-2008: 'A Self-Limiting Enterprise'?" Harvard Law Review. 122 (2009): 1476.

^h Levitt, Justin. A Citizen's Guide to Redistricting. Brennan Center for Justice. 2008: 11.

¹ National Conference of State Legislatures. "Hands-On Redistricting Simulation." *National Redistricting Seminar*. 27 Sept. 2010, Providence, Rhode Island. Web. 28 Mar. 2011: 32. www.ncsl.org/documents/legismgt/SimHandouts3.pdf.

¹ Center for Michigan. *Re-Drawing Michigan: How Redistricting Pre-Determines Many Election Results and Often Leaves Voters without Competitive Choices at the Polls.* February 2011:13. Web. 3 Apr. 2011. www.thecenterformichigan.net/wp-content/up-loads/2011/02/CFM_redistricting_report_feb_2011.pdf.

^k PA 282 of 1964

¹ Center for Michigan. Re-Drawing Michigan: How Redistricting Pre-Determines Many Election Results and Often Leaves Voters without Competitive Choices at the Polls. February 2011:12. Web. 3 Apr. 2011. www.thecenterformichigan.net/wp-content/up-loads/2011/02/CFM_redistricting_report_feb_2011.pdf.

^m McDonald, Michael D. "A Standard for Detecting and Remedying Gerrymanders." Binghamton University – SUNY. Aug. 2005: 4. Web. 11 Mar. 2011. http://cdp.binghamton.edu/papers/Gerrymandering.pdf.

ⁿ Chen, Jowei and Rodden, Jonathan. "Tobler's Law, Urbanization, and Electoral Bias: Why Compact, Contiguous Districts are Bad for the Democrats." 4 Nov. 2009: 1. Web. 6 Feb. 2011. www.stanford.edu/~jowei/identified.pdf.

^o Friedman, John N. and Holden, Richard T. "The Rising Incumbent Reelection Rate: What's Gerrymandering Got to Do with It?" *The Journal of Politics*. 71. 2. 2009: 593-611.

^p Vieth v. Jubelirer, 541 U.S. 267 (2004)

^q McCarty, Nolan, Pool, Keith T. and Rosenthal, Howard. "Does Gerrymandering Cause Polarization?" 23 Oct. 2006: 4. Web. 28 Mar. 2011. www.princeton.edu/~nmccarty/gerrymander11.pdf.

^r Walker, Richard. "Chapter 6 Summary—Red and Blue Nation? Characteristics and Causes of America's Polarized Politics." The Brookings Institution, Dec. 2006. Web. 27 Mar. 2011. www.brookings.edu/gs/projects/redandbluenation/ch6summary.pdf.

^s Davis v. Bandemer, 478 U.S. 109 (1986). O'Connor, J., concurring in the judgment

Recommendations

A constitutional amendment

should be introduced to

amend Sections 2 through

6 of Article IV of the 1963

Michigan Constitution, and

PA 463 of 1996 should be

statutorily amended to fully

implement the new consti-

tutional provisions.

Michigan's constitutional legislative redistricting rules are invalid; its statutory guidelines are not binding for congressional redistricting; and it is uncertain whether its legislative redistricting guidelines are binding. Unless valid constitutional provisions are

adopted, redistricting will continue to occur in a legislatively-devised and legislatively-adjustable framework. To replace Michigan's existing constitutional language requires a legislature-referred or voter-initiated proposal or revision at a constitutional convention. Given that the voters just rejected the calling of a constitutional convention, it would be prudent at this time for a constitutional amendment to be introduced to amend Sections 2 through 6 of Article IV of the 1963 Michigan Constitution,

and PA 463 of 1996 should be statutorily amended to fully implement the new constitutional provisions.

Redistricting Commission

Article IV, Section 6 of the Michigan Constitution creates an independent, party-appointed Commission on Legislative Apportionment and assigns it the responsibility for drawing legislative districts. However, the Michigan Supreme Court invalidated the Commission as part of its 1982 ruling that invalidated all the constitutional redistricting provisions in Sections 2 through 6. Moreover, not once during its 18-year existence did a majority of the 8-member Michigan Commission on Legislative Apportionment agree on a redistricting plan; following the 1960, 1970, and 1980 censuses, the Commission split along partisan lines.

While the 1961 state Constitutional Convention did much admirable work, the problems with the Commission on Legislative Apportionment were apparent immediately. The primary challenge was that, with an even-numbered membership, there was no way to resolve deadlock. The following recommended provisions suggest a return to an independent commission in such a way as to maintain the

strengths and correct for the key weaknesses of the Commission on Legislative Apportionment.

 Recreate a commission to conduct redistricting. The commission should comprise an odd number of members, with the majority and

minority leaders of each chamber appointing two individuals and the appointed individuals electing a member who is unaffiliated with any political party. Just as is currently provided in Article IV, Section 6, "Vacancies shall be filled in the same manner as for original appointment." Most states that use a commission for redistricting employ an odd number of members, which helps avoid deadlock, and sizes range from 3 to 18.65 The commission should conduct both

congressional and legislative redistricting.

- Maintain the safeguard for the representation of a prominent third political party. In describing the composition of the Commission on Legislative Apportionment, Article IV Section 6 expands the commission to accommodate representation of a third political party if that party becomes significant, as evidenced by a gubernatorial candidate of the party receiving more than 25 percent of the most recent general election vote. Such a provision should be preserved under a constitutional amendment. However, rather than allowing the third political party to appoint the additional four commissioners, as the Michigan Constitution now states, the amendment should assign the responsibility to the gubernatorial candidate.
- Maintain the requirement for geographic diversity among commissioners. Article IV, Section 6 also requires that Commission of Legislative Apportionment members reflect the diversity of the state, creating a commission that comprises an equal number of representatives from each region of the state. A constitutional

amendment should similarly strive for geographic diversity among commissioners.

- Maintain the requirement that commissioners be registered voters. This standard helps to ensure that commissioners are, at the most basic level, active members of their democracy and have a vested interest in an unbiased redistricting plan. Article IV, Section 6 already states that the membership of the Commission on Legislative Apportionment comprises electors. This language should be adapted to the new commission and preserved under a constitutional amendment.
- Maintain restrictions on who can serve on the commission, to minimize potential conflicts of interest. Article IV, Section 6 prohibits government officers and employees, other than notaries and members of the armed forces reserve,

General election

November 6

from serving on the Commission on Legislative Apportionment and states that commissioners will be ineligible for election to the legislature for two years after their commission appointment. Michigan's restrictions are relatively minor compared to the strong standard that, for example, California sets. A Michigan constitutional amendment should include, at minimum the existing constitutional language. The state may wish to consider more stringent language. California, which has particularly strong language, prohibits among other things, members of its commission from being current or recent elected officials; candidates for public office; officers, employees, or paid consultants of political parties or of certain political campaign committees; registered lobbyists; legislative staff; and blood or legal members of certain public officials' immediate families. 66 California also prohibits members of its commission from holding elective of-

Table 3 Michigan's 2	2012 Election Deadlines	
<u>Date</u>	<u>Deadline</u>	Election
May 15	Candidates (other than judicial candidates) file nominating petitions (or fees if applicable) and Affidavit of Identity	Primary
May 30	Petitions to place a legislative initiative proposal on the ballot filed with Secretary of State	General
July 9	Voter registration	Primary
	Petitions to place a proposed constitutional amendment on the ballot filed with the Secretary of State	General
July 19	Candidates without political affiliation file qualifying petitions and Affidavit of Identity	General
	New political parties file petitions to qualify for ballot	General
August 7	Primary election	
October 9	Voter registration	General
October 26	Write-in candidates file Declaration of Intent forms	General

Source: State of Michigan, *August 7, 2012 Primary and November 6, 2012 General Election: Important Dates and Filing Deadlines*, www.michigan.gov/documents/sos/ 2012 Important Dates Filing Deadline 346119 7.pdf.

fice for ten years from the date of appointment and from holding appointive public office, serving as staff to certain federal and state officials, and registering as a lobbyist for five years from the date of appointment.⁶⁷

• Require the legislature to fund the commis-

sion before appointing commissioners. To minimize the opportunity for the legislature to control the commission using its appropriation power, Arizona and California require that their legislatures fund their redistricting commissions before appointing commissioners.⁶⁸ Michigan should include similar language in its Constitution. The California Government Code requires, in each

The funding of the commission and appointment of commissioners should occur in the year of the federal census to minimize opportunity for the legislature to control the commission.

year ending in nine, that the governor's budget and the subsequent legislative Budget Act include "sufficient" funding, which is described in more detail, for the state's redistricting commission; it also enables the legislature to "make additional appropriations in any year in which it determines that the commission requires additional funding in order to fulfill its duties."⁶⁹

- Require appointment of commissioners by December 31 of the year of the federal decennial census. Having a deadline for the appointment of commissioners ensures that the commission will have sufficient time to elect a member who is unaffiliated with any political party before Michigan receives its redistricting data. In doing so, the commission will be able to hit the ground running when it receives the data. California's deadline of December 31 of each year ending in zero⁷⁰ is ideal because this is the deadline for the U.S. Census Bureau to deliver to the President the state resident and apportionment populations.
- State that the commission's plan is final.
 A constitutional amendment should include explicit language stating that the plan that the com-

mission approves is final and is not to subject to legislative or gubernatorial approval. Legislators and the governor, like the rest of the public, should have opportunities to provide input before plans are developed and feedback on the proposed plan, without compromising the commission's independence. Legislators and the

governor, like other Michigan electors, have legal standing to challenge final plans under Article IV, Section 6. This language should be preserved under a constitutional amendment. Florida and North Carolina use a similar approach.⁷¹

Frequency

Permit redistricting to occur only after the federal decennial census. A constitutional

amendment to improve Michigan's redistricting process should build on the foundation that Michigan law currently provides. PA 463 of 1996 requires that legislative redistricting occur once every ten years, beginning November 1, 2001, to coordinate with the decennial census. PA 221 of 1999 states the same requirement for congressional redistricting, although the Michigan Supreme Court ruled in 2002 that this act is not binding.⁷² A constitutional amendment should make it clear that redistricting should occur only once every ten years.

Process

Maintain the description of redistricting responsibilities, procedures, and timeline. The redistricting process described in Article IV, Section 6 should be retained. It identifies the secretary of state as the Commission on Legislative Apportionment's secretary and technical services provider, empowers the Commission to elect a chairman and make its own procedural rules, states that commissioners should be compensated as defined by law, requires a majority of commissioners to support all final commission decisions, and lays out a timeline for the redistricting process.

Transparency and Public Engagement

Although the Michigan Open Meetings Act requires that public bodies provide adequate notice of upcoming meetings and make available recordings and transcripts of hearings, redistricting provisions should go further in ensuring transparency and offering

meaningful opportunities for interested parties and the public to participate. A constitutional amendment should include language stating that the Commission will:

- Hold public hearings around the state to secure public input;
- Share information about the tools and processes the commission will use;
- Share the proposed plan and hold public hearings on the proposed plan; and
- Leave sufficient time between the end of the public comment period and the plan's due date in order to revise the plan based on public feedback.

While no state requires this exact bundle of transparency and public engagement provisions, former Congressman John Tanner of Tennessee introduced a bill last year in the U.S. House, the Redistricting Transparency Act of 2010, to require states to improve their congressional redistricting processes. The bill provides some sample language that may be useful to Michigan policymakers as they draft statutory language to provide for the implementation of the state's congressional and legislative redistricting processes. It requires soliciting public input for 60 days and holding at least one public hearing prior to the initial development of a plan, making redistricting data publicly available, offering opportunities for public comment on the proposed plan, and leaving at least ten days between publishing and adopting the final plan.73

Maintain redistricting proceedings as public record, and require the publication of the fi-

nal plan. Michigan's existing constitutional language suffices in fulfilling this provision; it should be maintained. Article IV, Section 6 requires that the secretary of state keep a public record of the proceedings of the Commission on Legislative Apportionment and that the final plan be published within 30 days of the Commission adopting it.

Redistricting provisions should ensure transparency and offer meaningful opportunities for interested parties and the public to participate.

Legal Standing

Maintain protection of electors' right to challenge redistricting plans. Article IV, Section 6 empowers, within 60 days of a redistricting plan's publication, any elector to request a Michigan Supreme Court review of the final plan. If it finds that the plan is

unconstitutional, the Court may remand the plan to the Commission on Legislative Apportionment for further action. This provision should be adapted to the new commission and preserved under a constitutional amendment.

Standards

Although there is variation between Michigan's constitutional and statutory redistricting language as well as between Michigan congressional and legislative redistricting guidelines, many (but not all) of Michigan's existing requirements should be included in a constitutional amendment. Although invalid and potentially not binding, respectively, the Michigan Constitution and PA 463 of 1996 include legislative redistricting rules for maximum population variances; preserving political boundaries; and contiguous and compact single-member districts. While not binding, PA 221 of 1999 establishes guidelines for drawing Michigan's congressional districts. The guidelines comprise provisions for strict population equity, upholding the Voting Rights Act, preserving political boundaries, contiguity, compactness, single-member districts, and numbering districts. Congressional redistricting guidelines have never been in the Michigan Constitution. However, because of the importance of having binding congressional redistricting standards, they should be.

CRC recommends new

standards comprising pro-

visions for population eq-

uity, single-member dis-

tricts, contiguity, adherence

to political boundaries, and

preserving communities of

interest.

In general, requirements should be limited in order to provide the commission flexibility in drawing districts that meet the most important criteria and purposeful in order to avoid unintended consequences. The guidelines listed here do not include requirements like compactness and adherence to geographic boundaries because of the arbitrary nature of these requirements and the subsequent bias that such requirements may foster. Moreover, they do not in-

clude criteria regarding individual residences because of the difficulty of enforcing such a requirement. Finally, they do not include a requirement for district competitiveness because of the lack of evidence demonstrating that it is possible or helpful to engineer competitive elections.

 Require strictly equal populations among congressional districts, and

limit legislative districts' population variation to five percent above or below the ideal district size. Existing technology and congressional districts' large sizes make it relatively easy to create districts with little to no population variation. Thus, congressional districts should have strictly equitable populations, as PA 221 of 1999 prescribes. Article IV, Section 3 currently allows legislative district populations to vary by up to 25 percent above or below the ideal district size, which is almost certainly is a violation of the federal Constitution. Legislative districts should maintain populations that vary no more than five percent above or below the ideal district size, as PA 463 of 1996 states.

Maintain the requirement for single-member districts. Federal law requires single-member congressional districts. A Michigan constitutional amendment should require single-member legislative districts, preserving language already in Article IV, Sections 2 and 3.

- Maintain the requirement that districts be contiguous. The existing language in Article IV, Sections 3 and 4 is effective in clearly communicating this requirement. It should be extended to apply to congressional districts as well.
- Maintain the requirement to adhere as close to political boundaries as possible.
 Article IV, Section 3 prescribes for districts "ad-

hering to county lines" and directs districts to "follow city and township boundaries where applicable." At minimum, this language should be preserved under a constitutional amendment. Statute should be used to implement this provision. PA 463 of 1996 provides a more detailed description of how to preserve boundaries but does not apply to congressional districts. Additionally, PA 116 of 2001 defines one way of counting the num-

ber of political boundary breaks; language like this is necessary in order to implement a constitutional requirement for preserving political boundaries, particularly because counting boundary breaks can often be contentious.

Preserve communities of interest. A constitutional amendment could also provide that the redistricting commission should account for communities of interest in its work. Details of what constitutes a community of interest should be provided in state law, not the constitution. PA 221 of 1999 includes language requiring that the Voting Rights Act be upheld; this act is not binding. Arguably communities of interest would extend beyond ethnicity to economic and social interests.

Conclusion

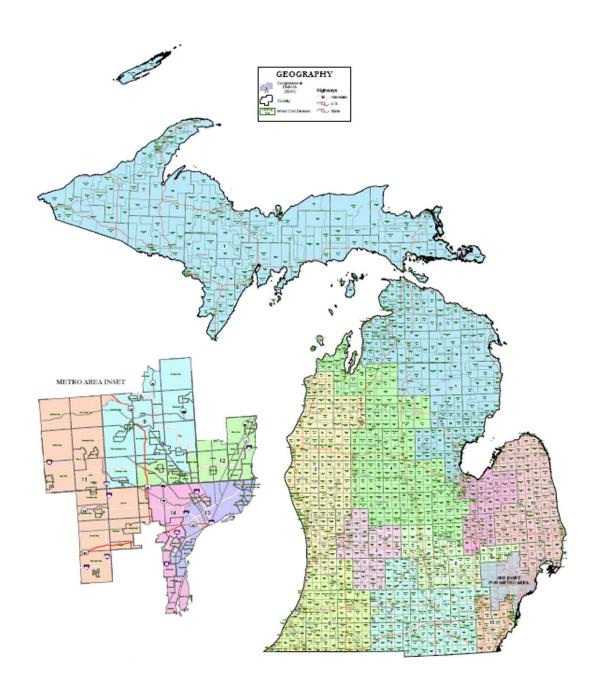
Redistricting is fundamental to democracy because it matches potential candidates to constituencies, setting the parameters for representation. As such, detailed policies contained in the U.S. and state governments' fundamental laws should govern redistricting. The U.S. Constitution mandates equal representation among districts, and the Voting Rights Act requires that states provide minority groups an equal opportunity to elect candidates of their choice. While most states have secondary guidelines to constrain the redistricting process—such as that districts adhere to political boundaries, preserve communities of interest, and be contiguous and compact— Michigan remains without even the most basic guidelines for congressional redistricting and with precarious guidelines for legislative redistricting.

With Michigan having lost population for the first time since the U.S. government began the census and significant population shifts throughout the state redistricting will result in significant changes to the maps of Michigan's legislative and congressional districts. A clearly defined and transparent process etched into Michigan's Constitution is the best solution for improving Michigan's redistricting process.

Each of the Michigan Constitutions has contained specific legislative apportionment provisions. This suggests that voters have deemed it unwise to leave the matter to the discretion of any branch of state government, including the judiciary. Given the historical preference of Michigan voters, and due to the fundamental importance of redistricting, state constitutional provisions specifying what entity should bear responsibility for the process and what standards should govern the process would seem a prudent recourse. A new redistricting process designed to produce districts that are drawn in conformance with specific standards is imperative to ensure the unbiased and effective representation of Michigan citizens.

Appendix A 2001 Congressional, Michigan House of Representatives and Michigan Senate Districts

Map 9 Michigan's 15 Congressional Districts



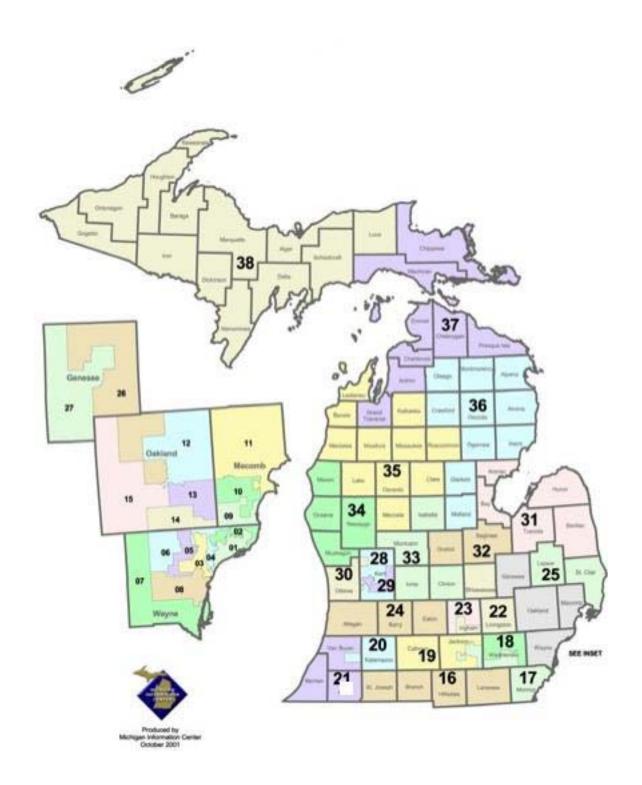
Source: State of Michigan website, www.michigan.gov/documents/Congress01-state-E_43697_7.pdf.

Map 10 Michigan's 110 State House of Representative Districts



Source: Michigan House of Representatives website, www.house.mi.gov/district_maps/HOUSE%20MASTER.pdf

Map 10 Michigan's 38 State Senate Districts



Source: Michigan Senate website, www.michigan.gov/documents/Senate_state_16748_7.pdf.

Appendix B Method of Equal Proportions

Under the Method of Equal Proportions, Congress assigns seats based on states' priority values, a state's population divided by the square root of the product of the number of seats up to that point in the reapportionment process and the number of seats if it were to receive the next seat. The state with the highest priority value in each round receives the seat, until all 385 seats are assigned.⁷⁵ For example, if a state has a

population of 40 million, it's priority value for the 51st seat is $\frac{40,000,000}{\sqrt{1^{\circ}2}}$ = 28,284,271.25. If this value is the highest among all states, it will receive the 51st seat and have two seats. If it receives the 51st seat, its priority value for the 52nd seat will decrease to $\frac{40,000,000}{\sqrt{2^{\circ}3}}$ = 16,329,931.62; if not, its priority value for the 52nd seat will remain 28,284,271.25.

Endnotes

- ¹ The total state population, typically per the decennial census, divided by the number of seats in a legislative body.
- ² Office of the Clerk, U.S. House of Representatives. "7. What Is the Size of the House of Representatives and How Is It Determined?" *Member FAQs.* Web. 11 Apr. 2011. http://clerk.house.gov/member_info/memberfaq.aspx.
- ³ Mills, Karen M. *Congressional Apportionment*. U.S. Census Bureau. Jul. 2001: 1. Web. 11 Apr. 2011. www.census.gov/prod/2001pubs/c2kbr01-7.pdf.
- ⁴ U.S. Census Bureau. *Congressional Apportionment*. Web.
 27 Mar. 2011. www.census.gov/population/apportionment/.
- ⁵ New York and Ohio each lose two seats despite population increases, while Michigan only loses one seat with a net population loss because of the size of their population changes relative to other similarly sized states.
- ⁶ U.S. Census Bureau. "Apportionment Population and Number of Representatives, by State: 2010 Census." *Congressional Apportionment: 2010 Apportionment Results.* Web. 29 Mar. 2011. www.census.gov/population/apportionment/data/files/Apportionment%20Population%202010.pdf.
- ⁷ Who Draws the Lines: A National Review of State Legislature Redistricting Methods. Rose Institute of State and Local Government. Web. 25 Mar. 2011. http://rosereport.org/stateleg/ and Who Draws the Lines: A National Review of Congressional Redistricting Methods. Rose Institute of State and Local Government. Web. 25 Mar. 2011. http://rosereport.org/congress/.
- ⁸ Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 75.
- ⁹ Reynolds v Sims, 377 US 533; 84 S Ct 1362; 12 L Ed 2d 506 (1964)
- 10 413 Mich. 96; 321 NW 2d 565 (1982)
- ¹¹ PA 222 of 1999 and PA 463 of 1996
- ¹² A special master is an individual appointed by a court to carry out some action on its behalf.
- 13 PA 463 of 1996
- ¹⁴ Following the 1960, and 1970 censuses, the Michigan Supreme Court selected the effective redistricting plans from among plans that the Commission on Legislative Apportionment submitted after it could not reach consensus on a single plan. Following the 1980 census, when neither the Commission on Legislative Apportionment nor the legislature could agree on a plan, the Michigan Supreme Court appointed an officer to draft a plan that the Court subsequently adopted. Citizens Research Council of Michigan. *Legislative Apportionment in Michigan*. No. 303. December 1991: 12-15.
- ¹⁵ Kirkpatrick v. Preisler, 394 U.S. 526 (1969)

- ¹⁶ American Civil Liberties Union. *Everything You Always Wanted to Know about Redistricting but Were Afraid to Ask.* 2010: 9.
- ¹⁷ The sum of the population variations, as compared to the ideal district size, of the largest and smallest districts.
- ¹⁸ Abrams v. Johnson, 521 U.S. 74 (1997)
- ¹⁹ White v. Regester, 412 U.S. 755, 764 (1973)
- ²⁰ Mahan v. Howell, 410 U.S. 315, 325 (1973). The facts of Mahan suggest that the actual deviation was not 16.4 percent as indicated by the Court but rather 16.4 percentage points. A percent is a part of a whole expressed in hundredths, while a percentage point is the difference produced by subtracting two numbers expressed as percents. For example, an increase in value from 1 percent to 2 percent is an increase of 100 percent but of only one percentage point. Citizens Research Council of Michigan. Legislative Apportionment in Michigan. No. 303. Dec. 1991: 6.
- ²¹ PA 463 of 1996
- ²² Kirkpatrick v. Preisler, 394 U.S. 526 (1969)
- ²³ Burns v. Richardson, 384 U.S. 73 at 92-96 (1966) and National Conference of State Legislatures. *Redistricting Law* 2010. 10.
- ²⁴ National Conference of State Legislatures. *Redistricting Law 2010.* 10.
- ²⁵ Scot A. Reader, "One Person, One Vote Revisited: Choosing a Population Basis to Form Political Districts," 17 *Harvard Journal of Law and Public Policy.* 1994. 521-565.
- ²⁶ Bartlett v. Strickland, No. 07-689, 129 S.Ct. 1231 (2009)
- ²⁷ Thornburg v. Gingles, 478 U.S. 30 (1986)
- ²⁸ Ancheta, Angelo N. *Race, Rights and the Asian American Experience*. New Brunswick, New Jersey: Rutgers University Press. 1992, 2006: 192-193.
- ²⁹ Thornburg v. Gingles, 478 U.S. 30 (1986)
- ³⁰ Thornburg v. Gingles, 478 U.S. 30 (1986)
- ³¹ Voting Rights Act of 1965, Section 5.
- ³² American Civil Liberties Union. *Everything You Always Wanted to Know about Redistricting but Were Afraid to Ask.* 2010: 25.
- 33 PA 463 of 1996 and PA 221 of 1999
- ³⁴ McDonald, Michael. *Midwest Mapping Project Michigan Summary*. Handout at Draw the Line Michigan, Livonia, Michigan. 14 Mar. 2011.
- ³⁵ Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 56.

- ³⁶ Population Reference Bureau. *How the 2010 Census is Different*. Apr. 2009. Web. 11 Apr. 2011. www.prb.org/Articles/2009/changesin2010.aspx.
- 37 Public Law 94-171. U.S. Census Bureau. Web. 26 Mar. 2011. http://factfinder.census.gov/jsp/saff/ SAFFInfo.jsp?_lang=en&_sse=on&_content=sp4_decennial_pl.html&_title=Public+Law+94-171.
- 38 Michigan Constitution Article IV, Section 5
- ³⁹ Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 52.
- ⁴⁰ National Conference of State Legislatures. *Redistricting Law 2010.* 225.
- ⁴¹ PA 221 of 1999
- ⁴² Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 53.
- ⁴³ Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 65.
- ⁴⁴ Arizona Constitution. Article IV, part 2, Section 1(15)
- 45 Montana Code Section 5-1-115(3)
- 46 Iowa Code Section 42.4(5)
- ⁴⁷ Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 123.
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- ⁴⁹ Jackson, Robert A. "A Reassessment of Voter Mobilization." *Political Research Quarterly* 49. 2 (1996): 331-349.
- ⁵⁰ Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 64.
- ⁵¹ Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 64.
- ⁵² Cain, Bruce E. and Mac Donald, Karin. *Transparency and Redistricting*. University of California at Berkley Institute of Governmental Studies. 2006: 3.
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- ⁵⁴ Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 67.
- ⁵⁵ Hamilton, Howard D. "Legislative Constituencies: Single-Member Districts, Multi-Member Districts, and Floterial Districts." *The Western Political Quarterly* 20. 2 (1967): 321-340.
- ⁵⁶ Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 67.
- ⁵⁷ Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 27.
- ⁵⁸ PA 463 of 1996

- ⁵⁹ *LeRoux v. Secretary of State*, 465 Mich. 594; 640 NW 2d 849 (2002)
- ⁶⁰ Carson, Jamie L., Engstrom, Erik J. and Roberts, Jason M. "Redistricting, Candidate Entry, and the Politics of Nineteenth-Century U.S. House Elections." *American Journal of Political Science.* 50.2. Apr. 2006: 283.
- ⁶¹ League of United Latin American Citizens v. Perry, 548 U. S. 399 (2006)
- ⁶² Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 40.
- ⁶³ Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 40.
- ⁶⁴ Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 40.
- ⁶⁵ Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 29-30.
- 66 California Government Code Sections 8252.2(A),(B)
- ⁶⁷ California Constitution Article XXII, Section 2(a)
- ⁶⁸ Levitt, Justin. *A Citizen's Guide to Redistricting*. Brennan Center for Justice. 2010: 77.
- 69 California Government Code §§ 8253.6(a)
- 70 California Constitution Article XXII, Section 2(c)(6)
- ⁷¹ Who Draws the Lines: A National Review of State Legislature Redistricting Methods. Rose Institute of State and Local Government. Web. 25 Mar. 2011. http://rosereport.org/stateleg/ and Who Draws the Lines: A National Review of Congressional Redistricting Methods. Rose Institute of State and Local Government. Web. 25 Mar. 2011. http://rosereport.org/congress/.
- ⁷² *LeRoux v. Secretary of State*, 465 Mich. 594; 640 NW 2d 849 (2002)
- ⁷³ House Resolution 4918 §§ 2-5, 111th Congress
- ⁷⁴ California Constitution Article XXII, Section 2 (d)(4)
- ⁷⁵ U.S. Census Bureau. *Congressional Apportionment: Computing Apportionment*. Web. 29 Mar. 2011. www.census.gov/population/apportionment/about/computing.html.