CRC Special Report
Michigan Constitutional Issues

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Seventh in a series of papers about state constitutional issues

Article IV – Legislative Branch

In Brief

At the November 2, 2010 general election, the voters of Michigan will decide whether to call a constitutional convention to revise the 1963 Michigan Constitution. The question appears on the ballot automatically every 16 years as required by the Constitution. The Constitution provides that a convention would convene in Lansing on October 4, 2011. If the question is rejected, it will automatically appear on the ballot again in the year 2026.

The Citizens Research Council of Michigan takes no position on the question of calling a constitutional convention. It is hoped that examination of the matters identified in this paper will promote discussion of vital constitutional issues and assist citizens in deliberations on the question of calling a constitutional convention.

State government powers are expansive and shared among three branches of government: legislative, executive, judicial. The lawmaking powers reside with the Michigan Legislature, which consists of a senate and a house of representatives. Should voters approve the calling of a constitutional convention, it is likely that delegates to the convention would examine a number of provisions contained in Article IV entitled, "Legislative Branch", dealing with: obsolete provisions and institutional matters; the legislative structure; term limitations; setting elected officials' compensation; and other issues. The legislature's role in the state's financial affairs as described outside of Article IV (e.g., "power of the purse" in Article IX and "balanced budget" in Article V) will be covered separately in forthcoming analyses.

Introduction

Article IV, Section 1 succinctly states that legislative power "is vested in a senate and a house of representatives." Absent further refinement of such powers, such authority would be sufficient to allow the legislature to carry out all acts that are embraced within the concept of the general powers of government. Unlike the executive and judicial branches of state government that exercise powers specifically enumerated to them, the Michigan Constitution, in theory, does not need to define the specific grants of legislative authority. Article IV, however, does contain provisions that define legislative powers, in addition to provisions that involve the legislative institution itself; its structure, organization, and procedures. This article also contains provisions governing the legislative redistricting process, which have been deemed to be unconstitutional by the Michigan Supreme Court, that should be eliminated and replaced with valid language.

Obsolete Provisions

States have considerable discretion in drafting the fundamental law that govern their operations and that afford rights to their citizens. State constitutions, however, are bound by the parameters of the United States Constitution and may not violate the provisions contained in that document. State constitutional provisions that are obsolete because they violate the provisions of the federal constitution make the language of a state constitution confusing and misleading to the citizenry. These provisions should be removed or revised to reflect the current status of law.

Article IV contains provisions relating to legislative redistricting that are not consistent with the federal constitution. Given the importance of redistricting

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to the electoral process and to ensuring representative democracy, the existing language that details the process of redistricting and the body responsible for this process should be eliminated and replaced with wording that complies with the United States Constitution.

Legislative Redistricting

Legislative redistricting is the process by which a state is divided into geographic districts from which voters elect state senators and state representatives. With respect to legislative redistricting, the 1963 Michigan Constitution is deficient in three respects: 1) it does not specify what body, agency, or official is responsible for the process; 2) it does not list the state-specific standards that govern the process; and 3) it does not indicate how often the process is to take place. Despite the fact that Michigan has been without valid redistricting provisions for the past 30 years, neither the legislature, nor the voters through their power to propose constitutional amendments, has chosen to address the issue.

Background

Michigan's current constitutional redistricting provisions were drafted at the same time precedent-setting legal cases were being decided by the U.S. Supreme Court establishing standards that states are required to follow in the redistricting process, namely the "one person, one vote" principle. The 1963 Constitution was crafted and took effect before federal legal precedent on the matter was settled and requires legislative districts to be crafted on a combination of factors, including population and land area. In 1962, the U.S. Supreme Court set the stage for future review of state legislative redistricting standards when it found that the matter was subject to judicial review and that it

"Apportionment" or "Redistricting"?

These two terms are often used interchangeably; however, doing so can lead to confusion. The terms have distinct definitions, depending on the context in which they are being discussed, e.g., state legislative bodies or the U.S. Congress. "Apportionment" is the process of determining the number of representatives to which each state is entitled in the U.S. House of Representatives. Each state is guaranteed at least one representative. The process of dividing the remaining seats in the U.S. House among the various states following each decennial U.S. census is called "reapportionment". (Seats in the U.S. Senate are not apportioned among the states because each state is assigned two seats in that chamber, regardless of population.) Once each state's allocation of U.S. House seats is determined, geographic boundaries for each congressional district are established, a process called "redistricting". States carry out the redistricting process for seats in the U.S. House. In the federal vernacular, "apportionment" and "redistricting" have separate meanings.

With respect to legislative bodies at the sub-federal government level, the term "apportionment" has little relevancy in light of U.S. Supreme Court rulings requiring the distribution of political power on the basis of "one person, one vote". Because the Michigan Constitution was drafted before resolution of these federal court cases, the original language refers to "apportionment" because legislative seats were "apportioned" to areas of the state based on land and population factors. Today, political power is required to be distributed primarily on the basis of population. Thus, the appropriate term to be used in state constitutions, including Michigan's, with respect to distributing the power of legislative bodies is "redistricting". As is the case at the federal level, this is a process of determining the geographical boundaries of individual legislative districts following each U.S. census.

was not solely the province of the political process in the states.[1] By June of 1964, the U.S. Supreme Court had rendered a decision that both houses of a bicameral state legislature must be divided up substantially on a population basis.[2] In light of the federal court action, the Michigan Supreme Court deemed the constitutional provisions related to the method of redistricting in Michigan (e.g., population and land area) to be in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.[3]

Responsibility

Absent clear lines of constitutional responsibility to the contrary, redistricting is a function to be discharged by state legislative bodies. The Michigan Constitution (Article IV, Section 6) entrusted this responsibility to an independent body (Commission on Legislative Apportionment); however, this body was declared unconstitutional in 1982 by the Michigan Supreme Court, largely on the reasoning that the body did not have valid criteria to guide its actions following the Court's finding that apportionment provisions of the state constitution violated the federal Equal Protection Clause.[4] Since that time, the Michigan Legislature has attempted to carry out the redistricting process. In years in which an independent body or the legislative body failed to fulfill this fundamental and recurring governmental function, responsibility for redistricting has fallen to the judicial branch of government.

The Michigan Supreme Court drew up legislative districts following the 1970, 1980, and 1990 U.S. censuses. The Commission on Legislative Apportionment initiated the redistricting process following the 1970 and 1980 censuses, but was unable to agree to a final plan and thus the courts finalized a plan.[5] Following the 1990 census, the Michigan Legislature failed to adopt a redistricting plan and the final plan was developed by the Supreme Court.

The "void" of constitutional responsibility and standards was filled in 1996 by way of Public Act 463, which directed the Michigan Legislature to develop a redistricting plan following each census, beginning in 2000, and prescribed the specific guidelines to use, while adhering to federal law. The state law further directed that the Supreme Court "shall have original and exclusive state jurisdiction to hear and decide all cases or controversies" involving redistricting plans developed by the legislature.[6] PA 463 marked the first time following the Supreme Court's 1982 ruling invalidating the role of the Commission on Legislative Apportionment that responsibility for the redistricting process was clearly defined in law.

Current Redistricting Guidelines

Since the U.S. Supreme Court's precedent-setting rulings in the mid 1960s requiring state legislatures to redistrict on a population basis, the Court has permitted some deviation from strict adherence to a population-only standard. Acknowledging the difficulties associated with pure mathematical equality in redistricting, the Court has allowed the use of other factors to effect rational state policy.[7] Both the Michigan Supreme Court and the Michigan Legislature, in establishing the statutory provisions in PA 463, have relied upon the following standards to guide the redistricting process in Michigan:

1. Contiguity – the ability to move to any location within a district without leaving it.
2. Compactness – districts should be as square in shape as practicable.
3. Adherence to local boundaries - districts should follow existing political and geographical boundaries, or respect identified communities of interest.

Public Act 116 of 2001 established the current senate and house districts using PA 463 guidelines, and have been in effect since the August 2002 primary election.

[1] Baker v Carr (369 US 186; 1962)

[2] Reynolds v Sims (377 US 533; 1964)

[3] In re Apportionment of State Legislature – 1982 (413 Mich 96; 1982)

[4] In re Apportionment of State Legislature – 1972 (387 Mich 442; 1972). In re Apportionment of State Legislature – 1982.

[5] 1996 PA 463, MCL 4.262.

[6] Mahan v Howell (410 US 315; 1973)

Constitutional Convention Issues

Each of the four state constitutions that have been adopted by Michigan voters since 1835 has contained specific legislative redistricting provisions. This fact suggests voters have deemed it unwise to leave the matter entirely to the discretion of any branch of government, which is currently the case. Redistricting language in the current 1963 Constitution is invalid and should be eliminated and replaced. If Michigan voters decide to call a constitutional convention, the convention might consider the following questions/issues for Article IV:

Who should be responsible for redistricting? As a result of PA 463 of 1996, the Michigan Legislature is tasked with redistricting the House of Representatives and the Senate every 10 years. The potential problems associated with entrusting the responsibility for the redistricting process to the same body that is directly affected by its outcomes are obvious. The potential for political manipulation was an underlying reason behind the establishment of a separate body to handle redistricting by the framers of the 1963 Constitution.

Thirteen states give first and final responsibility for redistricting to an appointive commission outside of the states' legislatures. Two states use advisory commissions to draft redistricting plans that the states' legislatures are presented with and five states employ backup commissions when the legislatures are unable to develop plans. Iowa, unlike any other state, grants this responsibility to nonpartisan legislative staff. Despite the strong prevalence of independent bodies in other states, as evidenced by Michigan's experience, having a commission does not necessarily ensure a timely, effective, and efficient redistricting process.

What guidelines should govern the process? With the exception of the population standard demanded by federal law, other basic redistricting guidelines are enumerated in state statute (PA 463), as opposed to the Michigan Constitution. Should these basic geographical standards (contiguity, compactness and local boundaries) appear in Michigan's fundamental law? Should this list be expanded to include political/legal factors, such as preservation of communities of interest, protecting minority voting rights, protection of incumbents, and/or assuring competitive partisan elections?

Politics, generally, is an inherent aspect of the redistricting process. The history of the use of specific "political" factors to draw legislative districts is replete with legal challenges. Some factors, such as protecting incumbents, have passed legal muster, while others remain unresolved. The courts have considered the issue of "political gerrymandering" (i.e., drawing of legislative districts to advantage one political party over another) and have found the issue to be "nonjusticiable" (i.e., court could not rule on the issue) based on a lack of standards for ruling on the matter.[8]

When Should Redistricting Occur? Current statutory guidelines covering the legislative redistricting process in Michigan require the exercise to be completed once every 10 years, beginning November 1, 2001. This date was set to accommodate the schedule of the decennial census. Michigan constitutional language, although voided in 1982, contemplated that redistricting would occur once every 10 years. Absent constitutional language to the contrary, the Michigan Legislature can engage in the process more frequently than once every 10 years by making statutory changes. Consideration might be given to limiting, by way of constitutional language, the redistricting process to once every 10 years, as has been common practice for over 180 years.

Other states, most notably Texas, have attempted mid-decade redistricting with many of the attempts challenged in court and resulting in varying outcomes. In many cases, the redistricting process was revisited by a newly-elected state legislature after a shift in political power occurred. In a number of cases, mid-decade redistricting plans replaced plans drafted by the courts and used in previous elections.

The 2010 census is currently ongoing, the results of which are scheduled to be released to states for redistricting purposes no later than April 1, 2011. Michigan law requires the legislature to develop house and senate redistricting

[7] Vieth v Jubelirer (541 US 267, 281; 2004)

plans based on the new census data by November 1, 2011, to be first used at the August 2012 primary elections. In light of this timeline, if a constitutional convention were to modify the current redistricting process it would not be implemented until after the next U.S. census, in 2020.

What about Congressional Redistricting?

The 1963 Michigan Constitution does not contain any mention of redistricting U.S. congressional districts. Federal law grants to state legislatures the authority to draw up the boundaries of congressional districts equal to the number of seats in the U.S. House of Representatives each state is entitled to based upon the most recent U.S. census. The U.S. Supreme Court has ruled that states are required to redistrict solely on the basis of population, ensuring that each district is of equal population.[1]

In addition to the strict population guideline, states are allowed to adopt secondary guidelines to govern the process. Michigan's current 15 congressional districts are established in law (2001 amendments to Public Act 282 of 1964), under statutory guidelines contained in the Congressional Redistricting Act (Public Act 221 of 1999). In general, these guidelines are similar to those governing redistricting of Michigan's legislature: contiguity, compactness, and adherence to local boundaries. A constitutional convention might consider what entity would be responsible for devising redistricting plans and what criteria, in addition to population, should be used.

[1] Wesberry v Sanders (376 US 1; 1963)

Institutional Issues

State legislative bodies are designed to reflect a state's people and political traditions. These factors and others account for the structure and overall size of the legislative body in a particular state as well as the sizes of the individual chambers that comprise the body. As a result, it can be said that there is no "typical" structure or size for a state legislative body in the aggregate or for its individual chambers. States also vary considerably in their use of term limits for members of legislative bodies.

Legislative Structure

Most states, including Michigan, mirror the Federal government with bicameral (two chamber) legislative branches of government. Nebraska's legislature consists of a single chamber (unicameral) called the senate. Commonly, the "upper" chamber in the bicameral structure is smaller in size and its members serve longer terms. The Michigan Senate, created in Section 2, consists of 38 members serving four-year terms. The Michigan House of Representatives (Section 3), similar to the U.S. House of Representatives, is larger in size (110 members) and its members serve shorter terms (two years).

Michigan's legislature has operated as a full-time, continuous body for much of the past 30 years, despite the fact that constitutional language contemplates a part-time body. Provisions regarding immediate effect (Section 27), special session (Section 28), gubernatorial "pocket veto" (Section 33), and referendum (Article II, Section 9) were included in the 1963 Constitution based on the assumption that the legislature would function in a part-time capacity. Nothing in Section 13 dealing with convening in "regular session", or elsewhere for that matter, prevents the legislature from functioning as it currently does, i.e., year-round session.

Nine other states have full-time legislatures that meet throughout the year (identified in **Table 2**

below). The remaining states have either part-time bodies (18 states) or a "hybrid" legislature (22 states), meaning the legislative session is limited in duration but the legislators are engaged in other related activities when not in session.

Size and Chamber Makeup. Provisions in each of Michigan's four constitutions have allowed the size of the legislature to grow from 66 members in 1835 to 148 members today. Under Michigan's 1835 constitution, the number of representatives was required to be at least 48, but not greater than 100, while the number of senators was required to be as close as possible to one-third of the number of representatives. The 1835 Constitution required the addition of senate and house districts following the organization of counties and as a result of reapportioning. The adoption of new constitutions and amendments to those constitutions has gradually increased the number of legislators over time (**Table 1**).

Representation. Michigan's population in 1960 was 7,823,194. The average senate district contained 205,874 people and the average house district contained 71,120 residents. Although Michigan's population has grown steadily since the adoption of the 1963 Constitution, the size of its legislature has remained constant.

Based on the U.S. Census Bureau's 2009 estimate of Michigan's population (9,969,727), the average senate district contained 262,361 residents and the average house district contained 90,634 residents. Today, senators and representatives represent populations about 27 percent larger, on average, than they did over four decades ago. Advances in technology, transportation, and communications have helped legislators manage the growth in legislative districts and attend to the representation demands of constituents.

Interstate Comparisons. To varying degrees, 33 states have modified the overall size of their legislative bodies and their constituent chambers from 1960 to 2009. No identifiable pattern is apparent with respect to the rationale for increasing or decreasing the size of the legislative bodies over time. In these states, 19 legislatures were decreased in size and 14 were increased. Overall, there has been a general decrease in the total number of legislators in the United States, from 7,781 in 1960 to 7,382 in 2009 according to the National Conference of State Legislatures. Twenty-one of the states that

Table 1
Number of Senators and Representatives under Michigan Constitutions

	Senate	House	Total	Ratio Member to Population
1835 Constitution				
1835	16	50	66	1: 479
1850	22	63	85	1: 4,678
1850 Constitution				
1851	22	63	85	1: 4,678
1908	32	100	132	1: 18,341
1908 Constitution				
1909	32	100	132	1: 48,271
1963	34	110	144	1: 54,328
1963 Constitution				
1964	38	110	148	1: 52,859
today	38	110	148	1: 67,363

Source: 2008 Michigan Manual

Table 2
Full-Time Legislatures: Changes in the Size of Legislatures 1960 - 2009

State	1960 Population	2009 Population	Percent Change	1960 Legislative Districts	2009 Legislative Districts	Percent Change	Last Modification
California	15,850,000	36,961,664	133%	120	120	0%	na
Florida	5,000,000	18,537,969	271%	133	160	20%	1972
Illinois	10,113,000	12,910,409	28%	235	177	-25%	1982
Massachusetts	5,167,000	6,593,587	28%	280	200	-29%	1978
New Jersey	6,099,000	8,707,739	43%	81	120	48%	1968
New York	16,827,000	19,541,453	16%	208	212	2%	2004
Ohio	9,739,000	11,542,645	19%	177	132	-25%	1966
Pennsylvania	11,343,000	12,604,767	11%	260	253	-3%	1966
Wisconsin	3,964,000	5,654,774	43%	133	132	-1%	1972
Michigan	7,848,000	9,969,727	27%	144	148	3%	1964

Source: National Conferences of State Legislatures, "Changes in the Size of Legislatures, 1960 – 2006". U.S. Census Bureau.

have made changes to the size of their legislative bodies over the past 45 years have done so multiple times and the remaining 12 states made a single change during this period.

Of the states with full-time legislatures, five states reduced the sizes of their legislatures and four states increased the sizes of their legislative bodies (**Table 2**). Some of these changes have been very minor, such as Michigan's addition of four senate seats in conjunction with the adoption of a new constitution in 1964. In contrast, the Massachusetts Constitution, the oldest state constitution in the country, reduced the number of legislators by 80 in 1978. New Jersey had a 48 percent increase in the size of its legislature over this period, a change that closely reflects the 43 percent population growth.

Constitutional Convention Issues

If the Michigan electorate decides to call a constitutional convention at the November general election, the convention might consider the following questions dealing with the size and structure of the legislative body.

Should the Structure of the Legislative Branch Change? Arguments in favor of switching to a part-time legislature rest largely on the costs involved in running a full-time body. By limiting the length of the legislative session (e.g., specific number of "session" or calendar days) legislators' salaries and benefits can be reduced commensurately. Reductions in staff levels and associated costs might also accompany a switch to a part-time legislature. Actual savings are likely to be small in relation to Michigan's total state budget ($46 billion), but the perception of cost-reduction may have populist appeal.

Converting to a part-time legislature, however, reduces neither the number nor the scope of important public policy issues confronting the legislative branch. Such a conversion means that less time will be devoted to "non-mandatory" legislative responsibilities in order to address those "mandatory" responsibilities, such as enacting an annual budget, in a timely manner.

Should the Size of the Legislature Change? Generally, justifications for making changes to the size of state legislative bodies have been based on the grounds of representation, costs, and/or efficiency. Legislative district population growth can affect how individuals perceive

they are being represented by their legislators. Increases in legislative district size generally result in more heterogeneous districts on many fronts. Elected officials are expected to represent the interests of their districts on a host of issues and a decrease in district homogeneity, perceived or otherwise, can reduce representation in the legislative arena. Further, given the increased workload associated with representing more constituents, legislators may have to reduce the amount of resources they devote to each constituent, which also affects representation. Advances in communication technology can help reduce the effects of legislative population growth on representation.

Generally speaking, larger legislatures cost more. However, reducing the size of a legislative body does not guarantee a reduction in costs. The number of people requiring representation and the accompanying workload remains when legislative district sizes are expanded. Fewer elected officials may result in larger staffs to handle the workload associated with legislative activities such as answering constituent inquiries, preparing and analyzing legislation, preparing for committees. The increase in staff size and the accompanying costs could offset any savings resulting from reducing the number of legislators. It is likely that there is a greater relationship between state population and legislative costs than there is between the number of legislators and legislative costs.

Advocates of reducing the number of legislators suggest that smaller legislative bodies are likely to be more efficient and capable of getting things done in a timely fashion. Opponents argue that, for better or for worse, the legislative process is not intended to be neat and efficient. The complex and very difficult issues facing legislative bodies each legislative session can require a substantial amount of time and resources to understand, investigate, and develop consensus around.

Legislative Term Limitations

In the 47-year history of the 1963 Constitution, the concept of legislative term limits is a fairly new one. Michigan voters, via a citizen initiative in November 1992, approved constitutional term limits for those serving in the Michigan Senate and House of Representatives effective for terms beginning on or after January 1, 1993. Correctly, or otherwise, some people contend that Michigan's current term limitations for legislators are partially to blame for the perceived dysfunction of the institution at times, as marked by the adoption of late state budgets in two of the past three years.

Michigan's move to adopt term limits occurred during the same time that other states approved similar measures. Today, 15 states, including Michigan, have legislative term limits. Michigan's model, contained in Section 54, caps the number of times that an individual may be elected to the Senate (two times) and to the House (three times) and provides a lifetime ban following service. Only five other states employ lifetime limits, which are much more restrictive than consecutive limits.

A constitutional convention could consider any number of options with respect to the term limit provisions of the current document, including complete abolishment. Elimination of the limits altogether is doubtful in light of the failure to do so in other states across the country. Voters in states with term limits appear to want some form of forced evacuation from their legislative bodies. Given the restrictive nature of Michigan's limits, the topic of shortening them is unlikely to occupy much time either. It is most likely that a convention, if called, would focus its discussion on the pros and cons of lengthening the limits now in place. Such discussions could address service time in the individual chambers or an overall limit for serving in the legislature.

Setting Elected Officials' Compensation

Few public policy issues generate as much public attention as compensation levels of elected officials. The level of attention heightens when these officials receive, what appear to be, generous raises or when adjustments are made during periods of austere public budgets. Questions and concerns also arise when the process for determining pay levels is not transparent, lacks accountability, or does not apply uniformly to all officials.

Michigan citizens have maintained influence or control over state officers' compensation in a variety of ways since Michigan's first constitution. From the 1835 Constitution to the 1963 Constitution and two subsequent amendments, many changes occurred in the officials covered and the method in which compensation changes were made. Under the 1963 Constitution, as amended in 1968, the body responsible for recommending compensation levels for Michigan's top public officials is the State Officers Compensation Commission (SOCC) and provisions regarding its actions are contained in Section 12.

Background

Section 12 empowers the State Officers Compensation Commission (SOCC) to establish salary and expense allowances for top elected state officials of all three branches of government, subject to legislative approval. Amendments to Section 12 were approved by Michigan voters in 2002; however, the implementing legislation did not pass until 2006 (Public Act 629) and took effect January 1, 2008. Under the provisions of the 2002 amendatory language to Section 12:

- the attorney general and secretary of state were added to the SOCC determination process;
- the legislature, by majority vote, now has to approve SOCC determinations for the adjustments to occur;
- the legislature now has the authority to amend SOCC determinations by proportionate reductions, but without reducing salaries or expenses below current levels;
- compensation adjustments now become effective in the legislative session after the next general election; and
- the legislature can establish qualifications for SOCC membership.

It is generally viewed that these changes addressed some of the major failings of the previous Section 12 provisions, which were adopted via the 1968 amendment. The changes increased the accountability associated with setting elected officials' pay by requiring an affirmative legislative vote and requiring an intervening general election before compensation changes take effect.

SOCC Determinations 1968 to 2009

Under the pre-2002 provisions of Section 12, SOCC determinations took effect unless rejected by two-thirds of the members elected to and serving in the house of the legislature. Between 1968 and 2002, rejection occurred once in 1991, which established pay increases for 1991 and 1992. Faced with a markedly different economic climate and state finances in persistent deficit, the 2009 SOCC made salary recommendations calling for 10 percent reductions for all covered positions, except Supreme Court justices. The recommendations received legislative approval in April 2009 and will take effect following the 2010 general election for those officials taking office on January 1, 2011.

The 2009 recommendations were precedent-setting in that they were the first in the 40-year history of the SOCC process that called for year-over-year salary reductions of top elected officials. While SOCC-recommended salary increases have been rejected (1991), SOCC has never recommended *decreases* from current salary levels. Section 12 does not prohibit such decreases; however, all "determinations" prior to 2009 dealt with increases. As a result of its constitutional history, the term "determinations" effectively became synonymous with changes that would increase pay levels, not decrease them.

Constitutional Convention Issues

A constitutional convention, if called at the November general election, might be expected to weigh in on the following issues related to setting compensation levels for Michigan's top state officials.

Is SOCC the Right Body? The SOCC has not operated flawlessly or without controversy during its 40-year history. The 1968 amendatory language was deemed unacceptable and replaced in 2002, and delays in passing implementing legislation for the new language resulted in the SOCC taking no action between 2002 and 2009. After finally getting language in place that appears to provide greater transparency, accountability, and uniformity with respect to setting compensation levels, a constitutional convention might consider an alternative to the SOCC. While many states use an independent

body such as the SOCC, others employ a variety of methods for determining elected officials' compensation levels, ranging from automatic adjustments based on price or income levels to legislative determination of pay. Leaving decisions to current sitting legislators would make them directly accountable to voters for their compensation levels.

Reducing Salaries. The 2009 SOCC salary determinations shed light on the interaction of two sections of Michigan's Constitution that previously were not considered to be interrelated. Although a formal legal opinion has not been rendered, it appears that the two sections conflict under certain circumstances. Whereas the provisions of Article IV, Section 12 apply to all elected officials with respect to pay *increases* and *decreases* ("determinations"), Article VI, Section 18 (Judicial Branch) specifically addresses *reducing* judicial salaries. Although the SOCC is empowered to set compensation levels for justices of the Michigan Supreme Court, SOCC determinations indirectly impact the salary levels of judges of Michigan's lower courts (i.e., Court of Appeals, Circuit Court, and Probate Court). The salaries of these judges are statutorily linked to the Supreme Court justices' salaries pursuant to the Revised Judicature Act, PA 236 of 1961.

Article VI, Section 18 stipulates that judicial salaries must be uniform and reductions may not occur during a term of office unless there is a "general salary reduction in all other branches of government." Authority to effect such general changes in pay for such a broad swath of government employees is divided among a number of different entities, including SOCC (elected officials), Michigan Civil Service Commission (executive branch employees), Michigan Supreme Court (judicial branch employees), and Michigan Legislature (legislative branch employees). Given the fact that the SOCC lacks authority over "all other branches government", it would appear that this body, while having valid authority to increase judicial salaries (directly and indirectly), does not have the constitutional power to reduce such salaries, creating a scenario where judicial salaries effectively can never be reduced. This inconsistency might be an issue considered when examining changes to the constitutional provisions of Article IV and Article VI.

Other Issues

Legislative Immunity from Civil Arrest and Process

Section 11 provides state senators and representatives a privilege of immunity from civil arrest and civil process while the legislature is in session and for the five days both before and after session. The three previous constitutions contained similar provisions. However, neither the drafters of the present or former legislative immunity provisions, nor the voters who adopted the respective Michigan Constitutions which contained them, contemplated that the legislature routinely would be in session throughout the year. Michigan's legislature routinely is in session from early January until adjournment sometime around December 25. Given the reality of continuous legislative sessions, Section 11 provides legislators with an uninterrupted immunity from civil arrest and civil process.

In 1982, voters adopted an amendment to Section 11 proposed by the legislature which authorized legislative immunity "except as provided by law." However, to date the legislature has not utilized this amendatory language to restrict the scope of legislative immunity. A state constitutional convention might wish to reconsider what the appropriate scope of such immunity ought to be in light of the current practice of year round legislative sessions. One option would be to limit legislative immunity to "working sessions" of the legislature, which would allow civil arrest or civil process while the legislature was in recess.

Appropriation Bills Not Subject to Referendum

Section 34 provides that all bills, except those appropriating money, passed by the legislature and approved by the governor may include a provision that requires voter approval before becoming law. Similarly, Section 9 of Article II shields all acts containing appropriations from citizen-led ref-

erenda. These two sections, taken together, effectively prevent the legislature from relinquishing its "power to appropriate" to other entities, in this case by passing a controversial issue on to the people. As was noted in CRC's previous paper, *Article II – Elections*, making appropriations "referendum-proof" can shield controversial legislation from aspects of direct democracy. Subjecting laws that make appropriations to the referendum would require changes to the constitution.

Conclusion

The current language contained in Article IV dealing with redistricting should be replaced with new provisions that are fully compliant with the federal constitution and court cases. At a minimum, the new language should address: who is responsible for the redistricting process; what state-specific criteria are to be used in the process; and how often it should occur. Redistricting is too important to the elective franchise and state and national traditions of representative democracy to not carry the weight of constitutional attention. Leaving redistricting to the whims of the legislature every 10 years can foster public distrust and concern regarding the end product.

Other sections of Article IV that would likely receive attention at a constitutional convention deal with the structure and operation of the legislative body itself. Some people might view such institutional matters through the perspective of the current political debates in Lansing and render a decision that something must be "structurally" wrong with the legislature and therefore support modifications to Article IV. However, such an approach ignores the current realities of the environment in which all modern legislative bodies operate. Economic, demographic, and social changes are occurring at rapid rates and the resultant public policy issues facing legislators are as significant and challenging as they have ever been. Deficiencies in the Michigan legislature, whether real or not, may not be owed to something fundamentally wrong with the constitutional foundations of the entity itself, but rather an outcome of the subject matter and environment that lawmakers must deal with. While it is likely that "structural" changes would be best addressed during a constitutional convention rather than via piecemeal amendments to the Michigan Constitution, fundamental flaws in the institutional makeup and operation of the legislative branch are not currently apparent.

Michigan's current term limitations were added to the Constitution by amendment in 1992 and modifications could be made in the same manner if so desired. Voters are beginning to see some of the practical and measurable outcomes of the tight, lifetime limits in place in Michigan and will likely continue to face the issue in the future, well after the vote in November.