APPENDIX B

Eligibility Guidelines for Public Comment

Email Redistricting@Michigan.gov to submit public comment on these draft eligibility guidelines.

Article IV, Section 6 of the Michigan Constitution, as amended by Proposal 2018-2, creates the Independent Citizens Redistricting Commission ("the Commission"). Section (6)(1) defines the eligibility requirements for Michigan citizens to serve on the Commission. The Department of State has received questions about the eligibility requirements in Section (6)(1). In an effort to address some of the questions, below is the constitutional language for each category of individuals who are ineligible, along with explanations of what the terms may mean. These guidelines are provided in response to questions received and anticipated from citizens seeking assistance in understanding whether they may be eligible to serve on the Commission.

Subsection I

What the Constitution says:

> *"Each Commissioner shall: … not currently be or in the past 6 years have been … **a declared candidate for partisan federal, state, or local office.**"* MI Const Art 4 §6(1)(b)(i).

Guidance:

> The Michigan Campaign Finance Act defines a "**declared candidate for partisan federal, state, or local office**" as any individual who does one of the following:
>
> (a) files a fee, an affidavit of incumbency, or a nominating petition for an elective office;
> (b) is nominated as a candidate for elective office by a political party caucus or convention and whose nomination is certified to the appropriate filing official;
> (c) receives a contribution, makes an expenditure, or gives consent for another person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to an elective office, whether or not the specific elective office for which the individual will seek nomination or election is known at the time the contribution is received or the expenditure is made;
> (d) is an officeholder who is the subject of a recall vote;
> (e) holds an elective office, unless the officeholder is constitutionally or legally barred from seeking reelection or fails to file for reelection to that office by the applicable filing deadline.

This definition may be instructive for determining whether a person is a declared candidate for partisan office.

Reasoning behind this guidance:

The Constitution does not define "**declared candidate for a partisan elected office at the federal, state, or local level.**" However, similar terminology is defined in the Michigan Campaign Finance Act and, while a statutory definition is not binding on the Constitution, it may nonetheless be instructive. The Michigan Campaign Finance Act's definition of "candidate" in MCL 169.203(1) provides specific standards that may help to guide applicants. Each of the criteria listed above require a candidate to take an affirmative step in order to be recognized as a "candidate" for legal purposes (e.g. filing a fee, obtaining a party's nomination, receiving a contribution, etc.). These tangible steps are declaration of the person's intention to become a candidate.

Frequently Asked Questions:

1.1 Is a candidate for school board eligible to serve on the Commission?
Response: Section (6)(1) prohibits persons from being a Commissioner if they are a candidate for partisan office or have been a candidate for such an office in the past 6 years. Because the office of school board is non-partisan, school board members may be eligible to serve on the Commission. Other nonpartisan offices may include Supreme Court Justices, Judges of the Court of Appeals, Circuit Court, Probate Court, Probate District Court, District Court, or Municipal Court; local and intermediate school district Board Members; community college Board of Trustees; library trustees; and other elected officials in cities that elect officers on a nonpartisan basis.

1.2 Is a candidate for mayor or city council member eligible to serve on the Commission?
Response: Because the offices of mayor and city council are non-partisan in most cities, a candidate for mayor or city council in a city that elects officials on a non-partisan basis may be eligible to serve on the Commission.

1.3 Is a candidate for judge eligible to serve on the Commission?
Response: Because judicial officers are non-partisan, a candidate for judge may be eligible to serve on the Commission.

1.4 Is a candidate for precinct delegate eligible to serve on the Commission?
Response: Because the office of precinct delegate is a partisan local office, a candidate for precinct delegate at any time since August 15, 2014 may not be eligible to serve on the Commission.

Subsection II

What the Constitution says:

> *"Each Commissioner shall: … not currently be or in the past 6 years have been … **an elected official to partisan federal, state, or local office.**"* MI Const Art 4 §6(1)(b)(ii).

Guidance:

> An "**elected official to partisan federal, state, or local office**" may mean anyone elected to a partisan public office or appointed to fill a vacancy in a partisan public office that is ordinarily elective.

Reasoning behind this guidance:

> The Constitution does not define an "**elected official to partisan federal, state, or local office.**" However, similar terminology is defined in the Michigan Campaign Finance Act and, while a statutory definition is not binding on the Constitution, it may nonetheless be instructive. The word "elective office" is defined in MCL 169.205(4) as a public office filled by an election. Under the Michigan Campaign Finance Act, this includes anyone appointed to fill a vacancy in a partisan public office that is ordinarily elective.

Frequently Asked Questions:

> 2.1 Is a school board member eligible to serve on the Commission?
> Response: Because the office of school board is non-partisan, a school board member may be eligible to serve on the Commission. Other nonpartisan offices include local and intermediate school district Board Members; community college Board of Trustees; library trustees; and other elected officials in cities that elect officers on a nonpartisan basis.
>
> 2.2 Is a mayor or city council member eligible to serve on the Commission?
> Response: Because the offices of mayor and city council are non-partisan in most cities, a mayor or city council member in a city that elects officials on a non-partisan basis may be eligible to serve on the Commission.
>
> 2.3 Is a retired judge eligible to serve on the Commission?
> Response: Because judicial offices are non-partisan, a retired judge may be eligible to serve on the Commission, so long as they will have been retired for at least one year. See Article 6, Section 21 of the Michigan Constitution as discussed in Section D below and incorporated by Article 4, Section 6(1)(D) of the Michigan Constitution.

2.4 Is a sitting judge eligible to serve on the Commission?
Response: While judicial offices are nonpartisan, the Constitution prohibits a sitting judge from serving in another elective office while on the bench or for a year after their service ends. See Article 6, Section 21 of the Michigan Constitution as discussed in Section D below and incorporated by Article 4, Section 6(1)(D) of the Michigan Constitution. As a result, a sitting judge may not be eligible to serve on the Commission.

2.5 Is a precinct delegate eligible to serve on the Commission?
Response: Because the office of precinct delegate is a partisan local office, a precinct delegate at any time since August 15, 2014 may not be eligible to serve on the Commission.

Subsection III

What the Constitution says:

"*Each Commissioner shall: … not currently be or in the past 6 years have been … **an officer or member of the governing body of a national, state, or local political party.***" MI Const Art 4 §6(1)(b)(iii).

Guidance:

A "***member of the governing body of a national, state, or local political party***" may refer to any individual who is a member of a political party's national committee, state "Central Committee," local "County Committee," or Congressional District Committee.

An "***officer … of a national, state, or local political party***" may refer to the respective committees' chair, vice chair(s), secretary, and treasurer as well as any additional officer positions that may exist for a specific political party.

Reasoning behind the guidance:

The Constitution does not define the "**governing body of a political party, at the local, state, or national level.**" However, analogous concepts are defined in the Michigan Election Law and may be instructive. Michigan Election Law requires political parties to have a "County Committee" at the local level in MCL 168.599(4); and to have a "Central Committee" at the state level in MCL 168.597. Given their defined leadership roles, these committees, as well as a political party's national committee, seem to fall within the meaning of a "governing body."

Frequently Asked Questions:

3.1 Is a precinct delegate eligible to serve on the Commission?
Response: A precinct delegate at any time since August 15, 2014 may not be

eligible to serve on the Commission. Regardless of whether or not a given political party includes its "precinct delegate" as a member of its "governing body," the office of precinct delegate is a partisan local office and thus may be ineligible under MI Const Art 4 §6(1)(b)(ii). See discussion above under Subsection I and II.

Subsection IV

What the Constitution says:

"*Each Commissioner shall: … not currently be or in the past 6 years have been …* ***a paid consultant or employee of a federal, state, or local elected official or political candidate, of a federal, state, or local political candidate's campaign, or of a political action committee.***" MI Const Art 4 §6(1)(b)(iv).

Guidance:

An "**employee**" may refer to an individual who works for another person or for a company for wages or a salary.

A "**paid consultant**" may refer to an individual who is paid to give professional advice or services, perhaps as an independent contractor.

Reasoning behind this guidance:

The Constitution does not define "paid consultant or employee of a federal, state, or local elected official or political candidate, of a federal, state, or local political candidate's campaign, or of a political action committee." The guidance provided above is the common meaning of the words as defined in the Merriam-Webster dictionary.

Frequently Asked Questions:

4.1 Is a volunteer of an elected official, political candidate, campaign, or political action committee eligible to serve on the Commission?
Response: Because volunteers are not paid for their services, a volunteer may be eligible to serve on the Commission.

4.2 Is a paid consultant or employee of a *non-partisan* elected official, non-partisan political candidate or *non-partisan* local political candidate's campaign eligible to serve on the Commission?
Response: A paid consultant or employee of a non-partisan official, a non-partisan political candidate, or a non-partisan local candidate's campaign at any time since August 15, 2014 may not be eligible to serve on the Commission. Here, unlike elsewhere, the Constitution makes no distinction between officials who are elected to partisan and nonpartisan offices. Because the language is not explicitly limited

to partisan offices, it is likely that this disqualification applies to *all* employees and paid consultants who were paid in exchange for work by partisan or nonpartisan elected officials, candidates, or local political candidate's campaigns. This may include paid consultants and employees of non-partisan elected officials such as school board members, judges, mayors, and city council members, as well as paid consultants and employees of candidates for non-partisan offices such as school board, judge, mayor, and city council.

Subsection V

What the Constitution says:

"*Each Commissioner shall: … not currently be or in the past 6 years have been … **an employee of the Legislature.***" MI Const Art 4 §6(1)(b)(v).

Guidance:

An "**employee of the Legislature**" may refer to an individual who works for the Legislature for wages or a salary.

Reasoning behind this guidance:

The Constitution does not define the term "employee." The guidance provided above is the meaning of the word "employee" as defined in the Merriam-Webster dictionary.

Frequently Asked Questions:

5.1 Is a volunteer of the Legislature eligible to serve on the Commission?
Response: Because volunteers do not fall within the dictionary definition of employees, a volunteer in the Legislature may be eligible to serve on the Commission.

5.2 Are employees of the various committees, departments, and bodies that operate in the Legislature eligible to serve on the Commission?
Response: Any employee of a committee, department, or body that operates in the Legislature at any time since August 15, 2014 may not be eligible to serve on the Commission. The Constitution does nothing to limit the breadth of the term "the Legislature." In the absence of any such narrowing definition, this limitation may apply to all of the House and Senate Committees, Joint Committees, as well as all of the departments and bodies that operate in the Legislature, including but not limited to the Clerk of the House, the House Fiscal Agency, the House Republican Policy Office, the House Democratic Staff, the Secretary of the Senate, the Senate Fiscal Agency, the Criminal Justice Policy Commission, the Michigan Law Revision Commission, the Joint Committee on Administrative Rules, the Legislative Corrections Ombudsman, the Legislative Service Bureau,

the Michigan Commission on Uniform State Laws, the Michigan Veterans' Facility Ombudsman, and the State Drug Treatment Court Advisory Committee.

Subsection VI

What the Constitution says:

"*Each Commissioner shall: … not currently be or in the past 6 years have been … **any person who is registered as a lobbyist agent with the Michigan Bureau of Elections, or any employee of such person**.*" MI Const Art 4 §6(1)(b)(vi).

Guidance:

A "**person who is registered as a lobbyist agent with the Michigan Bureau of Elections**" may refer to those who have actually registered with the Michigan Bureau of Elections as a "lobbyist agent."

"**Any employee of such person**" may refer to any individual who works for a registered lobbyist agent, in any capacity, for wages or a salary.

Reasoning behind the guidance:

The Constitution's reference to an individual's "*registration* as a lobbyist agent with the Michigan Bureau of Elections" identifies who may be considered a "lobbyist agent."

The Constitution does not define the term "employee." The guidance regarding "employee" in the above sections is the meaning of the word "employee" as defined in the Merriam-Webster dictionary. The Constitution does not specify that the person's employment must be related to lobbying in order for the exclusion to apply. It refers to "*any* employee of such person."

Frequently Asked Questions:

6.1 How do I know if my employer is or has been "registered as a lobbyist agent with the Michigan Bureau of Elections" at any time since August 15, 2014?
Response: Please see this website **https://miboecfr.nictusa.com/cgi-bin/cfr/lobby_srch.cgi**.

6.2 What is a "lobbyist agent"?
Response: "Lobbyist agent" is not defined in Section (6)(1). Similar terminology is defined in the Michigan Lobbying Act and, while a statutory definition is not binding on the Constitution, it may nonetheless be instructive. In the Michigan Lobbying Act at MCL 4.415(5) a "lobbyist agent" is defined as: an individual who receives compensation or reimbursement of actual expenses, or both, in a

combined amount in excess of $625 in any 12-month period for lobbying. Lobbyist agents are required to register with the Michigan Bureau of Elections. The registration process is described in the Michigan Lobbying Act at MCL 4.417(2).

Subsection VII

What the Constitution says:

"*Each Commissioner shall: … not currently be or in the past 6 years have been …* ***an unclassified state employee who is exempt from classification in state civil service pursuant to Article XI, Section 5, except for employees of courts of record, employees of the state institutions of higher education, and persons in the armed forces of the state.***" MI Const Art 4 §6(1)(b)(vii).

Guidance:

An "**unclassified state employee**" is a designation for certain individuals in state government.

Article XI, Section 5 of the state constitution defines which positions fall within the classified civil service, and it excludes the following positions as unclassified state employees: "[those positions in the state] *filled by popular election, heads of principal departments, members of boards and commissions, the principal executive officer of boards and commissions heading principal departments, … employees of the legislature, … eight exempt positions in the office of the governor, and within each principal department, when requested by the department head, two other exempt positions, one of which shall be policy-making. The civil service commission may exempt three additional positions of a policy-making nature within each principal department."*

Section D

What the Constitution says:

"Each Commissioner shall: … **not be otherwise disqualified for appointed or elected office by this Constitution**." MI Const Art 4 §6(1)(D).

Guidance:

"**Otherwise disqualified for appointed or elected office by this Constitution**" may refer to the following provisions of the Michigan Constitution:

- "[The auditor general] shall be ineligible for appointment or election to any other public office in this state from which compensation is derived while serving as auditor general and for two years following the termination of his

service." MI Const Art 4 §53.

- "Any justice or judge of a court of record shall be ineligible to be nominated for or elected to an elective office other than a judicial office during the period of his service and for one year thereafter. MI Const Art 6 §21.

- "A person is ineligible for election or appointment to any state or local elective office of this state and ineligible to hold a position in public employment in this state that is policy-making or that has discretionary authority over public assets if, within the immediately preceding 20 years, the person was convicted of a felony involving dishonesty, deceit, fraud, or a breach of the public trust and the conviction was related to the person's official capacity while the person was holding any elective office or position of employment in local, state, or federal government. This requirement is in addition to any other qualification required under this constitution or by law." MI Const Art 11 §8.

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