EXHIBIT A

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Redistricting in Michigan

Past, Present, and Future

By Ronald Liscombe and Sean Rucker

The year 2020 marks another United States Census. Michigan's population will be counted, and state legislative and congressional districts will be reapportioned in accordance with the results. This article explores the history of that process—known as redistricting—in Michigan and traces the evolution of and rules applicable to redistricting and apportionment from the adoption of the Michigan Constitution of 1963 to the passage of Proposal 2 in 2018, which amended the constitution to create an Independent Citizens Redistricting Commission that is responsible for redistricting following this year's census and beyond.

At a Glance

Assuming the process works as intended, the new redistricting plan mandated by the passage of Proposal 2 will create a far more fair and transparent redistricting and apportionment model; no longer will partisan politicians and their lobbyists and consultants wield primary responsibility and authority with respect to redrawing their own election districts. Instead, the constitutional amendment occasioned by Proposal 2's passage places the redistricting power in the hands of a balanced, diverse group of Michigan citizens.

Redistricting in Michigan before 1982

With respect to redistricting and apportionment, the Michigan Constitution of 1963 originally provided, in part, that:

> following the decennial census, the Commission on Legislative Apportionment shall establish House and Senate districts in accordance with rules there prescribed for districting and apportionment. If a majority of the commission cannot agree upon a reapportionment plan, then, upon submission of plans to this Court by members of the commission, this Court shall determine which plan complies most accurately with 'the constitutional requirements' and order its adoption.[1]

Substantively most important, the 1963 constitution prescribed a weighted land area/population formula for districting and apportioning; the constitutional provisions explicitly provided that "in districting the state for the purpose of electing senators, each county is assigned apportionment factors which are based on 20% on land area and 80% on population."[2] Redistricting for the election of House members was based on a similar formula.[3]

The redistricting paradigm immediately ran into trouble. In 1964, the United States Supreme Court held that a similar weighted land area/population formula violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.[4] This decision resulted in Michigan's redistricting process marching on in a bifurcated manner for the next two decades, with the Commission on Legislative Apportionment continuing to procedurally function.[5] Finally, in *In re Apportionment of State Legislature—1982*, the Michigan Supreme Court declared the entire scheme unconstitutional, holding that the procedural reapportionment provisions and the substantive criteria are "inextricably interdependent" and, thus, not severable.[6] Consequently, the Commission on Legislative Apportionment was disbanded.[7]

The Michigan Supreme Court's 1982 decision—in the absence of a new scheme implemented by the legislature or the people—also created a new redistricting and apportionment scheme to be provided "in compliance with federal constitutional requirements and in a manner most consistent with the constitutional history of this state."[8] The Court's new scheme, known as the Apol Standards after former Michigan director of elections Bernard Apol, provided for a divergence from the one person-one vote principle that had been at the heart of the original 1963 redistricting plan—within the federally mandated maximum population divergence range of 16.4 percent[9]—while adhering to the state's "constitutional history" of "commitments to contiguous, single-member districts drawn along the boundary lines of local units of government which, within those limitations, are as compact as feasible."[10]

Redistricting post-1982

After the Court's decision in *In re Apportionment of State Legislature—1982*, redistricting in Michigan was accomplished through a legislative process; following the results of the U.S. Census in 1990, 2000, and 2010, the legislature itself determined the redistricting plan with approval from the governor.[11] So long as the legislature's plan adhered to the Michigan Supreme Court's articulated guidelines, the legislature was essentially free to draw district maps as it saw fit. Given that the plan was established by the legislature following each census year, Michigan's redistricting scheme of the last three decades facilitated gerrymandering—defined as "the practice of dividing or arranging a territorial unit into election districts in a way that gives one political party an unfair advantage in elections"[12]—as the legislature often decided on rules and subsequently drew district maps to support the election of candidates of the controlling political party.[13]

Michigan's new redistricting scheme

Enter Voters Not Politicians (VNP), the nonpartisan, grassroots advocacy organization founded in 2017 to end the practice of partisan gerrymandering in Michigan. The group "works to strengthen democracy by engaging people across

Michigan in effective citizen action."[14] In 2018, VNP successfully placed a citizen-led ballot initiative before Michiganders in the November election; Proposal 2 was presented as a constitutional amendment to create an independent citizens redistricting commission to, as the group put it, "put the power to draw our election district maps in the hands of the voters—not politicians."[15]

Proposal 2 stated that it would, if passed, "establish a commission of citizens with exclusive authority to adopt district boundaries for the Michigan Senate, Michigan House of Representatives and U.S. Congress, every 10 years."[16] Proposal 2 further provided that it would:

- Create a commission of 13 registered voters randomly selected by the secretary of state: four each who self-identify as affiliated with the two major political parties and five who self-identify as unaffiliated with major political parties.
- Prohibit partisan officeholders and candidates, their employees, certain relatives, and lobbyists from serving as commissioners.
- Establish new redistricting criteria including geographically compact and contiguous districts of equal population, reflecting Michigan's diverse population and communities of interest. Districts shall not provide disproportionate advantage to political parties or candidates.
- Require an appropriation of funds for commission operations and commissioner compensation.[17]

On November 6, 2018, Proposal 2 passed with 61 percent of the vote.[18] It amended Article 4, Section 6 of the Michigan Constitution of 1963, most pertinently, by creating Michigan's Independent Citizens Redistricting Commission and mandating the following guidelines—in order of priority, as listed—for the drawing of district lines:

(a) Districts shall be of equal population as mandated by the United States Constitution, and shall comply with the voting rights act and other federal laws.

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

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

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

(e) Districts shall not favor or disfavor an incumbent elected official or a candidate.

(f) Districts shall reflect consideration of county, city, and township boundaries.

(g) Districts shall be reasonably compact.[19]

With respect to the first requirement—that the commission follow all federal laws related to redistricting—Proposal 2 requires the commission, in drawing district maps, to ensure that districts "contain close to an equal number of Michiganders to meet the 'equal population' requirement in the U.S. Constitution."[20] This "equal population" requirement is articulated in Article I, Section 2 of the U.S. Constitution, which requires that all districts be as nearly equal in population as practicable.[21] Additionally, the Equal Protection Clause of the Fourteenth Amendment applies to state legislative districts, mandating that they be substantially equal.[22] Further, the commission must adhere to the dictates of the Voting Rights Act, which provides that redistricting shall not result in dilution of minority votes.[23] While redistricting must be done in compliance with federal law, the commission is allowed under the Michigan Supreme Court's 1982 decision to diverge from the goal of equality of population to the extent necessary to achieve other rational goals as articulated in the criteria.[24]

According to VNP, the third criterion (communities of interest) means that the commission is "required to hold a series of public hearings to get feedback from real Michigan citizens about what they feel their shared values—also known as communities of interest—are."[25] The commission must "draw district lines while keeping shared cultural, historical, or economic interests in mind based on the feedback they receive from the public."[26]

Although VNP has provided guidelines, any articulation of what constitutes a community of interest in the relevant caselaw is opaque at best; the United States Supreme Court has discussed communities of interest but never provided a concrete definition or analytical framework. Indeed, the Court has opined that districts must be drawn to reflect "actual shared interests."[27] Further, it has provided that communities of interest are evidenced by "for example, shared broadcast and print media, public transport infrastructure, and institutions such as schools and churches."[28] Additionally, "socio-economic status, education, employment, health, and other characteristics" may factor into the applicable analysis.[29] Given that communities of interest have been vaguely articulated, courts are left to determine whether districts respect those communities on a case-by-case basis.

Commissioners must also ensure that there is no clear party advantage as a result of a potential redistricting plan.[30] Specifically, the commission may not "draw maps where a district gives an unfair or disproportionate advantage to any political party."[31] Nonetheless, the United States Supreme Court has held that "districting for some level of partisan advantage

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is not unconstitutional"; determining that lines were drawn on the basis of partisanship does not indicate that the districting was improper. A permissible intent—securing partisan advantage—does not become constitutionally impermissible, like racial discrimination, when that permissible intent "predominates."[32] Further, the Court noted that it has "never struck down a partisan gerrymander as unconstitutional—despite various requests over the past 45 years."[33] While "excessive partisan gerrymandering" is "not condone[d]" by the Court, Chief Justice John Roberts noted that some level of partisan advantage is acceptable under the U.S. Constitution, concluding that the issue is best left to the states and observing Michigan's then-recent approval of Proposal 2.[34] With this in mind, it is unlikely that a judicial challenge to this provision would ultimately prove successful.

Finally, while the commission must draw districts that are reasonably compact, commissioners do have the authority to decide how they will measure compactness.[35]

Notably, the commission's working process includes extensive opportunities for public participation: The commission is required to hold at least 10 public hearings across the state before drawing maps and at least another five public hearings to present proposed maps before adoption. Commissioners must publicly present and publish why and how they drew maps that met the prescribed criteria. Michiganders also have the ability to submit their own maps to the commission for its required consideration.[36] Further, the commission must make all resources used during its meetings available to the public; this includes "reference documents, data, software used to draw maps, identity of consultants and staff, and any other information relating to the Commission's work."[37]

Seven of the 13 commissioners must vote to adopt a plan, and that majority must include at least two Democrats, two Republicans, and two unaffiliated commissioners.[38] Further, the commission shall publish the plan within 30 days after adoption.[39] An adopted redistricting plan becomes law 60 days after its publication.[40] Original jurisdiction is vested in the Michigan Supreme Court to direct the secretary of state or the commission to perform their respective duties and to review a challenge to any plan adopted by the commission, requiring a remand of the plan to the commission for further action if the plan fails to comply with applicable requirements.[41]

The future of redistricting in Michigan

As mentioned at the outset, the year 2020 marks another U.S. Census—the first since Proposal 2 passed—and the application process to be on Michigan's inaugural Independent Citizens Redistricting Commission wrapped up on June 1. The Michigan Secretary of State's Office has processed nearly 6,000 applications from registered voters in 82 of the state's 83 counties.[42] From those applicants, 200 finalists will be selected; finalists must consist of 60 voters who identify as Democrats, 60 who identify as Republicans, and 80 who identify as unaffiliated with either major political party.[43] The process will also use an algorithm (which will be publicly available) to ensure that the finalists reflect Michigan's age, gender, and racial composition, and that the state's geographical regions are proportionately represented.

Democrats and Republicans in the House and Senate each have the power to strike up to five applicants from the initial 200 finalists; by July 1, 2020, those 200 finalists will have been trimmed down to 180.[44] On September 1, 2020, the 13 commissioners will be selected by random drawing from the 180 remaining, and the commission will begin its work by October 15, 2020, to be completed in time for the 2022 election cycle.[45]

Assuming the process works as intended, the new redistricting plan mandated by the passage of Proposal 2 will create a far more fair and transparent redistricting and apportionment model; no longer will partisan politicians and their lobbyists and consultants wield primary responsibility and authority with respect to redrawing their own election districts. Instead, the constitutional amendment places the redistricting power in the hands of a balanced, diverse group of Michigan citizens. The Independent Citizens Redistricting Commission is bound to follow a public process in which it must present its work and proposed maps to the people, holding the commission accountable. Michiganders are now far more involved in the drawing of their election districts, and the state's electoral process—as well as its representative democracy—should be better for it. ■

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ENDNOTES

1. *In re Apportionment of State Legislature—1982*, 413 Mich 96, 105–106; 321 NW 2d 565 (1982) (citing Const 1963, art 4, § 6).
2. *Id.* at 107, n 3.
3. *Id.*
4. *Reynolds v Sims*, 377 US 533; 84 S Ct 1362; 12 L Ed 2d 506 (1964).
5. *In re Apportionment*, 413 Mich at 110–111.
6. *Id.* at 138–139.
7. *Id.*
8. *Id.* at 140.
9. *Id.* at 118, 142. See also *Mahan v Howell*, 410 US 315; 93 S Ct 979; 35 L Ed 2d 320 (1973).
10. *Id.* at 140.
11. *Redistricting in Michigan after the 2020 census*, Ballotpedia <https://ballotpedia.org/Redistricting_in_Michigan_after_the_2010_census> [https://perma.cc/V6PP-UAKU]. All websites cited in this article were accessed July 8, 2020.
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13. *Issues—Redistricting Matters*, League of Women Voters of Michigan <https://www.lwvmi.org/issues/redistricting.html> [https://perma.cc/GPC5-CVBD].
14. *About Voters Not Politicians*, Voters Not Politicians <https://votersnotpoliticians.com/> [https://perma.cc/WW4S-VF4F].
15. *We Ended Gerrymandering in Michigan*, Voters Not Politicians <https://votersnotpoliticians.com/redistricting/> [https://perma.cc/H7NE-J3R2].
16. *Proposal 2—100 Word Summary*, Voters Not Politicians <https://votersnotpoliticians.com/language/> [https://perma.cc/27VY-W8QM].
17. *Amendment Language*, Voters Not Politicians <https://votersnotpoliticians.com/language/> [https://perma.cc/GP6C-D35Q].
18. *We Ended Gerrymandering in Michigan*.
19. Const 1963, art 4, § 6.
20. *Redistricting Amendment Criteria*, Voters Not Politicians <https://votersnotpoliticians.com/redistricting-amendment-criteria/> [https://perma.cc/FW9Q-FBVY].
21. *Karcher v Daggett*, 462 US 725, 730; 103 S Ct 2653; 77 L Ed 2d 133 (1983).
22. US Const Am XIV, § 2.
23. *League of United Latin American Citizens v Perry*, 548 US 399, 425; 126 S Ct 2594; 165 L Ed 2d 609 (2006).
24. *Redistricting Amendment Criteria*.
25. *Id.*
26. *Id.*
27. *Miller v Johnson*, 515 US 900, 916; 115 S Ct 2475; 132 L Ed 2d 762 (1995).
28. *Bush v Vera*, 517 US 952, 964; 116 S Ct 1941; 135 L Ed 2d 248 (1996).
29. *League of United Latin American Citizens*, 548 US at 424.
30. *Redistricting Amendment Criteria*.
31. *Id.*
32. *Rucho v Common Cause*, 139 S Ct 2484, 2503; 204 L Ed 2d 931 (2019).
33. *Id.* at 2507.
34. *Id.*
35. *Redistricting Amendment Criteria*.
36. *Id.*
37. *Id.*
38. Const 1963, art 4, § 6(14).
39. Const 1963, art 4, § 6(15).
40. Const 1963, art 4, § 6(17).
41. Const 1963, art 4, § 6(19).
42. *Redistricting Commission Offers Break with Corrupt Past*, Detroit Free Press (May 24, 2020) <https://www.freep.com/story/opinion/editorials/2020/05/24/citizens-redistricting-commission-membership-deadline-michigan/5244685002/> [https://perma.cc/KJT3-48BM].
43. *Id.*
44. *Id.*
45. *Id.*