STATE OF MICHIGAN
IN THE SUPREME COURT

CITIZENS PROTECTING MICHIGAN'S CONSTITUTION, JOSEPH SPYKE, and **JEANNE DAUNT,**
Plaintiffs – Appellants,

v

SECRETARY OF STATE and **MICHIGAN BOARD OF STATE CANVASSERS,**
Defendants / Cross-Defendants – Appellees,

and

VOTERS NOT POLITICIANS BALLOT COMMITTEE, d/b/a **VOTERS NOT POLITICIANS, COUNT MI VOTE,** a Michigan Non-Profit Corporation, d/b/a **VOTERS NOT POLITICIANS, KATHRYN A. FAHEY, WILLIAM R. BOBIER** and **DAVIA C. DOWNEY,**
Intervening Defendants / Cross-Plaintiffs – Appellees

Supreme Court
No. 157925

Court of Appeals
No. 343517

INTERVENING DEFENDANTS / CROSS-PLAINTIFFS – APPELLEES' BRIEF IN RESPONSE TO BRIEF OF AMICUS CURIAE ATTORNEY GENERAL

Peter H. Ellsworth (P23657)
Robert P. Young (P35486)
Ryan M. Shannon (P74535)
DICKINSON WRIGHT PLLC
Attorneys for Plaintiffs – Appellants
215 S. Washington, Suite 200
Lansing, MI 48933
(517) 371-1730

Eric E. Doster (P41782)
DOSTER LAW OFFICES PLLC
Attorneys for Plaintiffs – Appellants
2145 Commons Parkway
Okemos, MI 48864-3987
(517) 977-0147

Peter D. Houk (P15155)
Graham K. Crabtree (P31590)
Jonathan E. Raven (P25390)
FRASER TREBILCOCK DAVIS & DUNLAP. P.C.
Attorneys for the Intervening Defendants – Appellees
124 W. Allegan, Suite 1000
Lansing, Michigan 48933
(517) 482-5800

James R. Lancaster (P38567)
Lancaster Associates PLC
Attorneys for the Intervening Defendants – Appellees
P.O. Box 10006
Lansing, Michigan 48901
(517) 285-4737

B. Eric Restuccia (P49950)
Chief Legal Counsel
Heather S. Meingast (P55439)
Denise C. Barton (P41535)
Attorneys for Defendants
P. O. Box 30736
Lansing, MI 48909
(517) 373-6434

INTERVENING DEFENDANTS / CROSS-PLAINTIFFS – APPELLEES' BRIEF IN RESPONSE TO BRIEF OF AMICUS CURIAE ATTORNEY GENERAL

Submitted by:

Peter D. Houk (P15155)
Graham K. Crabtree (P31590)
Jonathan E. Raven (P25390)
FRASER TREBILCOCK DAVIS & DUNLAP. P.C.
Attorneys for the Intervening
Defendants/Cross-Plaintiffs – Appellees
124 W. Allegan, Suite 1000
Lansing, Michigan 48933
(517) 482-5800

James R. Lancaster (P38567)
Lancaster Associates PLC
Attorneys for the Intervening
Defendants/Cross-Plaintiffs – Appellees
P.O. Box 10006
Lansing, Michigan 48901
(517) 285-4737

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

Constitution

Rules

Other Authorities

LIST OF APPENDICES

COUNTER-STATEMENT OF QUESTION PRESENTED

I. HAS THE BALLOT PROPOSAL AT ISSUE BEEN PROPERLY PRESENTED AS A VOTER-INITIATED PROPOSAL FOR AMENDMENT OF THE CONSTITUTION PURSUANT TO CONST 1963, ART 12, § 2?

The Court of Appeals has answered this question "Yes."

The Plaintiffs – Appellants contend the answer should be "No."

Amicus Curiae Attorney General Schuette contends the answer should be "No."

The Intervening Defendants/Cross-Plaintiffs – Appellees contend the answer is "Yes."

INTRODUCTION

Attorney General Bill Schuette has donned the mantle of Friend of the Court, emphasizing his status as a constitutional officer and his obligation to protect the Constitution and the rights of the people, but he has written in support of the Plaintiffs' suggestion that the constitutionally guaranteed right of the people to vote on the proposed constitutional amendment at issue should be denied.

Attorney General Schuette's argument that the voter-initiated amendment proposed by Appellee Voters Not Politicians ("VNP") must be considered a "revision" which can only be proposed by a constitutional convention is not supported by any language of the Constitution itself, and finds no genuine support in the precedents of this Court. His argument relies, instead, upon an artificial distinction between "amendment" and "revision" adopted by our Court of Appeals in *Citizens Protecting Michigan's Constitution v Secretary of State,* 280 Mich App 273; 761 NW2d 210 (2008), *result affirmed,* 482 Mich 960; 755 NW2d 157 (2008) – a distinction which was based primarily upon case law from other states construing the language of ***their*** constitutional provisions, and injected into our own constitutional jurisprudence by judicial fiat. The Court of Appeals in this case appropriately concluded that even if this test is applied, it does not justify denying the voters their opportunity to consider VNP's proposal.

Adhering to the standard applied in *Citizens Protecting Michigan's Constitution* – a standard which this Court declined to adopt when affirming only the result – Attorney General Schuette has joined the Plaintiffs in suggesting that VNP's proposal cannot be presented to the people for their approval or disapproval because it proposes a "fundamental" change that "would alter the basic structure of Michigan's government." This suggestion is evidently based upon an assumption that the people of Michigan are incapable of considering and deciding

matters of importance, and that such matters must therefore be addressed and decided for them by constitutional convention delegates who have been elected in a "partisan election" held pursuant to Const 1963, art 12, § 3, after a preliminary vote expressing the people's desire to convene a convention for a "general revision" of the Constitution.

In support of Plaintiffs' argument that VNP's proposal must be considered a "revision," the Attorney General has ventured beyond the arguments offered by the Plaintiffs in this matter, asserting that establishment of the proposed Independent Citizens Redistricting Commission would violate the constitutional separation of powers. And in support of that new argument he has gone so far as to make the wholly unfounded suggestion that the new Commission could be characterized as a "fourth branch of government."

As discussed in greater detail *infra*, a careful comparison of the substance of VNP's proposal with the content of the existing constitutional language found in Const 1963, art 4, §§ 1-6 leads to the inevitable conclusion that VNP's proposal ***does*** address a single overall purpose – to remedy the abuses associated with partisan gerrymandering of state legislative and congressional districts – and that all of the proposed changes are germane to the accomplishment of that purpose. That examination will also reveal that the proposed and existing provisions are similar in many respects, and that the similarities are far more significant than the differences. When this is seen, it will become clear that the Attorney General's suggestion that VNP's proposal would upset the constitutional separation of power by effecting a "fundamental" change altering "the basic structure of Michigan's Government" is greatly exaggerated, and ultimately, devoid of merit.

The framers of our current Constitution proposed that the periodic redistricting of state legislative districts be performed by a Commission on Legislative Apportionment. In 1963, the

people of Michigan voted to approve our present Constitution, which included the provisions establishing the Commission on Legislative Apportionment for that purpose and governing its organization and the performance of its duties in Const 1963, art 4, §§ 2-6, where those provisions are found today.[1]

The constitutionally prescribed Commission on Legislative Apportionment was, in its most fundamental aspects, quite similar to the new Independent Citizens Redistricting Commission which would be created by VNP's proposal if approved by the voters, and thus, it may be seen that VNP has not proposed a completely new or revolutionary idea. The Court of Appeals aptly noted this similarity in its Opinion:

> ***"Moreover, the VNP Proposal is not wholly new. It does not create an entirely new commission regarding redistricting; the commission already exists in our Constitution,*** although admittedly it has not been active for decades given Reynolds. The VNP Proposal merely changes the method by which the commissioners will be chosen going forward and adds additional members who are avowed independent voters. It does not wholly impede legislative power, where legislative leaders retain the power to veto proposed commission members. Undeniably, it introduces new concepts, but it does so in a finite manner. The body of Michigan case law does not hold that the addition of new concepts within the framework of our existing constitution precludes an initiative petition." Slip Op. at p. 19. (Emphasis added)

[1] The constitutionally prescribed Commission on Legislative Apportionment has not been utilized for apportionment of Michigan's legislative districts since 1972, as this Court's decision in *In re Apportionment of State Legislature*, 413 Mich 96; 321 NW2d 565 (1982) held that the constitutionally prescribed use of weighted land area/population formulae violated the Equal Protection Clause of the U.S. Constitution, and that the invalid provisions were not severable because it could not be safely assumed that the people would have voted to approve the Constitution without them. More recently, the Legislature has had the responsibility for performing the periodic reapportionment of election districts for the Michigan Senate and House of Representatives, subject to review and independent action by the Supreme Court, pursuant to 1996 PA 436, MCL 4.261 *et seq.*, as amended. The reapportionment of Michigan's congressional election districts has been performed in similar fashion pursuant to the provisions of 1999 PA 221, MCL 3.61, *et seq.* and 1992 PA 222, MCL 3.71, *et seq.*.

The Attorney General's contention that VNP's proposal would effect a fundamental change that would dramatically alter the structure and functioning of our state government is without merit. VNP's Proposal would simply re-establish an important component that the voters understood and expected when they approved our current Constitution in 1963 – that the apportionment of legislative districts would be performed by an independent commission. As the Court of Appeals concluded in this case:

> "Where our existing Constitution has provided for a commission to draw the districting lines, it follows that an independent commission to do the same would not be so violative of the Constitution so as to preclude this proposal from placement on the ballot." Slip Op. at p. 19.

VNP is mindful that parties to litigation before this Court rarely file a response to an *amicus curiae* brief. VNP has filed this responsive brief because Attorney General Schuette has raised new and different arguments in support of the Plaintiffs' position – arguments which have been clothed with the prestige of his office, but do not withstand scrutiny. Plaintiffs have asked this Court to deny the people of Michigan their constitutionally reserved right to vote on VNP's proposed constitutional amendment, and they have made that request in spite of this Court's precedents which have long emphasized that the free exercise of that right should be facilitated, rather than burdened or curtailed. By joining in that request, the Attorney General is asking this Court to disregard one of the most fundamental principles of constitutional law – that all power emanates from the people. Const 1963, art 1, § 1. And under a system of government based on grants of power from the people, "constitutional provisions by which the people reserve to themselves a direct legislative voice ought to be liberally construed." *Woodland v Michigan Citizens Lobby,* 423 Mich 188, 243; 378 NW2d 337 (1985), quoting *Kuhn v Dept of Treasury,* 384 Mich 378, 385; 183 NW2d 796 (1971).

The Attorney General's presentation of groundless arguments in support of Plaintiffs' request is seen as a cause for grave concern, and this has suggested an unusual need to respond. This brief is therefore respectfully submitted by VNP and the other Intervening Defendants – Appellees in response to the Attorney General's *amicus curiae* brief to ensure that the issues will be kept in proper perspective, and the interests of justice properly served in this matter.

COUNTER-STATEMENT OF FACTS

The Intervening Defendants – Appellees shall continue to rely upon the excellent summary of the pertinent facts provided in the Court of Appeals' Opinion, and the discussion of the facts included in their previously-filed brief in opposition to Plaintiffs' Application for leave to Appeal. Additional discussion of the pertinent facts will be included in the body of the Legal Arguments, *infra*, to the extent that such discussion may be required to fully inform the Court.

LEGAL ARGUMENTS

I. THE BALLOT PROPOSAL AT ISSUE HAS BEEN PROPERLY PRESENTED AS A VOTER-INITIATED PROPOSAL FOR AMENDMENT OF THE CONSTITUTION PURSUANT TO CONST 1963, ART 12, § 2, AND THUS, CONSIDERATION OF VNP'S PROPOSAL NEED NOT BE RESERVED UNTIL THE NEXT CONSTITUTIONAL CONVENTION.

A. CONST 1963, ART 12, § 3 DOES NOT LIMIT THE PERMISSIBLE SUBJECT MATTER OR SCOPE OF A CONSTITUTIONAL AMENDMENT PROPOSED UNDER CONST 1963, ART 12, § 2.

As VNP has noted in its recently-filed brief in opposition to Plaintiffs' Application for Leave to Appeal, the provisions of Const 1963, art 12, §§ 2 and 3 provide separate alternative procedures for amendment of our Constitution, and neither provision contains any language

suggesting an intent to limit the permissible scope or operation of the other.[2] Nonetheless, the Plaintiffs and the Attorney General have insisted that there is a legally significant difference between a "revision" and an "amendment" which operates to limit the permissible scope of an amendment proposed by voter-initiative pursuant to Const 1963, art 12, § 2. They have relied primarily upon the qualitative/quantitative test adopted and utilized in *Citizens Protecting Michigan's Constitution v Secretary of State,* 280 Mich App 273; 761 NW2d 210 (2008), *result affirmed,* 482 Mich 960; 755 NW2d 157 (2008) – a standard which was based primarily upon case law from other states, construing the language of their own constitutional provisions, but was also based, to a lesser degree, upon brief discussions of similar issues in *Kelly v Laing,* 259 Mich 212; 242 NW2d 891 (1932) and *School District of the City of Pontiac v City of Pontiac,* 262 Mich 338; 247 NW 474 (1933). The Court of Appeals adhered to its prior decision in *Citizens Protecting Michigan's Constitution,* applying the standard adopted and utilized in that case because it was required to do so by MCR 7.215(J)(1), but ultimately concluded, correctly, that VNP's proposal cannot be considered a "revision" when judged by that standard. This Court is free to disavow the qualitative/quantitative test of *Citizens Protecting Michigan's Constitution,* and VNP again respectfully suggests that it should do so for the reasons previously discussed.

It should be noted, in this regard, that the Michigan authorities cited in *Citizens Protecting Michigan's Constitution* do not provide strong support for its conclusions. In *Kelly v Laing, supra,* this Court found that a multifarious collection of proposed amendments to the Bay City Charter proposing substantial changes in several related and unrelated aspects of the City government was not in a proper form for submission to the voters where the petition at

[2] Copies of Const 1963, art 12, §§ 2 and 3 are attached as Appendices "A" and "B."

issue proposed a separate vote on each of the 13 sections involved, contrary to the governing provisions of the Home Rule Act, but then went on to consider whether changes of the kind proposed could be made by means of a proposed amendment of the Charter, or only by means of a revision.[3] On that point, the Court concluded that the proposed changes were such as could only be accomplished by a general revision of the Charter under the terms of the governing statute, which "rather clearly" contemplated revision by a charter commission with subsequent voter approval as the appropriate method of changing the form of government, because the proposed multifarious changes were extensive, and would have effected a wholesale change in the manner of operation of the City Government.[4] 259 Mich at 216-217, 221-224. In so ruling, the Court expressed its understanding of the difference between an amendment and a revision, explaining that, in general, revision contemplates "a re-examination of the whole law and a redraft without obligation to maintain the form, scheme or structure of the old" while an amendment "implies continuation of the general plan and purport of the law, with corrections

[3] Having concluded that the proposed amendment could not be presented to the voters in the form proposed, the Court's further discussion of whether the proposed changes amounted to a revision was unnecessary to its holding, and was therefore *obiter dicta.*

[4] Like the RMGM proposal considered in *Citizens Protecting Michigan's Constitution,* the proposed amendments at issue in *Kelly v Laing,* addressed several unrelated issues. Those issues included: increasing the number of City Commissioners and changing their election districts; expanding the authority of the Mayor to include a veto power; abolishing the office of City Manager and vesting his powers and duties in the City Commission, with authority granted to that body to delegate those duties by ordinance to other city officers; prohibiting city officers and employees from being interested in city contracts; requiring public bids for certain expenditures; prohibiting diversion of water and light revenues; and providing for water and light service at cost. 259 Mich at 214. In determining that these changes could only be made by means of a revision, the Court found it significant that the proposed elimination of the City Manager and reassignment of his authority and duties would affect 52 of the Charter's 203 sections, and thus opined that, "the extent of the changes as well as their character, necessary to provide transfer of the powers of the city manager to other officers, undoubtedly would require a revision." 259 Mich at 222-223.

to better accomplish its purpose" and that, "[b]asically, revision suggests fundamental change, while amendment is a correction of detail." *Id.*, at 217.

This Court's conclusion, in *Kelly v Laing, supra,* that the separate procedure for revision was required for adoption of the proposed changes is not particularly helpful because that case did not involve interpretation of the constitutional procedures for amendment of the Constitution, but was instead focused upon the distinction that made a difference ***under the controlling terms of the statutory procedure at issue*** in that matter. This is not to say that the generalities expressed by way of the Court's dictum in *Kelly v Laing,* have no merit. The described distinctions said to define the general difference between an amendment and a revision may be found valid with respect to some proposals, like the multifarious proposals involved in *Kelly* and *Citizens Protecting Michigan's Constitution,* which propose multiple unrelated changes that would truly effect a major reconfiguration of government. And, of course, the difference defined by the Court's dictum in *Kelly v Laing,* would also be validly applied to describe a new Constitution or a major rewrite of the existing Constitution, which should only be proposed for adoption at a constitutional convention convened pursuant to the people's vote to authorize a "general revision" of the Constitution under Const 1963, art 12, § 3.

But that is not what has been presented here, as our Court of Appeals has appropriately concluded in this case, stating:

> "Eight decades ago, in 1932, our Supreme Court discussed the fundamental distinctions between revision and amendment in *Kelly v Laing*, 259 Mich 212; 242 NW 891 (1932). The Court held that an initiative petition may encompass one proposed amendment, but may involve more than one section, provided "all sections are germane to the purpose of the amendment."
>
> * * *
>
> Our Supreme Court added:

> "An amendment is usually proposed by persons interested in a specific change and little concerned with its effect upon other provisions of the charter" Slip Op. at pp. 15-16

The true significance of this Court's decision in *Kelly v Laing* is not the *dicta* cited in the Attorney General's brief. It is the idea that it is appropriate to change the Constitution by means of an amendment so long as it has a single purpose. The fact that an amendment may need to revise several sections of the Constitution to effect changes germane to that purpose is irrelevant.

To hold, as the Plaintiffs and the Attorney General have suggested, that an amendment crafted to address a single overall purpose may be considered a "general revision" that can only be proposed at a constitutional convention, would be "fundamentally" inconsistent with this Court's prior decisions holding that a constitutional amendment may alter multiple sections if the changes address a single overall purpose and the changes are germane to the accomplishment of that purpose. *Graham v Miller,* 348 Mich 684, 692-693; 84 NW2d 46 (1957); *Kelly v Laing, supra,* 259 Mich at 215-216; *People v Stimer,* 248 Mich 272, 287; 226 NW 899 (1929). Their argument, based upon the dictum in *Kelly v Laing,* that an amendment can be nothing more than a mere "correction of detail" is also fundamentally inconsistent with the definition of "amendment" provided in those decisions. It is inconsistent with our history as well, because there ***have*** been a number of voter-initiated amendments over the years which have effected sweeping changes that could hardly be characterized as a "mere correction of detail." These would include the Headlee Amendment, the amendment adopted in 1992 to establish the existing constitutional term limits for legislators and the Governor, and the "Proposal A" property tax amendment adopted in 1994, to name a few.

The Attorney General's reliance upon *School District of the City of Pontiac v City of Pontiac,* 262 Mich 338; 247 NW 474 (1933), is also misplaced. In that case, this Court rejected a post-election challenge to the validity of a voter-initiated constitutional amendment based upon a claim that the state election officials had failed to publish all of the existing constitutional provisions that would be altered or abrogated by the proposed amendment. The Court then went on to summarily reject an additional argument that the constitutional amendment, limiting the authority of local governments to assess property taxes, was invalid because its impact was so far reaching as to constitute a revision which should have been accomplished in the manner provided for revisions of the Constitution in Const 1908, art 17, § 4. 262 Mich at 345.

The Court of Appeals Opinion in this matter correctly construed the appropriate significance of this case, stating:

> "One year after *Laing*, our Supreme Court had occasion to consider whether a proposal was a revision or an amendment in *Sch Dist of City of Pontiac v City of Pontiac*, 262 Mich 338, 344; 247 NW 474 (1933). The plaintiff argued that the proposal to limit property taxes that had been approved in the general election was so far-reaching as to invalidate the Constitution and thus was a general revision. The Court disagreed, concluding that it was an amendment because the proposal did not "interfere with" nor "modify" the operation of governmental agencies in such a way to render it a general revision. *Id.* at 345." Slip Op. at p. 16.

Similarly, in this case VNP's Proposal is narrow in scope and does not change or interfere with the operation of other state agencies. It is narrowly tailored to achieve one result – to place the task of redistricting back into the hands of an independent commission that operates free of interference by the Legislature or the Governor.

The Court's Opinion in *Citizens Protecting Michigan's Constitution* also suggests that the rationale for its adoption of the qualitative/quantitative standard was flawed by a failure to recognize that, as used in Const 1963, art 12, § 2, the term "amendment" does not contemplate

a "process of amending," as the Court appears to have assumed. 280 Mich App at 295. By equating an "amendment" proposed or adopted pursuant to Const 1963, art 12, § 2 with a ***process*** similar to the process of revision initiated under Const 1963, art 12, § 3, the Court improperly injected the concept of "revision" into its interpretation of Const 1963, art 12, § 2, where it has no proper application.

The distinction between "revision" and "amendment" of the Constitution made in *Citizens Protecting Michigan's Constitution* is also unsatisfactory, and should therefore be reconsidered or limited to the peculiar facts of that matter, for two additional reasons. First, the nebulous comparison of the qualitative and quantitative nature of changes proposed by that decision provides no clear standards capable of delivering consistent results. Applying that standard in any but the most extreme cases – like the RMGN proposal considered in that case – can be expected to yield widely differing conclusions, and this level of uncertainty cannot be tolerated when suspension of the people's right to propose constitutional amendments by voter initiative is proposed.

Second, and perhaps most importantly, classification of VNP's proposed constitutional amendment as an "amendment" or a "revision" by application of the qualitative/quantitative standard utilized by the Court of Appeals alone in *Citizens Protecting Michigan's Constitution* would be inappropriate because it requires a reading in of limitations that are not found in, and cannot be reasonably implied from, the constitutional language. As previously discussed, it is inappropriate, under established Michigan law, for the Court to read in limitations of the constitutionally reserved right of initiative that the drafters and thus, the people, could have included, but did not. This being the case, decisions from other states interpreting the provisions of ***their*** constitutions are also unhelpful. As Justice Weaver aptly noted in her separate

concurring Opinion in *Citizens Protecting Michigan's Constitution*, the incorporation of extraneous words, phrases and concepts into our Constitution by interpretation is a form of "judicial activism" which improperly threatens a "judicial veto" of voter-initiated proposals for amendment of the Constitution. 482 Mich at 962. Although this may pass constitutional muster under the law of other states, it is not acceptable under the established precedents of this state. As previously discussed, the decisions of ***our*** courts have uniformly held that the free exercise of the people's reserved right to propose amendment of the Constitution by voter initiative cannot be curtailed or unduly burdened by legislative, executive or judicial action.

B. THE PROPOSED AMENDMENT IS LARGELY CONSISTENT WITH THE EXISTING CONSTITUTIONAL LANGUAGE, WOULD NOT EFFECT ANY "FUNDAMENTAL" CHANGE ALTERING THE BASIC FORM OR FUNCTIONING OF STATE GOVERNMENT, AND WOULD NOT VIOLATE THE CONSTITUTIONAL SEPARATION OF POWER.

The Plaintiffs have complained that VNP's proposal must be considered a "revision" because it would effect a "fundamental" change, dramatically altering the basic form and functioning of our state government. The Attorney General has added his voice to that chorus, but has gone a step farther to suggest that the proposed changes would violate the constitutional separation of powers, and in presenting that new argument, he has gone so far as to suggest that the proposed Independent Citizens Redistricting Commission "would be in effect a fourth branch of government, executing legislative, executive and judicial powers." This new argument is fatally flawed because it overlooks the very substantial similarities between VNP's proposal and the existing constitutional language, and is built upon wildly exaggerated claims that the new Commission would somehow exercise authority belonging to the executive and judicial branches of government.

It is useful to note, at the outset, that the distribution of power among the three branches of government is not absolute or inflexible. The Attorney General has correctly noted that, "[t]he powers of government are divided into three branches: legislative, executive and judicial." Const 1963, art 3, § 2. But the Constitution specifically allows for exceptions made by its controlling provisions. Const 1963, art 3, § 2 goes on to say that, "[n]o person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution."

Consistent with these directives, this Court has recognized that the constitutional separation of powers is not so strict as to preclude all overlap of responsibilities and powers, and has not been construed to mean that the branches must be kept wholly separate. As the Court explained in *Taxpayers of Michigan Against Casinos v State of Michigan,* 478 Mich 99; 732 NW2d 487 (2007):

> "This Court has established that the separation of powers doctrine does not require so strict a separation as to provide no overlap of responsibilities and powers." *Judicial Attorneys Ass'n v Michigan,* 459 Mich 291, 296; 586 NW2d 894 (1998). An overlap or sharing of power may be permissible if "the grant of authority to one branch is limited and specific and does not create encroachment or aggrandizement of one branch at the expense of the other ...." *Id.* at 297. The Separation of Powers Clause "has not been interpreted to mean that the branches must be kept wholly separate." *Soap & Detergent Ass'n v Natural Resources Comm,* 415 Mich 728, 752; 330 NW2d 346 (1982)." 478 Mich at 105-106.

This Court has also recognized that there is no "fourth branch" of state government, and thus, efforts to characterize autonomous state agencies as such have been rejected. *Straus v Governor,* 459 Mich 526, 536-537; 592 NW2d 53 (1999); *Civil Service Commission v Auditor General,* 302 Mich 673, 682-684; 5 NW2d 536 (1942). By the governing provisions of our Constitution, the people have reserved for themselves the right to amend the Constitution, to initiate legislation, and to approve or disapprove legislative enactments, and in doing so, they

have created for themselves a role that is "closely akin to that of a fourth branch of government." *Woodland v Michigan Citizens Lobby,* 423 Mich 188, 244; 378 NW2d 337 (1985) (Williams, J., Dissenting). Thus, if there is any involvement of a "fourth branch of government" in relation to VNP's proposal, it is the involvement of the people in proposing the amendment at issue.

Const 1963, art 1, § 1 expresses the most important governing principle of all – that, "[a]ll political power is inherent in the people. Government is instituted for their equal benefit, security and protection." In light of this, and the other constitutional provisions and decisions previously discussed, it is clear that the people of Michigan are free to structure their government as they see fit, subject to any restrictions imposed by the United States Constitution, none of which are at issue here.

With these guiding principles in mind, it is now useful to consider the specifics of VNP's proposed amendment and its similarity to the existing provisions of Const 1963, art 4, § 6.[5] As previously discussed, the existing provision approved by the vote of the people in 1963 assigned the responsibility for redistricting to a Commission on Legislative Apportionment. As the Attorney General has correctly noted, legislative apportionment is a legislative function, and thus, the provisions establishing that Commission and governing its activity were appropriately included in the Legislative Article. The provisions addressing VNP's proposed Independent Citizens Redistricting Commission would likewise be included in the Legislative Article, in the same section as amended, and it is appropriate that the Commission would be housed within the legislative branch in light of the legislative nature of its functions.

[5] Copies of VNP's petition and the existing provisions of Const 1963, art 4, §§ 1-6 are attached as Appendices "C" and "D."

Like the Commission established by the existing provisions, the new Commission would perform the required redistricting independent of supervision or control by the Legislature and the Governor. Like the existing provisions, the new provisions would include a procedure for selection of the Commissioners designed to ensure a diversity of political viewpoints, and require the Legislature to appropriate the funding required to enable the Commission to carry out its functions. And like the existing provisions, the new provisions would provide for judicial review, the scope of which would remain unchanged with the single exception that this Court would no longer be empowered to order the adoption of a specific proposed redistricting plan. That purely ***legislative*** authority would be reserved for the Commission.

The Plaintiffs and the Attorney General have made much of the fact that the proposed amendment would transfer the authority for redistricting from the Legislature to the new Commission. Their discussion of this point overlooks a number of important points. First, as previously discussed, the people are free to define the structure of their government as they choose by amendment of the Constitution. Thus, objections that the authority for redistricting should be retained by the Legislature, in whole or in part, or that additional checks and balances should be included, are not objections that should be allowed to stand in the way of the people's right to approve or disapprove VNP's proposal. They are instead, objections that may be raised, along with any other objections to the substance of the proposal, to suggest that the voters should cast their votes against VNP's proposal on election day.

Second, the transfer of authority for redistricting to the new Commission would not involve the implementation of a new or revolutionary idea, as it would simply return that authority to the Commission established by the existing constitutional provisions with

improvements designed to secure its independence and ensure that the redistricting process could no longer be controlled or thwarted by the members of one political party. It should be recalled, in this regard, that the existing Commission has not been used in recent years because of this Court's decision in *In re Apportionment of State Legislature*, *supra,* which held that the constitutionally prescribed use of weighted land area/population formulae violated the Equal Protection Clause of the U.S. Constitution, and that the invalid provisions were not severable because it could not be safely assumed that the people would have voted to approve the Constitution without them. The Legislature could have elected to remedy the defect identified by this Court's decision by proposing an amendment of the legislative article for that purpose, but it did not choose to do so. It chose, instead, to arrogate to itself the authority to perform the redistricting function. There is certainly nothing novel or otherwise inappropriate about suggesting that this authority should again be exercised by an independent Commission, as the people intended when they voted to approve the our current Constitution.

Third, the suggestion that VNP's proposal would somehow effect a "fundamental" change dramatically altering the structure or functioning of our state government strains credulity in light of its limited purpose, the Commission's limited function of drawing state legislative and congressional election districts once every ten years, and the similarities between the proposal and the existing constitutional provisions.

As previously discussed, the proposed amendments to the Legislative Article would establish the new Citizens Commission as a permanent Commission in the legislative branch, replacing the existing constitutional provisions regarding apportionment of the state Senate and House of Representatives districts. The proposed additions to that Article would provide for the establishment and funding of the new Commission and define and facilitate the performance of

its duties, as the existing provisions did with respect to the originally established Commission. The new provisions would provide for selection of the Commission's politically-diverse members by use of a methodology designed to ensure that the redistricting process could no longer be controlled or thwarted by one political party; define the role of the Secretary of State in the selection of the Commission's members; prescribe the performance of the Commission's duties, including the criteria to be considered and applied in its development of the redistricting plans; and prescribe the procedures for the adoption and implementation of those plans.

If adopted by vote of the people, VNP's proposed Const 1963, art 4, § 6 would include provisions designed to ensure the independence of the new Commission. Those provisions would declare that the powers granted to the Commission would be considered legislative functions, exclusively reserved to the Commission and not subject to the control or approval of the Legislature. Thus, although VNP's proposal would shift the Legislature's ***legislatively conferred*** authority to perform the redistricting function to an independent Commission similar to the Commission prescribed by the existing language of Const 1963, art 4, § 6, and prohibit any legislative interference with the Commission's performance of that function, it would not suspend or erode any other part of the legislative power conferred under Article IV.

VNP's proposal would also allow limited review by the this Court. The new Subsection (19) addressing that issue is also quite similar to the existing provisions of Const 1963, art 4, § 6 and the subsequently enacted legislation. It would provide that this Court, in the exercise of its original jurisdiction, "shall direct the Secretary of State and the Commission to perform their respective duties"; that the Court "may review a challenge to any plan adopted by the Commission"; and that the Court "shall remand a plan to the Commission for further action" if the plan fails to comply with state or federal constitutional requirements or superseding federal

law. The significant difference is its proviso that, "[i]n no event shall any body, except the Independent Citizens Redistricting Commission acting pursuant to this section, promulgate and adopt a redistricting plan or plans for this state." Thus, this Court's role and authority with respect to the redistricting process would be the same as its current role and authority under the existing language of Const 1963, art 4, § 6, MCL 1996 PA 463 and 1999 PA 222, except that it would no longer be allowed the authority to order the adoption of its own preferred redistricting plan, as currently provided in Const 1963, art 4, § 6, and presently allowed by MCL 3.74 and MCL 4.264.

VNP's proposal would make minor changes in three sections of the Executive Article to ensure the continuity and independence of the Commission. The changes would add new language, similar to the language included in the proposed Const 1963, art 4, § 6, declaring that the powers granted to the Independent Citizens Redistricting Commission would be considered legislative functions, exclusively reserved to the Commission and not subject to the control or approval of the Governor. This change is intended, primarily, to assure that the Governor could not use his authority to reorganize government to interfere with the independence and authority of the new Commission, as occurred in *Straus* . The proposal would also amend Const 1963, art 5, § 4, addressing the establishment of temporary commissions or agencies, to recognize the proposed establishment of the Independent Citizens Redistricting Commission as a permanent Commission. No other modification or erosion of the executive power has been proposed.

The Attorney General has complained that VNP's proposal would infringe the Governor's authority to veto redistricting plans and appropriations of funding for the new Commission. This objection lacks merit for three reasons. First, the people are clearly

empowered to reduce the Governor's authority in this regard by amendment of the Constitution if they desire to do so. Second, the veto power is a legislative function. *Wood v State Administrative Board*, 255 Mich 220, 224-225; 238 NW 16 (1931); *Oakland County Commissioner v Oakland County Executive,* 98 Mich App 639, 651; 296 NW2d 621 (1980) Thus, when the Governor exercises his prerogative to veto legislation pursuant to Const 1963, art 4, § 33, he is exercising a part of the legislative power which has been delegated to the executive by that provision. Accordingly, a limitation of the Governor's veto power cannot be considered an infringement of his executive authority. Third, although the Governor would no longer be empowered to veto a redistricting plan because that authority extends only to legislation,[6] VNP's proposal does not purport to limit his authority to veto an appropriation.

VNP's proposal would amend the Judicial Article to impose a narrow limitation of this Court's authority to exercise superintending control; to issue, hear and determine prerogative and remedial writs; and to exercise appellate jurisdiction by the addition of new language specifying that the Court may exercise that authority except to the extent that its authority is limited or abrogated by Const 1963, art 4, § 6 or Const 1963, art 5, § 2. Thus, the Court would be empowered to adjudicate redistricting disputes as it has in the past, but would no longer be empowered to "promulgate and adopt a redistricting plan or plans for this state." No other limitation of the Supreme Court's jurisdiction or authority has been proposed.

Finally, although the new Commission would be empowered to exercise legislative authority, there is no basis for the Attorney General's claim that the new Commission would be

[6] It may be acknowledged that the people would not be permitted to challenge a redistricting plan by referendum since the ability to pursue that remedy is also limited to legislation in accordance with the controlling provisions of Const 1963, art 2, § 9, but the people's right to change the new system by further amendment of the Constitution would not be diminished.

authorized to exercise any executive or judicial power. VNP's proposal would add new language to the Executive Article and the Judicial Article to clarify that the authority conferred upon the Governor and the Court of Justice is vested in those branches except to the extent that their authority is limited or abrogated by the new provisions governing the new Commission's performance of the redistricting function. These provisions recognize the minor ***limitations*** of the authority granted to the Executive and Judicial Branches included in VNP's proposal, and as VNP has explained in its original brief in opposition to the Plaintiffs' Application for Leave to Appeal, those "Except to the extent limited or abrogated by" clauses were included out of an abundance of caution to avoid unfounded claims that VNP's petition had failed to republish existing constitutional provisions that would be abrogated by the proposed amendment if adopted by the voters. Those provisions do not confer any authority upon the new Commission to exercise any executive or judicial power.

RELIEF

WHEREFORE, the Intervening Defendants / Cross-Plaintiffs – Appellees respectfully request that Plaintiffs – Appellants' Application for Leave to Appeal be denied.

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP. P.C.

By: _____

Peter D. Houk (P15155)
Graham K. Crabtree (P31590)
Jonathan E. Raven (P25390)

James R. Lancaster (P38567)
Lancaster Associates PLC

Attorneys for the Intervening Defendants / Cross-Plaintiffs – Appellees

Dated: July 3, 2018

Appendix A

STATE CONSTITUTION (EXCERPT)
CONSTITUTION OF MICHIGAN OF 1963

§ 2 Amendment by petition and vote of electors.

Sec. 2. Amendments may be proposed to this constitution by petition of the registered electors of this state. Every petition shall include the full text of the proposed amendment, and be signed by registered electors of the state equal in number to at least 10 percent of the total vote cast for all candidates for governor at the last preceding general election at which a governor was elected. Such petitions shall be filed with the person authorized by law to receive the same at least 120 days before the election at which the proposed amendment is to be voted upon. Any such petition shall be in the form, and shall be signed and circulated in such manner, as prescribed by law. The person authorized by law to receive such petition shall upon its receipt determine, as provided by law, the validity and sufficiency of the signatures on the petition, and make an official announcement thereof at least 60 days prior to the election at which the proposed amendment is to be voted upon.

Submission of proposal; publication.

Any amendment proposed by such petition shall be submitted, not less than 120 days after it was filed, to the electors at the next general election. Such proposed amendment, existing provisions of the constitution which would be altered or abrogated thereby, and the question as it shall appear on the ballot shall be published in full as provided by law. Copies of such publication shall be posted in each polling place and furnished to news media as provided by law.

Ballot, statement of purpose.

The ballot to be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than 100 words, exclusive of caption. Such statement of purpose and caption shall be prepared by the person authorized by law, and shall consist of a true and impartial statement of the purpose of the amendment in such language as shall create no prejudice for or against the proposed amendment.

Approval of proposal, effective date; conflicting amendments.

If the proposed amendment is approved by a majority of the electors voting on the question, it shall become part of the constitution, and shall abrogate or amend existing provisions of the constitution at the end of 45 days after the date of the election at which it was approved. If two or more amendments approved by the electors at the same election conflict, that amendment receiving the highest affirmative vote shall prevail.

History: Const. 1963, Art. XII, § 2, Eff. Jan. 1, 1964.

Former constitution: See Const. 1908, Art. XVII, §§ 2, 3.

Appendix B

STATE CONSTITUTION (EXCERPT)
CONSTITUTION OF MICHIGAN OF 1963

§ 3 General revision of constitution; submission of question, convention delegates and meeting.

Sec. 3. At the general election to be held in the year 1978, and in each 16th year thereafter and at such times as may be provided by law, the question of a general revision of the constitution shall be submitted to the electors of the state. If a majority of the electors voting on the question decide in favor of a convention for such purpose, at an election to be held not later than six months after the proposal was certified as approved, the electors of each representative district as then organized shall elect one delegate and the electors of each senatorial district as then organized shall elect one delegate at a partisan election. The delegates so elected shall convene at the seat of government on the first Tuesday in October next succeeding such election or at an earlier date if provided by law.

Convention officers, rules, membership, personnel, publications.

The convention shall choose its own officers, determine the rules of its proceedings and judge the qualifications, elections and returns of its members. To fill a vacancy in the office of any delegate, the governor shall appoint a qualified resident of the same district who shall be a member of the same party as the delegate vacating the office. The convention shall have power to appoint such officers, employees and assistants as it deems necessary and to fix their compensation; to provide for the printing and distribution of its documents, journals and proceedings; to explain and disseminate information about the proposed constitution and to complete the business of the convention in an orderly manner. Each delegate shall receive for his services compensation provided by law.

Submission of proposed constitution or amendment.

No proposed constitution or amendment adopted by such convention shall be submitted to the electors for approval as hereinafter provided unless by the assent of a majority of all the delegates elected to and serving in the convention, with the names and vote of those voting entered in the journal. Any proposed constitution or amendments adopted by such convention shall be submitted to the qualified electors in the manner and at the time provided by such convention not less than 90 days after final adjournment of the convention. Upon the approval of such constitution or amendments by a majority of the qualified electors voting thereon the constitution or amendments shall take effect as provided by the convention.

History: Const. 1963, Art. XII, § 3, Eff. Jan. 1, 1964.

Former constitution: See Const. 1908, Art. XVII, § 4.

Appendix C

INITIATIVE PETITION
AMENDMENT TO THE CONSTITUTION

A proposal to amend the Michigan Constitution to create an Independent Citizens Redistricting Commission. If adopted, this amendment would transfer the authority to draw Congressional and State Legislative district lines from the Legislature and Governor to the Independent Commission. The selection process will be administered by the Secretary of State. Thirteen commissioners will be randomly selected from a pool of registered voters, and consist of four members who self-identify with each of the two major political parties, and five non-affiliated, independent members. Current and former partisan elected officials, lobbyists, party officers and their employees are not eligible to serve. The proposal is to be voted on in the November 6, 2018 General Election.

FOR THE FULL TEXT OF THE PROPOSED AMENDMENT AND PROVISIONS OF THE EXISTING CONSTITUTION THAT ARE ALTERED OR ABROGATED BY THE PROPOSAL IF ADOPTED, SEE THE REVERSE SIDE AND ATTACHED PAGES OF THIS PETITION.

We, the undersigned qualified and registered electors, residents in the county of _____, State of Michigan, respectively petition for amendment to constitution.

WARNING — A person who knowingly signs this petition more than once, signs a name other than his or her own, signs when not a qualified and registered elector, or sets opposite his or her signature on a petition, a date other than the actual date the signature was affixed, is violating the provisions of the Michigan election law.

INDICATE CITY OR TOWNSHIP IN WHICH REGISTERED TO VOTE	SIGNATURE	PRINTED NAME	STREET ADDRESS OR RURAL ROUTE	ZIP CODE	DATE OF SIGNING		
					MO	DAY	YEAR
CITY OF ☐ TOWNSHIP OF ☐	1.						
CITY OF ☐ TOWNSHIP OF ☐	2.						
CITY OF ☐ TOWNSHIP OF ☐	3.						
CITY OF ☐ TOWNSHIP OF ☐	4.						
CITY OF ☐ TOWNSHIP OF ☐	5.						
CITY OF ☐ TOWNSHIP OF ☐	6.						
CITY OF ☐ TOWNSHIP OF ☐	7.						
CITY OF ☐ TOWNSHIP OF ☐	8.						
CITY OF ☐ TOWNSHIP OF ☐	9.						
CITY OF ☐ TOWNSHIP OF ☐	10.						

CERTIFICATE OF CIRCULATOR

The undersigned circulator of the above petition asserts that he or she is 18 years of age or older and a United States citizen; that each signature on the petition was signed in his or her presence; that he or she has neither caused nor permitted a person to sign the petition more than once and has no knowledge of a person signing the petition more than once; and that, to his or her best knowledge and belief, each signature is the genuine signature of the person purporting to sign the petition, the person signing the petition was at the time of signing a registered elector of the city or township indicated preceding the signature, and the elector was qualified to sign the petition.

☐ If the circulator is not a resident of Michigan, the circulator shall make a cross or check mark in the box provided, otherwise each signature on this petition sheet is invalid and the signatures will not be counted by a filing official. By making a cross or check mark in the box provided, the undersigned circulator asserts that he or she is not a resident of Michigan and agrees to accept the jurisdiction of this state for the purpose of any legal proceeding or hearing that concerns a petition sheet executed by the circulator and agrees that legal process served on the Secretary of State or a designated agent of the Secretary of State has the same effect as if personally served on the circulator.

WARNING — A circulator knowingly making a false statement in the above certificate, a person not a circulator who signs as a circulator, or a person who signs a name other than his or her own as circulator is guilty of a misdemeanor. 000031

Paid for with regulated funds by Voters Not Politicians Ballot Committee, PO Box 8362, Grand Rapids, MI 49518

CIRCULATOR — Do not sign or date certificate until after circulating petition.

_____ ___/___/___
(Signature of Circulator) (Date)

_____
(Printed Name of Circulator)

_____
Complete Residence Address (Street and Number or Rural Route) [Do Not Enter a Post Office Box]

_____
(City or Township, State, Zip Code)

_____
(County of Registration, if Registered to Vote, of a Circulator who is not a Resident of Michigan)

INITIATIVE PETITION
AMENDMENT TO THE CONSTITUTION

The proposal, if adopted, would amend Article IV, Sections 1 through 6, Article V, Sections 1, 2, and 4,Article VI, Sections 1 and 4 as follows (new language capitalized, deleted language struck out with a line):

Article IV – Legislative Branch

§ 1 Legislative power.

Sec. 1. EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE IV, SECTION 6 OR ARTICLE V, SECTION 2, the legislative power of the State of Michigan is vested in a senate and a house of representatives.

§ 2 Senators, number, term.

Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor.

~~**Senatorial districts; apportionment factors.**~~

~~In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned apportionment factors equal to the sum of its percentage of the state's population as shown by the last regular federal decennial census computed to the nearest one-one hundredth of one percent multiplied by four and its percentage of the state's land area computed to the nearest one-one hundredth of one percent.~~

~~**Apportionment rules.**~~

~~In arranging the state into senatorial districts, the apportionment commission shall be governed by the following rules:~~

~~(1) Counties with 13 or more apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. After each such county has been allocated one senator, the remaining senators to which this class of counties is entitled shall be distributed among such counties by the method of equal proportions applied to the apportionment factors.~~

~~(2) Counties having less than 13 apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. Such counties shall thereafter be arranged into senatorial districts that are compact, convenient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 13 apportionment factors, but in no event less than 10 or more than 16. Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there is a failure to comply with the above standards.~~

~~(3) Counties entitled to two or more senators shall be divided into single member districts. The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the county by the number of senators to which it is entitled. Each such district shall follow incorporated city or township boundary lines to the extent possible and shall be compact, contiguous, and as nearly uniform in shape as possible.~~

§ 3 Representatives, number, term; contiguity of districts.

Sec. 3. The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population as provided in this article. ~~The districts shall consist of compact and convenient territory contiguous by land.~~

~~**Representative areas; single and multiple county.**~~

~~Each county which has a population of not less than seven-tenths of one percent of the population of the state shall constitute a separate representative area. Each county having less than seven-tenths of one percent of the population of the state shall be combined with another county or counties to form a representative area of not less than seven-tenths of one percent of the population of the state. Any county which is isolated under the initial allocation as provided in this section shall be joined with that contiguous representative area having the smallest percentage of the state's population. Each such representative area shall be entitled initially to one representative.~~

~~**Apportionment of representatives to areas.**~~

~~After the assignment of one representative to each of the representative areas, the remaining house seats shall be apportioned among the representative areas on the basis of population by the method of equal proportions.~~

~~**Districting of single county area entitled to 2 or more representatives.**~~

~~Any county comprising a representative area entitled to two or more representatives shall be divided into single member representative districts as follows:~~

~~(1) The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the representative area by the number of representatives to which it is entitled.~~

~~(2) Such single member districts shall follow city and township boundaries where applicable and shall be composed of compact and contiguous territory as nearly square in shape as possible.~~

~~**Districting of multiple county representative areas.**~~

~~Any representative area consisting of more than one county, entitled to more than one representative, shall be divided into single member districts as equal as possible in population, adhering to county lines.~~

~~**§ 4 Annexation or merger with a city.**~~

~~Sec. 4. In counties having more than one representative or senatorial district, the territory in the same county annexed to or merged with a city between apportionments shall become a part of a contiguous representative or senatorial district in the city with which it is combined, if provided by ordinance of the city. The district or districts with which the territory shall be combined shall be determined by such ordinance certified to the secretary of state. No such change in the boundaries of a representative or senatorial district shall have the effect of removing a legislator from office during his term.~~

~~**§ 5 Island areas; contiguity.**~~

~~Sec. 5. Island areas are considered to be contiguous by land to the county of which they are a part.~~

§ 6 INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR STATE LEGISLATIVE AND CONGRESSIONAL DISTRICTS. ~~**Commission on legislative apportionment.**~~

Sec. 6.

(1) AN INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR STATE LEGISLATIVE AND CONGRESSIONAL DISTRICTS (HEREINAFTER, THE "COMMISSION") IS HEREBY ESTABLISHED AS A PERMANENT COMMISSION IN THE LEGISLATIVE BRANCH.

THE COMMISSION SHALL CONSIST OF 13 COMMISSIONERS. THE COMMISSION SHALL ADOPT A REDISTRICTING PLAN FOR EACH OF THE FOLLOWING TYPES OF DISTRICTS: STATE SENATE DISTRICTS, STATE HOUSE OF REPRESENTATIVE DISTRICTS, AND CONGRESSIONAL DISTRICTS. EACH COMMISSIONER SHALL:

(A) BE REGISTERED AND ELIGIBLE TO VOTE IN THE STATE OF MICHIGAN;

(B) NOT CURRENTLY BE OR IN THE PAST 6 YEARS HAVE BEEN ANY OF THE FOLLOWING:

(I) A DECLARED CANDIDATE FOR PARTISAN FEDERAL, STATE, OR LOCAL OFFICE;

(II) AN ELECTED OFFICIAL TO PARTISAN FEDERAL, STATE, OR LOCAL OFFICE;

(III) AN OFFICER OR MEMBER OF THE GOVERNING BODY OF A NATIONAL, STATE, OR LOCAL POLITICAL PARTY;

(IV) 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;

(V) AN EMPLOYEE OF THE LEGISLATURE;

(VI) ANY PERSON WHO IS REGISTERED AS A LOBBYIST AGENT WITH THE MICHIGAN BUREAU OF ELECTIONS, OR ANY EMPLOYEE OF SUCH PERSON; OR

(VII) 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;

(C) NOT BE A PARENT, STEPPARENT, CHILD, STEPCHILD, OR SPOUSE OF ANY INDIVIDUAL DISQUALIFIED UNDER PART (1)(B) OF THIS SECTION; OR

(D) NOT BE OTHERWISE DISQUALIFIED FOR APPOINTED OR ELECTED OFFICE BY THIS CONSTITUTION.

(E) FOR FIVE YEARS AFTER THE DATE OF APPOINTMENT, A COMMISSIONER IS INELIGIBLE TO HOLD A PARTISAN ELECTIVE OFFICE AT THE STATE, COUNTY, CITY, VILLAGE, OR TOWNSHIP LEVEL IN MICHIGAN.

(2) COMMISSIONERS SHALL BE SELECTED THROUGH THE FOLLOWING PROCESS:

(A) THE SECRETARY OF STATE SHALL DO ALL OF THE FOLLOWING:

(I) MAKE APPLICATIONS FOR COMMISSIONER AVAILABLE TO THE GENERAL PUBLIC NOT LATER THAN JANUARY 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS. THE SECRETARY OF STATE SHALL CIRCULATE THE APPLICATIONS IN A MANNER THAT INVITES WIDE PUBLIC PARTICIPATION FROM DIFFERENT REGIONS OF THE STATE. THE SECRETARY OF STATE SHALL ALSO MAIL APPLICATIONS FOR COMMISSIONER TO TEN THOUSAND MICHIGAN REGISTERED VOTERS, SELECTED AT RANDOM, BY JANUARY 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS.

(II) REQUIRE APPLICANTS TO PROVIDE A COMPLETED APPLICATION.

(III) REQUIRE APPLICANTS TO ATTEST UNDER OATH THAT THEY MEET THE QUALIFICATIONS SET FORTH IN THIS SECTION; AND EITHER THAT THEY AFFILIATE WITH ONE OF THE TWO POLITICAL PARTIES WITH THE LARGEST REPRESENTATION IN THE LEGISLATURE (HEREINAFTER, "MAJOR PARTIES"), AND IF SO, IDENTIFY THE PARTY WITH WHICH THEY AFFILIATE, OR THAT THEY DO NOT AFFILIATE WITH EITHER OF THE MAJOR PARTIES.

(B) SUBJECT TO PART (2)(C) OF THIS SECTION, THE SECRETARY OF STATE SHALL MAIL ADDITIONAL APPLICATIONS FOR COMMISSIONER TO MICHIGAN REGISTERED VOTERS SELECTED AT RANDOM UNTIL 30 QUALIFYING APPLICANTS THAT AFFILIATE WITH ONE OF THE TWO MAJOR PARTIES HAVE SUBMITTED APPLICATIONS, 30 QUALIFYING APPLICANTS THAT IDENTIFY THAT THEY AFFILIATE WITH THE OTHER OF THE TWO MAJOR PARTIES HAVE SUBMITTED APPLICATIONS, AND 40 QUALIFYING APPLICANTS THAT IDENTIFY THAT THEY DO NOT AFFILIATE WITH EITHER OF THE TWO MAJOR PARTIES HAVE SUBMITTED APPLICATIONS, EACH IN RESPONSE TO THE MAILINGS.

(C) THE SECRETARY OF STATE SHALL ACCEPT APPLICATIONS FOR COMMISSIONER UNTIL JUNE 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS.

(D) BY JULY 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS, FROM ALL OF THE APPLICATIONS SUBMITTED, THE SECRETARY OF STATE SHALL:

(I) ELIMINATE INCOMPLETE APPLICATIONS AND APPLICATIONS OF APPLICANTS WHO DO NOT MEET THE QUALIFICATIONS IN PARTS (1)(A) THROUGH (1)(D) OF THIS SECTION BASED SOLELY ON THE INFORMATION CONTAINED IN THE APPLICATIONS;

(II) RANDOMLY SELECT 80 APPLICANTS FROM EACH POOL OF AFFILIATING APPLICANTS AND 80 APPLICANTS FROM THE POOL OF NON-AFFILIATING APPLICANTS. 50% OF EACH POOL SHALL BE POPULATED FROM THE QUALIFYING APPLICANTS TO SUCH POOL WHO RETURNED AN APPLICATION MAILED PURSUANT TO PART 2(A) OR 2(B) OF THIS SECTION, PROVIDED, THAT IF FEWER THAN 30 QUALIFYING APPLICANTS AFFILIATED WITH A MAJOR PARTY OR FEWER THAN 40 QUALIFYING NON-AFFILIATING APPLICANTS HAVE APPLIED TO SERVE ON THE COMMISSION IN RESPONSE TO THE RANDOM MAILING, THE BALANCE OF THE POOL SHALL BE POPULATED FROM THE BALANCE OF QUALIFYING APPLICANTS TO THAT POOL. THE RANDOM SELECTION PROCESS USED BY THE SECRETARY OF STATE TO FILL THE SELECTION POOLS SHALL USE ACCEPTED STATISTICAL WEIGHTING METHODS TO ENSURE THAT THE POOLS, AS CLOSELY AS POSSIBLE, MIRROR THE GEOGRAPHIC AND DEMOGRAPHIC MAKEUP OF THE STATE; AND

(III) SUBMIT THE RANDOMLY-SELECTED APPLICATIONS TO THE MAJORITY LEADER AND THE MINORITY LEADER OF THE SENATE, AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES.

(E) BY AUGUST 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS, THE MAJORITY LEADER OF THE SENATE, THE MINORITY LEADER OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND THE MINORITY LEADER OF THE HOUSE OF REPRESENTATIVES MAY EACH STRIKE FIVE APPLICANTS FROM ANY POOL OR POOLS, UP TO A MAXIMUM OF 20 TOTAL STRIKES BY THE FOUR LEGISLATIVE LEADERS.

(F) BY SEPTEMBER 1 OF THE YEAR OF THE FEDERAL DECENNIAL CENSUS, THE SECRETARY OF STATE SHALL RANDOMLY DRAW THE NAMES OF FOUR COMMISSIONERS FROM EACH OF THE TWO POOLS OF REMAINING APPLICANTS AFFILIATING WITH A MAJOR PARTY, AND FIVE COMMISSIONERS FROM THE POOL OF REMAINING NON-AFFILIATING APPLICANTS.

(3) EXCEPT AS PROVIDED BELOW, COMMISSIONERS SHALL HOLD OFFICE FOR THE TERM SET FORTH IN PART (1)(B) OF THIS

SECTION. IF A COMMISSIONER'S SEAT BECOMES VACANT FOR ANY REASON, THE SECRETARY OF STATE SHALL FILL THE VACANCY BY RANDOMLY DRAWING A NAME FROM THE REMAINING QUALIFYING APPLICANTS IN THE SELECTION POOL FROM WHICH THE ORIGINAL COMMISSIONER WAS SELECTED. A COMMISSIONER'S OFFICE SHALL BECOME VACANT UPON THE OCCURRENCE OF ANY OF THE FOLLOWING:

(A) DEATH OR MENTAL INCAPACITY OF THE COMMISSIONER;

(B) THE SECRETARY OF STATE'S RECEIPT OF THE COMMISSIONER'S WRITTEN RESIGNATION;

(C) THE COMMISSIONER'S DISQUALIFICATION FOR ELECTION OR APPOINTMENT OR EMPLOYMENT PURSUANT TO ARTICLE XI, SECTION 6;

(D) THE COMMISSIONER CEASES TO BE QUALIFIED TO SERVE AS A COMMISSIONER UNDER PART (1) OF THIS SECTION; OR

(E) AFTER WRITTEN NOTICE AND AN OPPORTUNITY FOR THE COMMISSIONER TO RESPOND, A VOTE OF 10 OF THE COMMISSIONERS FINDING SUBSTANTIAL NEGLECT OF DUTY, GROSS MISCONDUCT IN OFFICE, OR INABILITY TO DISCHARGE THE DUTIES OF OFFICE.

(4) THE SECRETARY OF STATE SHALL BE SECRETARY OF THE COMMISSION WITHOUT VOTE, AND IN THAT CAPACITY SHALL FURNISH, UNDER THE DIRECTION OF THE COMMISSION, ALL TECHNICAL SERVICES THAT THE COMMISSION DEEMS NECESSARY. THE COMMISSION SHALL ELECT ITS OWN CHAIRPERSON. THE COMMISSION HAS THE SOLE POWER TO MAKE ITS OWN RULES OF PROCEDURE. THE COMMISSION SHALL HAVE PROCUREMENT AND CONTRACTING AUTHORITY AND MAY HIRE STAFF AND CONSULTANTS FOR THE PURPOSES OF THIS SECTION, INCLUDING LEGAL REPRESENTATION.

(5) BEGINNING NO LATER THAN DECEMBER 1 OF THE YEAR PRECEDING THE FEDERAL DECENNIAL CENSUS, AND CONTINUING EACH YEAR IN WHICH THE COMMISSION OPERATES, THE LEGISLATURE SHALL APPROPRIATE FUNDS SUFFICIENT TO COMPENSATE THE COMMISSIONERS AND TO ENABLE THE COMMISSION TO CARRY OUT ITS FUNCTIONS, OPERATIONS AND ACTIVITIES, WHICH ACTIVITIES INCLUDE RETAINING INDEPENDENT, NONPARTISAN SUBJECT-MATTER EXPERTS AND LEGAL COUNSEL, CONDUCTING HEARINGS, PUBLISHING NOTICES AND MAINTAINING A RECORD OF THE COMMISSION'S PROCEEDINGS, AND ANY OTHER ACTIVITY NECESSARY FOR THE COMMISSION TO CONDUCT ITS BUSINESS, AT AN AMOUNT EQUAL TO NOT LESS THAN 25 PERCENT OF THE GENERAL FUND/GENERAL PURPOSE BUDGET FOR THE SECRETARY OF STATE FOR THAT FISCAL YEAR. WITHIN SIX MONTHS AFTER THE CONCLUSION OF EACH FISCAL YEAR, THE COMMISSION SHALL RETURN TO THE STATE TREASURY ALL MONEYS UNEXPENDED FOR THAT FISCAL YEAR. THE COMMISSION SHALL FURNISH REPORTS OF EXPENDITURES, AT LEAST ANNUALLY, TO THE GOVERNOR AND THE LEGISLATURE AND SHALL BE SUBJECT TO ANNUAL AUDIT AS PROVIDED BY LAW. EACH COMMISSIONER SHALL RECEIVE COMPENSATION AT LEAST EQUAL TO 25 PERCENT OF THE GOVERNOR'S SALARY. THE STATE OF MICHIGAN SHALL INDEMNIFY COMMISSIONERS FOR COSTS INCURRED IF THE LEGISLATURE DOES NOT APPROPRIATE SUFFICIENT FUNDS TO COVER SUCH COSTS.

(6) THE COMMISSION SHALL HAVE LEGAL STANDING TO PROSECUTE AN ACTION REGARDING THE ADEQUACY OF RESOURCES PROVIDED FOR THE OPERATION OF THE COMMISSION, AND TO DEFEND ANY ACTION REGARDING AN ADOPTED PLAN. THE COMMISSION SHALL INFORM THE LEGISLATURE IF THE COMMISSION DETERMINES THAT FUNDS OR OTHER RESOURCES PROVIDED FOR OPERATION OF THE COMMISSION ARE NOT ADEQUATE. THE LEGISLATURE SHALL PROVIDE ADEQUATE FUNDING TO ALLOW THE COMMISSION TO DEFEND ANY ACTION REGARDING AN ADOPTED PLAN.

(7) THE SECRETARY OF STATE SHALL ISSUE A CALL CONVENING THE COMMISSION BY OCTOBER 15 IN THE YEAR OF THE FEDERAL DECENNIAL CENSUS. NOT LATER THAN NOVEMBER 1 IN THE YEAR IMMEDIATELY FOLLOWING THE FEDERAL DECENNIAL CENSUS, THE COMMISSION SHALL ADOPT A REDISTRICTING PLAN UNDER THIS SECTION FOR EACH OF THE FOLLOWING TYPES OF DISTRICTS: STATE SENATE DISTRICTS, STATE HOUSE OF REPRESENTATIVE DISTRICTS, AND CONGRESSIONAL DISTRICTS.

(8) BEFORE COMMISSIONERS DRAFT ANY PLAN, THE COMMISSION SHALL HOLD AT LEAST TEN PUBLIC HEARINGS THROUGHOUT THE STATE FOR THE PURPOSE OF INFORMING THE PUBLIC ABOUT THE REDISTRICTING PROCESS AND THE PURPOSE AND RESPONSIBILITIES OF THE COMMISSION AND SOLICITING INFORMATION FROM THE PUBLIC ABOUT POTENTIAL PLANS. THE COMMISSION SHALL RECEIVE FOR CONSIDERATION WRITTEN SUBMISSIONS OF PROPOSED REDISTRICTING PLANS AND ANY SUPPORTING MATERIALS, INCLUDING UNDERLYING DATA, FROM ANY MEMBER OF THE PUBLIC. THESE WRITTEN SUBMISSIONS ARE PUBLIC RECORDS.

(9) AFTER DEVELOPING AT LEAST ONE PROPOSED REDISTRICTING PLAN FOR EACH TYPE OF DISTRICT, THE COMMISSION SHALL PUBLISH THE PROPOSED REDISTRICTING PLANS AND ANY DATA AND SUPPORTING MATERIALS USED TO DEVELOP THE PLANS. EACH COMMISSIONER MAY ONLY PROPOSE ONE REDISTRICTING PLAN FOR EACH TYPE OF DISTRICT. THE COMMISSION SHALL HOLD AT LEAST FIVE PUBLIC HEARINGS THROUGHOUT THE STATE FOR THE PURPOSE OF SOLICITING COMMENT FROM THE PUBLIC ABOUT THE PROPOSED PLANS. EACH OF THE PROPOSED PLANS SHALL INCLUDE SUCH CENSUS DATA AS IS NECESSARY TO ACCURATELY DESCRIBE THE PLAN AND VERIFY THE POPULATION OF EACH DISTRICT, AND A MAP AND LEGAL DESCRIPTION THAT INCLUDE THE POLITICAL SUBDIVISIONS, SUCH AS COUNTIES, CITIES, AND TOWNSHIPS; MAN-MADE FEATURES, SUCH AS STREETS, ROADS, HIGHWAYS, AND RAILROADS; AND NATURAL FEATURES, SUCH AS WATERWAYS, WHICH FORM THE BOUNDARIES OF THE DISTRICTS.

(10) EACH COMMISSIONER SHALL PERFORM HIS OR HER DUTIES IN A MANNER THAT IS IMPARTIAL AND REINFORCES PUBLIC CONFIDENCE IN THE INTEGRITY OF THE REDISTRICTING PROCESS. THE COMMISSION SHALL CONDUCT ALL OF ITS BUSINESS AT OPEN MEETINGS. NINE COMMISSIONERS, INCLUDING AT LEAST ONE COMMISSIONER FROM EACH SELECTION POOL SHALL CONSTITUTE A QUORUM, AND ALL MEETINGS SHALL REQUIRE A QUORUM. THE COMMISSION SHALL PROVIDE ADVANCE PUBLIC NOTICE OF ITS MEETINGS AND HEARINGS. THE COMMISSION SHALL CONDUCT ITS HEARINGS IN A MANNER THAT INVITES WIDE PUBLIC PARTICIPATION THROUGHOUT THE STATE. THE COMMISSION SHALL USE TECHNOLOGY TO PROVIDE CONTEMPORANEOUS PUBLIC OBSERVATION AND MEANINGFUL PUBLIC PARTICIPATION IN THE REDISTRICTING PROCESS DURING ALL MEETINGS AND HEARINGS.

(11) THE COMMISSION, ITS MEMBERS, STAFF, ATTORNEYS, AND CONSULTANTS SHALL NOT DISCUSS REDISTRICTING MATTERS WITH MEMBERS OF THE PUBLIC OUTSIDE OF AN OPEN MEETING OF THE COMMISSION, EXCEPT THAT A COMMISSIONER MAY COMMUNICATE ABOUT REDISTRICTING MATTERS WITH MEMBERS OF THE PUBLIC TO GAIN INFORMATION RELEVANT TO THE PERFORMANCE OF HIS OR HER DUTIES IF SUCH COMMUNICATION OCCURS (A) IN WRITING OR (B) AT A PREVIOUSLY PUBLICLY NOTICED FORUM OR TOWN HALL OPEN TO THE GENERAL PUBLIC.

THE COMMISSION, ITS MEMBERS, STAFF, ATTORNEYS, EXPERTS, AND CONSULTANTS MAY NOT DIRECTLY OR INDIRECTLY SOLICIT OR ACCEPT ANY GIFT OR LOAN OF MONEY, GOODS, SERVICES, OR OTHER THING OF VALUE GREATER THAN $20 FOR THE BENEFIT OF ANY PERSON OR ORGANIZATION, WHICH MAY INFLUENCE THE MANNER IN WHICH THE COMMISSIONER, STAFF, ATTORNEY, EXPERT, OR CONSULTANT PERFORMS HIS OR HER DUTIES.

(12) EXCEPT AS PROVIDED IN PART (14) OF THIS SECTION, A FINAL DECISION OF THE COMMISSION REQUIRES THE CONCURRENCE OF A MAJORITY OF THE COMMISSIONERS. A DECISION ON THE DISMISSAL OR RETENTION OF PAID STAFF OR CONSULTANTS REQUIRES THE VOTE OF AT LEAST ONE COMMISSIONER AFFILIATING WITH EACH OF THE MAJOR PARTIES AND ONE NON-AFFILIATING COMMISSIONER. ALL DECISIONS OF THE COMMISSION SHALL BE RECORDED, AND THE RECORD OF ITS DECISIONS SHALL BE READILY AVAILABLE TO ANY MEMBER OF THE PUBLIC WITHOUT CHARGE.

(13) THE COMMISSION SHALL ABIDE BY THE FOLLOWING CRITERIA IN PROPOSING AND ADOPTING EACH PLAN, IN ORDER OF PRIORITY:

(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 CHARACTERISTICS OR ECONOMIC INTERESTS. COMMUNITIES OF INTEREST 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.

(14) THE COMMISSION SHALL FOLLOW THE FOLLOWING PROCEDURE IN ADOPTING A PLAN:

(A) BEFORE VOTING TO ADOPT A PLAN, THE COMMISSION SHALL ENSURE THAT THE PLAN IS TESTED, USING APPROPRIATE TECHNOLOGY, FOR COMPLIANCE WITH THE CRITERIA DESCRIBED ABOVE.

(B) BEFORE VOTING TO ADOPT A PLAN, THE COMMISSION SHALL PROVIDE PUBLIC NOTICE OF EACH PLAN THAT WILL BE VOTED ON AND PROVIDE AT LEAST 45 DAYS FOR PUBLIC COMMENT ON THE PROPOSED PLAN OR PLANS. EACH PLAN THAT WILL BE VOTED ON SHALL INCLUDE SUCH CENSUS DATA AS IS NECESSARY TO ACCURATELY DESCRIBE THE PLAN AND VERIFY THE POPULATION OF EACH DISTRICT, AND SHALL INCLUDE THE MAP AND LEGAL DESCRIPTION REQUIRED IN PART (9) OF THIS SECTION.

(C) A FINAL DECISION OF THE COMMISSION TO ADOPT A REDISTRICTING PLAN REQUIRES A MAJORITY VOTE OF THE COMMISSION, INCLUDING AT LEAST TWO COMMISSIONERS WHO AFFILIATE WITH EACH MAJOR PARTY, AND AT LEAST TWO COMMISSIONERS WHO DO NOT AFFILIATE WITH EITHER MAJOR PARTY. IF NO PLAN SATISFIES THIS REQUIREMENT FOR A TYPE OF DISTRICT, THE COMMISSION SHALL USE THE FOLLOWING PROCEDURE TO ADOPT A PLAN FOR THAT TYPE OF DISTRICT:

(I) EACH COMMISSIONER MAY SUBMIT ONE PROPOSED PLAN FOR EACH TYPE OF DISTRICT TO THE FULL COMMISSION FOR CONSIDERATION.

(II) EACH COMMISSIONER SHALL RANK THE PLANS SUBMITTED ACCORDING TO PREFERENCE. EACH PLAN SHALL BE ASSIGNED A POINT VALUE INVERSE TO ITS RANKING AMONG THE NUMBER OF CHOICES, GIVING THE LOWEST RANKED PLAN ONE POINT AND THE HIGHEST RANKED PLAN A POINT VALUE EQUAL TO THE NUMBER OF PLANS SUBMITTED.

(III) THE COMMISSION SHALL ADOPT THE PLAN RECEIVING THE HIGHEST TOTAL POINTS, THAT IS ALSO RANKED AMONG THE TOP HALF OF PLANS BY AT LEAST TWO COMMISSIONERS NOT AFFILIATED WITH THE PARTY OF THE COMMISSIONER SUBMITTING THE PLAN, OR IN THE CASE OF A PLAN SUBMITTED BY NON-AFFILIATED COMMISSIONERS, IS RANKED AMONG THE TOP HALF OF PLANS BY AT LEAST TWO COMMISSIONERS AFFILIATED WITH A MAJOR PARTY. IF PLANS ARE TIED FOR THE HIGHEST POINT TOTAL, THE SECRETARY OF STATE SHALL RANDOMLY SELECT THE FINAL PLAN FROM THOSE PLANS. IF NO PLAN MEETS THE REQUIREMENTS OF THIS SUBPARAGRAPH, THE SECRETARY OF STATE SHALL RANDOMLY SELECT THE FINAL PLAN FROM AMONG ALL SUBMITTED PLANS PURSUANT TO PART (14)(C)(I).

(15) WITHIN 30 DAYS AFTER ADOPTING A PLAN, THE COMMISSION SHALL PUBLISH THE PLAN AND THE MATERIAL REPORTS, REFERENCE MATERIALS, AND DATA USED IN DRAWING IT, INCLUDING ANY PROGRAMMING INFORMATION USED TO PRODUCE AND TEST THE PLAN. THE PUBLISHED MATERIALS SHALL BE SUCH THAT AN INDEPENDENT PERSON IS ABLE TO REPLICATE THE CONCLUSION WITHOUT ANY MODIFICATION OF ANY OF THE PUBLISHED MATERIALS.

(16) FOR EACH ADOPTED PLAN, THE COMMISSION SHALL ISSUE A REPORT THAT EXPLAINS THE BASIS ON WHICH THE COMMISSION MADE ITS DECISIONS IN ACHIEVING COMPLIANCE WITH PLAN REQUIREMENTS AND SHALL INCLUDE THE MAP AND LEGAL DESCRIPTION REQUIRED IN PART (9) OF THIS SECTION. A COMMISSIONER WHO VOTES AGAINST A REDISTRICTING PLAN MAY SUBMIT A DISSENTING REPORT WHICH SHALL BE ISSUED WITH THE COMMISSION'S REPORT.

(17) AN ADOPTED REDISTRICTING PLAN SHALL BECOME LAW 60 DAYS AFTER ITS PUBLICATION. THE SECRETARY OF STATE SHALL KEEP A PUBLIC RECORD OF ALL PROCEEDINGS OF THE COMMISSION AND SHALL PUBLISH AND DISTRIBUTE EACH PLAN AND REQUIRED DOCUMENTATION.

(18) THE TERMS OF THE COMMISSIONERS SHALL EXPIRE ONCE THE COMMISSION HAS COMPLETED ITS OBLIGATIONS FOR A CENSUS CYCLE BUT NOT BEFORE ANY JUDICIAL REVIEW OF THE REDISTRICTING PLAN IS COMPLETE.

(19) THE SUPREME COURT, IN THE EXERCISE OF ORIGINAL JURISDICTION, SHALL DIRECT THE SECRETARY OF STATE OR THE COMMISSION TO PERFORM THEIR RESPECTIVE DUTIES, MAY REVIEW A CHALLENGE TO ANY PLAN ADOPTED BY THE COMMISSION, AND SHALL REMAND A PLAN TO THE COMMISSION FOR FURTHER ACTION IF THE PLAN FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS CONSTITUTION, THE CONSTITUTION OF THE UNITED STATES OR SUPERSEDING FEDERAL LAW. IN NO EVENT SHALL ANY BODY, EXCEPT THE INDEPENDENT CITIZENS REDISTRICTING COMMISSION ACTING PURSUANT TO THIS SECTION, PROMULGATE AND ADOPT A REDISTRICTING PLAN OR PLANS FOR THIS STATE.

(20) THIS SECTION IS SELF-EXECUTING. IF A FINAL COURT DECISION HOLDS ANY PART OR PARTS OF THIS SECTION TO BE IN CONFLICT WITH THE UNITED STATES CONSTITUTION OR FEDERAL LAW, THE SECTION SHALL BE IMPLEMENTED TO THE MAXIMUM EXTENT THAT THE UNITED STATES CONSTITUTION AND FEDERAL LAW PERMIT. ANY PROVISION HELD INVALID IS SEVERABLE FROM THE REMAINING PORTIONS OF THIS SECTION.

(21) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, NO EMPLOYER SHALL DISCHARGE, THREATEN TO DISCHARGE, INTIMIDATE, COERCE, OR RETALIATE AGAINST ANY EMPLOYEE BECAUSE OF THE EMPLOYEE'S MEMBERSHIP ON THE COMMISSION OR ATTENDANCE OR SCHEDULED ATTENDANCE AT ANY MEETING OF THE COMMISSION.

(22) NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONSTITUTION, OR ANY PRIOR JUDICIAL DECISION, AS OF THE EFFECTIVE DATE OF THE CONSTITUTIONAL AMENDMENT ADDING THIS PROVISION, WHICH AMENDS ARTICLE IV, SECTIONS 1 THROUGH 6, ARTICLE V, SECTIONS 1, 2 AND 4, AND ARTICLE VI, SECTIONS 1 AND 4, INCLUDING THIS PROVISION, FOR PURPOSES OF INTERPRETING THIS CONSTITUTIONAL AMENDMENT THE PEOPLE DECLARE THAT THE POWERS GRANTED TO THE COMMISSION ARE LEGISLATIVE FUNCTIONS NOT SUBJECT TO THE CONTROL OR APPROVAL OF THE LEGISLATURE, AND ARE EXCLUSIVELY RESERVED TO THE COMMISSION. THE COMMISSION, AND ALL OF ITS RESPONSIBILITIES, OPERATIONS,

FUNCTIONS, CONTRACTORS, CONSULTANTS AND EMPLOYEES ARE NOT SUBJECT TO CHANGE, TRANSFER, REORGANIZATION, OR REASSIGNMENT, AND SHALL NOT BE ALTERED OR ABROGATED IN ANY MANNER WHATSOEVER, BY THE LEGISLATURE. NO OTHER BODY SHALL BE ESTABLISHED BY LAW TO PERFORM FUNCTIONS THAT ARE THE SAME OR SIMILAR TO THOSE GRANTED TO THE COMMISSION IN THIS SECTION.

~~A commission on legislative apportionment is hereby established consisting of eight electors, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor received the highest vote at the last general election at which a governor was elected preceding each apportionment. If a candidate for governor of a third political party has received at such election more than 25 percent of such gubernatorial vote, the commission shall consist of 12 members, four of whom shall be selected by the state organization of the third political party. One resident of each of the following four regions shall be selected by each political party organization: (1) the upper peninsula; (2) the northern part of the lower peninsula, north of a line drawn along the northern boundaries of the counties of Bay, Midland, Isabella, Mecosta, Newaygo and Oceana; (3) southwestern Michigan, those counties south of region (2) and west of a line drawn along the western boundaries of the counties of Bay, Saginaw, Shiawassee, Ingham, Jackson and Hillsdale; (4) southeastern Michigan, the remaining counties of the state.~~

~~**Eligibility to membership.**~~

~~No officers or employees of the federal, state or local governments, excepting notaries public and members of the armed forces reserve, shall be eligible for membership on the commission. Members of the commission shall not be eligible for election to the legislature until two years after the apportionment in which they participated becomes effective.~~

~~**Appointment, term, vacancies.**~~

~~The commission shall be appointed immediately after the adoption of this constitution and whenever apportionment or districting of the legislature is required by the provisions of this constitution. Members of the commission shall hold office until each apportionment or districting plan becomes effective. Vacancies shall be filled in the same manner as for original appointment.~~

~~**Officers, rules of procedure, compensation, appropriation.**~~

~~The secretary of state shall be secretary of the commission without vote, and in that capacity shall furnish, under the direction of the commission, all necessary technical services. The commission shall elect its own chairman, shall make its own rules of procedure, and shall receive compensation provided by law. The legislature shall appropriate funds to enable the commission to carry out its activities.~~

~~**Call to convene; apportionment; public hearings.**~~

~~Within 30 days after the adoption of this constitution, and after the official total population count of each federal decennial census of the state and its political subdivisions is available, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter. The commission shall complete its work within 180 days after all necessary census information is available. The commission shall proceed to district and apportion the senate and house of representatives according to the provisions of this constitution. All final decisions shall require the concurrence of a majority of the members of the commission. The commission shall hold public hearings as may be provided by law.~~

~~**Apportionment plan, publication; record of proceedings.**~~

~~Each final apportionment and districting plan shall be published as provided by law within 30 days from the date of its adoption and shall become law 60 days after publication. The secretary of state shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of each plan.~~

~~**Disagreement of commission; submission of plans to supreme court.**~~

~~If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section.~~

~~**Jurisdiction of supreme court on elector's application.**~~

~~Upon the application of any elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their duties, may review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution.~~

Article V – Executive Branch

§ 1 Executive power.

Sec. 1. EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE V, SECTION 2, OR ARTICLE IV, SECTION 6, The executive power is vested in the governor.

§ 2 Principal departments.

Sec. 2. All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor, and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes.

Organization of executive branch; assignment of functions; submission to legislature.

Subsequent to the initial allocation, the governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders and submitted to the legislature. Thereafter the legislature shall have 60 calendar days of a regular session, or a full regular session if of shorter duration, to disapprove each executive order. Unless disapproved in both houses by a resolution concurred in by a majority of the members elected to and serving in each house, each order shall become effective at a date thereafter to be designated by the governor.

EXEMPTION FOR INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR STATE LEGISLATIVE AND CONGRESSIONAL DISTRICTS.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONSTITUTION OR ANY PRIOR JUDICIAL DECISION, AS OF THE EFFECTIVE DATE OF THE CONSTITUTIONAL AMENDMENT ADDING THIS PROVISION, WHICH AMENDS ARTICLE IV, SECTIONS 1 THROUGH 6, ARTICLE V, SECTIONS 1, 2 AND 4, AND ARTICLE VI, SECTIONS 1 AND 4, INCLUDING THIS PROVISION, FOR PURPOSES OF INTERPRETING THIS CONSTITUTIONAL AMENDMENT THE PEOPLE DECLARE THAT THE POWERS GRANTED TO INDEPENDENT CITIZENS REDISTRICTING COMMISSION FOR STATE AND CONGRESSIONAL DISTRICTS (HEREINAFTER, "COMMISSION") ARE LEGISLATIVE FUNCTIONS NOT SUBJECT TO THE CONTROL OR APPROVAL OF THE GOVERNOR, AND ARE EXCLUSIVELY RESERVED TO THE COMMISSION. THE COMMISSION, AND ALL OF ITS RESPONSIBILITIES, OPERATIONS, FUNCTIONS, CONTRACTORS, CONSULTANTS AND EMPLOYEES ARE NOT SUBJECT TO CHANGE, TRANSFER, REORGANIZATION, OR REASSIGNMENT, AND SHALL NOT BE ALTERED OR ABROGATED IN ANY MANNER WHATSOEVER, BY THE GOVERNOR. NO OTHER BODY SHALL BE ESTABLISHED BY LAW TO PERFORM FUNCTIONS THAT ARE THE SAME OR SIMILAR TO THOSE GRANTED TO THE COMMISSION IN ARTICLE IV, SECTION 6.

§ 4 Commissions or agencies for less than 2 years.

Sec. 4. EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE V, SECTION 2 OR ARTICLE IV, SECTION 6, Temporary

commissions or agencies for special purposes with a life of no more than two years may be established by law and need not be allocated within a principal department.

Article VI – Judicial Branch

§ 1 Judicial power in court of justice; divisions.

Sec. 1. EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE IV, SECTION 6, OR ARTICLE V, SECTION 2, The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

§ 4 General superintending control over courts; writs; appellate jurisdiction.

Sec. 4. EXCEPT TO THE EXTENT LIMITED OR ABROGATED BY ARTICLE IV, SECTION 6, OR ARTICLE V, SECTION 2, The supreme court shall have general superintending control over all courts; power to issue, hear and determine prerogative and remedial writs; and appellate jurisdiction as provided by rules of the supreme court. The supreme court shall not have the power to remove a judge.

Provisions of existing Constitution altered or abrogated by the proposal if adopted.

Article IV – Legislative Branch

§1 Legislative power.

Sec. 1. The legislative power of the State of Michigan is vested in a senate and a house of representatives.

§ 2 Senators, number, term.

Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor.

Senatorial districts, apportionment factors.

In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned apportionment factors equal to the sum of its percentage of the state's population as shown by the last regular federal decennial census computed to the nearest one-one hundredth of one percent multiplied by four and its percentage of the state's land area computed to the nearest one-one hundredth of one percent.

Apportionment rules.

In arranging the state into senatorial districts, the apportionment commission shall be governed by the following rules:

(1) Counties with 13 or more apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. After each such county has been allocated one senator, the remaining senators to which this class of counties is entitled shall be distributed among such counties by the method of equal proportions applied to the apportionment factors.

(2) Counties having less than 13 apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. Such counties shall thereafter be arranged into senatorial districts that are compact, convenient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 13 apportionment factors, but in no event less than 10 or more than 16. Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there is a failure to comply with the above standards.

(3) Counties entitled to two or more senators shall be divided into single member districts. The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the county by the number of senators to which it is entitled. Each such district shall follow incorporated city or township boundary lines to the extent possible and shall be compact, contiguous, and as nearly uniform in shape as possible.

§ 3 Representatives, number, term; contiguity of districts.

Sec. 3. The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population as provided in this article. The districts shall consist of compact and convenient territory contiguous by land.

Representative areas, single and multiple county.

Each county which has a population of not less than seven-tenths of one percent of the population of the state shall constitute a separate representative area. Each county having less than seven-tenths of one percent of the population of the state shall be combined with another county or counties to form a representative area of not less than seven-tenths of one percent of the population of the state. Any county which is isolated under the initial allocation as provided in this section shall be joined with that contiguous representative area having the smallest percentage of the state's population. Each such representative area shall be entitled initially to one representative.

Apportionment of representatives to areas.

After the assignment of one representative to each of the representative areas, the remaining house seats shall be apportioned among the representative areas on the basis of population by the method of equal proportions.

Districting of single county area entitled to 2 or more representatives.

Any county comprising a representative area entitled to two or more representatives shall be divided into single member representative districts as follows:

(1) The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the representative area by the number of representatives to which it is entitled.

(2) Such single member districts shall follow city and township boundaries where applicable and shall be composed of compact and contiguous territory as nearly square in shape as possible.

Districting of multiple county representative areas.

Any representative area consisting of more than one county, entitled to more than one representative, shall be divided into single member districts as equal as possible in population, adhering to county lines.

§ 4 Annexation or merger with a city.

Sec. 4. In counties having more than one representative or senatorial district, the territory in the same county annexed to or merged with a city between apportionments shall become a part of a contiguous representative or senatorial district in the city with which it is combined, if provided by ordinance of the city. The district or districts with which the territory shall be combined shall be determined by such ordinance certified to the secretary of state. No such change in the boundaries of a representative or senatorial district shall have the effect of removing a legislator from office during his term.

§ 5 Island areas, contiguity.

Sec. 5. Island areas are considered to be contiguous by land to the county of which they are a part.

§ 6 Commission on legislative apportionment.

Sec. 6. A commission on legislative apportionment is hereby established consisting of eight electors, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor received the highest vote at the last general election at which a governor was elected preceding each apportionment. If a candidate for governor of a third political party has received at such election more than 25 percent of such gubernatorial vote, the commission shall consist of 12 members; four of whom shall be selected by the state organization of the third political party. One resident of each of the following four regions shall be selected by each political party organization: (1) the upper peninsula; (2) the northern part of the lower peninsula, north of a line drawn along the northern boundaries of the counties of Bay, Midland, Isabella, Mecosta, Newaygo and Oceana; (3) southwestern Michigan, those counties south of region (2) and west of a line drawn along the western boundaries of the counties of Bay, Saginaw, Shiawassee, Ingham, Jackson and Hillsdale; (4) southeastern Michigan, the remaining counties of the state.

Eligibility to membership.

No officers or employees of the federal, state or local governments, excepting notaries public and members of the armed forces reserve, shall be eligible for membership on the commission. Members of the commission shall not be eligible for election to the legislature until two years after the apportionment in which they participated becomes effective.

Appointment, term, vacancies.

The commission shall be appointed immediately after the adoption of this constitution and whenever apportionment or districting of the legislature is required by the provisions of this constitution. Members of the commission shall hold office until each apportionment or districting plan becomes effective. Vacancies shall be filled in the same manner as for original appointment.

Officers, rules of procedure, compensation, appropriation.

The secretary of state shall be secretary of the commission without vote, and in that capacity shall furnish, under the direction of the commission, all necessary technical services. The commission shall elect its own chairman, shall make its own rules of procedure, and shall receive compensation provided by law. The legislature shall appropriate funds to enable the commission to carry out its activities.

Call to convene; apportionment; public hearings.

Within 30 days after the adoption of this constitution, and after the official total population count of each federal decennial census of the state and its political subdivisions is available, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter. The commission shall complete its work within 180 days after all necessary census information is available. The commission shall proceed to district and apportion the senate and house of representatives according to the provisions of this constitution. All final decisions shall require the concurrence of a majority of the members of the commission. The commission shall hold public hearings as may be provided by law.

Apportionment plan, publication; record of proceedings.

Each final apportionment and districting plan shall be published as provided by law within 30 days from the date of its adoption and shall become law 60 days after publication. The secretary of state shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of each plan.

Disagreement of commission; submission of plans to supreme court.

If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section.

Jurisdiction of supreme court on elector's application.

Upon the application of any elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their duties, may review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution.

Article V – Executive Branch

§1 Executive power.

Sec. 1. The executive power is vested in the governor.

§ 2 Principal departments.

Sec. 2. All executive and administrative offices, agencies and instrumentalities of the executive branch of state government and their respective functions, powers and duties, except for the office of governor and lieutenant governor, and the governing bodies of institutions of higher education provided for in this constitution, shall be allocated by law among and within not more than 20 principal departments. They shall be grouped as far as practicable according to major purposes.

Organization of executive branch; assignment of functions; submission to legislature.

Subsequent to the initial allocation, the governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders and submitted to the legislature. Thereafter the legislature shall have 60 calendar days of a regular session, or a full regular session if of shorter duration, to disapprove each executive order. Unless disapproved in both houses by a resolution concurred in by a majority of the members elected to and serving in each house, each order shall become effective at a date thereafter to be designated by the governor.

§ 4 Commissions or agencies for less than 2 years.

Sec. 4. Temporary commissions or agencies for special purposes with a life of no more than two years may be established by law and need not be allocated within a principal department.

Article VI – Judicial Branch

§ 1 Judicial power in court of justice; divisions.

Sec. 1. The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.

§ 4 General superintending control over courts; writs; appellate jurisdiction.

Sec. 4. The supreme court shall have general superintending control over all courts; power to issue, hear and determine prerogative and remedial writs; and appellate jurisdiction as provided by rules of the supreme court. The supreme court shall not have the power to remove a judge.

Appendix D

STATE CONSTITUTION (EXCERPT)
CONSTITUTION OF MICHIGAN OF 1963

ARTICLE IV
LEGISLATIVE BRANCH

§ 1 Legislative power.

Sec. 1. The legislative power of the State of Michigan is vested in a senate and a house of representatives.

History: Const. 1963, Art. IV, § 1, Eff. Jan. 1, 1964.

Former constitution: See Const. 1908, Art. V, § 1.

§ 2 Senators, number, term.

Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor.

Senatorial districts, apportionment factors.

In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned apportionment factors equal to the sum of its percentage of the state's population as shown by the last regular federal decennial census computed to the nearest one-one hundredth of one percent multiplied by four and its percentage of the state's land area computed to the nearest one-one hundredth of one percent.

Apportionment rules.

In arranging the state into senatorial districts, the apportionment commission shall be governed by the following rules:

(1) Counties with 13 or more apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. After each such county has been allocated one senator, the remaining senators to which this class of counties is entitled shall be distributed among such counties by the method of equal proportions applied to the apportionment factors.

(2) Counties having less than 13 apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. Such counties shall thereafter be arranged into senatorial districts that are compact, convenient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 13 apportionment factors, but in no event less than 10 or more than 16. Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there is a failure to comply with the above standards.

(3) Counties entitled to two or more senators shall be divided into single member districts. The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the county by the number of senators to which it is entitled. Each such district shall follow incorporated city or township boundary lines to the extent possible and shall be compact, contiguous, and as nearly uniform in shape as possible.

History: Const. 1963, Art. IV, § 2, Eff. Jan. 1, 1964.

Constitutionality: The United States Supreme Court held in *Reynolds v Sims*, 377 US 533; 84 S Ct 1362; 12 L Ed 2d 506 (1964) that provisions establishing weighted land area-population formulae violate the Equal Protection Clause of the United States Constitution. Because the apportionment provisions of art 4, §§ 2 - 6 are interdependent and not severable, the provisions are invalidated in their entirety and the Commission on Legislative Apportionment cannot survive. In re Apportionment of State Legislature—1982, 413 Mich 96; 321 NW2d 565 (1982), rehearing denied 413 Mich 149; 321 NW2d 585; stay denied 413 Mich 222; 321 NW2d 615, appeal dismissed 459 US 900; 103 S Ct 201; 74 L Ed 2d 161.

Former constitution: See Const. 1908, Art. V, § 2.

§ 3 Representatives, number, term; contiguity of districts.

Sec. 3. The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population as provided in this article. The districts shall consist of compact and convenient territory contiguous by land.

Representative areas, single and multiple county.

Each county which has a population of not less than seven-tenths of one percent of the population of the state shall constitute a separate representative area. Each county having less than seven-tenths of one percent of the population of the state shall be combined with another county or counties to form a representative area of not less than seven-tenths of one percent of the population of the state. Any county which is isolated under

the initial allocation as provided in this section shall be joined with that contiguous representative area having the smallest percentage of the state's population. Each such representative area shall be entitled initially to one representative.

Apportionment of representatives to areas.

After the assignment of one representative to each of the representative areas, the remaining house seats shall be apportioned among the representative areas on the basis of population by the method of equal proportions.

Districting of single county area entitled to 2 or more representatives.

Any county comprising a representative area entitled to two or more representatives shall be divided into single member representative districts as follows:

(1) The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the representative area by the number of representatives to which it is entitled.

(2) Such single member districts shall follow city and township boundaries where applicable and shall be composed of compact and contiguous territory as nearly square in shape as possible.

Districting of multiple county representative areas.

Any representative area consisting of more than one county, entitled to more than one representative, shall be divided into single member districts as equal as possible in population, adhering to county lines.

History: Const. 1963, Art. IV, § 3, Eff. Jan. 1, 1964.

Constitutionality: The United States Supreme Court held in *Reynolds v Sims*, 377 US 533; 84 S Ct 1362; 12 L Ed 2d 506 (1964) that provisions establishing weighted land area-population formulae violate the Equal Protection Clause of the United States Constitution. Because the apportionment provisions of art IV, §§ 2 - 6 are interdependent and not severable, the provisions are invalidated in their entirety and the Commission on Legislative Apportionment cannot survive. In re Apportionment of State Legislature—1982, 413 Mich 96; 321 NW2d 565 (1982), rehearing denied 413 Mich 149; 321 NW2d 585; stay denied 413 Mich 222; 321 NW2d 615, appeal dismissed 459 US 900; 103 S Ct 201; 74 L Ed 2d 161.

Former constitution: See Const. 1908, Art. V, § 3.

§ 4 Annexation or merger with a city.

Sec. 4. In counties having more than one representative or senatorial district, the territory in the same county annexed to or merged with a city between apportionments shall become a part of a contiguous representative or senatorial district in the city with which it is combined, if provided by ordinance of the city. The district or districts with which the territory shall be combined shall be determined by such ordinance certified to the secretary of state. No such change in the boundaries of a representative or senatorial district shall have the effect of removing a legislator from office during his term.

History: Const. 1963, Art. IV, § 4, Eff. Jan. 1, 1964.

Constitutionality: The United States Supreme Court held in *Reynolds v Sims*, 377 US 533; 84 S Ct 1362; 12 L Ed 2d 506 (1964) that provisions establishing weighted land area-population formulae violate the Equal Protection Clause of the United States Constitution. Because the apportionment provisions of art IV, §§ 2 - 6 are interdependent and not severable, the provisions are invalidated in their entirety and the Commission on Legislative Apportionment cannot survive. In re Apportionment of State Legislature—1982, 413 Mich 96; 321 NW2d 565 (1982), rehearing denied 413 Mich 149; 321 NW2d 585; stay denied 413 Mich 222; 321 NW2d 615, appeal dismissed 459 US 900; 103 S Ct 201; 74 L Ed 2d 161.

§ 5 Island areas, contiguity.

Sec. 5. Island areas are considered to be contiguous by land to the county of which they are a part.

History: Const. 1963, Art. IV, § 5, Eff. Jan. 1, 1964.

Constitutionality: The United States Supreme Court held in *Reynolds v Sims*, 377 US 533; 84 S Ct 1362; 12 L Ed 2d 506 (1964) that provisions establishing weighted land area-population formulae violate the Equal Protection Clause of the United States Constitution. Because the apportionment provisions of art IV, §§ 2 - 6 are interdependent and not severable, the provisions are invalidated in their entirety and the Commission on Legislative Apportionment cannot survive. In re Apportionment of State Legislature—1982, 413 Mich 96; 321 NW2d 565 (1982), rehearing denied 413 Mich 149; 321 NW2d 585; stay denied 413 Mich 222; 321 NW2d 615, appeal dismissed 459 US 900; 103 S Ct 201; 74 L Ed 2d 161.

§ 6 Commission on legislative apportionment.

Sec. 6. A commission on legislative apportionment is hereby established consisting of eight electors, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor received the highest vote at the last general election at which a governor was elected preceding each apportionment. If a candidate for governor of a third political party has received at such election more than 25 percent of such gubernatorial vote, the commission shall consist of 12 members, four of whom shall be selected by the state organization of the third political party. One resident of each of the following four regions shall be selected by each political party organization: (1) the upper peninsula; (2) the northern part of

the lower peninsula, north of a line drawn along the northern boundaries of the counties of Bay, Midland, Isabella, Mecosta, Newaygo and Oceana; (3) southwestern Michigan, those counties south of region (2) and west of a line drawn along the western boundaries of the counties of Bay, Saginaw, Shiawassee, Ingham, Jackson and Hillsdale; (4) southeastern Michigan, the remaining counties of the state.

Eligibility to membership.

No officers or employees of the federal, state or local governments, excepting notaries public and members of the armed forces reserve, shall be eligible for membership on the commission. Members of the commission shall not be eligible for election to the legislature until two years after the apportionment in which they participated becomes effective.

Appointment, term, vacancies.

The commission shall be appointed immediately after the adoption of this constitution and whenever apportionment or districting of the legislature is required by the provisions of this constitution. Members of the commission shall hold office until each apportionment or districting plan becomes effective. Vacancies shall be filled in the same manner as for original appointment.

Officers, rules of procedure, compensation, appropriation.

The secretary of state shall be secretary of the commission without vote, and in that capacity shall furnish, under the direction of the commission, all necessary technical services. The commission shall elect its own chairman, shall make its own rules of procedure, and shall receive compensation provided by law. The legislature shall appropriate funds to enable the commission to carry out its activities.

Call to convene; apportionment; public hearings.

Within 30 days after the adoption of this constitution, and after the official total population count of each federal decennial census of the state and its political subdivisions is available, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter. The commission shall complete its work within 180 days after all necessary census information is available. The commission shall proceed to district and apportion the senate and house of representatives according to the provisions of this constitution. All final decisions shall require the concurrence of a majority of the members of the commission. The commission shall hold public hearings as may be provided by law.

Apportionment plan, publication; record of proceedings.

Each final apportionment and districting plan shall be published as provided by law within 30 days from the date of its adoption and shall become law 60 days after publication. The secretary of state shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of each plan.

Disagreement of commission; submission of plans to supreme court.

If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section.

Jurisdiction of supreme court on elector's application.

Upon the application of any elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their duties, may review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution.

History: Const. 1963, Art. IV, § 6, Eff. Jan. 1, 1964.

Constitutionality: The United States Supreme Court held in *Reynolds v Sims*, 377 US 533; 84 S Ct 1362; 12 L Ed 2d 506 (1964) that provisions establishing weighted land area-population formulae violate the Equal Protection Clause of the United States Constitution. Because the apportionment provisions of art IV, §§ 2 - 6 are interdependent and not severable, the provisions are invalidated in their entirety and the Commission on Legislative Apportionment cannot survive. In re Apportionment of State Legislature—1982, 413 Mich 96; 321 NW2d 565 (1982), rehearing denied 413 Mich 149; 321 NW2d 585; stay denied 413 Mich 222; 321 NW2d 615, appeal dismissed 459 US 900; 103 S Ct 201; 74 L Ed 2d 161.

Transfer of powers: See MCL 16.132.

§ 7 Legislators; qualifications, removal from district.

Sec. 7. Each senator and representative must be a citizen of the United States, at least 21 years of age, and an elector of the district he represents. The removal of his domicile from the district shall be deemed a vacation of the office. No person who has been convicted of subversion or who has within the preceding 20 years been convicted of a felony involving a breach of public trust shall be eligible for either house of the