

Ballot Proposal 2 of 2018



“VOTERS NOT POLITICIANS” PETITION/ INDEPENDENT REDISTRICTING COMMISSION

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**Proposed Constitutional Initiative
November 6, 2018 General Election
Placed on the ballot by petition
Complete to 10-16-18**

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY OF THE BALLOT PROPOSAL:

If approved by a majority of voters, Proposal 18-2 would primarily amend Article IV (Legislative Branch) of the Michigan Constitution of 1963 by changing the composition of the commission charged with redistricting following each decennial census. Articles V (Executive Branch) and VI (Judicial Branch) of the Constitution would also incorporate those changes.

Generally, the amendment would replace the current method of determining the boundaries of congressional, state Senate, and state House districts—namely, governed by the legislature—with a process led by an Independent Citizens Redistricting Commission created under the amendment.

Following each decennial census, 13 commissioners, largely determined by random draw but representing the two main political parties (referred to as Democrats and Republicans for the purposes of this analysis) and political independents, would adopt redistricting plans using specified criteria as to population, geographic contiguousness, and demographic representation, among other considerations. Following public hearings, a period for public comment, and testing of proposed plans by appropriate technology, the commission would adopt the plan supported by a majority of members, including at least two Republicans, two Democrats, and two independents.

The amendment would also “[e]liminate legislative oversight over the independent commission, vest original jurisdiction in the [Michigan] Supreme Court regarding challenges related to the independent commission and create an exception in the power of the executive branch to the extent limited or abrogated by the independent commission.”¹

Unusually, the composition and function of the commission on legislative apportionment described in Section 6 of Article IV of the Constitution does not represent current apportionment/redistricting practice. The process prescribed in the 1963 Constitution was deemed invalid by the Michigan Supreme Court in 1982, with the court finding that its weighted land/population formulae violated the “one person, one vote” equal protection guarantee. State and federal courts oversaw the redistricting process until it was resumed by the legislature for the latest two cycles, in 2001 and 2011.

¹ *Citizens Protecting Michigan’s Constitution v Secretary of State*, Mich App No 343517 (2018).
http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180607_C343517_53_343517.OPN.PDF

The following is the official language as it will appear on the November 2018 general election ballot:

Proposal 18-2

A proposed constitutional amendment to establish a commission of citizens with exclusive authority to adopt district boundaries for the Michigan Senate, Michigan House of Representatives and U.S. Congress, every 10 years

This proposed constitutional amendment would:

- Create a commission of 13 registered voters randomly selected by the Secretary of State:
 - 4 each who self-identify as affiliated with the 2 major political parties; and
 - 5 who self-identify as unaffiliated with major political parties.
- Prohibit partisan officeholders and candidates, their employees, certain relatives, and lobbyists from serving as commissioners.
- Establish new redistricting criteria including geographically compact and contiguous districts of equal population, reflecting Michigan's diverse population and communities of interest. Districts shall not provide disproportionate advantage to political parties or candidates.
- Require an appropriation of funds for commission operations and commissioner compensation.

Should this proposal be adopted?

[] YES

[] NO

The full text of the proposal as it appeared on the circulated petition can be found here: https://www.michigan.gov/documents/sos/Voters_Not_Pol_p_598255_7.pdf

DETAILED SUMMARY:

Eligibility for the commission

The amendment would establish an Independent Citizens Redistricting Commission, consisting of 13 commissioners, as a permanent body in the legislative branch. With certain exceptions, registered and eligible Michigan voters could serve on the commission unless they were current or former lobbyists, elected officials or candidates for partisan federal, state, or local offices, or a close relative of anyone disqualified under those criteria. Commissioners would be ineligible to hold a partisan elective office at the state, county, city, village, or township level in Michigan for five years following the date of appointment to the commission.

Application process

No later than **January 1** in years when the decennial census is being conducted (e.g., 2020, 2030, 2040), the Secretary of State (SOS) would make applications for membership on the commission generally available, and would also mail applications to 10,000 randomly selected Michigan voters. Applicants would need to provide a completed application and attest under oath that they meet the requisite qualifications under the amendment.

Additionally, until **June 1** of that year, the SOS would mail applications to randomly selected Michigan voters until qualifying applications were received in response to the mailing for 30 Democrats, 30 Republicans, and 40 unaffiliated applicants.

Selection to the commission

By **July 1** of that year, the SOS would eliminate any incomplete or nonqualifying applications, and then randomly select 60 people from the Democratic pool, 60 from the Republican, and 80 from the independents. Half of each pool (so 100 people total) would have to come from the second group that had been randomly mailed applications. If any pool were too small to yield the requisite number, the remainder would come from the balance of qualifying applicants to that pool. The random selection process used by the SOS would have to use accepted statistical weighting methods to ensure that the pools mirror the geographic and demographic makeup of the state as closely as possible.

By **August 1** of that year, the party leaders of both houses (the minority and majority leaders in the Senate and the Speaker of the House and minority leader in the House) could each strike five applicants from any pool, for a potential total of 20 strikes.

By **September 1** of that year, from the remaining population of 180 to 200 across the three pools, depending on the number of strikes used, the SOS would select four Democrats, four Republicans, and five independents. Seats that become vacant would be filled by random selection by the SOS from the remaining applicants in the applicable pool.

Functioning of the commission

The SOS would be secretary of the commission and would furnish all necessary technical services as directed by the commission. The commission would have procurement and contracting authority and could hire staff and consultants. By **December 1** of the year preceding the census and while the commission operates, the legislature would have to appropriate funds sufficient to compensate the commissioners and to enable the commission to function, amounting to at least 25% of the general fund/general purpose budget for the SOS for that fiscal year. From that amount, each of the 13 commissioners would receive compensation equal to at least 25% of the governor's salary (which was \$159,300 in 2018, so commissioners would receive at least \$39,825).

The SOS would convene the commission by **October 15** of the census year. Before drafting any plan, the commission would have to hold at least 10 public meetings throughout the state and accept written submissions from any member of the public. After developing at least one proposed plan for each type of district, the commission would publish the proposed plans and any supporting materials. Each commissioner could propose only one plan for each type of district.

The following would be required for each proposed plan:

- Any census data necessary to describe the plan accurately and verify the population of each district.
- A map and legal description that include the political subdivisions (such as counties, cities, and townships), human-made features (such as streets, roads, highways, and

railroads), and natural features (such as waterways) that form the boundaries of the proposed districts.

Then, the commission would have to hold at least five public meetings to receive comments about the proposed plans.

The commission would have to abide by the following criteria in proposing and adopting each plan, in order of priority:

1. Districts must be of equal population as mandated by the U.S. Constitution and must comply with the Voting Rights Act and other federal laws.
2. Districts must be geographically contiguous. Island areas are considered to be contiguous to the county of which they are a part.
3. Districts must reflect the state's diverse population and communities of interest. Communities of interest may include populations that share cultural or historical characteristics or economic interests, and do not include relationships with political parties, incumbents, or political candidates.
4. Districts must not provide a disproportionate advantage to any political party. A disproportionate advantage will be determined using accepted measures of partisan fairness.
5. Districts must not favor or disfavor an incumbent elected official or a candidate.
6. Districts must reflect consideration of county, city, and township boundaries.
7. Districts must be reasonably compact.

Adopting redistricting plans

The commission would adopt redistricting plans for the state Senate, state House, and congressional districts by **November 1** of the year following the census. Before doing so, the commission would need to test the plan, using appropriate technology, for compliance with the criteria above. The commission would also have to provide public notice of each plan under consideration and provide at least 45 days for public comment.

The commission would adopt plans supported by a majority (at least seven) of the commissioners, including at least two Democrats, two Republicans, and two independents. If no plan met this requirement for a type of district, the commission would use ranked voting, as follows:

- Each commissioner could submit one proposed plan for each type of district to the full commission.
- Each commissioner would rank the submitted plans according to preference, with point values assigned to each.
- The commission would adopt the plan with 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.

If plans were tied for the highest point total, the SOS would randomly select the final plan from those plans. If no plan met the requirements described above, the SOS would randomly select the final plan from among all plans submitted under the first bullet point.

Procedure following adoption of plans

Within 30 days after adopting a plan, the commission would publish the plan and material reports, reference materials, and data used in drawing it. It would also issue a report explaining the basis for the decision. (Commissioners dissenting with the adopted plan could submit dissenting reports).

An adopted plan would become law 60 days after its publication. Commissioners' terms would expire once the commission completed its obligations, but not before any judicial review of the plans were complete. The Michigan Supreme Court would have original jurisdiction over challenges to the plans and could remand a plan to the commission for further action if any plan failed to comply with the requirements of the Michigan Constitution, U.S. Constitution, or superseding federal law. In no event would any body except the Independent Citizens Redistricting Commission promulgate and adopt a redistricting plan for the state.

Finally, the proposed amendment states that no additional legislation is necessary to implement the commission, and that any section held invalid would be severable from the remaining sections. By approving the amendment, the people would declare that the functions of the commission are not subject to the control or approval of the legislature.

BACKGROUND INFORMATION:

According to the Michigan Constitution of 1963, a proposed amendment to the Constitution must be accompanied by the signatures of 10% or more of the number of votes cast for all candidates in the last gubernatorial election in order to go before the electorate.² 3,156,531 votes³ were cast in the gubernatorial race in 2014, meaning that a constitutional amendment initiative requires 315,654 signatures. Those signatures must be collected within 180 days, submitted to the Secretary of State at least 120 days prior to the election, and verified as valid by the Board of State Canvassers.

On December 18, 2017, Voters Not Politicians (VNP) submitted the petition along with approximately 425,000 signatures. Another ballot question committee, Citizens Protecting Michigan's Constitution (CMPC), sent a letter to Michigan's Secretary of State calling for rejection of the petition based on the argument that it would constitute a *revision* of the Constitution rather than an *amendment* to it.⁴ VNP then sent a letter to the Board requesting that it certify the petition, as it had submitted the requisite number of signatures by the deadline and the validity of the signatures had been established by sampling.

On May 22, 2018, the Bureau of Elections released its staff report recommending that the Board certify the petition.

CMPC then sought a writ of mandamus from the Michigan Court of Appeals that would order the SOS and the Board to reject the VNP petition. VNP filed a cross-complaint,

² Michigan Constitution of 1963, Article XII, Section 2. <http://legislature.mi.gov/doc.aspx?mcl-Article-XII-2>

³ <https://miboecfr.nictusa.com/election/results/14GEN/>

⁴ http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180607_C343517_53_343517.OPN.PDF

asking the court to order those parties to execute their legal duties and certify the petition. In its order granting VNP's cross-complaint (and directing the Board to take the necessary steps to place the petition on the ballot), the court found that, while the proposal is "undeniably detailed...it is targeted to achieve a single, specific purpose."⁵ It found that the amendment would merely change the method by which commissioners would be chosen and add unaffiliated voters to the (albeit inactive) commission described in the Constitution currently. Thus, it found that the VNP petition would constitute an amendment rather than a general revision.

On July 31, 2018, the Michigan Supreme Court affirmed the judgment of the Court of Appeals that the VNP initiative is a permissible voter-initiated constitutional amendment.⁶

The Board certified that the petition contained a sufficient number of valid signatures on June 20, 2018.⁷ The SOS published the 100-word description of the petition as it will appear on the ballot on August 30, 2018. (That description is included on the second page of this analysis.)

FISCAL IMPACT:

The proposed constitutional amendment would result in increased costs to the state related to funding the Independent Citizens Redistricting Commission, administrative costs to the Department of State (DOS), and likely litigation costs stemming from defending challenges to the commission's redistricting plans. Based on estimates of each of these cost factors, a total estimate of increased costs to the state is approximately \$6.3 million over the duration of each decennial redistricting period. The operations for each redistricting period would likely cover three fiscal years. Details of the estimate are provided below.

Independent Citizens Redistricting Commission

The proposal would require the legislature to appropriate funds sufficient to compensate commissioners and for the commission to carry out its operations and activities. The required amount is to be at least 25% of the amount of General Fund/General Purpose (GF/GP) funds appropriated to the Department of State (DOS). The amendment also states that all unexpended funds remaining at the end of the fiscal year must be returned to the general fund. Considering that the DOS's GF/GP appropriation fluctuates from one fiscal year to the next, the average of the GF/GP amounts appropriated in the three most recent fiscal years is used to estimate the annual appropriation to the commission at approximately \$5.4 million. From each annual appropriation, commissioners are to receive compensation equal to at least 25% of the governor's salary. This would result in an annual compensation of \$39,825 for each commissioner, and \$517,725 for all 13 commissioners, leaving just under \$4.9 million for the commission's operations and activities.

⁵ *Citizens* at 20.

http://publicdocs.courts.mi.gov/OPINIONS/FINAL/COA/20180607_C343517_53_343517.OPN.PDF

⁶ http://publicdocs.courts.mi.gov/OPINIONS/FINAL/SCT/157925_86_01.pdf

⁷ https://www.michigan.gov/documents/sos/Bal_Prop_Status_560960_7.pdf

Section 6(5) of the amendment states that the legislature must make the first appropriation for the commission no later than December 1 of the year preceding the federal decennial census, or FY 2019-20. The commission is expected to continue its activities until late 2021, or early FY 2021-22. This time span would cover three fiscal years and require three appropriations as described above, resulting in a total of \$16.2 million GF/GP in authorized spending from FY 2019-20 to FY 2021-22. *However, the commission is not obligated, or likely, to expend the full spending authorization in every fiscal year.*

The final selection of commissioners will not be complete until nearly the end of FY 2019-20, and the commission is not required to convene until after the beginning of FY 2020-21. It is likely, then, that little will be expended from the FY 2019-20 appropriation and that the authorized funds will lapse back to the general fund. Based on spending patterns from similar redistricting commissions in California,⁸ Arizona,⁹ and Washington,¹⁰ it is predicted that the commission will not utilize its full spending authority in either FY 2020-21 or FY 2021-22. Not counting subsequent legal costs, California spent approximately \$8.6 million over two years for its 2010 decennial census redistricting commission. Washington's budget for its commission's 2010 redistricting was \$2.7 million over two fiscal years. Arizona spent approximately \$2.3 million to establish its commission, before appropriating approximately \$12.0 million to support litigation costs over the following six years. Considering Michigan's population, and that this would be the commission's first decennial redistricting operation, it is estimated that operations and activities will cost approximately \$3.5 million in FY 2020-21 and \$1.5 million in FY 2021-22.

Legal costs

Costs to defend redistricting plans in subsequent litigation battles have been a significant source of expense in Arizona and California. Section 6(6) of the amendment states that the legislature shall provide "adequate funding to allow the commission to defend any action regarding an adopted plan." California spent over \$1.8 million in legal costs following its 2010 decennial census redistricting¹¹ and is recommending over \$3.0 million to be budgeted for the upcoming 2020 decennial census redistricting to cover post-deliberation litigation costs.¹² As mentioned previously, Arizona appropriated over \$12.0 million in litigation costs over the course of six years. Michigan should anticipate some potential legal costs related to the commission's redistricting plans. It is therefore estimated that an additional \$2.0 million could be expended from the FY 2021-22 appropriation, with additional costs possible in the subsequent years.

⁸ https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2012/06/handouts_20120605_crc_costreport.pdf

⁹ https://www.azauditor.gov/sites/default/files/IRC_2012.pdf

¹⁰ http://www.redistricting.wa.gov/assets/Agendas/Minutes_20110712.pdf

¹¹ https://wedrawthelines.ca.gov/wp-content/uploads/sites/64/2012/06/handouts_20120605_crc_costreport.pdf

¹² Sonenshein, Raphael J., "When the People Draw the Lines: An Examination of the California Citizens Redistricting Commission," League of Women Voters of California, 2013.
<https://cavotes.org/sites/default/files/jobs/RedistrictingCommission%20Report6122013.pdf>

Department of State administration

The proposal would require increased responsibilities from the DOS in administrating the redistricting process, but does not require any appropriation to support the associated costs. The commission’s required appropriation would be appropriated to the budget for the legislature, where the commission will be housed. The DOS estimates that the cost of printing and mailing information and applications to voters will cost 55 cents per item. The proposal requires that 10,000 mailings be sent, and that mailings continue to be sent until a certain number of applicants are obtained. This results in a number of possible mailings as large as the number of eligible voters in Michigan. However, assuming that the required number of applicants is obtained after 20,000 mailings, the cost to the DOS will be \$11,000.

Furthermore, in order to fulfil the administrative role of being secretary of the commission and responsible for “all technical services that the commission deems necessary” given to the DOS in the amendment, the DOS may need to hire an additional temporary FTE employee. Using the average Michigan Civil Service employee salary,¹³ it is estimated that an additional \$107,000 would be needed to cover the cost of an additional FTE in each year the commission operates.

Total estimated increased costs

The legislature appropriated \$878,000 for the 2010 reapportionment in Public Act 193 of 2010. Adjusted for inflation, this amount would be equal to just over \$1.0 million in 2018. Adding the costs estimated above, as shown in Table 1, below, the proposal’s total estimated increased cost to the state for each decennial redistricting commission would be \$6.3 million.

Table 1: Summary of Total Estimated Increased Costs

<u>Budget</u>	<u>FY 2019-20</u>	<u>FY 2020-21</u>	<u>FY 2021-22</u>	<u>Total</u>
Legislature	\$0	\$3,500,000	\$3,500,000	\$7,000,000
Dept. of State	\$118,000	\$118,000	\$118,000	\$354,000
Total	\$118,000	\$3,618,000	\$3,618,000	\$7,354,000
Current Costs				(\$1,005,200)
Total Estimated Increased Costs				\$6,348,800

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

¹³ State of Michigan Civil Service Commission, “Thirty-eighth Annual Workforce Report, Fiscal Year 2016-17.”