



MEMORANDUM

TO: Michigan Independent Citizens Redistricting Commission (MICRC)

CC: MICRC & MDOS Staff

FROM: Julianne V. Pastula *JVP*
General Counsel, MICRC

DATE: February 9, 2022

RE: Considerations Regarding Further Modification of the Rules of Procedure

The Michigan Independent Citizens Redistricting Commission (MICRC) is moving toward the effective date of its adopted maps¹ and is currently in the process of completing its final work relative to those maps (i.e., final report²). As the MICRC is currently defending two lawsuits³, the judicial review of the adopted redistricting plans is ongoing. When both the final work of the MICRC and the judicial review is complete, Section 6(18) of Article 4 of Michigan’s 1963 Constitution will be activated. The MICRC began its discussion regarding additional options to consider for potential amendment⁴ of its Rules of Procedure (i.e., holding remote meetings and reconvening) at its last meeting. This document builds on the prior memorandum⁵ and further discusses the expiration of Commissioner terms and potential reconvening of the MICRC.

Section 6(18) of Article 4 of Michigan’s 1963 Constitution states that “[t]he 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.” During the brief discussion during the January 27th MICRC meeting, a question was raised regarding the meaning of “expire.” It is defined as:

- a coming to an end; esp. a formal termination on a closing date. *Black’s Law Dictionary* (8th ed).
- to come to an end: such as a) to exceed its period of validity, b) to pass its expiration date. *Merriam-Webster’s Collegiate Dictionary* (11th ed).

¹ Const 1963, art 4, § 6(17).

² Const 1963, art 4, § 6(16).

³ *League of Women Voters of Michigan, et al v. Independent Citizens Redistricting Commission*, MSC Docket No. 164022 and *Banerian v. Benson*, WD Mich, Case 1:22-cv-00054.

⁴ Please note this memorandum is a discussion document that does not satisfy the notice and publication requirements under Section 14.2 of the current Rules of Procedure for action to be taken at the February 10th MICRC meeting.

⁵ *Potential Options for Further Modification of the Rules of Procedure*, dated January 25, 2022.

These definitions connote finality and at first glance suggest the 2020 MICRC could not be reconvened. However, in a larger context, this interpretation is not supported when the full text of Article 4, Section 6 is examined.

Absent new legal challenges, when judicial review of the current litigation regarding the work of the 2020 MICRC is complete, Commissioner terms “expire.” However, should a future legal challenge be successful and a Court orders that remedial maps be drawn⁶, Subsection 19 is clear 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.” This coupled with the language in both Subsections 2 and 7 setting forth not only the process but also the timing by which commissioners shall be selected and the commission convened (both the responsibility of the Secretary), does not permit the seating of a “new” MICRC until the 2030 body is selected pursuant to Subsection 2.

Another important, if not critical consideration, is the eligibility language in Subsection 1 as well as potential vacancies under Subsection 3 that could manifest in the timeframe between the 2020 and 2030 bodies. The role of the Secretary of State delineated in the constitutional text, the fact that there will always be an individual serving as Secretary of State, the operational and technical capacity of that office to notice and convene the MICRC all support preserving that function in the Secretary. This does not grant the Secretary additional powers and should a call to convene be issued, the Secretary cannot call the meeting to order unless a quorum of Commissioners eligible to serve is present. Should a vacancy exist, the Secretary’s role and the constitutional language is clear on how that vacancy shall be filled. Individual Commissioners (and staff) lack not only the capacity (i.e., post notice, secure meeting location, etc.) but also the authority under the current constitutional language to reconvene the MICRC.

Therefore, it is recommended that the Commission consider language to reconvene the Body in the event it completes its final work, the current lawsuits are resolved, and new legal challenges are not filed until later this decade. It is not uncommon for redistricting litigation to be filed 5-6 years after plans are adopted. During the previous redistricting cycle in Michigan, a challenge to the 2011 plan was filed in 2017.⁷ If and when the language of Subsection 18 is triggered, it is recommended a mechanism be in place to reconvene the MICRC.⁸

⁶ Continuation of outside counsel contracts and handling of lawsuits prior to a court-ordered reconvening is also a consideration as is whether the MICRC has the ability to reconvene absent a Court-ordered remand. The MICRC is in the process of reviewing current contracts and a clause addressing this issue could be inserted that preserves the Body’s rights.

⁷ *League of Women Voters v Benson*, 373 F Supp 3d 867 (ED Mich, 2019).

⁸ It is also important to acknowledge that this is ultimately a future question for the courts to resolve should there be litigation later this decade. However, leaving the issue open without a rule or process in place is unadvised.