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Legal Considerations and Discussion of Justifications Re: Criteria Dated: October 7, 2021

Michigan voters, in a purposeful and intentional way, granted the MICRC full authority to implement the redistricting process in accordance with the new constitutional amendment that includes ranked criteria to be followed in that ranked numerical priority order. Advocacy efforts for adherence to criteria that are obsolete or that disregard the plain language of the current Constitution shall be rejected. Now that the MICRC is in its compliance phase and moving into its final work, that nature of that work and the language, framing and context used to describe it deserve heightened sensitivity. Particularly given that the MICRC is reviewing its prior work and will need to clearly articulate why revisions are or are not being made. When drawing district maps, Commissioners may review the following considerations based on the ranked constitutional criteria.

1. Consider that districts shall be of equal population...and shall comply with the Voting Rights Act.

- **Congressional districts must be drawn to be “nearly equal as possible.”** “One person, One vote” codifies the legal mandate that the population of each election district AND the population variance of ALL the districts (of the same body: state, county, city, etc.) combined must be so substantially equal as to not violate the principle of counting each person’s vote equally with all others votes.
- **Legislative districts do not have the same requirement and may be “substantially equal” or drawn with some deviations from virtually equal population.** However, such deviations must be explained and justified as complying with legitimate policy considerations, such as compliance with the Voting Rights Act, to be constitutional.

Legally compliant explanations must include HOW equal population was considered and HOW did the commission consider VRA compliance, such as not dividing minority populations, not diluting minority voting strength, following racially polarized voting and election analysis, and including applicable Voting Rights Act-related communities of interest identified by citizen comments. The U.S. Supreme Court has held that population deviations can be justified by demonstrating a rational policy in making the choices that resulted in the deviation.

2. Consider that districts shall be geographically contiguous...

Be prepared to explain how contiguity was considered or evaluated and whether the district is contiguous because all of the lines that create it are connected. A district consisting of two or more unconnected areas is not contiguous.

3(a). Consider that districts shall reflect the state's diverse population.

Explain how you considered diversity or made adjustments to accommodate a diverse population present in an area. For example, diversity can include or involve people from a range of different social and ethnic backgrounds and of different genders, sexual orientations, races, religions, economic situations, etc.

3(b). Consider that districts shall reflect the state's communities of interest.

Explain and describe the relevant community(ies) of interest included in the district and the reasons for their inclusion. Please note your own research into why a particular community of interest was included or not included in your district. Evidence of shared interests should be demonstrated. If a COI coincides with race/ethnicity, it should not be the sole focus or "predominant factor" and compliance with the VRA is required.

4. Consider that districts shall not provide a disproportionate advantage to any political party using "acceptable measures of partisan fairness."

Explain and describe how this was achieved, whether through adjustments to district lines or acceptance of the testing results. Explain and describe your consideration of political fairness testing methodologies and identify those methodologies (i.e., seats/votes ratio, lopsided margins, mean-median difference and efficiency gap).

5. Consider that districts shall not favor or disfavor an incumbent elected official or a candidate.

Be prepared to explain and describe how this was achieved. Explain whether or not you knew the address/location of any incumbent state legislature or Congressional elected official or political candidates when creating the district. This can demonstrate both direct and circumstantial evidence of intent (or lack of intent) to favor nor disfavor incumbents. Generally, this criterion

represents an effort to ban partisan gerrymandering by rejecting influence of current elected officials or preservation of their seats.

6. Consider that districts shall reflect consideration of county, city, and township boundaries.

Explain and describe HOW you considered such political boundaries while complying with the Constitution's ranked order priorities. This may include adjustments to district lines to either include or exclude portions of the political subdivisions listed in the criteria while considering other criteria. The Commission could choose to note the number of boundary splits in a given plan.

7. Consider districts shall be reasonably compact.

Explain and describe HOW you considered compactness while complying with the Constitution's ranked order priorities. If you created a Voting Rights Act majority minority or minority plurality district, explain how your district is "reasonably compact." A district that "reaches out to grab small and apparently isolated minority communities" is not reasonably compact according to the U.S. Supreme Court. Explain and describe your consideration of compactness measures and identify those scores. Note whether adjustments were made and, if so, why.

What is NOT an acceptable consideration or justification when drawing districts?

Below are some examples of considerations and justifications for drawing a district that are not acceptable based on the terms and criteria provided in the Michigan Constitution. Compliance with the constitutional criteria is critical to producing legally defensible maps.

- ⊗ **Example:** *"I drew this district because I think the shape of it is pretty!"*
Instead: Aesthetically pleasing districts is not one of the ranked criteria. Commissioners must utilize the constitutional criteria and use the ranked order when drawing district lines and providing justifications.

- ⊗ **Example:** *"I heard a lot of public comment that we should only draw straight lines."*
Instead: Public comment is critical for several criteria, like Communities of Interest, but some input may not comply with the constitutional criteria. Only use the constitutional criteria to justify how district lines are drawn. Public comments may not be legally dispositive or legally

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compliant with state and federal laws, and those laws must be primarily relied upon when creating districts.

⊗ **Example:** *"I drew this district to make life easier for the election clerk."*

Instead: Consideration of election clerks is not a constitutional consideration for drawing districts. Use the constitutional criteria and consider the ranked order when drawing district lines and providing your justifications.

⊗ **Example:** *"I don't think there are people living there because the voter turnout is low in this area, and we should accommodate that."*

Instead: Do not speculate or guess facts in the absence of data particularly if the topic is not a consideration in redistricting. Only use the constitutional criteria to justify how district lines are drawn.