



December 23, 2021

Via U.S. Mail and Email

To: Michigan Independent Citizens Redistricting Commission
P. O. Box 30318
Lansing, Michigan 48909
redistricting@michigan.gov

Re: Voting Procedure / Demand

Ladies and Gentlemen:

I represent Ms. Erin Wagner, whom as you know is a duly appointed commissioner of the Michigan Independent Citizens Redistricting Commission. To get directly to the point, Ms. Wagner hereby demands that the Commission immediately rescind any promulgated rule(s) and procedure(s) that would restrict or prohibit her from submitting a new proposed plan should a published plan not be approved pursuant to Article 4, Section 6(14)(c) of the Michigan Constitution of 1963. To deny her that opportunity, and indeed to deny any commissioner that opportunity, would be to deny that commissioner their constitutional right to do the same.

As the Commission is aware, the procedure for approving a redistricting plan is specified in the aforementioned Section 6(14). That Section sets forth a two-stage approval process that can be summarized as follows:

1. Each commissioner may propose one redistricting plan for each type of district: state senate, state house, and federal congressional.
2. Proposed redistricting plans shall be published for a period no less than 45 days. During the publication period, the public shall be allowed to comment on these plans.
3. After the expiration of at least 45 days, the Commission is to hold a final vote on the adoption of the proposed published plans. A plan may not be approved unless it receives a “2-2-2” vote, meaning that at least two commissioners affiliated with both major political parties and two independents must vote for a particular plan.
4. If redistricting plans are approved for state senate, state house, and congressional districts, then the Commission’s work is concluded.
5. If, however, a final plan is not approved for one or more of these districts, then the following second procedure “shall” be utilized.

From the desk of:

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6. Each commissioner may propose one redistricting plan to the Commission for consideration.

7. The commissioners shall assign a numbered rank to the plans submitted. The plan receiving the highest number of “points” is the plan that is approved subject to conditions. If the plan was submitted by a commissioner affiliated with a major political party, that plan must also be scored in the top half by two commissioners of the opposing political party. If the plan was submitted by an independent commissioner, it must also be ranked in the top half by at least two commissioners affiliated with a major political party. In the event of a tie, or if no plan meets these conditions, the secretary of state conducts a random draw of the plans.

The Commission is currently near the conclusion of step two outlined above. Proposed plans were published on November 12, 2021. From what I understand, the Commission intends will move forward to step three, the final vote, on December 28, 2021. Should one or more districts not receive the requisite 2-2-2 vote, it is not clear when the Commission intends to proceed with the second plan submission and voting process. Clear, however, is that the Commission has adopted a rule, first promulgated by vote on November 4, 2021, which restricts commissioners from submitting any plan under step six to those originally published on November 12, 2021. This rule is unconstitutional.

First, the plain language of Section 6 simply does not contain this restriction. See *Coal of State Emp Unions v State*, 498 Mich 312, 323; 870 NW2d 275 (2015) (courts must apply the plain meaning of constitutional provisions). As your own counsel informed you on November 7, 2021, a limitation that is not within the express language of a provision governing a governmental body may not be created or inferred. *Mich Charitable Gaming Ass’n v Michigan*, 310 Mich App 584, 600-01; 873 NW2d 827 (2015).

Second, the interplay of Section 6’s provisions does not support such a restriction. Considering all provisions together, Subsection 14 clearly delineates two separate plan submissions, each independent of the other. The text clearly indicates that first vote is to be on plans published pursuant to Subsection 14(b). Should this vote fail to result in an approved plan for each type of district, Subsection 14(c) describes a second and wholly separate submission process without any publication requirement. A critical example of support for this reading is found at Subsection 14(c)(iii). That subsection requires the secretary of state to randomly approve a plan should no plan ultimately receive the required level of support. Expressly stated is that this random draw is to be made from plans submitted under Subsection 14(c); not Subsection 14(b).

Third, structural concerns do not support the rule. The rationale behind enactment of Section 6 was to create a citizen-driven, public redistricting process. Fundamental to the new process is the right of the citizenry to have critical comment on proposed redistricting plans. While it may be that the impetus behind the Commission’s adoption of the offending rule was exactly that concern, it will have the opposite effect. Under this rule, no commissioner may propose a new plan incorporating the citizenry’s input should an original plan not be approved.

For these reasons, Ms. Wagner demands that she, and indeed any commissioner, be permitted to submit a new plan pursuant to Subsection 14(c)(i) should plans not be adopted for each district following the initial vote. Even if plans are adopted for all districts on the initial vote, she further demands that the offending rule be rescinded so as to avoid the perpetuation of an unconstitutional procedure. Should the Commission

fail to take these steps, be advised that it is Ms. Wagner's intent to immediately pursue legal action with the Michigan Supreme Court.

Best Regards,


MATTHEW E. GRONDA