BRENNAN
CENTER
FOR JUSTICE

**Testimony of**

**Myrna Pérez and Justin Levitt**
**Brennan Center for Justice at NYU School of Law**

**Before the**
**Michigan House Judiciary Committee**

**April 13, 2010**

Good afternoon, distinguished members of the Committee. I thank you for the opportunity to speak at this very important hearing. My name is Myrna Pérez, and I am an attorney at the Brennan Center for Justice at NYU School of Law. The Brennan Center is a non-partisan organization that unites scholars and advocates in pursuit of a vision of inclusive and effective democracy. Toward that end, the Center's Democracy Program promotes reforms that eliminate barriers to full and equal political participation and that foster responsive and responsible governance.

In particular, the Brennan Center has been at the forefront of research on redistricting procedures, both in the Midwest and across the country. We have extensively studied redistricting practices nationwide, analyzed both successful and unsuccessful attempts at redistricting reform, and produced materials to educate the public about the benefits and consequences of various redistricting methods. We have testified with respect to proposed redistricting legislation, and assisted advocates and elected officials in drafting such legislation. In addition, we have participated as *amici curiae* in many of the major cases addressing the use of redistricting for partisan gain or at the expense of minority voters.

We are very pleased that the Committee has chosen to evaluate publicly how Michigan draws the boundaries for its state legislative — and, we hope eventually, congressional — districts. We commend you for prioritizing this critically important process, and for airing this debate before the redistricting cycle is fully upon us. We urge the Committee to ensure that meaningful reform follows in a manner as timely as these hearings.

Today, I will propose four specific elements that I suggest should serve as a frame for reform of the redistricting process: meaningful independence, meaningful diversity, meaningful guidance, and meaningful transparency. Before we discuss those components, however, I hope to briefly lay out an overview of the need for reform. I will describe the structure of the current system by which Michigan district lines are drawn, noting especially the potential for legislators to influence their own districts' boundaries, and the risks of such a system. I will also briefly lay out alternative structures for drawing district lines that are in place in other states, some of which may prove to be useful models.

We feel strongly that there is no single redistricting archetype that fits all 50 states — a system for Michigan must consider the unique demographics and political issues that confront Michigan voters. Still, we hope that the basic principles we focus on today can provide useful guidance as your deliberations continue.

**The Michigan redistricting system**

Each state's redistricting system is slightly different, in both design and implementation. Michigan stands out for a particularly salient reason, though: it is one of only two states we know of without a valid state constitutional provision specifically governing the redistricting process.[1] It is therefore one of only two states — Michigan and Delaware — where you, the state legislature, have the power to reform the process completely and unambiguously by statute alone.

Thus far, you have left yourselves plenary responsibility for drawing the lines of both state legislative districts and Congress, subject to gubernatorial veto. You have imposed fairly rigid geometric constraints on yourself, in addition to those set by federal law: counties, cities, and townships, in that order, are to be kept intact where possible, and if any city or township contains more than one district, those districts must be as compact as possible. (When multiple state legislative districts fall within a city or township, there is a further constraint on population disparity, even if districts are slightly less compact as a result.) But subject to these constraints, you still hold the pen.

As a result, as you know well, many state legislators become extensively involved in determining the bounds by which they and their congressional colleagues are elected. Moreover, this process can unfold in ways not readily transparent to the public, including "review" of shell bills in which the intended district maps are not revealed until the 11th hour.

Such a process contains substantial flaws. The process of drawing legislative lines affects the interests of individual legislators, the interests of political parties, and the interests of represented communities — or, put differently, the public good. When legislators personally are able to set the lines by which they are elected, there arises a natural temptation to conflate the three, even when those officials act with the purest of motives. That is, even conscientious elected representatives might be tempted to draw electoral lines that insulate their districts from effective challenge and promote their party's fortunes — because they believe themselves and their party best able to serve their constituents.

Such temptations — whether fueled by self-interest or zealous advocacy — weaken the democratic process and blunt the voice of the electorate. By drawing district lines to promote individual and party security, legislators with a hand in the process become enmeshed in the task of building districts based on favored constituents and disfavored ones. That is, representatives get into the business of choosing their constituents, rather than the other way around.

---

[1] *See generally* In re Apportionment of State Legislature 1982, 321 N.W.2d 565 (Mich. 1982).

Just as important is the way that this process appears to the public. Even if some individuals choose to forgo self-interested temptation, a system that encourages legislators to design their own districts fosters the public perception that improper self-dealing is at work.

The appearance of rampant self-interest is driven, in part, by outcomes: election results feed the intuition that districts are drawn for protection of self and party. The results would be less worrisome if legislators were not themselves responsible for drawing their own districts. However, with the structural opportunity for self-interest, it looks to many as if the contest has been rigged.

For example, as you know, Michigan overall tends to be relatively closely divided politically, with most statewide races since 2000 won by Democrats.[2] Federal and state districts within the state, however, were drawn by a Republican legislature and approved by a Republican governor in 2001. And looking to the underlying political preferences of the voters in the districts created by that process, 67% of Congressional seats favored Republicans, and 53% of the seats in the state legislature favored Republicans.[3]

This is a blunt metric, to be sure. Some of the factors that contribute to districts with a certain partisan composition are driven by where voters with various political preferences choose to live. Moreover, in order to represent particular distinctive communities, it will often be necessary to link like-minded voters together; with the right constellation of geography, such groupings can shift the statewide political balance. And in 2002, legislators like Senator Prusi or then-Representative Richardville showed that it is certainly possible to win an election in districts slanted toward the opposing party; today, the political shift in both federal and state delegations shows that districts slanted toward one party may not lock in an advantage over the course of an entire decade.

Still, when redistricting yields districts slanted substantially toward the party in charge of the process, particularly when that party does not have a substantial statewide majority, it naturally raises disturbing questions about the incentives of those involved. And when legislators are themselves drawing the lines, it is much more difficult to explain lopsided district composition and the resulting lopsided elections in terms that put the public interest foremost.

It is not merely the process that creates questions about whether the resulting maps are truly in the public interest. The strictness of Michigan's geographic and geometric criteria may also unduly commit the process to results that appear odd or counterproductive locally.

Consider the current emphasis on county boundaries. It is true that a sharp priority on county boundaries creates districts that appear neat and regular. But many of these county lines,

---

[2] *See* Mich. Dep't of State, Elections in Michigan: Previous Election Information, at http://www.michigan.gov/sos/0,1607,7-127-1633_8722---,00.html.

[3] We estimate the "underlying political preference" of voters through a data source recognized by many political scientists for this purpose: the presidential election of 2000, viewed by many as the best single election expressing underlying precinct-based partisan preference around the 2000 redistricting cycle. Professor Michael McDonald, of George Mason University, has aggregated precinct-based election results to determine the underlying political composition of Michigan's legislative districts drawn in 2002, and graciously supplied the data for this analysis. His technique is more fully described in MICHAEL P. MCDONALD, MIDWEST MAPPING PROJECT 8-9 (2009).

in a sharp grid across much of the state, are largely derived from 18th-century geometric surveying techniques that created abstract township grids in the Northwest Territories, before settlements arose.[4] Real communities rarely develop with 18th-century Enlightenment geometry. And though county lines may make for reasonable district boundaries in portions of the state, they can create anomalies elsewhere. For example, an African-American community links Detroit and Southfield, but county lines both divide the community and overpack minority Detroit residents; legislative districts that follow these lines appear to limit minority citizens' voting strength, raising serious questions under the Voting Rights Act. County lines also contribute to the fact that, as you no doubt know well, pieces of Lansing are divided into four different State House districts, and pieces of East Lansing are similarly divided by county lines into two House districts. If residents here feel more connected to their municipality than their county, representation dependent on inflexible fealty to county lines will suffer.

Following county boundaries is also not politically "neutral" — indeed, virtually every redistricting criterion is likely to have a predictable political effect. In this case, Professor Michael McDonald of George Mason University has demonstrated that preserving county boundaries, in line with the Apol standards of the late 1990s, may tend to create a mild structural bias in favor of the Republican party.[5] This finding is consistent with similar studies in other jurisdictions.[6] Again, the ability to deviate from the rigidity of Michigan's existing county-city-township hierarchy may help ameliorate the bias.

**Alternatives**

There are many alternatives to the status quo already successfully implemented in other states.[7] Some of these alternatives concern the process by which individuals are selected to draw district lines, or guidelines governing where the lines are to be drawn, or both.

*Who draws the lines*

Five states, for example, employ an advisory commission to help advise the legislature on where state legislative lines should be drawn. The most widely analyzed of these is in Iowa, where the legislature's bureau of nonpartisan civil servants, normally responsible for legal drafting, budget analysis, and technical advice, is charged with preparing drafts of redistricting plans. This bureau prepares a draft redistricting map, which the legislature may accept or reject as is, but may not modify. If the map is rejected, the nonpartisan bureau will try again, with another opportunity for the legislature to vote up or down without change. If the legislature rejects two sets of plans, and the nonpartisan bureau returns with a third map, the legislature is then, on the third try, able to accept, reject, or modify the plan it has given. Since the procedure

---

[4] *See, e.g.*, Land Ordinance of 1785 (reprinted in 28 J. CONTINENTAL CONG. 375 (Jon Fitzpatrick ed., 1933)), available at http://bit.ly/by5F0L; Clarke Historical Library, Michigan Local History Introduction, at http://clarke.cmich.edu/localhistory/countycreation.htm.

[5] *See* MICHAEL P. MCDONALD, MIDWEST MAPPING PROJECT 55, 62, 72, 82 (2009).

[6] *See, e.g.*, Jowei Chen & Jonathan Rodden, Tobler's Law, Urbanization, and Electoral Bias (2009), at http://www.stanford.edu/~jowei/identified.pdf.

[7] For a state-by-state assessment of these alternatives, see generally JUSTIN LEVITT, A CITIZEN'S GUIDE TO REDISTRICTING (2008); *see also* Justin Levitt, Who Draws the Lines 2, at http://bit.ly/who_draws; Justin Levitt, Where the Lines Are Drawn (State Law, 2000), at http://bit.ly/where_to_draw.

was put in place in 1980, the Iowa legislature has not used its authority to draw its own maps from scratch on the third attempt.

House Bill No. 5914, the measure before you today, appears to adopt much of this model for state legislative districts. Michigan's Legislative Service Bureau, charged with nonpartisan drafting and research, would prepare draft maps, which the legislature could reject (with a two-thirds supermajority), but not modify. If the map is rejected, the LSB would try again, incorporating the comments of the rejecting chamber or chambers; both houses would have another opportunity to reject the second plan, again with a supermajority. The LSB would then be able to either adopt or reject changes suggested by the legislature; in either event, the resulting plan would be the final plan adopted. As with Iowa, this procedure gives the legislature a role in the dialogue of the redistricting process, without allowing individual legislators unfettered ability to design their own districts.

Other states choose a different path to put distance between individual legislators and the redistricting process. For example, seven states — Arkansas, Colorado, Hawaii, Missouri, New Jersey, Ohio, and Pennsylvania — draw state legislative districts with so-called "politician commissions," distinct from the legislature but on which elected officials may serve as members.[8] Each is designed differently. In Arkansas and Ohio, specific elected officials have designated seats on the commission.[9] In the other states, the legislative or party leadership nominates commissioners, usually with balanced numbers from each party, and sometimes with a role for the Governor or Chief Justice of the state Supreme Court to select nominees or appoint additional commission members.

Six other states — Alaska, Arizona, California, Idaho, Montana, and Washington — draw state legislative districts using an independent commission, with regulations limiting direct participation by elected officials.[10] No member of these commissions may be a legislator or public official; each state also prohibits commissioners from running for ofice in the districts they draw, at least for a few years after the commission completes its work. Some of the states further limit commission members' direct link to the legislature: Arizona and California, for example, also bar legislative staff from serving on the commission; California, Idaho, and Washington bar lobbyists from serving on the commission as well.

Though each of these states attempts to ensure that commissioners are not beholden to particular legislators, that does not mean that the legislature has no role in the process: each of the above models preserves some ability for either the legislative leadership or the legislature as a whole to select individual commissioners or modify commission lines on the margin. The objective is not to remove politics entirely from the process, but rather to insulate politicians with the most direct self-interest from the appearance that their own personal or partisan fortunes are put ahead of the well-being of their constituents.

---

[8] Hawaii and New Jersey also draw their congressional districts through "politician commissions."

[9] In Arkansas, the commission consists of the Governor, Secretary of State, and Attorney General. In Ohio, the commission consists of the Governor, Secretary of State, and State Auditor, as well as one member chosen by each major party's legislative leadership.

[10] Arizona, Idaho, and Washington also use independent commissions to draw congressional districts. California allows its legislature to draw congressional districts; Alaska and Montana have only one congressional representative, and therefore do not need to draw district lines.

Whether the structure in HB 5914 is designed to accomplish this end will depend largely on information that we at the Brennan Center do not have. On paper, the LSB is tasked with drawing district lines as an initial matter, and receives feedback on those lines from the state House or Senate institutionally and not through individual back-channels.[11] Occasionally, however, in some states with agencies similar to the LSB, suggestions circulate that some legislators have "more equal" access to such agencies than others. Michiganders are far better equipped to evaluate where the LSB may fall on this spectrum than are we.

*Where the lines are drawn*

Other states also present different models for giving guidance to whichever entity is tasked with drawing the district lines, beyond the bare constraints of federal law.

Twenty-four states, for example, ask redistricting bodies drawing state legislative districts to consider preserving "communities of interest" — communities that share common features relevant to the legislative enterprise.[12] This represents an important means to enhance vigorous representation, making it easier for legislators to speak for distinct groups of constituents with shared preferences, rather than collections of voters with little in common. Such communities are flexibly defined: in Kansas, for example, map drawers are asked to consider "[s]ocial, cultural, racial, ethnic, and economic interests common to the population of the area, which are probable subjects of legislation."[13] Montana's guidelines are similarly broad: "Communities of interest can be based on trade areas, geographic location, communication and transportation networks, media markets, Indian reservations, urban and rural interests, social, cultural and economic interests, or occupations and lifestyles."[14] Alabama adds the helpful reminder that "[i]t is inevitable that some interests will be recognized and others will not, [but] the legislature will attempt to accommodate those felt most strongly by the people in each specific location."[15]

Especially if you choose to adopt a redistricting process that removes the appearance of conflict, so that the primary redistricting body can be trusted to focus exclusively on the public interest, Michigan might benefit by recognizing this principle explicitly. The ability to deviate from geometric guidelines, to follow real communities built around real housing developments that may run in irregular fashion, would give that trusted redistricting body the flexibility to ensure that communities of Michiganders have the most meaningful representation.

---

[11] Notably, however, the bill itself does not indicate whether the feedback reports that are delivered from the Secretary of the Senate or the Clerk of the House of Representatives are themselves open for public access.

[12] Twelve states do the same for their congressional districts. In general, fewer states articulate distinct criteria for drawing congressional lines, simply because the congressional districting process is seldom reflected in state constitutions, statutes, or legislative guidelines.

[13] *See* Guidelines and Criteria for 2002 Kansas Congressional and Legislative Redistricting , *at* http://skyways.lib.ks.us/ksleg/KLRD/Redistrct/documents/Guidelines.pdf.

[14] Mont. Districting and Apportionment Comm'n, Criteria and Operational Guidelines for Legislative Redistricting, April 18, 2001, at http://tinyurl.com/montanacommunities.

[15] Ala. Reapportionment Comm. Guidelines for Legislative, State Bd. of Education & Congressional Redistricting, § IV, *at* http://www.legislature.state.al.us/reapportionment/Guidelines.html.

There are also several coarse proxies for representing communities of common interest that frequently appear in state redistricting guidelines. For example, forty-one states join Michigan in requiring some accounting for political boundaries — county, township, municipal, or ward lines — in state legislative districts; eighteen states ask the same for congressional districts. Municipal boundaries, in particular, often approximate shared legislative interests; depending on the state, county or township lines may have a similar function. Most often, state laws that require consideration of political boundaries in redistricting leave flexibility in the mandate, instructing the redistricting body to maintain political boundaries "to the extent practicable," and without an inflexible hierarchy of relevant government units. Michigan, however, presently has a relatively strict tiered order — counties first, and only then cities or townships — that may or may not actually fit the structure of communities on the ground.

Almost as many states — thirty-six in all, including Michigan for some districts — use an even rougher proxy for common interest, by requiring their legislative districts to be reasonably "compact"; seventeen states ask that congressional districts be compact as well. Here too, state law is usually flexible, without a precise definition of "compactness"; in general, a district in which constituents live more or less near each other is considered more compact than one in which they do not, and a district with a regular convex shape is considered more compact than one with multiple extended tendrils. Again, Michigan is more precise, focusing on a particular mathematical assessment of compactness involving the degree to which a district spreads from a central circular core, in a way that may or may not mirror real communities on the ground.

House Bill 5914 appears to relax Michigan's existing county boundary requirement a bit, focusing on the majority of the district rather than the district's entirety. It further appears to relax the existing compactness requirement, by eliminating the precise mathematical definition that currently holds sway. Though there are some ambiguities in the text which make the precise extent of this relaxation unclear, we welcome the general principle.

In addition to the above criteria, several states attempt to limit the impact of partisanship in the redistricting process. Nine states — California, Delaware, Hawaii, Iowa, Idaho, Montana, Nebraska, Oregon, and Washington — have prohibited their redistricting bodies from drawing state legislative districts in order to "unduly" favor a candidate or political party; all but California do the same for Congress.[16] Five states — Arizona, California, Iowa, Idaho, and Montana — attempt to implement the restriction by precluding the consideration of the residence of an incumbent in drawing district lines. Arizona and Washington instruct their redistricting bodies to design districts so that competition is affirmatively encouraged, when practicable, and when doing so would not detract from other state priorities.[17]

Several of the states above also limit the use of further political data, which also appears to be a significant focus of the bill before you today. Iowa, Idaho, and Montana purport to

---

[16] Idaho's formulation of the requirement is that counties may not be divided in order to protect a party or incumbent. IDAHO CODE § 72-1506(8). If a county must be divided for other reasons (including the equal population mandate), however, it is not clear that a redistricting body would be precluded from drawing these lines for partisan benefit.

[17] ARIZ. CONST. art. IV, pt. 2, § 1(14)(F); Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n, 208 P. 3d 676, 686-87 (2009); REV. CODE WASH. § 44.05.090(5).

preclude the use of partisan voter history in drawing districts; New Jersey allows the use of voter history but declares that it may not support deviations from other districting principles; and Arizona states that "[p]arty registration and voting history data shall be excluded from the initial phase of the mapping process but may be used to test maps for compliance" with other priorities.[18]

In considering limits on the use of partisan voter data, it is important to remember that it will almost always be necessary to consider such data in assessing responsibility under the Voting Rights Act. Only with partisan voter history is it possible to tell if racially polarized voting exists to an extent that incurs liability under the Act; if so, only with partisan voter history is it possible to know whether a particular remedy will likely be effective. The Voting Rights Act's mandate will therefore supersede state law restricting the use of political data, at least in regions where minority populations present the possibility of Voting Rights Act obligations.

It is also worth noting that restricting partisan voter data does not result in "neutral" partisan consequences, even if it is assumed that those who draw the lines do not understand the partisan implications of their decisions, with or without precise data. As mentioned above, every decision about where to draw the lines will have partisan consequences, most of which are predictable. In particular, I have mentioned Professor McDonald's research suggesting that a strict constraint to produce maps that follow county boundaries or that maximize certain assessments of compactness will naturally result in plans that produce a statewide partisan imbalance, no matter who is drawing the lines. Drawing district lines that are ostensibly entirely blind to partisan consequences is not a way to produce districts that achieve partisan fairness. As long as trusted decisionmakers are primarily responsible for producing the maps, it may be preferable to ask them to avoid unduly favoring a particular candidate or party, armed with the political data necessary to actually achieve that objective.

**Prospects for reform**

The above overview was intended to lay out the basic landscape for redistricting, in Michigan and beyond. There is much in the current process to generate substantial public suspicion, and much in the process elsewhere in the way of commendable alternatives. I know that various proposals have been floated in Michigan, including the one currently before the Committee. An analysis of House Bill 5914 accompanies this written submission, though some of the legislative language may be ambiguous, and subject to several court interpretations.

Although I am happy to comment further on particular attributes of particular plans that you are considering, my purpose today is not to present a single preferred process for redistricting in Michigan. There are many potential ways to change the status quo that would benefit Michigan voters at the end of the day. Rather, I would like to close by highlighting four components of the redistricting process in particular that we believe to be crucial in any effort to restore constituents' faith in the fairness of the districting exercise.

[18] ARIZ. CONST. art. IV, pt. 2, § 1(15).

*First, an independent process.* We have already described the appearance of impropriety that results when legislators are intimately involved in drawing their own district lines. For the benefit of the institution as a whole, and for the public good, we are encouraged that the bill under consideration has suggested placing primary redistricting authority, at least, beyond direct individual manipulation by those with the most self-interest. The authority responsible for redistricting in Michigan — and just as important, the staff supporting that process — should be meaningfully independent from undue legislative influence.

We stress the limiting adjective "meaningful" with the understanding that cosmetic independence will not suffice, but neither is complete isolation necessary. Meaningful independence primarily hinges on the primary redistricting body's pragmatic freedom from obligation to particular incumbents.

There are at least two further substantial caveats to implementing a system that provides those who draw the district lines some measure of independence. First, I am not suggesting simply importing wholesale the procedure of another state. Elements of many of the systems discussed above might be productively deployed in Michigan, but they will likely need to be adapted to Michigan' particular political climate. Differences between states are meaningful for their redistricting institutions as well.

Second, the fact that Michigan should benefit from a meaningfully independent redistricting body does not mean that the state should be carved into neat automated rectangles or circles — and indeed, the existing preference for rectangular counties or circular districts within towns may be too extreme. As mentioned, district lines serve a community only when they reflect the community, and communities do not evolve with mathematical exactitude. There will still be ample need for political compromise: the arbiters of district lines will be called upon to seek fair and equitable representation for racial and ethnic minorities, and grant representation to real communities of interest spread out in irregular fashion. Independence does not attempt to take the politics entirely out of the redistricting process. Nor, indeed, does it attempt to eliminate entirely politicians' role. The difference is that, in a body with independence, those with a particular incentive to lock out competent challengers are not given unfettered access to the keys.

*Second, a diverse representative body.* The need to reconcile competing and complementary interests in the redistricting process demonstrates the second element of success: the redistricting body must be meaningfully diverse. An independent body that is designed in an exclusionary fashion is not likely to represent an improvement on the status quo, particularly in a state with Michigan's diversity. Those responsible for drawing district lines must reflect ample geographic, racial, and political diversity, so as to prevent charges of self-dealing similar to those that have found a foothold in the current system, but on a group level rather than an individual level. That is, the redistricting body must be sufficiently diverse to be legitimate in the eyes of the citizens districted by its action. There is, naturally, no lawful formula that will guarantee diversity across all dimensions. Nevertheless, in a body of substantial size, with some part of the selection process in the hands of those with a political incentive to foster diversity, it should be possible to provide a rich array of representation. I do not know the demographic composition of Michigan's Legislative Service Bureau, but it may merit caution if the composition of the Bureau departs dramatically from the composition of the state as a whole.

*Third, meaningful redistricting criteria.* We recommend a diverse and independent redistricting body, because without the right set of arbiters, well-tailored goals will fail to produce desirable results. Similarly, without a set of meaningful and workable goals, the ideal group of line-drawers will be left unmoored. A redistricting body must be guided by specific criteria, to adequately assess whether any given plan has succeeded in achieving the public good.

Certainly, any attempt to draw district lines must at least conform to applicable federal law. This includes the Constitutional equipopulation requirement, and the obligation to justify disparities even within a 10% deviation for state legislative districts.[19] It also, of course, includes all of the protections of the Voting Rights Act. However, even within these bounds, there are endless permutations of district lines. Any redistricting body requires further agreed-upon criteria to guide its choices and render them legitimate in the eyes of the population.

There are many available options. Some present affirmative requirements, such as the mandate to hew to pre-existing political geography, to develop districts that are reasonably compact, or to draw lines in order to further the representation of particular communities of interest. Others are negative injunctions, such as the obligation to avoid drawing lines in order to disadvantage a particular incumbent or challenger. One stands out as particularly important in the context of the current conversation in Michigan: given our American political commitment to the fundamental principle of majority rule, it is necessary to pay some attention to the likely partisan balance of a redistricting map, so that a minority of the state's population does not reliably and durably control the majority of the legislature.

The need for clear governing criteria should not be confused with a demand that the criteria in question dictate a particular result. It is a common, but mistaken, instinct to attempt to bind a redistricting body to maximize one or two readily quantified factors; such a mandate usually produces undesirable unanticipated consequences in particular portions of a state. Rather, the criteria should retain enough flexibility to allow trusted decisionmakers — the diverse and independent redistricting body mentioned above — to apply the overall state priorities to peculiar local circumstances, sensibly and in the broader public interest. House Bill 5914's apparent attempt to ease the existing Michigan preference for strict adherence to county lines, and its strict mathematical construction of compactness, is a welcome change in this regard.

*Fourth, meaningful transparency.* At the moment, most citizens feel excluded from the redistricting process, which concerns not merely public policy, but the aggregation of group interests that are the foundation of all policy discussions. Communities are splintered and electoral fortunes tailored, by and large, without meaningful opportunity for input.

The extent to which HB 5914 embraces broader public transparency is not entirely clear. The legislature should commit to making the redistricting process more transparent in 2011 and 2012, with the components common to basic due process protections: public hearings and open meetings, and the opportunity to respond to drafts before they are enacted. The redistricting body should endeavor to make data and even redistricting software broadly available, and allow

---

[19] *See, e.g.*, Cox v. Larios, 542 U.S. 947 (2004).

citizen members of the public to submit full or partial proposals, to inform the primary body's deliberations. These are modest steps indeed for a process so fundamental to democratic representation.

* * *

In reviewing the way in which Michigan's state legislative districts are drawn, this Committee has set itself a commendable and necessary task. Citizens strongly support the need to promote independent decisionmaking and remove the taint of potential self-dealing. We understand the need for pragmatic solutions, and do not wish to allow the perfect to become the enemy of the good … but we also firmly believe that the state will be well served by truly meaningful reform, and wish the Committee well in its efforts directed at that end. As with other states across the country, the Brennan Center stands ready to assist the people of Michigan and their representatives with comparative research, legal analysis, and drafting of particular provisions – among other services – in the interest of furthering redistricting reform. I thank you very much for your time – and I am more than happy to answer any questions that you may have.