

1-1-2011

How Serpentine Districts Became Law: Michigan Redistricting in 2011

Jocelyn Benson
Wayne State University

Recommended Citation

Jocelyn Benson, How Serpentine Districts Became Law: Michigan Redistricting in 2011, 13 J.L. Soc'y 7, 22 (2011)
Available at: <https://digitalcommons.wayne.edu/lawfrp/271>

This Article is brought to you for free and open access by the Law School at DigitalCommons@WayneState. It has been accepted for inclusion in Law Faculty Research Publications by an authorized administrator of DigitalCommons@WayneState.

HOW SERPENTINE DISTRICTS BECAME LAW: MICHIGAN REDISTRICTING IN 2011

JOCELYN BENSON¹

Table of Contents

I. INTRODUCTION	7
II. THE POLITICS OF REDISTRICTING IN MICHIGAN IN 2011	9
III. THE LAW OF REDISTRICTING IN 2011	13
IV. AN OPPORTUNITY FOR REFORM: A CITIZENS' REDISTRICTING COMMISSION	17
V. CONCLUSION	21

I. INTRODUCTION

In July 2011, the Michigan legislature enacted a plan for new congressional districts that could arguably be the most oddly-shaped district maps in Michigan's history, with districts swirling around Southeast Michigan like "colors in a Willy Wonka lollipop."²

As the below illustration demonstrates, the new 9th, 11th, and 14th congressional districts for Michigan are three of the most awkwardly shaped districts that Michigan has ever seen. The new 9th District, is shaped like a Leprechaun's shoe, heeled in Roseville and Eastpointe and curling up around Birmingham to capture Bloomfield Township. The 11th grew a tail that wraps around Pontiac to reach Birmingham. And, the serpentine shape of the 14th Congressional District groups voters in Southwest Detroit and Grosse Pointe with residents of West Bloomfield and Pontiac.³

1. Associate Professor of Law, Wayne State University Law School. B.A. Wellesley College, M.Phil, Oxford University, J.D. Harvard Law School. I am grateful for the suggestions and comments provided in the formulation of this article. All errors and omissions are my own.

2. See Jo Mathis, *Asked and Answered: Jocelyn Benson*, DET. LEGAL NEWS, Aug. 18, 2011, <http://www.legalnews.com/detroit/1044313>; see also Jack Lessenberry, *The Topsy-Turvy World of Michigan Politics*, WINDSOR STAR (Can.), Oct. 18, 2011 (referring to the map as "the most oddly gerrymandered congressional districts in state history").

3. See MICH. STATE S., CONGRESSIONAL DISTRICT MAP 3 (2011) [hereinafter CONGRESSIONAL DISTRICT MAP], available at <http://www.senate.mi.gov/reapportionment/Proposed%20Congressional%20Plan.pdf>.

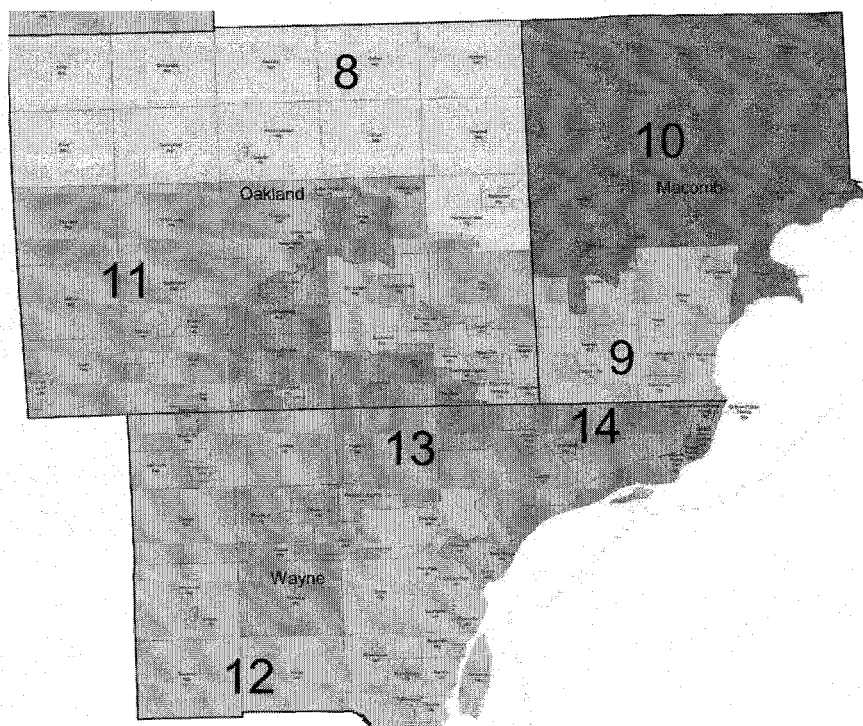


Figure 1. Congressional districts of Southeast Michigan (see note 3).

Michigan is not the only state in the country where the 2011 redistricting cycle yielded several questionable new districts. The national political journal *Roll Call* suggested that nationally, this redistricting cycle was “particularly ugly and hypocritical” – perhaps the “ugliest” ever.⁴ The newspaper pointed to Michigan’s very own, increasingly infamous, 14th Congressional district, as one of the top five most partisan, “ugliest” districts.⁵ *Roll Call* considers the district, dubbed the “8 Mile Mess,” on a level of irregularity with Maryland’s contorted 3rd District, the “Pinwheel of Death,” and Ohio’s 9th – the “Mistake by the Lake.”⁶

4. Stuart Rothenberg, *Is This the Ugliest Redistricting Cycle Ever?* ROLL CALL, Nov. 18, 2011, http://www.rollcall.com/issues/57_57/is_this_ugliest_redistricting_cycle_ever-210186-1.html.

5. Shira Toeplitz, *Top 5 Ugliest Districts: Partisan Gerrymandering 101*, ROLL CALL, Nov. 10, 2011, http://www.rollcall.com/features/Election-Preview_2011/election/top-5-ugliest-districts-210224-1.html.

6. *Id.*

The map's defenders claim that Section 2 of the federal Voting Rights Act⁷ (VRA) compelled them to draw such bizarrely shaped districts.⁸ VRA is widely interpreted to require Michigan to maintain two congressional districts where African Americans comprise over fifty percent of the voting population.⁹

Critics have argued that this requirement in no way required the creation of such contorted districts. As evidence, they point to a wide array of alternative maps – including one drawn by the president of the College Republicans at Central Michigan University¹⁰ – that meet VRA standards with compact districts that also guarantee population heavyweights, like Oakland County, the opportunity to send one of its own residents to Congress.

This article will review the legal arguments and political realities that envelop the 2011 Michigan Congressional District Maps. Part II delves into the political realities and partisan context that influenced and in many ways drove the redistricting process. Part III provides an overview of the state and federal legal requirements for the Congressional districts and the ways in which the new Congressional map fits within those requirements, noting the fact that the maps will likely escape serious legal scrutiny. Part IV reviews some of the reforms proposed to change the redistricting process in 2011 and suggests the creation of an Independent Redistricting Commission in Michigan to ensure that future efforts to redraw Michigan's Congressional districts are in line with the interests of the state's citizens.

II. THE POLITICS OF REDISTRICTING IN MICHIGAN IN 2011

In December 2010, the United States Census Bureau announced that Michigan would be one of ten states losing a seat in the U.S. Congress

7. Voting Rights Act of 1965 § 2, 42 U.S.C. § 1973(a) (2006).

8. See, e.g., Chad Selweski, *GOP Map Puts Reps. Levin, Peters in Same District*, MACOMB DAILY, June 17, 2011, <http://www.macombdaily.com/articles/2011/06/17/news/doc4dfb8bb61ee2e847785542.txt>.

9. See *Presentation Concerning Section 2 of the Voting Rights Act Before the H. Comm. on Redistricting*, 96th Leg., Reg. Sess. (Mich. 2011) (testimony of Melvin Butch Hollowell, Legal Counsel, Michigan Legislative Black Caucus) [hereinafter *Testimony of Melvin Hollowell*], available at <http://house.michigan.gov/SessionDocs/2011-2012/Testimony/Committee7-4-26-2011.pdf>; see also, e.g., *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986); *Voinovich v. Quilter*, 507 U.S. 146, 157 (1993); *Grove v. Emison*, 507 U.S. 25, 40 (1993).

10. Chad Selweski, *College Kid Shows up Legislators on Redistricting*, MACOMB DAILY, June 24, 2011, <http://macombpolitics.blogspot.com/2011/06/college-kid-shows-up-legislators-on.html>.

based on population shifts around the country.¹¹ As a result, one thing was certain even before the 2011 redistricting cycle began: at least one member of the state's congressional delegation elected in 2010 would be searching for a new job come January 2013.

The political debate, explicit or not, focused on that very question: which current incumbent would be left without a district following the reconfiguration of the map?¹²

With sizeable majorities in both houses in the state legislature and the Governor's office, Republicans had complete control of the process. It was therefore no surprise that a Democrat – Congressman Gary Peters – represented the then soon to be eliminated district. Peters was relatively young, moderate, and widely regarded to have a bright future.¹³ He was first elected in 2008 as the first Democrat to represent Oakland County in Congress in over a century.¹⁴ In the new map, Peters' district is eliminated and its voters parceled out into three neighboring districts. Strong Republican areas of the district were folded into Republican Thaddeus McCotter's District 11, and the Democratic areas of the district are now part of areas currently represented by Democrats Sandy Levin and John Conyers.¹⁵

This effort to eliminate Peters' Democratic leaning district was one of the political and partisan factors that drove the redistricting process in 2011. Two other factors also influenced the process.

The first is the political ambition of the current Congressional delegation and the legislators drawing the maps. Those serving in Congress are widely assumed to work behind closed doors with state legislators to advocate for the best possible district in which to run for re-election.¹⁶ To the term-limited state legislator, redistricting offers the

11. See KRISTEN BURNETT, U.S. CENSUS BUREAU, C2010BR-08, CONGRESSIONAL APPORTIONMENT 3 (2011). Other states, like Texas, gain up to four additional congressional seats. *Id.*

12. See e.g., Peter Luke, *Michigan Likely to Lose a Democrat in Congress under Proposed New Congressional Map*, MLIVE.com (June 17, 2011, 1:04 PM), http://www.mlive.com/politics/index.ssf/2011/06/michigan_likely_to_lose_a_demo.html.

13. See Lessenberry, *supra* note 2.

14. *Id.*; see also LEG. SERV. BUREAU, MICHIGAN MANUAL 2003-2004, at 606-24 (2004), <http://www.legislature.mi.gov/%28S%28vmcacebxze5neiafwpv2uhe%29%29/mileg.aspx?page=mm2003-2004>.

15. Marisa Schultz, *New 14th District: A Land of Opposites*, DET. NEWS, Aug. 4, 2011, at A1 (quoting political scientist John Chamberlin as commenting that the 14th Congressional District “is the ugliest district Michigan has had since they’ve started doing redistricting” and noting that “[i]t’s clearly tortured. Something is going on”).

16. Rothenberg, *supra* note 4 (noting “sources close to the process,” indicating that Michigan Congressman Fred Upton “took a leading role in negotiating the new map with

opportunity to draw his or her own future Congressional district. They can, literally, choose which voters they would like to include in their district.¹⁷

Ten years ago, then-term limited state Senator Thaddeus McCotter aspired to serve in Congress. As a legislator sitting on the committee who drew the congressional district lines, future Congressman McCotter was able to select and vote on the creation of a district where he would later run a victorious campaign.¹⁸

This round it was widely believed that State Representative Marty Knollenberg, who announced his candidacy for Congress while serving on the House redistricting committee that commissioned the maps, was seeking to repeat history by drawing himself into Congressional District 11.¹⁹ Knollenberg later withdrew from the race when Congressman McCotter ended his campaign for the Presidency and indicated he would be running for re-election in District 11.²⁰

The second factor is the larger effort by political parties to create maps that produce strangely shaped noncompetitive districts in order to ensure a pre-ordained partisan makeup in the state's Congressional delegation.²¹ When that happens, it's the citizens who play the price. Voters are less motivated to participate in elections when their district's partisan make-up predetermines the winner of the general election.²² And, when the winner of the primary is able to safely sail to victory in the general, politicians learn to win through playing to the partisan extremists in their districts. Political rhetoric rises and moderates lose out.²³

the governor and state legislators, with [Congressman Dave] Camp and fellow GOP Rep. Candice Miller assisting”).

17. For further commentary on the need for voters to choose their representatives, “not the other way around,” see, e.g., *How to Rig an Election*, ECONOMIST, Apr. 25, 2002, <http://www.economist.com/node/1099030>.

18. David E. Rosenbaum, *The 2002 Campaign: The House; Stark Differences Define 2 Candidates In A Close Race In Michigan*, N.Y. TIMES, Oct. 18, 2002, at A1.

19. Charles Crumm, *Knollenberg Plans to Run for Congress*, OAKLAND PRESS, Mar. 30, 2011, <http://theoaklandpress.com/articles/2011/03/30/news/politics/doc4d936b6eed9a1528413092.txt?viewmode=fullstory>.

20. Rothenberg, *supra* note 4 (affirming Knollenberg's hope to run for Congress in the district but his decision to not “run against a Republican incumbent”).

21. For data on the disenfranchising effects of noncompetitive districts, see SUSAN J. DEMAS & JOHN BEBOW, CTR. FOR MICH., RE-DRAWING MICHIGAN (2011), http://www.thecenterformichigan.net/wp-content/uploads/2011/02/CFM_redistricting_report_feb_2011.pdf.

22. *Id.* at 7.

23. *Id.* at 9.

Further, if districts are compact and communities preserved, voters have greater influence over the person elected out of that district. But districts drawn to maximize partisan advantage will likely divide local communities into many districts. When communities are spread across multiple districts, it becomes nearly impossible for neighbors to have clout in any of them.²⁴

Michigan's 2011 Congressional district map reflects the presence of both of these phenomena. The plan, which Michigan's Democratic leaders referred to as "partisan hijacking,"²⁵ spreads the state's Republican voters across nine districts and packs nearly all of Michigan's Democratic voters into the remaining five, only two of the fourteen districts are competitive – with Republicans making up an estimated fifty-three percent of the voting population.²⁶ Christina Kuo, executive director of nonpartisan Common Cause of Michigan, called the map a partisan "sham," noting that "[t]he only beneficiaries of partisan-gerrymandered districts are partisan political operatives and the wealthy special interests they serve."²⁷

While partisan and political influences dominated the 2011 redistricting process in Michigan, much of the public debate also circled

24. Justin Levitt, *Weighing the Potential of Citizen Redistricting*, 44 LOY. L.A. L. REV. 513 (2011) (describing the importance of preserving communities of interest in the redistricting process).

25. Peter Luke, *State Democrats Want Public Input on District Maps, Redistricting and Elections Committee Chief Defends Plan*, GRAND RAPIDS PRESS (June 18, 2011); see also *Hearing on H.B. 4780 Before the S. Comm. on Redistricting*, 96th Leg., Reg. Sess. (Mich. 2011) (testimony of Mark Brewer, Chair, Michigan Democratic Party), available at <http://www.senate.michigan.gov/committees/files/2011-SCT-REDIST-06-28-1-06.PDF>. In his testimony, Brewer states:

[t]here is not one district under the . . . plan that is 50-50 in partisan make-up when one reviews previous election results. It is clear they sought solely to strengthen the partisan make-up for their Congressional Republican incumbents. By reducing competitive districts, this plan disenfranchises not only Democrats and Republicans but independent voters – by making partisan primaries the key elections and making general elections irrelevant. *Id.* at 2.

26. Shira Toeplitz, *Levin, Peters Drawn Together Under New Michigan Map*, ROLL CALL, June 17, 2011, <http://www.rollcall.com/news/levin-peters-drawn-together-under-new-michigan-map-206587-1.html>. Toeplitz notes:

Veteran GOP Reps. Dave Camp, Fred Upton and Thaddeus McCotter, as well as recently returned Rep. Tim Walberg, all saw more Republican voters moved into their respective districts. Republicans also moved more GOP voters into the district of freshman Rep. Dan Benishek (R) . . . [And] Freshman Rep. Bill Huizenga's (R) solidly Republican western 2nd district remains pretty much intact under the proposed map, only acquiring the remainder of Allegan County. *Id.*

27. Luke, *State Democrats Want Public Input*, *supra* note 25.

around the legality of the proposed maps.²⁸ Compounding the rancor of the debate is the fact that redistricting law is one of the least settled areas of federal law, with new holdings and interpretations emerging every decade. That makes the outcome of any federal litigation highly uncertain, and ensures intense debate along the way.

III. THE LAW OF REDISTRICTING IN 2011

Federal redistricting law is relatively young. For several decades, federal courts declined to hear claims alleging wrongdoing in the drawing of Congressional district lines, finding such claims to be nonjusticiable and believing that the debate was best left to the political arena.²⁹ That reticence began to erode with the 1962 decision of *Baker v. Carr*,³⁰ in which the Supreme Court formally entered the redistricting fray, declaring that legal challenges to redistricting plans were permitted under the Equal Protection Clause of the U.S. Constitution.³¹ During the fifty-plus years that have followed, redistricting jurisprudence has grown and evolved into a highly complex web of case law with the federal courts working to strike a careful balance between the need to protect citizens' fair representation and the inherent political interest-driven nature of the process.

Two years after *Baker*, the Court established the equipopulation principle in *Reynolds v. Sims*, holding that the Equal Protection Clause of the U.S. Constitution requires a state to make an honest and good faith effort in constructing districts that are "as nearly of equal population as is practicable."³² *Reynolds* also required that districts be redrawn following every decennial Census to ensure that they remain equally apportioned. Michigan law further clarifies that the state must make a good faith effort to "achieve precise mathematical equality of population in each district."³³

28. Kathleen Gray, *Redrawn District Maps Create Uncertainty for Michigan Democrats*, DET. FREE PRESS, Aug. 21, 2011, at A10 (quoting the Chair of the Michigan Legislative Black Caucus, Fred Durhal, as stating "The only certainty ... is that the new maps ... will be challenged in federal court.").

29. *Colegrove v. Green*, 328 U.S. 549 (1946).

30. *Baker v. Carr*, 369 U.S. 186 (1962).

31. *Id.* at 237 ("[w]e conclude that the complaint's allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment.").

32. *Reynolds v. Sims*, 377 U.S. 533, 577 (1964).

33. MICH. COMP. LAWS § 3.63(3)(a) (2000); *see also* *LeRoux v. Secretary of State*, 640 N.W.2d 849 (Mich. 2002).

Michigan's Congressional District plan complies perfectly with these equipopulation requirements.³⁴ Each district has precisely 705,974 people in it, according to the 2010 Census figures.

In addition to the equipopulation requirement, the U.S. Supreme Court has banned partisan and racial gerrymandering under the Equal Protection Clause of the Constitution.³⁵ But, the Court has set the bar very high for overturning district plans under these guidelines. For example, the Court has held that parties can allege redistricting plans to be overly, and unconstitutionally, partisan.³⁶ The court has yet to strike down even the most blatantly partisan plans under this standard,³⁷ or devise a reliable measure of fairness for determining when partisan goals drive the redistricting process to such an extent as to violate the U.S. Constitution.³⁸ At most, the Court has suggested that a violation would only occur where a political party is completely "denied its chance to effectively influence the political process" in any way.³⁹ For this reason, while politics may have driven much of Michigan's 2011 redistricting process, there is little reason to believe the resulting plan could be struck down under this line of case law.

Successful claims of unconstitutional racial gerrymandering are also rare, though not as rare as their partisan counterpart. The U.S. Supreme Court held in *Shaw v. Reno* that where the shapes of districts are "extremely irregular" it is likely that they are unconstitutional if they are the result of "an effort to segregate the races for purposes of voting, without regard for traditional districting principles."⁴⁰

In creating this new, "analytically distinct" cause of action under the Equal Protection Clause, the *Shaw* Court reasoned,

reapportionment is one area in which appearances do matter. A reapportionment plan that includes in one district individuals who belong to the same race, but who are otherwise widely separated by geographical and political boundaries, and who

34. CONGRESSIONAL DISTRICT MAP, *supra* note 3.

35. *See e.g.* *Davis v. Bandemer*, 478 U. S. 109 (1986); *Shaw v. Reno*, 509 U.S. 630 (1993).

36. *Bandemer*, 478 U. S. at 111.

37. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006).

38. *See, e.g., Vieth v. Jubelirer*, 541 U.S. 267 (2004) (Kennedy, J., concurring) (Stevens, J., dissenting) (Souter, J., dissenting) (Breyer, J., dissenting).

39. *Bandemer* 478 U. S. at 132-133.

40. *Shaw*, 509 U.S. at 642. For a detailed analysis of *Shaw v. Reno* and its implications, *see* Richard H. Pildes, *Expressive Harms, "Bizarre Districts," And Voting Rights: Evaluating Election-District Appearances After Shaw V. Reno*, 92 MICH. L. REV. 483, 494-497 (1993).

may have little in common with one another but the color of their skin, bears an uncomfortable resemblance to political apartheid. It reinforces the perception that members of the same racial group – regardless of their age, education, economic status, or the community in which they live – think alike, share the same political interests, and will prefer the same candidates at the polls. We have rejected such perceptions . . . as impermissible racial stereotypes.⁴¹

The opinion concluded that a citizen in an racially gerrymandered district could state a claim under the Fourteenth Amendment if they could feasibly allege that traditional districting principles, such as respect for political subdivisions, compactness, and contiguity, had been set aside in deference to considerations of the racial makeup of the district.⁴² The Supreme Court clarified this issue four years later in *Miller v. Johnson*,⁴³ in which Justice Kennedy emphasized the permissibility of considering racial demographics, but said that this could not be the “predominant factor” for motivating the legislature to draw districts a certain way.

The chairman of the Michigan Democratic Party stated he believes the districts are bizarre enough to suggest a racial gerrymander,⁴⁴ Michigan legislators who voted to enact the newly drawn 14th have generally claimed that it was drawn this way to create a majority African American district. It is therefore feasible that a voter living in the redrawn 14th district could state a claim that traditional districting principles, such as respect for political subdivisions, compactness, and contiguity, had been set aside in deference to considerations of the racial makeup of the district.

Section 2 of the Voting Rights Act bans any redistricting map that “results in a denial or abridgment” of the right to vote on the basis of race, color, or language-minority status.⁴⁵ The Supreme Court has

41. *Shaw*, 509 U.S. at 647.

42. *See id.* at 658 (“Today we hold only that appellants have stated a claim under the Equal Protection Clause by alleging that the North Carolina General Assembly adopted a reapportionment scheme so irrational on its face that it can be understood only as an effort to segregate voters into separate voting districts because of their race, and that the separation lacks sufficient justification.”).

43. *Miller v. Johnson*, 515 U.S. 900, 918 (1999).

44. Peter Luke, *Gov. Rick Snyder Signs Redistricting Bills Designed to Give GOP Political Edge*, MLIVE.COM (Aug. 9, 2011, 5:00 PM), http://www.mlive.com/politics/index.ssf/2011/08/gov_rick_snyder_signs_redistri.html.

45. 42 U.S.C. § 1973(a). States with a history of pernicious racial discrimination must receive federal approval for their redistricting plans under Section 5 of the Voting Rights Act. In Michigan, two townships are covered under this provision: Buena Vista Township

established three *prima facie* factors that must be satisfied before a court can determine whether, under a totality of the circumstances, a Section 2 violation has occurred. These preconditions are: (1) the minority group is “sufficiently large and geographically compact to constitute a majority” in a single-member district; (2) the minority group is politically cohesive; and (3) the white majority votes sufficiently as a bloc to enable it usually to defeat the minority-preferred candidate.⁴⁶ Where these three conditions are present, the Court has generally ordered the creation of majority-minority districts to “ensure equal political and electoral opportunity” for minority voters to elect their candidate of choice.⁴⁷

The African American community in Southeast Michigan is the only minority community that is sufficiently large, geographically compact, and politically cohesive in such a way as to require the creation of two majority African American Congressional districts under Section 2.⁴⁸ Accordingly, there are two districts in the Congressional map where the Voting Age Population for African Americans is over fifty percent, thus meeting this requirement: the Black Voting Age population (BVAP) is 55.71% for District 13 and 57.05% for District 14.⁴⁹

After meeting these federal legal requirements, the state’s Congressional district plan must also meet state mandates that require districts be compact, contiguous, and where possible, counties and cities be kept together in the same district.⁵⁰ These guidelines, though inscribed by state law, are explicitly “secondary” to compliance with federal law.⁵¹ While each Congressional district within the map is contiguous, several leaders, including Congressman John Conyers of Detroit, questioned the compactness of some of the aforementioned districts in southeast Michigan.⁵² Additionally, the map contains ten county and fourteen

in Saginaw County and Clyde Township in Allegan County. The state therefore must submit the districts that encompass those townships for approval, but no others.

46. *Thornburg*, 478 U.S. at 50-51; *see also Voinovich*, 507 U.S. at 157; *Grove*, 507 U.S. at 40.

47. *Johnson v. De Grandy*, 512 U.S. 997, 1019-20 (1994) (finding that the remedy for a Section 2 violation is race-conscious districting and that, by proving their Section 2 claim, plaintiffs show that “racial and ethnic cleavages . . . necessitate majority-minority districts to ensure equal political and electoral opportunity”).

48. *See* Testimony of Melin Hollowell, *supra* note 8.

49. *See* CONGRESSIONAL DISTRICT MAP, *supra* note 3.

50. MICH. COMP. LAWS § 3.63(3) (2000).

51. *Id.* (calling the guidelines for contiguity, compactness, and maintaining county/city boundaries to be “secondary guidelines” and followed, “except as otherwise required by federal law for congressional districts”).

52. Jamie Edmunds, *House Committee Passes Congressional Redistricting Map*, WILX.COM (Jun. 21, 2011, 5:26 PM), http://www.wilx.com/news/headlines/House_Committee_Passes_Congressional_Redistricting_Map_124313854.html (quoting an

municipal splits, suggesting a potential cause of action under the provision of state law that requires district lines to “break as few” county, city and township boundaries “as is reasonably possible.”⁵³ Thus it is viable to suggest a legal claim that alleges that the newly drawn map violates state law. But, because federal law supersedes state law, it is permissible for the legislature to deviate from the state requirements if they are trying to comply with the requirements of the Voting Rights Act or the U.S. Constitution.

With these limited opportunities for legal recourse, the high cost of pursuing litigation in state and federal court and the uncertainty of success, it is unlikely that any group or voter will step forward to challenge the legality of the “8 Mile Mess” and other components of the Michigan Congressional district maps.

That does leave another possible alternative: reforming the existing state law to take the redistricting authority away from the Legislature and give it to an independent citizens’ redistricting commission. Such a change could give voters a meaningful voice in the redistricting process before the districts are drawn, and potentially avoid such strangely contorted maps in the future.

IV. AN OPPORTUNITY FOR REFORM: A CITIZENS’ REDISTRICTING COMMISSION

One striking fact behind the development of Michigan’s new Congressional districts is the lack of official input offered to voters as the map was being drawn.⁵⁴ And it was not for lack of interest – hundreds of

attorney for Congressman Conyers as saying, “You have the 14th district that stretches 50 miles, then in places it’s at few blocks, that doesn’t pass muster. Districts should be compact and include communities of interest. These are all over the place.”).

53. MICH. COMP. LAWS § 3.63(3)(c) (2000). Under the current map, the following 10 counties are split into one or more congressional districts: Mason, Allegan, Kent, Montcalm, Saginaw, Tuscola, Washtenaw, Macomb, Oakland and Wayne. The following 14 cities and townships are also split into multiple congressional districts: Hamlin Township, Holland, Byron Township, Greenville City, Saginaw Township, Vassar Township, Detroit, Pittsfield, Scio Township, Rochester Hills, Sterling Heights, Clawson, West Bloomfield Township, and Dearborn Heights. See CONGRESSIONAL DISTRICT MAP, *supra* note 3.

54. For example, shortly after the maps were introduced to the public, Christina Kuo, then-executive director of Common Cause of Michigan, declared, “The public has been completely shut out of a rigged process that will impact them long after politicians have left the stage The only beneficiaries of partisan-gerrymandered districts are partisan political operatives and the wealthy special interests they serve. The people of Michigan will not have a voice as long as Lansing politicians shut them out of their own democracy, as they have done with this sham of a political map.” Luke, *Michigan Likely to Lose a Democrat*, *supra* note 12.

individuals and groups produced alternative maps through a variety of informal methods⁵⁵ and many demonstrated other ways to comply with federal requirements while drawing compact districts that respect county boundaries.⁵⁶

At the height of the redistricting debate in early 2011, a few efforts to change the process at the state and local levels circulated in Lansing. Though none were enacted, the proposed reforms also would have done little to effectively address the central flaw in Michigan's redistricting process: allowing politicians to choose which voters will be in their districts.

One such debate, sponsored by Republican lawmakers from Oakland County, Michigan sought to grant County Commissioners in Oakland and Wayne counties the power to draw their own Commission district.⁵⁷ This change would have applied only to the state's two largest counties, wresting redistricting power to draw county commission districts from a committee of countywide elected officials, and giving it to the county commissioners. Like moving the deck chairs around on the Titanic, this plan merely would have shifted the authority from one group of politicians to another, giving county commissioners the express authority to draw their own districts.⁵⁸

State Representative Barb Byrum, the ranking Democrat on the State House redistricting committee, submitted a proposal that would have required at least six statewide hearings to consider and solicit redistricting proposals. The proposal would also require a website posting any redistricting plans and listing any communication House members and staff have with outside parties regarding redistricting.⁵⁹ While this reform would have increased the transparency of the existing process and provided a mechanism for public input, it did not change the fact that state legislators would be charged with selecting and enacting their preferred plan.

Another proposal from the Democrats in the State Senate would create an independent commission of political appointees to advise the legislature on state and Congressional redistricting plans.⁶⁰ They claimed the independent commission would take redistricting "outside of the

55. See e.g., Gregory Korte, *Technology Allows Citizens to Be a Part of the Redistricting Process*, USA TODAY, March 11, 2011, http://www.usatoday.com/news/washington/2011-03-21-redistricting21_ST_N.htm?

56. Selweski, *supra* note 10.

57. H.R. 4380, 96th Leg. (Mich, 2011).

58. Bruce Fealk, *Republican Legislation Would Change The Rules For County Commission Redistricting*, ROCHESTER CITIZEN, Mar. 9, 2011.

59. H.R. 4557, 96th Leg. (Mich 2011)

60. H.R. 301, 96th Leg. (Mich 2011).

politics that occur within our legislature.”⁶¹ But the proposed commission actually wouldn’t be all that independent or authoritative. It would simply create an advisory committee comprised of appointees from both parties and the Michigan Auditor General. There’s no reason to expect partisan appointees to act any less partisan than the legislators. Further, the committee would lack any real authority to enact the plans anyway, because the state legislature could still choose to accept or reject their suggested districts.

Reforming Michigan’s redistricting process is important. But none of these proposals would have achieved the most needed change – altering the self-interested or partisan nature of the process itself. And, it’s unlikely that any proposals coming out of the state legislature really could.

True reform of Michigan’s redistricting process will only come with a constitutional amendment that replaces politicians with citizens and independent experts who have a stake in preserving the fairness and integrity of the process. Voters in states like Arizona, Iowa, and California have led the way in this regard, enacting ballot proposals that created true independent commissions where citizens are empowered to draw the lines and enact redistricting plans.

In Arizona, citizens voted to amend their state constitution in 2000 to create a five-member bi-partisan committee.⁶² The state’s Commission on Appellate Court Appointments nominates ten Democrats, ten Republicans, and five people who are not registered with either party, and state lawmakers select four members from that pool to serve on the Redistricting Commission. Those four then pick the fifth and final member.

Voters in California enacted ballot proposals that created a true independent commission where citizens are empowered to draw the lines *and* enact redistricting plans.⁶³ The procedure for assembling the fourteen- member California Commission makes the Arizona selection process look simple. A panel from the California State Auditor’s office selects a pool of sixty interested applicants, and legislative leaders from both parties then have the option of eliminating twenty-four individuals from the pool. Eight individuals are then randomly selected in a lottery from the remaining 36 potential commissioners, and they in turn select

61. Press Release, Senate Democrats Push for Redistricting Overhaul (Mar. 21, 2011), *available at* <http://www.senate.mi.gov/dem/Bieda/news.php>.

62. *See* ARIZ. INDEP. REDISTRICTING COMM’N, <http://www.azredistricting.org> (last visited Jan. 24, 2012).

63. *See* CAL. CITIZENS REDISTRICTING COMM’N, <http://wedrawthelines.ca.gov> (last visited Jan. 24, 2012).

an additional six to serve with them on the committee. The current fourteen-member Commission is made up of five Republicans, five Democrats, and the remaining four are not affiliated with either party.⁶⁴

Though their structures are superior to Michigan's, the experiences in states with independent redistricting commissions are not without their own complications. In Arizona, Republican Governor Jan Brewer sought unsuccessfully to have the independent chairwoman of the commission removed, arguing that chair was "improperly conducting commission business out of public view and of skewing the redistricting process toward Democrats."⁶⁵ And in California, some of the state's Latino leaders argued that the commission's State Senate map did not fairly reflect the growing Latino population in the state,⁶⁶ while the state Republican Party argued that the map unfairly benefited Democrats.⁶⁷

Nevertheless, if Michigan is to be a state where voters have a meaningful role in drawing their congressional districts, thus creating districts that are more likely to preserve communities with similar interests and further the promise of effective representation, the state should follow suit with Arizona, Iowa, and other states that have granted citizens the power to draw their districts. The most direct and efficient way to achieve this reform is a ballot initiative to amend our state constitution to take the redistricting authority away from politicians and give it to the citizens themselves. Until that reform occurs, voters will have limited ability to influence a process that is driven primarily by partisanship, politics, and politicians.

64. *Id.*

65. Marc Lacey, *Arizona Governor and Senate Oust Redistricting Leader*, N.Y. TIMES, Nov. 2, 2011, <http://www.nytimes.com/2011/11/02/us/chairwoman-of-arizona-redistricting-commission-ousted.html>.

66. *Commission Final Senate Map Would Severely Impede Latino Political Progress*, REUTERS, Aug. 15, 2011, <http://www.reuters.com/article/2011/08/15/idUS213206+15-Aug-2011+PRN20110815> ("the State Senate map that would turn the clock back on Latino political progress for the next decade. The map reduces the number of districts where Latinos can effectively choose their elected representatives. It also significantly weakens the voice of the Latino community in the San Fernando Valley and Orange County."); see also Patrick McGreevy & Richard Simon, *Voting Districts Finalized and Face Immediate Challenges*, L.A. TIMES, Aug. 15, 2011, <http://articles.latimes.com/2011/aug/15/local/la-me-redistricting-20110816>.

67. Bryan Llenas, *California's New Election Map Draws Fire from GOP and Latino Groups*, FOX NEWS LATINO, Aug. 16, 2011, <http://latino.foxnews.com/latino/politics/2011/08/16/new-california-redistricting-passes-but-latino-opposition-remains/#ixzz1fBeT55Em> ("The California Republican Party is already leading the way on litigation against the commission's decision because they say it unfairly benefits Democrats.").

V. CONCLUSION

Michigan citizens are alone in finding themselves voting in new, strangely contorted Congressional districts after the 2011 redistricting cycle. As politicians drawing the districts worked to comply with state and federal law, they drew districts that furthered various partisan and political goals instead of the interests of their constituents. Given the limited role of the courts and judicial oversight, it is likely that this will continue as long as elected officials maintain the power and authority to draw these districts.

But states like California and Arizona have demonstrated ways that an Independent Citizens Redistricting Commission can comply with the minimal state and federal legal requirements while providing voters with a meaningful role in the redistricting process. Amending the Michigan state constitution to create such a commission is the best way to grant citizens the power to draw their districts and ensure that we move closer to achieving a Congressional District map that is compact, cohesive, and preserves communities and interests in a way that furthers the ability for voters to achieve effective representation in Congress.

