

"ultimate standard of review is a narrow one and the Court is not empowered to substitute its judgment for that of the agency."

As the remainder of this Brief demonstrates, the Petitioner has completely failed to meet his burden of proof. The Commission did not abuse its discretion or act in bad faith in its effort to redistrict Bay County's commissioner districts.

B. The Criteria Applicable To County Apportionment Plans

MCL 46.404; MSA 5.359(4) provides in pertinent part:

"Sec. 4. In apportioning the county into commissioner districts, the county apportionment commission shall be governed by the following guidelines in the stated order of importance:

- (a) All districts shall be single-member districts and as nearly of equal population as is practicable.

* * *

- (b) All districts shall be contiguous.
- (c) All districts shall be as compact and of as nearly square shape as is practicable, depending on the geography of the county area involved.
- (d) No township or part thereof shall be combined with any city or part thereof for a single district, unless such combination is needed to meet the population standard.
- (e) Townships, villages and cities shall be divided only if necessary to meet the population standard.
- (f) Precincts shall be divided only if necessary to meet the population standard.
- (g) Residents of state institutions who cannot by law register in the county as electors shall be excluded from any consideration of representation.

(h) Districts shall not be drawn to effect partisan political advantage."

The Michigan Supreme Court described the above-referenced criteria as follows:

"Criteria (a) through (f) state apportionment goals. Criterion (g) concerns the counting of certain residents of state institutions. Criterion (h) states that the pursuit of partisan political advantage may not be a goal.

Criteria (d), (e), and (f) together with criterion (a) concern the population standard: all districts shall be single-member districts drawn to preserve township, village, city and precinct lines if this can be done within the population standard of composing districts as nearly of equal population as is practicable.'

Criteria (b) and (c) concern geography and serve to avoid gerrymandering. The districts are to be contiguous and to be as compact and as of nearly square shape as is practicable depending on the geography of the area involved.

In stating that the districts shall be compact and square as practicable, the Legislature stated a goal which is to take precedence over preserving the boundary lines of local governmental units to the extent that there are alternative plans by which those boundary lines could be preserved. Where there is a choice between alternative plans both of which preserve such boundary lines, the plan which is more compact and square in shape is to be selected because compactness and squareness has a higher stated order of importance.

Compactness and squareness (criterion [c]) is not an end in itself but rather a means of avoiding gerrymandering. It was not intended that criterion (c) be implemented to the extent of entirely subordinating boundary lines criteria (d), (e) and (f)."²¹

²¹ Wayne County Apportionment - 1982, 413 Mich at 260-261.

Before the Michigan Supreme Court decision in Wayne County Apportionment - 1982, the Court of Appeals emphasized compliance with Criteria (a) and held that strict mathematical equality of population was required;²² however, in 1982, the Michigan Supreme Court rejected such a "rigid" reading of Section 4 of the County Apportionment Statute, because, among other reasons, it would give "no effect whatsoever to criteria (d) through (f) concerning the preservation of township, city, village and precinct lines, and thereby make meaningless those provisions."²³

Consequently, the Michigan Supreme Court held:

"We thus conclude that Acts 261 and 293 require that commissioner district lines be drawn to preserve township, village, city and precinct lines to the extent this can be done without exceeding the range of allowable divergence under the federal constitution (11.9% [94.05% to 105.95%] until the United States Supreme Court declares otherwise) at the least cost to the federal principle of equal population between election districts consistent with the maximum preservation of such lines."²⁴

As the following section of this Brief indicates, the duly-approved Bay County Apportionment Plan satisfies the criteria applicable to county apportionment plans. Accordingly, this frivolous action should be dismissed in its entirety and the

²²See, e.g., In Re Apportionment of Delta County Board of Commissioners - 1982, 113 Mich App 178; 317 NW2d 568 (1982); Apportionment of Cass County Board of Commissioners - 1972, 39 Mich App 671; 197 NW2d 892 (1972).

²³ Wayne County Apportionment - 1982, 413 Mich at 259.

²⁴ Wayne County Apportionment - 1982, 413 Mich at 263-264.