

# Court of Appeals, State of Michigan

## ORDER

In re Apportionment – Kent County – 2021

Docket No. 359310

Jane E. Markey  
Presiding Judge

Douglas B. Shapiro

Mark T. Boonstra  
Judges

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The motion for immediate consideration is GRANTED. The motion for leave to file a reply to the answer is GRANTED, and the proposed reply accompanying the motion is accepted for filing. Petitioners' request for relief is DENIED for lack of merit, and the petition for review of the Kent County Apportionment Plan is DISMISSED without a full hearing on the merits. MCR 7.206(D)(4).

The districting plan adopted by the Kent County Apportionment Commission is both constitutional and otherwise in compliance with the laws of this state. The districting plan meets constitutional and statutory population standards because the total population departure between the largest and smallest districts from the average size is well below 11.9%. MRE 46.404(a); *In re Apportionment of Tuscola County Bd of Comm'rs–2001*, 466 Mich 78, 79; 644 NW2d 44 (2002). Petitioners have not shown that Districts 1 and 11 lack the contiguity required by MCL 46.404(b). Nevertheless, even had such a showing been made, such a deficiency is not preclusive. *Apportionment of Wayne Co Bd of Comm'rs–1982*, 413 Mich 224, 265; 321 NW2d 615 (1982). The districts are reasonably square and compact given the population distribution and geography of Kent County. MCL 46.404(c). The divisions and combinations of the townships, villages, and cities are reasonable when considered in the context provided by the population and the need to satisfy the divergence standard. MCL 46.404(d)-(f). It is clear from a review of the specifics of the adopted plan and the plan for which petitioners now advocate that the integrity of multiple political subdivisions in the county will have to be compromised in order for all districts to meet the population standard of criterion (a). The decision as to which falls well within the legislative discretion conferred upon the apportionment commission by the Legislature. Finally, petitioners have failed to carry their evidentiary burden of demonstrating that partisanship was a prominent consideration in adopting a plan, or the adopted plan unfairly alters the existing allocation of political power vis-à-vis voting strength, *In re Apportionment of Clinton Co–1991*, 193 Mich App 231, 239; 483 NW2d 448 (1992); *Apportionment of Kent Co Bd of Comm'rs–1972*, 40 Mich App 508, 512, 514; 198 NW2d 915 (1972). Our review of the documentation supplied by petitioners and of the record before the apportionment commission discloses an absence of evidence that partisan political advantage was a prominent consideration in drawing of district lines.

For all of these reasons, the adopted plan constitutes a reasonable choice in the exercise of judgment, which should be sustained by the Court. *Apportionment of Wayne Co Bd of Comm'rs–1982*, 413 Mich at 264. Although the plan advocated by petitioner reflects marginally better compliance with some of the statutory criteria, the fact that a marginally better plan might be devised does not provide grounds for rejecting the plan adopted. *In re Apportionment of Clinton Co–1991*, 193 Mich App at 237.

  
Presiding Judge

Shapiro J., would order that this original action proceed to a full hearing on the merits in accordance with MCR 7.206(D)(4) and that the matter be referred to Mark A. Trusock, Chief Judge of the 17<sup>th</sup> Circuit Court, to select a judge of the Kent Circuit Court to serve as a special master to make factual findings as to whether the apportionment plan adopted by the Kent County Apportionment Commission on October 20, 2021, meets the requirements of MCL 46.404(b) and (h).



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

January 3, 2022  
Date

  
Chief Clerk