

Written Testimony of

**The Brennan Center for Justice
at New York University School of Law**

Hearing on H.F. 4598
Before the Elections Finance and Policy Committee
of the Minnesota House of Representatives

March 13, 2024
at 6:00 p.m.

Thank you for the opportunity to provide comments as the Minnesota House of Representatives considers H.F. No. 4598, a landmark bill that would reform Minnesota's redistricting process and transform it into one of the fairest and most robust in the nation.

The Brennan Center for Justice at New York University School of Law is a nonpartisan public policy and law institute that works to reform, revitalize, and defend our country's systems of democracy and justice. Through its Democracy Program, the Brennan Center seeks to bring the ideal of representative self-government closer to reality. For nearly three decades, the Brennan Center has built up a large body of nationally respected quantitative, empirical, legal, and historical work and research on these issues, including in the fields of redistricting and voting rights.

Two longtime focuses of our work have been combatting the proliferation of extreme partisan gerrymandering that is undermining American democracy and ensuring fairer redistricting outcomes for the nation's rapidly growing, but frequently underrepresented, communities of color. As part of our work, we regularly advise lawmakers and advocates at both the state and federal levels on the design of redistricting and related electoral and voting-rights reforms.

The Brennan Center strongly supports H.F. 4598, which, in our opinion, is among the best and most coherently designed redistricting-reform proposals to emerge from a legislature in recent years. If passed, we believe the bill would build on Minnesota's long and storied tradition of serving as a model for states around the country looking to create an inclusive democracy that works for everyone.

Our remarks below focus on four critical design elements that we believe, working in tandem, make H.F. 4598 one of the most robust redistricting reform measures passed by a legislative body.

We are happy to follow up to answer any questions that members of the House Elections Finance and Policy Committee may have or provide additional information if it would be helpful.

1. A Well-Structured Commissioner Selection Process.

Central to any strong redistricting reform is ensuring that commissioners have both the background and experience to evaluate public input on proposed maps and the independence and willingness to negotiate in good faith with other commissioners necessary to achieve cross-party consensus on maps.

H.F. 4598 closely follows what the Brennan Center considers best practices on the selection of commissioners.

As in other states with strong independent commissions, H.F. 4598 contains vigorous conflict-of-interest rules that exclude consideration of applicants who have too close a tie to the political process or to those who could directly benefit or be hurt by mapping choices, for example, by excluding applicants who are lobbyists, party officials, or close relatives of an elected official or candidate for office.

Applicants who have no disqualifying conflicts are then screened by a bipartisan panel of retired judges. This screening includes a qualitative assessment of an applicant's "relevant experiences and skills, community ties, and commitment to impartiality, compromise, and fairness."

After interviewing semi-finalists, the screening panel then creates a selection pool of well-qualified finalists that includes not only Democrats and Republicans but also independents and supporters of third parties.

Lastly, in line with best practices, H.F. 4598 provides for commissioners to be chosen from the selection pool through a mixture of random and non-random appointments. As in other states using this type of hybrid process, the initial commissioners (in this case, 3 Democrats, 3 Republicans, and 3 members not affiliated with a major party) are drawn at random from the selection pool. Those initial nine commissioners then select the remaining six commissioners from the selection pool.¹ This hybrid selection process

¹ In order to be one of the six non-randomly selected commissioners, an applicant must receive cross-party support, including support from at least two Republicans, two Democrats, and two non-majority party affiliated members from among the initial nine commissioners.

guards against gaming of the system, while at the same time ensuring through the final six picks that the commission is geographically and demographically representative of Minnesota.

2. Rules to Ensure Transparency and Public Participation.

H.F. 4598 also complies with redistricting best practices by ensuring that the public has a meaningful opportunity to provide input on maps, both before and after they are released,

This input is essential to helping map drawers understand the state’s many diverse, and often rapidly changing, communities of interest and, more importantly, how the representational needs of those communities are being met – or failing to be met – by existing maps or would be met, or fail to be met, by proposed alternatives.

In line with best practices, H.F. 4598 requires: (a) that a schedule of public hearings be developed with community input, (b) that the public be given the ability to view and participate in hearings and view and submit proposed maps via electronic means, (c) that the work of the commission be assessable in multiple languages, and (d) that multiple hearings be held in each of the state’s congressional districts.

As communicated to legislative staff, the one change the Brennan Center would recommend in this area is to include a provision mandating release of the demographic and election data and shapefiles or block-equivalency files needed for members of the public to prepare their map proposals and/or easily evaluate and provide feedback on the map proposals of others. The availability of this data is essential to ensuring the fullest transparency and the fullest public participation in the redistricting process.

3. Clear, Prioritized Map-Drawing Rules.

H.F. 4598 also provides clear, prioritized map-drawing rules, another central feature of any well-designed redistricting reform.

In line with previously published Brennan Center recommendations, H.F. 4598 prioritizes ensuring that maps do not dilute the electoral power of communities of color who are often targeting in redistricting for racial discriminatory or partisan reasons – or sometimes both.² Enshrining this right in the state constitution will provide Minnesota’s diverse and growing communities of color with a critical backstop should federal courts

² Yurij Rudensky and Annie Lo, Creating Strong Rules for Drawing Maps, Brennan Center for Justice (updated January 29, 2020), <https://www.brennancenter.org/our-work/policy-solutions/creating-strong-rules-drawing-maps>

continue their trend of recent years of weakening the protections available under federal voting-rights laws.³

Second, H.F. 4598 contains a strong provision requiring preservation of communities of interest to the extent possible, with a requirement that in the event communities of interest overlap, “greater consideration must be given to those communities of interest whose representational needs would be most benefited from the community’s inclusion in a single district.” Although we have suggested small tweaks to this section to legislative staff, it is a strong provision in line with best practices.

Third, the bill would have Minnesota join the growing number of states that have banned prison gerrymandering, requiring instead that incarcerated persons be counted for redistricting as residing at their last known pre-incarceration addresses.

Finally, and importantly given the refusal of federal courts to act to police extreme gerrymandering, H.F. 4598 contains a clear, objective, and judicially enforceable ban on partisan gerrymandering that prohibits the passage of any map that gives an undue advantage to one political party over others and defines in detail how the commission and courts are to measure partisan bias.⁴

4. A Prohibition of Party-Line Passage of Maps.

H.F. 4598 also follows best practices with respect to adoption of maps by requiring that a map win meaningful cross-party support in order to pass.

As documented by the Brennan Center, extreme partisan gerrymandering and other redistricting abuses tend to occur when one party has sole control of the redistricting process.⁵ In 2010 in Wisconsin, for example, Republicans swept that year’s midterm elections to gain an unexpected legislative trifecta on the eve of redistricting. They used that newly won power aggressively, transforming Wisconsin’s once highly competitive legislative maps into one of the most extreme gerrymanders in American history – maps so skewed that Republicans could win a near supermajority of legislative seats without winning a majority of votes. It worked. The gerrymander was so pernicious and durable that it held until this year when the Wisconsin Supreme Court finally ordered it redrawn

³ A panel of the United States Court of Appeals for the Eighth Circuit, where Minnesota is located, recently held for example that only federal government can assert claims under the Voting Rights Act. That decision is likely to be appealed but illustrates the volatility of current federal voting-rights laws.

⁴ The discussion in this section focuses on the three redistricting criteria in H.F. 4598 that have no analogue in current Minnesota law. However, the bill also makes a number of other smaller changes, such as requiring that districts be drawn on the basis of total population, that provide important safeguards against potential future efforts to game the redistricting process by ill-intentioned actors.

⁵ Laura Royden and Michael Li, *Extreme Maps*, Brennan Center for Justice (May 17, 2017), https://www.brennancenter.org/sites/default/files/2019-08/Report_Extreme%20Maps%205.16_0.pdf

after finding that legislative maps violated the state constitution's contiguity requirements.

A similar fate easily could have befallen Minnesota that cycle but for Governor Mark Dayton's razor-thin 8,770 vote victory over Republican Tom Emmer in that year's governor's race.

By contrast, under S.R. 4598, passage of a map requires winning not only the votes of a majority of the commissioners but also support from at least two Democrats, two Republicans, and two members not affiliated with either of the two major political parties. This two-tiered map-passage threshold ensures that adopted maps cannot pass unless they have broad consensus. More importantly, it incentivizes good-faith negotiations to achieve that consensus.

There is evidence that this type of structure works, especially when combined with carefully vetted commissioners who are not beholden to political interests and strong, clear map-drawing rules. In California, for example, in the 2010 redistricting cycle, the state's new independent commission approved legislative maps by a vote of 14-0 and congressional maps by a margin of 13-1. Similarly, in the 2020 redistricting cycle, both legislative and congressional maps in California were passed unanimously. Maps in other states with independent commissions, likewise, have nearly always passed with strong cross-partisan support.

The one change we would make to H.F. 4598 in this area would be to strengthen the runoff procedure used under Section 7 in the event that the commission is unable to agree on map. The Michigan constitution and proposed reforms in Ohio, for example, detail the ranked choice voting procedure to be used eliminate maps and specifies the minimum levels of cross-party support a map must have in order to be adopted in the runoff process.

Thank you again for this opportunity to address the Committee as it considers this historic legislation. We strongly urge that the Committee advance H.F. 4598 and that the Minnesota House of Representatives pass it. We are quite happy to make ourselves available to you if you have any questions.



March 11, 2024

Chair & Representative Mike Freiberg
House Elections Finance and Policy Committee
c/o Simon Brown, Committee Administrator
Room 200, Minnesota State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd
Saint Paul, MN 55155

Re: Testimony for HF4598 - Chief Author Rep. Long

Dear Chair Freiberg and Members of the House Elections Finance and Policy Committee,

The League of Women Voters of Minnesota is proud to be nonpartisan, neither supporting nor opposing candidates or political parties at any level of government, but always working on vital issues of concern to members and the public. Together, we envision a democracy where every person has the desire, the right, the knowledge and the confidence to participate, and where their **government is representative, accountable and responsive** to the community's interests.

At the heart of our defense of democracy is our **commitment to redistricting processes and enforceable standards that promote fair and effective representation at all levels of government with maximum opportunity for transparency and public participation.** Many of the changes that have been advanced by the legislature to improve and expand access to the ballot are ineffective if representative maps are manipulated to achieve a predetermined outcome. To that end, we have been actively involved in support of full census counts and people-powered fair maps for all Minnesotans for decades, and most recently, through our active participation in the Minnesota Census Mobilization Partnership, Our Maps Minnesota campaign, and the Minnesota Census and Democracy Partnership - all convened by the Minnesota Council on Foundations.

We know that HF 4598 is being considered concurrently with HF 4593 which also proposes creation of an independent redistricting commission. HF 4598 moves two additional "good government" reforms alongside redistricting, under a single constitutional amendment. The League of Women Voters remains neutral at this time with regard to the additional reforms being proposed along with redistricting, as we've not had ample time to study these issues. We strongly encourage legislators, however, to prioritize a standalone

redistricting bill that enhances transparency and accountability for Minnesota voters as they consider the proposed changes.

With respect to the redistricting provisions in this bill, HF4598, we feel there are many redistricting best practices reflected in this bill, but also some significant omissions that result in the bill not taking full advantage of the 5 years of community and stakeholder input that is included in HF4593, and that ensure the bill is the best it can be for the people and impacted communities that are unique to Minnesota. We strongly encourage the bill authors to consider the robust language included in HF4593 such as measures to assure diverse commission representation, provision for a citizen advisory commission should the constitutional amendment be unsuccessful, and ensure that an independent commission will be in place for the 2030 redistricting cycle.

We are hopeful that continued discussion can lead to the creation of a single bill that reflects best practices, as well as lessons learned, from redistricting efforts across the country and can be supported by all stakeholders while also meeting the interests of Minnesota voters in having congressional and legislative maps that provide for representative and responsive government where all voices, especially those of impacted or marginalized communities, are heard and supported.

We thank all the bill authors for their leadership on this important issue to ensure people-powered fair maps here in Minnesota.

Sincerely,



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Testimony of David F. Fisher, Clean Elections Minnesota

MN House Election Finance & Policy Committee 03.13.2024

Chair Freiberg, members, I'm David Fisher, a volunteer on behalf of Clean Elections MN, a nonprofit, nonpartisan organization working for inclusive and healthy democracy. We urge your support for BOTH HF4785 and HF4593. At the same time, we have not taken a position on either a year-round legislature or the bundling of constitutional amendments into one initiative.

We do strongly support reasonable limits on the ability of legislators to lobby their former colleagues after they have left office. And, we strongly support creation of an Independent Redistricting Commission. In short, we support integrity in our election process and results.

Elections should be decided by voters, not by the very politicians competing for the support of those same voters. Every voice should be heard and every vote should be counted equally.

But in many states, politicians draw their own district lines in order to pick their own voters and protect themselves on reelection.

Well the trend is changing. Today more than 21 U.S. states have some form of non-partisan or bipartisan redistricting commission, and although some have had their hiccups the reforms still work better than when maps were drawn in secret, behind closed doors.

In July 2018 the Brennan Center for Justice released research into redistricting commissions after interviews of more than 100 stakeholders involved with redistricting in seven jurisdictions. What they found was “a compelling case that putting commissions in charge of redistricting can significantly reduce many of the worst abuses associated with redistricting and improve outcomes and satisfaction across the stakeholder spectrum — but only if commissions are carefully designed and structured to promote independence and incentivize discussion and compromise.”

Based on its research, the Brennan Center recommended that reforms to maximize their independence and effectiveness:

- An independent selection process coupled with an element of randomness.
- Clear criteria for map drawing.
- A commission of nine to 15 members to ensure diversity and guard against deadlock.
- Map-approval rules that require at least some support from each major political block.
- Strong transparency requirements that make commission proceedings accessible and assessable.
- An enforceable guarantee of adequate funding for its operations.
- A timeframe allowing time to hold public hearings, obtain feedback, make necessary adjustments, and draw final maps.

Each of HF4785 and HF4593 address each of these reforms, and again urge your support.

We also join the League of Women Voters in hoping that a single Bill can come together quickly that reflects best practices and lessons learned from across the country and can be supported by all stakeholders, especially those of impacted or marginalized communities.