

Written Testimony of

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

Hearing on S.F. 4785  
Before the Elections Committee  
of the Minnesota Senate

March 12, 2024  
at 3:00 p.m.

Thank you for the opportunity to provide comments as the Minnesota Senate considers S.F. No. 4785, 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 S.F. 4785, 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 S.F. 4785 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 Senate Elections 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.

S.F. 4785 closely follows what the Brennan Center considers best practices on the selection of commissioners.

As in other states with strong independent commissions, S.F. 4785 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, S.F. 4785 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.<sup>1</sup> This hybrid selection process guards against gaming of the system, while at the same time ensuring through the final

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<sup>1</sup> 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.

six picks that the commission is geographically and demographically representative of Minnesota.

## **2. Rules to Ensure Transparency and Public Participation.**

S.F. 4785 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, S.F. 4785 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.**

S.F. 4785 also provides clear, prioritized map-drawing rules, another central feature of any well-designed redistricting reform.

In line with previously published Brennan Center recommendations, S.F. 4785 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.<sup>2</sup> Enshrining this right in the state constitution will provide Minnesota's diverse and growing communities of color with a critical backstop should federal courts

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<sup>2</sup> 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.<sup>3</sup>

Second, S.F. 4785 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, S.F. 4785 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.<sup>4</sup>

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

S.F. 4785 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.<sup>5</sup> 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

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<sup>3</sup> 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.

<sup>4</sup> The discussion in this section focuses on the three redistricting criteria in S.F. 4785 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.

<sup>5</sup> 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](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. 4785, 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 S.F. 4785 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.

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Thank you again for this opportunity to address the Committee as it considers this historic legislation. We strongly urge that the Committee advance S.F. 4785 and that the Minnesota Senate pass it. We are quite happy to make ourselves available to you if you have any questions.