UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEAGUE OF WOMEN VOTERS OF MICHIGAN, ROGER J. BRDAK, FREDERICK C. DURHAL, JR., JACK E. ELLIS, DONNA E. FARRIS, WILLIAM "BILL" J. GRASHA, ROSA L. HOLLIDAY, DIANA L. KETOLA, JON "JACK" G. LASALLE, RICHARD "DICK" W. LONG, LORENZO RIVERA and RASHIDA H. TLAIB,

Plaintiffs,

v.

RUTH JOHNSON, in her official capacity as Michigan Secretary of State, et al.,

Defendants.
_____/

Case No. 17-cv-14148

Hon. Eric L. Clay
Hon. Denise Page Hood
Hon. Gordon J. Quist

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SECRETARY OF STATE RUTH JOHNSON'S REPLY IN FURTHER SUPPORT OF HER MOTION IN LIMINE TO EXCLUDE TESTIMONY CONCERNING VARIOUS PROFFERED GERRYMANDERING METRICS

Plaintiffs claim in their Response that "Plaintiffs' experts supply extensive data to measure the Michigan gerrymandering and to compare it to other gerrymanders nationwide." (PageID.6730.) Relative measures do not establish a threshold; nor do they tell the Court anything about whether a score of "X" on a particular metric is good, bad, or benign.

Comparing one "gerrymander" to another "gerrymander" does not answer the key questions that have eluded the Supreme Court for 30 years: when does the inherently political exercise of a Legislature drawing lines work a cognizable burden, i.e., when is political map-drawing "too much?" *See Vieth v. Jubelirer,* 541 U.S. 267, 296-297 (2004) (plurality op.). Not one of the metrics used by Plaintiffs' proposed experts answers that question: each of Plaintiffs' experts, conversely, *disavowed* that they had even a *personal* or *idiosyncratic* threshold to suggest, much less that there is a well-recognized threshold to apply. (*See* discussion of expert depositions in Secretary's Brief, PageID.5506-5509.)

Plaintiffs claim that "by *any measure* this gerrymander is extreme." (PageID.6730.) But none of their experts agree. Not one can say when a gerrymander becomes cognizably burdensome. Each disavowed making precisely that claim. (*See* PageID.5506-5509.)

Measurements are completely meaningless without a reliable, accepted framework to interpret those measurements. Telling the Court that the Enacted Plan

scores "X" or "Y" means nothing unless one knows whether X is okay and Y is not *and* there is some widely accepted principle for the difference. *See Whiting v. Boston Edison Co.*, 891 F. Supp. 12, 25 (D. Mass. 1995). This does not go to "weight," but admissibility—the testimony is not based on "reliable principles" and does not help the trier of fact sort good from bad. *See* Fed. R. Evid. 702(a), (c).

Respectfully submitted,

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December 21, 2018

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2018, I caused to have electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record in this matter.

/s/ Ryan M. Shannon

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