UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL BANERIAN, et al.,

Plaintiffs,

v.

JOCELYN BENSON, et al.,

Defendants

and JOAN SWARTZ MCKAY, et al.,

Intervenor-Defendants.

Case No. 1:22-CV-00054-PLM-SJB

DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

SUPPLEMENTAL MEMORANDUM

The Defendant members of the Michigan Independent Citizens Redistricting Commission (the Commission) submit this supplemental memorandum at the Court's request. It and the accompanying appendix identify 546 public comments in the Commission's record that support the district-specific attestations of Commissioner Anthony Eid and other relevant sections of the legislative record. The appendix (App.) is organized into thirteen sections, one for each of the Chestnut plan's thirteen congressional districts. A fourteenth section identifies additional relevant sections of the legislative record. The appendix shows that Commissioner Eid's declaration cannot plausibly be deemed "a post-hoc justification for the district lines." ECF No. 53 at 6 (PageID.1085).

The record shows that the Commission made "a good-faith effort to achieve absolute equality" and that the small "population differences 'were necessary to achieve some legitimate state objective.'" *Tennant v. Jefferson Cty. Comm'n*, 567 U.S. 758, 760 (2012) (citations omitted). The Chestnut plan had the lowest population deviation of any plan submitted for the 45-day notice-and-comment period, which is required of any plan eligible for a vote of the Commission, *see* Mich. Const. art. IV, § 6(14)(b). App. 787. The record also shows that the Chestnut plan was the product of a good-faith effort to draw the deviation down. When Commissioner Eid first presented the Chestnut plan, it had a deviation of "plus or minus .37%." App. 763. By the time of its adoption, the deviation had been significantly reduced.

The record shows that Commissioner Eid collaborated with colleagues to craft the Chestnut plan and was generous in sharing the purposes behind the plan and soliciting the feedback that would be implemented into the final plan. *See* App. 761–73 (Commissioner Eid presenting the draft Chestnut plan); App. 775–86. The record further shows that

Commissioner Eid's purposes were informed to a large extent by public comments, as the Michigan Constitution contemplates, *see* Mich. Const. art. IV, § 6(8), (9), (13)(c), & (14)(b).

1. The legislative record amply supports Commissioner Eid's attestation that District 1 was drawn to preserve "northern regions of the State" that "are more rural and agricultural in nature." Eid. Decl. ¶ 5 (PageID.779). Public commenters told the Commission that these communities "are of similar interests and share demographics: religion, ethnicity, economics, culture." App. 008; *see also* App. 010 The record also supports Commissioner Eid's assertion that the district also serves the interests of "Native American communities." Eid. Decl. ¶ 5 (PageID.779); *see* App. 022; App. 022–23. At least 24 public comments support Commissioner Eid's testimony as to this district. App. 001–28.

2. The record also shows that District 2 was intended "to create a mid-Michigan district that included Barry County with other rural communities," like "Ionia, Montcalm, Gratiot, and Isabella." Eid. Decl. ¶ 5 (PageID.779). Commenters told the Commission that "Barry [C]ounty . . . is very rural and inland," does not "have the same economic base as the urban areas of Kalamazoo or Battle Creek," and "would go much better with counties like Ionia, Montcalm, and Gratiot that are also rural and face similar concerns such as flooding." App. 44. At least 16 public comments support Commissioner Eid's testimony as to this district. App. 029–49.

3. The general public overwhelmingly desired a district uniting "Grand Rapids, Muskegon, Grand Haven, and Rockford," and the Commission obliged with District 3. Eid. Decl. ¶ 8 (PageID.780). Commenters again and again stated that "Grand Rapids and Muskegon have similar concerns," App. 103, that "Muskegon and Grand Rapids are connected by the economically important I-96 corridor," App. 102, and that "[p]utting Grand Rapids in its own district with the Western part of West Michigan is critical to aligning values of

districts" because there are "[l]ots of religious, cultural, and geographical similarities among this district." App. 101. Commenters also opined that connecting "Grand Rapids and Muskegon[] create[s] a voice for the minority populations" in both cities. App. 090; *see also* App. 093. At least 47 public comments support Commissioner Eid's testimony as to this district. App. 050–103.

4. The purpose of District 4 was to unite areas in and around Battle Creek and Kalamazoo in "a western Michigan district" and *not* to include those cities with nearby rural regions having a different community of interest. Eid Decl. ¶ 10 (PageID.780). Again, the Commission adopted this configuration based on public input. The Commission was advised not to include Kalamazoo in a district with rural areas, *see* App. 122, to "consider Kalamazoo, Battle Creek, Kalamazoo County and Calhoun County as a community of interest," App. 107, that "put[ting] Kalamazoo and Battle Creek in the same district, . . . is the most representative for SW Michigan," App. 175, and that there was "a group which has been advocating for Battle Creek and Kalamazoo to be together in the same Congressional district . . . ." App. 178; *see also* App. 108–09. At least 64 public comments support Commissioner Eid's testimony as to this district. App. 104–78.

5. Perhaps no other configuration in the Chestnut plan enjoyed as much support as the decision to combine the southern border counties in District 5, as "many individuals spoke about living in Michigan but working, shopping, and praying across the border or dealing with interstate transportation." Eid Decl. ¶ 12 (PageID.781). The configuration, first, was proposed in the "heat maps" report of the Metric Geometry and Gerrymandering Group (MGGG) Redistricting Lab, which reported to the Commission that 36 submissions cited a strong community of interest along the border, based on a "[r]ural identity," "[s]hared concerns about interest commerce across with Ohio and Indiana," "[a]gricultural industries,

shared health care services, and recreation opportunities." App. 625. Commenters implored the Commission to pay "attention [to] the all too often overlooked border county community," because "[c]ounties along the Ohio and Indiana borders share similarities that no other counties can relate to"—that "residents on both sides of the state commute across the state line twice a day for work," "deal with tax disparities unique to the daily life of our border county residents," "shop, dine, and enjoy outdoor areas in each state," and "often share resources, state police posts, union regions, hospital systems[,] health departments[,] environmental concerns[,] infrastructure projects, broadcast media, print media and much more." App. 208–09; *see also* App. 210–11 (citing "[s]hared infrastructure, unions, United Way, print, broadcast media"). Commenters could not have been clearer that: "[l]iving in order counties many don't realize how much [we] rely on newspaper and stations for our local news." App. 196. Commenters also explained that "Monroe County" on the eastern end of District 5 "is much more tied together with other border counties than it is alike [to] the large cities to the North like Detroit . . . ." App. 199. Indeed, its residents observed that "[w]e are more similar to Toledo than we are to Detroit," in part because of "print and broadcast media" shared across state lines. App. 180. Commissioner Eid's attestations concerning District 5 are supported by at least 51 comments. App. 179–238.

6. The Commission intended District 6 to be "a district around Ann Arbor, Washtenaw County, and the University of Michigan" that did not include "Jackson and Livingston Counties," "as they shared different values," but did include Novi based on its community of interest with Ann Arbor. Eid Decl. ¶ 14 (PageID.781). The public record supported this choice. Commenters consistently observed that "[t]here is no apparent at all connection between" Jackson County and Ann Arbor, App. 272, because they don't share common values, *see* App. 286; *see also* App. 290 ("I further oppose any plans that place Jackson with

Washtenaw"); App. 277 ("I don't really think Ann Arbor and Jackson go together either. I just don't like it."); App. 271 ("Anyone that would marry the communities of Ann Arbor and Ypsilanti with Jackson County needs to go back to the drawing board."). The record also confirms Commissioner Eid's attestation that commenters favored including Novi in a district with Ann Arbor. *See* App. 243; App. 245. Commissioner Eid's attestations concerning District 6 are supported by at least 72 comments. App. 239–307.

7. District 7 was drawn as "a tri-county district consisting of Clinton, Eaton, and Ingham Counties" with the additional purpose of "keeping Shiawassee County whole." Eid Decl. ¶ 16 (PageID.782). The record confirms that these choices were made "in response to public comment." *Id.* Commenters opined that "Ingham, Eaton, and Clinton should be in the same district, as a Lansing-centric Community of Interest," App. 308, and discouraged "breaking Shiawassee County up into different districts," App. 331; *see also* App. 338 ("The counties of Clinton, Eaton, and Shiawassee share a community of interest."); App. 339 ("Clinton, Eaton County, and Ingham County together is something that needs to happen."); App. 308–09 ("I agree that Ingham, Eaton and Clinton counties constitute a Community of Interest."). Commissioner Eid's attestations concerning District 7 are supported by at least 37 comments. App. 308–59.

8. District 8 was intended to achieve a difficult compromise necessitated by differing views about how to recognize communities of interest in and around Midland County. Eid Decl. ¶ 18 (PageID.782). As Commissioner Eid attested, some commenters "asked that Midland be included with Gladwin County, while others asked for Midland to be included with the cities of Flint, Bay City, and Saginaw." *Id.* The legislative record shows this divide of views, as commenters opined both that "Saginaw Bay City[,] Midland[,] and Flint should be together," App. 393, and "that Midland should be put in the same legislative District as

Gladwin," App. 396. Comments along these lines were sharply divided. App. 402 ("Do NOT split up Midland County and align any of it with Saginaw, Bay City and Flint."); App. 404 ("Please keep the counties of Midland and Gladwin together in the redistricting plan."); App. 410 ("Keep Midland County with Gladwin County in a separate District from Flint."); App. 415; App. 417 ("Midland is one of the tri-cities, and local issues tend to revolve around the three as a whole instead of separate entities."). Commissioner Eid's attestations concerning District 8 are supported by at least 67 comments. App. 360–429.

9. Commissioner Eid configured District 9 "around the 'thumb' of Michigan," which he identified "as a community of interest due to its rural, agricultural nature," and he purposefully excluded "the cities of Wixom, Walled Lake, and Commerce Township," which "identified much more closely with the suburban metro-Detroit portions of Oakland County." Eid. Decl. ¶ 20 (PageID.783). The legislative record fully supports this choice. Commenters explained that "Oxford, Lake Orion, Addison, & Brandon townships all share alike objectives of their communities," App. 430, and that the interests of "thumb" communities "are absolutely separate from that of Oakland or Genesee Counties," App. 433; *see also* App. 434 ("We are a rural community that should never be part of Genesee or Oakland County."); App. 438 ("[T]ell me how someone from the thumb, farming and working the land, has the same concerns and issues as someone living the city life."); App. 439 ("North Oakland County consists mainly of bedroom of communities have strong associations with Flint and Genesee County" and "[h]as little in common with the northeastern part of the state"); App. 441 ("Please, for the love of God, stop lumping in Western Oakland County with the thumb district."). Commissioner Eid's attestations concerning District 9 are supported by at least 12 comments. App. 430–45.

10. District 10 was configured "to preserve communities of interest between Rochester Hills and the Macomb County communities of Sterling Heights, Warren, and St. Clair Shores because of shared cultural communities." Eid Decl. ¶ 22 (PageID.784). Residents of the area "express[ed] . . . support for having Warren and Sterling Heights in the same district," because of an "extensive communal and demographic connection" including through a shared "Arab and Chaldean community." App. 446; *see also* App. 452 ("Please give the Chaldean community a voice in one District."); App. 452 ("I'm asking the Commission to give Chaldeans a voice in one District."); App. 454 ("[P]ut Chaldeans in one Congressional District."). The Commission heard from commenters that Warren "should be kept with other industrial areas in Macomb and Oakland like Sterling Heights, Troy, and Rochester Hills." App. 450; *see also* App. 451 ("I find the inclusion of suburbs ranging from Rochester Hills to Royal Oak and Troy to Mt. Clemens to give us a diverse but connected constituency."); App. 456 ("Include cities of Farmington Hills, West Bloomfield, Bloomfield Twp, Troy, Rochester Hills, Sterling Heights and Shelby Twp together."); App. 457 ("In my map Sterling Heights Troy and parts of Rochester Hills are in one District as they should be."). Commissioner Eid's attestations concerning District 10 are supported by at least 12 comments. App. 446–60.

11. District 11 was designed "to preserve communities in and around Oakland County such as the cities of Wixom, Walled Lake, Commerce, West Bloomfield, Troy, and Farmington Hills." Eid. Decl. ¶ 24 (PageID.784). Additional goals included "to preserve the LGBTQ communities in the cities of Royal Oak, Ferndale, and Oak Park" and "to exclude Southfield from Congressional District 11 because individuals expressed that Southfield felt more closely aligned with the communities of Detroit than Oakland County." *Id.* The legislative record supports these choices. Residents argued that "the communities of Bloomfield Hills, Bloomfield Township, and West Bloomfield should be in the same district." App. 461;

see also App. 462 ("I strongly support the communities of interest (West Bloomfield Township, Keego Harbor, the City of Village of Orchard Lake, and Sylvan Lake"); App. 471 ("And I think Troy should be moved back in with other local areas to the south and west of our City like Clawson, Royal Oak Berkeley Birmingham, Bloomfield et cetera"); App. 469 ("I urge the Commission to link Troy with municipalities to our south and west, whether it's visiting parks, attending youth sports or classes, commuting, looking at places we shop or visit for entertainment."); App. 472 ("Troy is the largest economy in Oakland County and I think it's important it stays within this community."); App. 474 ("Troy must stay with Rochester, Rochester Hills, & Bloomfield in Oakland county as it is today."). Commenters also asked the Commission to be attentive to "the concerns of the LGBTQ community in Ferndale, Southfield, Pleasant Ridge, Hazel Park, Oak Park and Huntington Woods." App. 463; App. 465 ("Southeast Oakland County without a doubt is an LGBT community of interest as it holds the largest number of LGBT residents in our state."); App. 466 ("The LGBTQ is a community of interest that requires a fair representation."). Commissioner Eid's attestations concerning District 11 are supported by at least 33 comments. App. 461–98.

12. District 12 was crafted "to create a district featuring the east side of Detroit with Dearborn and other similar communities, . . . to preserve the historical neighborhoods in and around Detroit," and "to include Livonia . . . because of Livonia's blue-collar workforce that aligned more with the communities in Detroit, Dearborn, and Southfield." Eid. Decl. ¶ 26 (PageID.785). Residents informed the Commission that "there is some commonality (e.g., average income, age of houses and infrastructure, home value, educational attainment, etc.) among inner ring/older suburbs like Redford, Livonia, and Dearborn as well as long-established western communities like Plymouth, Northville, and Farmington, which are a popular destinations for those living in the western suburbs." App. 502; *see also* App. 506; App. 507

("As a community of interest people commute to Southfield or Detroit, but live in suburban neighborhoods and send their kids to the surrounding schools."); App. 510; App. 511 ("It is bizarre that so[] many Congressional maps refuse to add Southfield, Oak Park and Royal Oak Township to the west side Detroit district . . . ."). Comments overwhelmingly favored inclusion of Livonia with these similar communities. *See, e.g.*, App. 551 ("Our Community of Interest . . . primarily lives in Dearborn, Dearborn Heights, West Detroit, and Melvindale, as well as other parts of Michigan such as Hamtramck, Sterling Heights, Flint, Livonia, Canton, Ferndale, Ypsilanti, [and] Ann Arbor"); App. 240 ("The predominant features tying the community of Ann Arbor-Ypsilanti, Plymouth-Canton-Northville, Novi, and Livonia are the similar lifestyles, historical ties, and drivers of the economy."); App. 243 ("I would like the commission to consider my community of interest which incorporates the areas of Ann Arbor, Ypsilanti, Plymouth, Canton, Novi, and Livonia."); App. 502 ("[M]y map encompasses the Wayne-Westland school district, which now includes parts of Wayne, Westland, and Inkster; it also includes the Livonia district, which includes parts of Westland, and the Plymouth-Canton district, among others[.]"); App. 510. Commissioner Eid's attestations concerning District 12 are supported by at least 22 comments. App. 499–524.

13. Commission Eid configured District 13 "to create a Detroit centered district and to preserve the townships of Wayne and the southern portion of Dearborn Heights in order to keep minority communities whole." Eid Decl. ¶ 28 (PageID.785). Commenters urged the Commission to adopt a district of this genre, noting that it preserved Asian American, App. 528–38, Eastern European, App. 538, and Arab, App. 545; App. 551–53, populations. They observed that a "District of Dearborn, Hamtramck and parts of the north of Dearborn Heights" would preserve communities of interest. App. 557; *see also* App. 564 ("As you might know, cities like Dearborn and Dearborn Heights, are home to huge Arab American

populations."); App. 580 ("It is essential that our central communities in Dearborn and Dearborn Heights are not fragmented in the making of legislative districts."); App. 584; App. 585. Commissioner Eid's attestations concerning District 13 are supported by at least 89 comments. App. 525–90.

For these reasons and those stated in the Commission's prior opposition brief, the motion should be denied.[1] The Commission recognizes that some public commenters may have preferred different configurations from what the Commission ultimately chose, but this is unremarkable and unavoidable. To redistrict is, at its essence, to "balance competing interests," which is an "exercise of political judgment." *Miller v. Johnson*, 515 U.S. 900, 915 (1995). Plaintiffs appear to believe that the justification analysis requires a legislative body to adhere to the "judicially discoverable and manageable standards" that control judicial action, *see Rucho v. Common Cause*, 139 S. Ct. 2484, 2494 (2019), but legislative will is not so limited, *see, e.g.*, *Voinovich v. Quilter*, 507 U.S. 146, 156 (1993); *Perry v. Perez*, 565 U.S. 388, 392–93 (2012); *see also* The Federalist No. 78 at 523 (Hamilton) (Jacob Cooke ed., 1961). Finally, because Plaintiffs (like the other parties) formally chose not to "seek[] expedited discovery prior to the [preliminary-injunction] hearing on March 16, 2022." ECF No. 56 at 17 (PageID.1144), the Commission respectfully submits that the proper avenue for Plaintiffs to challenge evidentiary weight would have been to seek discovery and that no further factual development is warranted on the outstanding motion.

[1] The Commission's justifications for the deviations are not limited to the communities-of-interest goals under Subsection 13(c). The Commission focused on obvious communities-of-interest differences between the Chestnut plan and Plaintiffs' proposed remedy in opposing the preliminary injunction because the justification inquiry compares the enacted plan against "alternatives," *Tennant*, 567 U.S. at 763 (citation omitted), such that different alternatives may elicit a different defense strategy, *see id.* at 765 ("None of the alternative plans came close to vindicating *all three* of the State's legitimate objectives . . . ." (emphasis added)). A different hypothetical alternative might implicate different constitutional criteria, like compactness or partisan fairness. But all the criteria are justifications for the minor population deviation, since all criteria had to be achieved in a single, integrated plan.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.3(b)(ii), Counsel for the Commission certifies that this brief contains no more than 10 pages, inclusive of any headings, footnotes, citations, and quotations, and exclusive of the caption, cover sheets, signature block, any certificate, and any accompanying documents.

Dated: March 22, 2022

/s/ David H. Fink
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CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2022, a true and correct copy of the foregoing was filed via the Court's CM/ECF system and served via electronic filing upon all counsel of record in this case.

/s/Nathan J. Fink
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