No. 22-____

IN THE

Supreme Court of the United States

MICHAEL BANERIAN, *et al.*,

Appellants,

v.

JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS THE SECRETARY OF STATE OF MICHIGAN, *et al.*,

Appellees.

On Appeal from the United States District Court for the Western District of Michigan

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

The question presented is:

1. May a state justify deviations from Article I, Section 2 of the U.S. Constitution's "high standard of justice and common sense" for the apportionment of congressional districts—"equal representation for equal numbers of people," *Wesberry* v. *Sanders*, 376 U.S. 1, 18 (1964), based on a purported interest in maintaining "communities of interest," an ambiguous and open-ended criterion deliberately left undefined by the State Constitution.

PARTIES TO THE PROCEEDING

The following were parties before the district court:

Plaintiffs:

> Michael Banerian, Michon Bommarito, Peter Colovos, William Gordon, Joseph Graves, Beau LaFave, Sarah Paciorek, Cameron Pickford, Harry Sawicki, and Michelle Smith.

Defendants:

> Jocelyn Benson, In Her Official Capacity As The Secretary Of State Of Michigan; Douglas Clark, In His Official Capacity As Commissioner Of The Michigan Independent Citizens Redistricting Commission; Juanita Curry, In Her Official Capacity As Commissioner Of The Michigan Independent Citizens Redistricting Commission; Anthony Eid, In His Official Capacity As Commissioner Of The Michigan Independent Citizens Redistricting Commission; Rhonda Lange, In Her Official Capacity As Commissioner Of The Michigan Independent Citizens Redistricting Commission; Steven Terry Lett, In His Official Capacity As Commissioner Of The Michigan Independent Citizens Redistricting Commission; Brittni Kellom, In Her Official Capacity As Commissioner Of The Michigan Independent Citizens

Redistricting Commission; Cynthia Orton, In Her Official Capacity As Commissioner Of The Michigan Independent Citizens Redistricting Commission; M.C. Rothhorn, In His Official Capacity As Commissioner Of The Michigan Independent Citizens Redistricting Commission; Rebecca Szetela, In Her Official Capacity As Commissioner Of The Michigan Independent Citizens Redistricting Commission; Janice Vallette, In Her Official Capacity As Commissioner Of The Michigan Independent Citizens Redistricting Commission; Erin Wagner, In Her Official Capacity As Commissioner Of The Michigan Independent Citizens Redistricting Commission; Richard Weiss, In His Official Capacity As Commissioner Of The Michigan Independent Citizens Redistricting Commission; Dustin Witjes, In His Official Capacity As Commissioner Of The Michigan Independent Citizens Redistricting Commission.

Individual Intervenor-Defendants:

Joan Swartz McKay, Grace Huizinga, Samantha Neuhaus, Jordan Neuhaus, Cayley Winters, Glenna DeJong, Marsha Caspar, Hedwig Kaufman, Collin Christner, Melany Mack, Ashley Prew, Sybil Bade, Susan Diliberti, Lisa Wigent,

Matthew Wigent, Pamela Tessier, Susannah Goodman.

Organizational Intervenor-Defendants:

Count MI Vote d/b/a Voters Not Politicians, a Michigan nonprofit corporation.

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INTRODUCTION

This case is about whether a state may (1) choose an indefinite and inherently malleable redistricting criterion, (2) delegate the responsibility of defining that criterion to an independent commission, (3) allow the commission to apply that criterion inconsistently to draw the borders of thirteen congressional districts, and then (4) use the application of that criterion to justify dilution of roughly two-thirds of the state electorate's votes. Based on the plain text of the Constitution, the Founder's emphasis on equality among every vote cast, this Court's longstanding and consistent precedent, and basic notions of equity, the answer is no.

For nearly sixty years, this Court has adhered to the view that "'we the people' under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications." *Gray* v. *Sanders*, 372 U.S. 368, 380 (1963). For almost that same length of time, the Court has maintained that because Article I, Section 2 commands that "Representatives [must] be chosen 'by the People of the several States,' . . . as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." *Wesberry* v. *Sanders*, 376 U.S. 1, 7-8 (1964). Critically, "there are no *de minimis* population variations, which could practicably be avoided, but which nonetheless meet the standard of Art. I, § 2, without justification." *Karcher* v. *Daggett*, 462 U.S. 725, 734 (1983).

The record makes unassailable the notion that Michigan could have "practicably . . . avoided" any

population deviations among its thirteen congressional districts. *Id.* The question, then, is whether Michigan bore its burden of justifying "with particularity" the nearly twelve-hundred-person difference between its most populous and least populous congressional districts based on neutrally applied legislative policies that are "consistent with constitutional norms." *Id.*, at 739-40.

As a matter of law, Michigan has not done so. The only redistricting criterion the State offered to justify overpopulating eight of its thirteen congressional districts is maintaining "communities of interest." Under the Michigan Constitution, "communities of interest" "may include, *but shall not be limited to*, populations that share cultural or historical characteristics or economic interests." Mich. Const. art. IV, § 6(13)(c) (emphasis added). In other words, "communities of interest" are, in essence, whatever the Michigan Independent Citizens Redistricting Commission says they are. And because the plain terms of the Michigan Constitution contemplate different definitions of communities of interest in different areas of the State (e.g., maybe an economic community here, a cultural community there), determining whether the Commissioners applied this criterion in any consistent manner at all is an impossibility.

Therein lies the problem, and the error at the heart of the three-judge court's order. Article I, Section 2's one-person, one-vote requirement matters tremendously. The Court has held fast to the notion that there is "no excuse for ignoring our Constitution's plain objective of making equal representation for

equal numbers of people the fundamental goal for the House of Representatives." *Wesberry*, 376 U.S. at 18. It has also warned that "[i]f state legislators knew that a certain *de minimis* level of population differences was acceptable, they would doubtless strive to achieve that level rather than equality." *Karcher*, 462 U.S. at 731. Where, as here, a federal court allows a state to skirt Article I, Section 2's fundamental mandate under the banner of "deference" to the State's application of undefined, undefinable, and unascertainable criteria, it is inviting the same sort of mischief and, at its core, flipping on its head the notion that the U.S. Constitution is the Supreme Law of the Land.

OPINION BELOW

The three-judge district court's order denying Plaintiffs' motion for a preliminary injunction is available at *Banerian* v. *Benson*, No. 1:22-cv-54, 2022 U.S. Dist. LEXIS 61802 (W.D. Mich. Apr. 1, 2022) (three-judge court) and is reproduced at App. 239a-251a. The district court's order denying Plaintiffs' motion for a preliminary injunction is reproduced at App. 252a-253a.

Before denying Plaintiffs' motion for a preliminary injunction, the three-judge district court granted Defendants' Motion to Dismiss one of Plaintiffs' claims. The district court's opinion doing so is reported at *Banerian* v. *Benson*, No. 1:22-cv-54, 2022 U.S. Dist. LEXIS 38188 (W.D. Mich. Mar. 4, 2022) (three-judge court) and is reproduced at App. 232a-238a. This order is not at issue in this appeal.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1253, which provides that "any party may appeal to the Supreme Court from an order granting or denying, after notice and hearing, an interlocutory or permanent injunction in any civil action, suit or proceeding required by any Act of Congress to be heard and determined by a district court of three judges."

The three-judge district court denied Plaintiffs' motion for a preliminary injunction on April 1, 2022. App. 252a. Plaintiffs filed a timely notice of appeal on April 29, 2022. App. 1a.

On June 14, 2022, Plaintiffs filed an application for a thirty-day extension of time with Justice Kavanaugh. See *Banerian* v. *Benson*, No. 21A831 (U.S. Jun. 14, 2022). App. 254a-259a. On June 21, 2022, Justice Kavanaugh granted Plaintiffs' application, which extended the time to file this jurisdictional statement to July 28, 2022. See *Banerian* v. *Benson*, No. 21A831 (U.S. Jun. 21, 2022). App. 260a.

CONSTITUTIONAL PROVISIONS INVOLVED

Article I, Section 2, clause 1 of the United States Constitution provides in relevant part: "[t]he House of Representatives shall be composed of Members chosen . . . by the People of the several States." The entirety of Article I, Section 2 is reproduced at App. 264a-265a.

Article Four, Section 6 of the Michigan Constitution is reproduced at App. 265a-277a.

STATEMENT OF THE CASE

A. In 2018, Michigan voters approved an amendment to their state constitution that transferred the legislature's power to draw congressional and state legislative districts to an Independent Citizens Redistricting Commission. App. 240a. The amendment also instructed that when the Commissioners draw new district lines, they should consider seven redistricting criteria in descending order of priority. App. 240a-241a. The criteria include:

1. Complying with federal constitutional and statutory requirements, including the one-person, one-vote requirement of Article I, Section 2;

2. Maintaining geographic contiguity;

3. "[R]eflect[ing] the state's diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates";

4. Remaining neutral regarding political parties;

5. Remaining neutral regarding incumbents or candidates;

6. Reflecting consideration of county, city, and township boundaries; and

7. Maintaining reasonable compactness.

App. 240a-241a (citing Mich. Const. art. IV, § 6(13)).

The Commission consists of thirteen members, four of whom identify as Republicans, four of whom identify as Democrats, and five of whom affiliate with neither party. Mich. Const. art. IV, § 6(1)(b). None of the Commissioners may have been active in politics

within six years before their selection. *Id*; see also App. 240a.

While conducting their work, the Commissioners must hold at least ten public meetings. The public also enjoys the right to submit, and the Commission labors under a directive to consider, written submissions, including proposed redistricting maps and underlying data. Mich. Const. art. IV, § 8.

The Commissioners held their first meeting in September 2020, which occurred before the release of the 2020 Census Data. App. 241a. Approximately one-hundred and forty meetings held in various locations across the State followed. The Commissioners began drafting potential districting maps during this time. App. 241a; App. 220a.

B. Eventually, the Commissioners published five proposed congressional district plans. App. 241a. After they did so, the public had forty-five days to review and submit comments. Michiganders turned out in droves, eventually submitting "thousands" of comments for consideration. App. 241a.

Ultimately, the Commissioners voted for the "Chestnut Plan." The vote tally was eight of thirteen votes in favor. Two Republicans, two Democrats, and four Independents cast votes for it. App. 241a-242a.

Michigan's enacted Congressional District Map contained an overall population deviation of 0.14 percent with a population differential of 1,122 persons. App. 242a. Congressional District 5, which contains 635 persons fewer than the ideal population,

is the most underpopulated district. App. 37a. Congressional District 13 is the most overpopulated with 487 persons above the ideal. App. 37a; App. 221a. In total, the Chestnut Plan subjects eight of Michigan's thirteen congressional districts—which house well over two-thirds of the State's total population—to vote dilution. App. 221a (adding up the total population of all congressional districts that are overpopulated).

Accordingly, the votes of Plaintiffs Michael Banerian, William Gordon, Joseph Graves, Beau LaFave, Sarah Paciorek, Cameron Pickford, Harry Sawicki, and Michelle Smith, are all diluted.

Michael Banerian	Congressional District 11	389 Persons Overpopulated	App. 75a
William Gordon	Congressional District 6	94 Persons Overpopulated	App. 81a
Joseph Graves	Congressional District 8	50 Persons Overpopulated	App. 83a
Beau LaFave	Congressional District 1	196 Persons Overpopulated	App. 85a
Sarah Paciorek	Congressional District 3	235 Persons Overpopulated	App. 87a
Cameron Pickford	Congressional District 7	59 Persons Overpopulated	App. 89a

Harry Sawicki	Congressional District 12	68 Persons Overpopulated	App. 91a
Michelle Smith	Congressional District 12	68 Persons Overpopulated	App. 93a

See also App. 221a.

C. Because Michigan's overall population deviation is one of the largest in the country, Plaintiffs sued, alleging a violation of Article I, Section 2's requirement that each congressional district achieve equal population as near as is practicable. App. 5a. Because the Amended Complaint alleged a federal constitutional violation in the redistricting of congressional districts, a three-judge panel was convened. App. 29a.

Commissioner Anthony Eid, who identified as one of the Independent Commissioners, drafted the Chestnut Plan. App. 241a. During the three-judge district-court proceedings, he averred to scouring about twenty-five thousand public comments to "identify communities of interest[] in different parts of the state." App. 241a; App. 220a. He also used "community of interest heat maps," produced by the Metric Geometry and Gerrymandering Group Redistricting Lab. In Commissioner Eid's view, this technology helped him identify clusters of comments that corresponded to locations throughout Michigan. App. 140a.

The justifications provided by Commissioner Eid evidenced a process that, on its face, applied the

communities-of-interest criterion differently in different areas of the State. For instance, he claimed that his goal in drafting Congressional District 2 was to draw a district that included Barry County with other rural communities. App. 141a. In so doing, he purportedly responded to comments from Barry County residents desiring to be included with Ionia, Montcalm, Gratiot, and Isabella Counties. App. 141a.

He also defended Congressional District 3's borders by a desire to pair Muskegon and Grand Rapids in the same district, because some comments suggested that Muskegon and Grand Rapids have shared values and culture. App. 141a-142a. But forty-two miles separate Muskegon and Grand Rapids, and the two communities have no meaningful interaction with each other. App. 198a-201a. Indeed, Muskegon and Grand Rapids have not been paired in the same congressional district since 1890. App. 203a.

Congressional District 5, which encompasses Michigan's entire three-hundred-mile Southern Border, may be the hardest to justify. App. 142a-143a. In Commissioner Eid's view, residents in counties that border Indiana and Ohio share "unique circumstances" such as "working, shopping, and praying across the border and dealing with interstate transportation," as well as a shared television market (even though five separate media markets service a border that spans the suburbs of Detroit to the suburbs of Chicago). App. 142a-143a; App. 205a.

Finally, there is little rhyme or reason as to how the Chestnut Map accounts for religious and cultural communities. Although the Commissioners

maintained a Chaldean community and a LGBTQ community in Congressional Districts 10 and 11 respectively, in those same districts, the Commissioners split an Orthodox Jewish community and an "Arab Middle Eastern, North African community in the southern portion of Dearborn Heights." App. 246a.

D. Plaintiffs submitted a proposed map with their Complaint and Motion for a Preliminary Injunction. All parties agreed that Plaintiffs' proposed map has a near zero population deviation—each district's population is within one person of all others. App. 222a. Although Plaintiffs' proposed plan splits more cities than the Chestnut Plan, it splits fewer counties, townships, and villages. App. 41a. It is also more compact. App. 43a.

The Commissioners responded that the communities-of-interest provision in the Michigan Constitution vested them with broad discretion to define what constitutes a community of interest and then to apply that definition however they see fit, notwithstanding the consequential population deviations among the congressional districts. Commers.' Opp.'n to Pls.' Mot for Prelim. Inj. At 14 (Dkt. No. 42) (PageID# 740). They left no room for debate on this point—in their view, the Michigan Constitution's community-of-interest criterion "exudes discretion." *Id.* Empowered with a State constitutional provision that purportedly gives them license to draw congressional districts however they please, the Commissioners took it one step further by maintaining that they did not have to achieve the "same communities of interest objective[s]"

throughout the State or even within a particular congressional district. *Id.*, at 22 (PageID# 748).

E. On April 1, 2022, the three-judge district court held that the Plaintiffs were not likely to succeed on their one-person, one-vote claim. The court therefore denied Plaintiffs' Motion for Preliminary Injunction. App. 239a.

The three-judge court's opinion was driven by a foundational legal premise—that, because the Michigan Constitution vests the Commissioners with broad discretion "to define and identify communities of interest as [they see] fit," the Commissioners were at liberty not only to come up with their own definition for the community-of-interest criterion but also to apply that definition differently throughout the State. App. 247a. To the three-judge court, it did not matter that the Commissioners' definition of community of interest—essentially, we know one when we see one—was applied inconsistently. In fact, the three-judge court acknowledged that the Chestnut Plan left intact some religiously homogenous communities while splitting others. App. 246a.

The court dismissed this inconsistent treatment based on two premises: "discretion" to the Commissioners and "self-determinism" of the individuals submitting public comments. App. 247a. In the three-judge court's view, arbitrary application was simply a product of the political judgments the Commissioners were empowered to make. This empowerment, according to the three-judge court, granted the Commissioners license to deviate from

Article I, Section 2's one-person, one-vote principle. App. 246a-247a.

The three-judge court also ruled that the 0.14 percent deviation was "small," even though the deviations meant that votes cast by one-third of Michiganders have more political power than votes cast by the other two-thirds. App. 245a. Consequently, the three-judge court concluded that the Commissioners' burden was light. App. 249a. The three-judge court then credited Commissioner Eid's assertions about all his communities-of-interest goals for Michigan's thirteen congressional districts. App. 249a-250a. The court noted that each community-of-interest goal that Commissioner Eid advanced was supported by at least one public comment. App. 250a. It held that, even though there were comments that contradicted what Commissioner Eid said, the weight of the comments supported his objectives. App. 250a. Accordingly, the court concluded that, at this preliminary stage, the Commissioners were justified in deviating from population equality because it was necessary to achieve their community-of-interest objectives. App. 250a.

F. Twenty-eight days later, on April 29, 2022, Plaintiffs filed their Notice of Appeal. App. 1a. Later, on June 14, 2022, Plaintiffs applied for an extension of time with Justice Kavanaugh, requesting thirty additional days for which to file their jurisdictional statement. App. 254a-259a. On June 21, 2022, Justice Kavanaugh granted the requested extension, moving the deadline to July 28, 2022. App. 260a.

REASONS FOR SUMMARILY REVERSING OR NOTING PROBABLE JURISDICTION

I. ABSOLUTE POPULATION EQUALITY AMONG CONGRESSIONAL DISTRICTS HAS BEEN, AND REMAINS, ARTICLE I, SECTION 2'S MANDATE.

Ever since individuals began challenging malapportioned voting districts, this Court has recognized that unconstitutional vote dilution occurs any time one person's vote carries more weight than another's. *Wesberry* was one of the first such cases. In *Wesberry*, the Court considered whether a congressional apportionment statute that "contracts the value of some votes and expands that of others" by creating some congressional districts with more individuals and some with fewer may survive Constitutional scrutiny. 376 U.S. at 7.

The Court arrived at the obvious conclusion. Because "the Federal Constitution intends that when qualified voters elect members of Congress each vote be given as much weight as any other vote," the statute failed. *Id.* As a matter of Article I, Section 2's plain text and the historical understanding of the requirement that "Representatives be chosen 'by the People of the several States,'" *id.* (quoting U.S. Const. Art. I, § 2, cl. 1), the Court got it right sixty years ago. This same understanding underscores (1) why "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's," *id.*, at 7-8, and (2) how far the three-judge court strayed from this Court's mandate when it declined to enjoin Michigan's maps.

An obvious point bears reemphasizing. When one congressional district includes fewer individuals than another, voters in the under-populated district have more political power than voters in the over-populated district. As more individuals are entitled to cast a vote for an individual representative, "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds* v. *Sims*, 377 U.S. 533, 555 (1964).[1] This point has been reiterated since our Country's earliest days.

After our Nation's Founders determined that the Articles of Confederation had failed to meet the challenges facing our young Country, they met in 1789 to construct a better system of government. During that Philadelphia summer, "[t]he question of how the legislature should be constituted precipitated the most bitter controversy of the Convention." *Wesberry*, 376 U.S. at 10. As part of this controversy, "[o]ne principle was uppermost in the minds of the many delegates: that, no matter where he lived, each voter should have a voice equal to that of every other in electing members of Congress." *Id.* The delegates

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[1] See also *South* v. *Peters*, 339 U.S. 276, 279 (1950) (Douglas, J., dissenting) ("The right to vote includes the right to have the ballot counted. . . . It also includes the right to have the vote counted at full value without dilution or discount. . . . That federally protected right suffers substantial dilution . . . [where a] favored group has full voting strength" and "[t]he groups not in favor have their votes discounted") (internal citations omitted).

adhering to the view that "it would be unfair, unjust, and contrary to common sense to give a small number of people as many Senators or Representatives as were allowed to much larger groups" included, among others, Alexander Hamilton,[2] James Wilson,[3] and James Madison, the latter of whom proclaimed that "[i]f the power is not immediately derived from the people, in proportion to their numbers, we may make a paper confederacy, but that will be all." *Id.* (quoting 3 M. Farrand, The Records of the Federal Convention of 1787 472 (1st ed. 1911)).

As part of the "Great Compromise" (i.e., the decision to split our Congress into two differently apportioned chambers), Article I, Section 2 was conceived. In relevant part, it provides that members of the United States House of Representatives shall be chosen "by the People of the several States" and should be "apportioned among the several States . . . according to their respective Numbers." This Court has long found it "abundantly clear" that the operative word—"People"—means that "in allocating Congressmen[,] the number assigned to each State should be determined solely by the number of the State's inhabitants." *Wesberry*, 376 U.S. at 13. Indeed, the Framers emphasized that the "'numbers of inhabitants' should always be the measure of representation in the House of Representatives." *Id.*,

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[2] See 3 M. Farrand, The Records of the Federal Convention of 1787 286, 465-66 (1st ed. 1911)).

[3] See 3 M. Farrand, The Records of the Federal Convention of 1787 253-54, 406, 449-50, 482-84 (1st ed. 1911).

at 13-14 (quoting 3 M. Farrand, The Records of the Federal Convention of 1787 579 (1st ed. 1911)).

From the premise that "equal numbers of people ought to have an equal n[umber] of representatives" follows the corollary that "representatives 'of different districts ought clearly to hold the same proportion to each other, as their respective constituents hold to each other.'" *Id.*, at 11 (quoting 3 M. Farrand, The Records of the Federal Convention of 1787 180 (1st ed. 1911)). For that reason, "[i]t would defeat the principle solemnly embodied in the Great Compromise—equal representation in the House for equal numbers of people— . . . [if] legislatures" were permitted to "draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others." *Id.*, at 14. Because "[t]he House of Representatives . . . was to represent the people as individuals," it demands "complete equality for each voter." *Id.*

Additional Founding-era evidence of this premise is abundant. For instance, James Madison "described the system of division of States into congressional districts, the method which he and others assumed States probably would adopt: 'The city of Philadelphia is supposed to contain between fifty and sixty thousand souls. It will therefore form nearly two districts for the choice of F[]ederal Representatives.'" *Id.*, at 15 (quoting The Federalist No. 57, p. 398 (J. Cooke ed. 1961)). Some state advocates for Constitutional ratification emphasized that "the House of Representatives will be elected immediately by the people[] and represent them and their personal rights individually." *Id.*, at 16 (quoting 2 J. Elliott,

The Debates in the Several State Conventions on the Adoption of the Federal Constitution 304 (2d ed. 1836)). Others explained "that the House of Representatives was meant to be free of the malapportionment then existing in some of the state legislatures . . . and argued that the power given Congress in Art. I, § 4, was meant to be used to vindicate the people's right to equality of representation in the House." *Id.* And according to Associate Justice James Wilson:

> All elections ought to be equal. Elections are equal, when a given number of citizens, in one part of the state, choose as many representatives, as are chosen by the same number of citizens, in any other part of the state. In this manner, the proportion of the representatives and of the constituents will remain invariably the same.

Id., at 17 (quoting 2 J. Andrews, The Works of James Wilson 15 (1st ed. 1896)).

II. DEVIATIONS FROM ABSOLUTE POPULATION EQUALITY VIOLATE ARTICLE I, SECTION 2 IF A COURT CANNOT FIGURE OUT THAT EACH DEVIATION IS JUSTIFIED BY A LEGITIMATE AND CONSISTENTLY APPLIED LEGISLATIVE PRIORITY.

The foregoing provides paramount support for the idea that Article I, Section 2 of the U.S. Constitution requires that a state's congressional districts contain numbers as equal as practicable. See *Wesberry*, 376 U.S. at 7-8. This rule ensures that the weight of each

person's vote weighs the same as any other. See *id.*, at 8. According to the Court, Article I, Section 2 imposes a "high standard of justice and common sense"—i.e., "equal representation for equal numbers of people"—that has been, and remains, bedrock constitutional law. See *Karcher* v. *Daggett*, 462 U.S. 725, 730 (1983) (quoting and citing *Wesberry*, 376 U.S. at 18). When legislatures have considered Article I, Section 2's one-person, one-vote mandate as merely one policy goal among many, this Court has not hesitated to intervene and correct that error.

A. The Court has commanded strict adherence to Article I, Section 2's population-equality rule.

Karcher remains this Court's most explicit articulation of Article I, Section 2's stringent equality mandate. In *Karcher*, the New Jersey legislature enacted a congressional map with an overall population deviation of 0.6984 percent, or 3,674 people. See 462 U.S. at 728. Before this Court, New Jersey argued that its enacted map was a "per se" product of a good-faith effort to achieve population equality because the map's maximum population deviation remained lower than the "predictable undercount in available census data." *Id.*, at 731. In other words, the State's point was that, because the Census data was incorrect to a small degree, a small population deviation among congressional districts did not matter. This Court disagreed.

To begin with, the Court reiterated that population equality remains Article I, Section 2's "paramount objective." *Id.*, at 732-33. As the cardinal aim,

population equality "outweighs the local interests that a State may deem relevant in apportioning districts." *Id.*, at 733. And, even in 1983, the Court recognized that, given the rapid advance of technology, it is "relatively simple" for a state legislature to achieve both population equality and whatever "secondary goals" it may wish to accomplish. *Id.*

Critically, the Court recognized that accepting New Jersey's close-enough-for-government-work argument would "subtly erode" Article I, Section 2's equality command. *Id.*, at 731. Rather than compelling legislators to strive for population equality, legislators would slouch towards whatever *de minimis* fudge factor this Court would allow. *Id.* And in any event, departing from population equality imports a level of arbitrariness because if *de minimis* is defined as 0.14 percent, for example, why not 0.25 percent, 0.3 percent, or 1 percent? See *id.*, at 732.

Moreover, because the plaintiffs in *Karcher* showed that maps with lower population deviations could be drawn, this Court rejected New Jersey's argument that the Court should not consider the other plans because they did not approximate the legislature's goals of, for example, "protect[ing] the interests of black voters in the Trenton and Camden areas." *Id.*, at 738-39. Although the Court acknowledged that states could pursue "legitimate secondary objectives," it observed that these other goals must be "consistent with a good-faith effort to achieve population equality." *Id.*, at 739. Because it remained possible to reduce the maximum population deviation by "merely . . . shifting a handful of municipalities from one district to another," the Court

agreed with the challengers to New Jersey's enacted maps. *Id.*, at 739-40.

At bottom, the Court rejected any *de minimis* exceptions to the population-equality rule established in the 1960s. The Court also reiterated that all other state objectives remain secondary to population equality. In the years following *Karcher*, three-judge courts throughout the Nation have adhered to this mandate.[4]

B. Subsequent caselaw has not eroded this Court's command that population equality must remain the paramount goal.

The three-judge court in this case relied heavily on this Court's subsequent per curiam decision in *Tennant* v. *Jefferson County Commission*, 567 U.S. 758 (2012). *Tennant*, however, did not dilute *Karcher*'s

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[4] See, *e.g.*, *Vieth* v. *Pennsylvania,* 195 F. Supp. 2d 672, 675-76 (M.D. Pa. 2002) (three-judge court) (finding that plaintiffs showed that the state did not draw congressional districts in a good-faith effort to achieve population equality where the enacted map had a population deviation of *nineteen persons* and plaintiffs submitted a map to the court—not to the legislature—that had a population deviation of just one person), *appeal dismissed as moot, Schweiker* v. *Vieth,* 537 U.S. 801 (2002).

command. Understood in its proper context, *Tennant* stands hand-in-hand with *Karcher*, not toe-to-toe.[5]

The plaintiffs in *Tennant* challenged congressional maps in West Virginia that contained an overall population deviation of 0.79 percent across the State's three congressional districts. *Id.*, at 760-61. West Virginia conceded that it could have achieved a lower population deviation, *id.*, at 761, but it justified the numerically malapportioned districts as necessary to avoid splitting counties, to keep incumbents separated, and to retain the cores of previous congressional districts.

The Court allowed the deviations based on West Virginia's unique, long-standing, and readily ascertainable State priorities. It began its analysis, however, by restating the rule that Article I, Section 2's command "require[s] that 'as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's.'" *Id.*, at 759 (quoting *Wesberry*, 376 U.S. at 7-8). The Court did not water down its emphasis that the U.S. Constitution obligates States to make a good-faith effort at achieving absolute population equality. *Id.*

West Virginia, however, has an unusual history. Not once had it *ever* split a county when drawing its congressional districts. *Id.*, at 762. To adhere to this longstanding and easily ascertainable goal, West Virginia's enacted map did not split counties, even

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[5] Cf. *Nixon* v. *Shrink Mo. Gov't PAC*, 528 U.S. 377, 393 (2000), *overruled sub. silentio FEC* v. *Ted Cruz for Senate*, 142 S. Ct. 1638, 1653 (2022).

though maintaining county lines foreclosed the possibility of population equality among congressional districts. *Id.*, at 761. The enacted map also preserved the cores of earlier districts and did not pit incumbents against each other. *Id.* Critically, in determining whether West Virginia applied these long-standing priorities neutrally, the Court needed to do no more than look at the map and confirm that the State had split no counties when it drew its congressional borders. *Id.*, at 761-62, 764.

This last point bears emphasizing. In *Tennant*, the Court had the ability to figure out, with virtual certainty, that the West Virginia legislature achieved three legitimate and historically important state policies in a way that was neutrally and non-arbitrarily applied throughout the State. *Id.*, at 762. In particular, West Virginia's unique, neutral, legitimate, and long-standing goal of keeping counties whole made a few population variations between the State's congressional districts inevitable. *Id.*, at 764. The Court could easily determine that West Virginia had in fact split no counties when it drew its districts, therefore, the Court allowed the population deviations based on its conclusion that West Virginia had indeed applied its county-line-maintenance goal neutrally and non-arbitrarily throughout the State. The Court was similarly able to determine that the prior cores of districts were respected, and that no incumbents were paired with each other in the newly constituted congressional districts. For these reasons, West Virginia's congressional map survived constitutional scrutiny.

That a state may deviate from population equality only in an attempt to achieve readily ascertainable goals is an idea rooted in this Court's precedents requiring clear, judicially manageable standards to evaluate redistricting challenges. For example, in *Vieth* v. *Jubelirer*, this Court extolled the simple and readily administrable test to determine one-person, one-vote violations. 541 U.S. 267, 290 (2004) (plurality op.); see *id.*, at 308 (Kennedy, J., concurring) (agreeing with the plurality's analysis for why proposed standards for adjudicating partisan gerrymandering claims are deficient). The *Vieth* plurality observed that the easily administrable standard of one-person, one-vote cases enables a judge to determine a constitutional violation based on "three readily determined factors—where the plaintiff lives, how many voters are in his district, and how many voters are in other districts." *Id.*, at 290.

The plurality contrasted the administrative ease of adjudicating one-person, one-vote cases with the "sea of imponderables" that face judges trying to adjudicate partisan gerrymandering cases. *Id.* Similarly, the *Vieth* plurality found, and Justice Kennedy agreed, that standards used to adjudicate racial gerrymandering cases are more readily manageable. This is so, in part, because a person's race is not an immutable concept and therefore "a person's politics is rarely as readily discernible—and *never* as permanently discernible—as a person's race." See *id.*, at 285-87; see *id.*, at 308 (Kennedy, J., concurring). To maintain the readily ascertainable nature of one-person, one-vote challenges, deviations from population equality must be based on readily ascertainable criteria.

Given *Karcher* and *Vieth*, *Tennant* neither walked back *Karcher*'s strict population-equality mandate nor injected "deference" into the analysis compelled by Article I, Section 2 in a way that would immunize a state's decision to aim at any goal short of strict-population equality. Instead, the *Tennant* Court merely acknowledged that West Virginia had a longstanding set of priorities that (1) it had *never* deviated from and (2) were, to a virtual certainty, applied in a neutral and non-arbitrary manner. Understood in that context, *Tennant* is merely an application of *Karcher* to an especially unusual fact pattern.

C. Three-judge courts throughout the Nation consistently get right *Karcher*'s strict equal-population rule.

As the foregoing shows, Article I, Section 2's one-person, one-vote requirement remains sacrosanct. Deviations from this rule may occur only if a state can show that such deviations are necessary to animate some other historically accepted and readily ascertainable districting goal. That a state must show that it achieved its goals in a neutral and nonarbitrary way is not negotiable. A requirement implicit in that principle is that a federal court must be able to determine whether a state has in fact deviated from the one-person, one-vote requirement based on some neutral and non-arbitrarily applied consideration.

In *Larios* v. *Cox*, for instance, a three-judge court of the Northern District of Georgia examined, in the analogous state-legislative redistricting context,

whether the Georgia legislature applied traditional redistricting criteria in a way that flouted the Fourteenth Amendment. See 300 F. Supp. 2d 1320, 1346-47 (N.D. Ga. 2004) (three-judge court), *aff'd mem.* 542 U.S. 947 (2004) The Northern District of Georgia observed that although legislatures may deviate from population equality to achieve neutral legitimate goals, "the central and invariable objective . . . remains 'equal representation for equal numbers of people.'" *Id.*, at 1337 (quoting *Wesberry,* 376 U.S. at 18). Accordingly, the *Larios* Court reiterated that a state may deviate from the constitutional command of equal representation for equal numbers of people only if such deviations advance a legitimate state interest that are consistently and neutrally applied. *Id.*, at 1338. But when the deviations are tainted by arbitrariness or discrimination, a state violates the Constitution. *Id.*

Despite Georgia's "strong historical preference for not splitting counties outside the Atlanta area," the *Larios* Court noted that the Georgia legislature seemed uninterested in avoiding county splits when it drew its new map. *Id.*, at 1350 (internal quotation omitted). The number of county splits, moreover, exceeded those in Georgia's previous legislative map. *Id.*, at 1349–50. And regarding the preservation of the previous districts' cores, the Northern District of Georgia concluded that "it was done in a thoroughly disparate and partisan manner, heavily favoring Democratic incumbents while creating new districts for Republican incumbents." *Id.*, at 1350. Because Georgia's resulting map was not "supported by any legitimate, consistently[] applied state interests but, rather, resulted from [an] arbitrary and

discriminatory objective," the *Larios* Court concluded that the map violated the Equal Protection Clause of the Fourteenth Amendment. *Id.*, at 1352 (emphasis omitted).

Critically, the *Larios* Court could do its job because Georgia had justified its population deviations with factors that a federal court could actually examine. The factors in *Larios* were the same as those in *Tennant*—avoidance of county splits and the preservation of prior district cores. In *Tennant*, West Virginia applied those criteria neutrally, while in *Larios*, Georgia had not. The common thread between those two cases—the same one the three-judge court here overlooked—is that the courts were able to determine whether those criteria were in fact applied neutrally and non-arbitrarily.

When courts analyze a legislative body's application of a communities of interest criterion, they have recognized the difficulty of analyzing what is an inherently "slippery" and "enigmatic" analysis. While a court can readily determine whether a state has, e.g., maintained county lines consistently, courts have recognized that undefined and unascertainable criteria like maintaining communities of interest are inherently susceptible to inconsistent application. To determine whether a legislative body consistently and neutrally applied this criterion, courts have anchored their determination in other objective and readily ascertainable data. By contrast, federal district courts have questioned communities of interest criteria that use subjective definitions such as "culture" and "religion."

For instance, a federal magistrate judge in New York quoted one political-science expert's description of the communities of interest criterion as "slippery." *Favors* v. *Cuomo*, No. 11-CV-5632, 2012 U.S. Dist. LEXIS 36849, *42-44 n. 16 (E.D.N.Y. Mar. 12, 2012) (Mann, M.J.), *report and recommendation adopted*, *Favors* v. *Cuomo*, 2012 U.S. Dist. LEXIS 36910 (E.D.N.Y. Mar. 19, 2012) (three-judge court). The criterion is slippery, in part, because one advocate's conception of a community may differ from another's. *Id.*, *42-44 n. 16. It is, therefore, subject to manipulation. *Id.* The three-judge court in that case accepted the proposed court-drawn map's conception of communities of interest, but only because the identified community of interest there was anchored in "certain widely recognized, geographically defined communities." *Id.*, *45. Thus, the communities-of-interest criterion in that case was readily ascertainable.

In accepting the magistrate judge's report and recommendation, the three-judge court itself acknowledged the amorphous nature of the communities-of-interest criterion. The three-judge court saw that using communities of interest risks drawing federal courts "into political debates" unlike the other redistricting criteria such as compactness, contiguity, and respect for political subdivisions. *Favors* v. *Cuomo*, 2012 U.S. Dist. LEXIS 36910, *27 (E.D.N.Y. Mar. 19, 2012) (three-judge court). Indeed, the criteria of compactness, contiguity, and respect for political subdivisions "are more susceptible to neutral analysis, with a court's options and choices often evident on a map." *Id.* By contrast, the communities-of-interest criterion "requires insights that cannot be

obtained from maps or even census figures." *Id.* And while the officials vested with the duty of drawing maps are expected to know their communities, "courts are understandably inclined to accord redistricting weight only to the preservation of obviously established and compact communities of interest." *Id.*, *28. Thus, the three-judge court adopted the proposed congressional map *because* it respected "certain widely recognized, geographically defined communities," and not out of deference to whatever communities of interest the map drawer may have concocted. *Id.*

Similarly, a three-judge district court in Virginia acknowledged the "enigmatic" nature of the communities-of-interest criterion. See *Bethune-Hill* v. *Va. State Bd. Of Elections*, 141 F. Supp. 3d 505, 539 (E.D. Va. 2015) (three-judge court), *aff'd in part, vacated in part, and remanded by Bethune-Hill* v. *Va. State Bd. Of Elections*, 137 S. Ct. 788 (2017). The three-judge court in that case observed that the communities-of-interest criterion can be a "guiding light" for the other neutral redistricting principles, but only when communities of interest are defined by objective and ascertainable data such as "service delivery areas, media markets, or major transit lines." See *id.* By contrast, the communities-of-interest criterion "may involve straddling the fence between neutral and discriminatory criteria" and might become "less neutral" when (as was the case in Michigan), the communities of interest criterion

includes "cultural, social, or religious communities of interest." *Id.*[6]

The *Bethune-Hill* court reasoned that, to find the communities-of-interest criterion an objective and neutral redistricting principle, the legislative body must have demonstrable evidence of "actual shared interests." See *id.* (quoting and citing *Miller* v. *Johnson*, 515 U.S. 900, 916 (1995) (underlining in original)). Without reliance on demonstrable evidence, the communities-of-interest criterion risks transmogrifying into "a more individualized metric." *Id.*[7]

In other words, to apply the communities-of-interest criterion neutrally, the legislative body must have a clear definition that can be applied

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[6] See also Mich. Const. art. IV, § 6(13) (defining communities of interest as including but not limited to "populations that share cultural or historical characteristics or economic interests").

[7] Compare generally App. 140a-148a (basing districting decisions upon comments received from individuals, and although attempting to base districting decisions upon objective data, e.g., shared media market in Congressional District 5, App.142a-43a, that data is ultimately wrong, App.205a); with *Bethune-Hill*, 141 F. Supp. 3d at 539 (citing *Bush* v. *Vera*, 517 U.S. 952, 966 (1996), for the proposition that assuming the legislature had the data, communities of interest criteria can be based on neutral objective factors such as major transportation lines and shared media sources).

objectively—subjective beliefs about shared culture and history do not suffice. The latter is not readily ascertainable while the former might be. For courts to evaluate adherence to the strict constitutional command of equal representation for equal numbers of people, deviations from strict population equality must be justified by neutral redistricting criteria that a court can examine.

III. THE DISTRICT COURT'S HYPER-DEFERENCE TO THE COMMISSION'S ARBITRARY "COMMUNITIES OF INTEREST" JUSTIFICATION RESULTED IN A VIOLATION OF ARTICLE I, SECTION 2.

For these reasons, the three-judge court's preliminary-injunction order cannot stand. The Commissioners' foundational premise—that the Michigan Constitution vests them with broad discretion "to define and identify communities of interest as [they see] fit"—cannot justify the population deviations infecting Michigan's congressional voting maps. App. 247a. But that is precisely what occurred in this case. Once the Commissioners—and the three-judge court below—accepted this premise, the Commissioners were then at liberty not only to come up with their own definition for the community-of-interest criterion but also to apply that definition differently throughout the State and then to rely on their facially inconsistent application of it to overpopulate two-thirds of Michigan's congressional districts.

Put another way, the Commissioners asserted that because the Michigan Constitution imposed no constraints on their application of the communities-

of-interest criterion, the Commissioners were not bound to achieve the "same communities of interest objective[s]" throughout the state or even within different districts. Commers.' Opp.'n to Pls.' Mot for Prelim. Inj. At 22 (Dkt. No. 42) (PageID# 748). The three-judge court agreed with them. And that was profound error: such license defies Article I, Section 2's text, the Framer's intent, and this Court's unbroken precedent.

Simply put, without an ascertainable definition for a one-person, one-vote deviation, a federal court cannot do its job—i.e., ensuring compliance with the U.S. Constitution. Neither "deference" nor "self-determination" changes this fact. Indeed, more than fifty years ago, when this Court was asked to allow population deviations "to avoid fragmenting areas with distinct economic and social interests"—like the communities of interest here—it held that "to accept population variances, large or small, in order to create districts with specific interest orientations is antithetical to the basic premise of the constitutional command to provide equal representation for equal numbers of people." *Kirkpatrick v. Preisler*, 394 U.S. 526, 533 (1969). "Neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation," because "[c]itizens, not history or economic interests, cast votes." *Id.* (quoting *Reynolds*, 377 U.S. at 579-80, and citing *Davis v. Mann*, 377 U.S. 678, 692 (1964)). The time has come to resuscitate these principles.

The three-judge court's contrary decision, then, simply cannot be squared with its obligation to our

Federal Charter. That is enough for this Court to summarily reverse, and it justifies noting probable jurisdiction.

One final point bears mentioning. This Court has warned that "[i]f state legislators knew that a certain *de minimis* level of population difference was acceptable, they would doubtless strive to achieve that level rather than equality." *Karcher*, 462 U.S. at 731. Similarly, if state legislatures and local government mapmakers know that they may deviate from the one-person, one-vote requirement by applying an unascertainable criterion that is essentially immune from meaningful judicial review, the same mischief will no doubt ensue. Such is the nature of redistricting processes.

This risk is not hypothetical. States across the Nation have begun using communities of interest as a map-drawing guidepost. With Michigan as the stark exception, almost all currently do so while achieving population equality. But if the three-judge court's opinion below remains as precedent, this will not remain the case for much longer.

In just one example, the Ohio Supreme Court on January 14, 2022, *Adams v. DeWine*, 2022-Ohio-89, held unconstitutional the latest congressional map for Ohio. While a federal court has implemented an interim map for 2022, it is certain that Ohio must draw new districts for 2024. Ohio's version of the communities-of-interest criterion is found at Ohio Constitution Article XIX.02 at (B)(4)(a), and it states, in similarly ambiguous terms, the following:

> [T]he authority shall attempt to include a significant portion of that municipal corporation or township in a single district and may include in that district other municipal corporations or townships that are located in that county and whose residents have similar interests as the residents of the municipal corporation or township that contains a population that exceeds the congressional ratio of representation.

Ohio is not an outlier. Federal court cases involving Congressional districts are pending in North Carolina, *Moore et al.* v. *Harper et al.*, No. 21-1271 (U.S.); Alabama, *Merrill et al.* v. *Milligan et al.*, No. 21-1086 (U.S.); Louisiana, *Ardoin et al.* v. *Robinson et al.*, No. 21-1596 (U.S.); Florida, *Common Cause et al.* v. *Lee et al.*, 5:22-cv-59 (N.D. Fla.); Texas, *United States* v. *Texas*, No. 3:21-cv-299 (W.D. Tex.); Georgia, *Alpha Phi Alpha Fraternity* v. *Raffensperger*, No. 1:21-cv-5337 (N.D. Ga.); and South Carolina, *South Carolina, S.C. Conf. of the NAACP* v. *Alexander et al.*, No. 3:21-cv-3302 (D.S.C.), among others. However these cases are resolved, if this Court allows the wiggle room approved by the three-judge court below, it is likely to see map drawers aiming at the gray area instead of the "high standard of justice and common sense" for the apportionment of congressional districts—"equal representation for equal numbers of people." *Wesberry*, 376 U.S. at 18.

The court below has permitted a vague and nearly undefinable community-of-interest standard to override the commands of the U.S. Constitution and this Court's jurisprudence. If this three-judge panel

ruling remains undisturbed by this Court, it is a virtual certainty that soon (including in state and local jurisdictions that have not yet redistricted following the 2020 Census), states will claim fealty to "communities of interest" in drawing representative districts with population deviations that push the boundaries of both the Equal Protection Clause and the strictures of Article I, Section 2.

CONCLUSION

To guarantee adherence to the constitutional command of one person, one vote, state criteria must be readily ascertainable. Michigan's communities-of-interest criterion is not. It cannot be allowed to stand.

For all these reasons, this Court should either summarily reverse the decision of the three-judge court below or note probable jurisdiction.

July 28, 2022 Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

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

MICHAEL BANERIAN, *et al*.,

Plaintiffs,

v.

JOCELYN BENSON, in her official capacity as the Secretary of State of Michigan, *et al*.,

Defendants.

Three-Judge Panel

28 U.S.C. § 2284(a)

NOTICE OF APPEAL

NOTICE OF APPEAL OF ORDER
DENYING PRELIMINARY INJUNCTION

Notice is hereby given that all Plaintiffs in the above-captioned case hereby appeal to the Supreme Court of the United States from this Court's April 1, 2022 Opinion Denying Plaintiffs' Motion for a Preliminary Injunction (ECF No. 69), and it's April 1, 2022 Order Denying Plaintiffs' Motion for a Preliminary Injunction (ECF No. 70).

This appeal is being taken under 28 U.S.C. § 1253.

Dated: April 29, 2022

Respectfully submitted,

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APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

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MICHAEL BANERIAN; MICHON BOMMARITO; PETER COLOVOS; WILLIAM GORDON; JOSEPH GRAVES; BEAU LAFAVE; SARAH PACIOREK; CAMERON PICKFORD; HARRY SAWICKI; AND MICHELLE SMITH,

Plaintiffs

v.

JOCELYN BENSON, in her official capacity as the Secretary of State of Michigan;

DOUGLAS CLARK, in his official capacity as Commissioner of the Michigan Independent Citizens Redistricting Commission;

JUANITA CURRY, in her official capacity as Commissioner of the Michigan Independent Citizens Redistricting Commission;

ANTHONY EID, in his official capacity as Commissioner of the Michigan Independent Citizens Redistricting Commission;

RHONDA LANGE, in her official capacity as Commissioner of the Michigan Independent Citizens Redistricting Commission;

STEVEN TERRY LETT, in his official capacity as Commissioner of the Michigan Independent Citizens Redistricting Commission;

BRITTNI KELLOM, in her official capacity as Commissioner of the Michigan Independent Citizens Redistricting Commission;

CYNTHIA ORTON, in her official capacity as Commissioner of the Michigan Independent Citizens Redistricting Commission;

M.C. ROTHHORN, in his official capacity as Commissioner of the Michigan Independent Citizens Redistricting Commission;

REBECCA SZETELA, in her official capacity as Commissioner of the Michigan Independent Citizens Redistricting Commission;

JANICE VALLETTE, in her official capacity as Commissioner of the Michigan Independent Citizens Redistricting Commission;

ERIN WAGNER, in her official capacity as Commissioner of the Michigan Independent Citizens Redistricting Commission;

RICHARD WEISS, in his official capacity as Commissioner of the Michigan Independent Citizens Redistricting Commission;

DUSTIN WITJES, in his official capacity as Commissioner of the Michigan Independent Citizens Redistricting Commission,

Defendants.

Three-Judge Panel Requested
28 U.S.C. § 2284(a)

FIRST AMENDED COMPLAINT

INTRODUCTION

1. Plaintiffs Michael Banerian (Counts I & II), Michon Bommarito (Count II), Peter Colovos (Counts I & II), William Gordon (Count I), Joseph Graves (Count I & II), Beau LaFave (Count I), Sarah Paciorek (Counts I & II), Cameron Pickford (Counts I & II), Harry Sawicki (Counts I & II), and Michelle Smith (Count I), bring this suit to challenge Michigan's recently enacted congressional districts as violative of the United States Constitution.

2. As an initial matter, Michigan's adopted congressional districts violate the "one person, one vote" rule enshrined in Article I, Section 2 of the U.S. Constitution.

3. This principle requires that "[r]epresentatives be chosen 'by the People of the several States'" in a way that ensures that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." *Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964) (quoting U.S. Const. art. I, § 2).

4. Because Michigan's newly adopted congressional districts fall far below this standard, they are unconstitutional and cannot stand.

5. Michigan's adopted congressional districts, moreover, violate the Fourteenth Amendment of the U.S. Constitution.

6. The individuals serving on the Michigan Independent Citizens Redistricting Commission (the "Commissioners") failed to draw Michigan's congressional maps in accordance with neutral, and traditionally accepted, redistricting criteria (now codified at Article IV, Section 6(13) of the Michigan Constitution).

7. The Commissioners' failure in this respect amounts to arbitrary boundary drawing, in violation of the Fourteenth Amendment's equal-protection guarantee.

8. Among other pressing defects, the Commissioners' congressional map unnecessarily fragments counties, townships, and municipalities—*i.e.*, Michigan's true communities of interest—without any legitimate or rational State interest.

9. To be certain, compliance with federal law (as informed by the Michigan Constitution) is neither impossible nor particularly onerous.

10. Indeed, as demonstrated by the remedy map attached to this filing as Exhibit A, the Commissioners had ample ability to draw and adopt congressional districts without the aforementioned flaws.

11. The Commissioners' failure to do so warrants the declaratory and injunctive relief sought by Plaintiffs in this action.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action under 28 U.S.C. § 1331, and 28 U.S.C. § 1343 because Plaintiffs' claims all arise under—and seek redress pursuant to—the U.S. Constitution and 42 U.S.C. § 1983.

13. Under 28 U.S.C. § 2284, a three-judge panel should hear and determine this case.

14. Under 28 U.S.C. § 1391(b), venue is proper in this District because the Office of the Secretary of State, Defendant Jocelyn Benson, is located in this District.

THREE-JUDGE COURT REQUESTED

15. In this action, Plaintiffs challenge the constitutionality of the Commissioners' reapportionment of Michigan's congressional districts.

16. 28 U.S.C. § 2284(a) provides that "[a] district court of three judges shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body."

17. For this reason, Plaintiffs respectfully request that the Court "immediately notify the chief judge of the circuit" so that the Chief Judge may "designate two other judges, at least one of whom shall be a circuit judge," to "serve as members of the court to hear and determine th[is] action." 28 U.S.C. § 2284(b)(1).

PARTIES

18. Each Plaintiff is a natural person, a citizen of the United States, and is registered to vote in Michigan.

19. Plaintiff Michael Banerian lives in Royal Oak, Michigan, which is in Oakland County. Mr. Banerian regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. Banerian resides in the newly created 11th Congressional District.

20. Plaintiff Michon Bommarito lives in Albion, Michigan, which is in Calhoun County. Ms. Bommarito regularly votes in federal state, and local elections in Michigan. Under the enacted map, Ms. Bommarito resides in the newly created 5th Congressional District.

21. Plaintiff Peter Colovos lives in Hagar Township, Berrien County, Michigan. Mr. Colovos regularly

votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. Colovos resides in the newly created 4th Congressional District.

22. Plaintiff William Gordon lives in Scio Township, Michigan, which is in Washtenaw County. Mr. Gordon regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. Gordon resides in the newly created 6th Congressional District.

23. Plaintiff Joseph Graves lives in Linden, Michigan, which is in Genesee County. Mr. Graves regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. Graves resides in the newly created 8th Congressional District.

24. Plaintiff Beau LaFave lives in Iron Mountain, Michigan, which is in Dickinson County. Mr. LaFave regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. LaFave resides in the newly created 1st Congressional District.

25. Plaintiff Sarah Paciorek lives in Ada, Michigan, which is in Kent County. Ms. Paciorek regularly votes in federal, state, and local elections. She first registered to vote in Michigan when she was 18, and regularly voted in Michigan for several years thereafter. She then moved out of state for work, where she was a regular voter, and returned to Michigan in 2021, where she is once again registered and intends to vote in 2022. Under the enacted map, Ms. Paciorek resides in the newly created 3rd Congressional District.

26. Plaintiff Cameron Pickford lives in Charlotte, Michigan, which is in Eaton County. Mr. Pickford regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. Pickford

resides in the newly created 7th Congressional District.

27. Plaintiff Harry Sawicki lives in Dearborn Heights, Michigan, which is in Wayne County. Mr. Sawicki regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. Sawicki resides in the newly created 12th Congressional District.

28. Plaintiff Michelle Smith lives in Sterling Heights, Michigan, which is in Macomb County. Ms. Smith regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Ms. Smith resides in the newly created 10th Congressional District.

29. Defendant Jocelyn Benson is the Michigan Secretary of State. In this capacity, Ms. Benson must enforce the district boundaries for congressional districts and accept the declarations of candidacy for congressional candidates. Plaintiffs sue Ms. Benson solely in her official capacity.

30. Non-party Michigan Independent Citizens Redistricting Commission ("the Commission") is an entity created by the Michigan Constitution to, every ten years, "adopt a redistricting plan for each of the following types of districts: state senate districts, state house of representative districts, and congressional districts." Mich. Const. art. IV, § 6(1).

31. The Commission is composed of thirteen members: four affiliated with the Democratic Party, four affiliated with the Republican Party, and five unaffiliated with either major political party. *Id.*

32. Defendant Douglas Clark serves as a commissioner on the Michigan Independent Citizens Redis-

tricting Commission. Mr. Clark is affiliated with the Republican Party. Plaintiffs sue Mr. Clark solely in his official capacity.

33. Defendant Juanita Curry serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Ms. Curry is affiliated with the Democratic Party. Plaintiffs sue Ms. Curry solely in her official capacity.

34. Defendant Anthony Eid serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Mr. Eid is not affiliated with either major political party. Plaintiffs sue Mr. Eid solely in his official capacity.

35. Defendant Rhonda Lange serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Ms. Lange is affiliated with the Republican Party. Plaintiffs sue Ms. Lange solely in her official capacity.

36. Defendant Steven Terry Lett serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Mr. Lett is not affiliated with either major political party. Plaintiffs sue Mr. Lett solely in his official capacity.

37. Defendant Brittni Kellom serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Ms. Kellom is affiliated with the Democratic Party. Plaintiffs sue Ms. Kellom solely in her official capacity.

38. Defendant Cynthia Orton serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Ms. Orton is affiliated with the Republican Party. Plaintiffs sue Ms. Orton solely in her official capacity.

39. Defendant M.C. Rothhorn serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Mr. Rothhorn is affiliated with the Democratic Party. Plaintiffs sue Mr. Rothhorn solely in his official capacity.

40. Defendant Rebecca Szetela serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Ms. Szetela is not affiliated with either major political party. Plaintiffs sue Ms. Szetela solely in her official capacity.

41. Defendant Janice Vallette serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Ms. Vallette is not affiliated with either major political party. Plaintiffs sue Ms. Vallette solely in her official capacity.

42. Defendant Erin Wagner serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Ms. Wagner is affiliated with the Republican Party. Plaintiffs sue Ms. Wagner solely in her official capacity.

43. Defendant Richard Weiss serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Mr. Weiss is not affiliated with either major political party. Plaintiffs sue Mr. Weiss solely in his official capacity.

44. Defendant Dustin Witjes serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Mr. Witjes is affiliated with the Democratic Party. Plaintiffs sue Mr. Witjes solely in his official capacity.

GENERAL ALLEGATIONS

45. In November 2018, Michigan amended its Constitution to establish the Michigan Independent Citizens Redistricting Commission ("the Commission"), a citizen-comprised entity vested with the exclusive authority to adopt district boundaries for State and congressional elections after each decennial census. *See* Mich. Const. art. IV, § 6(1).

46. The 2018 amendment also prescribed the criteria the Commissioners must apply when adopting each district plan.

47. Specifically, Article IV, Section 6(13) of the Michigan Constitution provides that the Commissioners must abide "by the following criteria in proposing and adopting each plan, in order of priority":

A. Districts shall be of equal population as mandated by the United States Constitution, and shall be geographically contiguous. Island areas are considered to be contiguous by land to the county of which they are a part.

B. Districts shall reflect the state's diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

C. Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political

party shall be determined using accepted measures of partisan fairness.

D. Districts shall not favor or disfavor an incumbent elected official or a candidate.

E. Districts shall reflect consideration of county, city, and township boundaries.

F. Districts shall be reasonably compact.

48. The criteria enumerated in the Michigan Constitution track the traditional (and traditionally accepted) redistricting criteria used in several jurisdictions across the Nation.

49. The Supreme Court recognizes these traditional redistricting criteria. *See, e.g., Karcher v. Daggett*, 462 U.S. 725, 740 (1983).

50. These traditional redistricting criteria serve as means to prevent unconstitutional gerrymandering and ensure compliance with federal law. *See, e.g.*, *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986) (imposing a compactness requirement to determine whether § 2 of the Voting Rights Act requires the drawing of a majority-minority district).1

51. In mid-September 2020, the Commissioners met for the first time to begin drawing Michigan's voting districts.[1]

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[1] *See also Bush v. Vera*, 517 U.S. 952, 979 (1996) ("If, because of the dispersion of the minority population, a reasonably compact majority-minority district cannot be created, § 2 does not require a majority-minority district."); *id*. at 962 (stating that in proving a racial gerrymandering claim under the Fourteenth Amendment's Equal Protection Clause, "[t]he Constitution does not mandate regularity of district shape . . . and the neglect of traditional districting criteria is merely necessary, not sufficient. For strict scrutiny to apply, traditional districting criteria must

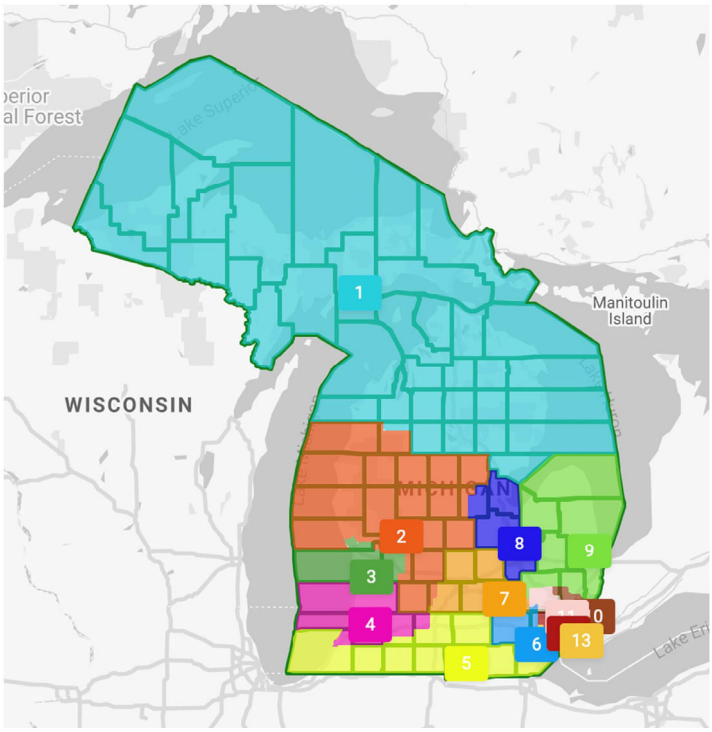
52. According to the 2020 Decennial Census, Michigan has a population of 10,077,331 persons.

53. Based on these numbers, Michigan was apportioned thirteen congressional districts.

54. To ensure that no district suffers from vote dilution in contravention of the "one person, one vote" principle recognized by the U.S. Supreme Court, the Commissioners were obligated to adopt districts that each have a population as close to 775,179 persons as possible.

55. According to publicly available information, the Commissioners considered five congressional plans, three of which were named after a species of tree ("Apple," "Birch," and "Chestnut") and two of which were named, respectively, after a commissioner ("Lange" and "Szetela").

56. On December 28, 2021, the Michigan Independent Citizens Redistricting Commission adopted and enacted the "Chestnut Plan," which appears as follows (and is available at https://michigan.mydistricting.com/legdistricting/comments/plan/279/23 (visited Jan. 6, 2022)):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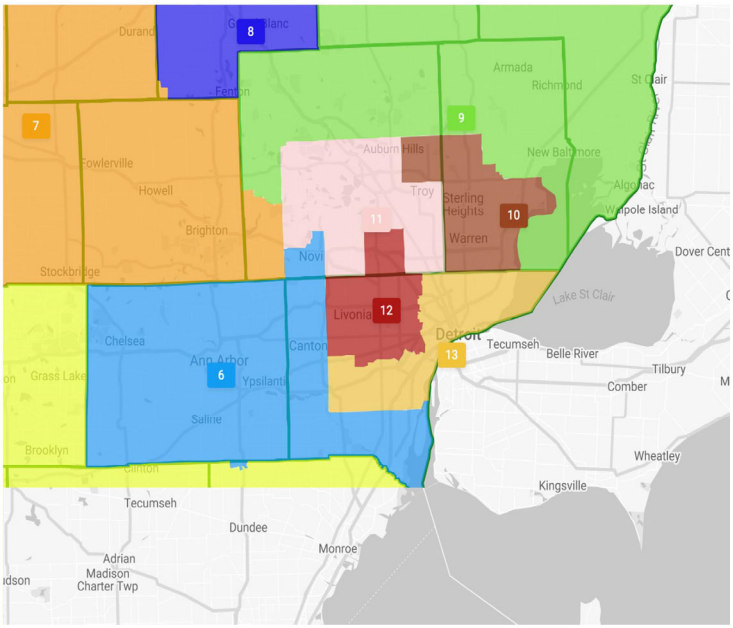
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Auburn Hills
New Baltimore
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Algonac
Wyandotte
Dover Cent
Stockbridge
Lake St Clair
Livonia
Detroit
Tecumseh
Belle River
Chelsea
Ann Arbor
Canton
Ypsilanti
Grass Lake
Tilbury
Comber
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Dundee
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57. The Chestnut Plan's largest congressional district (District 13) has a population of 775,666 persons, which is 487 persons above the ideal population for congressional districts in Michigan.

58. The Chestnut Plan's smallest congressional district (District 5) has a population of 774,544 persons, which is 635 persons below the ideal population for congressional districts in Michigan.

59. The difference in population between the largest and smallest congressional districts in the Chestnut Plan is 1,122 persons.

60. Only one congressional district (District 10) in the Chestnut Plan is less than 50 persons away from the ideal population (+39) for congressional districts in Michigan.

61. The following chart lists the population deviations for each district.

DISTRICT	TOTAL PERSONS	DEVIATION
District One	775,375	+196
District Two	774,997	-182
District Three	775,414	+235
District Four	774,600	-579
District Five	774,544	-635
District Six	775,273	+94
District Seven	775,238	+59
District Eight	775,229	+50
District Nine	774,962	-217

District Ten	775,218	+39
District Eleven	775,568	+389
District Twelve	775,247	+68
District Thirteen	775,666	+487

62. The Commissioners' failure to create districts with equal population also suggests that they did not prioritize the criteria enumerated in the Michigan Constitution in the order mandated by the Michigan Constitution. *See* Mich. Const. art. IV, § 6(13).

63. The remedy map attached to this Complaint (Exhibit A) reduces the difference in population to 1 person (nine districts have a population of 775,179 each and four districts have a population of 775,180 each).

64. Of Michigan's eighty-three counties, the Chestnut Plan splits at least fifteen of them (approximately 18%).

65. In fact, parts of Oakland County are located in *six* separate congressional districts.

66. Not only does this contravene the Michigan constitutional requirement that the State's congressional districts "reflect consideration of county, city, and township boundaries," Mich. Const. art. IV, § 6(13)(f), it also carves up "communities of interest," as that phrase has been construed by the Michigan Supreme Court and federal courts across the nation.

67. This is evidence that the Commissioners did not apply its criteria in a neutral and consistent manner but rather in an inconsistent and arbitrary manner.

68. As such, the boundaries established by the Commissioners are arbitrary, inconsistent, and non-neutral, in contravention of the Fourteenth Amendment's Equal Protection Clause. *See also* Mich. Const. art. IV, § 6(13)(c) (congressional districts must "reflect the state's diverse population and communities of interest").

69. The remedy map attached to this Complaint (Exhibit A) reduces the number of split counties to ten.

70. The remedy map attached to this Complaint also ensures that no Michigan county is part of more than four congressional districts.

71. The remedy map attached to this Complaint has fewer city and township splits than the number of city and township splits in the Chestnut Plan.

72. The attached remedial map more faithfully adheres to the Michigan's constitution's requirements to respect county, city, and township boundaries.

73. Finally, the Chestnut Plan cannot be described as "compact" under any reasonable interpretation of that term.

74. Indeed, the Chestnut Plan's District 5 (which splits four of the ten counties it covers) touches Michigan's Eastern *and* Western border.

75. Although not dispositive, this lack of compactness is evidence that the Commissioners did not act in a good faith effort to achieve population equality.

76. As reported by the Commissioners, the average compactness of the Chestnut Plan's districts is .41 on the Polsby-Popper measure, and .42 on the Reock Measure, with the least compact districts having scores of .27 and .19 respectively.

77. On both measures, numbers closer to one are more compact, and numbers closer to zero are less compact.

78. The remedy map attached to this Complaint (Exhibit A) greatly increases the compactness of several congressional districts, including District 5.[2]

79. The proposed remedy map (Exhibit A) yields an average Polsby-Popper measure of .46 and an average Reock measure .45, with the least compact districts being at .3 and .21 respectively.

80. That the Commissioners failed to abide by the constitutionally imposed traditional redistricting criteria (as reflected by the Michigan constitution) is evidence that the map they adopted inflicts constitutional harms on Plaintiffs. *Bush v. Vera*, 517 U.S. 952, 962–63 (1996).

81. In short, the remedy map attached to this Complaint (Exhibit A) demonstrates that it was well within the Commissioners' capacity to adopt a congressional map that complied with the "one person, one vote" principle while leaving far more counties intact and greatly increasing the compactness of Michigan's congressional districts (in compliance with the Fourteenth Amendment's Equal Protection Clause).

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[2] Compactness scores provided here are computed using map projections in ESRI Redistricting software. Some popular websites for drawing districts include compactness scores computed using other map projections. This may result in a minor variation between compactness scores computed by different GIS systems. *See* Viewing Compactness Tests, ESRI Redistricting Review, https://doc.arcgis.com/en/redistricting/review/viewing-compactness-tests.htm.

COUNT I
Violation of Article I, Section 2 of the U.S. Constitution
"One Person, One Vote"
(42 U.S.C. § 1983)

82. Plaintiffs restate and incorporate by reference each and every allegation in Paragraphs 1 through 81.

83. All Plaintiffs intend to vote in the 2022 Congressional Elections at the location where they currently reside within the state of Michigan.

84. Article I, Section 2 of the U.S. Constitution mandates that congressional districts must achieve population equality "as nearly as is practicable." *Wesberry v. Sanders*, 376 U.S. 1, 7–8, 18 (1964).

85. According to the 2020 Census, Michigan has a population of 10,077,331 persons.

86. Based on these Census numbers, Michigan was apportioned thirteen Congressional Districts.

87. Therefore, the ideal population in each congressional district is approximately 775,179 persons.

88. The Chestnut Plan substantially deviates from Article I, Section 2's command.

89. Congressional District 13 has the highest population of 775,666 persons (487 above the ideal population) while Congressional District 5 has a population of 774,544 persons (635 below the ideal population).

90. The Chestnut plan has an overall population deviation of 1,122 persons.

91. The total deviation is therefore 0.14%.

92. The existence of congressional district plans with lower population deviations shifts the burden from the plaintiff to the State to justify the need for the deviations.[3]

93. As demonstrated by the remedy map (Exhibit A) the Commissioners could have enacted a map with a population deviation of nearly zero.

94. The Commissioners did not make a good-faith effort to draw a map with nearly as equal population as possible.

95. Upon information and belief, the Chestnut Plan's population deviations were not intended to further any legitimate state objective.

96. Accordingly, the Defendants were and are acting under the color of state law and violating Plaintiffs' constitutional rights, violating 42 U.S.C. § 1983.

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[3] *See, e.g., Larios v. Cox,* 300 F. Supp. 2d 1320, 1354 (N.D. Ga. 2004) (three-judge court) (holding that Georgia did not make a good-faith effort to draw congressional districts of nearly equal population, shifting burden to state to justify its deviations, when Georgia's plan had a total population deviation of seventy-two people and testimony was given demonstrating that a near zero population deviation map was possible) *aff. mem.*, 542 U.S. 947 (2004). Sometimes a state cannot justify even minimal population deviations. *See, e.g., Vieth v. Pennsylvania*, 195 F. Supp. 2d 672, 674–78 (M.D. Pa. 2002) (three-judge court) (holding that Pennsylvania's congressional district maps violated the one person, one vote requirement where the total population deviation was 19 persons and Pennsylvania could not justify the deviation); *Karcher*, 462 U.S. at 728 (declaring unconstitutional New Jersey's congressional district plan with a maximum deviation of 0.6 percent or 3,674 persons and where plans with smaller population deviations were presented).

COUNT II
Violation of Fourteenth Amendment to the
United States Constitution
Equal Protection
(42 U.S.C. § 1983)

97. Plaintiffs restate and incorporate by reference each and every allegation in Paragraphs 1 through 96.

98. All Plaintiffs intend to vote in the 2022 Congressional Elections at the location where they currently reside within the state of Michigan.

99. The Fourteenth Amendment's Equal Protection Clause provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

100. Article One, Section Four of the Constitution vests state legislatures with the authority to group voters together in congressional districts.

101. When a legislature draws districts, traditional redistricting criteria serve as guardrails to ensure compliance with the U.S. Constitution, including the Equal Protection Clause.

102. For example, making districts compact, respecting communities of interest, ensuring that districts are contiguous, and preventing the pairing of incumbents all serve to limit various forms of gerrymandering and vote dilution.

103. A Fourteenth Amendment Equal Protection violation arises when a legislature or commission implements traditional redistricting criteria in an inconsistent and arbitrary manner.

104. Moreover, the Equal Protection Clause prohibits laws that treat people disparately or arbitrarily.

105. The criteria enumerated in the Michigan Constitution track the traditional (and traditionally accepted) redistricting criteria used throughout the nation, all of which exist to ensure compliance with the U.S. Constitution and federal law.

106. Because the Commissioners arbitrarily applied Michigan's constitutional requirements, the Commissioners imposed U.S. Constitutional injuries on Michigan's voters.

107. Specifically, Article IV, Section 6(13) of the Michigan Constitution requires the Commissioners to apply specific criteria "in proposing and adopting each plan, in order of priority."

108. The Commissioners applied the Michigan constitutional criteria in an inconsistent and arbitrary manner.

109. The Chestnut Plan fails to comply with or properly apply the following criteria:

A. Districts shall be of equal population as mandated by the United States Constitution, Mich. Const. art. IV, § 6(13)(a);

B. Districts shall reflect the state's diverse population and communities of interest, *id.* § 6(13)(c);

C. Districts shall reflect consideration of county, city, and township boundaries, *id.* § 6(13)(f); and

D. Districts shall be reasonably compact, *id.* § 6(13)(g).

110. Communities of interest requirements, whole county requirements, and whole township requirements ensure that when casting a vote in a congressional district, the voter is selecting a candidate that

can represent both the individual's interests and the common interests of the community within the district.

111. Because federal law, as well as the Michigan Supreme Court, have long construed the phrase "communities of interest" to include counties, cities, and townships, the Chestnut plan's arbitrary county, township, and municipality splits also violate the requirement that "[d]istricts shall reflect the state's diverse population and communities of interest." Mich. Const. art. IV, § 6(13)(c).

112. The Commissioners applied the communities of interest criterion in an inconsistent and arbitrary manner.

113. The communities of interest requirement and the requirement to keep counties and townships whole protects an individual's right to vote and their right to associate with their fellow citizens to advance the interests of the community, township, and county.

114. The Commissioners arbitrarily assigned voters to various locations.

115. The Commissioners did not draw a map with as few split counties as possible.

116. By unnecessarily fragmenting counties—*i.e.*, Michigan's true communities of interest—the Commissioners' adopted map is arbitrary, inconsistent, and non-neutral, violating the Equal Protection Clause.

117. And by unnecessarily splitting so many counties, cities, and townships the Commissioners appear to have used a wholly novel definition and arbitrarily and inconsistently applied the phrase "communities of interest." Mich. Const. art. IV, § 6(13)(c).

118. For these reasons, the Commissioners violated the Fourteenth Amendment's Equal Protection Clause because some voters will be able to elect candidates who can represent the interests of both the individual and the community.

119. Voting is both an expression of an individual's preference for a congressional representative and it is an associational act in choosing a congressional representative to represent and advance the interests of fellow voters in a community.

120. In these acts, the citizens of Michigan are required to be treated equally, which Defendants' have failed to do.

121. Thus, when the Commissioners arbitrarily and inconsistently applied their state constitutional requirements of keeping counties and townships whole and maintaining communities of interest, they violated the Equal Protection Clause.

122. In other words, the Commissioners ignored roughly half the criteria listed in the Michigan Constitution.

123. To the extent the Commissioners (im)properly applied any criteria, they did so out of the order of priority mandated by the Michigan Constitution.

124. As demonstrated by the remedial map (Exhibit A) the Commissioners were required to comply with each of the aforementioned traditional redistricting criteria.

125. The Commissioners' failure to do so renders the congressional maps they adopted arbitrary, inconsistent, and non-neutral, in violation of the Fourteenth Amendment's Equal Protection Clause.

124. At all times the Defendants were and are acting under the color of state law and violating

Plaintiffs' constitutional rights, violating 42 U.S.C. § 1983. PRAYER FOR RELIEF WHEREFORE, Plaintiffs respectfully request that the Court:

A. Convene a three-judge district court to hear and determine Plaintiffs' claims that the Commissioners' Congressional Plan violates the U.S. Constitution;

B. Declare that the Commissioners' Congressional Plan violates the one person, one vote principle contained in Article I, Section 2 of the U. S. Constitution;

C. Declare that the Commissioners' Congressional Plan violates the Fourteenth Amendment's Equal Protection Clause;

D. Enjoin Defendants, their agents, and assigns, from holding any congressional elections using the enacted map, the Chestnut Plan;

E. Establish a deadline by which the Commissioners must redraw maps, and if the Commissioners do not act by this deadline, assume jurisdiction, appoint a special master, and draw constitutionally compliant congressional districts;

F. Enjoin Defendants from using any plan for congressional elections that does not comply with the U.S. Constitution;

G. Award Plaintiffs their costs, expenses, disbursements, and reasonable attorneys' fees incurred in bringing this action, in accordance with 52 U.S.C. § 10310(e) and 42 U.S.C. § 1988;

H. Retain jurisdiction over this matter until

all Defendants have complied with all orders and mandates of this Court; and

I. Grant such other and further relief as the Court may deem just and proper.

January 27, 2022

Respectfully submitted,

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Shawn Toomey Sheehy
Edward M. Wenger
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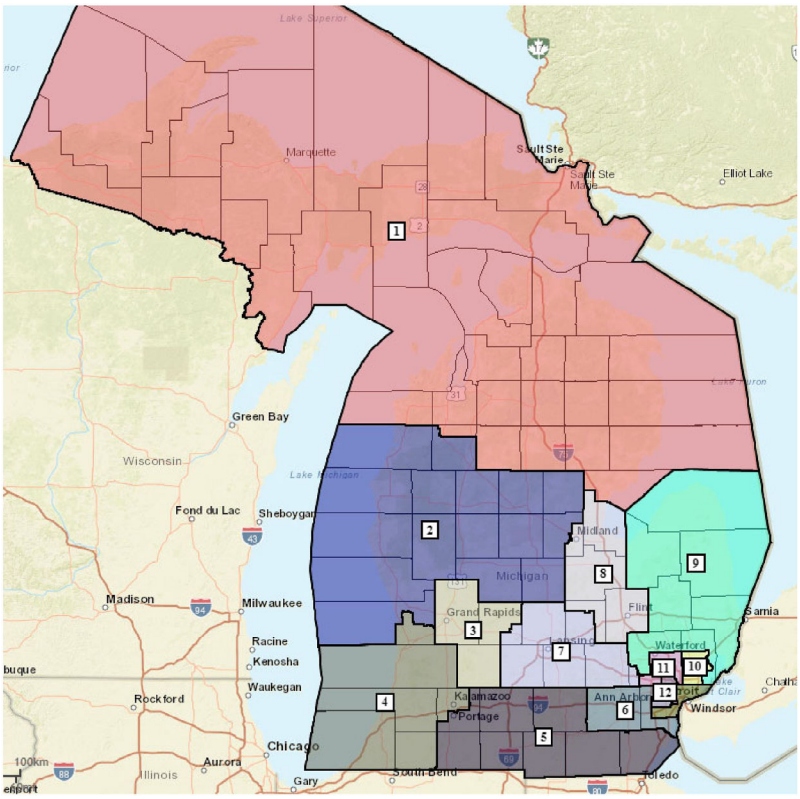
Attorneys for Plaintiffs Michael Banerian, Michon Bommarito, Peter Colovos, William Gordon, Joseph Graves, Beau LaFave, Sarah Paciorek, Cameron Pickford, Harry Sawicki, and Michelle Smith.

Exhibit A


Lake Superior
Marquette
Sault Ste Marie
Elliot Lake
Green Bay
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Fond du Lac
Sheboygan
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Rockford
Chicago
Aurora
Illinois
Gary
South Bend
Toledo
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APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 1:22-cv-54

In re: Appointment of Three-Judge Panel
Pursuant to 28 U.S.C. § 2284

ORDER

This matter is before the Court upon the request of the Honorable Paul L. Maloney, District Judge of the Western District of Michigan, to appoint a three-judge panel in the matter designated as *Michael Banerian, et al. v. Jocelyn Benson, et al.*, Case No. 1:22-cv-54. Having reviewed the request, Chief Judge Jeffrey S. Sutton agrees that a three-judge panel is warranted under 28 U.S.C. § 2284.

Wherefore, Chief Judge Sutton hereby designates the Honorable Raymond M. Kethledge, Circuit Judge of the Sixth Circuit Court of Appeals, and the Honorable Janet T. Neff, District Judge of the Western District of Michigan, to serve with the Honorable Paul L. Maloney in this matter. The provisions of 28 U.S.C. § 2284(b)(2) and (3) shall apply. This designation shall remain in full force and effect for the duration of the proceedings in Case No. 1:22-cv-54. The Clerk of this Court is directed to forward a copy of this order to the Clerk of the United States District Court for the Western District of Michigan for entry on the docket.

BY ORDER OF THE COURT
/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

Entered this 1st day of February, 2022.

APPENDIX D

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No.

MICHAEL BANERIAN, *et al.*,

Plaintiffs,

v.

JOCELYN BENSON, in her official capacity as the Secretary of State of Michigan, *et al.*,

Defendants.

Three-Judge Panel Requested

28 U.S.C. § 2284(a)

DECLARATION OF THOMAS M. BRYAN IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

EXPERT REPORT OF THOMAS M. BRYAN

I, Thomas Mark Bryan, affirm the conclusions I express in this report are provided to a reasonable degree of professional certainty.

EXPERT QUALIFICATIONS

1. I am an expert in demography with more than 30 years of experience. Described more fully below, I have been retained by the Plaintiffs in the above

captioned case as an expert to provide redistricting analysis related to Michigan congressional redistricting plans. I am being compensated $450 an hour for my services.

2. I graduated with a Bachelor of Science in History from Portland State University in 1992. I graduated with a Master of Urban Studies (MUS) from Portland State University in 1996, and in 2002 I graduated with a Master in Management and Information Systems (MIS) from George Washington University. Concurrent with earning my Management and Information Systems degree, I earned my Chief Information Officer certification from the GSA.[1]

3. My background and experience with demography, census data and advanced analytics using statistics and population data began in 1996 with an analyst role for the Oregon State Data Center. In 1998 I began working as a statistician for the U.S. Census Bureau in the Population Division – developing population estimates and innovative demographic methods. In 2001 I began my role as a professional demographer for ESRI Business Information Solutions, where I began developing my expertise in Geographic Information Systems (GIS) for population studies. In May 2004 I continued my career as a demographer, data scientist and expert in analytics in continuously advanced corporate roles, including at Altria and Microsoft through 2020.

4. In 2001 I developed a private demographic consulting firm "BryanGeoDemographics" or "BGD". I founded BGD as a demographic and analytic

[1] Granted by the General Services Administration (GSA) and the Federal IT Workforce Committee of the CIO Council. http://www.gwu.edu/~mastergw/programs/mis/pr.html.

consultancy to meet the expanding demand for advanced analytic expertise in applied demographic research and analysis. Since then, my consultancy has broadened to include litigation support, state and local redistricting, school redistricting, and municipal infrastructure initiatives. Since 2001, I have undertaken over 150 such engagements in three broad areas:

- state and local redistricting,
- applied demographic studies, and
- school redistricting and municipal infrastructure analysis.

5. My background and experience with redistricting began with McKibben Demographics from 2004-2012, when I provided expert demographic and analytic support in over 120 separate school redistricting projects. These engagements involved developing demographic profiles of small areas to assist in building fertility, mortality and migration models used to support long-range population forecasts and infrastructure analysis. Over this time, I informally consulted on districting projects with Dr. Peter Morrison. In 2012 I formally began performing redistricting analytics and continue my collaboration with Dr. Morrison to this day. I have been involved with over 40 significant redistricting projects, serving roles of increasing responsibility from population and statistical analyses to report writing to directly advising and supervising redistricting initiatives. Many of these roles were served in the capacity of performing Gingles analyses, risk assessments and Federal and State Voting Rights Act (VRA) analyses in state and local areas.

6. In each of those cases, I have personally built, or supervised the building of numerous databases

combining demographic data, local geographic data and election data from sources including the 2000, the 2010 and now 2020 decennial Census. I also innovated the use of the U.S. Census Bureau's statistical technique of "iterative proportional fitting" or "IPF" of the Census Bureau's American Community Survey, and the Census Bureau's Special Tabulation of Citizen Voting Age Population Data to enable the development of districting plans at the Census block level. This method has been presented and accepted in numerous cases we have developed or litigated. These data have also been developed and used in the broader context of case-specific traditional redistricting principles and often alongside other state and local demographic and political data.

7. In 2012, I began publicly presenting my redistricting work at professional conferences. I have developed and publicly presented on measuring effective voting strength, how to develop demographic accounting models, applications of using big data and statistical techniques for measuring minority voting strength – and have developed and led numerous tutorials on redistricting. With the delivery of the 2020 Census, I have presented on new technical challenges of using 2020 Census data and the impact of the Census Bureau's new differential privacy (DP) system. This work culminated with being invited to chair the "Assessing the Quality of the 2020 Census" session of the 2021 Population Association of America meeting, featuring Census Director Ron Jarmin.

8. I have written professionally and been published since 2004. I am the author of "Population Estimates" and "Internal and Short Distance Migration" in the definitive demographic reference "The Methods and Materials of Demography". In 2015

I joined a group of professional demographers serving as experts in the matter of *Evenwel, et al. v. Texas* case. In *Evenwel*, I served in a leadership role in writing an Amicus Brief on the use of the American Community Survey (ACS) in measuring and assessing one-person, one vote. In 2019 I co-authored "Redistricting: A Manual for Analysts, Practitioners, and Citizens", and in 2021 I co-authored "The Effect of the Differential Privacy Disclosure Avoidance System Proposed by the Census Bureau on 2020 Census Products".

9. I have been deposed once in the last four years, in the matter of *Harding v. County of Dallas* and have testified once in the last four years, in the matters of *Caster v. Merrill, Milligan v. Merrill* and *Singleton v. Merrill* in Alabama.

10. I have been recognized as an expert witness by two courts. This includes the following courts: US District Court of Alabama 2021 and US District Court of Alabama 2022.

11. I maintain membership in numerous professional affiliations, including:

- International Association of Applied Demographers (Member and Board of Directors)
- American Statistical Association (Member)
- Population Association of America (Member)
- Southern Demographic Association (Member)

FINDINGS

12. I draw from the Michigan Constitution as the primary guidance for my assessment. Article IV § 6 of the Michigan Constitution states:

> (13) The commission shall abide by the following criteria in proposing and adopting each plan, in order of priority:
>
> (a) Districts shall be of equal population as mandated by the United States constitution, and shall comply with the voting rights act and other federal laws.
>
> (b) Districts shall be geographically contiguous. Island areas are considered to be contiguous by land to the county of which they are a part.
>
> (c) Districts shall reflect the state's diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates.
>
> (d) Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political party shall be determined using accepted measures of partisan fairness.
>
> (e) Districts shall not favor or disfavor an incumbent elected official or a candidate.
>
> (f) Districts shall reflect consideration of county, city, and township boundaries.

(g) Districts shall be reasonably compact.

13. I have reviewed the Michigan Enacted Plan and Map, and the Plaintiffs' Remedy Plan and Map. In this report, I compare the plans by assessing population equality (a), geographic contiguity (b), the number of geographic splits (f), and geographic compactness (g). An assessment of communities of interest (c), partisan politics (d), incumbency (e) are not included in this analysis.

POPULATION EQUALITY (DEVIATION)

14. The first, most important objective of redistricting is to equally apportion population based on the results of the latest decennial census. Any redistricting plan must reapportion population, allowing for nearly equal number of inhabitants per district. Equal population is the most fundamental principle in redistricting because it underpins the entire American electoral process. The core purpose of the Census is to apportion political power, and to allow states and localities to draw political districts that equalize political power through "one person, one vote" or OPOV. The "one person, one vote" principle is meant to ensure that voters in each election district hold equally weighted ballots. Equalizing total population during redistricting, to the last person, accomplishes this end. Any difference from perfectly balanced population during redistricting will introduce what is known as "deviation". And this is why the Michigan Constitution specifically prioritizes this as the most important redistricting objective. In Michigan, the total population determined by the 2020 Census was 10,077,331.[2] Divided by 13 districts – this results in an

[2] https://www.census.gov/library/stories/state-by-state/michigan-population-change-between-census-decade.html

ideal population per district of 775,179.3. In Michigan, as with almost all other states, this means that congressional districts will not deviate by more than one person above or below this target.

15. The population deviations for the Enacted Plan are shown in Table 1. These deviations inexplicably have *not* been minimized per the direction of the Constitution. They unnecessarily deviate anywhere from 487 too many in District 13 to 635 too few in District 5.

Table 1 Population Deviation by District

DISTRICT	TOTAL PERSONS	DEVIATION
District One	775,375	+196
District Two	774,997	-182
District Three	775,414	+235
District Four	774,600	-579
District Five	774,544	-635
District Six	775,273	+94
District Seven	775,238	+59
District Eight	775,229	+50
District Nine	774,962	-217
District Ten	775,218	+39
District Eleven	775,568	+389
District Twelve	775,247	+68
District Thirteen	775,666	+487

16. By comparison, Plaintiffs' Remedy Map achieves near population equality, as shown in Table 2 (below). The population deviation of the Plaintiff's Plan is as close to zero as possible and complies with the direction of the Michigan Constitution.

Table 2: Plaintiff's Remedial Plan Population Deviation by District

DISTRICT	TOTAL PERSONS	DEVIATION
District One	775,179	0
District Two	775,179	0
District Three	775,179	0
District Four	775,180	+1
District Five	775,179	0
District Six	775,180	+1
District Seven	775,179	0
District Eight	775,180	+1
District Nine	775,179	0
District Ten	775,179	0
District Eleven	775,179	0
District Twelve	775,179	0
District Thirteen	775,180	+1

CONTIGUITY

17. An examination of both the Enacted Plan and the Plaintiffs' Remedial Plan indicate both are contiguous and comply with the law.

GEOGRAPHIC SPLITS

18. I next turn my attention to the unity of administrative geography in Michigan. Traditional redistricting principles (as provided by the NCSL[3]) mandate that splitting administrative geography should be minimized in a successful redistricting plan. There are three relevant layers of administrative geography in Michigan, including counties, county subdivisions and places. The U.S. Census Bureau provides useful details in understanding the number and characteristics of these layers in Michigan as follows:[4]

- Counties: There are 83 counties in Michigan. All counties in Michigan are functioning governmental entities, each governed by a board of commissioners.
- County Subdivisions: As of 2010 there were 1,573 county subdivisions in Michigan known as minor civil divisions (MCDs). There are 1,123 townships and 117 charter townships which are all actively functioning governmental units. Townships are the original units of government formed in the state. There may be slight variations in these numbers with the yet unreleased

[3] https://www.ncsl.org/research/redistricting/redistricting-criteria.aspx

[4] https://www.census.gov/geographies/reference-files/2010/geo/state-local-geo-guides2010/michigan.html

2020 Census Bureau Geographic Reference Files for Michigan.

- Places: As of 2010 there were 692 places (533 incorporated places and 159 CDPs) in Michigan. The incorporated places consist of 275 cities and 258 villages. Incorporated villages are dependent within county subdivision. Incorporated cities are independent of any township or charter township. There may be slight variations in these numbers with the yet unreleased 2020 Census Bureau Geographic Reference Files for Michigan.

19. In some cases, splits are unavoidable. In Michigan, at the county level, three counties need to be split, because they significantly exceed the target population of 775,179. Wayne County (1,793,561) needs to be split at least twice. Oakland County (1,274,395) and Macomb County (881,217) both need to be split at least once.

20. In comparing plans, the Plaintiffs' Remedy Plan scores better than the Enacted Plan in terms of number of splits for Counties, Townships and Villages. The Enacted Plan scores better than the Plaintiffs' Plan in terms of number of splits for Cities – as shown in Table 3 (below).

Table 3: Splits by Plan by Level of Geography

Geography	Enacted Plan		Plaintiffs' Remedial Plan	
	Splits	Segments	Splits	Segments
Counties	15	36	**10**	**23**
Townships	14	28	**10**	**20**
Cities	**7**	**15**	9	19
Villages	5	10	**4**	**8**
Total	41	89	**33**	**70**

21. There are 5 fewer county splits (10 vs. 15) with 13 fewer county segments (23 vs. 36) in the Plaintiffs' Plan. This is driven in part by the difference of segments in Oakland County in the Enacted Plan (6) compared to the number of segments in the Plaintiffs' Plan (4). There are 4 fewer township splits (10 vs. 14) with 8 fewer segments (20 vs. 28) in the Plaintiffs' Plan. There are 2 *greater* city splits (9 vs. 7) with 4 *greater* segments (19 vs. 15) in the Plaintiffs' Plan. There is 1 fewer village split (4 vs. 5) with 2 fewer segments (8 vs. 10) in the Plaintiffs' Plan. In total, the Plaintiffs' Plan has 8 fewer geographic splits than the Enacted Plan (33 vs. 41) and 19 fewer segments (70 vs. 89). Details of geographic splits in the Enacted Plan may be found in Appendix A and details of geographic splits in the Plaintiffs' Remedial Plan may be found in Appendix B.

COMPACTNESS

22. To deter gerrymandering, many state constitutions require districts to be "compact.". Geographic compactness of districts is a measure to ensure that districts do not excessively deviate from being

"reasonably shaped". The concept of "reasonably shaped" is an ambiguous and arbitrary description of what compactness actually is. Yet, the law offers few precise definitions other than "you know it when you see it," which effectively implies a common understanding of the concept. In contrast, academics have shown that compactness has multiple dimensions and have generated many conflicting measures.[5] While many states require compactness in their plans, none explicitly specify which measures to use or what standard is acceptable.[6] A district that is "most compact" by one compactness measure can easily and frequently be less compact by another. There is no professional consensus on a "right" measure, and every widely used compactness measure works differently. In redistricting, courts have most commonly used compactness measures of Polsby-Popper and Reock scores - and these are the measures I use here.

[5] "How to Measure Legislative District Compactness If You Only Know it When You See it" https://gking.harvard.edu/presentations/how-measure-legislative-district-compactness-if-youonly-know-it-when-you-see-it-7

[6] For example, the Constitution of Illinois says only "Legislative Districts shall be compact". The Constitution of Hawaii requires that "Insofar as practicable, districts shall be compact."

23. The Polsby-Popper measure is a ratio that compares a region's area to its perimeter, with values that range from 0 (least compact) to 1 (most compact) A perfect circle would score a value of 1. The Reock compactness score is computed by dividing the area of the voting district by the area of the smallest circle that would completely enclose it. Since the circle encloses the district, its area cannot be less than that of the district, and so the Reock compactness score will always be a number between zero and one (which may be expressed as a percentage). Again, values range from 0 (least compact) to 1 (most compact).

24. In examining Appendix C (Polsby-Popper Compactness Scores by Plan by District) the Enacted Plan has an average compactness of .41,and the Plaintiffs' Remedial Plan has an average compactness score of .46. In examining Appendix D (Reock Compactness Scores by Plan by District) the Enacted Plan has an average compactness of .42, and the Plaintiffs' Remedial Plan has an average compactness score of .45.

24. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 26, 2022

/s/ Thomas M. Bryan
Thomas M. Bryan

Appendix A: Enacted Plan
Geography Splits Inventory

25. Enacted map splits the following counties into (congressional districts):

Berrien County	(4th and 5th)
Calhoun County	(4th and 5th)
Eaton County	(2nd and 7th)
Genesee County	(7th and 8th)
Kalamazoo County	(4th and 5th)
Kent County	(2nd and 3rd)
Macomb County	(9th and 10th)
Midland County	(2nd and 8th)
Monroe County	(5th and 6th)
Muskegon County	(2nd and 3rd)
Oakland County	(6th, 7th, 9th, 10th, 11th and 12th)
Ottawa County	(2nd, 3rd and 4th)
Tuscola County	(8th and 9th)
Wayne County	(6th, 12th and 13th)
Wexford County	(1st and 2nd)

26. Enacted map splits the following county subdivisions into (congressional districts):

Algoma Township	(2nd the 3rd)
Arbela Township	(8th and 9th)
Argentine Township	(7th and 8th)
Georgetown charter Township	(3rd and 4th)

Kalamo Township	(2nd and 7th)
Laketon Township	(2nd and 3rd)
Lincoln charter Township	(4th and 5th)
Macomb Township	(9th and 10th)
Milan Township	(5th and 6th)
Milford charter Township	(7th and 9th)
Muskegan Township	(2nd and 3rd)
Royalton Township	(4th and 5th)
Wexford Township	(1st and 2nd)
White Lake Charter Township	(9th and 11th)

27. Enacted map splits the following places (not including CDPs) into (congressional districts):

Dearborn Heights City	(12th and 13th)
Detroit City	(12th and 13th)
Fenton City	(7th, 8th and 9th)
Flatrock City	(5th and 6th)
North Muskegan City	(2nd and 3rd)
Novi City	(6th and 11th)
Village of Grosse Pointe Shores City	(10th and 13th)
Hubbardston Village	(2nd and 7th)
Lennon Village	(7th and 8th)
Milford Village	(7th and 9th)
Otter Lake Village	(8th and 9th)
Reese Village	(8th and 9th)

Appendix B: Plaintiff Remedial Plan Geography Splits Inventory

28. Plaintiffs' map splits the following counties into (congressional districts):

Ionia County	(3rd and 7th)
Kalamazoo County	(4th and 5th)
Macomb County	(9th and 10th)
Midland County	(2nd and 8th)
Monroe County	(5th and 6th)
Oakland County	(7th, 9th, 11th and 12th)
Ottawa County	(2nd and 4th)
Shiawassee County	(7th and 8th)
Wayne County	(6th, 12th and 13th)
Wexford County	(1st and 2nd)

29. Plaintiffs' map splits the following county subdivisions into (congressional districts):

Caledonia charter Township	(7th and 8th)
Chesterfield Township	(9th and 10th)
Georgetown charter Township	(2nd and 4th)
Homer Township	(2nd and 8th)
Milan Township	(5th and 6th)
Milford charter Township	(7th and 9th)
Orange Township	(3rd and 7th)
Ross Township	(4th and 5th)
Southfield Township	(11th and 12th)
Wexford Township	(1st and 2nd)

30. Plaintiffs' map splits the following places (not including CDPs) into (congressional districts):

Detroit City	(12th and 13th)
Fenton City	(7th, 8th and 9th)
Ferndale City	(11th and 12th)
Flatrock City	(5th and 6th)
Livonia City	(6th and 12th)
Northville City	(6th and 11th)
Portage City	(4th and 5th)
Village of Grosse Pointe Shores City	(10th and 13th)
Wixom City	(9th and 11th)
Casnovia Village	(2nd and 3rd)
Hubbardston Village	(3rd and 7th)
Otter Lake Village	(8th and 9th)
Reese Village	(8th and 9th)

Appendix C: Polsby-Popper Compactness Scores by Plan by District

DISTRICT	ENACTED PLAN POLSBY-POPPER	REMEDIAL PLAN POLSBY-POPPER
District One	0.40	0.40
District Two	0.41	0.48
District Three	0.30	0.50
District Four	0.41	0.54
District Five	0.27	0.43
District Six	0.39	0.40
District Seven	0.56	0.53
District Eight	0.43	0.42
District Nine	0.53	0.50
District Ten	0.48	0.63
District Eleven	0.41	0.41
District Twelve	0.48	0.43
District Thirteen	0.29	0.30
Average	**0.41**	**0.46**

Appendix D: Reock Compactness Scores by Plan by District

DISTRICT	ENACTED PLAN REOCK	REMEDIAL PLAN REOCK
District One	0.38	0.38
District Two	0.56	0.54
District Three	0.32	0.49
District Four	0.42	0.59
District Five	0.19	0.32
District Six	0.39	0.39
District Seven	0.52	0.51
District Eight	0.41	0.41
District Nine	0.53	0.52
District Ten	0.47	0.57
District Eleven	0.48	0.44
District Twelve	0.57	0.49
District Thirteen	0.21	0.21
Reock Average	**0.42**	**0.45**

Appendix E

Thomas M. Bryan CV

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Redistricting Résumé and C.V.

Introduction

I am an applied demographic, analytic and research professional who leads a team of experts in state and local redistricting cases. I have subject matter expertise in political and school redistricting and Voting Rights Act related litigation, US Census Bureau data, geographic information systems (GIS), applied demographic techniques and advanced analytics.

Education & Academic Honors

2002 MS, Management and Information Systems - George Washington University

2002 GSA CIO University graduate* - George Washington University

1997 Graduate credit courses taken at University of Nevada at Las Vegas

1996 MUS (Master of Urban Studies) Demography and Statistics core - Portland State University

1992 BS, History - Portland State University

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* Granted by the General Services Administration (GSA) and the Federal IT Workforce Committee of the CIO Council. http://www.gwu.edu/~mastergw/programs/mis/pr.html

Bryan GeoDemographics, January 2001-Current: Founder and Principal

I founded Bryan GeoDemographics (BGD) in 2001 as a demographic and analytic consultancy to meet the expanding demand for advanced analytic expertise in applied demographic research and analysis. Since then, my consultancy has broadened to include litigation support, state and local redistricting, school redistricting, and municipal infrastructure initiatives. Since 2001, BGD has undertaken over 150 such engagements in three broad areas:

1) state and local redistricting,

2) applied demographic studies, and

3) school redistricting and municipal Infrastructure analysis.

The core of the BGD consultancy has been in state and local redistricting and expert witness support of litigation. Engagements include:

State and Local Redistricting

- 2021: Served as Consultant to the Arizona Independent Redistricting Commission, presenting "Pros and Cons of (Census data) Differential Privacy". July 13, 2021.
  - https://irc.az.gov/sites/default/files/meeting-agendas/Agenda%207.13.21.pdf
- 2021: Chosen by Virginia Senator Tommy Norment to be the Republican nominee for the position of Special Master to the Virginia Supreme Court in designing the Legislative, Senate and Congressional redistricting plans for the State of Virginia. Did not end up serving.

- https://www.vacourts.gov/courts/scv/districting/special masters nominations senator norment.pdf

- 2021: Retained as demographic and redistricting expert for the Wisconsin Legislature in *Johnson v. Wisconsin Elections Commission*, No. 2021AP001450-OA (Wis. Supreme Court) and related Wisconsin redistricting litigation. Offering opinions on demography and redistricting for redistricting plans proposed as remedies in impasse suit.

- 2021: Retained as demographic and redistricting expert by the State of Alabama Attorney General's office. Currently serving as the State's demographic and redistricting expert witness in the matters of *Milligan v. Merrill*, *Thomas v. Merrill* and *Singleton v. Merrill* over Alabama's Congressional redistricting initiatives.

- 2021: Retained as nonpartisan demographic and redistricting expert by counsel in the State of North Carolina to prepare commissioner redistricting plans for Granville County, Harnett County, Jones County and Nash County. Each proposed plan was approved and successfully adopted.

- 2021: Retained as demographic and redistricting expert by Democratic Counsel for the State of Illinois in the case of *McConchie v. State Board of Elections*. Prepared expert report in defense of using the American Community Survey to comply with state constitutional requirements in the absence of the (then) delayed Census 2020 data.

  - https://redistricting.lls.edu/case/mcconchie-v-ill-state-board-of-elections/.

- 2021: Retained by counsel for the Chairman and staff of the Texas House Committee on Redistricting

as a consulting demographic expert. Texas House Bill 1 subsequently passed by the Legislature 83-63.

- https://capitol.texas.gov/BillLookup/History.aspx?LegSess=873&Bill=HB1

- 2021: In the matter of the *State of Alabama, Representative Robert Aderholt, William Green and Camaran Williams v. the US Department of Commerce; Gina Raimondo; the US Census Bureau and Ron Jarmin* in US District Court of Alabama Eastern Division. Prepared a demographic report for Plaintiffs analyzing the effects of using Differential Privacy on Census Data in Alabama and was certified as an expert witness by the Court.
  - https://www.alabamaag.gov/Documents/news/Census%20Data%20Manipulation% 20Lawsuit.pdf
  - https://redistricting.lls.edu/case/alabama-v-u-s-dept-of-commerce-ii/

- 2020: In the matter of The Christian Ministerial Alliance (CMA), *Arkansas Community Institute v. the State of Arkansas.* In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Providing demographic and analytic litigation support.
  - https://www.naacpldf.org/wp-content/uploads/CMA-v.-ArkansasFILED-withoutstamp.pdf

- 2020: In the matter of *Aguilar, Gutierrez, Montes, Palmer and OneAmerica v. Yakima County* in Superior Court of Washington under the Washington Voting Rights Act ("WVRA" Wash. Rev. Code § 29A.92.60). In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Providing demographic and analytic litigation support.

- https://bloximages.newyork1.vip.townnews.com/yakimaherald.com/content/tncms/assets/v3/editorial/a/4e/a4e86167-95a2-5186-a86cbb251bf535 f1/5f0d01eec8234.pdf.pdf

- 2018-2020: In the matter of *Flores, Rene Flores, Maria Magdalena Hernandez, Magali Roman, Make the Road New York, and New York Communities for Change v. Town of Islip, Islip Town Board, Suffolk County Board of Elections* in US District Court. On behalf of Defendants - provided a critical analysis of plaintiff's demographic and environmental justice analysis. The critique revealed numerous flaws in both the demographic analysis as well as the tenets of their environmental justice argument, which were upheld by the court. Ultimately developed mutually agreed upon plan for districting.
  - https://nyelectionsnews.wordpress.com/2018/06/20/islip-faces-section-2-votingrights-act-challenge/
  - https://www.courthousenews.com/wp-content/uploads/2018/06/islip-voting.pdf

- 2017-2020 In the matter of *NAACP, Spring Valley Branch; Julio Clerveaux; Chevon Dos Reis; Eric Goodwin; Jose Vitelio Gregorio; Dorothy Miller; and Hillary Moreau v East Ramapo Central School District (Defendant)* in United States District Court Southern District Of New York (original decision May 25, 2020), later the U.S. Second Circuit Court of Appeals. On behalf of Defendants, developed mutually agreed upon district plan and provided demographic and analytic litigation support.
  - https://www.lohud.com/story/news/education/2020/05/26/federal-judge-sidesnaacp-east-ramapo-voting-rights-case/5259198002/

- 2017-2020: In the matter of *Pico Neighborhood Association et al v. City of Santa Monica* brought under the California VRA. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Providing demographic and analytic litigation support. Executed geospatial analysis to identify concentrations of Hispanic and Black CVAP to determine the impossibility of creating a minority majority district, and demographic analysis to show the dilution of Hispanic and Black voting strength in a district (vs at-large) system. Work contributed to Defendants prevailing in landmark ruling in the State of California Court of Appeal, Second Appellate District.
    - https://www.santamonica.gov/press/2020/07/09/santa-monica-s-at-large-electionsystem-affirmed-in-court-of-appeal-decision
- 2019: In the matter of *Johnson v. Ardoin / the State of Louisiana* in United States District Court. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Provided expert demographic and analytic litigation support.
    - https://www.brennancenter.org/sites/default/files/2019-10/2019-10-16-Johnson%20v%20Ardoin-132-Brief%20in%20Opposition%20to%20MTS.pdf
- 2019: In the matter of *Suresh Kumar v. Frisco Independent School District et al*. in United States District Court. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Provided expert demographic and analytic litigation support. Successfully defended.
    - https://www.friscoisd.org/news/district-headlines/2020/08/04/frisco-isd-winsvoting-rights-lawsuit

- https://www.courthousenews.com/wp-content/uploads/2020/08/texas-schools.pdf

- 2019: At the request of the City of Frisco, TX in collaboration with demographic testifying expert Dr. Peter Morrison. Provided expert demographic assessment of the City's potential liability regarding a potential Section 2 Voting Rights challenge.

- 2019: In the matter of *NAACP v. East Ramapo Central School District* in US District Court Southern District of NY. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Provided expert demographic and analytic litigation support.

- 2019: In the matter of *Johnson v. Ardoin* in United States District Court. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Provided expert demographic and analytic litigation support. Prepared analysis of institutionalized prison population versus noninstitutionalized eligible to vote population.

  - https://casetext.com/case/johnson-v-ardoin

- 2019: In the matter of *Vaughan v. Lewisville Independent School District et al.* in United States District Court. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Provided expert demographic and analytic litigation support.

  - https://www.nbcdfw.com/news/local/lawsuit-filed-against-lewisville-independentschool-district/1125/

- 2019: In the matter of *Holloway, et al. v. City of Virginia Beach in* United States District Court, Eastern District of Virginia. In collaboration with

demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Provided expert demographic and analytic litigation support.

- https://campaignlegal.org/cases-actions/holloway-et-al-v-city-virginia-beach

- 2018: At the request of Kirkland City, Washington in collaboration with demographic testifying expert Dr. Peter Morrison. Performed demographic studies to inform the City's governing board's deliberations on whether to change from at-large to single-member district elections following enactment of the Washington Voting Rights Act. Analyses included gauging the voting strength of the City's Asian voters and forming an illustrative district concentrating Asians; and compared minority population concentration in pre- and post-annexation city territory.

  - https://www.kirklandwa.gov/Assets/City+Council/Council+Packets/021919/8bSpecialPresentations.pdf#:~:text=RECOMMENDATION%3A%20It%20is%20recommended%20that%20City%20Council%20receive,its%20Councilmembers%20on%20a%20city wide%2C%20at-%20large%20basis

- 2018: At the request of Tacoma WA Public Schools in collaboration with demographic testifying expert Dr. Peter Morrison. Created draft concept redistricting plans that would optimize minority population concentrations while respecting incumbency. Client will use this plan as a point of departure for negotiating final boundaries among incumbent elected officials.

- 2018: At the request of the City of Mount Vernon, Washington., in collaboration with demographic testifying expert Dr. Peter Morrison. Prepared a numerous draft concept plans that preserves His-

panics' CVAP concentration. Client utilized draft concept redistricting plans to work with elected officials and community to agree upon the boundaries of six other districts to establish a proposed new seven-district single-member district plan.

- 2017: In the matter of *Pico Neighborhood Association v. City of Santa Monica*. In collaboration with demographic testifying expert Dr. Peter Morrison. Worked to create draft district concept plans that would satisfy Plaintiff's claim of being able to create a majority-minority district to satisfy Gingles prong 1. Such district was not possible, and the Plaintiffs case ultimately failed in California State Court of Appeals Second Appellate District.
    - https://law.justia.com/cases/california/court-of-appeal/2020/b295935.html
- 2017: In the matter of *John Hall, Elaine Robinson-Strayhorn, Lindora Toudle, Thomas Jerkins, v. Jones County Board of Commissioners*. In collaboration with demographic testifying expert Dr. Peter Morrison. Worked to create draft district concept plans to resolve claims of discrimination against African Americans attributable to the existing at-large voting system.
    - http://jonescountync.gov/vertical/sites/%7B9E2432B0-642B-4C2F-A31B-CDE7082E88E9%7D/uploads/2017-02-13-Jones-County-Complaint.pdf
- 2017: In the matter of *Harding v. County of Dallas* in U.S. District Court. In collaboration with demographic testifying expert Dr. Peter Morrison. In a novel case alleging discrimination *against* White, non-Hispanics under the VRA, I was retained by plaintiffs to create redistricting scenarios with different balances of White-non-Hispanics, Blacks and Hispanics. Deposed and provided expert testimony on the case.

- https://www.courthousenews.com/wp-content/uploads/2018/08/DallasVoters.pdf

- 2016: Retained by The Equal Voting Rights Institute to evaluate the Dallas County Commissioner existing enacted redistricting plan. In collaboration with demographic testifying expert Dr. Peter Morrison, the focus of our evaluation was twofold: (1) assess the failure of the Enacted Plan (EP) to meet established legal standards and its disregard of traditional redistricting criteria; (2) the possibility of drawing an alternative Remedial Plan (RP) that did meet established legal standards and balance traditional redistricting criteria.

  http://equalvotingrights.org/wp-content/uploads/2015/01/Complaint.pdf

- 2016: In the matter of *Jain v. Coppell ISD et al* in US District Court. In collaboration with demographic testifying expert Dr. Peter Morrison. Consulted in defense of Coppell Independent School District (Dallas County, TX) to resolve claims of discriminatory at-large voting system affecting Asian Americans. While Asians were shown to be sufficiently numerous, I was able to demonstrate that they were not geographically concentrated - thus successfully proving the Gingles 1 precondition could not be met resulting the complaint being withdrawn.

  - https://dockets.justia.com/docket/texas/txndce/3:2016cv02702/279616

- 2016: In the matter of *Feldman et al v. Arizona Secretary of State's Office et al* in SCOTUS. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Provided analytics on the locations and proximal demographics of polling stations that had been closed subsequent to

Shelby County v. Holder (2013) which eliminated the requirement of state and local governments to obtain federal preclearance before implementing any changes to their voting laws or practices. Subsequently provided expert point of view on disparate impact as a result of H.B. 2023. Advised Maricopa County officials and lead counsel on remediation options for primary polling place closures in preparation for 2016 elections.

- https://arizonadailyindependent.com/2016/04/05/doj-wants-information-onmaricopa-county-election-day-disaster/
- https://www.supremecourt.gov/DocketPDF/19/191257/142431/20200427105601341Brnovich%20Petition.pdf

- 2016: In the matter of *Glatt v. City of Pasco, et al.* in US District Court (Washington). In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Provided analytics and draft plans in defense of the City of Pasco. One draft plan was adopted, changing the Pasco electoral system from at-large to a six-district + one at large.
  - https://www.pasco-wa.gov/DocumentCenter/View/58084/Glatt-v-Pasco---Order---January-27-2017?bidId=
  - https://www.pasco-wa.gov/923/City-Council-Election-System
- 2015: In the matter of *The League of Women Voters et al. v. Ken Detzner et al* in the Florida Supreme Court. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Performed a critical review of Florida state redis-

tricting plan and developed numerous draft concept plans.

- http://www.miamiherald.com/news/politics-government/statepolitics/article47576450.html
- https://www.floridasupremecourt.org/content/download/322990/2897332/file/OPSC14-1905LEAGUE%20OF%20WOMEN%20VOTERS JULY09.pdf

- 2015: In the matter of *Evenwel, et al. v. Abbott / State of Texas* in SCOTUS. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Plaintiffs. Successfully drew map for the State of Texas balancing both total population from the decennial census and citizen population from the ACS (thereby proving that this was possible). We believe this may be the first and still only time this technical accomplishment has been achieved in the nation at a state level. Coauthored SCOTUS Amicus Brief of Demographers.
  - https://www.supremecourt.gov/opinions/15pdf/14-940ed9g.pdf
  - https://www.scotusblog.com/wp-content/uploads/2015/08/Demographers-Amicus.pdf

- 2015: In the matter of *Ramos v. Carrollton-Farmers Branch Independent School District* in US District Court (Texas). In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Used 2009-2013 5-year ACS data to generate small-area estimates of minority citizen voting age populations and create a variety of draft concept redistricting plans. Case was settled decision in favor of a novel cumulative voting system.

- https://starlocalmedia.com/carrolltonleader/c-fb-isd-approves-settlement-in-votingrights-lawsuit/article92c256b2-6e51-11e5-adde-a70cbe6f9491.html

- 2015: In the matter of *Glatt v. City of Pasco et al.* in US District Court (Washington). In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Consulted on forming new redistricting plan for city council review. One draft concept plan was agreed to and adopted.
  - https://www.pasco-wa.gov/923/City-Council-Election-System

- 2015: At the request of Waterbury, Connecticut, in collaboration with demographic testifying expert Dr. Peter Morrison. As a result of a successful ballot measure to convert Waterbury from an at-large to a 5-district representative system, consulted an extensive public outreach and drafted numerous concept plans. The Waterbury Public Commission considered alternatives and recommended one of our plans, which the City adopted.
  - http://www.waterburyobserver.org/wod7/node/4124

- 2014-15: In the matter of *Montes v. City of Yakima* in US District Court (Washington). In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants. Analytics later used to support the Amicus Brief of the City of Yakima, Washington in the U.S. Supreme Court in *Evenwel v. Abbott*.
  - https://casetext.com/case/montes-v-city-of-yakima-3

- 2014: In the matter of *Harding v. County of Dallas* in the US Court of Appeals Fifth Circuit. In the novel case of Anglo plaintiffs attempting to claim relief as protected minorities under the VRA. Served as demographic expert in the sole and limited capacity of proving Plaintiff claim under Gingles prong 1. Claim was proven. Gingles prongs 2 and 3 were not and the case failed.
    - https://electionlawblog.org/wp-content/uploads/Dallas-opinion.pdf
- 2014: At the request of Gulf County, Florida in collaboration with demographic testifying expert Dr. Peter Morrison. Upon the decision of the Florida Attorney General to force inclusion of prisoners in redistricting plans – drafted numerous concept plans for the Gulf County Board of County Commissioners, one of which was adopted.
    - http://myfloridalegal.com/ago.nsf/Opinions/B640990E9817C5AB85256A9C0063138 7
- 2012-2015: In the matter of *GALEO and the City of Gainesville* in Georgia. In collaboration with demographic testifying expert Dr. Peter Morrison, on behalf of Defendants -consulted on defense of existing at-large city council election system.
    - http://atlantaprogressivenews.com/2015/06/06/galeo-challenges-at-large-voting-incity-of-gainesville/
- 2012-: Confidential. Consulted (through Morrison & Associates) to support plan evaluation, litigation, and outreach to city and elected officials (1990s - mid-2000s). Executed first statistical analysis of the American Community Survey to determine probabilities of minority-majority populations in split statistical/

administrative units of geography, as well as the cumulative probabilities of a "false-negative" minority-majority reading among multiple districts.

- 2011-: Confidential. Consulted on behalf of plaintiffs in Committee (Private) vs. State Board of Elections pertaining to citizen voting-age population. Evaluated testimony of defense expert, which included a statistical evaluation of Hispanic estimates based on American Community Survey (ACS) estimates. Analysis discredited the defendant's expert's analysis and interpretation of the ACS.

School Redistricting and Municipal Infrastructure Projects

BGD worked with McKibben Demographics from 2004-2012 providing expert demographic and analytic support. These engagements involved developing demographic profiles of small areas to assist in building fertility, mortality and migration models used to support long-range population forecasts and infrastructure analysis in the following communities:

Fargo, ND 10/2012	Charleston, SC 8/08
Columbia, SC 3/2012	Woodland, IL 7/08
Madison, MS 9/2011	White County, IN 6/08
Rockwood, MO 3/2011	Gurnee District 56, IL 5/08
Carthage, NY 3/2011	Central Noble, IN 4/08
NW Allen, IN 9/2010	Charleston First Baptist, SC 4/08
Fayetteville, AR 7/2010	Edmond, OK 4/08
Atlanta, GA 2/2010	East Noble, IN 3/08
Caston School Corp., IN 12/09	Mill Creek, IN 5/06
Rochester, IN 12/09	Rhode Island 5/06
Urbana, IL 11/09	Garrett, IN 3/08

Dekalb, IL 11/09
Union County, NC 11/09
South Bend, IN 8/09
Lafayette, LA 8/09
Fayetteville, AR 4/09
New Orleans, LA 4/09
Wilmington New Hanover 3/09
New Berry, SC 12/08
Corning, NY 11/08
McLean, IL 11/08
Lakota 11/08
Greensboro, NC 11/08
Guilford 9/08
Lexington, SC 9/08
Plymouth, IN 9/08

Projects Continued

Baton Rouge, LA 4/07
Cobb County, GA 4/07
Charleston, SC District 20 4/07
McDowell County, NC 4/07
East Allen, IN 3/07
Mt. Pleasant, SC District 2 2/07
Peach County, GA 2/07
North Charleston, SC District 4 2/07
Madison County, MS revisions 1/07
Portage County, IN 1/07

Meridian, MS 3/08
Madison County, MS 3/08
Charleston 12/07
Champaign, IL 11/07
Richland County, SC 11/07
Lake Central, IN 11/07
Columbia, SC 11/07
Duneland, IN 10/07
Union County, NC 9/07
Griffith, IN 9/07
Rensselaer, IN 7/07
Hobart, IN 7/07
Buffalo, NY 7/07
Oak Ridge, TN 5/07
Westerville, OH 4/07
Allen County 11/05
Bremen, IN 11/05
Smith Green, IN 11/05
Steuben, IN 11/05
Plymouth, IN 11/05
North Charleston, SC 11/05
Huntsville, AL 10/05
Dekalb, IN 9/05
East Noble, IN 9/05
Valparaiso, IN 6/05
Penn-Harris-Madison, IN 7/05

Marietta, GA 1/07	Elmira, NY 7/05
Porter, IN 12/06	South Porter/Merriville, IN 7/05
Harrison County, MS 9/06	Fargo, ND 6/05
New Albany/Floyd County, IN 9/06	Washington, IL 5/05
North Charleston, SC 9/06	Addison, NY 5/05
Fairfax, VA 9/06	Kershaw, SC 5/05
Coleman 8/06	Porter Township, IN 3/05
DeKalb, GA 8/06	Portage, WI 1/05
LaPorte, IN 7/06	East Stroudsburg, PA 12/04
NW Allen, IN 7/06	North Hendricks, IN 12/04
Brunswick, NC 7/06	Sampson/Clinton, NC 11/04
Carmel Clay, IN 7/06	Carmel Clay Township, IN 9/04
Calhoun, SC 5/06	SW Allen County, IN 9/04
Hamilton Community Schools, IN 4/06	East Porter, IN 9/04
Dilworth, MN 4/06	Allen County, IN 9/04
Hamilton, OH 2/06	Duplin, NC 9/04
West Noble, IN 2/06	Hamilton County / Clay TSP, IN 9/04
New Orleans, LA 2/06	Hamilton County / Fall Creek TSP, IN 9/04
Norwell, IN 2/06	Decatur, IN 9/04
Middletown, OH 12/05	Chatham County / Savannah, GA 8/04
West Noble, IN 11/05	Evansville, IN 7/04
Madison, MS 11/05	Madison, MS 7/04
Fremont, IN 11/05	Vanderburgh, IN 7/04
Concord, IN 11/05	New Albany, IN 6/04

Publications

- In the matter of *Johnson v. Wisconsin Elections Commission*, No. 2021AP001450OA, in the Supreme Court of Wisconsin. Assessing the features of proposed redistricting plans by the Wisconsin Legislature and other parties to the litigation. December 2021.

- In the matters of *Caster v. Merrill* and *Milligan v. Merrill* in US District Court of the Northern District of Alabama. Civil Action NOs. 2:21-cv-01536-AMM; 2:21-cv-01530-AMM. Declaration of Thomas Bryan. Assessing the compliance and performance of the demonstrative VRA congressional plans of Dr. Moon Duchin and Mr. William Cooper. December 2021.

- In the matter of *Milligan v. Merrill* in US District Court of the Northern District of Alabama. Civil Action NO. 2:21-cv-01530-AMM. Declaration of Thomas Bryan. Assessing the compliance and performance of the Milligan and State of Alabama congressional redistricting plans. December 2021.

- In the matter of *Singleton v. Merrill* in US District Court of the Northern District of Alabama. Civil Action NO. 2:21-cv-01291-AMM. Declaration of Thomas Bryan. Assessing the compliance and performance of the Singleton and State of Alabama congressional redistricting plans. December 2021.

- "The Effect of the Differential Privacy Disclosure Avoidance System Proposed by the Census Bureau on 2020 Census Products: Four Case Studies of Census Blocks in Alaska" PAA Affairs, (with D. Swanson and Richard Sewell, Alaska Department of Transportation and Public Facilities). March 2021.

  - https://www.populationassociation.org/blogs/paa-web1/2021/03/30/the-effect-of-the-differential-

privacy-disclosure?CommunityKey=a7bf5d77-d09b-4907-9e17-468af4bdf4a6 .

- https://redistrictingonline.org/2021/03/31/study-census-bureaus-differential-privacy-disclosure-avoidance-system-produces-produces-concerning-results-for-local-jurisdictions/
- https://www.ncsl.org/research/redistricting/differential-privacy-for-census-dataexplained.aspx

- In the matter of the *State of Alabama, Representative Robert Aderholt, William Green and Camaran Williams v. the US Department of Commerce; Gina Raimondo; the US Census Bureau and Ron Jarmin* in US District Court of Alabama Eastern Division. Declaration of Thomas Bryan, Exhibit 6. Civil Action NO. 3:21-CV-211, United States District Court for Middle Alabama, Eastern Division. Assessing the impact of the U.S. Census Bureau's approach to ensuring respondent privacy and Title XIII compliance by using a disclosure avoidance system involving differential privacy. March 2021.
  - https://redistricting.lls.edu/wp-content/uploads/AL-commerce2-20210311-PI.zip

- Peter A. Morrison and Thomas M. Bryan, Redistricting: A Manual for Analysts, Practitioners, and Citizens (2019). Springer Press: Cham Switzerland.

- "Small Area Business Demography." in D. Poston (editor) Handbook of Population, 2nd Edition. (2019). Springer Press: London (with P. Morrison and S. Smith).

- "From Legal Theory to Practical Application: A How-To for Performing Vote Dilution Analyses." *Social Science Quarterly*. (with M.V. Hood III and Peter Morrison). March 2017

- http://onlinelibrary.wiley.com/doi/10.1111/ssqu.12405/abstract

- In the Supreme Court of the United States Sue Evenwel, Et Al., *Appellants,* V. Greg Abbott, in his official capacity as Governor of Texas, et al., *Appellees. On appeal from the United States District Court for the Western District of Texas*. Amicus *Brief of Demographers Peter A. Morrison, Thomas M. Bryan, William A. V. Clark, Jacob S. Siegel, David A. Swanson, and The Pacific Research Institute* - As *amici curiae* in support of Appellants. August 2015.

  - www.scotusblog.com/wp-content/uploads/2015/08/Demographers-Amicus.pdf)

- Workshop on the Benefits (and Burdens) of the American Community Survey, Case Studies/Agenda Book 6 "Gauging Hispanics' Effective Voting Strength in Proposed Redistricting Plans: Lessons Learned Using ACS Data." June 14–15, 2012

  - http://docplayer.net/8501224-Case-studies-and-user-profiles.html

- "Internal and Short Distance Migration" by Bryan, Thomas in J. Siegel and D. Swanson (eds.) The Methods and Materials of Demography, Condensed Edition, Revised. (2004). Academic/Elsevier Press: Los Angeles (with D. Swanson and P. Morrison).

- "Population Estimates" by Bryan, Thomas in J. Siegel and D. Swanson (eds.) The Methods and Materials of Demography, Condensed Edition, Revised. (2004). Academic/Elsevier Press: Los Angeles (with D. Swanson and P. Morrison).

- Bryan, T. (2000). U.S. Census Bureau Population estimates and evaluation with loss functions. *Statistics in Transition,* 4, 537–549.

Professional Presentations and Conference Participation

- Session Chairman on Invited Session "Assessing the Quality of the 2020 Census", including Census Director Ron Jarmin at the 2020 Population Association of America meeting May 5, 2021.
  - https://paa2021.secure-platform.com/a/organizations/main/home
- "The Effect of the Differential Privacy Disclosure Avoidance System Proposed by the Census Bureau on 2020 Census Products: Four Case Studies of Census Blocks in Alaska". 2021 American Statistical Association - Symposium on Data Science and Statistics (ASA-SDSS). With Dr. David Swanson.
  - https://ww2.amstat.org/meetings/sdss/2021/index.cfm
- "New Technical Challenges in Post-2020 Redistricting" 2020 Population Association of America Applied Demography Conference, 2020 Census Related Issues, February 2021. With Dr. Peter Morrison.
  - https://www.youtube.com/watch?v=ETvvoECt9sc&feature=youtu.be
- "Tutorial on Local Redistricting" 2020 Population Association of America Applied Demography Conference, February 2021. With Dr. Peter Morrison.
  - https://www.youtube.com/watch?v=ETvvoECt9sc&feature=youtu.be
- "Demographic Constraints on Minority Voting Strength in Local Redistricting Contexts" 2019 Southern Demographic Association meetings (coauthored with Dr. Peter Morrison) New Orleans, LA, October 2019. Winner of annual E. Walter Terrie

award for best state and local demography presentation.

- http://sda-demography.org/2019-new-orleans

- "Applications of Big Demographic Data in Running Local Elections" 2017 Population and Public Policy Conference, Houston, TX.

- "Distinguishing 'False Positives' Among Majority-Minority Election Districts in Statewide Congressional Redistricting," 2017 Southern Demographic Association meetings (coauthored with Dr. Peter Morrison) Morgantown, WV.

- "Devising a Demographic Accounting Model for Class Action Litigation: An Instructional Case" 2016 Southern Demographic Association (with Peter Morrison), Athens, GA.

- "Gauging Hispanics' Effective Voting Strength in Proposed Redistricting Plans: Lessons Learned Using ACS Data." 2012 Conference of the Southern Demographic Association, Williamsburg VA

- "Characteristics of the Arab-American Population from Census 2000 and 1990: Detailed Findings from PUMS." 2004 Conference of the Southern Demographic Association, (with Samia El-Badry) Hilton Head, SC.

- "Small-Area Identification of Arab American Populations," 2004 Conference of the Southern Demographic Association, Hilton Head, SC.

- "Applied Demography in Action: A Case Study of Population Identification." 2002 Conference of the Population Association of America, Atlanta, GA.

Primary Software Competencies

ESRI ArcGIS: advanced

SAS: intermediate

Microsoft Office: advanced

Professional Affiliations

International Association of Applied Demographers (Member and Board of Directors)

American Statistical Association (Member)

Population Association of America (Member)

Southern Demographic Association (Member)

American BAR Association (Affiliated Professional: Solo, Small Firm and General Practice Division)

Relevant Work Experience

January 2001- April 2003 ESRI Business Information Solutions / Demographer

Responsibilities included demographic data management, small-area population forecasting, IS management and software product and specification development. Additional responsibilities included developing GIS-based models of business and population forecasting, and analysis of emerging technology and R&D / testing of new GIS and geostatistical software.

May 1998-January 2001 U.S. Census Bureau / Statistician

Responsibilities: developed and refined small area population and housing unit estimates and innovative statistical error measurement techniques, such as Loss Functions and MAPE-R.

Service

Eagle Scout, 1988, Boy Scouts of America. Member of the National Eagle Scout Association. Involved in leadership of the Boy Scouts of America Heart of Virginia Council.

References

Dr. David Swanson	Dr. Peter Morrison
Professional Peer	*Professional Peer*
david.swanson@ucr.edu	petermorrison@me.com
951-534-6336	310-266-9580

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:22-CV-054-PLM

BANERIAN, *et al.*,

Plaintiffs,

v.

BENSON, *et al.*,

Defendants.

Three-Judge Panel Requested
28 U.S.C. § 2284(a)

DECLARATION OF MICHAEL BANERIAN

MICHAEL BANERIAN declares as follows:

1. I am over 18 years of age and competent to make this declaration.

2. I am a U.S. citizen and am lawfully registered to vote in Michigan.

3. I regularly vote in federal, state, and local elections in Michigan.

4. I live in the City of Royal Oak, Michigan. I reside in Oakland County.

5. I live in the newly created Eleventh Congressional District.

6. The newly created Eleventh Congressional District is overpopulated by 389 individuals, thus harming me by leading to a dilution of my vote as compared to other districts containing fewer individuals.

7. Oakland County, the county within which I reside, is split between six Congressional Districts, Congressional Districts Six, Seven, Nine, Ten, Eleven, and Twelve. As is demonstrated by the remedy map, it is possible to split Oakland County between four Congressional Districts. Splitting Oakland County six ways was unnecessary.

8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 26, 2022

/s/ Michael Banerian
Michael Banerian

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:22-CV-054-PLM

BANERIAN, *et al.*,

Plaintiffs,

v.

BENSON, *et al.*,

Defendants.

Three-Judge Panel Requested
28 U.S.C. § 2284(a)

DECLARATION OF MICHON BOMMARITO

MICHON BOMMARITO declares as follows:

1. I am over 18 years of age and competent to make this declaration.

2. I am a U.S. citizen and am lawfully registered to vote in Michigan.

3. I regularly vote in federal, state, and local elections in Michigan.

4. I live in the City of Albion, Michigan. I reside in Calhoun County.

5. I live in the newly created Fifth Congressional District.

6. Calhoun County is split between two Congressional districts; Congressional Districts Four and Five. By contrast, the remedy map keeps Calhoun County entirely within a single Congressional District. Accordingly, this split was unnecessary and my community of interest, Calhoun County, is harmed.

7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 26, 2022

/s/ Michael Banerian
Michael Banerian

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:22-CV-054-PLM

BANERIAN, *et al.*,

Plaintiffs,

v.

BENSON, *et al.*,

Defendants.

Three-Judge Panel Requested
28 U.S.C. § 2284(a)

DECLARATION OF PETER COLOVOS

PETER COLOVOS declares as follows:

1. I am over 18 years of age and competent to make this declaration.

2. I am a U.S. citizen and am lawfully registered to vote in Michigan.

3. I regularly vote in federal, state, and local elections in Michigan.

4. I reside in Hagar Township, Berrien County, Michigan.

5. I live in the newly created Fourth Congressional District.

6. The newly created Fourth Congressional District contains portions of six different counties. Only the NE corner of Berrien County is contained in the Fourth District with the remainder of Berrien County being contained in the newly formed Fifth Congressional District. The newly formed Fourth Congressional District was not formed according to the requirements outlined in the Michigan Constitution, thus harming me by requiring that I vote in a malformed district that does not represent the unique interests of my local community of Berrien County.

7. As demonstrated by the remedy map submitted with the Complaint, it is possible to keep my county, Berrien County, whole. After the 2010 Census, Berrien County was kept whole. Splitting Berrien County harms me because my county is now split between the Fourth and Fifth Congressional Districts. The Fourth Congressional District is anchored in Western Michigan while the Fifth Congressional District includes the Detroit suburbs. The Commissioners therefore did not respect my community of interest.

8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 26, 2022

/s/ Peter Colovos
Peter Colovos

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:22-CV-054-PLM

BANERIAN, *et al.*,

Plaintiffs,

v.

BENSON, *et al.*,

Defendants.

Three-Judge Panel Requested
28 U.S.C. § 2284(a)

DECLARATION OF WILLIAM GORDON

WILLIAM GORDON declares as follows:

1. I am over 18 years of age and competent to make this declaration.

2. I am a U.S. citizen and am lawfully registered to vote in Michigan.

3. I regularly vote in federal, state, and local elections in Michigan.

4. I live in the City of Ann Arbor, Michigan. I reside in Washtenaw County.

5. I live in the newly created Sixth Congressional District.

6. The newly created Sixth Congressional District is overpopulated by 94 individuals, thus harming me by leading to a dilution of my vote as compared to other districts containing fewer individuals.

7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 26, 2022

/s/ William Gordon
William Gordon

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:22-CV-054-PLM

BANERIAN, *et al.*,

Plaintiffs,

v.

BENSON, *et al.*,

Defendants.

Three-Judge Panel Requested
28 U.S.C. § 2284(a)

DECLARATION OF JOSEPH GRAVES

JOSEPH GRAVES declares as follows:

1. I am over 18 years of age and competent to make this declaration.

2. I am a U.S. citizen and am lawfully registered to vote in Michigan.

3. I regularly vote in federal, state, and local elections in Michigan.

4. I live in the City of Linden, Michigan. I reside in Genesee County.

5. I live in the newly created Eighth Congressional District.

6. The newly created Eighth Congressional District is overpopulated by 50 individuals, thus harming me by leading to a dilution of my vote as compared to other districts containing fewer individuals.

7. My county of Genesee County is split between the Eighth Congressional District and the Seventh Congressional District. The Seventh Congressional District is based in Lansing while the Eighth Congressional District is based in Flint and Saginaw. This split was unnecessary. As the remedy map demonstrates, it is possible to keep Genesee County whole.

8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 26, 2022

/s/ Joseph Graves
Joseph Graves

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:22-CV-054-PLM

BANERIAN, *et al.*,

Plaintiffs,

v.

BENSON, *et al.*,

Defendants.

Three-Judge Panel Requested
28 U.S.C. § 2284(a)

DECLARATION OF BEAU LAFAVE

BEAU LAFAVE declares as follows:

1. I am over 18 years of age and competent to make this declaration.

2. I am a U.S. citizen and am lawfully registered to vote in Michigan.

3. I regularly vote in federal, state, and local elections in Michigan.

4. I live in the City of Iron Mountain, Michigan. I reside in Dickinson County.

5. I live in the newly created first Congressional District.

6. The newly created First Congressional District is overpopulated by 196 individuals, thus harming me by leading to a dilution of my vote as compared to other districts containing fewer individuals.

7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 26, 2022

/s/ Beau LaFave
Beau LaFave

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:22-CV-054-PLM

BANERIAN, *et al.*,

Plaintiffs,

v.

BENSON, *et al.*,

Defendants.

Three-Judge Panel Requested
28 U.S.C. § 2284(a)

DECLARATION OF SARAH PACIOREK

SARAH PACIOREK declares as follows:

1. I am over 18 years of age and competent to make this declaration.

2. I am a U.S. citizen and am lawfully registered to vote in Michigan.

3. I regularly vote in federal, state, and local elections. I first registered to vote in Michigan when I was 18, and regularly voted in Michigan for several years thereafter. I then moved out of state for work, where I was a regular voter, and returned to Michigan in 2021, where I am once again registered and intend to vote in 2022.

4. I live in the City of Ada, Michigan. I reside in Kent County.

5. I live in the newly created Third Congressional District.

6. The newly created Third Congressional District is overpopulated by 235 individuals, thus harming me by leading to a dilution of my vote as compared to other districts containing fewer individuals.

7. Kent County is split between two Congressional Districts; Congressional Districts Two and Three. Congressional District Two includes the suburbs of Lansing Michigan and goes all the way north and west to include the Huron-Manistee National Forrest. Congressional District Three is anchored in Grand Rapids. By contrast, the remedy map keeps Kent County entirely within a single congressional district. Accordingly, this split was unnecessary and my community of interest, Kent County, is harmed.

8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 26, 2022

/s/ Sarah Paciorek
Sarah Paciorek

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:22-CV-054-PLM

BANERIAN, *et al.*,

Plaintiffs,

v.

BENSON, *et al.*,

Defendants.

Three-Judge Panel Requested
28 U.S.C. § 2284(a)

DECLARATION OF CAMERON PICKFORD

CAMERON PICKFORD declares as follows:

1. I am over 18 years of age and competent to make this declaration.

2. I am a U.S. citizen and am lawfully registered to vote in Michigan.

3. I regularly vote in federal, state, and local elections in Michigan.

4. I live in the City of Charlotte, Michigan. I reside in Eaton County.

5. I live in the newly created Seventh Congressional District.

6. The newly created Seventh Congressional District is overpopulated by 59 individuals, thus harming me by leading to a dilution of my vote as compared to other districts containing fewer individuals.

7. My county, Eaton County, is split between Congressional Districts Two and Seven. Eaton County is a suburb of Lansing. As the remedy map demonstrates, this split was unnecessary, and Eaton can be left whole. Instead, Eaton County is split into Congressional District Two, a district that is anchored in Western Michigan and includes the Huron-Manistee National Forrest, and District Seven, a district that is anchored in Lansing. The enacted map disregards my community of interest.

8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 26, 2022

/s/ Cameron Pickford
Cameron Pickford

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:22-CV-054-PLM

BANERIAN, *et al.*,

Plaintiffs,

v.

BENSON, *et al.*,

Defendants.

Three-Judge Panel Requested
28 U.S.C. § 2284(a)

DECLARATION OF HARRY SAWICKI

HARRY SAWICKI declares as follows:

1. I am over 18 years of age and competent to make this declaration.

2. I am a U.S. citizen and am lawfully registered to vote in Michigan.

3. I regularly vote in federal, state, and local elections in Michigan.

4. I live in the City of Dearborn Heights, Michigan. I reside in Wayne County.

5. I live in the newly created Twelfth Congressional District.

6. The newly created Twelfth Congressional District is overpopulated by 68 individuals, thus harming me by leading to a dilution of my vote as compared to other districts containing fewer individuals.

7. Wayne County is split between three congressional districts, the Sixth, Twelfth, and Thirteenth districts. Although the remedy map splits Wayne County into the same three congressional districts, the remedy map keeps my city, the City of Dearborn Heights, whole. In the enacted map, the City of Dearborn Heights is split between Congressional District Twelve and Thirteen. District Thirteen's primary city is Detroit and District Thirteen includes the Detroit suburbs. By contrast, the majority of the district Twelfth's population comes from outside of Detroit and is more suburban. My community of interest, City of Dearborn Heights, is split between these two districts. As is demonstrated in the remedy map, this split was unnecessary.

8. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 26, 2022

/s/ Harry Sawicki
Harry Sawicki

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:22-CV-054-PLM

BANERIAN, *et al.*,

Plaintiffs,

v.

BENSON, *et al.*,

Defendants.

Three-Judge Panel Requested
28 U.S.C. § 2284(a)

DECLARATION OF MICHELLE SMITH

MICHELLE SMITH declares as follows:

1. I am over 18 years of age and competent to make this declaration.

2. I am a U.S. citizen and am lawfully registered to vote in Michigan.

3. I regularly vote in federal, state, and local elections in Michigan.

4. I live in the City of Sterling Heights, Michigan. I reside in Macomb County.

5. I live in the newly created Tenth Congressional District.

6. The newly created Tenth Congressional District is overpopulated by 39 individuals, thus harming me by leading to a dilution of my vote as compared to other districts containing fewer individuals.

7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 26, 2022

/s/ Michelle Smith
Michelle Smith

Exhibit A

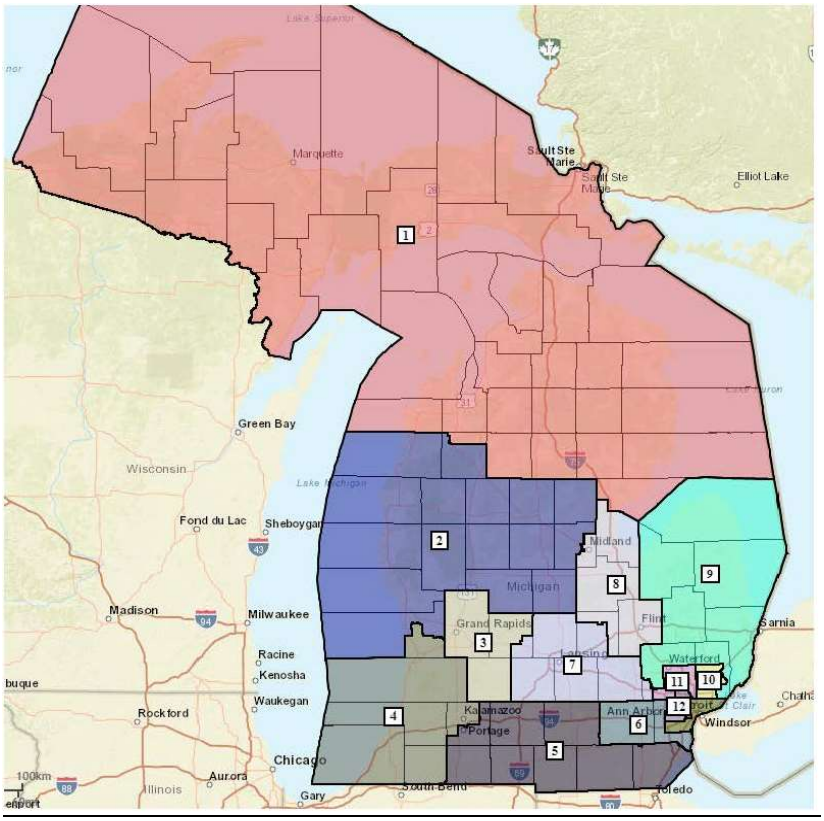
Marquette
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Exhibit B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

MICHAEL BANERIAN, *et al.*,

Plaintiffs,

v.

JOCELYN BENSON, in her official capacity as the Secretary of State of Michigan, *et al.*,

Defendants.

Three-Judge Panel Requested
28 U.S.C. § 2284(a)

EXHIBIT B TO

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

January 28, 2022

MEMORANDUM

To Michigan Independent Citizens Commission

From Stephen Markman
Michigan Supreme Court Justice (retired)
Professor of Constitutional Law, Hillsdale College
Commissioned by Hillsdale College

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EXECUTIVE SUMMARY

This Memorandum addresses the Report of the Center for Local, State, and Urban Policy at the University of Michigan, offering "Recommendations to the Michigan Independent Citizens Redistricting Commission." The recommendations of the Report are neither in full accord with the language of the Amendment nor with the "common understanding" of the Amendment on the part of the people of Michigan who ratified it.

In particular, the concept of the "community of interest" has been significantly distorted from its previous legal usage. The Report fails to acknowledge what the term historically has meant in Michigan—electoral boundaries built upon counties, cities, and townships, the genuine communities of interest to which all citizens of our state equally belong. In its place, the Report would define the "community of interest" on the basis of groups in support of and in opposition to "public policy issues;" media markets and special assessment tax districts; "shared visions of the future" of communities; and by introducing into the Michigan Constitution for the first time express consideration of "race, ethnicity, and religion." As a result, what the people of Michigan wished to see ended by their ratification of the Amendment—a redistricting process characterized by partisanship, self-dealing, and gerrymandering—risks being reintroduced under a different name.

The Report's reinterpretation of the "communities of interest" concept is predicated upon what its author describes as a "new theory of representation." This "new theory" would replace the citizen as the core of the democratic process with the interest group; it would substitute for the ideal of equal citizenship favored and disfavored voting blocs; it would replace

partisanship with ideology; it would enhance the role of "race, ethnicity, and religion" in the construction of electoral districts; and it seeks to build an electoral and political foundation upon the judgments of "experts" rather than those of ordinary citizens.

The new Commission has the opportunity either to separate or to unite—to separate our people as members of interest groups and identity categories or to unite them as equal citizens, entitled to an equal role in the electoral process. Furthermore, the Commission is positioned to influence similar amendments being considered by other states, which are now assessing the Michigan experience. This memorandum presumes that in ratifying the Amendment, the people were doing exactly what was heralded at the time: they were establishing a redistricting process at whose core would be "voters not politicians" and not "reimagining" their democracy or experimenting with "new theories of representation."

MEMORANDUM

To: Commission Members From: Stephen Markman

Re: Role of the Commission

Hillsdale College

Hillsdale College is a private liberal arts college in Hillsdale, Michigan with a student body of approximately 1400. It was founded in 1844 by Free Will Baptist abolitionists and has long maintained a liberal arts curriculum grounded upon the institutions and values of Western culture and Judeo-Christian tradition. Since its inception, Hillsdale has been non-denominational and takes pride in having been the first American college to prohibit discrimination based

upon race, religion, or sex in its official charter, becoming an early force in Michigan for the abolition of slavery. A higher percentage of Hillsdale students enlisted during the Civil War than from any other western college. Of its more than 400 students who fought for the Union, four earned the Congressional Medal of Honor, three became generals, many more served as regimental commanders, and sixty students gave their lives. Many notable speakers visited Hillsdale's campus during the Civil War era, including social reformer and abolitionist Frederick Douglass and the man whose remarks preceded those of Abraham Lincoln at Gettysburg, Edward Everett. Hillsdale College plays no partisan role in American politics.

Purpose

Hillsdale College commissioned retired Justice of the Michigan Supreme Court Stephen Markman to review the Report of the Center for Local, State, and Urban Policy at the University of Michigan ["Report"] issued last August. This Report proposes "Recommendations to the Michigan Independent Citizens Redistricting Commission" ["Commission"] in implementing a state redistricting plan in accordance with the constitutional amendment ["Amendment"] ratified by the people by initiative in 2018. While the Report and its recommendations are thoughtful in many ways, its conclusions and recommendations, in our judgment, are fundamentally mistaken. The purpose of this Memorandum is to highlight the Report's deficiencies and to offer an alternative view that more closely adheres to the principles of American constitutionalism and incorporates more fully the legal and constitutional history of redistricting in Michigan. Specifically, this Memorandum offers thoughts

and recommendations in support of what we believe to be the common interest of Michigan citizens that our public institutions uphold principles fundamental to our State constitution: the principles of representative self-government.

Formative Role

The present thirteen Commissioners comprise the Commission's formative membership and, as a result, your policies and procedures will come to define the work of this new institution. These policies and procedures will continue to define the Commission as new members join it, as new political balances arise in Michigan, and as new public policy controversies and partisan disputes come to the fore. Your legacy of public service will determine the extent to which the Commission endures as an institution and its reforms become permanent. Each of you has been afforded a rare opportunity to help construct the constitutional course of our state. As with the best of public servants, you must rise to this occasion.

Absence of Perspective

A threshold concern with the Center for Local, State, and Urban Policy's Report is the absence of historical and constitutional perspective. Of particular concern is the Report's failure to take into adequate consideration in its Recommendations aspects of our federal and state constitutional systems that may be relevant in effectively and responsibly implementing the new Amendment. While the Amendment has removed our state redistricting process from within the traditional purview of the legislative power, it has not removed this process from within the purview of our Constitution. State constitutional principles and values remain applicable to the work of the

Commission, including that of judicial review, as do all federal constitutional and legal principles and values. These may include, for example, the guarantee to every state of a "republican form of government;" norms of democratic electoral participation; recognition of our nation as a continuing experiment in self-government; and such fundamental precepts as federalism, equal protection, due process, equal suffrage, checks and balances, and governmental transparency. In other words, the Commission, as with *all* public bodies, does not stand *outside* the "supreme law" of our federal and state constitutions. For that reason, debates and discussions within the Commission that proceed without reference to any value of government larger than how best to define a "community of interest," or that reflect little historical or constitutional perspective, are likely to prove shallow, sterile, and stunted.

Oath of Office

As Commissioners, you must bear in mind the oath you have each taken, affirming support for the "Constitution of the United States and the Constitution of this state" and vowing to "faithfully discharge the duties of [your] office according to the best of [your] ability." Const 1963, art 11, § 2. While you will exercise your own best judgments in satisfying these obligations, as with all who exercise public authority, you must each familiarize yourself with our federal and state constitutions, just as you have familiarized yourselves with Michigan's redistricting process and the new Amendment.

Apol Standards

As just one illustration, there is an absence in the UM Report of even a single mention of the "Apol

standards" which have guided our state's redistricting process for at least forty years in *name* and for far longer *in practice*. Named after Bernard Apol, a former State Director of Elections, and prepared under the leadership of Michigan Supreme Court Justice Charles Levin, these standards can offer practical guidance to the Commission in understanding and implementing the present Amendment. The Supreme Court has summarized these standards as follows:

1. The Senate consists of 38 districts.

2. The House consists of 110 districts.

3. All districts shall be contiguous, single-member districts.

4. The districts shall have a population not exceeding 108.2% and not less than 91.8% of the ideal district which, based on the 1980 census, would contain 243,739 persons in the Senate and 84,201 persons in the House.

5. The boundaries of the districts shall first be drawn to contain only whole counties to the extent this can be done within the 16.4% range of divergence and to minimize within that range the number of county lines which are broken.

6. If a county line is broken, the fewest cities or townships necessary to reduce the divergence to within 16.4% shall be shifted; between two cities or townships, both of which will bring the district within the range, the city or township with the least population shall be shifted.

7. Between two plans with the same number of county line breaks, the one that shifts the fewest cities and townships statewide shall be selected; if more than one plan shifts the same number of cities and

townships statewide, the plan that shifts the fewest people in the aggregate statewide to election districts that break county lines shall be selected.

8. In a county which has more than one senator or representative, the boundaries of the districts shall first be drawn to contain only whole cities and townships to the extent this can be done within the 16.4% range of divergence and to minimize within that range the number of city and township lines that are broken.

9. If a city or township line is broken, there shall be shifted the number of people necessary to achieve population equality between the two election districts affected by the shift, except that, in lieu of absolute equality, the lines may be drawn along the closest street or comparable boundary; between alternate plans, shifting the necessary number of people, the plan which is more compact is to be selected.

10. Between two plans, both of which have the same number of city and township breaks within a particular county, the one that minimizes the population divergence in districts across the county is to be selected.

11. Within a city or township that is apportioned more than one senator or representative, election district lines shall be drawn to achieve the maximum compactness possible within a population range of 98%–102% of absolute equality between districts within that city or township.

12. Compactness shall be determined by circumscribing each district within a circle of minimum radius and measuring the area, not part of the Great Lakes and not part of another state, inside the circle but not inside the district. The plan to be

selected is the plan with the least area within all the circles not within the district circumscribed by the circle. *In re Apportionment State Legislature-1992,* 439 Mich 715, 720-22.

Particular attention should be given to standards 5-10, each of which in some manner gives significant regard to counties and municipalities in Michigan's redistricting process. The Apol standards are emphasized because: (a) they offer useful perspective to the Commission that is missing from the Report; (b) the Michigan Supreme Court has observed that these standards are compatible with the state *constitutional* value of "autonomy of local governmental subdivisions*,"* a value that also goes unmentioned in the Report; and (c) these standards are fair-minded, neutral and non-partisan, and unrelated in any way to the public concerns that led to the present Amendment. Those concerns—partisanship, self-dealing, and gerrymandering—are in no way related to or attributable to the Apol standards.

The Law

The provision central to the UM Report, as well as to this Memorandum, is Const 1963, art 4, § 6, 13 (c), which states in relevant part,

> Districts shall reflect the state's diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests.

Communities of Interest

The UM Report makes clear its sense of the importance of the "communities of interest" concept to

the implementation of the new Amendment, at least as the Report understands this concept. While recognizing that the concept is "subjective" and "not well-defined," the Report nonetheless proceeds to explain its own very broad understanding of this new political foundation upon which our governmental system allegedly now rests. "Communities of interest" comprise the new "building blocks" of our democracy; "communities of interest" will determine "how well a community is represented;" representatives will be assessed by how responsive they are to the 'community [of interest's] needs;" representatives will be "attentive" to "members [of the "communities of interest"]; "communities of interest" will play a "leading role in the process;" "[t]o be an effective representative, a legislator must represent a district that has reasonable homogeneity of needs and interests;" "'communities of interest' can pick up the texture of bonds and interests within a political jurisdiction;" "'communities of interest' can capture the current patterns of community life;" and "'communities of interest' are "primary elements of the new redistricting process," whose recognition by the Commission "will lead to fairer and more effective representation." Although the term is not well defined in the Amendment (the Amendment largely sets forth examples or illustrations of what "may be included" within the term), the "community of interest" is enthusiastically embraced by the Report as the dominant institution mediating between voters and their elected officials.

The Citizen (1)

While the Report has much to say concerning "communities of interest," it has little to say concerning the American political system's *genuine* "building block," the citizen. Each citizen participates

in the electoral process, not as a component of vaguely defined interest groups accredited by a governmental commission, but by casting his or her vote in accord with individual judgment and personal conscience. Yes, the citizen is a part of a community. But it is not a community arbitrarily cobbled together by a public commission and its "experts" and legitimated only after a majority vote has been cast following months of public hearings and lobbying. And it is not a community to which only *some* citizens belong or a community in which its supposed members may not even have *known* of their affiliation until after the community had been officially endorsed by the Commission. Rather, the citizen belongs to a *genuine* "community of interest," one to which *all* citizens belong *equally* and in which all share a common interest and influence. And it is one whose definition requires no prolonged hearings or votes or expert consultations. It is *this* "community of interest" that has always served as the foundation of our electoral process, the community to which each of us belongs and is actually *from*, the community that most embodies our status as free and independent citizens, the community we each call *home*.

The Citizen (2)

To the extent American citizens are defined and officially separated by governmental agencies on the basis of their membership in arbitrarily-defined "communities of interest"—"communities" defined by "interest, identity and affinity" groupings, as the Report proposes we are stereotyped and divided as a people. If we must be defined in collective terms, it should only be as part of "we the people," in whose name our constitutions were ratified, not compartmentalized in the most fundamental sphere of our

citizenship on the basis of considerations such as race, nationality, ethnicity, religion, or skin color. The first obligation of the Commission is to ensure the enactment of a fair-minded, neutral, and non-partisan redistricting process—what would be a remarkable contribution to good government if it could be achieved. It is not an obligation, as the Report instead recommends, to assemble an electoral checkerboard upon which "interest, identity, and affinity" groups can compete for electoral advantage. Such a system would depart drastically from the fundamental principles of the consent of the governed and the equality of all under the law, as it inevitably would elevate some groups of citizens, but not others, to a privileged status.

Duties of Commission

The Report appears to view the lack of clarity and the obscurity of definition of the "community of interest" concept as presenting an *opportunity*, empowering the Commission, with the assistance of the "philanthropic and non-profit sectors" and the "print and broadcast media," to fill an empty constitutional vessel as the Commission sees fit. Operating in accordance with the Report, the Commission is to be occupied in doing at least the following: (a) examining the qualifications of "interest, identity, and affinity" groups to determine which should be favored in the redistricting process as "communities of interest;" (b) assessing which of the resulting "communities of interest" should be "linked" or not "linked" with other "interest, identity, and affinity" groups, both within and across electoral districts, to establish larger "communities of interest;" and (c) deciding under which circumstances "communities of interest" should be concentrated within a single district in order

that the "community" be capable of electing a member of that "community" as its representative, or dispersed among districts in order that the "influence" of that "community" be more broadly felt. Such a process is a zero-sum game in which there are winners *and* losers. The latter will be comprised not only of "interest, identity and affinity" groups rejected as "communities of interest," but also ordinary Michigan citizens, not belonging to any such "community," and who might not have appreciated that such affiliation was a prerequisite for their full exercise of equal suffrage rights in the redistricting process.

Rule of Law

What is perhaps *most* troubling about this decision-making process imposed upon the Commission is that it is an essentially standardless process. The rule of law—to which the Commission, as with all public bodies, must adhere—is all about standards: the setting of rules, criteria and procedures that are defined in *advance* of a decision and applied in an equal and consistent manner. Standards lie at the core of public decision-making, for these ensure that the law is applied today as it was yesterday, and as it will be tomorrow. The constitutional guarantees of both due process and equal protection, for example, are heavily dependent upon the government establishing and abiding by standards. As this pertains to "communities of interest"—which the Report describes as our new "building blocks" of democracy—these standards must ultimately be derived from our constitutions and laws, taking into account their language, structure, history, and purpose. In particular, the language of Michigan's constitution must be understood in the "sense most obvious to the common understanding . . . as reasonable minds, the great

mass of the people themselves, would give it." *Traverse City Sch Dist v Att'y Gen*, 384 Mich 390, 405 (1971), quoting Thomas Cooley, Constitutional Limitations. In other words, vagueness and unclear language in the Amendment does not warrant the Commission 'making up' the law, acting in an arbitrary fashion, exercising merely personal discretion, or formulating rules and procedures on a case-by-case basis. This is not how the rule of law operates, particularly where the most fundamental institutions of our representative architecture are being constructed.

"Subjective" and "Not Well-Defined"

What makes the meaning of "communities of interest" in Const 1963, art IV, § 6, 13(c), so challenging is not only the potentially *boundless* implications of the "may include, but are not limited to" language, but also the potential breadth of other critical terms such as "diversity," "cultural," "historical," and "economic." For these reasons, the term "communities of interest" is correctly characterized by the Report as not only being "subjective" and "not well-defined," but as "opaque at best" in a recent article, Liscombe & Rucker, *Redistricting in Michigan*, Mich Bar J, Aug 2020. The Report further summarizes a survey of local officials responding to questions on the meaning and implications of "communities of interest." Significant numbers of these officials responded that "there were no significant local COIs" in their jurisdictions, that the matter was "inapplicable to their jurisdiction," that they "didn't understand what was being asked," or that the new constitutional provision was "not legitimate." In consequence, the Report describes the tenor of these responses as evidencing "uncertainty or skepticism," or, perhaps

better put, "uncertainty and utter confusion." Despite this, the Report proceeds to give even the most obscure language of the Amendment meaning, its *own* meaning.

Compounding the Confusion

Consider, for example, the threshold question of giving proper meaning to the term "community of interest." The definition in the Amendment is already highly confusing, stating merely that the term "may include, but are not limited to" populations that "share cultural or historical characteristics or economic interests." The Report then proceeds to *compound* what is confusing about the Amendment by introducing a host of additional and equally amorphous concepts, including: "racial, ethnic, and religious identities"; "common bonds"; "link[age] to a set of public policy issues that are affected by legislation"; "shared vision[s] of the future of a community"; "communities concerned about environmental hazards"; "media markets"; "affinity groups among neighboring jurisdictions"; "invisible ["communities of interest"]; "like-minded nearby communities"; "shared identities"; "what binds [the] community together"; "how the community currently engages with the political process"; "particular governmental policies that are high priority"; "nearby areas whose inclusion . . . would strengthen . . . and weaken representation for your community of interest"; and "metrics to transform [the term] 'reflect' into a clear measure of compliance with [the Amendment's redistricting] criteria." All of this occurs with little explanation or analysis, and with no reference whatsoever to Michigan's constitutional history. Of course, such complexity and convolution would be unnecessary if the Report viewed the Commission's work as "merely"

redistricting Michigan in a "fair-minded, neutral, and non-partisan" way. But far more is required if the "building block" of our democracy is to be reconfigured in pursuit of a reimagined "theory of representation."

Reflections on Report

It is not entirely the fault of the Report's authors for promoting an incorrect understanding of "communities of interest" because this term, as used in the Amendment, is defined inadequately and confusingly. Nonetheless, the Report is deeply flawed, and there is a far more reasonable understanding of "communities of interest" that should guide the work of the Commission, not only to render its efforts in better accord with our Constitution, but also to render this work more broadly unifying. The following are several specific observations in this regard:

(1) The Report asserts that "communities of interest" must be somehow "linked" to a "public policy issue that [is] affected by legislation." Why must this be so? What if a "community" is simply distinguished by the warmth and neighborliness of its people; by people with a common love for the outdoors and who revel in local recreational opportunities; by people enamored with the peace and quiet of the community; by people who relish the quality of local schools, libraries, shops or restaurants; or by people who simply appreciate its proximity to their place of work or to family members, or its affordability? What, of course, is logically implicit but unstated in the Report's assertion is that there must also be some *common* point-of-view on the "public policy issue that [is] affected by legislation," lest the "community of interest" join people among whom there is actually an *absence* of agreement on the "public policy issues." And if there must be a common point-of-view on a "public policy issue that [is] affected

by legislation," how is this consideration any different from the partisan considerations that were meant to be precluded by the Amendment in the first place? After all, attitudes toward "public policy issues that [are] affected by legislation" are exactly what characterizes American political parties. They are not fraternities or sororities, social clubs, or charitable societies, but rather groupings of citizens, broadly sharing "common points-of-view" on the role and responsibilities of government, and separated from other groupings of citizens, broadly sharing "contrary pointsof-view." Indeed, by the Report's own understanding, the political party itself might be defined as a "community of interest," except that it was a dominant purpose of the Amendment to *reduce* partisan influence within the redistricting process, not to heighten it.

(2) Furthermore, the Report's "linkage" requirement, apparently encompassing those with common "racial, ethnic, and religious identities," is seemingly in tension with its *own* definition of "communities of interest." Is the premise of the Report that those possessing common "racial, ethnic, and religious" identities will also tend to possess common attitudes on "public policy issues?" Or is its premise that "communities of interest" should be defined along more narrow, but also more politicized, lines such as, joining together "Asian-American communities favoring globalist and international perspectives," "Hispanic communities with liberal points-of-view," or "Christian communities with socially conservative attitudes?" In either case, the "linkage" requirement is inexplicable in both its rationale and its requirements.

(3) The Report enumerates a variety of "geographically-oriented" groupings that "may" give rise to

"communities of interest," including those predicated upon common "media markets," "enterprise zones," "special assessment tax districts," and "transportation districts". The Commission should bear in mind that recommendations of this sort are intended to preclude the Commission from treating *actual* communities—counties, cities, townships, and villages—as "communities of interest." Moreover, are any of the examples set forth by the Report indicative in any way of a *bona fide* community? Is there a single citizen of Michigan with an allegiance to his or her NBC media market? Or a felt sense of attachment to his or her local "enterprise zone?" Or a kinship with fellow-citizens within his or her "transportation district?" Or a bond with his or her "special assessment tax district?" Are these the types of "building blocks" of a democracy to which a free citizenry would profess their sense of community? If so, what about such "communities of interest" as those based upon sewer districts, subdivisions, apartment complexes, zoning categories, health care centers, tourist areas, policing, firefighting and 911 precincts, downtown development districts, parks and recreational areas, zip-codes, nursing homes, strip malls, and internet protocol addresses? All this to avoid giving consideration to the most genuine of our "communities of interest" — counties, cities and townships, the places where people actually live their lives.

(4) The Report specifies shared "racial, ethnic, or religious identities" as potential "communities of interest" in the redistricting process, while excluding without explanation other standard civil rights categories, including nationality, age, alienage, citizenship, gender, sexual preference, and handicap. The Report specifically offers "racial, ethnic, or religious identities" under the "may include" language of the

Amendment, rather than under its "diverse population" language, perhaps because it recognizes that Michiganders are "diverse" in many ways that have nothing to do with identity considerations. However, the truly overarching question is one the Report neither asks nor answers: did the people of Michigan who ratified this Amendment share a "common understanding" that, for the first time in Michigan's history, its Constitution would impose an affirmative *obligation* upon the state to take "race, ethnicity, and religion" into account in setting public policy even though that dictate, and those terms, *nowhere* appear in the Amendment? And did these same people also share a "common understanding" that, for the first time in Michigan's history, its Constitution would impose an affirmative obligation upon the state to arrange and configure electoral districts and political influence on the basis of express calculations of "race, ethnicity, and religion?"

(5) And in this same regard, what is the relevance of Const 1963, art I, § 2? ("No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin.") Is the redistricting process not a zero-sum process, in which advantages accorded to one "community of interest" on the basis of "race, ethnicity, or religion" come necessarily at the expense of *other* "communities of interest," and other individuals? Moreover, what is the relevance of Const 1963, art I, § 26, enacted by an earlier constitutional initiative of the people in 2006, in supplying evidence of the people's "common understanding" of the present Amendment? The 2006 provision forbids the state—including expressly the "University of Michigan," the sponsors of the Report in

question—from "discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin," in the realms of "public employment, public education, and public contracting." Are these two express constitutional provisions relevant in affording some understanding of what the people meant, and did not mean, in 2018 in ratifying the present Amendment?

(6) The Report states that, "communities concerned about environmental hazards" "may" also be designated as "communities of interest." What about communities concerned about the adequacy of policing or firefighting resources; communities concerned about the quality of local education; communities concerned about road infrastructure; or even communities concerned about levels of property taxation resulting from the policies favored by communities concerned about environmental hazards? Does this singular and specific recommendation of the Report, not offered as an illustration but as a formal recommendation, strike the Commissioners as satisfying the standards of "fair-mindedness, neutrality, and non-partisanship," to which the Commission itself is constitutionally obligated?

(7) The Report observes that communities with a "shared vision of the future of a community" may also be designated as "communities of interest" (16). Does this really describe an inquiry of the sort that the Commission wishes to undertake, to distinguish between communities with and without a "shared vision" of the future and then to ascertain *which* specific "shared visions" should be given priority as "communities of interest?" The Commission should reject this invitation to serve as the "Planning

Commission for the 21st Century" or as Michigan's philosopher-kings. Still, let us ask the obvious: what evidence of consensus would conceivably demonstrate a "shared community vision?" How would this be demonstrated in the course of the Commission's hearings? What would define a sufficiently ennobling "vision" to warrant recognition as a "community of interest?" That the schools of the community might some day provide a quality education for every student without regard to race, ethnicity, or religion? That the community might remain peaceable and responsibly policed? That a supportive ethic among neighbors might arise and be sustained? That small businesses might prosper? Perhaps relevant to these inquiries, the Hillsdale College community of more than 6000 people *also* harbor what it believes to be a shared, and deeply-held, educational and moral vision for the future of the College, and it has adhered to this vision for 175 years. Doubtless, it is a distinctive vision from that of the University of Michigan, but it is no less of a vision and each of our institutions, and our student bodies, are enhanced by these visions. No public body, however capable and enlightened its members might be, should be engaged in comparing and ranking community "visions." The Commission would be acting wisely and responsibly in rejecting this recommendation.

(8) Finally, by the sheer breadth and invented character of its recommendations, the Report defines for the Commission a mission that extends well beyond eliminating partisan advantage, ending legislative self-dealing, and curtailing gerrymandering in the redistricting process. For the Commission to succumb to this mission would constitute grievous error and a lost opportunity to bring the people of our state together in the contentious process of

redistricting rather than dividing them further. The Commission of thirteen engaged and public-spirited citizens should instead operate faithfully within its charter, act with energy and integrity in pursuit of its constitutional purpose, and define a responsible and lasting legacy for the generations of Commissioners who will follow in the years ahead.

Analysis: Counties

What follows is an analysis concerning how the Commission should give reasonable and faithful meaning to the concept of "communities of interest" in Const 1963, art 4, § 6, 13 (c). Just as there is no reference in the Report to the Apol standards that have long guided the redistricting process in Michigan, there is also no reference to relevant decisions of the Michigan Supreme Court—the highest tribunal of our state and a court possessing the authority to review the legal determinations of the Commission. Const 1963, art 4, § 6, 18-20. There is an utter absence of historical memory in the Report. In 1982, in the course of reviewing the state's proposed redistricting plan, the Michigan Supreme Court unanimously held,

> We see in the *constitutional* history of this state dominant commitments to . . . single-member districts drawn along boundary lines of local units of government . . . Michigan has a consistent *constitutional history* of combining less populous counties and subdividing populous counties to form election districts. As a result, county lines have remained inviolate. The reason for following county lines was not the "political unit" theory of representation, but rather that each Michigan Constitution has required preservation of

> the *electoral autonomy* of the counties. *In re Apportionment-1982*, 413 Mich 149, 187 (1982) (emphasis added).

And two Justices, Levin and Fitzgerald, in a bipartisan concurrence, separately wrote in this same regard,

> The "*constitutional* requirements" concerning county, city and township lines, which preserve the *autonomy of local government subdivisions* . . . were not part of the political compromise reflected in the weighted land area/population formulae. [Rather,] they are [among] separate requirements which carry forward provisions and concepts which extend back over 100 years from the Constitution of 1850 through the Constitution of 1908 and the 1952 amendment thereto. *In re Apportionment-1982*, 413 Mich 96, 139n24 (1982) (emphasis added).

And the Court unanimously reiterated this same constitutional understanding in assessing Michigan's 1992 redistricting,

> Recognizing the importance of local communities, and the harm that would result from splitting the political influence of these communities, each of [our past] *constitutions* explicitly protected jurisdictional lines . . . For instance, the 1835 constitution said that no county line could be broken in apportioning the Senate. Const. 1835, art. 4, § 6. The 1850 constitution repeated that rule and added that no city or township could be divided in forming a representative's district. Const. 1850, art. 4, §§ 2-3. [And as] originally

> enacted, the 1908 constitution continued those rules, though it permitted municipalities to be broken where they crossed county lines. Const. 1908, art. 5, §§ 2-3. *In re Apportionment-1992*, 486 Mich 715, 716, 716 n 6 (1992).

Although without the slightest doubt, our Constitution can be changed or altered by amendment, as it has been here, a responsible assessment of new constitutional language would take into account the interpretive counsel that might be derived from past constitutional provisions and court decisions. And in that regard, what the above decisions indicate is that, *at least* through 2018, "preservation of the electoral autonomy of the counties" was viewed by the highest court of this state as a substantial *constitutional* value, and reflected in our state's redistricting processes in 1982 and 1992 (and since) by the application of the Apol standards upholding where reasonably possible the integrity of county and municipal boundaries. Moreover, in assessing the "common understanding" of the people who ratified the Amendment in 2018, and in reviewing the language of the Amendment itself, we see no evidence that this constitutional value has been repudiated.

Analysis: Judicial Use of "Communities of Interest"

The Report incorrectly states that the concept of "communities of interest" is an entirely "new" concept in Michigan law. It is not. For example, in the course of a unanimous decision of the Michigan Supreme Court addressing the 1982 redistricting process, the following observations were made in a full concurrence to that decision by Justices Levin and Fitzgerald,

The Court considered whether, when cities or townships must be shifted, there should be shifted (i) the number of cities or townships necessary to equalize the population of the two districts, or (ii) only the number of cities or townships necessary to bring the districts within the range of allowable divergence. The Court concluded that the concept of minimizing the breaking of county lines extended to the shifting of cities and townships. A county is kept more intact as a *community of interest*, and fewer special election districts must be created, when the minimum necessary number of cities or townships are shifted. *In re Apportionment of State Legislature*- 1982, 413 Mich 149, 155n 8 (1982).

* * *

There remained the possibility that two sets of cities or townships might satisfy the above rule; for example, each of two townships might contain the population required to be shifted. The Court again concluded that the concept of preserving counties as *communities of interest* to the fullest extent possible required that the township or set of townships with the fewest people necessary should be shifted. *In re Apportionment of State Legislature*- 1982, 413 Mich 149, 155n 8 (1982).

* * *

The flaw in this method [of redistricting] is that it artificially divides the counties into two groups, treating one group differently

> than another . . . The historical [redistricting] practice of following county lines never rose to a level of a principle of justice, [but] it has always been simply a device for controlling gerrymandering, facilitating elections and preserving *communities of interest*. Once the rule of following county boundary lines yielded to the principle of 'entitlement', the Court could not pretend to have a neutral and objective set of guidelines. *In re Apportionment of State Legislature*- 1982, 413 Mich 149, 193-5 (1982).

Each of these judicial excerpts employs "communities of interest" in a context referring to municipal boundaries and each was specifically made in the course of assessing the 'Apol standards,' with its emphasis upon preserving such boundaries wherever reasonably possible. The Supreme Court in the 1992 redistricting process again addressed the term and similarly observed,

> The Masters determined that none of the plans submitted to them was satisfactory. They stated that these plans 'either fail to comply with the 1982 [Apol] criteria or do so only facially.' Further, the plans exhibited 'a disregard of some specific criteria, such as *community of interest*. . . . Thus the Masters drew their own plan. In doing so, they followed the same criteria used by Mr. Apol in 1982 *In re Apportionment of State Legislature*-1992, 437 Mich 715, 724 (1992).
>
> * * *
>
> A legislator [can represent his constituents] only if there is some real *community of*

> *interest* among the represented group — without that, the legislator cannot speak effectively on the group's behalf. When a small portion of a jurisdiction is split from the remaining body and affixed to another governmental entity in order to reduce population divergence, the shifted area is likely to lose a great portion of its political influence. For that compelling reason, grounded in sound public policy, all four Michigan Constitutions have provided that jurisdictional lines, particularly county lines, are to be honored in the apportionment process. Id. at 732-33.
>
> * * *
>
> Nor did the parties' proofs sufficiently demonstrate a *community of interest* between and among the voter populations of Oakland County and the voter populations of the City of Detroit and Wayne County. Id. at 737 n 50.

There is, of course, additional language within Const 1963, art IV, § 6, 13(c), that must also be taken into consideration in giving meaning to "communities of interest" in the new Amendment. By these excerpts, however, it is clear that the slate is not quite as blank concerning the meaning of "communities of interest" as the Report would suggest. Especially in the context of an Amendment focused upon redistricting, and in which the critical term has been asserted by the Report to be "new," it might be thought that clarifying language from Michigan's highest court in the *two most significant redistricting decisions of the past half-century* would be welcomed and closely considered. And it is clear that the term has

specifically been understood to refer to municipal communities and their boundaries.

Analysis: § 13(c)

Next, with regard to the language of the Amendment itself, the first sentence of § 13(c) specifies that the *only* entities that "shall" or "must" be reflected within an electoral district are "communities of interest," and the "state's diverse population." However, the second sentence of § 13(c) does not set forth anything that "shall" or "must" be designated as a "community of interest" and thus, by cross reference, also does not set forth anything within the first sentence that "shall" or "must" be reflected within an electoral district. Instead, the second sentence communicates only that certain groups "may" be included as a "community of interest" and that a "community of interest" is not "limited to" such groups. It defines nothing that "shall" or "must" be treated as such a community. As a result, when viewed together, the operative language of the Amendment, the first sentence of § 13(c), provides only that communities of interest "shall" be reflected in the redistricting process but only *if* they have been designated in the first place. The problem in focusing upon § 13(c), without also assessing § 13 as a *whole*, is that there may be *no* designated "communities of interest" that "shall" or "must" be reflected within electoral districts, despite an obvious intention that there be such communities.

Analysis: § 13(f)

While the conundrum posed in the previous paragraph—that there may be *no* "community of interest" at all to be considered in the redistricting process—reflects one *conceivable* understanding of §

13(c), it is not the most *reasonable* understanding. Rather, a more reasonable understanding of § 13(c), would be to read § 13 as a whole, and to include as "communities of interest" *precisely* the entities described in § 13(f): the "counties, cities, and townships," whose boundaries "*shall*" be reflected in the redistricting process. Indeed, these are the *only* entities in the Amendment whose relevance in the redistricting process is made constitutionally *mandatory* and not merely a product of the Commission's *discretion,* thus avoiding any possibility that the consideration of "communities of interest" in the process is rendered a nullity by the absence of any "community of interest" being *designated* pursuant to the second sentence of § 13(c). This understanding is made even more compelling by the fact that such "counties, cities, and townships" are reasonably understood as the *actual* "communities of interest" referred to in the first sentence of § 13(c). As result, an understanding of § 13 that harmonizes its subsections (c) and (f), which is the obligation of any interpreter of a provision of law, not only offers a more reasonable understanding of § 13(c) by filling in its gaps, but it is an understanding in closest accord with the genuine meaning of the term "community of interest" in Michigan redistricting law and history.

Analysis: Priorities

The Report not only fails to harmonize § 13(c) and § 13(f), but seeks to "deprioritize" the latter provision (requiring the consideration of "counties, cities, and townships") on the grounds of its relative "order of priority within § 13." While such an "order of priority" makes sense in defining the organization or sequence of the process by which electoral districts are to be constructed, it runs the risk—one the Report seems

content to run—that such an "order of priority" will effectively read out of the Constitution, or nullify, express constitutional provisions, in this instance, § 13(f) and its *exclusive* requirement that "counties, cities, and townships" "*shall*" be considered in the redistricting process. To understand this concern, we must again review decisions of the Michigan Supreme Court:

> [The challenged law in issue] provides for the establishment of a county apportionment commission and that such a commission "shall be governed by the following guidelines in the stated order of importance: "The stated order is: (a) equality of population as nearly as is practicable; (b) contiguity; (c) compact and as nearly square in shape as is practicable; (d, e, f) not joining townships with cities and not dividing townships, villages, cities or precincts unless necessary to meet the population standard; (g) not counting residents of state institutions who cannot vote; and (h) that the district lines not be drawn to effect partisan political advantage.
>
> If the stated order requires exhaustive compliance with each criterion before turning to a succeeding criterion, then criteria (a) through (c) alone would be determinative and criteria (d) through (f) could not be given any effect.
>
> There are an endless number of ways in which one could construct the district lines consistent with criterion (a), equality of population, and criterion (b), contiguity. Criterion (c) requires that all districts shall be as compact and as nearly square in shape as

> is practicable, depending on the geography of the county area involved. Read literally and given an absolute priority, that criterion would require that the district lines be drawn *without regard* to township, village, city or precinct lines. The apportionment of a county would [then] be a mechanical task.
>
> * * *
>
> We reject such a rigid reading of "stated order" because so read:
>
> * * *
>
> (c) It would give no effect whatsoever to criteria (d) through (f) concerning the preservation of township, city, village and precinct lines, and thereby make meaningless those provisions. It is our duty to read the statute as a whole and to avoid a construction which renders meaningless provisions that clearly were to have effect. *Appeal of Apportionment of Wayne County-1982*, 413 Mich 224, 258-59 (1982); see also *In re Apportionment of State Legislature*-1992, 439 Mich 715, 742n 65 (1992).

In sum, the UM Report seeks, first, to exclude "counties, cities, and townships" from within the purview of the "community of interest"; second, to elevate the role of its own preferred "communities of interest" by giving emphasis to the "may include, but are not limited to" language of the Amendment; and, third, to "deprioritize" and thereby "preempt" from any material role in the redistricting process "counties, cities, and townships." None of these approaches—by concocting creative and dubious "communities of interest" one the one hand, and by excluding the most

obvious and historically-grounded "communities of interest" on the other—constitute a fair or reasonable way of understanding the Amendment.

Analysis: Home

"Counties, cities, and townships" are not only reasonably understood as our fundamental "communities of interest" on the basis of judicial decisions and historical practice, as well as a close analysis of the Amendment itself, but also in terms of how the ordinary citizen would understand this concept. Such communities are where the people reside; where they sleep, play, relax, worship, and mix with families, friends and neighbors; where their children attend schools, make and play with friends, compete in sports, participate in extracurricular activities, and grow to maturity; where they work, shop, dine, and participate in acts of charity; where their taxes are paid, votes cast, and library books borrowed; and where their police and firefighters serve and protect. In short, these places are meaningful to every Michigander, for they serve to define what we call "home" and they signify to the rest of the world where we are "from." Nonetheless, with no explanation or analysis, the Report summarily and confidently assures the Commission that a "community of interest is not a political jurisdiction."

Analysis: Fairness

The Report defines "communities of interest" on the basis of "race, ethnicity, and religion;" "media markets;" "environmental hazards;" "creative arts;" "shared visions of the future;" "immigrant communities;" and "linkages to a set of public policy issues that are affected by legislation"—*none* of which is found anywhere within the law, except that each fits, as

would *any other* conceivable entity, within the "may include, but are not limited to" language of § 13(c). Yet, the most obvious and genuine "communities of interest"—the "counties, cities, and townships" of Michigan, the *only* entitles that *"shall"* be given consideration in the redistricting process under the Amendment—are to be *excluded* from the term. This is done without the slightest consideration for what may be the *greatest* strength of treating our "counties, cities, townships" as "communities of interests"—namely, that every Michigan citizen is an equal part of *this* "community of interest" and there is no other "community of interest" whose establishment would be more "fair-minded, neutral, and non-partisan." That is, the definition proposed here—"communities of interest" based upon "communities" of "interest"—has at least the minor virtue of enabling the Commission to avoid struggling with the impossible, and inapt, question, "which citizens should count, and which should count more and which should count less?"

Analysis: Gerrymandering

The Amendment was popularly headlined as an "anti-gerrymandering" measure in such media as the *Detroit Free Press* (November 7, 2018). Yet the Report, in its disdain for municipal "communities of interest", and in its preference for the dislocated and erratic boundaries of interest and identity groups, is far more likely to give rise to districts that are truly gerrymandered, albeit in different ways than they may sometimes have been gerrymandered in the past. Relying upon county, city, and township lines is simply the most certain and fair-minded way of avoiding gerrymandering altogether, for there is no more neutral and established boundary, with almost all of these having been created either pre-statehood (as

with Wayne County in 1796) or shortly thereafter. District maps produced in accordance with the Report will not only appear oddly-shaped and irregular, but they will appear to be so precisely because they will have been constructed in pursuit of traditional Gerrymandering considerations, dividing our citizens into winners and losers.

Analysis: "A New Theory of Representation"

In a press release from the University of Michigan, the author of the Report has stated that the Report's recommendations offer a "new theory of Representation." (closup.umich.edu/policy-reports/18/the-role-of-communities-of-interest-in-michigans-newapproach-to-redistricting-recommendations, Aug 31, 2020.) While its theory is indeed new to the history of American constitutionalism, it is foreign to it as well. It is a "new theory" that replaces the citizen with the interest group as the core of the democratic process; a "new theory" that enhances the role of race, ethnicity, and religion in the construction of electoral districts; a "new theory" that substitutes for the ideal of equal citizenship that of favored and disfavored voting blocs; a "new theory" that replaces partisanship with ideology; a "new theory" that seeks to build a new political foundation upon the judgments of 'experts' rather than those of ordinary citizens. Although the author's assertion that his Report's recommendations are "unique and interesting" may be also correct, these do not have much to do with the intentions of several million citizens who cast their votes for Proposition 2.

Analysis: Summary

In summary, regarding the threshold policy question that must be addressed by the Commission—the meaning of the "community of interest"—the Report

essentially asserts that almost any entity, any asserted "community," can be included within the "may include, but are not limited to" language of § 13(c) and thus be considered as a "community of interest," with the singular and remarkable *exception* of the most genuine of these communities, our "counties, cities, and townships." These are to be excluded, despite the fact:

* That "counties, cities, and townships" are by any reasonable and ordinary definition of the term *actual* "communities of interest;"

* That "communities of interests" has been defined in Michigan Supreme Court decisions to refer principally to "counties, cities, and townships;"

* That such Michigan Supreme Court decisions have pertained specifically and directly to the state's redistricting process;

* That "communities of interest," understood in the context of the 'Apol standards,' which have guided Michigan redistricting since at least 1982, have also been understood in terms of "counties, cities, and townships; "

* That "counties, cities, and townships" are the only entities that "shall" be reflected in the redistricting process and there is no alternative definition in the Amendment of what "shall" be considered a 'community of interest;"

* That "counties, cities, and townships," as with every other entity the Report would include within "communities of interests" on the basis of the "may include, but are not limited to" language of § 13(c), obviously could also be included on this same basis;

* That "counties, cities, and townships" would seem to be the most obvious "communities" for inclusion within the Amendment's undefined and discretionary "community of interest" categories of "shared cultural characteristics," "shared historical characteristics," and "shared economic interests;" and

* That the most reasonable and harmonized understanding of § 13 of the Amendment strongly suggests that the "counties, cities and townships" referred to in § 13(f) are precisely the "communities of interests" referenced in the first sentence of § 13(c).

Authority of the People

In response to this Memorandum, the authors of the Report may contend that the people of Michigan through their constitutional amendment process are entitled to repudiate the Apol standards, the decisions of the Michigan Supreme Court, and historical redistricting practices. This Memorandum would not dispute such an assertion, only that this is not what the people have, *done* by the present Amendment. While the law of Michigan has been modified in important regards—most significantly, by conferring the authority to administer the redistricting process upon the Commission instead of the Legislature—what the people have *not* done is enact *obligatory* changes in what is meant by the "community of interest." While the term has been made subject to change at the *discretion* of the Commission, the standards, decisions, and practices addressed in this Memorandum largely pertain to the *mandatory* obligations of the Commission in giving meaning to the "community of interest." ("Districts *shall* reflect consideration of county, city, and township boundaries.") In other words, while the Commission may possess the *discretion* to redefine the "community of

interest," it also possesses the *obligation* to consider geographic "communities of interest. The Commission should act to carry out its *obligations* under the Amendment while at the same time exercising its *discretion* not to act *beyond* those obligations in designating "communities of interest." This would constitute the wisest and most responsible exercise of authority by the Commission and nothing in the debate over Proposition 2 or in the assessment of the people's "common understanding" or in the language of the Amendment compels any different result.

Conclusion

Districts should be drawn according to the proposition that each voter should be rendered as equal as possible in his or her participation and influence in the democratic process and as individual citizens, rather than as members of interest groups, and that districts should be drawn with a view to uniting rather than dividing society. The guiding ideal should be that the purpose of government is to secure the rights of individual citizens, their common good, and the strengthening of the right of all of our people to pursue happiness under our federal and state constitutions. The best way for the Commission to accomplish this is to rely upon the longstanding definition of "communities of interest" as being primarily "counties, cities, and townships."

COMMISSIONER RECOMMENDATIONS

Respectfully, the Independent Citizens Redistricting Commission should consider the following recommendations in carrying out its responsibilities under the Amendment:

1. The Commissioners should seek in their decisions to act in a fair-minded, neutral, and non-partisan

manner, in accordance with their responsibilities under the Constitution and in accordance with "common understandings" of the Amendment by the people of our state.

2. The Commissioners should work to secure an understanding and perspective, not only of the Amendment and our state's redistricting process, but of the principles and values underlying our two constitutions. You should be guided in this process by your own best judgments as independent citizens and by the legal framework to which "we the people" have assented, not by the judgments of unelected 'experts.'

3. The Commissioners should take care in the redistricting process to maintain and preserve the greatest institution of our people, representative self-government under constitutional rules and principles.

4. The Commissioners should bear in mind that as formative members of the Commission, your decisions and judgments will continue to guide the Commission in the years ahead as partisan majorities, political incumbents, and legislative debates ebb and flow. Your legacy will far outlast your public service, and so requires wisdom and foresight.

5. The Commissioners should show modesty in carrying out their mission. What the people of Michigan understand most clearly of your work is that you have replaced the Legislature in the decennial process of reconstructing our electoral districts. Do not succumb to the invitations of "experts" to broaden what is already a substantial and daunting mission. As with all responsible public servants, you must act within your authority and not within your power.

6. The Commissioners should show humility in recognizing that, however capable and committed each

of you might be, you are nonetheless in the unusual position of exercising crucial public responsibilities without ever having been elected or confirmed to your position by a democratic vote of those whom you now represent.

7. The Commissioners should avoid becoming enmeshed or embedded within factions or coalitions on the Commission. You are a single Commission representing a single people.

8. The Commissioners should act as nonpartisans, not bipartisan. Although the presence of independent members of the Commission is one important means of achieving a nonpartisan process, so too are members of the Commission with partisan backgrounds who respect that their constitutional obligation is to avoid a "disproportionate advantage to a political party." Each of you thus constitutes your own personal "check and balance" upon the Commission to ensure that it acts in the necessary manner.

9. The Commissioners must subordinate their individual attitudes and allegiances to the requirements of the law. As with all public officers, your personal codes and consciences must conform to the rule of law.

10. The Commissioners should maintain their independence from political parties, incumbents, blocs, experts, interest groups, aspirant 'communities of interest,' and even from one another, but you cannot be independent of the people or their laws and constitutions.

11. The Commissioners should not seek or accept outside funding, or enter into partnerships, or engage in outreach with businesses, foundations, philanthropic organizations, non-profits, or educational institutions, as has been urged upon you. Yours is an

independent citizens commission, and the only reason these actions would be necessary would be if you were to expand upon your mission. Do not leave as your legacy one more expensive governmental bureaucracy and carefully consider how dispiriting it would be to the people of this state if *this* Commission was to abuse its power and position.

REDISTRICTING RECOMMENDATIONS

1. Consider carefully the Apol standards and its variations. Do not assume that these standards were repudiated in 2018 or that they contributed in any way to partisanship, legislative self-interest and self-dealing, or gerrymandering in the redistricting process. Do not close yourself to learning from past practice and historical experience. Although with exceptions, the history of Michigan has, by and large, been one of honest and responsible government.

2. Consider defining "communities of interest" exclusively on the basis of fair-minded, neutral, and non-partisan applications of "county, city, and township" boundaries. Every Michigan citizen is equally a member of such "communities of interest." Once you begin to exercise increasingly broad discretion in defining and creating new "communities of interests," you will inevitably begin to pit citizens and interests against each other. Resolving these disputes will inevitably place yourselves and the Commission into the type of political process the Commission was meant to transcend.

3. Consider carefully whether you wish to introduce explicit considerations of "race, ethnicity, and religion" into the redistricting process. Not only will such considerations come at the expense of other "races, ethnicities, and religions," but such policies implicate

our nation's most profound and divisive issues. To paraphrase former U.S. Supreme Court Justice William O. Douglas, "When such lines are drawn by the State, the diverse communities that our Constitution seeks to weld together become separated, and antagonisms are generated that relate to 'race, ethnicity, and religion,' rather than to political issues." A unifying legacy on the part of the Commission would be a momentous legacy.

4. Consider *not* exercising the Commission's apparently limitless discretion to create new "communities of interests" under its "may include, but are not limited to" authority in § 13(c). This is truly the broadest-possible and most standardless delegation of power ever placed into our Constitution. The language does not reflect well upon the rule of law; do not let it also reflect poorly upon the Commission.

5. Consider carefully the wide variety of means, direct and indirect, obvious and subtle, by which legislators and political strategists have sometimes placed partisan and 'self-interested' thumbs on the scales of redistricting justice. For Members of the Commission to do the same would be no step forward in the pursuit of good government. Avoid doing acts of partisanship, as well as acts that are *tantamount* or *equivalent* to partisanship.

6. Consider carefully the regularity of shape of the districts you construct. "Gerrymanders" are not simply oddly shaped districts, but encompass also districts of a more regular character, but with erratic and 'squiggly' indentations and protrusions undertaken largely to achieve political or partisan purposes.

7. Consider carefully before you add to the complexity of the redistricting process by the adoption of new legal concepts, new statistical measurements,

novel types of "communities of interests," amorphous political science terms, new 'metrics,' and pseudo-scientific concepts of redistricting. None of this complexity and convolution will be necessary if the Commission views its responsibilities simply as the preparation of a "fair-minded, neutral, and non-partisan" redistricting plan, rather than as "reimagining" representative government for Michigan.

8. Consider carefully the risk of nullifying or distorting express provisions of the Amendment, and thereby rewriting the Amendment, by an overly rigid application of the "order" of provisions, by reviewing Michigan Supreme Court decisions in this regard. See "Analysis: Priorities."

9. Consider carefully whether the phrases and concepts you will hear from the 'experts,' such as "common bonds," "affinities," "shared characteristics, "communities," "identities," and "like-mindedness" are largely employed to divide and separate people, rather than to join them together and unify.

10. Consider carefully whether "communities," "identities" "interests," "groups," or "populations" are more strengthened in the political process where their members are consolidated within districts or dispersed among districts. Then, consider carefully whether endless calculations of this sort are part of the proper and "common understanding" of the Commission's work by the people of Michigan who ratified the Amendment.

♦ This Memorandum was commissioned by Hillsdale College and authored by Stephen Markman, a retired Justice of the Michigan Supreme Court and a Professor of Constitutional Law at the College for 28 years.

APPENDIX E

Exhibit C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:22-CV-00054-RMK-JTN-PLM

MICHAEL BANERIAN, *et al.*,

Plaintiffs,

v.

JOCELYN BENSON, *et al.*,

Defendants.

DECLARATION OF ANTHONY EID

I, Anthony Eid, declare and state pursuant to 28 U.S.C. § 1746 as follows:

1. I am a Commissioner on the Michigan Independent Citizens Redistricting Commission.

2. I serve as a Commissioner unaffiliated with any major political party.

3. This declaration is given based on my personal knowledge concerning facts with which I am intimately familiar. I reviewed Exhibit D to the Brace Declaration (the "Map Comparison"), a map comparing the enacted congressional plan to Plaintiffs' proposed remedial plan, as part of preparing this declaration.

Role in Map-Drawing Process

4. I prepared the initial draft of the enacted congressional plan — called the Chestnut map — using community of interest heat maps facilitated through the work of Dr. Moon Duchin and the Metric Geometry and Gerrymandering Group ("MGGG") Redistricting Lab. These heat maps aggregate comments made by the public on corresponding portions of the map to provide information about concentrated communities of interest within the map, and are available to the public. I sponsored the Chestnut map through the collaborative map-drawing process. The people of Michigan had the opportunity to, and did, give feedback on the chestnut map. Commissioners collaboratively edited the plan after the Commission's second round of public hearings. I was present during all Commission meetings when map-drawing decisions were made related to the Chestnut map. I supported the Chestnut map because the public response to the map indicated that the public preferred the Chestnut map because it most closely corresponded with Michigan's ranked redistricting criteria, it valued Michigan's communities of interest and diverse populations, and I believed it would be a map supported by the necessary votes among the Commissioners.

Congressional District 1

5. The goals in drawing Congressional District 1 were to preserve the northern regions of the State, including the Upper Peninsula and contiguous regions on the other side of Lake Huron which have similar features. They are sparsely populated counties that are more rural and agricultural in nature. The district also includes many Native American communites.

Congressional District 2

6. The goals in drawing Congressional District 2 were to create a mid-Michigan district that included Barry County with other rural communities in response to public comments from residents of Barry County. Individuals expressed that Barry County was a rural farming community that wanted to be included with other rural counties such as Ionia, Montcalm, Gratiot, and Isabella. I understood that the Republican Commissioners agreed with this formation and wanted to see it in the final map.

7. In reviewing the Map Comparison, I notice that Plaintiffs' proposed Congressional District 2 does not include Barry County with other rural counties and support rural communities of interest. I also notice in Plaintiffs' proposed Congressional District 2 that Muskegon is annexed from Grand Rapids. The Commission heard many comments from the Muskegon and Grand Rapids community of interest, asking to be kept together because of shared cultural and economic values. Plaintiffs' Congressional District 2 divides this community of interest.

Congressional District 3

8. The goals in drawing Congressional District 3 were to preserve the communities of interest in Grand Rapids, Muskegon, Grand Haven, and Rockford. Residents of these communities indicated, through public comment, that they wanted to remain together.

9. In reviewing the Map Comparison, I notice that Plaintiffs' proposed Congressional District 2 includes rural Barry County, whose residents asked to remain with other rural communities, with the more urban Grand Rapids community. Plaintiffs' proposed Congressional District 3 does not include Muskegon with

Grand Rapids. The Commission was asked to keep these two more urban communities together because of their shared values and cultural commonalities.

Congressional District 4

10. The goals in drawing Congressional District 4 were to create a western Michigan district while preserving the communities of interest in the Battle Creek and Kalamazoo area. Many individuals at public comment spoke about living in Battle Creek and working or shopping in Kalamazoo; individuals also spoke about a shared common highway between the two communities. Commission Orton, who is familiar with the Battle Creek area, helped identify the portions of Battle Creek that felt more closely aligned with Kalamazoo.

11. In reviewing the Map Comparison, I notice that Plaintiffs' proposed Congressional District 4 splits Battle Creek and Kalamazoo and includes Kalamazoo with counties bordering Michigan and Indiana. This configuration divides the community of interest identified along the southern border of Michigan which were kept whole in the enacted plan's Congressional District 5.

Congressional District 5

12. The goals in drawing Congressional District 5 were to preserve the communities of interest along the southern border of Michigan. Residents of the southern counties that border Indiana and Ohio spoke to the Commission about the unique circumstances that align them. For example, many individuals spoke about living in Michigan but working, shopping, and praying across the border or dealing with interstate transportation. Additionally, we heard public comment

about the community feeling connected by a shared television market.

13. In reviewing the Map Comparison, I notice that Plaintiffs' proposed Congressional 5 does not comport with our goals because it divides the southern border community of interest. Congressional District 6

14. The goals in drawing Congressional District 6 were create a district around Ann Arbor, Washtenaw County, and the University of Michigan. Individuals made it clear through public comment that Jackson and Livingston Counties should not be included in a Congressional district with Washtenaw County, as they share different values. Since Washtenaw County does not contain enough population to make a congressional district by itself, the commission decided to add communities to this district that were similar in nature to Washtenaw County. The commission therefore decided to preserve the communities of interest between Novi and Ann Arbor. Individuals at public comment asked the Commission to include Novi with Ann Arbor based on shared commonalities, such as residents of Novi receiving services from the University of Michigan and Ann Arbor area. Additionally, Novi residents identified with Ann Arbor's white-collar workforce.

15. In reviewing the Map Comparison, I notice that Plaintiffs' proposed Congressional District 6 includes Livonia with Ann Arbor and splits the community of interest between Novi and Ann Arbor. The Commission heard during public comment that Livonia has more of a blue-collar workforce that is much more closely aligned with the communities in Detroit, Dearborn, and Southfield. The Commission decided to include Livonia with those communities as a result.

Congressional District 7

16. The goals in drawing Congressional District 7 were to create a tri-county district consisting of Clinton, Eaton, and Igham Counties while keeping Shiawassee County whole. The commission wanted to support the communities of interest within the tri-county area of Clinton, Eaton, and Ingham County in response to public comment. This community was split in the previous 2011 congressional map, and the citizens of the area made it clear that they wanted to be made whole as they are in the Chestnut map.

17. In reviewing the Map Comparison, I notice that Plaintiff's proposed Congressional District 7 splits Shiawassee County and includes portions of Barry County with the tri-counties. Plaintiffs' District 7 splits the rural community of interest in Barry County against the expressed interests described above in the formation of Congressional District 2.

Congressional District 8

18. The goals in drawing Congressional District 8 were to accommodate various communities of interest and draw a district that compromised on competing interests in and around Midland County. The Commission heard many comments asking the Commission to keep Midland County as whole as possible. Some individuals 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. In an effort to compromise and create a map that would receive bipartisan support, the Commission opted to keep Midland County as whole as possible by only excluding five sparsely populated portions of Midland County.

19. In reviewing the Map Comparison, I notice that Plaintiff's proposed Congressional District 8 split the City of Midland from the County of Midland. The Commission considered this kind of split in the proposed Birch map configuration. Ultimately, the Commission did not opt for this configuration, and I did not believe that this alternative configuration would receive the support of two Republican Commissioners (a requirement for selecting a map).

Congressional District 9

20. The goal in drawing Congressional District 9 was to create a district centered around the "thumb" of Michigan. This area identified as a community of interest due to its rural, agricultural nature. In doing so, the commission decided not to include the cities of Wixom, Walled Lake, and Commerce Township within this "thumb"-centered district. These cities identified as a community of interest with the southern portion of Oakland County. The Commission heard public comment that these communities identified much more closely with the suburban metro-Detroit portions of Oakland County than with the rural communities in Michigan's thumb area. I understood from Commissioner Vallette, a Commissioner from that area, that these communities were much more aligned with Oakland County than the rural, agricultural community in the thumb.

21. In reviewing the Map Comparison, I notice that Plaintiffs' proposed Congressional District 9 includes Wixom and Walled Lake with Michigan's upper thumb portion. This does not comport with our goals because these communities are very different and includes the suburban, metro-Detroit communities with rural, agricultural communities.

Congressional District 10

22. The goals in drawing Congressional District 10 were 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. The areas share a large Chaldean population that the Commission worked to keep together. Additionally, Commissioner Clark, who resides in Rochester Hills, believed that Rochester Hills was more closely associated with the communities in Sterling Heights and St. Clair Shores in Macomb County.

23. In reviewing the Map Comparison, I notice that Plaintiffs' proposed Congressional District 10 excludes Rochester Hills from the closely aligned Macomb County communities and splits up that cultural community of interest. Plaintiffs' decision to include Rochester Hills in District 11, instead of Congressional District 10, resulted in the exclusion of Walled Lake, White Lake, Wixom, and Commerce from Plaintiffs' Congressional District 11. These communities indicated, through public comment, a desire to be included with Oakland County and felt more closely aligned with other communities in Oakland County.

Congressional District 11

24. The goals in drawing Congressional District 11 were to preserve communities in and around Oakland County such as the cities of Wixom, Walled Lake, Wixom, Commerce, West Bloomfield, Troy, and Farmington Hills. Many of these townships identified as a community of interest representing the core townships of Oakland County, and share economic, cultural, and historic similarities. The Commission also worked to preserve the LGBTQ communities in

the cities of Royal Oak, Ferndale, and Oak Park. The Commission decided to exclude Southfield from Congressional District 11 because individuals expressed that Southfield felt more closely aligned with the communities of Detroit than Oakland County.

25. In reviewing the Map Comparison, I notice that Plaintiffs' proposed District 11 divides communities of interest by including the Rochester Hills area that asked to be included with portions of Macomb County and including the Novi area that expressed a desire to be included with Ann Arbor.

Congressional District 12

26. The goals in drawing Congressional District 12 were to create a district featuring the east side of Detroit with Dearborn and other similar communities, and to preserve the historical neighborhoods in and around Detroit. Commissioners Kellom and Curry, who were familiar with this area, made meaningful changes to the Detroit area to keep these neighborhoods together. The Commission also decided to include Livonia in Congressional District 12 because of Livonia's blue-collar workforce that aligned more with the communities in Detroit, Dearborn, and Southfield. The Commission worked to preserve township lines and followed the borders of Southfield and Livonia when drawing this District.

27. In reviewing the Comparison Map, I notice that Plaintiffs' proposed Congressional District 12 excludes Livonia from Congressional District 12 and includes it in Congressional District 6 with the Ann Arbor area. This decision splits up the community of interest between the Novi and the Ann Arbor area and includes the blue-collar workforce of Livonia with the white-

collar workforce of Ann Arbor when these communities share little in common.

Congressional District 13

28. The goals in drawing Congressional District 13 were 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.

* * * *

29. I never saw a plan that achieved the communities-of-interest goals of the Chestnut plan at a lower population deviation than the Chestnut plan.

30. I do not know how the Commission would have achieved all the communities-ofinterest goals of the Chestnut plan at a lower population deviation.

31. Plaintiffs' alternative does not convince me that the Commission could have achieved all the communities-of-interest goals at a lower population deviation.

32. Plaintiffs' district configurations do not appear to try to achieve the Commission's goals concerning communities of interest.

33. I would not have proposed or voted for Plaintiffs' alternative plan.

I declare under penalty of perjury that to the best of my memory the foregoing is true and correct.

Executed this 18 day of February, 2022.

/s/ Anthony Eid
Anthony Eid

Exhibit F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:22-CV-00054-RMK-JTN-PLM

MICHAEL BANERIAN, *et al.*,

Plaintiffs,

v.

JOCELYN BENSON, *et al.*,

Defendants.

DECLARATION OF KIMBALL BRACE

I, Kim Brace, declare and state pursuant to 28 U.S.C. § 1746 as follows:

1. My name is Kimball William Brace. I am the president of Election Data Services, Inc. ("EDS, Inc."), a Manassas, Virginia-based consulting firm whose specialty is reapportionment, redistricting matters, election administration issues, and the census.

2. All the materials considered in forming the opinions contained herein are identified in this report.

3. A copy of my curriculum vitae is attached as Exhibit A, which includes a complete list of cases in which I have testified as an expert at trial or by deposition.

Michigan Redistricting Experience in 2021 to current

4. In March 2021, Election Data Services, Inc. was selected as the vendor to provide Map Drawing support to the Michigan Independent Citizens Redistricting Commission (MICRC). My company was selected through a competitive bid process to provide full support services to the Michigan Independent Citizens Redistricting Commission (MICRC) during the redistricting process. These services included building a full redistricting database (composed of Census data and geography, along with political data and precinct geography), providing a full suite of redistricting software for the Commissioners and staff to use to draw district configurations, providing map drawing staffers (either myself at the beginning or subcontractors Kent Stigall and John Morgan) to perform the actual district creation in the software at the direction of Commissioners in open and fully transparent public meetings that were televised, along with creation of analytic software to help the Commissioners understand the racial and political data utilized in the map drawing process. All of this effort and system is now being utilized with regard to the redistricting cases consolidated in the above-captioned matter.

5. This work encompassed a multitude of different activities and tasks. Initially we were responsible for creating a massive database of 1) Census data (the results of the PL 94-171 program when it was released in August, 2021), 2) all Census geography (as provided by the Census Bureau's Topologically Integrated Geographic Encoding and Reference files (TIGER)), along with 3) political data (precinct level election results usually compiled by the Michigan Secretary of State back to 2012) and 4) political geography (the

configuration of precincts to correspond to the election data, in many instances reflecting precinct changes that occurred during the decade). I have commonly termed these four elements of a redistricting database as the "redistricting data cube" when I make presentations to groups or the court. We also provided the redistricting software (in Michigan's instance it was the AutoBound Redistricting system for 2020 (called AutoBound EDGE)) and helped the state install it on every Commissioner's state-provided laptop. Support to the Commissioners for their individual needs was also provided.

6. Our contract also provided that we have staff that would operate the redistricting software and draw district possibilities at the direction of Commission members. I, or my subcontracting staff of Kent Stigall and John Morgan, were at every meeting of the Commission to perform the tasks of actually drawing the districts using Commissioner's thoughts and directions in the AutoBound EDGE software.

7. Even before the PL 94-171 Census data arrived in August 2021, we purchased commercially available population estimates from a demographic and GIS company called ESRI and incorporated them into the AutoBound EDGE system so that draft mapping could take place. At the same time, we incorporate the concepts of Community of Interests (COIs) and built linkages to software and data files generated by MIT that allowed the public to recommend and draw their own concept of Community of Interests for submission to the MICRC.

8. Shortly after our contract started, we went into significant teaching and training mode with the Commission. I did extensive education programs for the Commission (and the public since all these

sessions were televised live as well as taped for storage on the MICRC's YouTube page so that the public could view commission meetings at any time). These included all aspects and definitions used in the redistricting process. I designed special in-depth hour-long training sessions that focused upon each of the four pieces of the "redistricting data cube," including examples of how the pieces appear in Michigan.

9. During the life of the contract, we modified or developed separate computer programs to help analyze plans and line drawings done by the Commission. One of our longstanding programs is what we call "AvsB" which allows us to compare, for example, two different plans to see how much is assigned to identical districts, or the amount of population and geography that is configured differently. The AvsB reports are utilized in this declaration.

10. In conjunction with another subcontractor, political scientist Lisa Handley, we created special software to analyze the extent of racial bloc voting in different parts of the state as well as calculate various political science measures to investigate political fairness (one of the criteria dictated by Michigan law that created the MICRC). The political fairness analysis and reports are utilized in this declaration.

Plaintiffs' Proposed Alternative Plan

11. Plaintiffs' complaint proposed an alternative plan to the court. Plaintiffs' effort to create a plan that has a deviation of only one person from the ideal population for any of the 13 congressional districts is only achievable by unnecessarily splitting the state's counties, townships, cities and precincts into such small pieces that they will expose voter's secrecy of the ballot. In addition, it appears the plaintiffs' have

sought to change the political leaning of a number of districts and thereby reverse the efforts of the Commission to create a "politically fair" plan.

12. Exhibit B to this declaration is a graphic map showing the Chestnut Congressional Plan drawn by the MICRC (with the districts shaded by the district number), with an overlay of the Plaintiff's plan boundaries in red outline. Because the Upper Peninsula of the state is identical between the two plans, Exhibit C to this declaration is a zoomed in portion of the same map, showing just the lower part of the state. Exhibit D to this declaration is a 13-page set of maps, one for every Congressional District, showing in a gray hatched pattern the district in the Chestnut plan and a black boundary for the Plaintiff's congressional plan for that district.

13. Exhibit E to this declaration is an extract of our normal AvsB report, in this instance comparing the Plaintiffs' plan against counties in the state. This exhibit shows all the counties that are split in the Plaintiffs' plan for Congress and the amount of population in each piece of a split county. The Plaintiff's plan splits 10 different counties, with Oakland County split four ways and Wayne County split three ways. All the other eight counties have two pieces each in their plan. While Oakland County has parts of four districts, only one of those are wholly contained in the county. Each of the other three parts contribute only 38%, 20% and 6% of the other districts, so they are not majority factors in those districts.

14. Exhibit F to this declaration is an extract of our normal AvsB report, in this instance comparing the Plaintiffs' plan against townships in the state. This exhibit shows all the townships that are split in the Plaintiffs' plan for Congress and the amount of

population in each piece of a split township. The extremeness of the Plaintiffs' attempt to create districts that all have the same population can be seen in how they split Southfield township in Oakland County. Plaintiffs' map pulled just 13 people out of the town's 91,504 population to place them in district 11, clearly exposing any voter's vote in an election and violating the secrecy of the ballot. The Plaintiffs' plan also pulled just 19 people out of Ross Township in Kalamazoo County to place them in District 4, creating a small pocket of voters that will cause problems for the town clerk. In addition, Plaintiffs' map splits small townships in half unnecessarily, including Orange Township in Ionia County and Wexford Township in Wexford County. Finally, Caledonia Township in Shiawassee County loses just 5.6% of its 4,360 people into District 8 in the Plaintiffs' plan.

15. Exhibit G to this declaration performs the same split township analysis on the Commission's Chestnut Congressional plan. There are no instances of extreme small populations in a piece of a township. The smallest split of a township in the Commission's plan is in Royalton Township in Berrien County where 186 people are placed in District 4. While there is one more township split in the Commission's plan compared to what is presented by the Plaintiffs, the Commission looked are a much wider array of different data and matrixes in creating their plan than the Plaintiffs' seemingly focus on just total population equality.

16. But the Commission's Chestnut plan was not a single-minded exercise to create districts that matched the same population number, but instead were a long exhausting effort to look at multiple factors governing the development of a plan. The commission spent multiple sessions stretching out over many hours

developing and modifying the steps and procedures they would follow to develop a redistricting plan. They were governed by the language enacted by the voters in the redistricting referendum passed in 2018, as well as the training I gave them, particularly to be observant of the effects of the lines on clerk's efforts to conduct an election.

17. The plaintiff's plan also does damage to a number of the state's cities, splitting 13 cities in total. Exhibit H, attached to this declaration shows all the cities (the Census Bureau calls them "places") that are split in the Plaintiffs' plan. It should be noted that a number of the splits have very small pieces pulled out to be in a different district. For example, only 36 people were pulled out of Fenton City's 12,050 population, or 77 people were cut off from the 2,647 people in the Village of Grosse Pointe Shores. Even the small cities of Hubbardston village, Otter Lake village and Reese village were further split apart in the plaintiff's plan.

18. Like townships, the plaintiffs paid little attention to how many precincts they split in creating their plan. While precincts can change because of the redistricting process, it is also important to recognize that maintaining precinct configurations make the implementation of the plan by city and town clerks easier because they already have the older precincts' configuration defined in the voter registration system's street file. All of my research over the past 50 years shows that voters are more likely to be incorrectly assigned to a correct precinct at the beginning of the decade, just after redistricting takes place.

19. Exhibit I to this affidavit shows all the precincts (known as VTDs by the Census Bureau) are split in the Plaintiff's proposed plan and the amount of

population that is separated from the precinct. This two-page exhibit shows several instances where tiny pieces have been pulled out of the precincts to match the plaintiff's goal of having all their districts equally populated.

I declare under penalty of perjury that to the best of my memory the foregoing is true and correct.

Executed this 18 day of February, 2022, at Manassas, VA

/s/ Kimball Brace
Kimball Brace

List of Exhibits Attached to Declaration of Kimball Brace

A. Kimball Brace Vita

B. Statewide map of Chestnut plan by MICRC with overlay of Plaintiff's plan

C. Zoomed in map of Chestnut Plan with Plaintiff's Plan overlay

D. 13 page map set depicting individual congressional districts maps with gray hatch pattern for the Chestnut Plan and black overlay for the Plaintiff's plan.

E. Table of Counties split in Plaintiff's plan for Congress.

F. Table of Townships split in Plaintiff's plan for Congress.

G. Table of Townships split in Chestnut plan for Congress.

H. Table of cities (places) split in Plaintiff's plan for Congress.

I. Table of precincts (VTDs) split in Plaintiff's plan for Congress.

Exhibit A

VITA

KIMBALL WILLIAM BRACE

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Kimball Brace is the president of Election Data Services Inc., a consulting firm that specializes in redistricting, election administration, and the analysis and presentation of census and political data. Mr. Brace graduated from the American University in Washington, D.C., (B.A., Political Science) in 1974 and founded Election Data Services in 1977.

Redistricting Consulting

Activities include software development; construction of geographic, demographic, or election databases; development and analysis of alternative redistricting plans; general consulting, and onsite technical assistance with redistricting operations.

Congressional and Legislative Redistricting

Arizona Independent Redistricting Commission: Election database, 2001 Arizona Legislature, Legislative Council: Election database, 2001

Colorado General Assembly, Legislative Council: Geographic, demographic, and election databases, 1990-91

Connecticut General Assembly

- Joint Committee on Legislative Management: Election database, 2001; and software, databases, general consulting, and onsite technical assistance, 1990-91
- Senate and House Democratic Caucuses: Demographic database and consulting, 2001

Florida Legislature, House of Rep.: Geographic, demographic, and election databases, 1989-92

Illinois General Assembly

- Speaker of House and Senate Minority Leader: Software, databases, general consulting, and onsite technical assistance, 2000-02,
- Speaker of House and President of Senate: Software, databases, general consulting, and onsite technical assistance, 2018-current, 2009-2012, 1990-92, and 1981-82

Iowa General Assembly, Legislative Service Bureau and Legislative Council: Software, databases, general consulting, and onsite technical assistance, 2000-01 and 1990-91

Kansas Legislature: Databases and plan development (state senate and house districts), 1989

Massachusetts General Court

- Senate Democratic caucus: Election database and general consulting, 2001-02
- Joint Reapportionment Committees: Databases and plan development (cong,, state senate, and state house districts), 1991-93, 2010-2012

Michigan Legislature: Geographic, demographic, and election databases, 1990-92; databases and plan

development (cong., state senate, and state house districts), 1981-82

Missouri Redistricting Commission: General consulting, 1991-92 Commonwealth of Pennsylvania: General consulting, 1992

Rhode Island General Assembly and Reapportionment Commissions

- Software, databases, plan development, and onsite assistance (cong., state senate, and state house districts), 2016- current, 2010-2012, 2001-02 and 1991-92
- Databases and plan development (state senate districts), 1982-83

State of South Carolina: Plan development and analysis (senate), U.S. Dept. of Justice, 1983-84

Local Government Redistricting

Orange County, Calif.: Plan development (county board), 1991-92

City of Bridgeport, Conn.: Databases and plan development (city council), 2011-2012 and 200203

Cook County, Ill.: Software, databases, and general consulting (county board), 2010-2012, 2001-02, 1992-1993, and 1989

Lake County, Ill.: Databases and plan development (county board), 2011 and 1981

City of Chicago, Ill.: Software, databases, general consulting, and onsite technical assistance (city wards), 2010-2012, 2001-02 and 1991-92

City of North Chicago, Ill.: Databases and plan development (city council), 1991 and 1983 City of

Annapolis, Md.: Databases and plan development (city council), 1984

City of Boston, Mass.: Databases and plan development (city council), 2011-2012, 2001-2002, and 1993

City of New Rochelle, N.Y.: Databases and plan development (city council), 1991-92 City of New York, N.Y.: Databases and plan development (city council), 1990-91

Cities of Pawtucket, Providence, East Providence, and Warwick, and town of North Providence, R.I.: Databases and plan development (city wards and voting districts), 2011-2012, 2002

City of Woonsocket and towns of Charlestown, Johnston, Lincoln, Scituate and Westerly, R.I.: Databases and plan development (voting districts), 2011-2012, 2002; also Westerly 1993

City of Houston, Tex.: Databases and plan development (city council), 1979 recommended by U.S. Department of Justice

City of Norfolk, Va.: Databases and plan development (city council), 1983-84 for Lawyers' Committee for Civil Rights

Virginia Beach, Va.: Databases and plan development (city council), 2011-2012,2001-02,1995, and 1993

Other Activities

International Foundation for Electoral Systems (IFES) and U.S. Department of State: redistricting seminar, Almaty, Kazakhstan, 1995

Library of Congress, Congressional Research Service: Consulting on reapportionment, redistricting, voting behavior and election administration

National Conference of State Legislatures (NCSL): Numerous presentations on variety of redistricting and election administration topics, 1980 - current

Election Administration Consulting

Activities include seminars on election administration topics and studies on voting behavior, voting equipment, and voter registration systems.

Prince William County, VA:
2013 — Appointed by Board of County Supervisors to 15 member Task Force on Long Lines following 2012 election. Asked and appointed by County's Electoral Board to be Acting General Registrar for 5-month period between full-time Registrars.
2008 - current — poll worker and now chief judge for various precincts in county

U.S. Election Assistance Commission (EAC): Served as subcontractor to prime contractors who compiled survey results from 2008 and 2010 Election Administration and Voting Survey.

U.S. Election Assistance Commission (EAC): Compile, analyze, and report the results of a survey distributed to state election directors during FY-2007. Survey results were presented in the following reports of the EAC: *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2005-2006, A Report to the 110th Congress,* June 30, 2007; *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), Survey Report Findings,* September, 2007; and *The 2006 Election Administration and Voting Survey, A Summary of Key Findings,* December, 2007.

U.S. Election Assistance Commission (EAC): Compile, analyze, and report the results of three surveys

distributed to state election directors during FY-2005: Election Day, Military and Overseas Absentee Ballot (UOCAVA), and Voter Registration (NVRA) Surveys. Survey results were presented in the following reports: *Final Report of the 2004 Election Day Survey,* by Kimball W. Brace and Dr. Michael P. McDonald, September 27, 2005; and *Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2003-2004, A Report to the 109th Congress,* June 30, 2005.

Rhode Island Secretary of State: Verification of precinct and district assignment codes in municipal registered voter files and production of street files for a statewide voter registration database, on-going maintenance of street file, 2004-2006, 2008-2014, 2016-2017.

Rhode Island Secretary of State, State Board of Elections & all cities & towns: production of precinct maps statewide, 2012, 2002, 1992

District of Columbia, Board of Elections and Ethics (DCBOEE): Verification of election ward, Advisory Neighborhood Commission (ANC), and Single-Member District (SMD) boundaries and production of a new street locator, 2003. Similar project, 1993.

Harris County, Tex.: Analysis of census demographics to identify precincts with language minority populations requiring bilingual assistance, 2002-03

Cook County, Ill., Election Department and Chicago Board of Election Commissioners:

- Analysis of census demographics to identify precincts with language minority populations

requiring bilingual assistance, 2019,2010-2013,2002-03

- Study on voting equipment usage and evaluation of punch card voting system, 1997

Chicago Board of Election Commissioners: Worked with Executive Director & staff in Mapping Dept. to redraw citywide precincts, eliminate over 600 to save costs, 2011-12

Library of Congress, Congressional Research Service: Nationwide, biannual studies on voter registration and turnout rates, 1978-2002

U.S. General Accounting Office (GAO), U.S. Dept. of Justice, and numerous voting equipment vendors and media: Data on voting equipment usage throughout the United States, 1980—present

Needs assessments and systems requirement analyses for the development of statewide voter registration systems:

- Illinois State Board of Elections: 1997
- North Carolina State Board of Elections, 1995
- Secretary of Commonwealth of Pennsylvania, 1996

Federal Election Commission, Office of Election Administration:

- Study on integrating local voter registration databases into statewide systems, 1995
- Nationwide workshops on election administration topics, 1979-80
- Study on use of statistics by local election offices, 1978-79

Cuyahoga County, Ohio, Board of Elections: Feasibility study on voting equipment, 1979

Winograd Commission, Democratic National Committee: Analysis of voting patterns, voter registration and turnout rates, and campaign expenditures from 1976 primary elections

Mapping and GIS

Activities include mapping and GIS software development (geographic information systems) for election administration and updating TIGER/Line files for the decennial census.

2000 Census Transportation Planning Package (CTPP), 1998-99: GIS software for the U.S. Department of Transportation to distribute to 400 metropolitan planning organizations (MPOs) and state transportation departments for mapping traffic analysis zones (TAZs) for the 2000 census; provided technical software support to MPOs

Census 2000, 2010 and 2020 Redistricting Data Program, Block Boundary Suggestion Project (Phase 1) and Voting District Project (Phase 2), 1995-99: GIS software and provided software, databases, and technical software support to the following program participants:

- Alaska Department of Labor
- Connecticut Joint Committee on Legislative Management
- Illinois State Board of Elections
- Indiana Legislative Services Agency
- Iowa Legislative Service Bureau
- New Mexico Legislative Council Service
- Rhode Island General Assembly

- Virginia Division of Legislative Services

Developed PRECIS® Precinct Information System—GIS software to delineate voting precinct boundaries—and delivered software, databases, and technical software support to the following state and local election organizations (with date of installation):

- Cook County, Ill., Department of Elections (1993)
- Marion County, Fla., Supervisor of Elections (1995)
- Berks County Clerk, Penn. (1995)
- Hamilton County, Ohio, Board of Elections (1997)
- Brevard County, Fla., Supervisor of Elections (1999)
- Osceola County, Fla., Supervisor of Elections (1999)
- Multnomah County, Ore, Elections Division (1999)
- Chatham County, Ga., Board of Elections (2000)
- City of Chicago, Ill., Board of Election Commissioners (2000)
- Mahoning County, Ohio, Board of Elections (2000)
- Iowa Secretary of State, Election and Voter Registrations Divisions (2001)
- Woodbury County, Iowa, Elections Department (2001)
- Franklin County, Ohio, Board of Elections (2001)
- Cobb County, Ga., Board of Elections and Voter Registration (2002)

Illinois State Board of Elections, Chicago Board of Election Commissioners, and Cook County Election Department: Detailed maps of congressional, legislative, judicial districts, 1992

Associated Press: Development of election night mapping system, 1994

Litigation Support

Activities include data analysis, preparation of court documents and expert witness testimony. Areas of expertise include the census, demographic databases, district compactness and contiguity, racial bloc voting, communities of interest, and voting systems. Redistricting litigation activities also include database construction and the preparation of substitute plans.

State of Alabama vs. US Department of Commerce, et al (2019-2020) apportionment & citizenship data

NAACP vs. Denise Merrill, CT Secretary of State, et al (2019-2020) state legislative redistricting and prisoner populations

Latasha Holloway, et al. v. City of Virginia Beach, VA (2019) city council redistricting *Joseph V. Aguirre vs. City of Placentia, CA* (2018-2019), city council redistricting

Davidson, et al & ACLU of Rhode Island vs. City of Cranston, RI (2014-16), city council & school committee redistricting with prisoner populations.

Navaho Nation v. San Juan County, UT (2014-17) county commissioner & school board districts.

Michael Puyana vs. State of Rhode Island (2012) state legislature redistricting

United States of America v. Osceola County, Florida, (2006), county commissioner districts.

Deeds vs McDonnell (2005), Va. Attorney General Recount

Indiana Democratic Party, et al., v. Todd Rokita, et al. (2005), voter identification.

Linda Shade v. Maryland State Board of Elections (2004), electronic voting systems

Gongaley v. City of Aurora, Ill. (2003), city council districts

State of Indiana v. Sadler (2003), ballot design (city of Indianapolis-Marion County, Ind.)

Peterson v. Borst (2002-03), city-council districts (city of Indianapolis-Marion County, Ind.)

New Rochelle Voter Defense Fund v. City of New Rochelle, City Council of New Rochelle, and Westchester County Board Of Elections (2003), city council districts (New York)

Charles Daniels and Eric Torres v. City of Milwaukee Common Council (2003), council districts (Wisconsin)

The Louisiana House of Representatives v. Ashcroft (2002-03), state house districts

Camacho v. Galvin and *Black Political Caucus v. Galvin* (2002-03), state house districts (Massachusetts)

Latino Voting Rights Committee of Rhode Island, et al., v. Edward S. Inman, III, et al. (2002-03), state senate districts

Metts, v. Harmon, Almond, and Harwood, et al. (2002-03), state senate districts (Rhode Island)

Joseph F. Parella, et al. v. William Irons, et al. (2002-03), state senate districts (Rhode Island)

Jackson v. County of Kankakee (2001-02), county commissioner districts (Illinois)

Corbett, et al., v. Sullivan, et al. (2002), commissioner districts (St Louis County, Missouri)

Harold Frank, et al., v. Forest County, et al. (2001-02), county commissioner districts (Wisc.)

Albert Gore, Jr., et al., v. Katherine Harris as Secretary of State, State of Florida, et al., and The Miami Dade County Canvassing Board, et al., and The Nassau County Canvassing Board, et al., and The Palm Beach County Canvassing Board, et al., and George W. Bush, et al (2000), voting equipment design Leon County, Fla., Circuit Court hearing, December 2, 2000, on disputed ballots in Broward, Volusia, Miami-Dade, and Palm Beach counties from the November 7, 2000, presidential election.

Barnett v. Daley/PACI v. Daley/Bonilla v. Chicago City Council (1992-98), city wards

Donald Moon, et al. v. M Bruce Meadows, etc and Curtis W. Harris, et al. (1996-98), congressional districts (Virginia)

Melvin R. Simpson, et al. v. City of Hampton, et al. (1996-97), city council districts (Va.)

Vera vs. Bush (1996), Texas redistricting

In the Matter of the Redistricting of Shawnee County Kansas and Kingman, et al. v. Board of County Commissioners of Shawnee County, Kansas (1996), commissioner districts

Vecinos de Barrio Uno v. City of Holyoke (1992-96), city council districts (Massachusetts)

Torres v. Cuomo (1992-95), congressional districts (New York)

DeGrandy v. Wetherell (1992-94), congressional, senate, and house districts (Florida)

Johnson v. Miller (1994), congressional districts (Georgia)

Jackson, et al v Nassau County Board of Supervisors (1993), form of government (N.Y.)

Gonzalez v. Monterey County, California (1992), county board districts

LaPaille v. Illinois Legislative Redistricting Commission (1992), senate and house districts

Black Political Task Force v. Connolly (1992), senate and house districts (Massachusetts)

Nash v. Blunt (1992), house districts (Missouri)

Fund for Accurate and Informed Representation v. Weprin (1992), assembly districts (N.Y.)

Mellow v. Mitchell (1992), congressional districts (Pennsylvania)

Phillip Langsdon v. Milsaps (1992), house districts (Tennessee)

Smith v. Board of Supervisors of Brunswick County (1992), supervisor districts (Virginia)

People of the State of Illinois ex. rel. Burris v. Ryan (1991-92), senate and house districts

Good v. Austin (1991-92), congressional districts (Michigan)

Neff v. Austin (1991-92), senate and house districts (Michigan)

Hastert v. Illinois State Board of Elections (1991), congressional districts

Republican Party of Virginia et al. v. Wilder (1991), senate and house districts

Jamerson et al. v. Anderson (1991), senate districts (Virginia)

Ralph Brown v. Iowa Legislative Services Bureau (1991), redistricting database access

Williams, et al. v. State Board of Election (1989), judicial districts (Cook County, Ill.)

Fifth Ward Precinct 1A Coalition and Progressive Association v. Jefferson Parish School Board (1988-89), school board districts (Louisiana)

Michael V. Roberts v. Jerry Wamser (1987-89), St. Louis, Mo., voting equipment

Brown v. Board of Commissioners of the City of Chattanooga, Tenn. (1988), county commissioner districts

Business Records Corporation v. Ransom F. Shoup & Co., Inc. (1988), voting equip. patent

East Jefferson Coalition for Leadership v. The Parish of Jefferson (1987-88), parish council districts (Louisiana)

Buckanaga v. Sisseton School District (1987-88), school board districts (South Dakota)

Griffin v. City of Providence (1986-87), city council districts (Rhode Island)

United States of America v. City of Los Angeles (1986), city council districts

Latino Political Action Committee v. City of Boston (1984-85), city council districts

Ketchum v. Byrne (1982-85), city council districts (Chicago, Ill.)

State of South Carolina v. United States (1983-84), senate districts U.S. Dept. of Justice

Collins v. City of Notfolk (1983-84), city council districts (Virginia) for Lawyers' Committee for Civil Rights

Rybicki v. State Board of Elections (1981-83), senate and house districts (Illinois)

Licht v. State of Rhode Island (1982-83), senate districts (Rhode Island)

Agerstrand v. Austin (1982), congressional districts (Michigan)

Farnum v. State of Rhode Island (1982), senate districts (Rhode Island)

In Re Illinois Congressional District Reapportionment Cases (1981), congressional districts

Publications

"EAC Survey Sheds Light on Election Administration", *Roll Call,* October 27, 2005 (with Michael McDonald)

Developing a Statewide Voter Registration Database: Procedures, Alternatives, and General Models, by Kimball W. Brace and M. Glenn Newkirk, edited by William Kimberling, (Washington, D.C.: Federal Election Commission, Office of Election Administration, Autumn 1997).

The Election Data Book: A Statistical Portrait of Voting in America, 1992, Kimball W. Brace, ed., (Bernan Press, 1993)

"Geographic Compactness and Redistricting: Have We Gone Too Far?", presented to Midwestern Political Science Association, April 1993 (with D. Chapin and R. Niemi)

"Whose Data is it Anyway: Conflicts between Freedom of Information and Trade Secret Protection in Redistricting", *Stetson University Law Review,* Spring 1992 (with D. Chapin and W. Arden)

"Numbers, Colors, and Shapes in Redistricting," *State Government News,* December 1991 (with D. Chapin)

"Redistricting Roulette," *Campaigns and Elections,* March 1991 (with D. Chapin)

"Redistricting Guidelines: A Summary", presented to the Reapportionment Task Force, National Conference on State Legislatures, November 9, 1990 (with D. Chapin and J. Waliszewski)

"The 65 Percent Rule in Legislative Districting for Racial Minorities: The Mathematics of Minority Voting Equality," *Law and Policy,* January 1988 (with B. Grofman, L. Handley, and R. Niemi)

"Does Redistricting Aimed to Help Blacks Necessarily Help Republicans?" *Journal of Politics,* February 1987 (with B. Grofman and L. Handley)

"New Census Tools," *American Demographics,* July/August 1980

Professional Activities

Member, Task Force on Long Lines in 2012 Election, Prince William County, VA

Member, 2010 Census Advisory Committee, a 20-member panel advising the Director of the Census on the planning and administration of the 2010 census.

Delegate, Second Trilateral Conference on Electoral Systems (Canada, Mexico, and United States), Ontario, Canada, 1995; and Third Trilateral Conference on Electoral Systems, Washington, D.C., 1996

Member, American Association of Political Consultants

Member, American Association for Public Opinion Research

Member, American Political Science Association

Member, Association of American Geographers, Census Advisory Committee

Member Board of Directors, Association of Public Data Users

Member, National Center for Policy Alternatives, Voter Participation Advisory Committee

Member, Urban and Regional Information Systems Association

Historical Activities

Member, Manassas Battlefield Trust Board Member, 2018 -- current

Member, Historical Commission, Prince William County, VA., 2015 — current. Elected Chairman in 2017, re-elected 2018

Member of Executive Committee & head of GIS Committee, Bull Run Civil War Round Table, Centerville, VA. 2015 — current

Member, Washington Capitals Fan Club, Executive Board 2017 -- current

February, 2020

Exhibit B

Michigan Redistricting Comparison

Commission Adopted Congressional Plan (Chestnut) vs Plaintiff Congressional Plan

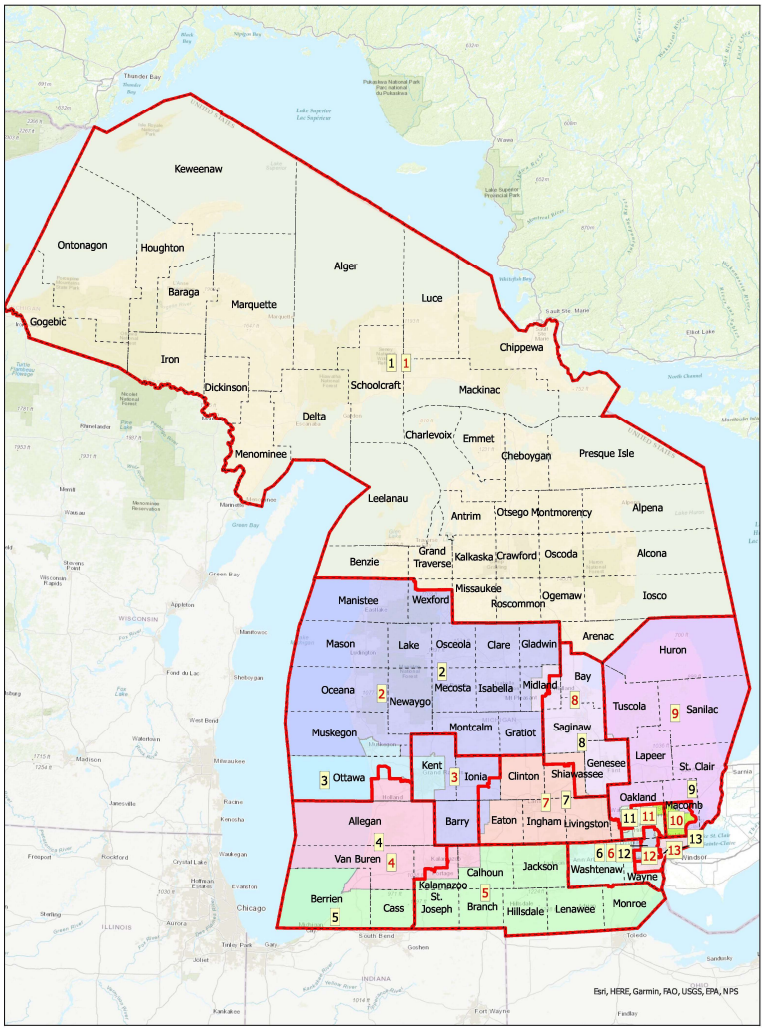


Exhibit C

Michigan Redistricting Comparison

Commission Adopted Congressional Plan (Chestnut) vs Plaintiff Congressional Plan

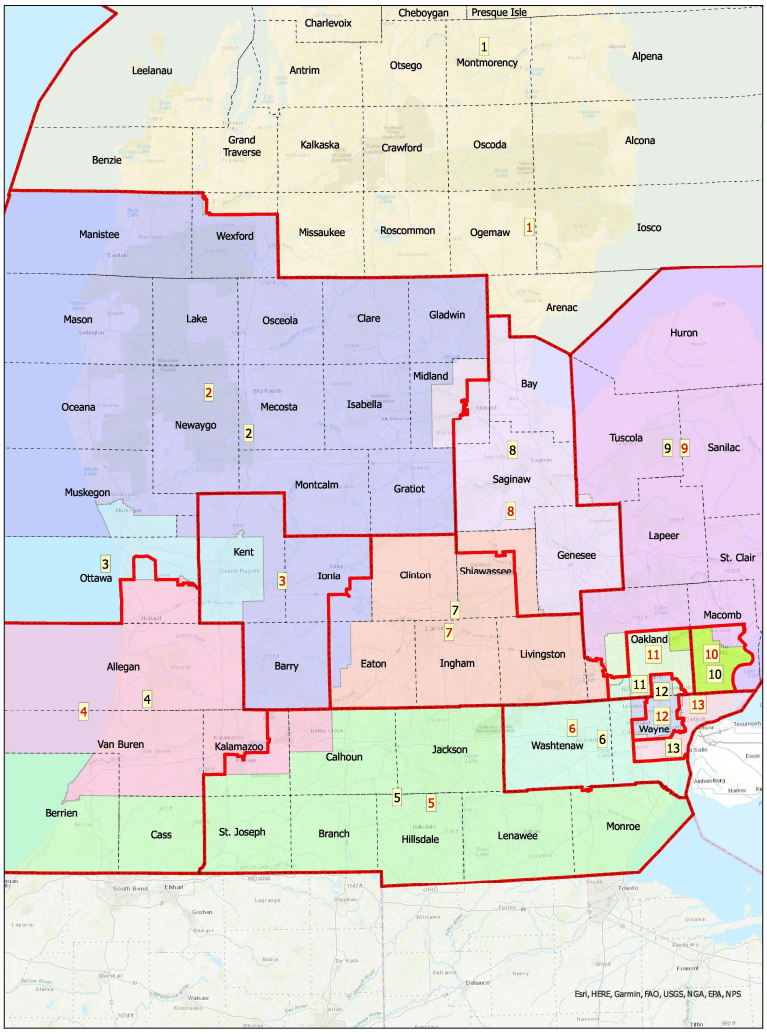
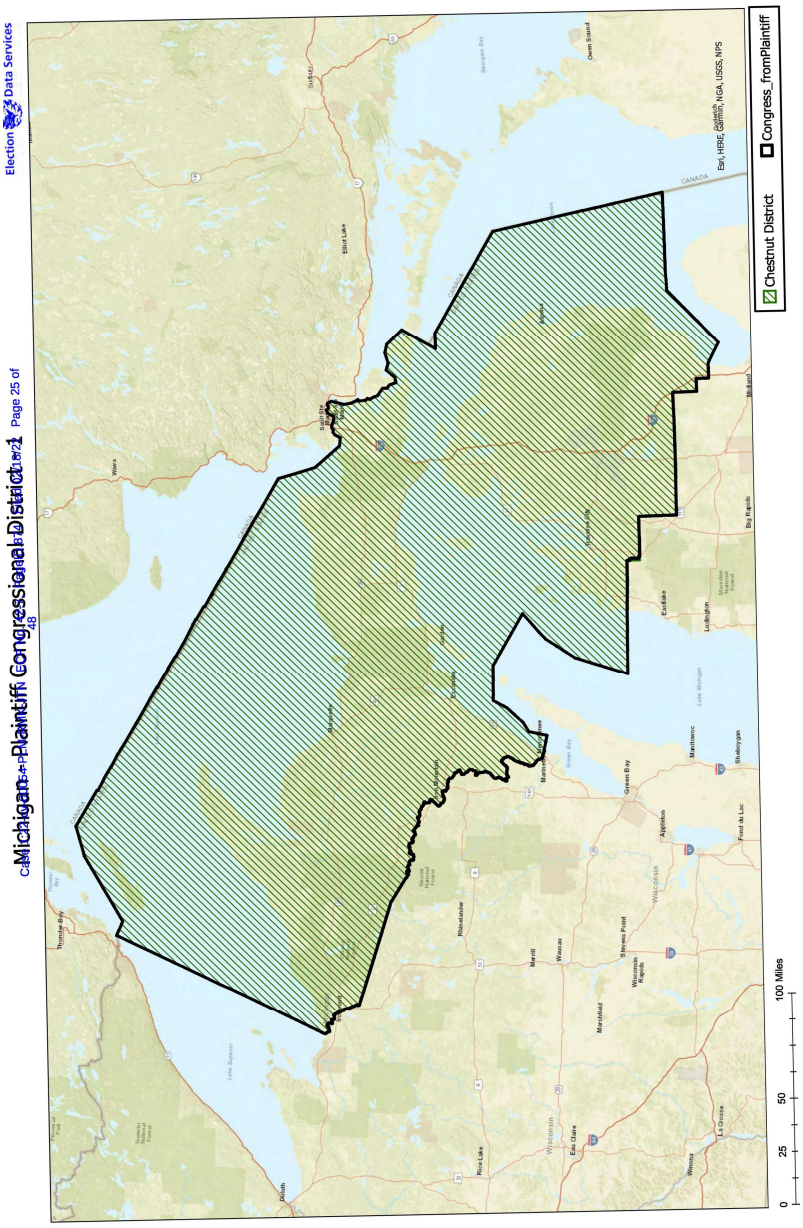
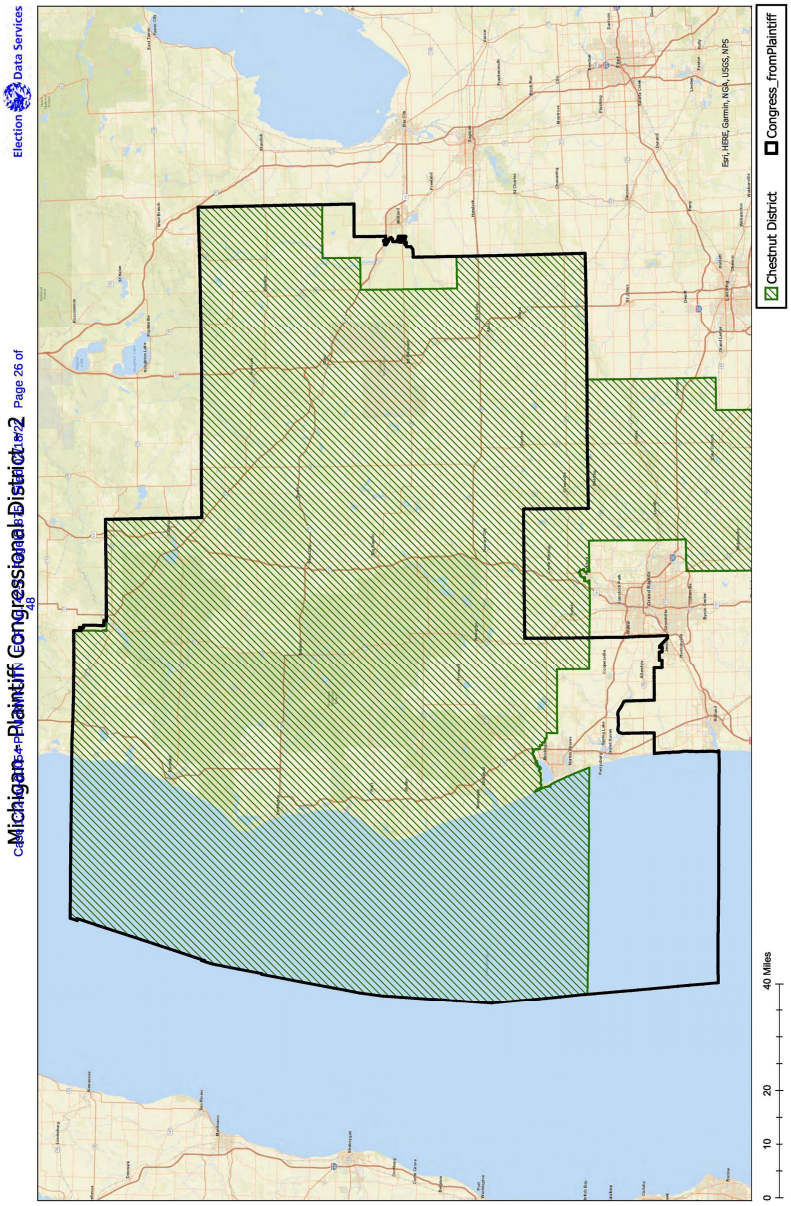
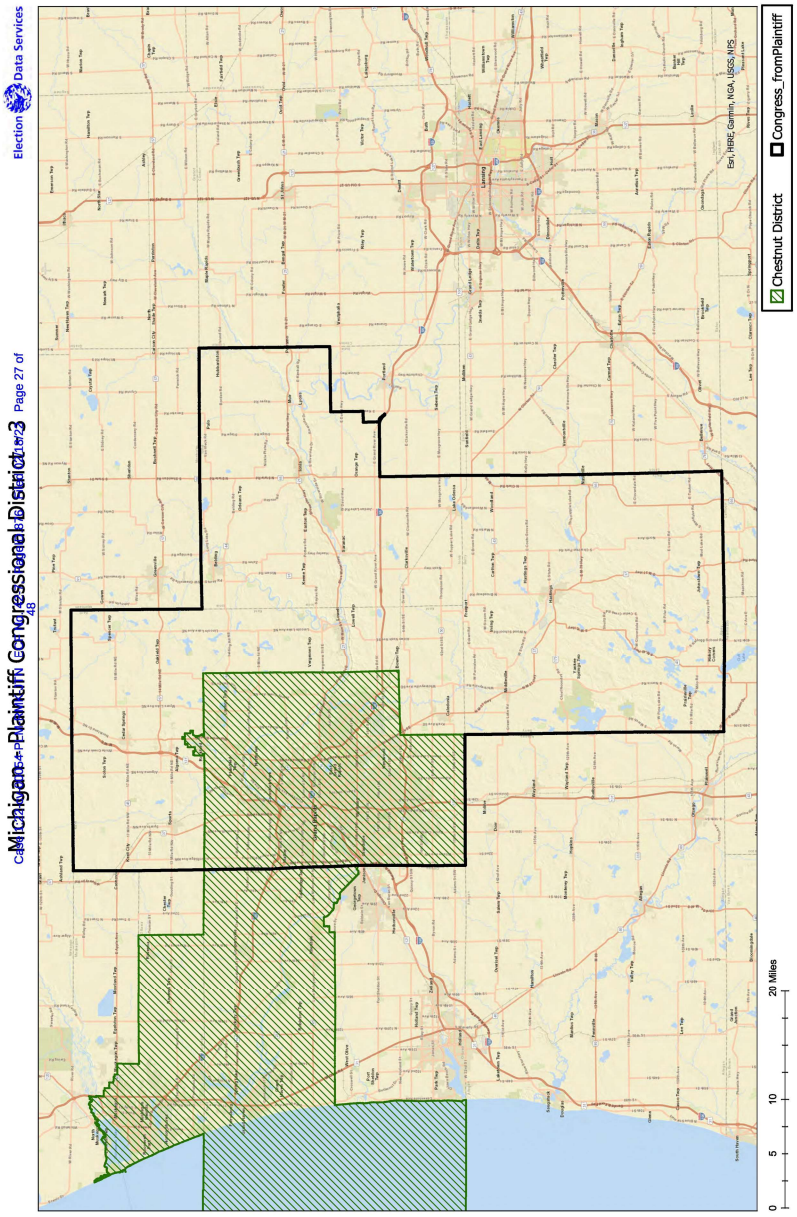
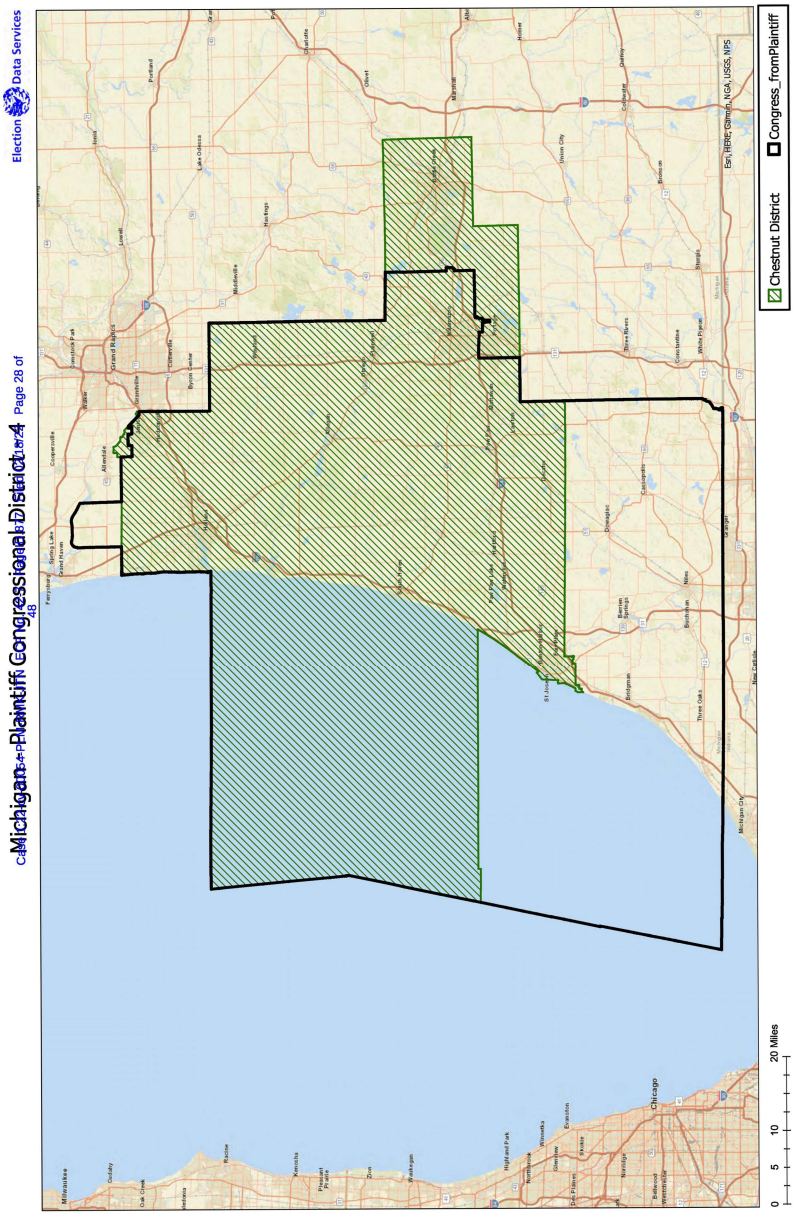


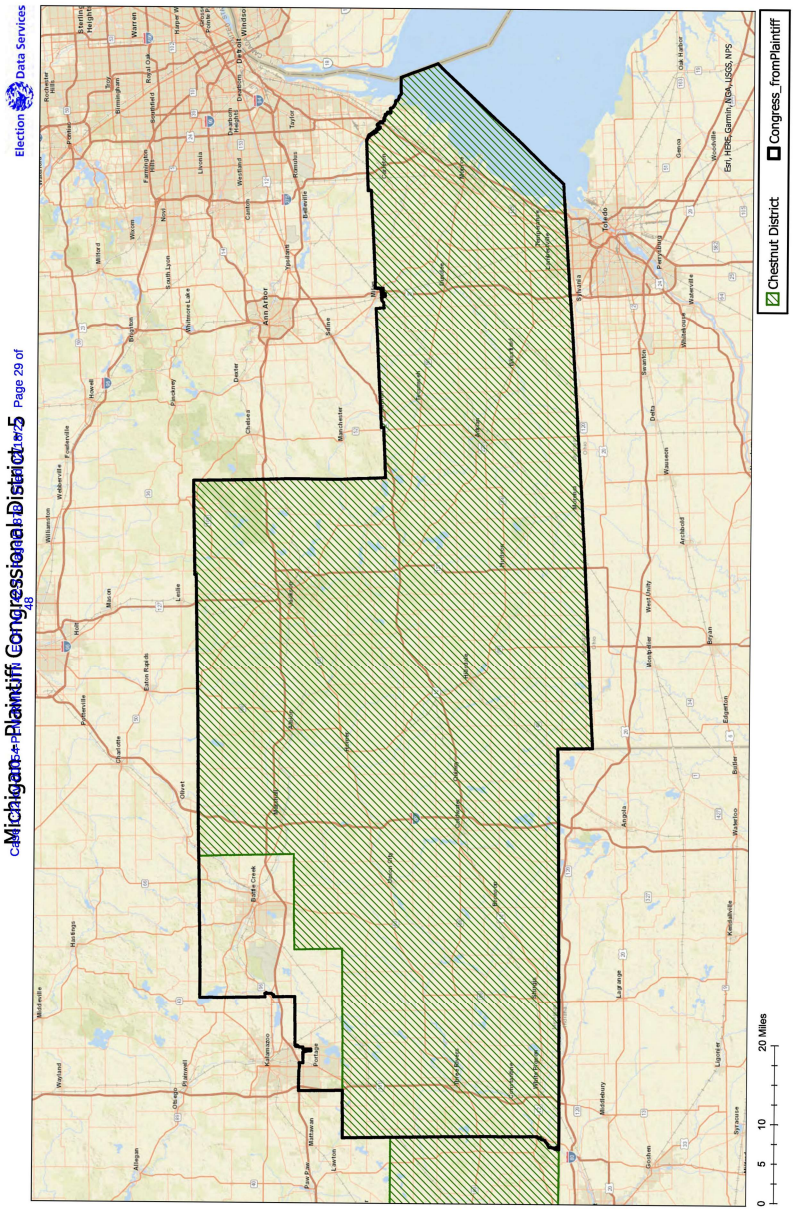
Exhibit D

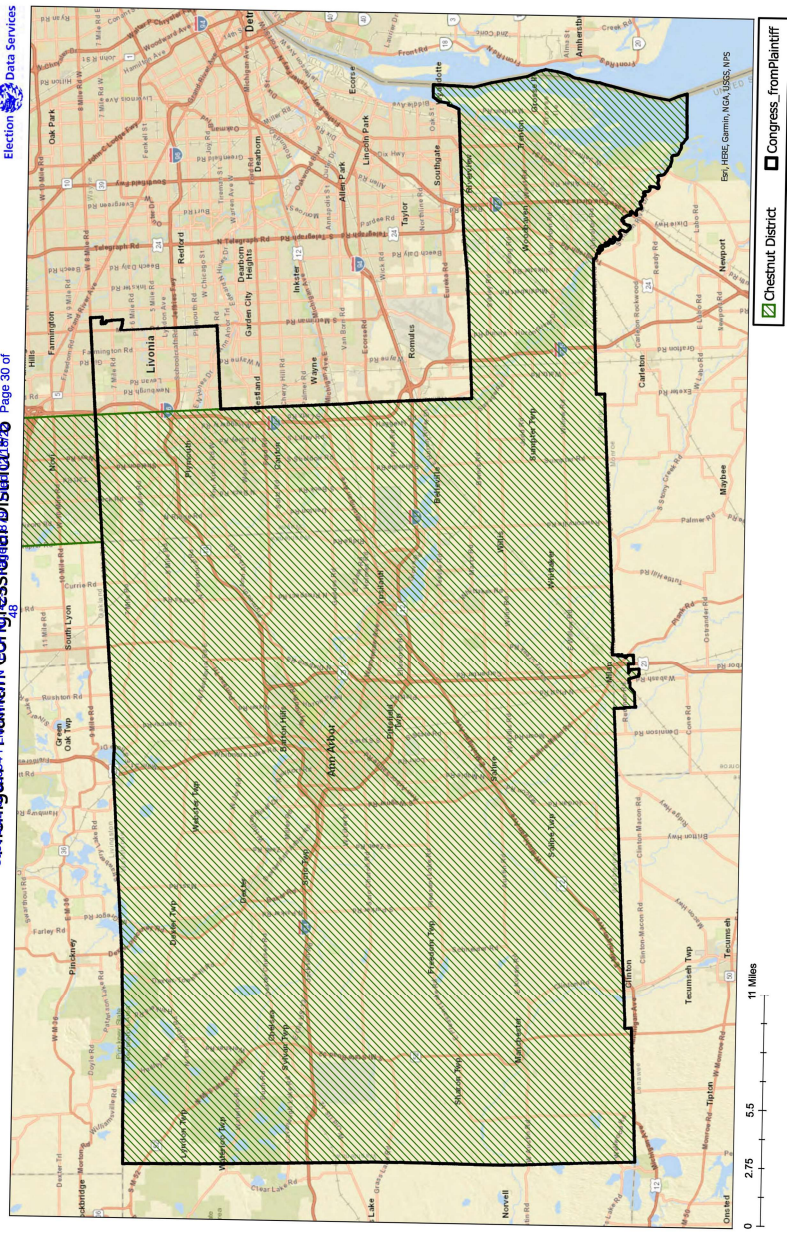

Michigan - Plaintiff Congressional District 1
Chestnut District
Congress_fromPlaintiff
0
25
50
100 Miles
CANADA

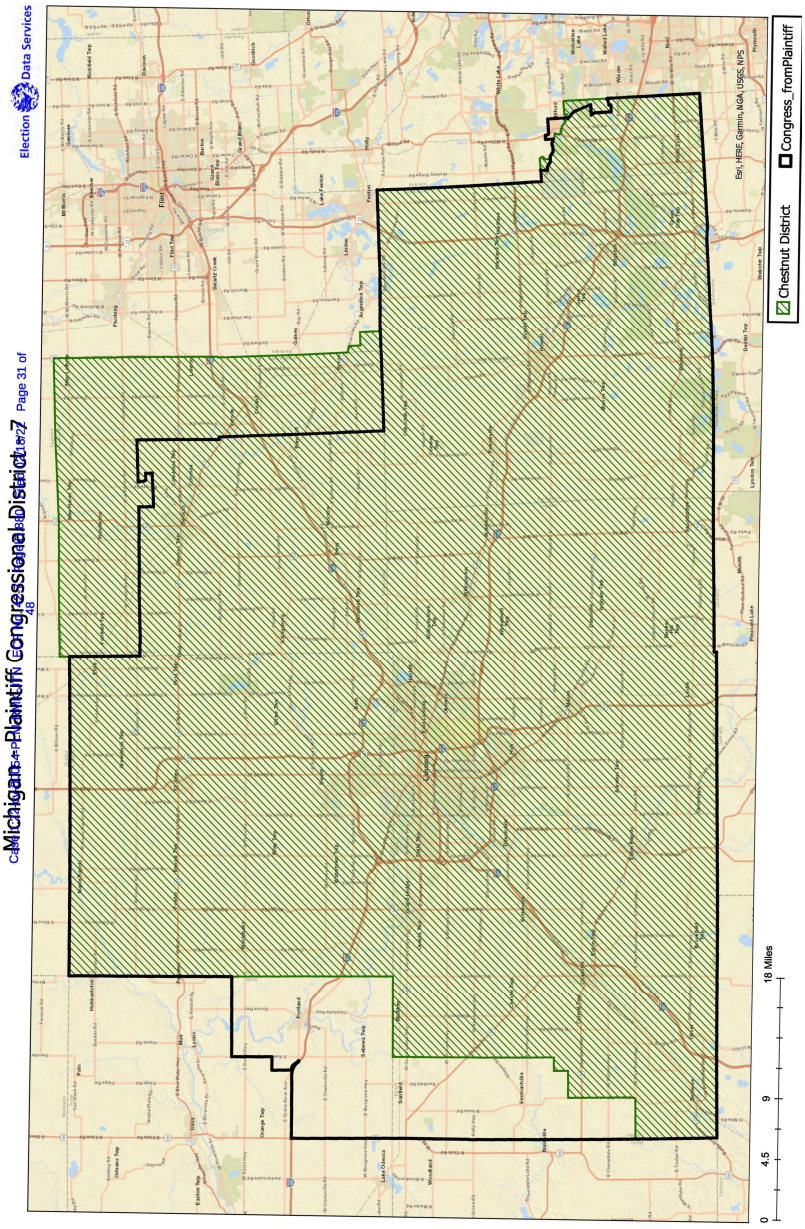

Election Data Services
Michigan Plaintiff Congressional District 2
Page 26 of 48
Chestnut District
Congress_fromPlaintiff
Esri, HERE, Garmin, NGA, USGS, NPS
0
10
20
40 Miles


Michigan - Plaintiff Congressional District 3
Page 27 of 48
Election Data Services
Chestnut District
Congress_fromPlaintiff
Esri, HERE, Garmin, NGA, USGS, NPS
0
5
10
20 Miles


Election Data Services
Michigan - Plaintiff Congressional District 4
Page 28 of 48
Chestnut District
Congress_fromPlaintiff
Esri, HERE, Garmin, NGA, USGS, NPS
0 5 10 20 Miles
Chicago

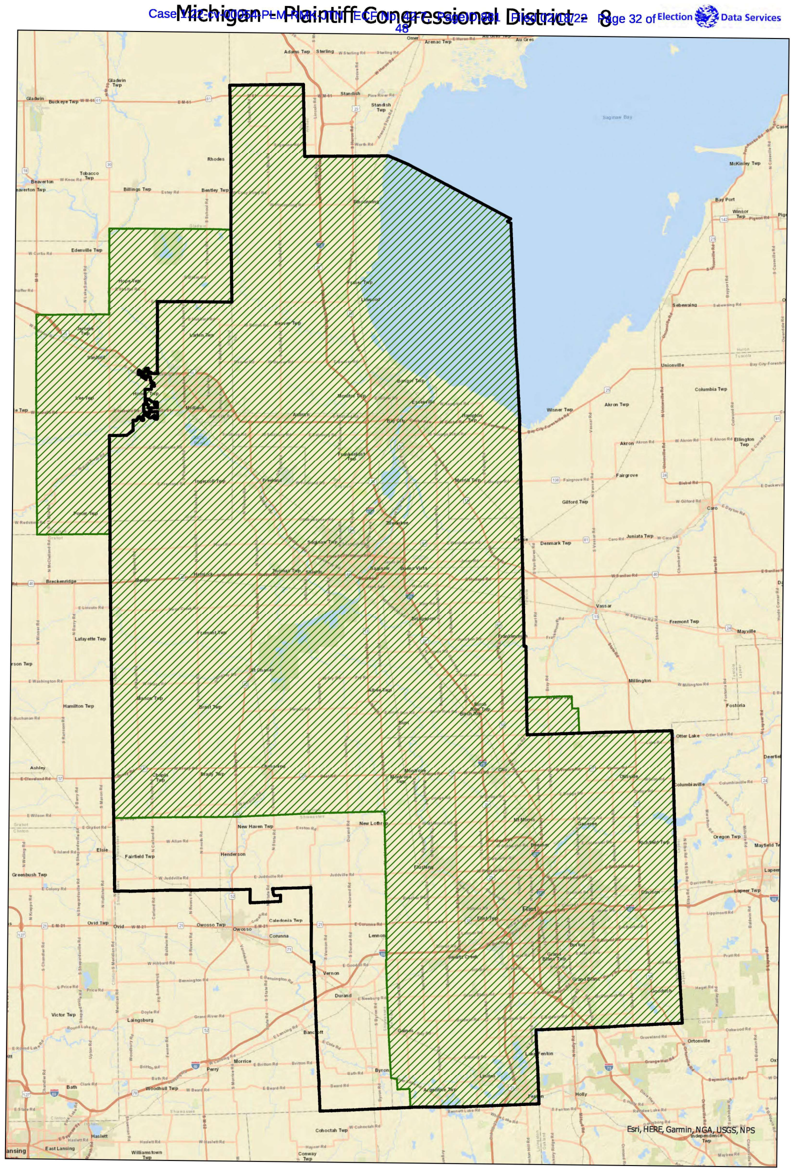

Election Data Services
Michigan - Plaintiff Congressional District 5
Chestnut District
Congress_fromPlaintiff
0
5
10
20 Miles
Esri, HERE, Garmin, NGA, USGS, NPS


Michigan - Plaintiff Congressional District 6
Chestnut District
Congress_fromPlaintiff
Election Data Services
Esri, HERE, Garmin, NGA, USGS, NPS
0
2.75
5.5
11 Miles


Michigan - Plaintiff Congressional District 7
Election Data Services
Page 31 of 48
Chestnut District
Congress_fromPlaintiff
0
4.5
9
18 Miles
Esri, HERE, Garmin, NGA, USGS, NPS

Michigan - Plaintiff Congressional District 8

Election Data Services



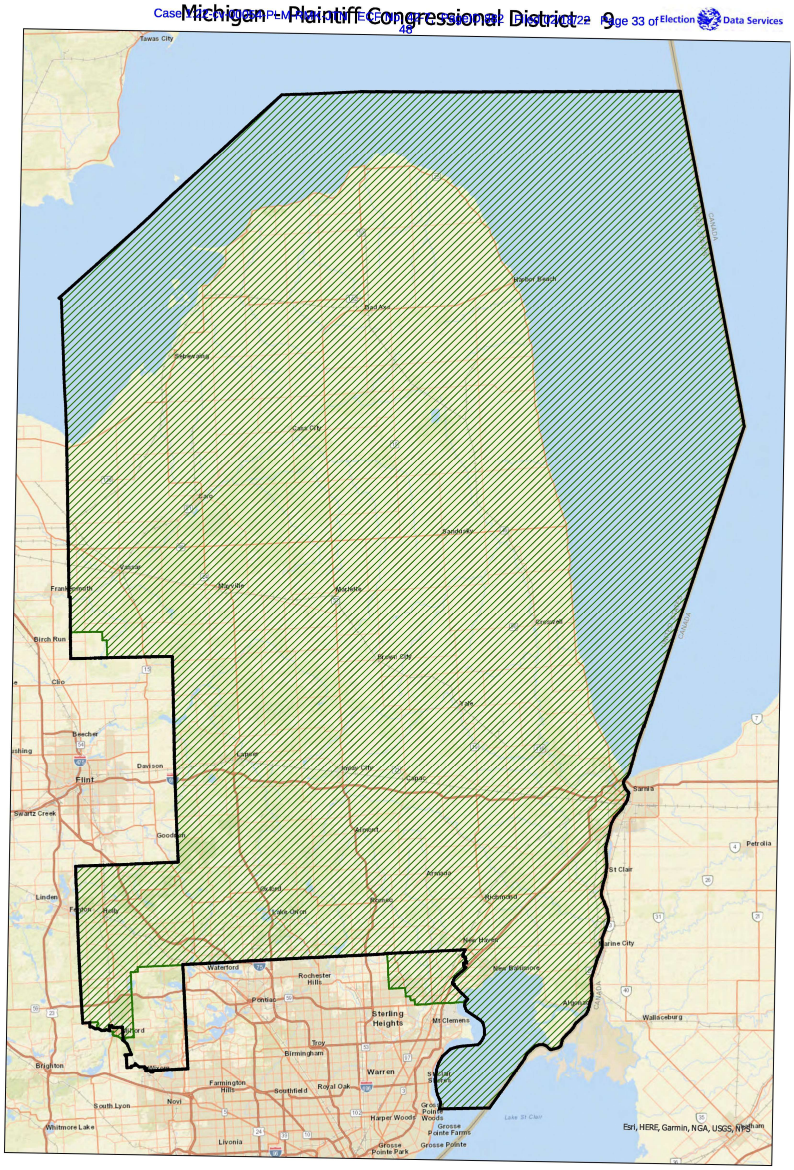
0 4.75 9.5 19 Miles

Chestnut District

Congress_fromPlaintiff

Michigan - Plaintiff Congressional District - 9

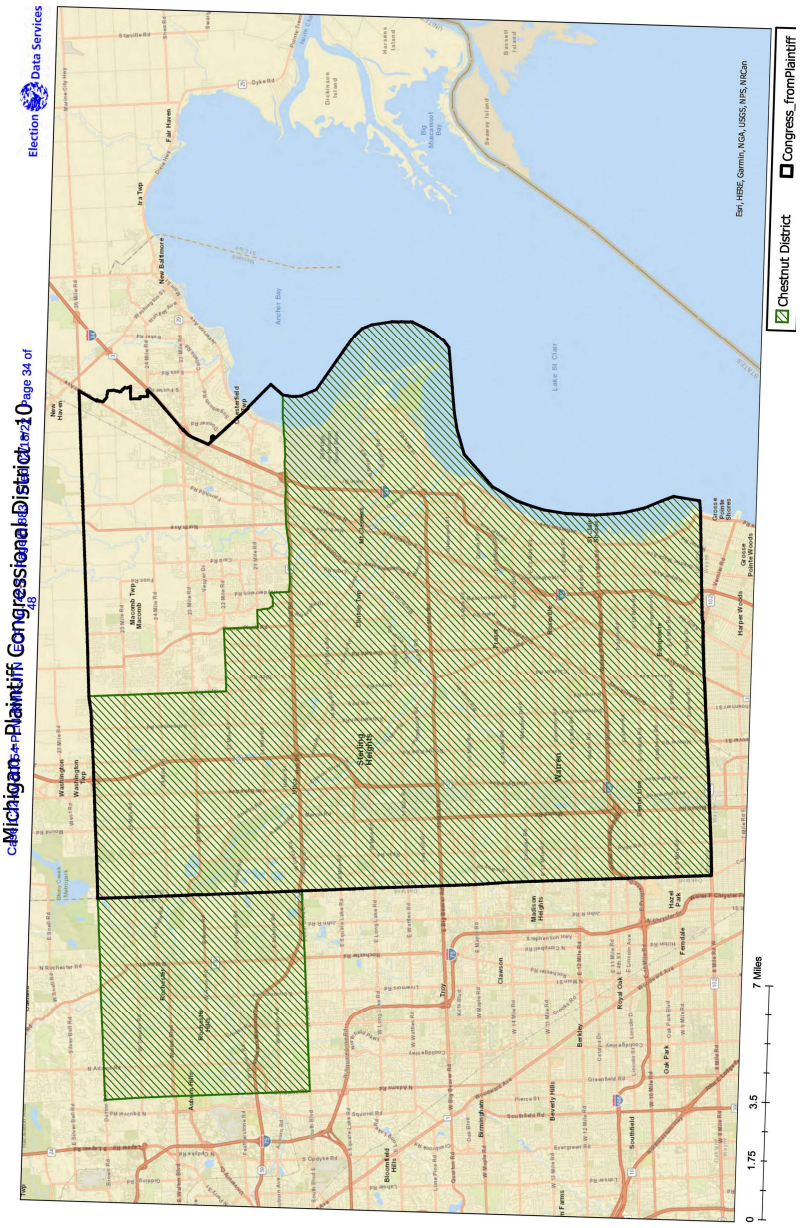
Election Data Services

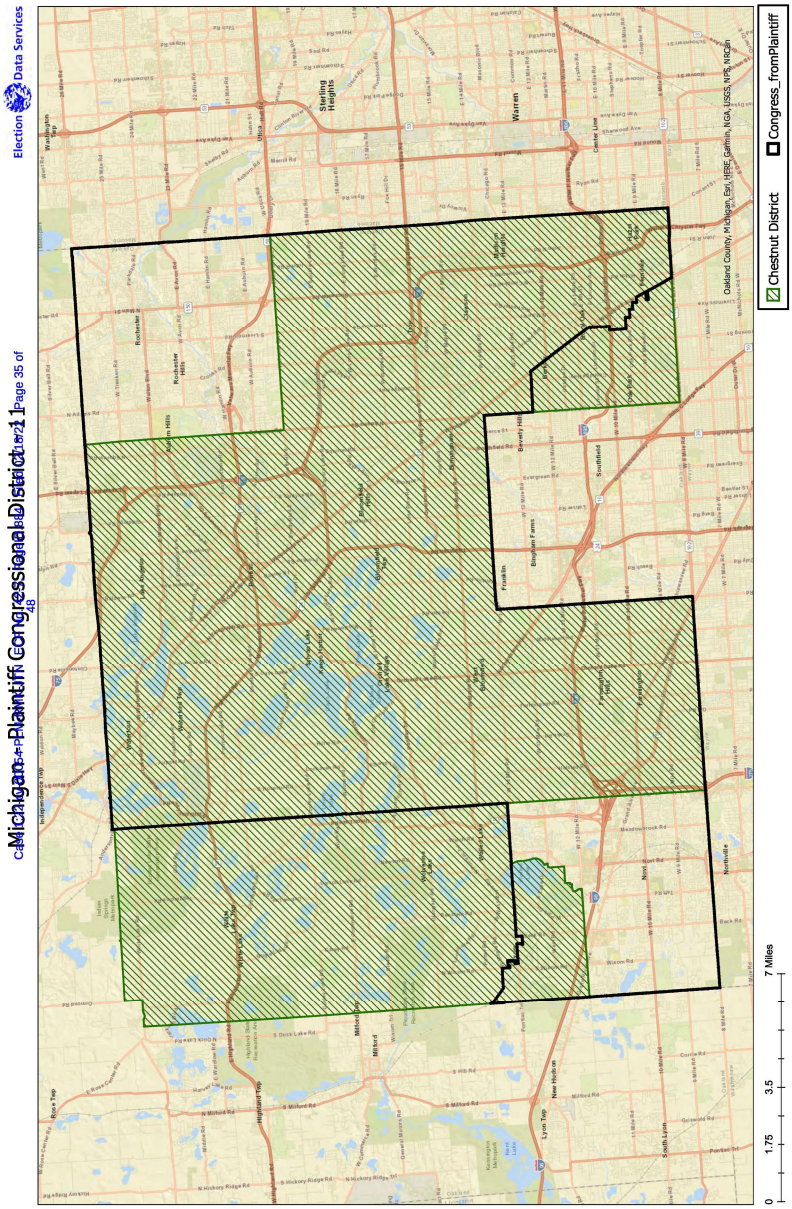


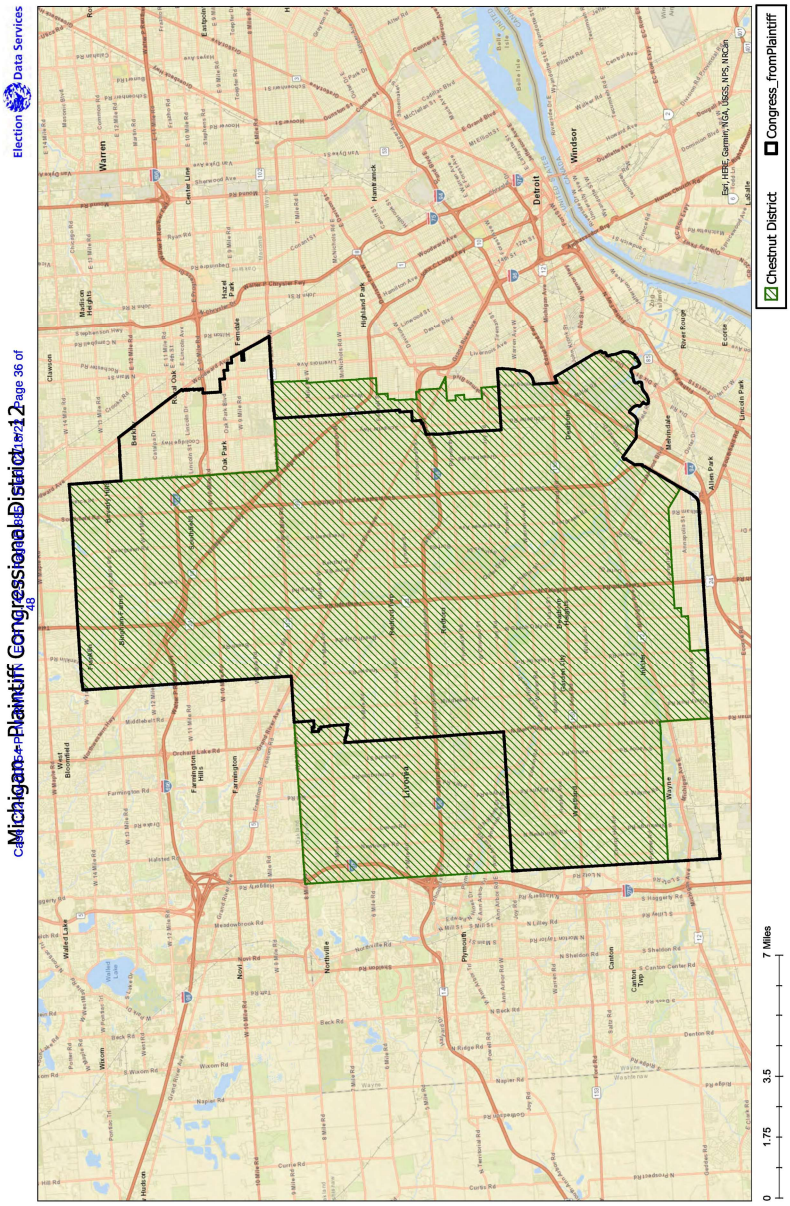
0 5 10 20 Miles

Chestnut District

Congress_fromPlaintiff


Michigan - Plaintiff Congressional District 10
Chestnut District
Congress_fromPlaintiff
Esri, HERE, Garmin, NGA, USGS, NPS, NRCan
0
1.75
3.5
7 Miles


Election Data Services
Michigan Plaintiff Congressional District 11
Chestnut District
Congress_fromPlaintiff
0
1.75
3.5
7 Miles


Election Data Services
Michigan Plaintiff Congressional District 12
Page 36 of 48
Chestnut District
Congress_fromPlaintiff
Earl, HERE, Garmin, NGA, USGS, NPS, NRCan
0
1.75
3.5
7 Miles

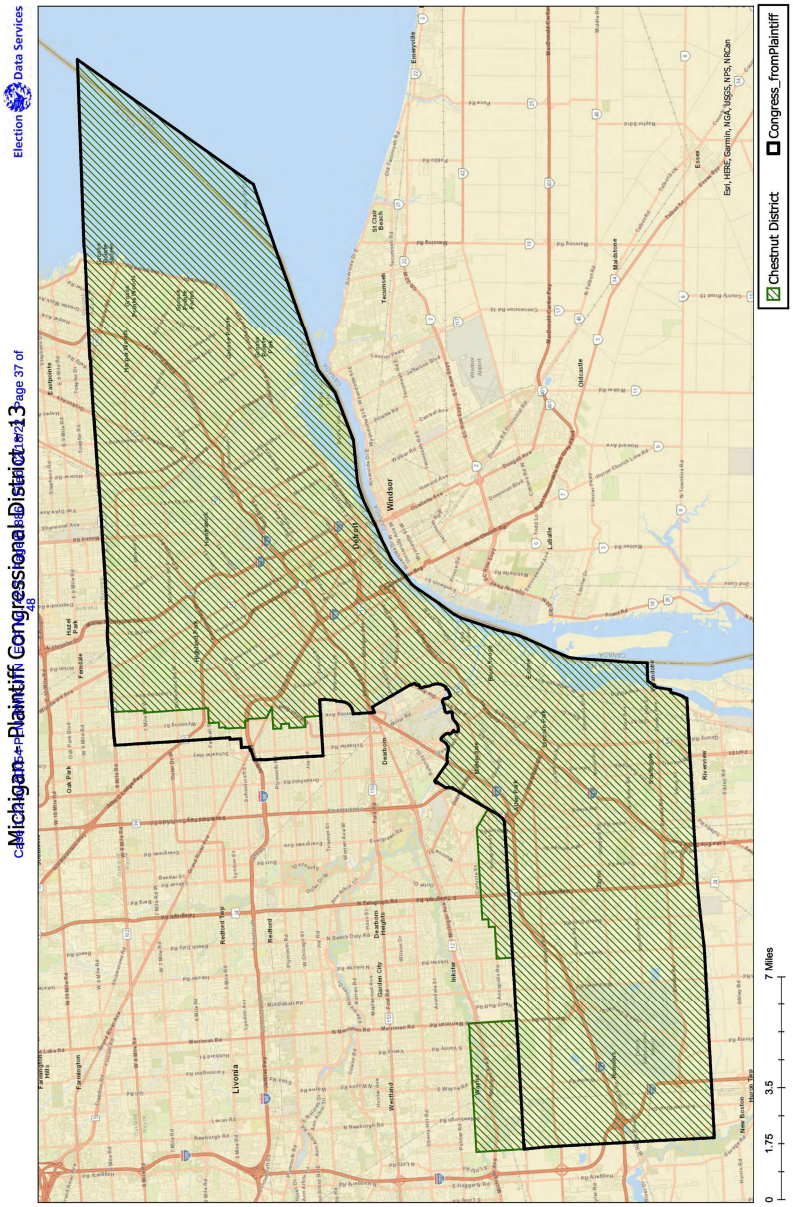

Michigan - Plaintiff Congressional District 13
Election Data Services
Chestnut District
Congress_fromPlaintiff
Esri, HERE, Garmin, NGA, USGS, NPS, NRCan
0
1.75
3.5
7 Miles

Exhibit E

MI_SplitsReport_CongressionalPlansB.xlsx
Plaintiff's Congressional Plan
P_Counties

DISTRICT	County	Population of Component	Population of City/Township	Population of District	Percent of District	Percent of City/Township
3	Ionia	54,782	66,804	775,179	7.07%	82.00%
7	Ionia	12,022	66,804	775,179	1.55%	18.00%
4	Kalamazoo	184,730	261,670	775,180	23.83%	70.60%
5	Kalamazoo	76,940	261,670	775,179	9.93%	29.40%
9	Macomb	106,038	881,217	775,179	13.68%	12.03%
10	Macomb	775,179	881,217	775,179	100.00%	87.97%
2	Midland	27,426	83,494	775,180	3.54%	32.85%
8	Midland	56,068	83,494	775,179	7.23%	67.15%
5	Monroe	152,593	154,809	775,179	19.68%	98.57%
6	Monroe	2,216	154,809	775,180	0.29%	1.43%
7	Oakland	46,914	1,274,395	775,179	6.05%	3.68%
9	Oakland	294,798	1,274,395	775,179	38.03%	23.13%
11	Oakland	775,179	1,274,395	775,179	100.00%	60.83%
12	Oakland	157,504	1,274,395	775,179	20.32%	12.36%
2	Ottawa	107,744	296,200	775,180	13.90%	36.38%
4	Ottawa	188,456	296,200	775,180	24.31%	63.62%
7	Shiawassee	49,174	68,094	775,179	6.34%	72.21%
8	Shiawassee	18,920	68,094	775,179	2.44%	27.79%
6	Wayne	400,706	1,793,561	775,180	51.69%	22.34%
12	Wayne	617,675	1,793,561	775,179	79.68%	34.44%
13	Wayne	775,180	1,793,561	775,180	100.00%	43.22%
1	Wexford	3,920	33,673	775,179	0.51%	11.64%
2	Wexford	29,753	33,673	775,180	3.84%	88.36%

MI_SplitsReport_CongressionalPlansB.xlsx
Plaintiff's Congressional Plan
P_Townships

DISTRICT	County	Township	Population of Component	Population of City/Township	Population of District	Percent of District	Percent of City/Township
3	Ionia County	Orange, Ionia County	744	1012	775179	0.10%	73.52%
7	Ionia County	Orange, Ionia County	268	1012	775179	0.03%	26.48%
4	Kalamazoo County	Portage, Kalamazoo County	4776	48891	775180	0.62%	9.77%
5	Kalamazoo County	Portage, Kalamazoo County	44115	48891	775179	5.69%	90.23%
4	Kalamazoo County	Ross, Kalamazoo County	19	4851	775180	0.00%	0.39%
5	Kalamazoo County	Ross, Kalamazoo County	4832	4851	775179	0.62%	99.61%
9	Macomb County	Chesterfield, Macomb County	25027	45376	775179	3.23%	55.15%
10	Macomb County	Chesterfield, Macomb County	20349	45376	775179	2.63%	44.85%
2	Midland County	Homer, Midland County	2250	3993	775180	0.29%	56.35%
8	Midland County	Homer, Midland County	1743	3993	775179	0.22%	43.65%
5	Monroe County	Milan, Monroe County	1569	3785	775179	0.20%	41.45%
6	Monroe County	Milan, Monroe County	2216	3785	775180	0.29%	58.55%
11	Oakland County	Ferndale, Oakland County	10781	19190	775179	1.39%	56.18%
12	Oakland County	Ferndale, Oakland County	8409	19190	775179	1.08%	43.82%
7	Oakland County	Milford, Oakland County	11897	17090	775179	1.53%	69.61%
9	Oakland County	Milford, Oakland County	5193	17090	775179	0.67%	30.39%
11	Oakland County	Royal Oak, Oakland County	58211	60585	775179	7.51%	96.08%
12	Oakland County	Royal Oak, Oakland County	2374	60585	775179	0.31%	3.92%
11	Oakland County	Southfield, Oakland County	13	91504	775179	0.00%	0.01%
12	Oakland County	Southfield, Oakland County	91491	91504	775179	11.80%	99.99%
9	Oakland County	Wixom, Oakland County	10384	17193	775179	1.34%	60.40%
11	Oakland County	Wixom, Oakland County	6809	17193	775179	0.88%	39.60%
2	Ottawa County	Georgetown, Ottawa County	7846	54091	775180	1.01%	14.51%
4	Ottawa County	Georgetown, Ottawa County	46245	54091	775180	5.97%	85.49%
7	Shiawassee County	Caledonia, Shiawassee County	4114	4360	775179	0.53%	94.36%
8	Shiawassee County	Caledonia, Shiawassee County	246	4360	775179	0.03%	5.64%
12	Wayne County	Detroit, Wayne County	205233	639111	775179	26.48%	32.11%
13	Wayne County	Detroit, Wayne County	433878	639111	775180	55.97%	67.89%
6	Wayne County	Livonia, Wayne County	62466	95535	775180	8.06%	65.39%
12	Wayne County	Livonia, Wayne County	33069	95535	775179	4.27%	34.61%
1	Wexford County	Wexford, Wexford County	653	1161	775176	0.08%	56.24%
2	Wexford County	Wexford, Wexford County	508	1161	775180	0.07%	43.76%

Exhibit F

MI_SplitsReport_CongressionalPlansB.xlsx

Chestnut Congressional Plan by MICRC

C_Townships

DISTRICT	County	Township	Population of Component	Population of City/Township	Population of District	Percent of District	Percent of City/Township
4	Berrien County	Lincoln, Berrien County	544	14929	774600	0.07%	3.64%
5	Berrien County	Lincoln, Berrien County	14385	14929	774544	1.86%	96.36%
4	Berrien County	Royalton, Berrien County	186	5141	774600	0.02%	3.62%
5	Berrien County	Royalton, Berrien County	4955	5141	774544	0.64%	96.38%
2	Eaton County	Kalamo, Eaton County	789	1765	774997	0.10%	44.70%
7	Eaton County	Kalamo, Eaton County	976	1765	775238	0.13%	55.30%
7	Genesee County	Argentine, Genesee County	203	7091	775238	0.03%	2.86%
8	Genesee County	Argentine, Genesee County	6888	7091	775229	0.89%	97.14%
9	Macomb County	Macomb, Macomb County	68947	91663	774962	8.90%	75.22%
10	Macomb County	Macomb, Macomb County	22716	91663	775218	2.93%	24.78%
5	Monroe County	Milan, Monroe County	1569	3785	774544	0.20%	41.45%
6	Monroe County	Milan, Monroe County	2216	3785	775273	0.29%	58.55%
2	Muskegon County	Laketon, Muskegon County	7255	7626	774997	0.94%	95.14%
3	Muskegon County	Laketon, Muskegon County	371	7626	775414	0.05%	4.86%
2	Muskegon County	Muskegon, Muskegon County	7723	55914	774997	1.00%	13.81%
3	Muskegon County	Muskegon, Muskegon County	48191	55914	775414	6.21%	86.19%
2	Muskegon County	North Muskegon, Muskegon County	2443	4093	774997	0.32%	59.69%
3	Muskegon County	North Muskegon, Muskegon County	1650	4093	775414	0.21%	40.31%
7	Oakland County	Milford, Oakland County	9641	17090	775238	1.24%	56.41%
9	Oakland County	Milford, Oakland County	7449	17090	774962	0.96%	43.59%
6	Oakland County	Novi, Oakland County	59233	66403	775273	7.64%	89.20%
11	Oakland County	Novi, Oakland County	7170	66403	775568	0.92%	10.80%
9	Oakland County	White Lake, Oakland County	1271	30950	774962	0.16%	4.11%
11	Oakland County	White Lake, Oakland County	29679	30950	775568	3.83%	95.89%
3	Ottawa County	Georgetown, Ottawa County	2679	54091	775414	0.35%	4.95%
4	Ottawa County	Georgetown, Ottawa County	51412	54091	774600	6.64%	95.05%
8	Tuscola County	Arbela, Tuscola County	1398	2808	775229	0.18%	49.79%
9	Tuscola County	Arbela, Tuscola County	1410	2808	774962	0.18%	50.21%
12	Wayne County	Dearborn Heights, Wayne County	43090	63292	775247	5.56%	68.08%
13	Wayne County	Dearborn Heights, Wayne County	20202	63292	775666	2.60%	31.92%
12	Wayne County	Detroit, Wayne County	242662	639111	775247	31.30%	37.97%
13	Wayne County	Detroit, Wayne County	396449	639111	775666	51.11%	62.03%
1	Wexford County	Wexford, Wexford County	849	1161	775372	0.11%	73.13%
2	Wexford County	Wexford, Wexford County	312	1161	774997	0.04%	26.87%

Exhibit H

MI_SplitsReport_CongressionalPlansB.xlsx
Plaintiff's Congressional Plan
P_Places

DISTRICT	Place (City, Village, Census Designated Place)	Population of Component	Population of City/Township	Population of District	Percent of District	Percent of City/Township
2	Casnovia village	165	316	District populations within Cities, Villages, and Census Designated Places do not equal 100% of a District		52.22%
3	Casnovia village	151	316			47.78%
12	Detroit city	205,233	639,111			32.11%
13	Detroit city	433,878	639,111			67.89%
8	Fenton city	12,014	12,050			99.70%
9	Fenton city	36	12,050			0.30%
11	Ferndale city	10,781	19,190			56.18%
12	Ferndale city	8,409	19,190			43.82%
3	Hubbardston village	336	369			91.06%
7	Hubbardston village	33	369			8.94%
6	Livonia city	62,466	95,535			65.39%
12	Livonia city	33,069	95,535			34.61%
6	Northville city	2,793	6,119			45.64%
11	Northville city	3,326	6,119			54.36%
8	Otter Lake village	67	426			15.73%
9	Otter Lake village	359	426			84.27%
4	Portage city	4,776	48,891			9.77%
5	Portage city	44,115	48,891			90.23%
8	Reese village	24	1,261			1.90%
9	Reese village	1,237	1,261			98.10%
10	Village of Grosse Pointe Shores city	77	2,647			2.91%
13	Village of Grosse Pointe Shores city	2,570	2,647			97.09%
6	Whitmore Lake CDP	4,919	7,584			64.86%
7	Whitmore Lake CDP	2,665	7,584			35.14%
9	Wixom city	10,384	17,193			60.40%
11	Wixom city	6,809	17,193			39.60%

Exhibit I

MI_SplitsReport_CongressionalPlansB.xlsx
Plaintiff's Congressional Plan
P_VTDs

DISTRICT	VTD	Population of Component	Population of City/Township	Population of District	Percent of District	Percent of City/Township
8	Voting District 0492776000002	2,051	2,087	775,179	0.26%	98.28%
9	Voting District 0492776000002	36	2,087	775,179	0.00%	1.72%
3	Voting District 0676092000001	744	1,012	775,179	0.10%	73.52%
7	Voting District 0676092000001	268	1,012	775,179	0.03%	26.48%
4	Voting District 0776556000002	351	2,323	775,180	0.05%	15.11%
5	Voting District 0776556000002	1,972	2,323	775,179	0.25%	84.89%
4	Voting District 0776556000003	34	2,828	775,180	0.00%	1.20%
5	Voting District 0776556000003	2,794	2,828	775,179	0.36%	98.80%
4	Voting District 0776556000011	1,706	2,891	775,180	0.22%	59.01%
5	Voting District 0776556000011	1,185	2,891	775,179	0.15%	40.99%
4	Voting District 0776556000015	973	2,410	775,180	0.13%	40.37%
5	Voting District 0776556000015	1,437	2,410	775,179	0.19%	59.63%
4	Voting District 0776556000020	1,712	1,993	775,180	0.22%	85.90%
5	Voting District 0776556000020	281	1,993	775,179	0.04%	14.10%
9	Voting District 0991534000001	2,241	2,280	775,179	0.29%	98.29%
10	Voting District 0991534000001	39	2,280	775,179	0.01%	1.71%
9	Voting District 0991534000013	983	2,786	775,179	0.13%	35.28%
10	Voting District 0991534000013	1,803	2,786	775,179	0.23%	64.72%
9	Voting District 0991534000016	308	1,839	775,179	0.04%	16.75%
10	Voting District 0991534000016	1,531	1,839	775,179	0.20%	83.25%
2	Voting District 1113898000001	694	1,138	775,180	0.09%	60.98%
8	Voting District 1113898000001	444	1,138	775,179	0.06%	39.02%
2	Voting District 1113898000003	302	1,601	775,180	0.04%	18.86%
8	Voting District 1113898000003	1,299	1,601	775,179	0.17%	81.14%
2	Voting District 1114616000001	7	2,059	775,180	0.00%	0.34%
8	Voting District 1114616000001	2,052	2,059	775,179	0.26%	99.66%
5	Voting District 1155390000001	1,569	1,586	775,179	0.20%	98.93%
6	Voting District 1155390000001	17	1,586	775,180	0.00%	1.07%
11	Voting District 1252788000001	725	2,680	775,179	0.09%	27.05%
12	Voting District 1252788000001	1,955	2,680	775,179	0.25%	72.95%
11	Voting District 1252788000009	97	2,282	775,179	0.01%	4.25%
12	Voting District 1252788000009	2,185	2,282	775,179	0.28%	95.75%
7	Voting District 1255398000001	476	2,094	775,179	0.06%	22.73%
9	Voting District 1255398000001	1,618	2,094	775,179	0.21%	77.27%
7	Voting District 1255398000002	790	2,470	775,179	0.10%	31.98%
9	Voting District 1255398000002	1,680	2,470	775,179	0.22%	68.02%
7	Voting District 1255398000004	1,373	1,915	775,179	0.18%	71.70%
9	Voting District 1255398000004	542	1,915	775,179	0.07%	28.30%
7	Voting District 1255398000005	518	1,871	775,179	0.07%	27.69%
9	Voting District 1255398000005	1,353	1,871	775,179	0.17%	72.31%
9	Voting District 1258814000002	2,405	2,807	775,179	0.31%	85.68%
11	Voting District 1258814000002	402	2,807	775,179	0.05%	14.32%

APPENDIX F

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:22-C V-00054-RMK-JTN-PLM

MICHAEL BANERIAN, *et al.,*

Plaintiffs

v.

JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS THE SECRETARY OF STATE OF MICHIGAN, *et al.,*

Defendants.

SUPPLEMENTAL DECLARATION OF THOMAS M. BRYAN IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

THOMAS M. BRYAN declares as follows:

1. I am over 18 years of age and competent to make this declaration.

2. I have previously submitted an expert report in this matter.

3. I have reviewed the Declarations of Mr. Anthony Eid, Dr. Paul Gronke and Mr. Kim Brace in this matter.

4. I contest the assertion of the Declaration of Dr. Paul Gronke that my report "leads Bryan to inaccurate conclusions about the Commission plan". The scope of

work that I was provided at the time of my initial report was to review and report on population deviations, geographic splits and compactness of the districts in the Michigan enacted and plaintiffs' remedial congressional plans. That scope of work did *not* include an assessment of communities of interest, and I state as much in the report. That omission did not reflect a lack of knowledge or a disregard for the priorities of the Michigan constitution. My findings are accurate for the scope of work I was provided and the time I was provided to do the analysis in.

5. With regard to the concerns expressed in the Intervenor-Defendants' Response to Plaintiffs' Motion for Preliminary Injunction about my credibility as an expert witness, citing "A three-judge panel in the Northern District of Alabama recently "question[ed] [Mr. Bryan's] credibility as an expert witness". I note that this matter has been stayed by the U.S. Supreme Court *See Merrill v. Milligan, No.21A375 Slip Op. (U.S. Feb 7,2022).* My professional credibility is intact. I have had a lengthy professional career in demography and expert witness cases, and was recently recommended by Senior Democratic attorney Michael Kasper, who wrote to the Clerk of the Virginia Supreme Court:

> "I am a Chicago lawyer who has practiced in the area of voting rights and elections for several decades. I have represented Illinois's Democratic legislative leaders in redistricting cases in both State and federal courts in 2001, 2011 and, in litigation that is currently pending, 2021. In my current representation of the Legislative Leaders, I retained Mr. Bryan as an expert witness to render his professional opinion regarding certain aspects

> of the census and redistricting process. Mr. Bryan was thorough, thoughtful, prompt and extremely professional throughout the course of our engagement."

6. Based on the Declaration of Mr. Eid, I noted a combination of objective, factual statements about the goals of drawing each district, which I do not dispute. However, many of these goals are supported by vague, subjective, conflicting and/or inaccurate supporting evidence. Due to time constraints, I provide two examples.

7. Based on the Declaration of Dr. Gronke, I use the same information platform used in his report (https://onthemap.ces.census.gov)[1] to provide evidence as to why the defense and explanations provided by Mr. Eid do not hold for all districts. I have not found evidence that the valuable information in https://onthemap.ces.census.gov was used, let alone was decisive in determining the final Michigan congressional maps. So, I supplement this resource with observations from the "COI Clusters for Michigan" report from the

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[1] Dr. Gronke states in his Declaration "For each county, I provide a flow analysis and a radial analysis. The flow analysis examines a) number of individuals who live outside of a county and are employed in a county (inflow), b) the number of individuals who live in a county and are employed in the same county (stable), and c) the number of individuals who are employed in a county and are employed outside the county (outflow). The radial analysis reports where and how far residents travel to their place of employment, broken down into four categories: less than 10 miles, 10 to 24 miles, 25 to 50 miles, and more than 50 miles. I use these maps to reach conclusions about whether the geographic border of the county contains a single community of interest, or whether there is evidence of a COI that crosses county boundaries."

MGGG Redistricting Lab and OPEN-Maps Coalition (MGGG hereafter).[2]

8. I focus my attention on two illustrative geographic examples. First, the Kent County / Grand Rapids and Barry County area in Southwest Michigan, approximately enacted District 3. Second, I focus my attention on the entire southern border of Michigan, approximately enacted District 5

9. The current configuration of District 3 includes Barry, Calhoun, Ionia and most of Kent Counties, except the towns of Walker, Grandville, Wyoming and Kentwood. The enacted plan significantly changes this configuration. Mr. Eid writes in his report, "The goals in drawing Congressional District 3 were to preserve the communities of interest in Grand Rapids, Muskegon, Grand Haven, and Rockford. Residents of these communities indicated, through public comment, that they wanted to remain together."

10. Muskegon and Grand Rapids are located approximately 42 miles apart. I turn my attention to the https://onthemap.ces.census.gov information resource used by Dr. Gronke to look for economic evidence defending the enacted plan in general and supporting the unification of Kent County / Grand Rapids and Muskegon specifically.

11. As shown in Figure 1, an analysis of job counts by places for Kent County does not list any interaction with Muskegon. As shown in Figure 2, the general location and prevailing direction of jobs in Kent County are right in Kent County, to areas east of Kent County, not west.

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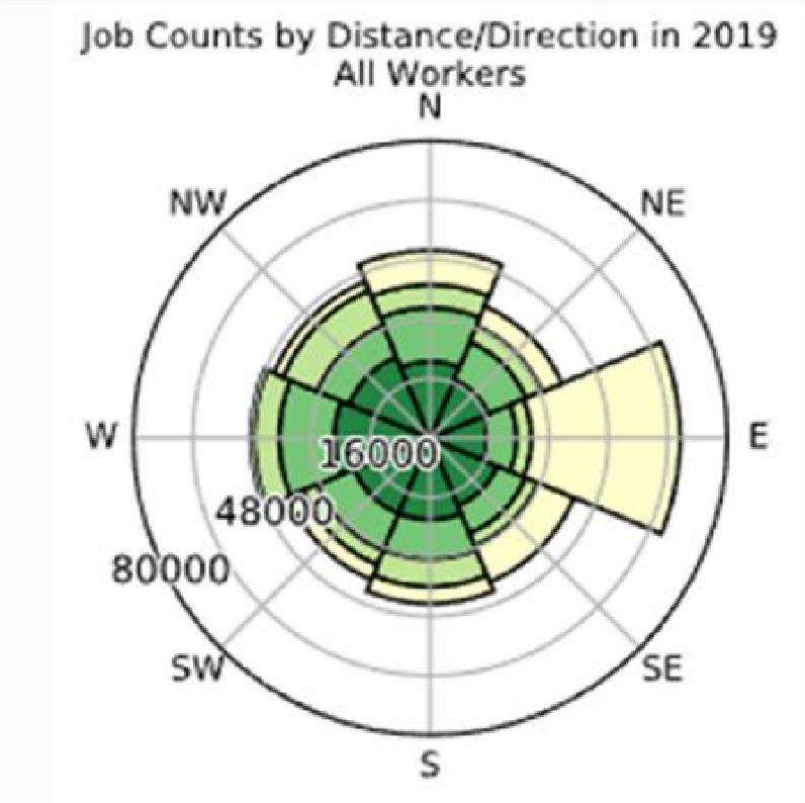
[2] https://mggg.org/

Figure 1: Kent Co. Jobs by Where Live

Jobs Counts by Places (Cities, CDPs, etc.) Where Workers Live - Private Primary Jobs

	2019 Count	2019 Share
All Places (Cities, CDPs, etc.)	377,605	100.0%
Grand Rapids city, MI	61,205	16.2%
Wyoming city, MI	24,205	6.4%
Kentwood city, MI	17,924	4.7%
Forest Hills CDP, MI	8,208	2.2%
Walker city, MI	7,884	2.1%
Cutlerville CDP, MI	5,380	1.4%
Northview CDP, MI	5,106	1.4%
Grandville city, MI	4,740	1.3%
Jenison CDP, MI	4,124	1.1%
Comstock Park CDP, MI	3,647	1.0%
All Other Locations	235,182	62.3%

Figure 2: Kent Co.
Jobs by Direction

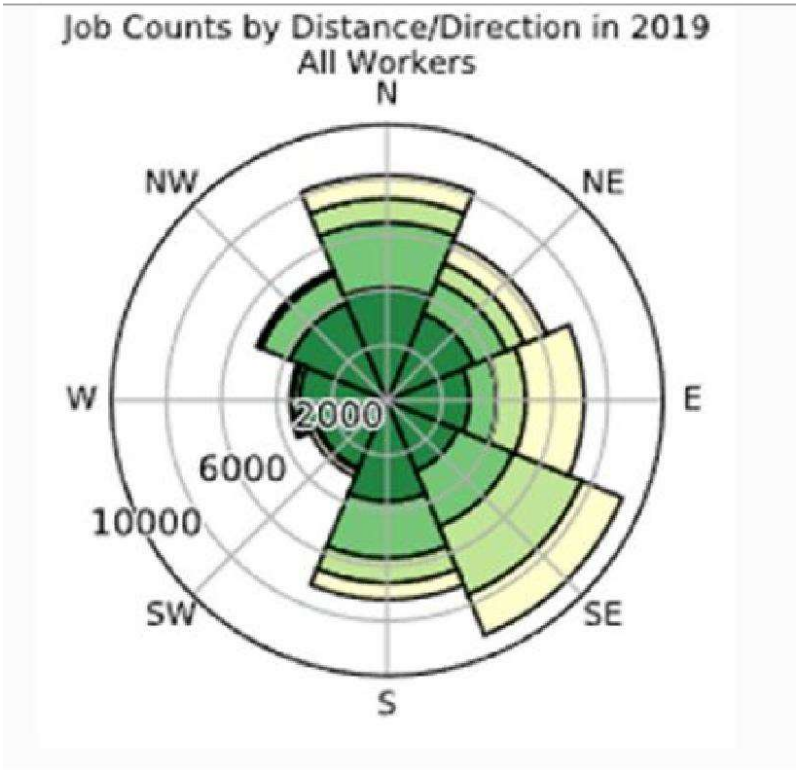


12. Shown in Figure 3, an analysis of job counts by places for Muskegon County shows a 1.6% job interaction with Grand Rapids. As shown in Figure 4, the general location of jobs in Muskegon County are right in Muskegon County, and areas north, east and southeast.

Figure 3: Muskegon Co. Jobs by Where Live

Jobs Counts by Places (Cities, CDPs, etc.) Where Workers Live - Private Primary Jobs	2019	
	Count	Share
All Places (Cities, CDPs, etc.)	49,597	100.0%
Muskegon city, MI	5,644	11.4%
Norton Shores city, MI	4,349	8.8%
Muskegon Heights city, MI	1,365	2.8%
Wolf Lake CDP, MI	892	1.8%
Roosevelt Park city, MI	888	1.8%
North Muskegon city, MI	818	1.6%
Grand Rapids city, MI	781	1.6%
Grand Haven city, MI	631	1.3%
Whitehall city, MI	535	1.1%
Montague city, MI	508	1.0%
All Other Locations	33,186	66.9%

Figure 4: Muskegon Co. Jobs by Direction



13. It should also be noted that Muskegon and Grand Rapids have not been joined in the same congressional districts since the 1890s (https://cdmaps.polisci.ucla.edu/).

14. I turn my attention here to enacted District 5. Enacted District 5 covers all of the counties along the Southern border of Michigan. As with my examination of enacted District 3, I reviewed the MGGG document on COI clusters in Southern Michigan. I found Cluster

9 in western Wayne County, Cluster 23, in the Monroe area, Cluster 23 "Downriver", and Cluster 34 "Hillsdale Area" as different COI representations of the Southeast corner of Michigan. None of these clusters make any mention of connections to the *southwestern* part of Michigan.

15. One cluster, Cluster 11 represents the *southeastern* corner of the state. That cluster's description has no mention of connections to the central or *southeastern* part of the state.

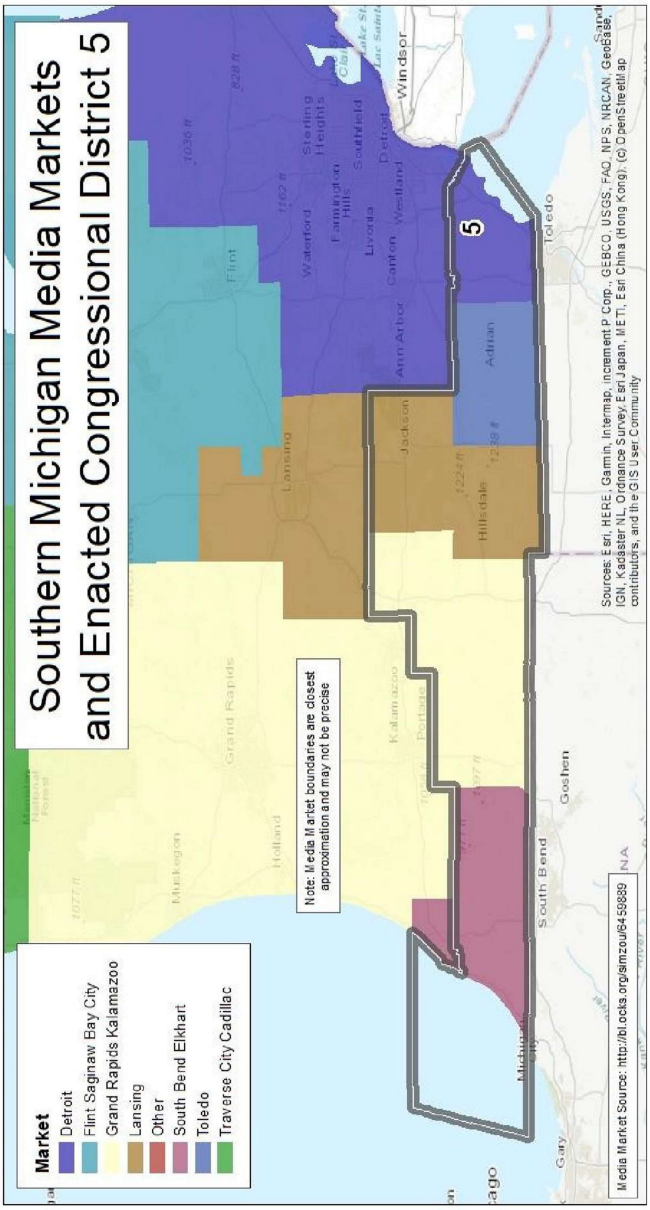
16. Only one MGGG cluster, Cluster 32 "Southern Border Counties" covers all of the southern counties. It is described as "Rural identity. Shared concerns about interstate commerce across with Ohio and Indiana. Agricultural industries, shared health care services, and recreation opportunities. Edges into the Allegan/Van Buren County area, identified as rural lakeshore communities." The inference in the design of enacted District 5 is that this MGG COI Cluster alone should prevail over the other overwhelming clusters, particularly in Southeastern Michigan. Dr. Gronke notes in his report at Para. 11 that, "Districts shall reflect the state's diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. It is on this last criteria that I focus. Mr. Eid's characterization of enacted District 5 is that its residents are somehow unified by "working, shopping, and praying across the across the border or dealing with interstate transportation". However, in examining Mr. Eid's comments and_https://onthemap.ces.census.gov results for the southern border counties of Michigan, there is no evidence of strong intrastate

economic connections between counties across the 300 miles the district spans that warrant their unification.

17. One other issue arises with the characterization of the unity of these Southern Michigan counties. Mr. Eid states "Additionally, we heard public comment about the community feeling connected by a shared television market." Whether this is a perception or not, or how strong that perception is — it is incorrect. As shown in Figure 5, a review of media markets in Southern Michigan indicates that there are at least five media markets along the Southern Michigan border.[3]

[3] Nielsen Media is a paid-for, subscription service and is widely recognized as the authoritative source of defining markets such as these. The markets depicted here were generated from numerous corroborating online resources and verified against the latest information published on Media Markets by ESRI, the GIS software widely used for redistricting.

Figure 5: Southeastern Michigan Media Markets and Enacted Congressional District 5



18. These examples provide a small sample of evidence of how the districts in the enacted plan do not conform to the rigorous, well thought out COI clusters presented by the reputable MGGG team at Tufts. Further, using the reputable, widely used online economics tool presented by Dr. Gronke (https://onthemap.ces.census.gov) shows that there is evidence that there are situations where the enacted districts contain areas are *not* connected economically.

19. I have one further observation based on the expert report of Mr. Kim Brace. In Para 14, Mr. Brace writes:

> "This exhibit shows all the townships that are split in the Plaintiffs' plan for Congress and the amount of population in each piece of a split township. The extremeness of the Plaintiffs' attempt to create districts that all have the same population can be seen in how they split Southfield township in Oakland County. Plaintiffs' map pulled just 13 people out of the town's 91,504 population to place them in district 11, clearly exposing any voter's vote in an election and violating the secrecy of the ballot."

20. On the assertion that there are 13 people that are pulled out, Mr. Brace is accurate and correct. Block 26125159005 has 13 people in the 2020 Census. That block was drawn by plaintiffs to be wholly included in VTD 26125125039, and to enable the minimum deviation the plan sought to achieve. It is our expectation that the registrar will manage voting precinct and VTD geography in such a way as to protect voter confidentiality.

21. The issue of small slivers of population being removed or separated is not a new one in congressional redistricting, and not one the enacted plan is immune from. In examining the enacted plan, there are very small populations that are split by district boundaries as well. For example, in the enacted plan: VTD 0816908900002 is cut by D2 and D3 leaving 4 people out. These are not fatal flaws — these are occasional occurrences in many redistricting plans.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 23, 2022

/s/ Thomas M. Bryan
Thomas M. Bryan

4888-8230-6320 v1 [100404-1]

APPENDIX G

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:22-C V-00054-PLM-SJB

MICHAEL BANERIAN, *et al.,*

Plaintiffs,

v.

JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS THE SECRETARY OF STATE OF MICHIGAN, *et al.,*

Defendants.

Three-Judge Panel
28 U.S.C. § 2284(a)

JOINT STATUS REPORT

Pursuant to this Court's February 24, 2022 order, ECF 55, PageID.1126-27, the Parties submit this Joint Status Report. In accordance with that order, the Parties held a conference via Microsoft Teams on Monday, February 28, 2022. The Parties also held an additional conference via Microsoft Teams on Tuesday, March 1, 2022.

I. JOINT STATEMENT OF UNDISPUTED MATERIAL FACTS.

A. Census Numbers

1. According to the 2020 Decennial Census, Michigan has a population of 10,077,331 persons. Am. Compl. 1152 (PagelD. 65); VNP Answer 1152, ECF 33, PageID.493; Voter-Defs.' Answer ¶ 52, ECF 35, PageID.549-550; Comm'rs Answer ¶ 52, ECF 40, PageID.687.

2. Based on these numbers, Michigan was apportioned thirteen congressional districts. Am. Compl. 1153 (PageID.65). VNP Answer 1153, ECF 33, PageID.493; Voter-Defs.' Answer ¶ 52, ECF 35, PageID.550; Comm'rs Answer ¶ 53, ECF 40, PageID.687; Sec'y Answer ¶ 53, ECF 46, PageID.952.

3. The ideal congressional district population is 775,179 persons. Am. Compl. ¶ 54 (PagelD. 65-66). VNP Answer ¶ 87, ECF 33, PageID.502-503; Voter-Defs. Answer ¶ 87, ECF 35, PageID.559; Comm'rs Answer ¶ 54, ECF 40, PageID.687.

B. Plaintiffs

4. All Plaintiffs are natural persons, citizens of the United States, and registered to vote in Michigan. Am. Compl. ¶ 18, ECF 7, PageID.60.

5. Plaintiff Michael Banerian is a resident of Royal Oak, Michigan, in Oakland County. *Id.* ¶ 19, ECF 7, PageID.60. He regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Mr. Banerian resides in the newly created Eleventh Congressional District. *Id.*

6. Plaintiff Michon Bommarito is a resident of Albion, Michigan, in Calhoun County. Am. Compl. ¶20, ECF 7, PageID.60. She regularly votes in federal,

state, and local elections in Michigan. *Id.* Under the enacted map, Ms. Bommarito resides in the newly created Fifth Congressional District. *Id.*

7. Plaintiff Peter Colovos is a resident of Hagar Township, Michigan, in Berrien County. Am. Compl. ¶ 21, ECF 7, PageID.60. He regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Mr. Colovos resides in the newly created Fourth Congressional District. *Id.*

8. Plaintiff William Gordon is a resident of Scio Township, Michigan, in Washtenaw County. Am. Compl. ¶ 22, ECF 7, PageID.60. He regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Mr. Gordon resides in the newly created Sixth Congressional District. *Id.*

9. Plaintiff Joseph Graves is a resident of Linden, Michigan, in Genesee County. Am. Compl. ¶ 23, ECF 7, PageID.60. He regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Mr. Graves resides in the newly created Eighth Congressional District. *Id.*

10. Plaintiff Beau LaFave is a resident of Iron Mountain, Michigan, in Dickinson County. Am. Compl. ¶ 24, ECF 7, PageID.61. He regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Mr. LaFave resides in the newly created First Congressional District. *Id.*

11. Plaintiff Sarah Paciorek is a resident of Ada, Michigan, in Kent County. Am. Compl. 1125, ECF 7, PageID.61. She first registered to vote in Michigan at the age of 18 before moving out of the state for work; she returned to Michigan in 2021, where she is currently registered and intends to vote in 2022. *Id.*

Under the enacted map, Ms. Paciorek resides in the newly created Third Congressional District. *Id.*

12. Plaintiff Cameron Pickford is a resident of Charlotte, Michigan, in Eaton County. Am. Compl. ¶ 26, ECF 7, PageID.61. He regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Mr. Pickford resides in the newly created Seventh Congressional District. *Id.*

13. Plaintiff Harry Sawicki is a resident of Dearborn Heights, Michigan, in Wayne County. Am. Compl. ¶ 27, ECF 7, PageID.61. He regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Mr. Sawicki resides in the newly created Twelfth Congressional District. *Id.*

14. Plaintiff Michelle Smith is a resident of Sterling Heights, Michigan, in Macomb County. Am. Compl. ¶ 28, ECF 7, PageID.61. She regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Ms. Smith resides in the newly created Tenth Congressional District. *Id.*

C. Defendants

1. Defendant Commissioners

15. Defendant Douglas Clark serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 32, ECF 7, PageID.62; VNP Answer ¶ 32, ECF 33, PageID.489; Voters-Defs.' Answer ¶ 32, ECF 35, PageID.545; Comm'rs Answer ¶ 32, ECF 40, PageID.682; Sec'y Answer ¶ 32, ECF 46, PageID.947. Mr. Clerk is affiliated with the Republican Party and is sued only in his official capacity. Am. Compl. ¶ 32, ECF 7, PageID.62; VNP Answer ¶ 32, ECF 33, PageID.489; Voters-Defs.' Answer ¶ 32, ECF

35, PageID.545; Comm'rs Answer ¶ 32, ECF 40, PageID.682; Sec'y Answer ¶ 32, ECF 46, PageID.947.

16. Defendant Juanita Curry serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 33, ECF 7, PageID.62; VNP Answer ¶ 33, ECF 33, PageID.489; Voters-Defs.' Answer ¶ 32, ECF 35, PageID.545; Comm'rs Answer ¶ 32, ECF 40, PageID.683; Sec'y Answer ¶ 32, ECF 46, PageID.948. Ms. Curry is affiliated with the Democratic Party and is sued only in her official capacity. Am. Compl. ¶ 33, ECF 7, PageID.62; VNP Answer ¶ 33, ECF 33, PageID.489; Voters-Defs.' Answer ¶ 32, ECF 35, PageID.545; Comm'rs Answer ¶ 32, ECF 40, PageID.683; Sec'y Answer ¶ 32, ECF 46, PageID.948.

17. Defendant Anthony Eid serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶34, ECF 7, PageID.62; VNP Answer ¶34, ECF 34, PageID.489; Voters-Defs.' Answer ¶34, ECF 35, PageID.545; Comm'rs Answer ¶ 34, ECF 40, PageID.683; Sec'y Answer ¶34, ECF 46, PageID.948. Mr. Eid is not affiliated with either major political party and is sued only in his official capacity. Am. Compl. ¶ 34, ECF 7, PageID.62; VNP Answer ¶34, ECF 34, PageID.489; Voters-Defs.' Answer ¶34, ECF 35, PageID.545; Comm'rs Answer ¶ 34, ECF 40, PageID.683; Sec'y Answer ¶ 34, ECF 46, PageID.948.

18. Defendant Rhonda Lange serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 35, ECF 7, PageID.62; VNP Answer ¶ 35, ECF 34, PageID.489; Voters-Defs.' Answer ¶ 35, ECF 35, PageID.545; Comm'rs Answer ¶ 35, ECF 40, PageID.683; Sec'y Answer ¶ 35, ECF 46, PageID.948. Ms. Lange is affiliated with the Republican Party and is sued only in her official capacity. Am.

Compl. ¶ 35, ECF 7, PageID.62; VNP Answer ¶ 35, ECF 34, PageID.489; Voters-Defs.' Answer ¶ 35, ECF 35, PageID.545; Comm'rs Answer ¶ 35, ECF 40, PageID.683; Sec'y Answer ¶ 35, ECF 46, PageID.948.

19. Defendant Steven Terry Lett serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 36, ECF 7, PageID.62; VNP Answer ¶ 36, ECF 34, PageID.489-490; Voters-Defs.' Answer ¶ 36, ECF 35, PageID.546; Comm'rs Answer ¶ 36, ECF 40, PageID.683; Sec'y Answer ¶ 36, ECF 46, PageID.948. Mr. Lett is not affiliated with either major political party and is sued only in his official capacity. Am. Compl. ¶ 36, ECF 7, PageID.62; VNP Answer ¶ 36, ECF 34, PageID.489-490; Voters-Defs.' Answer ¶ 36, ECF 35, PageID.546; Comm'rs Answer ¶ 36, ECF 40, PageID.683; Sec'y Answer ¶ 36, ECF 46, PageID.948.

20. Defendant Brittni Kellom serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶37, ECF 7, PageID.63; VNP Answer ¶ 37, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 37, ECF 35, PageID.546; Comm'rs Answer ¶37, ECF 40, PageID.683; Sec'y Answer ¶37, ECF 46, PageID.948. Ms. Kellom is affiliated with the Democratic Party and is sued only in her official capacity. Am. Compl. ¶ 37, ECF 7, PageID.63; VNP Answer ¶ 37, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 37, ECF 35, PageID.546; Comm'rs Answer ¶ 37, ECF 40, PageID.683; Sec'y Answer ¶ 37, ECF 46, PageID.948.

21. Defendant Cynthia Orton serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶38, ECF 7, PageID.63; VNP Answer ¶ 38, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 38, ECF 35, PageID.546; Comm'rs Answer ¶ 38, ECF 40, PageID.683-684; Sec'y Answer ¶ 38,

ECF 46, PageID.949. Ms. Orton is affiliated with the Republican Party and is sued only in her official capacity. Am. Compl. ¶ 38, ECF 7, PageID.63; VNP Answer ¶ 38, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 38, ECF 35, PageID.546; Comm'rs Answer ¶ 38, ECF 40, PageID.683-684; Sec'y Answer ¶ 38, ECF 46, PageID.949.

22. Defendant M.C. Rothhorn serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 39, ECF 7, PageID.63; VNP Answer ¶ 39, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 39, ECF 35, PageID.546; Comm'rs Answer ¶ 39, ECF 40, PagelD. 684; Sec'y Answer ¶ 39, ECF 46, PageID.949. Mr. Rothhorn is affiliated with the Democratic Party and is sued only in his official capacity. Am. Compl. ¶ 39, ECF 7, PageID.63; VNP Answer ¶ 39, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 39, ECF 35, PageID.546; Comm'rs Answer ¶ 39, ECF 40, PagelD. 684; Sec'y Answer ¶ 39, ECF 46, PageID.949.

23. Defendant Rebecca Szetela serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 40, ECF 7, PageID.63; VNP Answer ¶ 40, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 40, ECF 35, PageID.546; Comm'rs Answer ¶ 40, ECF 40, PagelD. 684; Sec'y Answer ¶ 40, ECF 46, PageID.949. Ms. Szetela is not affiliated with either major political party and is sued only in her official capacity. Am. Compl. ¶ 40, ECF 7, PageID.63; VNP Answer ¶ 40, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 40, ECF 35, PageID.546; Comm'rs Answer ¶ 40, ECF 40, PagelD. 684; Sec'y Answer ¶ 40, ECF 46, PageID.949.

24. Defendant Janice Vallette serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶41, ECF 7, PageID.63;

VNP Answer ¶ 41, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 41, ECF 35, PageID.546-547; Comm'rs Answer ¶ 41, ECF 40, PageID. 684; Sec'y Answer ¶ 41, ECF 46, PageID.949. Ms. Vallete is not affiliated with either major political party and is sued only in her official capacity. Am. Compl. ¶ 41, ECF 7, PageID.63; VNP Answer ¶ 41, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 41, ECF 35, PageID.546-547; Comm'rs Answer ¶ 41, ECF 40, PageID. 684; Sec'y Answer ¶ 41, ECF 46, PageID.949.

25. Defendant Erin Wagner serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 42, ECF 7, PageID.63; VNP Answer ¶ 42, ECF 34, PageID.491; Voters-Defs.' Answer ¶ 42, ECF 35, PageID.547; Comm'rs Answer ¶ 42, ECF 40, PageID. 684; Sec'y Answer ¶ 42, ECF 46, PageID.949. Ms. Wagner is affiliated with the Republican Party and is sued only in her official capacity. Am. Compl. ¶ 42, ECF 7, PageID.63; VNP Answer ¶ 42, ECF 34, PageID.491; Voters-Defs.' Answer ¶ 42, ECF 35, PageID.547; Comm'rs Answer ¶ 42, ECF 40, PageID. 684; Sec'y Answer ¶ 42, ECF 46, PageID.949.

26. Defendant Richard Weiss serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 43, ECF 7, PageID.63; VNP Answer ¶ 43, ECF 34, PageID.491; Voters-Defs.' Answer ¶ 43, ECF 35, PageID.547; Comm'rs Answer ¶ 43, ECF 40, PageID. 684; Sec'y Answer ¶ 43, ECF 46, PageID.949-950. Mr. Weiss is not affiliated with either major political party and is sued only in his official capacity. Am. Compl. ¶ 43, ECF 7, PageID.63; VNP Answer ¶ 43, ECF 34, PageID.491; Voters-Defs.' Answer ¶ 43, ECF 35, PageID.547; Comm'rs Answer ¶ 43, ECF 40, PageID. 684; Sec'y Answer ¶ 43, ECF 46, PageID.949-950.

27. Defendant Dustin Witjes serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 44, ECF 7, PageID.64; VNP Answer ¶ 44, ECF 34, PageID.491; Voters-Defs.' Answer ¶ 44, ECF 35, PageID.547; Comm'rs Answer ¶ 44, ECF 40, PageID. 685; Sec'y Answer ¶ 44, ECF 46, PageID.950. Mr. Witjes is affiliated with the Democratic Party and is sued only in his official capacity. Am. Compl. ¶ 44, ECF 7, PageID.64; VNP Answer ¶ 44, ECF 34, PageID.491; Voters-Defs.' Answer ¶ 44, ECF 35, PageID.547; Comm'rs Answer ¶ 44, ECF 40, PageID. 685; Sec'y Answer ¶ 44, ECF 46, PageID.950.

2. Defendant Secretary of State

28. Defendant Jocelyn Benson is the Michigan Secretary of State. Am. Compl. ¶ 29, ECF 7, PageID.61; VNP Answer ¶ 29, ECF 34, PageID.488; Voters-Defs.' Answer ¶ 29, ECF 35, PageID.544; Comm'rs Answer ¶ 29, ECF 40, PageID. 682; Sec'y Answer ¶ 29, ECF 46, PageID.947. In this capacity, Ms. Benson must enforce the district boundaries for congressional districts and accept declarations of candidacy for congressional candidates. Am. Compl. ¶ 29, ECF 7, PageID.61; VNP Answer ¶ 29, ECF 34, PageID.488; Voters-Defs.' Answer ¶ 29, ECF 35, PageID.544; Comm'rs Answer ¶ 29, ECF 40, PageID. 682; Sec'y Answer ¶ 29, ECF 46, PageID.947.

3. Defendant Voter Intervenors

29. Intervenor-Defendant Joan Swartz McKay is a resident of the First Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

30. Intervenor-Defendant Grace Huizenga is a resident of the Second Congressional District on the

enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

31. Intervenor-Defendant Samantha Neuhaus is a resident of the Third Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

32. Intervenor-Defendant Jordan Neuhaus is a resident of the Third Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

33. Intervenor-Defendant Cayley Winters is a resident of the Fourth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

34. Intervenor-Defendant Glenna DeJong is a resident of the Fourth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

35. Intervenor-Defendant Marsha Caspar is a resident of the Fourth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

36. Intervenor-Defendant Hedwig Kaufman is a resident of the Fifth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

37. Intervenor-Defendant Collin Christner is a resident of the Sixth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

38. Intervenor-Defendant Melany Mack is a resident of the Seventh Congressional District on the

enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

39. Intervenor-Defendant Ashley Prew is a resident of the Eighth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

40. Intervenor-Defendant Sybil Bade is a resident of the Ninth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

41. Intervenor-Defendant Susan Diliberti is a resident of the Tenth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

42. Intervenor-Defendant Lisa Wigent is a resident of the Eleventh Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

43. Intervenor-Defendant Matthew Wigent is a resident of the Eleventh Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

44. Intervenor-Defendant Pamela Tessier is a resident of the Twelfth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

45. Intervenor-Defendant Susannah Goodman is a resident of the Thirteenth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

4. Defendant Voters Not Politicians Intervenors

46. Intervenor-Defendant Voters Not Politicians ("VNP") is a nonprofit organization that was the primary drafter and sponsor of the constitutional amendment that established the Michigan Independent Citizens Redistricting Commission. VNP Mot. for Leave to Intervene at 1, 7, ECF 22, PageID.345, 351; Comm'rs Opp'n to PI Br. at 5-6, ECF 42, PageID.728-729.

D. Process Of Drafting Michigan's Enacted Plan

47. The Commission held at least 139 public meetings, including at least 16 hearings before drafting maps. Voter-Defs.' Opp'n to PI Br. at 7, ECF 39, PageID.646; Comm'rs' Opp'n. to PI Br. at 5, ECF 42, PageID.731.

48. The Commission received approximately 25,000 public comments through its online portal. Voter-Defs.' Opp'n to PI Br. at 7, ECF 39, PageID.646; Comm'rs' Opp'n. to PI Br. at 7, ECF 42, PageID.731.

49. Commissioner Eid drafted the Chestnut Plan in September of 2021. Comm'rs'Opp'n. to PI Br. at 5, ECF 42, PageID.731.

50. The Commission adopted the Chestnut Plan on December 28, 2021, by a vote of 8-5. Comm'rs' Opp'n. to PI Br. at 8, ECF 42, PageID.732.

E. Statistics Of The Enacted Plan

51. The Enacted Plan contains the following population deviations in each congressional district:

DISTRICT	TOTAL PERSONS	DEVIATION
District One	775,375	+196
District Two	774,997	-182
District Three	775,414	+235
District Four	774,600	-579
District Five	774,544	-635
District Six	775,273	+94
District Seven	775,238	+59
District Eight	775,229	+50
District Nine	774,962	-217
District Ten	775,218	+39
District Eleven	775,568	+389
District Twelve	775,247	+68
District Thirteen	775,666	+487

Bryan Decl. ¶ 15, Table 1 (ECF 9-3) (PageID.148); Comm'rs Answer ¶ 61, ECF 40, PageID.690.

52. The overall population deviation in the Enacted Plan is 1,122 persons. Bryan Decl. ¶ 15, Table 1 (ECF 9-3) (PageID.148); Comm'rs Answer 1190, ECF 40, PageID.695.

53. The overall population deviation in the Enacted Plan is 0.14%. Bryan Decl. ¶ 15, Table 1 (ECF 9-3) (PageID.48); Am. Compl. 1191 (PageID.71); VNP Opp'n to PI Br. at 7, ECF 36, PageID.580; Comm'rs Answer ¶ 91, ECF 40, PageID.696; Comm'rs Opp'n to PI Br. at 7, 21, ECF 42, PageID.731, 745.

F. Statistics Of Plaintiffs' Proposed Map

54. Plaintiffs' Proposed Map, submitted as Exhibit A to the Amended Complaint (PageID 79) contains the following population deviations in each congressional district:

DISTRICT	TOTAL PERSONS	DEVIATION
District One	775,179	0
District Two	775,180	+1
District Three	775,179	0
District Four	775,180	+1
District Five	775,179	0
District Six	775,180	+1
District Seven	775,179	0
District Eight	775,179	0
District Nine	775,179	0
District Ten	775,179	0
District Eleven	775,179	0
District Twelve	775,179	0
District Thirteen	775,180	+1

Bryan Decl. ¶ 16, Table 2 (ECF 9-3) (PageID.149).[1]

[1] In Plaintiffs' Motion for Preliminary Injunction, Plaintiffs asserted that in their proposed map, Congressional District 2 had an ideal population, or a zero-person population deviation and Congressional District 8 had one person above ideal population. Bryan Decl. ¶ 16, Table 2 (ECF 9-3) (PageID.149). During the Parties conference, the Intervenor Defendants Voters Not Politicians noticed that it was Congressional District 2 that had one person above the ideal population and Congressional District 8 had an ideal population. The chart in this filing presents the accurate population deviations of Plaintiffs' Proposed Plan.

II. IDENTIFICATION OF DISPUTED QUESTIONS OF FACTS PERTINENT TO PLAINTIFFS' PRELIMINARY INJUNCTION REQUEST.

A. PLAINTIFFS

1. Whether a new congressional redistricting plan may be adopted with sufficient time to implement that plan prior to the congressional primary election on August 2, 2022. *See Purcell v. Gonzalez,* 549 U.S. 1, 4-5 (2006).

2. Concerning Plaintiffs' Count I: Whether Plaintiffs are likely to succeed on the merits that the population deviations in the enacted plan "could have been reduced or eliminated altogether by a good-faith effort to draw districts of equal population." *Karcher v. Daggett,* 462 U.S. 725, 730 (1983).

3. Also Concerning Plaintiffs' Count I: Whether Defendants are likely to succeed on the merits in showing that each population variance was necessary to achieve Defendants' goal of maintaining communities of interest. *Kirkpatrick v. Preisler,* 394 U.S. 526, 531 (1969); *Karcher,* 462 U.S. at 731, 741. The burden on the state to make this showing is flexible and the level of the burden depends on the following:

a. the size of the deviations;

b. the importance of the State's interests;

c. the consistency with which the plan as a whole reflects those interests; and

d. the availability of alternatives that might substantially vindicate those interests yet approximate population equality more closely.

Tennant v. Jefferson County Comm'n, 567 U.S. 758, 760 (2012).

Stated differently, whether Defendants' asserted goal of maintaining communities of interest applied in a consistent and nondiscriminatory manner. *Karcher,* 462 U.S. at 740-41.

4. Concerning Plaintiffs' Count II, whether the Commissioners' justification of maintaining communities of interest was applied neutrally and consistently, and did not treat voters in an arbitrary manner. *Karcher,* 462 U.S. at 740-41; *Roman v. Sincock,* 377 U.S. 695, 710 (1964); *Bush v. Gore,* 531 U.S. 98, 10509 (2000).

B. DEFENDANT COMMISSIONERS

1. Whether it is too late to adopt a new congressional redistricting plan in time to implement that plan for the 2022 congressional election process. *Purcell v. Gonzalez,* 549 U.S. 1, 2, 127 S. Ct. 5, 6, 166 L. Ed. 2d 1 (2006); *see also, Alpha Phi Alpha Fraternity Inc. v. Raffensperger,* No. 1:21-cv-05337 at p. 230-237 (N.D. Ga. Feb. 28, 2022) (order denying preliminary injunction due to proximity of 2022 election).

2. Whether Plaintiffs are likely to show at trial that the population deviation in the enacted plan could have been practically avoided. *Tennant v. Jefferson County Com'n,* 567 U.S. 758, 760 (2012).

3. Whether Defendants are likely to show at trial that the population differences were necessary to achieve some legitimate state objective, as determined through the following inquiries:

a. Whether the population deviation is small or large in size;

b. Whether the Commission's interests are important;

c. Whether the Commission's interests are reflected consistently in the Enacted Plan as a whole; and

d. Whether alternatives are available vindicating the Commission's interests while approximating population equality more closely. *Id.*

III. THE PARTIES' POSITIONS CONCERNING EXPEDITED DISCOVERY PRIOR TO THE MARCH 16, 2022 HEARING.

The Parties have conferred and no Party seeks expedited discovery prior to the hearing on March 16, 2022.

IV. THE PARTIES' POSITION REGARDING WHETHER THE COMMISSION'S PUBLIC RECORD IS PART OF THE RECORD IN THIS CASE.

The Parties agree that pursuant to Federal Rule of Evidence 201, this Court may take judicial notice of any part or the entirety of the Commission's public legislative record. *See Northville Downs v. Granholm,* 622 F.3d 579, 586 (6th Cir. 2010); *Anderson v. Holder,* 673 F.3d 1089, 1094 n.1 (9th Cir. 2012).

V. WHETHER FURTHER MOTIONS PRACTICE IS CONTEMPLATED BY ANY PARTY.

The Parties have conferred and no Party contemplates any motions practice prior to the hearing on March 16, 2022.

Dated: March 2, 2022

Respectfully submitted,

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APPENDIX H

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

No. 1:22-cv-54

MICHAEL BANERIAN, *et al.,*

Plaintiffs,

v.

JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS THE SECRETARY OF STATE OF MICHIGAN, *et al.,*

Defendants.

Three-Judge Court

ORDER

In accordance with the unanimous Opinion of the Panel issued on this date,

IT IS HEREBY ORDERED that the partial motions to dismiss filed by Intervenor-Defendant Count MI Vote (ECF No. 32), by Intervenor-Defendants Sybil Bade, Marsha Caspar, Collin Christner, Glenna DeJong, Susan Diliberti, Susannah Goodman, Grace Huizinga, Hedwig Kaufman, Melany Mack, Joan Swartz McKay, Jordan Neuhaus, Samantha Neuhaus, Ashley Prew, Pamela Tessier, Lisa Wignet, Matthew Wignet, and Cayley Winters (ECF No. 34), by Defendants Douglas Clark, Juanita Curry, Anthony Eid, Brittni Kellom, Rhonda Lange, Steven Terry Lett,

Cynthia Orton, M. C. Rothhorn, Rebecca Szetela, Janice Vallette, Erin Wagner, Richard Weiss, and Dustin Witjes (ECF No. 41), and by Defendant Jocelyn Benson (ECF No. 44) are GRANTED.

IT IS FURTHER ORDERED that Count II of Plaintiffs' complaint is DISMISSED.

Dated: March 4, 2022

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge
on Behalf of the Three-Judge Panel

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

No. 1:22-cv-54

MICHAEL BANERIAN, *et al.,*

Plaintiffs,

v.

JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS THE SECRETARY OF STATE OF MICHIGAN, *et al.,*

Defendants.

Three-Judge Court

OPINION GRANTING PARTIAL MOTIONS TO DISMISS

KETHLEDGE, Circuit Judge. Ten Michigan voters challenge the State's new congressional districting plan, asserting two different federal constitutional claims. The first is that the plan violates the "one-person, one-vote" principle announced by the Supreme Court in *Wesberry v. Sanders,* 376 U.S. 1, 7-8 (1964). That claim is not at issue here. The other claim is that the plan fragments the plaintiffs' "communities of interest" more than it does such "communities" of other voters, thereby allegedly diluting the strength of the plaintiffs' votes. That claim is a blood relative of the claims of partisan gerrymandering that the Supreme Court found nonjusticiable in *Rucho v.*

Common Cause, 139 S. Ct. 2484, 2506-07 (2019). We hold that the plaintiffs' "communities of interest" claim is nonjusticiable for many of the same reasons that the claims in *Rucho* were. We therefore grant the motions to dismiss that claim.

I.

In November 2018, Michigan voters approved a state constitutional amendment that shifted from the state legislature to the "Michigan Independent Citizens Redistricting Commission" the power to draw congressional districts. The amendment directed the Commission to draw districts according to specified criteria, in the following order of priority:

(a) Districts shall be of equal population as mandated by the United States constitution, and shall comply with the voting rights act and other federal laws.

(b) Districts shall be geographically contiguous. Island areas are considered to be contiguous by land to the county of which they are a part.

(c) Districts shall reflect the state's diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(d) Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political party shall be determined using accepted measures of partisan fairness.

(e) Districts shall not favor or disfavor an incumbent elected official or a candidate.

(f) Districts shall reflect consideration of county, city, and township boundaries.

(g) Districts shall be reasonably compact.

Mich. Const. art. IV, § 6(13).

In December 2021, after considering five different redistricting plans, the Commission adopted the "Chestnut Plan" (the "Plan"). About a month later, the plaintiffs brought this lawsuit against the Michigan Secretary of State and each of the Commissioners in their official capacities, challenging the Plan as unconstitutional. The defendants and various intervenor-defendants now move to dismiss Count II, in which the plaintiffs assert that the Commission so misapplied "traditional redistricting criteria" that the Plan violates the federal Equal Protection Clause.

II.

A.

"The threshold element of an equal protection claim is disparate treatment[.]" *Scarbrough v. Morgan Cnty. Bd. of Educ.,* 470 F.3d 250, 260 (6th Cir. 2006). In an equal-protection case challenging legislative district lines in particular, the claim, generally stated, is that the votes of some citizens are "debased and diluted" as compared to the votes of other citizens. *Reynolds v. Sims,* 377 U.S. 533, 556 (1964).

Yet challenges to electoral-district lines are notoriously difficult to adjudicate. Some types of governmental action are left to the discretion of elected officials—which means, to that extent, those actions are "only politically examinable[,]" and not governed by law. *Marbury v. Madison, 5 U.S.* 137, 166 (1803). The

President's exercise of his veto power is one example. For a court to intervene, rather, "there must be some rule of law to guide the court in the exercise of its jurisdiction." *Id.* at 165.

Those rules are absent, the Supreme Court has held, in cases where citizens claim that their votes were diluted by means of "political gerrymandering[.]" *Rucho,* 139 S. Ct. at 2497 (cleaned up). For the Constitution permits at least some political gerrymandering, and provides no standards as to when it "has gone too far." *Id.* (internal quotation marks omitted). Thus, political-gerrymandering claims rest on notions of fairness, indeed of *political* fairness; and the "federal courts are not equipped to apportion political power as a matter of fairness." *Id.* at 2499.

In only "two areas—one-person, one-vote and racial gerrymandering"—has the Supreme Court "held that there is a role for the courts with respect to at least some issues that could arise from a State's drawing of congressional districts." *Id.* at 2495-96. The "one-person, one-vote rule is relatively easy to administer as a matter of math." *Id.* at 2501. And "a racial gerrymandering claim does not ask for a fair share of political power[,]" but "asks instead for the elimination of a racial classification." *Id.* at 2502. Hence the courts can adjudicate those two types of claims according to "judicially discoverable and manageable standards." *Id.* at 2494 (cleaned up). The Supreme Court has otherwise rejected theory after theory by which, various plaintiffs have argued, the federal courts should adjudicate political-gerrymandering claims. *See, e.g., id.* at 2506-07; *Vieth v. Jubelirer,* 541 U.S. 267, 306 (2004) (plurality opinion); *Gaffney v. Cummings,* 412 U.S. 735, 753-54 (1973).

B.

Yet here the plaintiffs offer another. Their claim is not—expressly at least—that the Plan reflects "excessive partisanship in districting." *Rucho,* 139 S. Ct. at 2491. Instead, the plaintiffs allege that the Plan "fragment[s]" their "communities of interest" more than it fragments other voters' "communities of interest"—which the plaintiffs say diminishes their ability "to elect candidates who can represent the interests of both the individual and the community." Compl. ¶¶ 116, 118.

That is just a political-gerrymandering claim by another name. Just as the Constitution allows States to draw lines for congressional districts based on partisan interests, so too it allows them to "fragment" voters' "communities of interest." And no principle discernable in the Constitution can direct a court's decision as to when such fragmentation "has gone too far." *Rucho,* 139 S. Ct. at 2497 (cleaned up). The Supreme Court has already said as much, when it rejected "'traditional' districting criteria"—including "communities of interest"—as a potential "fairness touchstone" in challenges to legislative districts. *Id.* at 2500-01. True, the Michigan Constitution has ranked the criteria here, whereas they had not been ranked in *Rucho;* but that still leaves the question of "how much deviation from each [criterion] to allow"—to which the Court saw no legal answer. *Id.* at 2501.

Indeed, the claim here would be shot through with political judgments even more than the claim in *Rucho* was. Start with the definition of "communities of interest." The term's vagueness affords the Commission broad discretion to define the term however it likes. (The term's vagueness does not raise due-process concerns because it is not embedded in a rule of

conduct.) The plaintiffs do allege in conclusory fashion that "Michigan's true communities of interest" are "counties[.]" Compl. 11116. But that is plainly untrue, given that, under the Michigan Constitution, county lines are expressly part of a different (and lower-ranked) criterion altogether; and the "communities of interest" criterion itself provides that such communities "may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests." Mich. Const. art. IV, § 6(13)(c), (f). Those "characteristics" and "interests" are in no way bounded by law and thus are not judicially reviewable. *See Marbury, 5U .S.* at 165.

Moreover, the Michigan Constitution's reference to those different characteristics and interests plainly contemplates that an individual voter can belong to multiple communities of interest—ethnic, geographic, economic, and so on—some of which might be more "fragmented" than others. But the federal Constitution lacks rules to circumscribe the multiplicity of potential "communities," or to determine the net effect of fragmenting some of a voter's communities while leaving others intact. And the very premise of the plaintiffs' claim—that the cohesion of communities of interest within districts affects the relative strength of a citizen's vote—means that these are communities of *political* interest, comprising voters who tend to vote the same way. Defining such communities is no business of the courts. Nor does the federal Constitution afford us any basis to review the Commission's trade-offs between "communities of interest" and the other districting criteria enumerated under Michigan law. Trade-offs among legitimate interests involve legislative judgments, not judicial ones.

In the end, the claim at issue here rests upon the plaintiffs' own notions of political fairness. And a "judicial decision on what is fair in this context would be an unmoored determination of the sort characteristic of a political question beyond the competence of the federal courts." *Rucho,* 139 S. Ct. at 2500 (cleaned up). The plaintiffs' claim in Count II is nonjusticiable.

We grant the defendants' motions and dismiss Count II of the plaintiffs' complaint.

APPENDIX I

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

No. 1:22-cv-54

MICHAEL BANERIAN, *et al.*,

Plaintiffs,

v.

JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS THE SECRETARY OF STATE OF MICHIGAN, *et al.*,

Defendants.

Three-Judge Court

OPINION DENYING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

KETHLEDGE, Circuit Judge. Of the five congressional redistricting plans voted on by Michigan's Independent Citizens Redistricting Commission, the plan that the Commission chose—the "Chestnut Plan"—came the closest to perfect compliance with the Supreme Court's "one-person one-vote" rule. Yet here the plaintiffs have moved to enjoin the State's implementation of that plan, arguing that it violates that same rule. We deny the motion.

I.

A.

In November 2018, Michigan voters approved Ballot Proposal 18-2, which amended Michigan's Constitution to change how the lines for Michigan's congressional districts (as well as state legislative districts) are drawn. Specifically, the amendment transferred the power to draw those lines from the State Legislature to a newly created "Independent Citizens Redistricting Commission." Per the amendment's terms, the Commission must comprise thirteen members: four who identify as Democrats, four who identify as Republicans, five who affiliate with neither party, and none of whom have been active in politics during the preceding six years. *See* Mich. Const. art. IV, § 6(1)(b). The amendment also directs the Commission to consider the following districting criteria, listed in order of priority:

(a) Districts shall be of equal population as mandated by the United States constitution, and shall comply with the voting rights act and other federal laws.

(b) Districts shall be geographically contiguous. Island areas are considered to be contiguous by land to the county of which they are a part.

(c) Districts shall reflect the state's diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(d) Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political party shall be determined using accepted measures of partisan fairness.

(e) Districts shall not favor or disfavor an incumbent elected official or a candidate.

(f) Districts shall reflect consideration of county, city, and township boundaries.

(g) Districts shall be reasonably compact.

Mich. Const. art. IV, § 6(13).

The Commission first convened in September 2020, as it awaited results of the 2020 Census. Before attempting to draft any congressional-district lines, the Commission held 16 public hearings; after the Commission began drafting, it held upward of 120 hearings more. *See* Mich. Const. art. IV, § 8. Different commissioners eventually drafted five different districting plans; commissioner Anthony Eid drafted the "Chestnut Plan," which used public comments to identify "communities of interests" in different parts of the State.

In November 2021, the Commission published the Chestnut Plan along with four others (the Apple, Birch, Lange, and Szetela Plans) for a 45-day period of public notice-and-comment. *See* Mich. Const. art. IV, § 6(14)(b). The Commission received thousands of comments regarding the five plans.

On December 28, 2021, the Commission convened to choose a final plan. Eleven of the thirteen commissioners picked the Chestnut Plan as either their first or second choice. The Commission ultimately adopted the Chestnut plan by an 8-5 vote, with two Democratic,

two Republican, and four independent commissioners voting in favor of the Plan.

B.

The plaintiffs brought this suit on January 20, 2022, asserting two claims. Their second claim we recently dismissed as nonjusticiable. *See Banerian v. Benson,* ____F.Supp.3d____, 2022 WL 676001 (W.D. Mich. 2022). The plaintiffs' remaining claim is that the Chestnut Plan violates the one-person one-vote rule announced by the Supreme Court in *Wesberry v. Sanders,* 376 U.S. 1, 7-8 (1964). According to that rule, states must "achieve population equality" among congressional districts "as nearly as is practicable." *Karcher v. Daggett,* 462 U.S. 725, 730 (1983) (cleaned up).

Using 2020 Census numbers, the ideal population for each district in Michigan is 775,179 persons. The Chestnut Plan deviates from that ideal by 0.14%—meaning the difference in population between its most populous and least populous districts (namely, 1,122 persons) equals 0.14% of the ideal population. (The four other plans voted on by the Commission had deviations ranging from 0.22% to 0.48%.) The Chestnut Plan's deviation, the plaintiffs claim, violates the Constitution.

On January 27, the plaintiffs filed a motion in which they requested "that the Court preliminarily enjoin the State from using [the Chestnut Plan] for any congressional election in Michigan." Mot. at 36. In support, the plaintiffs submitted a plan of their own creation, which equalized population among districts while substantially redrawing district lines statewide. On February 4, 2022, the plaintiffs moved to expedite adjudication of their motion, citing a pending April 19 filing deadline for Michigan congressional candidates.

We granted that motion in substantial part, set an expedited briefing schedule, and scheduled oral argument for March 16. The next day—February 9—the plaintiffs filed another motion to expedite, asking this court to reschedule oral argument for March 1. We denied that motion. The Defendant Commissioners (hereinafter, "defendants") filed their brief in opposition to the plaintiffs' preliminary-injunction motion on February 18, the date specified in our briefing schedule. Exhibit C to the defendants' brief in opposition was a declaration by Commissioner Eid, which he submitted under penalty of perjury. *See* 28 U.S.C. § 1746.

Eid's declaration describes a redistricting plan animated by a principle of self-determinism: public comments on the various plans, as Eid describes it, drove the Commission to recognize (by its adoption of the Chestnut Plan) particular communities of interest in different parts of the State—which in turn led the Commission to draw the district lines as it did. The plaintiffs, in their reply brief, argued that Eid's declaration had misrepresented the thrust of the relevant public comments.

During the March 16 hearing, this court directed the defendants and plaintiffs alike to provide—no later than March 22—specific citations to the Commission's record for every single public comment that they thought supported or refuted, respectively, Eid's representations in his declaration. In response, the defendants submitted a 787-page appendix, which included copies of 546 comments that, the defendants said, supported Eid's representations. The plaintiffs, for their part, claimed that 199 comments refuted Eid's representations, for which they provided citations (usually by way of *"see, e.g."* cites) for only 59.

II.

A preliminary injunction is an extraordinary remedy, to which the movant must show a clear entitlement. *Enchant Christmas Light Maze & Market Ltd. v. Glowco, LLC,* 958 F.3d 532, 539 (6th Cir. 2020). Four factors govern our decision whether to grant or deny a preliminary injunction:

> (1) whether the movant has a strong likelihood of success on the merits; (2) whether the movant would suffer irreparable injury without the injunction; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by the issuance of the injunction.

Hunter v. Hamilton Cnty. Bd. of Elections, 635 F.3d 219, 233 (6th Cir. 2011) (cleaned up). Although "considerations specific to election cases" can affect our assessment of these factors, *Purcell v. Gonzalez,* 549 U.S. 1 (2006), the most important factor is often the movant's likelihood of success on the merits, *Obama for Am. v. Husted,* 697 F.3d 423, 436 (6th Cir. 2012) (internal quotation marks omitted). We begin with that factor here.!

A.

The Supreme Court has held that Article I, § 2 of the Constitution requires "equal representation for equal numbers of people" in congressional districts. *Wesberry,* 376 U.S. at 18. That rule (the "one-person, one-vote" rule) "does not require that congressional districts be drawn with precise mathematical equality" as to population. *Tennant v. Jefferson County Com'n,* 567 U.S. 758, 759 (per curiam). Instead, the Court is "willing to defer to state legislative policies, so long as

they are consistent with constitutional norms, even if they require small differences in the population of congressional districts." *Karcher,* 462 U.S. at 740.

The relevant analysis proceeds in two steps. "First, the parties challenging the plan bear the burden of proving the existence of population differences that could practicably be avoided." *Tennant,* 567 U.S. at 760. Here, we assume for purposes of argument that the plaintiffs have made that showing. Second, upon that showing, "the burden shifts to the State to 'show with some specificity' that the population differences 'were necessary to achieve some legitimate state objective.' *Id.* (quoting *Karcher,* 462 U.S. at 741).

The "specificity" the State must provide depends, in turn, on four factors. The Supreme Court has explained: "The showing required to justify population deviations is flexible, depending on the size of the deviations, the importance of the State's interests, the consistency with which the plan as a whole reflects those interests, and the availability of alternatives that might substantially vindicate those interests yet approximate population equality more closely." *Karcher,* 462 U.S. at 741.

1.

Here, all four factors direct us to review deferentially the Commission's justification for the Chestnut Plan's deviation from perfect equality of population. First, the Chestnut Plan's 0.14% deviation is small. In *Tennant,* the deviation was more than five times bigger-0.79%—and yet the Supreme Court unanimously reversed the district court (which had enjoined the plan there) on the ground that it had "failed to afford appropriate deference" to the State's justifications for its redistricting plan. 567 U.S. at 759.

Second, the interest that the Commission sought to further by means of its district lines—namely, preservation of "communities of interest"—is undisputedly legitimate. Indeed, the plaintiffs agree that the preservation of such communities is a "traditional districting criter[ion]" employed by more than 20 states. Mot. for Prelim. Inj. at 20; *see also, e.g., Bethune-Hill v. Virginia State Bd. of Elections,* 137 S. Ct. 788, 795 (2017); *League of United Latin Am. Citizens v. Perry,* 548 U.S. 399, 424 (2006).

Third, the Chestnut Plan consistently reflects the Commission's emphasis on preserving what it determined—on the basis of public comments—to be communities of interest in different districts. Specifically, the Eid declaration identifies communities of interest in every one of Michigan's 13 districts and explains that the Chestnut Plan's "goals" were to preserve them. *See* ECF No. 42-4 PageID 779-785. The plaintiffs counter that the "Commission's handling of cultural and religious communities of interest is the most glaring inconsistency" in its application of this criterion. Pl. Supp. Br. at 2. Specifically, the plaintiffs assert that, though the Commission kept intact a Chaldean community in District 10 and an LGBTQ community in District 11, the Commission split an Orthodox Jewish community into two districts, and did the same to an "Arab Middle Eastern, North African community" in "the southern portion of Dearborn Heights." *Id.* at 3.

To some extent, the plaintiffs have a point. The Commission did split what two commenters described as an Orthodox Jewish community in Oak Park and Southfield between Districts 11 and 12. But keeping some communities intact inevitably means separating others; and the plaintiffs cite only two comments

urging the Commission to keep this community intact (one of which urged the Commission to keep all of Oakland County intact, which even the plaintiffs' plan splits into four districts). And even in a comment-driven redistricting process, the Commission's decisions would unavoidably leave some commenters disappointed. Similarly, the Commission did put a part of southern Dearborn Heights into District 13. But the Commission kept the rest of Dearborn Heights and Dearborn intact in District 12, thereby largely heeding the many commenters who urged it to keep intact the Middle Eastern communities in those cities. And the borders of Dearborn Heights itself take the form of a gerrymander of sorts, extending approximately six miles from north to south and almost five miles east to west, which could make it harder to contain in one district.

Nor did the Commission act inconsistently simply because, as the Commission acknowledges, "each district does not achieve the *same* communities-of-interest objective." Def. Opp. at 22. The Michigan Constitution afforded the Commission broad discretion to define and identify communities of interest as it saw fit; and in different districts, different types of communities might predominate. That the Commission thought certain cultural communities predominated in some districts does not mean that it was required to find that every cultural community predominated in every district. "[R]edistricting ordinarily involves criteria and standards that have been weighed and evaluated by the elected branches in the exercise of their political judgment." *Perry v. Perez,* 565 U.S. 388, 393 (2012). Tradeoffs between keeping some communities intact and splitting others are examples of those kinds of judgments. The Chestnut Plan reflects those tradeoffs; but the Plan is consistent throughout in its

emphasis on communities of interests identified in comments submitted to the Commission.

Fourth, the plaintiffs have not identified any alternative plan that would preserve the "interests" identified by the Commission while "approximat[ing] population equality more closely." *Karcher,* 462 U.S. at 741. The plaintiffs' own plan does not preserve those communities of interest or even attempt to; instead it does not apply the community-of-interest criterion at all, apart from the plan's emphasis on preserving county and municipal lines. And the other four plans voted on by the Commission deviated from "population equality" more than the Chestnut Plan does. Hence this factor favors deference. *See Tennant,* 567 U.S. at 765 ("None of the alternative plans came close to vindicating" the State's interests "while achieving a lower variance."). At oral argument, the plaintiffs did argue for the first time that, given the opportunity, they could tweak the Chestnut Plan to equalize population among districts while retaining its communities of interest. But as counsel for the Commission observed, a districting plan is like a Rubik's Cube: every adjustment requires still more adjustments. If the plaintiffs were to submit a tweaked plan now—as opposed to the altogether redrawn plan that they chose to submit with their motion—the defendants would then be entitled to submit a brief explaining all the other consequences, apart from population equality, wrought by the new plan. For good reasons, we expedited at the plaintiffs' request briefing and argument for their preliminary-injunction motion; we do not have time for another round of briefing and argument now.

2.

The Commission therefore bears only a light burden to show that the Chestnut Plan's 0.14% deviation from perfect equality of population among districts was "necessary to achieve" its goal of maintaining communities of interest. *Karcher,* 462 U.S. at 731. We find that the Commission is very likely to carry that burden in this case. As an initial matter, the Supreme Court has twice accepted the statements of a single legislator as evidence of a State's redistricting goals. *See Tennant,* 567 U.S. at 763-64; *Bethune-Hill v. Virginia State Bd. of Elections,* 137 S. Ct. 788, 801-02 (2017). Eid's declaration is therefore sufficient evidence of the Commission's goals here.

More to the point, the Commission has specifically identified the communities of interest that it sought to maintain in each district: among them, the rural and agricultural northern regions and Native American communities in District 1; the rural farming counties of Barry, Ionia, Montcalm, Gratiot, and Isabella in District 2; the economic I-96 corridor between Muskegon and Grand Rapids in District 3; the people who live in Battle Creek but work or shop in Kalamazoo in District 4; the communities along the southern border of Michigan, with all the unique cultural and economic interests of communities that border another state, in District 5; the white-collar workforce that resides in District 6; the "tri-county area" of Clinton, Eaton, and Ingham Counties in District 7; the Midland County community of interest in District 8; the rural, agricultural communities in the "thumb" of Michigan in District 9; the Chaldean and other cultural communities in District 10; the "core townships" of Oakland County in District 11; the blue-collar workforce in Livonia, Detroit, Dearborn, and Southfield in District

12; and the "Detroit-centered" communities in District 13.

Eid's declaration recites that public commenters identified every one of these communities of interest. The Commission's record supports Eid's declaration: the Commission has provided hundreds of public comments that identify these same communities of interest. To quantify matters, the plaintiffs dispute the Commission's determinations of communities of interest in eight of Michigan's thirteen congressional districts. For those eight districts, the Commission has produced 351 public comments that the Commission says support its determinations of communities of interests. Having reviewed all of them, we find that 298 of those comments are plainly supportive of the Commission's determinations. The plaintiffs, for their part, have provided citations for 59 comments that they say refute those determinations; having reviewed all of those comments, we find that only 31 of them do. Thus, the overwhelming weight of the record now before us supports the Commission's judgment that the Chestnut Plan's slight deviation from perfect equality of population among districts was "necessary to achieve" the Commission's goal of maintaining its identified communities of interest. *Karcher,* 462 U.S. at 731. The plaintiffs therefore have not shown that their remaining claim has a "likelihood of success on the merits." *Hunter,* 635 F.3d at 233.

B.

"Preliminary injunctions in constitutional cases often turn on likelihood of success on the merits, usually making it unnecessary to dwell on the remaining three factors." *Monclova Christian Acad. v. Toledo-Lucas Cnty. Health Dep't,* 984 F.3d 477, 482 (6th Cir. 2020) (cleaned up). We briefly address only

one of those factors here. By means of an amendment to the Michigan Constitution, the people of Michigan have exercised their power to prescribe for their state government—rather than having their state government prescribe for them—the manner in which the lines for congressional districts shall be drawn in this State. The public interest supports allowing the upcoming congressional election to proceed with the districting plan drawn in the manner that Michigan's Constitution now prescribes—which is the Chestnut Plan.

The plaintiffs' motion for a preliminary injunction is denied.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

No. 1:22-cv-54

MICHAEL BANERIAN, *et al.,*

Plaintiffs,

v.

JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS THE SECRETARY OF STATE OF MICHIGAN, *et al.,*

Defendants,

and

JOAN SWARTZ MCKAY, *et al.*

Intervenor-Defendants,

and

COUNT MI VOTE D/B/A VOTERS NOT POLITICIANS,

Intervenor-Defendants.

Three Judge Court

ORDER DENYING PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

In accordance with the unanimous Opinion of the Panel issued on this date,

IT IS HEREBY ORDERED that Plaintiffs' motion for a preliminary injunction (ECF No. 9) is DENIED.

IT IS SO ORDERED.

Date: April 1, 2022

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge
on Behalf of the Three Judge
Panel

APPENDIX J

IN THE
SUPREME COURT OF THE UNITED STATES

No. __-____

MICHAEL BANERIAN, MICHON BOMMARITO, PETER COLOVOS, WILLIAM GORDON, JOSEPH GRAVES, BEAU LAFAVE, SARAH PACIOREK, CAMERON PICKFORD, HARRY SAWICKI, MICHELLE SMITH,

Applicants,

v.

JOCELYN BENSON, IN HER OFFICIAL CAPACITY AS THE MICHIGAN SECRETARY OF STATE, *et al.*,

Respondents.

APPLICATION FOR EXTENSION OF TIME TO FILE A JURISDICTIONAL STATEMENT

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Counsel for Applicants

TO THE HONORABLE Brett M. Kavanaugh, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SIXTH CIRCUIT

Applicants,[1] Plaintiffs below, respectfully request that this Court grant an extension of time to file a jurisdictional statement, pursuant to Supreme Court Rules 18.3, 21, 22, and 30. Applicants request a thirty-day extension of time to and including Friday, July 28, 2022 in which to file a jurisdictional statement in a the appeal from the denial of Applicants' requested preliminary injunction seeking to enjoin Michigan's newly enacted congressional districts. *See Banerian v. Benson,* No. 22-cv-00054 (W.D. Mich. April 1, 2022) (three-judge court) (attached as Exhibit A). Counsel for the Applicants has conferred with counsel for all respondents. Counsel does not object to the Applicants' request for an extension.

Applicants challenge Michigan's enacted congressional districts. After the 2020 Census, Michigan was apportioned 13 congressional districts. *See* Ex. A at 7. The ideal population for each district is 775,179. Ex. A

[1] The Applicants are Michael Banerian, Michon Bommarito, Peter Colovos, William Gordon, Joseph Graves, Beau LaFave, Sarah Paciorek, Cameron Pickford, Harry Sawicki, and Michelle Smith.

at 3.[2] Applicants contend that the enacted congressional districts violate the constitutional requirement of achieving as nearly as is practicable population equality in each congressional district. *See Karcher u. Daggett,* 462 U.S. 725, 730 (1983). Michigan's congressional districts contained an overall population deviation of 0.14%, or 1,122 persons. Ex. A at 3. Of the congressional district plans adopted in the fifty states, Michigan's population deviation is the fourth largest.[3] Because Plaintiffs' challenged Michigan's congressional maps as violating the U.S. Constitution, a three-judge court was convened. *See* 28 U.S.C. § 2284(a).

On April 1, 2022, however, the three-judge court ruled that the deviation contained in Michigan's congressional districts was "necessary to achieve" Michigan's state goal of maintaining communities of interest. Ex. A at 9. Accordingly, the three-judge court denied Applicants' motion for preliminary injunction.

On April 29, 2022, Applicants timely filed their notice of appeal identifying that Applicants were appealing the three-judge court's denial of Applicants requested injunction. Fed. R. App. P. 4(a)(1)(A) (notice of appeal attached as Exhibit B). Because a three-judge district court issued the order denying Applicants'

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[2] *See also* U.S. Census Bureau, Table 1. Apportionment Population And Number Of Representatives By State: 2020 Census (April 26, 2021), *available at* https://www2.census.gov/programssurveys/decennial/2020/data/apportionment/apportionment-2020-table01.pdf (last visited June 10, 2022).

[3] Only Rhode Island (1,223 persons), West Virginia (1,582 persons), and Hawaii (2,481 persons) have higher population deviations. And each of these three states have only two congressional districts.

requested preliminary injunction, this Court has jurisdiction under 28 U.S.C. § 1253.

Pursuant to Supreme Court Rule 18.3, Applicants' jurisdictional statement is due sixty days from April 29, 2022. The current deadline is therefore Tuesday, June 28, 2022. For good cause, "a Justice may extend the time to file a jurisdictional statement for a period not exceeding 60 days." Sup. Ct. R. 18.3.

Accordingly, Applicants' respectfully request an extension of thirty days to file their jurisdictional statement. Granting the request would move the deadline to Thursday, July 28, 2022.

Good cause exists to grant the extension.

1. This case involves the right to vote and the weight of the persons vote. This Court has previously ruled that the right to vote is "a fundamental political right because [it is] preservative of all rights." *Reynolds v. Sims,* 377 U.S. 533, 562 (1964); *see also Wesberry v. Sanders,* 376 U.S. 1, 17 (1964) ("No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live."). The constitutional right to vote is violated when an individual's vote is diluted. *Wesberry,* 376 U.S. at 17. Because this case involves the fundamental right to vote, good cause exists to grant the requested extension to afford Applicants' counsel adequate time to address the constitutional rights at stake.

2. Additionally, due to other pressing litigation deadlines, an extension of time to file the jurisdictional statement is necessary. For example, among other cases, counsel to Applicants here also serves as counsel to Jeff Landry, the Attorney General for the State of Louisiana. On June 6, 2022, the district court

entered its opinion and order in *Robinson v. Ardoin,* No. 22-CV-211, 2022 U.S. Dist. LEXIS 100975 (M.D. La. June 6, 2022) (a congressional redistricting case). Defendants, including undersigned counsel, appealed and filed an emergency application for a stay of the district court's order, which was denied. *Robinson v. Ardoin,* No. 22-30333, slip op. (5th Cir. June 12, 2022). The U.S. Court of Appeals for the Fifth Circuit ordered expedited briefing and oral argument during the week of July 4, 2022. *See id.* at 2-3, 33. Undersigned counsel here is counsel in *Ardoin* and will need time to prepare briefs in that case and prepare for oral argument, and for the upcoming special legislative session and potential remedial proceedings before the district court.

3. Finally, on June 9, 2022, Applicants emailed counsel for Defendants and Defendant-Intervenors to seek their position on Applicants' requested relief. On the same day, Defendants and Defendant-Intervenors stated that they do not object to the relief requested in this Application.

CONCLUSION

Applicants respectfully request that this Court grant the requested extension and permit Applicants to file their jurisdictional statement on or before July 28, 2022.

Dated: June 14, 2022

Respectfully submitted,

/s/ Jason B. Torchinsky

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APPENDIX K

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

June 21, 2022

Scott S. Harris
Clerk of the Court
(202) 479-3011

FILED - GR
June 27, 2022 1:49 PM
CLERK OF COURT
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY:JMW SCANNED BY: JW/6-27

Clerk
United States District Court for the Western
District of Michigan
452 Federal Building
110 Michigan Street, N.W.
Grand Rapids, MI 49503

Re: Michael Banerian, et al. v. Jocelyn Benson, Michigan Secretary of State, et al. Application No. 21A831 (Your No. 1:22-cv-54)

Dear Clerk:

The application for an extension of time within which to docket an appeal in the above-entitled case has been presented to Justice Kavanaugh, who on June 21, 2022, extended the time to and including July 28, 2022.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk

by /s/ Sara Simmons
Sara Simmons
Case Analyst

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

NOTIFICATION LIST

Mr. Jason Brett Torchinsky
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Clerk
United States District Court for the Western District of Michigan
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APPENDIX L

CONSTITUTIONAL PROVISIONS ADDENDUM

U.S. Const. Art. I, § 2

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Mich. Const. Art. IV, § 6

(1) An independent citizens redistricting commission for state legislative and congressional districts (hereinafter, the "commission") is hereby established as a permanent commission in the legislative branch. The commission shall consist of 13 commissioners. The commission shall adopt a redistricting plan for each of the following types of districts: state senate districts, state house of representative districts, and congressional districts. Each commissioner shall:

(a) Be registered and eligible to vote in the state of Michigan;

(b) Not currently be or in the past 6 years have been any of the following:

(i) A declared candidate for partisan federal, state, or local office;

(ii) An elected official to partisan federal, state, or local office;

(iii) An officer or member of the governing body of a national, state, or local political party;

(iv) A paid consultant or employee of a federal, state, or local elected official or political candidate, of a federal, state, or local political candidate's campaign, or of a political action committee;

(v) An employee of the legislature;

(vi) Any person who is registered as a lobbyist agent with the Michigan Bureau of Elections, or any employee of such person; or

(vii) An unclassified state employee who is exempt from classification in state civil service pursuant to Article XI, Section 5, except for employees of courts of record, employees of the state institutions of higher education, and persons in the armed forces of the state;

(c) Not be a parent, stepparent, child, stepchild, or spouse of any individual disqualified under part (1)(b) of this section; or

(d) Not be otherwise disqualified for appointed or elected office by this constitution.

(e) For five years after the date of appointment, a commissioner is ineligible to hold a partisan elective office at the state, county, city, village, or township level in Michigan.

(2) Commissioners shall be selected through the following process:

(a) The secretary of state shall do all of the following:

(i) Make applications for commissioner available to the general public not later than January 1 of the year of the federal decennial census. The secretary of state shall circulate the applications in a manner that invites wide public participation from different regions of the state. The secretary of state shall also mail applications for commissioner to ten thousand Michigan registered voters, selected at random, by January 1 of the year of the federal decennial census.

(ii) Require applicants to provide a completed application.

(iii) Require applicants to attest under oath that they meet the qualifications set forth in this section; and either that they affiliate with one of the two political parties with the largest representation in the legislature (hereinafter, "major parties"), and if so, identify the party with which they affiliate, or that they do not affiliate with either of the major parties.

(b) Subject to part (2)(c) of this section, the secretary of state shall mail additional applications for commissioner to Michigan registered voters selected at random until 30 qualifying applicants that affiliate with one of the two major parties have submitted applications, 30 qualifying applicants that identify that they affiliate with the other of the two major parties have submitted applications, and 40 qualifying applicants that identify that they do not affiliate with either of the two major parties have submitted applications, each in response to the mailings.

(c) The secretary of state shall accept applications for commissioner until June 1 of the year of the federal decennial census.

(d) By July 1 of the year of the federal decennial census, from all of the applications submitted, the secretary of state shall:

(i) Eliminate incomplete applications and applications of applicants who do not meet the qualifications in parts (1)(a) through (1)(d) of this section based solely on the information contained in the applications;

(ii) Randomly select 60 applicants from each pool of affiliating applicants and 80 applicants from the pool of non-affiliating applicants. 50% of each pool shall be populated from the qualifying applicants to such pool who returned an application mailed pursuant to part 2(a) or 2(b) of this section, provided, that if fewer than

30 qualifying applicants affiliated with a major party or fewer than 40 qualifying non-affiliating applicants have applied to serve on the commission in response to the random mailing, the balance of the pool shall be populated from the balance of qualifying applicants to that pool. The random selection process used by the secretary of state to fill the selection pools shall use accepted statistical weighting methods to ensure that the pools, as closely as possible, mirror the geographic and demographic makeup of the state; and

(iii) Submit the randomly-selected applications to the majority leader and the minority leader of the senate, and the speaker of the house of representatives and the minority leader of the house of representatives.

(e) By August 1 of the year of the federal decennial census, the majority leader of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives may each strike five applicants from any pool or pools, up to a maximum of 20 total strikes by the four legislative leaders.

(f) By September 1 of the year of the federal decennial census, the secretary of state shall randomly draw the names of four commissioners from each of the two pools of remaining applicants affiliating with a major party, and five commissioners from the pool of remaining non-affiliating applicants.

(3) Except as provided below, commissioners shall hold office for the term set forth in part (18) of this section. If a commissioner's seat becomes vacant for any reason, the secretary of state shall fill the vacancy by randomly drawing a name from the remaining qualifying applicants in the selection pool from which the original commissioner was selected. A commissioner's

office shall become vacant upon the occurrence of any of the following:

(a) Death or mental incapacity of the commissioner;

(b) The secretary of state's receipt of the commissioner's written resignation;

(c) The commissioner's disqualification for election or appointment or employment pursuant to Article XI, Section 8;

(d) The commissioner ceases to be qualified to serve as a commissioner under part (1) of this section; or

(e) After written notice and an opportunity for the commissioner to respond, a vote of 10 of the commissioners finding substantial neglect of duty, gross misconduct in office, or inability to discharge the duties of office.

(4) The secretary of state shall be secretary of the commission without vote, and in that capacity shall furnish, under the direction of the commission, all technical services that the commission deems necessary. The commission shall elect its own chairperson. The commission has the sole power to make its own rules of procedure. The commission shall have procurement and contracting authority and may hire staff and consultants for the purposes of this section, including legal representation.

(5) Beginning no later than December 1 of the year preceding the federal decennial census, and continuing each year in which the commission operates, the legislature shall appropriate funds sufficient to compensate the commissioners and to enable the commission to carry out its functions, operations and activities, which activities include retaining independent, nonpartisan subject-matter experts and legal counsel,

conducting hearings, publishing notices and maintaining a record of the commission's proceedings, and any other activity necessary for the commission to conduct its business, at an amount equal to not less than 25 percent of the general fund/general purpose budget for the secretary of state for that fiscal year. Within six months after the conclusion of each fiscal year, the commission shall return to the state treasury all moneys unexpended for that fiscal year. The commission shall furnish reports of expenditures, at least annually, to the governor and the legislature and shall be subject to annual audit as provided by law. Each commissioner shall receive compensation at least equal to 25 percent of the governor's salary. The state of Michigan shall indemnify commissioners for costs incurred if the legislature does not appropriate sufficient funds to cover such costs.

(6) The commission shall have legal standing to prosecute an action regarding the adequacy of resources provided for the operation of the commission, and to defend any action regarding an adopted plan. The commission shall inform the legislature if the commission determines that funds or other resources provided for operation of the commission are not adequate. The legislature shall provide adequate funding to allow the commission to defend any action regarding an adopted plan.

(7) The secretary of state shall issue a call convening the commission by October 15 in the year of the federal decennial census. Not later than November 1 in the year immediately following the federal decennial census, the commission shall adopt a redistricting plan under this section for each of the following types of districts: state senate districts, state house of representative districts, and congressional districts.

(8) Before commissioners draft any plan, the commission shall hold at least ten public hearings throughout the state for the purpose of informing the public about the redistricting process and the purpose and responsibilities of the commission and soliciting information from the public about potential plans. The commission shall receive for consideration written submissions of proposed redistricting plans and any supporting materials, including underlying data, from any member of the public. These written submissions are public records.

(9) After developing at least one proposed redistricting plan for each type of district, the commission shall publish the proposed redistricting plans and any data and supporting materials used to develop the plans. Each commissioner may only propose one redistricting plan for each type of district. The commission shall hold at least five public hearings throughout the state for the purpose of soliciting comment from the public about the proposed plans. Each of the proposed plans shall include such census data as is necessary to accurately describe the plan and verify the population of each district, and a map and legal description that include the political subdivisions, such as counties, cities, and townships; man-made features, such as streets, roads, highways, and railroads; and natural features, such as waterways, which form the boundaries of the districts.

(10) Each commissioner shall perform his or her duties in a manner that is impartial and reinforces public confidence in the integrity of the redistricting process. The commission shall conduct all of its business at open meetings. Nine commissioners, including at least one commissioner from each selection pool shall constitute a quorum, and all meetings shall

require a quorum. The commission shall provide advance public notice of its meetings and hearings. The commission shall conduct its hearings in a manner that invites wide public participation throughout the state. The commission shall use technology to provide contemporaneous public observation and meaningful public participation in the redistricting process during all meetings and hearings.

(11) The commission, its members, staff, attorneys, and consultants shall not discuss redistricting matters with members of the public outside of an open meeting of the commission, except that a commissioner may communicate about redistricting matters with members of the public to gain information relevant to the performance of his or her duties if such communication occurs (a) in writing or (b) at a previously publicly noticed forum or town hall open to the general public.

The commission, its members, staff, attorneys, experts, and consultants may not directly or indirectly solicit or accept any gift or loan of money, goods, services, or other thing of value greater than $20 for the benefit of any person or organization, which may influence the manner in which the commissioner, staff, attorney, expert, or consultant performs his or her duties.

(12) Except as provided in part (14) of this section, a final decision of the commission requires the concurrence of a majority of the commissioners. A decision on the dismissal or retention of paid staff or consultants requires the vote of at least one commissioner affiliating with each of the major parties and one non-affiliating commissioner. All decisions of the commission shall be recorded, and the record of its decisions shall be readily available to any member of the public without charge.

(13) The commission shall abide by the following criteria in proposing and adopting each plan, in order of priority:

(a) Districts shall be of equal population as mandated by the United States Constitution, and shall comply with the voting rights act and other federal laws.

(b) Districts shall be geographically contiguous. Island areas are considered to be contiguous by land to the county of which they are a part.

(c) Districts shall reflect the state's diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates.

(d) Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political party shall be determined using accepted measures of partisan fairness.

(e) Districts shall not favor or disfavor an incumbent elected official or a candidate.

(f) Districts shall reflect consideration of county, city, and township boundaries.

(g) Districts shall be reasonably compact.

(14) The commission shall follow the following procedure in adopting a plan:

(a) Before voting to adopt a plan, the commission shall ensure that the plan is tested, using appropriate technology, for compliance with the criteria described above.

(b) Before voting to adopt a plan, the commission shall provide public notice of each plan that will be voted on and provide at least 45 days for public comment on the proposed plan or plans. Each plan that will be voted on shall include such census data as is necessary to accurately describe the plan and verify the population of each district, and shall include the map and legal description required in part (9) of this section.

(c) A final decision of the commission to adopt a redistricting plan requires a majority vote of the commission, including at least two commissioners who affiliate with each major party, and at least two commissioners who do not affiliate with either major party. If no plan satisfies this requirement for a type of district, the commission shall use the following procedure to adopt a plan for that type of district:

(i) Each commissioner may submit one proposed plan for each type of district to the full commission for consideration.

(ii) Each commissioner shall rank the plans submitted according to preference. Each plan shall be assigned a point value inverse to its ranking among the number of choices, giving the lowest ranked plan one point and the highest ranked plan a point value equal to the number of plans submitted.

(iii) The commission shall adopt the plan receiving the highest total points, that is also ranked among the top half of plans by at least two commissioners not affiliated with the party of the commissioner submitting the plan, or in the case of a plan submitted by non-affiliated commissioners, is ranked among the top half of plans by at least two commissioners affiliated with a major party. If plans are tied for the highest point total, the secretary of state shall randomly select the

final plan from those plans. If no plan meets the requirements of this subparagraph, the secretary of state shall randomly select the final plan from among all submitted plans pursuant to part (14)(c)(*i*).

(15) Within 30 days after adopting a plan, the commission shall publish the plan and the material reports, reference materials, and data used in drawing it, including any programming information used to produce and test the plan. The published materials shall be such that an independent person is able to replicate the conclusion without any modification of any of the published materials.

(16) For each adopted plan, the commission shall issue a report that explains the basis on which the commission made its decisions in achieving compliance with plan requirements and shall include the map and legal description required in part (9) of this section. A commissioner who votes against a redistricting plan may submit a dissenting report which shall be issued with the commission's report.

(17) An adopted redistricting plan shall become law 60 days after its publication. The secretary of state shall keep a public record of all proceedings of the commission and shall publish and distribute each plan and required documentation.

(18) The terms of the commissioners shall expire once the commission has completed its obligations for a census cycle but not before any judicial review of the redistricting plan is complete.

(19) The supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their respective duties, may review a challenge to any plan adopted by the commission, and shall remand a plan to the commission for

further action if the plan fails to comply with the requirements of this constitution, the constitution of the united states or superseding federal law. In no event shall any body, except the independent citizens redistricting commission acting pursuant to this section, promulgate and adopt a redistricting plan or plans for this state.

(20) This section is self-executing. If a final court decision holds any part or parts of this section to be in conflict with the united states constitution or federal law, the section shall be implemented to the maximum extent that the united states constitution and federal law permit. Any provision held invalid is severable from the remaining portions of this section.

(21) Notwithstanding any other provision of law, no employer shall discharge, threaten to discharge, intimidate, coerce, or retaliate against any employee because of the employee's membership on the commission or attendance or scheduled attendance at any meeting of the commission.

(22) Notwithstanding any other provision of this constitution, or any prior judicial decision, as of the effective date of the constitutional amendment adding this provision, which amends Article IV, Sections 1 through 6, Article V, Sections 1, 2 and 4, and Article VI, Sections 1 and 4, including this provision, for purposes of interpreting this constitutional amendment the people declare that the powers granted to the commission are legislative functions not subject to the control or approval of the legislature, and are exclusively reserved to the commission. The commission, and all of its responsibilities, operations, functions, contractors, consultants and employees are not subject to change, transfer, reorganization, or reassignment, and shall not be altered or abrogated in any manner

whatsoever, by the legislature. No other body shall be established by law to perform functions that are the same or similar to those granted to the commission in this section.