UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL BANERIAN, *et al*., Plaintiffs, v. JOCELYN BENSON, in her official capacity as the Secretary of State of Michigan, *et al.*, Defendants.	**Case No. 1:22-CV-00054-PLM-SJB** **Three-Judge Panel Requested** **28 U.S.C. § 2284(a)** **ORAL ARGUMENT REQUESTED**

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Fed. R. Civ. P. 65(a), Plaintiffs move this Court for entry of a preliminary injunction prohibiting Defendants from holding any elections using the Michigan congressional districts recently adopted by the Michigan Independent Citizens Redistricting Commission.

The basis for Plaintiffs' requested relief is set forth in the appended Brief in Support and in Plaintiffs' First Amended Complaint.

Dated: January 27, 2022

Respectfully submitted,

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MICHAEL BANERIAN, *et al*.,

Plaintiffs,

v.

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PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION FOR PRELIMINARY INJUNCTION

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BACKGROUND

After an attempt by certain advocates claiming to seek to reduce the influence of politics on redistricting, the State of Michigan approved a 2018 constitutional amendment that established the Michigan Independent Citizens Redistricting Commission (the "Commission"). Intended to be a politician-free, citizen-comprised entity, the Commission, per Article IV, Section 6 of the Michigan Constitution, has exclusive authority to adopt boundaries for both State and congressional voting districts after each decennial census. *See* Mich. Const. art. IV, § 6(1). The first iteration of the Commission, which includes thirteen Commissioners, convened in September 2020.

The Commissioners, however, do not have *carte blanche* to do as they please. Article I, Section 2 of the U.S. Constitution requires that "[r]epresentatives be chosen 'by the People of the several States'" in a way ensuring 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). The Equal Protection Clause of the Fourteenth Amendment, moreover, mandates that districts shall be drawn using consistent and neutral criteria, and, accordingly, it prohibits arbitrarily and inconsistently drawn voting-district boundaries. *See Karcher v. Daggett*, 462 U.S. 725, 740 (1983) (requiring that legislatures apply traditional redistricting criteria in a consistent and neutral manner).[1]

When Michiganders amended their Constitution in 2018, they added Article IV, Section 6(13). This provision enumerates the traditional redistricting criteria recognized by the U.S. Supreme Court. *See id.* Specifically, Article IV, Section 6(13) provides that the Commissioners "shall abide by the following criteria in proposing and adopting each plan, in order of priority":

[1] *See also Roman v. Sincock*, 377 U.S. 695, 710 (1964) (recognizing certain factors "that are free from any taint of arbitrariness or discrimination").

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.

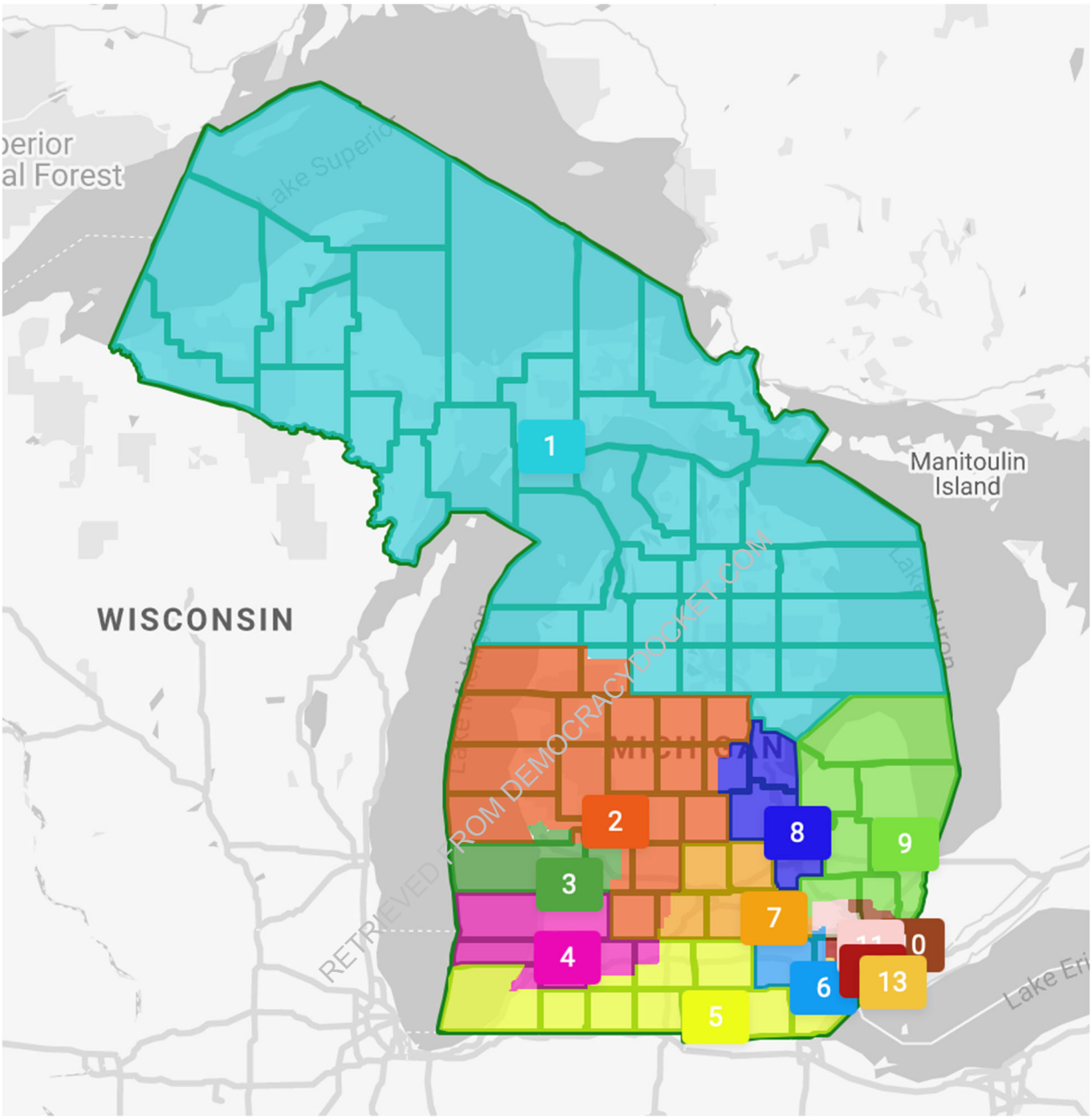
E. Districts shall not favor or disfavor an incumbent elected official or a candidate.

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

G. Districts shall be reasonably compact.

Mich. Const. art. IV, § 6(13).

During the Commissioners' tenure, five proposed congressional maps emerged as finalists. Three were named after trees ("Apple," "Birch," and "Chestnut") and two after Commissioners ("Lange" and "Szetela"). On December 28, 2021, the Commissioners adopted the "Chestnut" plan:



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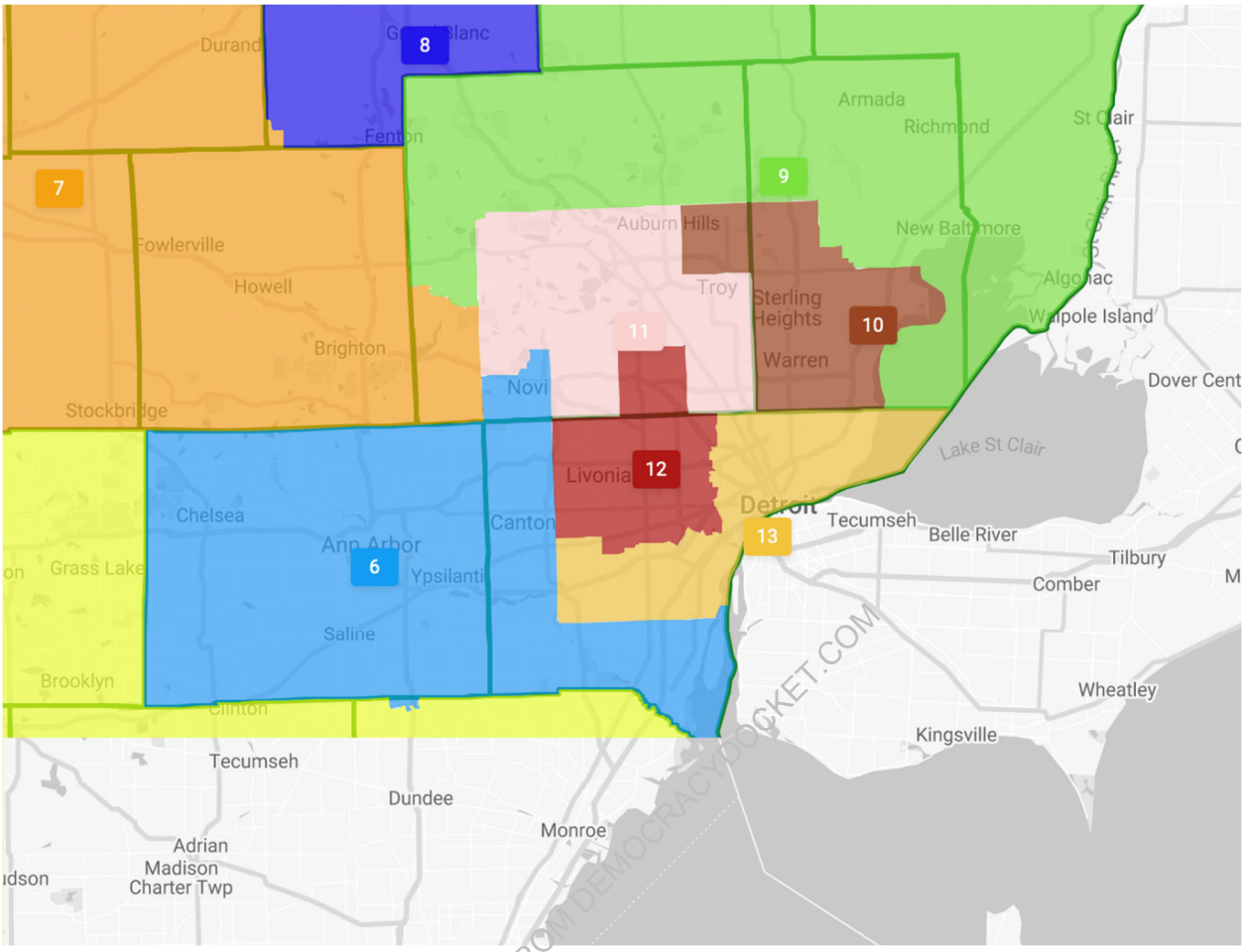


Available at https://michigan.mydistricting.com/legdistricting/comments/plan/279/23 (last visited Jan. 12, 2022)).

According to the 2020 Census, Michigan's population is 10,077,331 persons. If this population were spread equally among each of Michigan's thirteen congressional districts, each district would have 775,179 persons. Every district created by Chestnut, however, deviates from this mean:

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).

In other words, the Chestnut map's largest district (District Thirteen) exceeds the mean by 487, while its smallest (District Five) is short by 635. The difference between the largest and smallest districts is 1,122. Of the thirteen districts, only one (District Ten) is within fifty persons of the mean. In an underpopulated district, the vote of a citizen is "overweighted" mathematically. In an overpopulated district, the vote of a citizen is "underweighted." For congressional districts, the U.S. Supreme Court has held that districts must be "apportioned to achieve population equality as nearly as is practicable" to prevent either over or under weighting any person's vote. *Karcher*, 462 U.S. at 730 (citation and quotation marks omitted).

The Commissioners compounded this population divergence by adopting districts that transgress roughly 20 percent of the State's county lines. Of Michigan's eighty-three counties, fifteen of them fall into at least two separate congressional districts:

COUNTY	CONGRESSIONAL DISTRICTS
Berrien County	Fourth & Fifth
Calhoun County	Fourth & Fifth
Eaton County	Second & Seventh
Genesee County	Seventh & Eighth
Kalamazoo County	Fourth & Fifth
Kent County	Second & Third
Macomb County	Ninth & Tenth
Midland County	Second & Eighth
Monroe County	Fifth & Sixth
Muskegon County	Second & Third
Oakland County	Sixth, Seventh, Ninth, Tenth, Eleventh, & Twelfth
Ottawa County	Second, Third, & Fourth
Tuscola County	Eighth & Ninth
Wayne County	Sixth, Twelfth, & Thirteenth
Wexford County	First & Second

Bryan Decl. Appendix A, ¶ 25.

In an illustrative but shocking example, the Chestnut map would have Oakland County residents casting their respective ballots to fill one of *six* separate congressional seats. Bryan Decl. ¶ 21; Appendix A, ¶ 1. Communities of interest—*e.g.*, shared characteristics of the parents

of the 210,000 students in the Oakland County School District—are not reflected through separation and dilution into six separate congressional districts.

The Chestnut Map also splits the following Michigan minor civil divisions[2]:

MINOR CIVIL DIVISION	CONGRESSIONAL DISTRICT
Algoma Township	Second & Third
Arbela Township	Eighth & Ninth
Argentine Township	Seventh & Eighth
Dearborn Heights City	Twelfth & Thirteenth
Detroit City	Twelfth & Thirteenth
Georgetown Charter Township	Third & Fourth
Kalamo Township	Second & Seventh
Laketon Township	Second & Third
Lincoln Charter Township	Fourth & Fifth
Macomb Township	Ninth & Tenth
Milan Township	Fifth & Sixth
Milford Charter Township	Seventh & Ninth
Muskegon Charter Township	Second & Third
North Muskegon City	Second & Third
Novi City	Sixth & Eleventh
Royalton Township	Fourth & Fifth

[2] Minor civil divisions are subdivisions of Michigan's eighty-three counties. *See* Michigan, Basic Information, U.S. Census Bureau, https://www.census.gov/geographies/reference-files/2010/geo/*state-local-geo-guides-2010/michigan.html*.

Wexford Township	First & Second
White Lake Charter Township	Ninth & Eleventh

See Bryan Decl. Appendix A, ¶ 26.

Finally, the Chestnut Map splits the following places:

PLACES	CONGRESSIONAL DISTRICT
Dearborn Heights City	Twelfth & Thirteenth
Detroit City	Twelfth & Thirteenth
Fenton City	Seventh, Eighth, & Ninth
Flatrock City	Fifth & Sixth
Hubbardston Village	Second & Seventh
Lennon Village	Seventh & Eighth
Milford Village	Seventh & Ninth
North Muskegon City	Second & Third
Novi City	Sixth & Eleventh
Otter Lake Village	Eighth & Ninth
Reese Village	Eighth & Ninth
Village of Grosse Pointe Shores City	Tenth & Thirteenth

Bryan Decl. Appendix A.

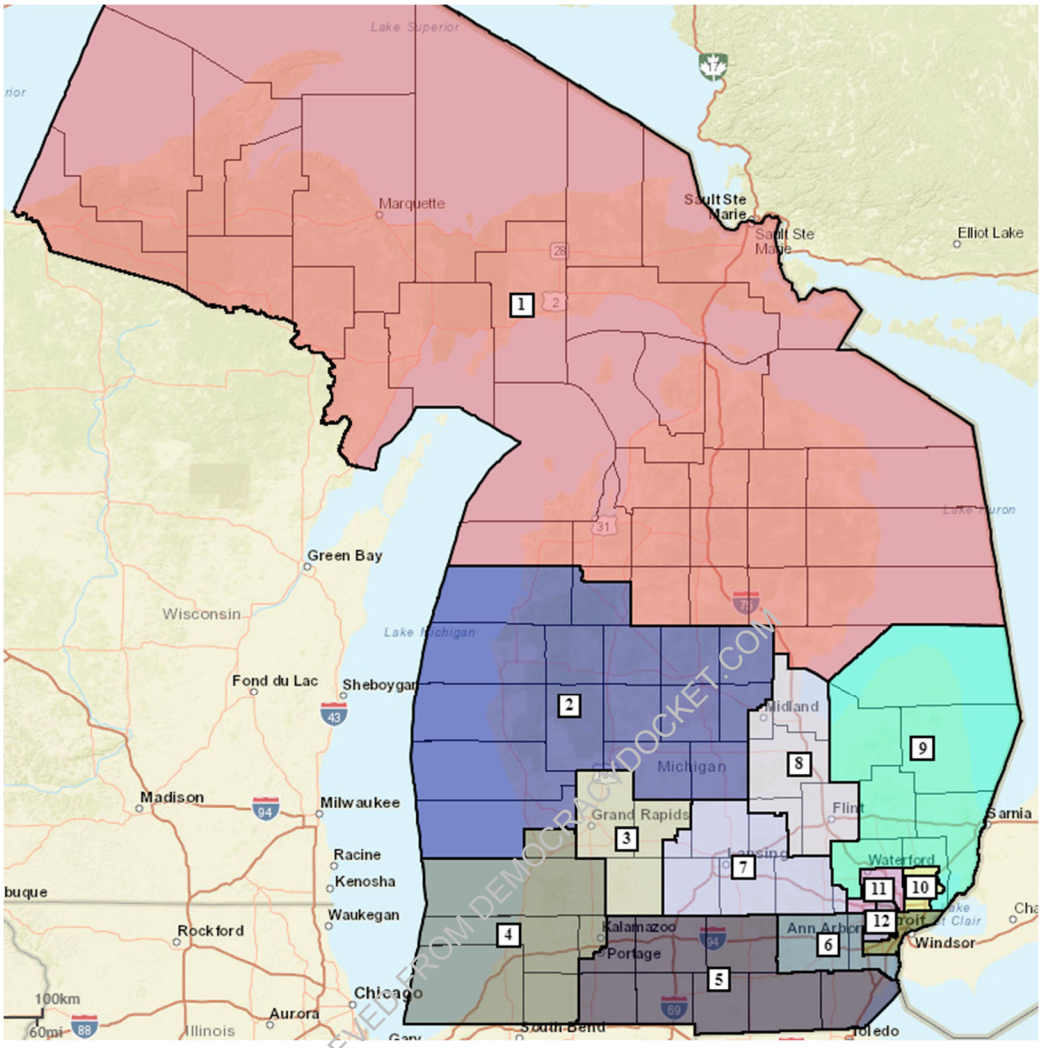
Congressional district "compactness," another Michigan Constitutional requirement, was also overlooked by the Commissioners. Compactness can be assessed using several different

metrices, including the Polsby-Popper Measure[3] and the Reock Measure.[4] *Id.* ¶¶ 22–23. For both measures, numbers closer to 1 are more compact (and thus more favorable), while numbers closer to 0 are less compact (and thus less favorable). *Id.* ¶ 23. As reported by the Commissioners, the average compactness of the Chestnut Map 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. *Id.* ¶ 24. It also bears noting that, since 1963, no single Michigan congressional district outside the Upper Peninsula touched both the Eastern and Western borders of the State. The Commissioners' map bucks this trend by adopting District Five, which in addition to splitting four of the ten counties it covers, touches *three* (Western, Southern, and Eastern) State borders.

None of these problems were inevitable, nor were the Commissioners' hands tied by trying to satisfy countervailing requirements; the fixes are manifest and straightforward. The districts could, for example, be drawn as follows:

[3] The Polsby-Popper Measure has its roots in a 1991 law review article authored by Professors Daniel D. Polsby and Robert Popper that offered voting-district compactness as a way to reduce partisan gerrymandering. *See* Polsby & Popper, *The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering*, 9 YALE L. & POL'Y REV. 301 (1991).

[4] The Reock Measure "is a ratio of an area for a circle drawn around [a] district." *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 1047 (S.D. Ohio 2019) (three-judge court), *vacated on other grounds sub. nom.*, *Householder v. Ohio A. Philip Randolph Inst.*, 140 S. Ct. 101 (2019).



See also Exh. A.

This map, offered by Plaintiffs as a remedy, reduces the difference in population among Michigan's thirteen congressional districts to *one* (Nine districts have a population of 775,179 persons and four districts have a population of 775,180). *Id.* ¶ 16, Table 2.

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

Bryan Decl. ¶ 16, Table 2.

This proposal reduces the number of split counties from fifteen to ten (and also ensures that no Michigan county finds itself as part of more than four congressional districts). *Id.* ¶ 21. It also reduces the number of split minor civil divisions from fourteen to ten. *Id.*. And it substantially improves the districts' respective compactness scores, *id.* ¶ 24, Appendix C;[5] the average Polsby-Popper Measure for the remedy map is .46 (up from .41), the average Reock measure .45 (up from .42), and the least compact districts improve to .3 (up from .27) and .21 (up from .19), respectively:

[5] 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.

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**

Bryan Decl. Appendix C.

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**

Bryan Decl. Appendix D.

ARGUMENT

"Four factors determine when a court should grant a preliminary injunction: (1) whether the party moving for the injunction is facing immediate, irreparable harm, (2) the likelihood that the movant will succeed on the merits, (3) the balance of the equities, and (4) the public interest." *D.T. v. Sumner Cty. Sch.*, 942 F.3d 324, 326 (6th Cir. 2019) (citation omitted). Where, as here, "a party seeks a preliminary injunction on the basis of a potential constitutional violation, 'the likelihood of success on the merits often will be the determinative factor.'" *Obama for Am. v.*

Husted, 697 F.3d 423, 436 (6th Cir. 2012) (quoting *Jones v. Caruso*, 569 F.3d 258, 265 (6th Cir. 2009)). As discussed below, because (1) conducting the rapidly approaching 2022 Congressional Midterm Elections using malapportioned voting districts will plainly inflict irreparable injury on Plaintiffs, (2) the Commissioners' congressional map plainly and needlessly contravenes the U.S. Constitution (both Article I, Section 2, and the Fourteenth Amendment's Equal Protection Clause), and (3) both the balance of equities and the public interest plainly favor correcting these problems before the 2022 Midterm Elections, entry of a preliminary injunction is warranted.

I. CONDUCTING THE 2022 MIDTERM CONGRESSIONAL ELECTIONS PREMISED ON MALAPPORTIONED CONGRESSIONAL DISTRICTS WILL INFLICT IMMEDIATE AND IRREPARABLE HARM.

Should the Court decline to enjoin use of the Commissioners' congressional map, Plaintiffs will, when the 2022 Midterm Elections commence on November 8, 2022, suffer an injury that is not "compensable" at all "by monetary damages," and is therefore irreparable. *See Obama for Am.*, 697 F.3d at 436 (6th Cir. 2012) (quoting *Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 550 (6th Cir. 2007)). Denying Plaintiffs their "inalienable right to full and effective participation in the political processes" is the architype of a wrong that cannot be made right once inflicted. *Reynolds v. Sims*, 377 U.S. 533, 565 (1964). Forcing Plaintiffs—indeed, forcing Michigan's electorate as a whole—to elect their U.S. congressional representatives via maps that were drawn in contravention of the Nation's charter gashes the effectiveness and fairness of their political participation.

The U.S. Supreme Court has underscored the vital importance of safeguarding full and effective political participation. Indeed, "[n]o 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," and "[o]ther rights, even the most basic, are illusory if the right to vote is

undermined." *Id*. at 560 (quoting *Wesberry*, 376 U.S. at 17–18).[6] When *any* "constitutional rights are threatened or impaired, irreparable injury is presumed." *Obama for Am.*, 697 F.3d at 436 (6th Cir. 2012) (citing *ACLU of Ky. V. McCreary Cty., Ky.*, 354 F.3d 438, 445 (6th Cir. 2003)). Indeed, "the Supreme Court held that when reviewing a motion for a preliminary injunction, if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated." *Bonnell v. Lorenzo*, 241 F.3d 800, 809 (6th Cir. 2001) (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). It follows, then, that "[a] restriction on the fundamental right to vote," the *primordial* fundamental right, must "constitute[] irreparable injury." *Obama for Am.*, 697 F.3d at 436 (citing *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986)).

The ability of Michiganders to participate fully, effectively, and on equal terms in the election of their constitutional representatives is on the line in this case. Once the November 2022 Midterm Elections arrive, the injury exacted by the Commissioners' unconstitutional congressional maps will petrify into a permanent, irreparable harm that money damages cannot fix. For these reasons, Plaintiffs satisfy this first prong.

II. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF BOTH THEIR CLAIMS.

A. The Commissioners' congressional map plainly violates the "one-person, one-vote" principle enshrined in Article I, Section 2 of the U.S. Constitution.

The first and most salient defect in the Commissioners' map is that it does not abide by the "high standard of justice and common sense" enshrined in Article I, Section 2, of the U.S. Constitution, which commands "equal representation for equal numbers of people." *Wesberry*,

[6] *See also Reynolds*, 377 U.S. at 561–62 ("Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized. Almost a century ago, in *Yick Wo v. Hopkins*, 118 U.S. 356, the Court referred to 'the political franchise of voting' as 'a fundamental political right, because [it is] preservative of all rights.' 118 U.S.[] at 370.").

376 U.S. at 18. Commonly known as the "one person, one vote" principle, it requires congressional districts to be "apportioned to achieve population equality as nearly as is practicable." *Karcher*, 462 U.S. at 730 (citation and quotation marks omitted). The "'as nearly as practicable' standard requires that the State make a good-faith effort to achieve *precise* mathematical equality." *Id.* (emphasis added) (citation and quotations marks omitted). Even slight deviations, if not justified, fail this standard. *See, e.g.*, *id.* at 727 (striking as unconstitutional a congressional redistricting map where the population of largest district was less than one percent greater than the population of smallest district); *see also id.* at 732 ("As between two standards—equality or something less than equality—only the former reflects the aspirations of Art. I, § 2."); *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 nineteen persons and Pennsylvania could not justify the deviation).[7]

To assess Plaintiffs' one-person, one-vote challenge, the Court must answer "two basic questions." *Karcher*, 462 U.S. at 730. "First, the court must consider whether the population differences among districts could have been reduced or eliminated altogether by a good-faith

[7] While the Commission had some leeway when drafting State legislative voting districts, the Supreme Court has consistently demanded "that absolute population equality be the paramount objective of apportionment . . . in the case of congressional districts, for which the command of [Article I, Section 2], as regards the National Legislature outweighs the local interests that a State may deem relevant in apportioning districts for representatives to state and local legislatures." *Karcher*, 462 U.S. at 732–33 (citing *White v. Weiser*, 412 U.S. 783, 793 (1973)); *White v. Regester*, 412 U.S. 755, 763 (1973); *Mahan v. Howell*, 410 U.S. 315, 321–23 (1973); *Washington v. Dawson & Co.*, 264 U.S. 219, 237 (1924) (Brandeis, J., dissenting); B. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 150 (1921)). The equal population requirement for congressional districts comes from Article I, Section 2, while the population equality rules for other representative bodies comes from the Equal Protection Clause of the Fourteenth Amendment. *See Gaffney v. Cummings*, 412 U.S. 735, 741–42 (1973) (discussing *Reynolds*, 377 U.S. at 533).

effort to draw districts of equal population"; for this prong, Plaintiffs bear the burden. *Id*. at 730–31. "If . . . the plaintiffs can establish that the population differences were not the result of a good-faith effort to achieve equality," then the burden shifts to the State to "prov[e] that each significant variance between districts was necessary to achieve some legitimate goal." *Id.* at 731 (citation omitted).

1. *The Plaintiffs' remedy map demonstrates conclusively that the population differences among the districts adopted by the Commissioners can—and must—be eliminated.*

The alpha and omega of this prong is attached as Exhibit A. The Supreme Court has held that if a plaintiff can show that "resort to the simple device of transferring entire political subdivisions of known population between contiguous districts would have produced districts much closer to numerical equality," it has carried its burden. *Karcher*, 462 U.S. at 739 (citation and quotation marks omitted); *see also Swann v. Adams*, 385 U.S. 440, 445–46 (1967). Plaintiffs' remedy map does precisely that: the congressional districts it creates differ from one another by no more than *one* person. For this reason, the burden shifts to Defendants to justify the population deviations.

2. *The Defendants cannot show that the population differences among the districts adopted by the Commissioners are necessary to serve a legitimate State interest.*

Although some "consistently applied legislative policies might justify some variance," *Karcher*, 462 U.S. at 740, Defendants must—but here cannot—show "with some specificity that a particular objective *required* the specific deviations in its plan." *Id.* at 741 (emphasis added). The only priorities the Commissioners were to consider are those enumerated by the Michigan Constitution, and the Michigan Constitution establishes the order of priority that the Commissioners were to apply. *See* Mich. Const. art. IV, § 6(13). The first (*i.e.*, highest) priority the Commissioners were tasked with effectuating is:

> 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.

Id. art. IV, § 6(13)(a). By State Constitutional decree, then, the Commissioners were *not* justified in elevating any consideration above achieving "*precise* mathematical equality." *Karcher*, 462 U.S. at 767 (emphasis added). This fact alone resolves Plaintiffs' one-person, one-vote challenge in their favor.

Indeed, the Michigan Constitution's express requirement that equal-population distribution receives highest priority distinguishes this case from the handful of cases in which courts have allowed population deviations to survive constitutional scrutiny. In *Tennant v. Jefferson County Commission*, for instance, the U.S. Supreme Court allowed West Virginia to adopt a map with a 0.79 percent population variance among its three congressional districts, but only because the State could not achieve absolute population equity while also "avoiding contests between incumbents," "not splitting political subdivisions," and "limiting the shift of population between old and new districts." 567 U.S. 758, 764 (2012). In so holding, the Court eschewed any suggestion that "anytime a State must choose between serving an additional legitimate objective and achieving a lower variance, it may choose the former." *Id.* at 765. And where, as here, (1) population equality is enumerated in the State Constitution as the factor that must be given first precedence, *see* MICH. CONST. art. IV, § 6(13)(a), and (2) Plaintiffs' remedy map animates other legitimate State interests better than the Commissioners' map, *see infra* at 20–35, while simultaneously equalizing the population among all thirteen congressional districts, *see supra* at 15–18, cases like *Tennant* are wholly inapposite.

In any event, the remedy map not only achieves "absolute population equality," *Karcher*, 462 U.S. at 732–33 (citations omitted); it also represents an improvement over the Commissioners' map on most of the other considerations enumerated in the Michigan

constitution (and performs at least as well on all the others). *See* Bryan Decl. ¶¶ 15–16, 20–21, 24; Appendix A–D. As noted above, the remedy map splits fewer counties and minor civil divisions, and for the ones it does split, it splits them among fewer districts (MICH. CONST. art. IV, § 6(13)(f); *see also* Bryan Decl. ¶¶ 20–21; Appendix A–B. By so doing, it also respects a higher proportion of Michigan's communities of interest (as that phrase has been historically understood)[8] (*id*. art. IV, § 6(13)(c. And, moreover, it increases the compactness of the congressional districts (*id*. art. IV, § 6(13)(g); *see also* Bryan Decl. ¶ 24, while maintaining contiguity (*id.* art. IV, § 6(13)(b); *see also* Bryan Decl. ¶ 17, and avoiding any preference for a political party or incumbent (*id.* a*rt*. IV, §§ 6(13)(d)–(e).

* * *

The Commissioners' map violates the one-person, one-vote standard enshrined in Article I, Section 2 of the U.S. Constitution. "[T]here are no *de minimis* population variations, which could practicably be avoided, but which nonetheless meet the standard of Art. I, § 2, without justification." *Karcher*, 462 U.S. at 734. The deviations among the districts are not necessary; Plaintiffs' remedy map makes this point unassailable. Bryan Decl. ¶ 15. Nor can they be justified; the remedy map performs more favorably (or at least as favorably) as the Commissioners' map with regard to respect for county, city, and township boundaries (as reflected in Article IV, Section 6(13) of the Michigan Constitution). Bryan Decl. ¶ 20; Appendix A–B. Entry of a preliminary injunction is thus plainly warranted.

[8] *See* Exhibit B (Memorandum to Michigan Independent Commission from Stephen Markman, Michigan Supreme Court Justice (retired)); *see also* discussion *infra* at 23–30.

B. The Commissioners violated the Fourteenth Amendment's Equal Protection Clause by adopting a map with arbitrarily drawn voting-district borders.

The Commissioners' constitutional errors do not end with their one-person, one-vote transgression. Rather, they similarly failed to abide by the rudiments of the Fourteenth Amendment's Equal Protection Clause. Distilled to its core, the Fourteenth Amendment requires that the entity creating voting districts do so in a way that is not arbitrary, inconsistent, or non-neutral. *See Bush v. Gore*, 531 U.S. 98, 104–05 (2000) ("The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another."). Historically, federal courts have looked to whether voting districts were drawn in a way that consistently and neutrally applied traditional redistricting criteria. *See Karcher*, 462 U.S. at 740. For example, courts have recognized that, among other considerations, maximizing compactness, respecting communities of interest, and ensuring that districts are contiguous all serve to limit various forms of gerrymandering and vote dilution.[9]

Michigan's constitutional requirements of keeping counties and townships whole, as well as maintaining communities of interest, serve to limit the Commissioners' authority to group voters in various districts. This limitation serves the dual function that congressional officials represent voters and that they capably represent the interests of the communities within which

[9] *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); *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 be subordinated to race.").

voters live. *See Vera*, 517 U.S. at 1049 (1996) (Souter, J., dissenting); *see also id.* at 964 (citing with approval Justice Souter's recognition that communities of interest play an important role in our system of representative democracy). Voting is both an expression of an individual's preference in a congressional representative, and it is an associational act in choosing a congressional representative to represent fellow voters in a community. *See id*. at 1049 (Souter, J., dissenting).[10]

Thus, when the Commissioners arbitrarily and inconsistently applied its State Constitutional requirements of keeping counties and townships whole and maintaining communities of interest, it violated the Equal Protection Clause. The Commissioners arbitrarily assigned voters to various locations without concern for Plaintiffs' rights to associate with their fellow citizens in their communities to advance the interests of their counties, townships, and communities. The associational harm diminishes the effectiveness of Plaintiffs' representation. Representing communities with vastly different interests limits the Representatives ability to effectively represent counties, townships, and communities. *See Fletcher v. Lamone*, 831 F. Supp. 2d 887, 899 (D. Md. 2011) (three-judge court) (rejecting that the suburbs of Baltimore and the suburbs of Washington, D.C. formed a community of interest because the two areas formed different media markets and had vastly different economies), *sum. aff.*, 567 U.S. 930 (2012).[11]

[10] *See also Ill. State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979) (recognizing that ballot access restrictions burden both the voters' associational rights—there the ability of a voter to associate with the party of one's choice for the advancement of commonly held political beliefs—and the right of the voter to cast an effective vote); *Kusper v. Pontikes*, 414 U.S. 51, 56–57 (1973) ("There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments . . . . [U]nduly restrictive state election laws may so impinge upon freedom of association as to run afoul of the First and Fourteenth Amendments." (citation omitted)).

[11] *See also Fletcher*, 831 F. Supp. 2d at 903 (although rejecting a racial gerrymandering claim, the court lamented that one congressional district divided communities of interest such

Arbitrarily applying state constitutional criteria harms the fundamental First Amendment rights of voters to associate and advance the interests of their communities. The Commissioners therefore violated the Equal Protection Clause.

Larios v. Cox is instructive. In that case, a Northern District of Georgia three-judge panel examined whether the Georgia legislature applied traditional redistricting criteria in a way that ran afoul of the Fourteenth Amendment. *See* 300 F. Supp. 2d 1320, 1346–47 (N.D. Ga. 2004) (three-judge court). 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. The number of county splits, moreover, exceeded Georgia's previous legislative map. *Id*. at 1349–50. And regarding the preservation of the prior district's 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 the arbitrary and discriminatory objective," *Larios* Court concluded that the map violated the Equal Protection Clause of the Fourteenth Amendment. *Id*. at 1352. (emphasis omitted).

The arbitrariness and inconsistency that doomed the map at issue in *Larios* pales in comparison to the arbitrariness and inconsistency tainting the Commissioner's congressional map. In addition to the federal courts, the Michigan Constitution now mandates adherence to

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that a farmer in rural Oakland shared a congressman with a federal contractor who lived in the wealthy suburb of Potomac); *id*. at 906 (Titus, J., concurring) (noting that the representational interests of voters in one congressional district are harmed because the congressman must represent the interests of those who love bear hunting and work in mines as well as the interests of those voters who live in suburban Washington who abhor the idea of hunting bears and do not know what a coal mine looks like).

most of the commonly recognized traditional redistricting criteria. *See* Mich. Const. art. IV, § 6. In adopting their congressional map, however, the Commissioners (1) ignored four of the seven criteria listed in the Michigan Constitution, Bryan Decl. Appendix A–D; (2) to the extent they applied any criteria, they did so out of the order of priority mandated by the Michigan Constitution,); and (3) by splitting so many counties and minor civil divisions, the Commissioners appear to have used a wholly novel and arbitrary definition of the phrase "communities of interest," In other words, the map they adopted includes voting-district boundaries that are arbitrarily drawn under any conceivable definition of the word. For that reason, they have run afoul of the Fourteenth Amendment.

1. *The Commissioners' congressional map does not include "[d]istricts . . . of equal population as mandated by the United States Constitution . . . ." (Article IV, Section 6(13)(a) of the Michigan Constitution).*

Unfortunately, the Commissioners stumbled right out of the gate. As discussed above, the map they adopted did not include "[d]istricts . . . of equal population as mandated by the United States Constitution." Mich. Const. art. IV, § 6(13)(a). They had an obligation to give this consideration top priority, *see id.* § 13, and their failure to do so began a pattern of arbitrariness that infected the rest of their work.

2. *The Commissioners' congressional map transgresses the requirement that districts "reflect the state's diverse population and communities of interest" (Article IV, Section 6(13)(c) of the Michigan Constitution).*

Plaintiffs expect that, in opposition to this motion, Defendants will offer some defense of the Commissioners' map based on the requirement that the map's congressional boundaries "reflect the state's diverse population and communities of interest." Mich. Const. art. IV, § 6(13)(c). According to the Michigan Constitution, "[c]ommunities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests," but may "not include relationships with political parties, incumbents, or political

candidates." *Id.* Because the phrase "communities of interest" has a long- and well-established definition in Michigan law, and because the Commissioners appear to have deviated substantially from this phrase's pedigree, the Commissioners cannot rely on this requirement to justify the other aberrations discussed throughout this filing. Instead, the Commissioners' apparent decision to stray from the established "communities of interest" definition adds to, rather than detracts from, the constitutionally violative arbitrariness that remains fatal to the Commissioners' congressional map.

The somewhat nebulous "communities of interest" provision adopted via Michigan Constitutional Amendment in 2018 does not give the Commissioners plenary authority to demarcate "communities of interest" however they see fit. The phrase has a rich context in Michigan law, none of which was abrogated when the Commission was created. As traditionally understood by the Michigan Supreme Court, communities of interest include those housed in specific counties; indeed, some Justices went so far as to consider county lines "inviolate," *see In re Apportionment of State Legislature—1982*, 321 N.W.2d 565, 584 & n.46 (Mich. 1982) (Levin and Fitzgerald, J.J., concurring), and took pains to ensure that "count[ies]" were "kept . . . intact *as . . . communit[ies] of interest*," *id.* at 584 n.8 (Levin and Fitzgerald, J.J., concurring) (emphasis added).[12] In recognition of "the importance of local communities, and the harm that

[12] *See also In re Apportionment of State Legislature—1982*, 321 N.W.2d at 584 n.8 ("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.") (emphasis added); *id.* at 584 ("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 the level of a principle of justice, [but] it has always been simply a device for controlling gerrymandering, facilitating elections and *preserving communities of interest*.") (emphasis added); *cf. In re Apportionment of State Legislature—1992*, 486 N.W.2d at 641 n.50 ("Nor did the parties' proofs sufficiently demonstrate *a community of interest* between and

would result from splitting the political influence of these communities," several iterations of Michigan's Constitution (1835, 1850, and 1908) "explicitly protected jurisdictional lines," including counties and townships. *In re Apportionment of State Legislature—1992*, 486 N.W.2d 639, 641 (Mich. 1992).[13]

Thus, although Article IV, Section 1 6(13)(c) of the Michigan Constitution states that the Commissioners "may" (not shall) "include . . . populations that share cultural or historical characteristics or economic interests" within a "community of interest," the Commissioners are not writing on a blank slate. At a minimum, roughly half a century of Michigan Supreme Court caselaw suggests that counties, cities, and townships form the primary communities of interest that the Commissioners must try to leave intact. Imposing this gloss on the phrase "communities of interest" not only demonstrates fealty to the Michigan Supreme Court's rich redistricting jurisprudence but also serves an important prophylactic purpose. Without the local jurisdictional boundaries serving as a guardrail, "communities of interest" could become proxies for, among other things, political parties.[14] This, of course, would contravene the very purpose for the

among the voter populations of Oakland County and the voter populations of the City of Detroit and Wayne County." (emphasis added)).

[13] *See also In re Apportionment of State Legislature—1992*, 486 N.W.2d at 641 n.6 ("[T]he 1835 constitution said that no county line could be broken in apportioning the Senate. . . . The 1850 constitution repeated that rule[] and added that no city or township could be divided in forming a representative's district. . . . As originally enacted, the 1908 constitution continued those rules, though it permitted municipalities to be broken where they crossed county lines." (citations omitted)).

[14] This possibility was acutely concerning to former Justice Markman. In commenting on a suggestion from a report submitted to the Commission from the University of Michigan's Center for Local, State, and Urban Policy at the University of Michigan, which suggested that the Commission construe "communities of interest" to include those "link[] to a set of public policy issues that are affected by legislation," Justice Markman stated:

Commission's existence. *See* Mich. Const. art. IV, § 6(13)(c). It is also one of the many issues that informed the Northern District of Georgia's finding of federal unconstitutionality in *Larios*. *See* 300 F. Supp. 2d at 1350 (faulting maps as being drawn "in a thoroughly disparate and partisan manner.").

It also bears noting that the ordinary Michigander would understand a "community of interest" to include counties, cities, and towns. As elegantly stated by former Michigan Supreme Court Justice Stephen Markman:

> 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 points-of-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.

See Exhibit B (Memorandum to Michigan Independent Commission from Stephen Markman, Michigan Supreme Court Justice (retired)).

> 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."

See Exh. B, at 23 (Memorandum to Michigan Independent Commission from Stephen Markman, Michigan Supreme Court Justice (retired)). Because the Michigan Constitution must be construed in the "sense most obvious to the common understanding"; *i.e.*, as "as reasonable minds, the great mass of the people themselves, would give it," *Traverse City Sch. Dist. v. Attorney General*, 384 185 N.W.2d 9, 14 (Mich. 1971) (quoting Thomas Cooley, *Constitutional Limitations* 81), the Court should do so here.

Lest the Court have any lingering doubt, it bears noting that most districts adopted by Commissioners unnecessarily contravene some traditionally understood communities of interest:

- The Commission made no attempt to keep Oakland County remotely intact, and, instead, carved it into six different congressional districts, even though Plaintiffs' Remedy Map split Oakland County four districts. Bryan Decl. Appendix A–B.

- District Two (which is underpopulated by 182 people) unnecessarily splits Ottawa County. Bryan Decl. ¶¶ 15–16 (Table 1, Table 2); Appendix A–B.

- District Three (which is overpopulated by 235 people) appears to have been drawn without any regard to numerous comments regarding split communities of interest in the Grand Rapids area. Additionally, District Three connects Grand Rapids with Muskegon, creating unnecessary county splits in the process.

- District Four (which is underpopulated by 579 persons) reflects the Commissioners' decision to disregard concerns about split communities of interest in Western Michigan. As a result, the Commissioners' enacted map splits Kalamazoo, Calhoun, and Berrien Counties. Bryan Decl. ¶¶ 15–16 (Table 1, Table 2); Appendix A–B.

- District Five (which is underpopulated by 635 persons) unnecessarily split three counties (Berrien, Calhoun, and Kalamazoo) into two congressional districts. Bryan Decl. ¶¶ 15–16 (Table 1, Table 2); Appendix A–B.

- District Six (which is overpopulated by ninety-four persons) unnecessarily plucks 65,559 people from thoroughly whittled Oakland County. Bryan Decl. ¶¶ 15–16 (Table 1, Table 2); Appendix A–B.

- District Seven (which is overpopulated by fifty-nine persons) is part of Oakland County's six-way split. Bryan Decl. ¶¶ 15–16 (Table 1, Table 2); Appendix A–B. It adds, for good measure, a split of Argentine Township to pull 173 persons.

- District Eight (which is overpopulated by fifty people) splits Arbela Township, grabbing 1,398 people. Bryan Decl. ¶¶ 15–16 (Table 1, Table 2); Appendix A–B.

- District Nine (which is underpopulated by 217 people) is part of Oakland County's six-way split. Bryan Decl. ¶¶ 15–16 (Table 1, Table 2); Appendix A–B. In addition to the County, District Nine splits a number of towns as well, including Arbela Township, Macomb Township, Milford Charter Township, and White Lake Charter Township. Bryan Decl. ¶¶ 15–16 (Table 1, Table 2); Appendix A–B.

- District Ten (which is overpopulated by thirty-nine people), is, too, part of the six-way Oakland split. Bryan Decl. ¶¶ 15–16 (Table 1, Table 2); Appendix A–B. Because District Ten could fit entirely within Macomb County, this split is particularly egregious. and appears driven by politics. Bryan Decl. ¶¶ 15–16 (Table 1, Table 2); Appendix A–B. District Ten's incursion into Rochester and Rochester Hills Township in Oakland County accomplished little other than adding voters who cast ballots in favor of President Biden during the 2020 General Election. If District Ten was wholly contained in Macomb County, the additional population would have picked up more Republican voters.

The Commissioners never provide a reason why they decided to carve up such a substantial proportion of the State's longstanding local units of government, some of which have existed since the time of the American Founding. (The boundaries of Wayne County, for example, were established in 1796.) And although the remedy map splits Wayne County, it does so in a manner that unites split municipalities. *See* Bryan Decl. Appendix A–B.

For decades, maintaining local jurisdictional boundaries (has been emphasized unwaveringly by the Michigan Supreme Court. *See, e.g.*, *In re Apportionment of State Legislature—1992*, 486 N.W.2d at 643 (discussing the twelve "Apol Standards,"[15] five of which emphasize the importance of maintaining county and municipal boundary lines while redistricting). And as shown by the remedy map (Exhibit A), slivering counties in this fashion is entirely unnecessary. *See* Bryan Decl. ¶¶ 20-21; Appendix A–B. If adopted, the remedy map would reduce the number of split counties to ten of eighty-three (12 percent), reduce the number of ways in which split counties are divided (*i.e.*, no split county covers more than four congressional districts and most of the split counties cover only two), and comply more faithfully with the other requirements of the federal and State Constitutions (*see* discussion *supra* at 15–28; *infra* at 30–35; Bryan Decl. ¶¶ 15–16, 21, 24; Appendix A–D).[16]

For all these reasons, the Commissioners violated their responsibility to adopt congressional districts that reflect "communities of interest," as that phrase has been construed by the Michigan Supreme Court and would be understood by the average Michigander. MICH. CONST. art. IV, § 6(13)(c). Doing so was entirely arbitrary, and, accordingly, runs afoul of the Fourteenth Amendment's Equal Protection guarantee because voters are arbitrarily denied their ability to associate together with their community to advance the communities interests.

[15] The Apol standards are named after Michigan's former elections director, Bernie Apol. *See NAACP v. Snyder*, 879 F. Supp. 2d 662, 680 n.2 (E.D. Mich. 2012) (three-judge court). Per Section 4.261 of the Michigan Compiled Laws, they apply to "[r]edistricting plan[s] for" the State "senate and house of representatives."

[16] Some splits are mathematically required. Bryan Decl. ¶ 19. Three counties (Wayne, Oakland, and Macomb) have populations greater than a single congressional district and therefore must be split into multiple "segments." *Id.* ¶ 19. The remaining eighty counties do not have a large enough population to equal a congressional district by themselves, so they must be combined with all or part of neighboring counties to equalize population. *Id.* ¶ 19.

3. *The Commissioners' congressional map fails "to reflect consideration of county, city, and township boundaries" (Article IV, Section 6(13)(f) of the Michigan Constitution).*

For all these reasons discussed above, *see supra* at 23–29, the Commissioners' map violates Article IV, Section 6(13)(f) of the Michigan Constitution. As noted throughout this filing, the Commissioners' decision to dissect so many Michigan counties, cities, and townships compels the conclusion that it acted arbitrarily.

It bears noting that these divisions affect each Plaintiff in a real and concrete way. For example:

- Plaintiff Michael Banerian, who resides in the Commissioners' overpopulated Eleventh Congressional District, lives in Oakland County. Banerian Decl. ¶¶ 4–5. The Commissioners' map splits Oakland County between six congressional districts, while the remedy map reduces that number to four. *Id*. ¶ 7.

- Plaintiff Michon Bommarito, who resides in the Commissioners' underpopulated Fifth Congressional District, lives in Calhoun County. Bommarito Decl. ¶¶ 4–5. The Commissioners' map splits Calhoun County between the Fourth and Fifth Congressional District, while the remedy map keeps it whole. *Id*. ¶ 6.

- Plaintiff Peter Colovos, who resides in the Commissioners' underpopulated Fourth Congressional District, lives in the northeast corner of Berrien County. Colovos Decl. ¶¶ 4–5. This northeast corner of Berrien County is the only portion contained in the Commissioners' Fourth Congressional District (which is anchored in Western Michigan); the rest of Berrien County would vote in the Commissioners' Fifth Congressional District (which includes the Detroit suburbs). *Id*. ¶¶ 6–7. The remedy map keeps Berrien County whole. *Id*. ¶ 7.

- Plaintiff Joseph Graves, who resides in the Commissioners' overpopulated Eighth Congressional District, lives in Genesee County. Graves Decl. ¶¶ 4–5. The Commissioners' map splits Genesee County between the Eighth Congressional District (which is based in Flint and Saginaw) and the Seventh Congressional District (which is based in Lansing). *Id*. ¶¶ 6–7. The remedy map keeps Genesee County whole. *Id*. ¶ 7.

- Plaintiff Sarah Paciorek, who resides in the Commissioners' overpopulated Third Congressional District, lives in Kent County. Paciorek Decl. ¶¶ 4–6. The Commissioners' map splits Kent County

between the Second and Third Congressional Districts. *Id*. ¶ 7. The former includes Lansing suburbs and extends north and west to include the Huron-Manistee National Forest. *Id*.. The latter is anchored in Grand Rapids. *Id*.. The remedy map, in contrast, keeps Kent County whole. *Id*..

- Plaintiff Cameron Pickford, who resides in the Commissioners' overpopulated Seventh Congressional District, lives in Eaton County. Pickford Decl. ¶¶ 4–6. The Commissioners' map splits Eaton County between the Second and Seventh Congressional Districts; the former is anchored in Western Michigan and includes the Huron-Manistee National Forest while the latter is anchored in Lansing. *Id*. ¶ 7. The remedy map keeps Eaton County whole. *Id*..

- Plaintiff Harry Sawicki, who resides in the Commissioners' overpopulated Twelfth Congressional District, lives in the City of Dearborn Heights. Sawicki Decl. ¶¶ 4–6. The Commissioners' map splits the City of Dearborn Heights between the Twelfth Congressional District (which includes Detroit) and the Thirteenth Congressional District (which is more suburban). *Id*. ¶ 7. The remedy map keeps the City of Dearborn Heights whole. *Id*..

The counties, cities, and townships that the Commissioners have diced are "meaningful to every Michigander, for they serve to define what [they] call 'home[,]' and they signify to the rest of the world where we are from.'" *See* Exh. B, at 23 (Memorandum to Michigan Independent Commission from Stephen Markman, Michigan Supreme Court Justice (retired)). They certainly matter to Plaintiffs, and, as noted above, *see supra* at 15–30, arbitrarily divvying them up inflicts real and concrete associational and representational harm. For that reason, the Commissioners' map cannot stand.

4. *The Commissioners' congressional map violates the requirement that "[d]istricts shall be reasonably compact" (Article IV, Section 6(13)(g) of the Michigan Constitution).*

As noted above, congressional-district compactness can be assessed through a variety of metrics. *See* Bryan Decl. ¶ 23. Two—the Polsby-Popper Measure and the Reock Measure—are widely accepted among redistricting experts. *Id.*. On both, the Plaintiffs' Remedy Map outperforms the Commissioners' congressional map. *Id.* ¶ 24, Appendix C-D. Regarding the

former, the Commissioners' map's average compactness score is .41 and its least compact district is .27; on the latter, the average compactness score is .42 and the least compact district's is .19. *Id.* ¶ 23, Appendix C–D. The remedy map demonstrates that this failure was avoidable; its average Polsby-Popper Measure is .46 (up from .41) and its least compact district scores at .3 (up from .27), while its average Reock measure comes in at .45 (up from .42), and its least compact district improves to .21 (up from .19).

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**

Bryan Decl. Appendix C.

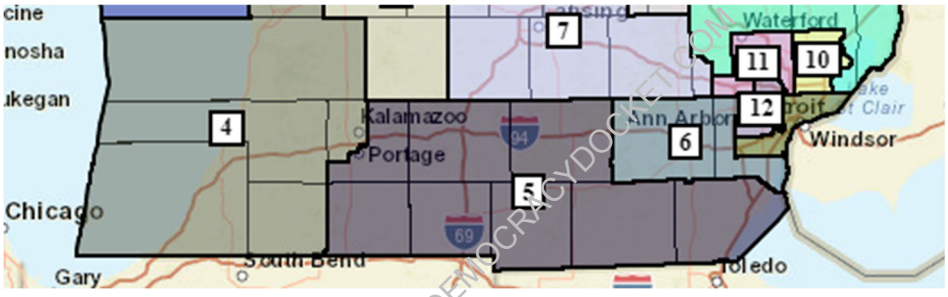
DISTRICT	ENACTED PLAN REOCK	REMEDIAL PLAN REOCK
District One	0.38	0.38
District Two	0.56	0.54
District Three	0.32	0.49
District Four	0.42	0.59
District Five	0.19	0.32
District Six	0.39	0.39
District Seven	0.52	0.51
District Eight	0.41	0.41
District Nine	0.53	0.52
District Ten	0.47	0.57
District Eleven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

Bryan Decl. Appendix D.

At a more conceptually straightforward level, it cannot be said that the Commissioners' map creates "compact" districts in any normal sense of the word. Not since at least 1963 has Michigan seen a congressional district (outside of the Upper Peninsula) that touches both its

Eastern and Western borders.[17] The Commissioners' District Five breaks that streak by extending across the entirety of Michigan's roughly 200-mile Southern border, joining Lake Erie with Lake Michigan.

As with the other flaws blighting the Commissioners' map, the remedy map solves this problem:



See Exh A.

* * *

The Commissioner's congressional map does not equalize population across all districts. Bryan Decl. ¶ 15. They adopt a wholly standardless definition of "community of interest" and then apply this definition to draw boundaries that transgress scores of Michigan county, city, and township lines. *Id.* Appendix A. Finally, they make no serious attempt to satisfy any degree of compactness, in any sense of that word, and instead draw a district traversing, for the first time in almost fifty years, the entire southern border of the State.

[17] Michigan's historic district boundaries are available at The American Redistricting Project, https://thearp.org/maps/congress/2020/MI (last visited Jan. 12, 2022).

None of this was unavoidable. Each of these problems would have been solved had the Commissioners applied, consistently and neutrally, the traditional redistricting criteria recognized by the U.S. Supreme Court and now enshrined in the Michigan Constitution. The Commissioners' failure to do so renders the congressional map it adopted entirely arbitrary. And for this reason, the Commissioners have violated the Fourteenth Amendment rights of Plaintiffs.

III. BOTH THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST FAVOR ENTRY OF A PRELIMINARY INJUNCTION.[18]

If the Court agrees that the Commissioners' map likely violates the U.S. Constitution (and to be sure, it does), then both the balance of the equities and the public interest tilt strongly in favor of preliminary-injunctive relief. Virtually every court has recognized that "[w]hen a constitutional violation is likely . . . [,] the public interest militates in favor of injunctive relief because 'it is always in the public interest to prevent violation of a party's constitutional rights.'" *Miller v. City of Cincinnati*, 622 F.3d 524, 540 (6th Cir. 2010) (quoting *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998)). Some have gone further, holding that, because "no cognizable harm results from stopping unconstitutional conduct," it is "*always* in the public interest to prevent violation of a party's constitutional rights." *Vitolo v. Guzman*, 999 F.3d 353, 360 (6th Cir. 2021) (emphasis added).

At issue in this case, however, is not a mine-run constitutional right. Instead, the issues touch on the one right that "is preservative of other basic civil and political rights," *Reynolds*, 377 U.S. at 561–62; *i.e.*, "having a voice in the election," the most "precious [right] in a free country," *Wesberry*, 376 U.S. at 17. For that reason, the Supreme Court has lent its imprimatur to the notion that, "once a State's legislative apportionment scheme has been found to be

[18] The final two factors "'merge when the Government is the opposing party.'" *Wilson v. Williams*, 961 F.3d 829, 844 (6th Cir. 2020) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to [e]nsure that no further elections are conducted under the invalid plan." *Reynolds*, 377 U.S. at 585. This is not that unusual case.

Simply put, the irreparable injury that Plaintiffs will suffer absent this Court's intervention far eclipses any conceivable nuisance the State might experience by entry of a preliminary injunction. Granting the injunction might send the Commission back to the drawing board (literally and figuratively); but as shown by the remedy map (Exh. A), bringing Michigan's congressional districts into compliance with the U.S. and Michigan Constitutions would require no more than a few modest alterations. And if this proves too onerous, the Court could alleviate the Commission's burden by assuming jurisdiction, appointing a special master, and establishing constitutionally compliant congressional districts itself (or, of course, adopting Plaintiffs' proffered remedy map). In either event, it cannot be said that the balance of the equities, or the interest of the public, would be well served by allowing the Commission's congressional map to remain in effect.

CONCLUSION

As of the date of this filing, the 2022 Midterm Elections are 285 days away. Michiganders must be given the opportunity to elect their congressional representatives in a way that complies with the U.S. Constitution. Because the Commission's congressional map does not, and given the irreparable injury that will arise on November 8, 2022 if these violations are not remedied, Plaintiffs respectfully request that the Court preliminarily enjoin the State from using this map for any congressional election in Michigan.

January 27, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY, in reliance on the word processing software used to create this Brief, that:

1. This Brief complies with the word-count limitation of W.D. Mich. LCivR 7.2(b)(i) because this Brief in support of a dispositive motion (i.e., a motion for injunctive relief (*see* W.D. Mich. LCivR 7.2(a))) contains 9,172 words (including headings, footnotes, citations, and quotations but not the case caption, cover sheets, table of contents, table of authorities, signature block, attachments, exhibits, or affidavits).

2. The word processing software used to create this Brief and generate the above word count is Microsoft Word 2016.

Dated: January 27, 2022

/s/ Charles R. Spies
Charles R. Spies (P83260)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 27, 2022, I caused to be filed with the Court, via submission to the Court's ECF system, Plaintiffs' Motion for Preliminary Injunction and Plaintiffs' Brief in Support of Their Motion for Preliminary Injunction.

I FURTHER CERTIFY that, in accordance with Fed. R. Civ. P. 4, I will cause such Motion and Brief to be served on each Defendant together with the Summons and Second Amended Complaint.

Dated: January 27, 2022

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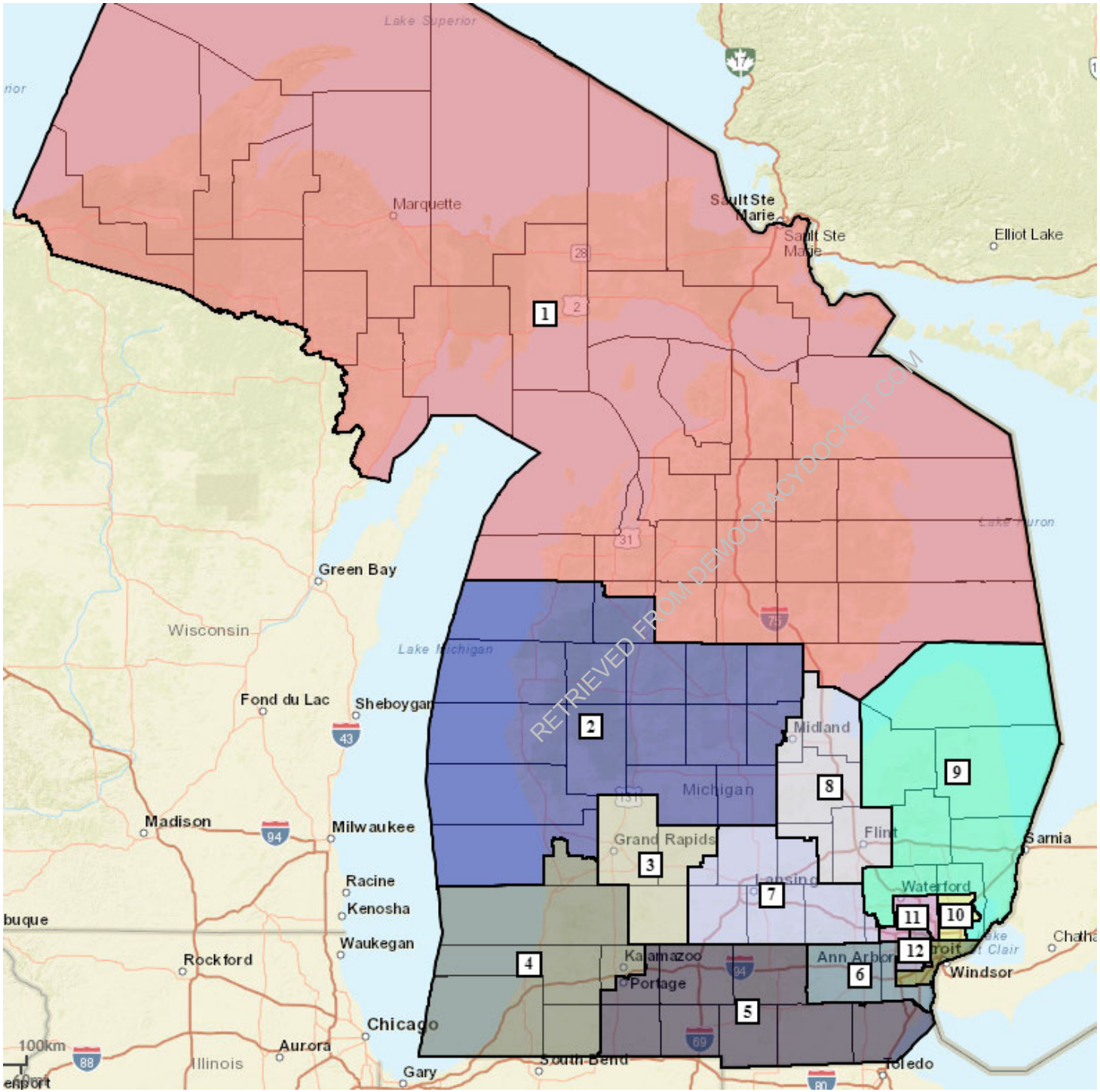
EXHIBIT A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Kalamazoo
Ann Arbor
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Rockford
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Portage
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Windsor
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Chicago
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Gary
South Bend
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL BANERIAN, *et al*.,

Plaintiffs,

v.

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

Defendants.

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

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

EXHIBIT B TO
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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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 points-of-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).
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> 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).
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> 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).
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> * * *
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> 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.
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> * * *
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> 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.
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> 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.
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> 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.
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> We reject such a rigid reading of "stated order" because so read:
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> (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-new-approach-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.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL BANERIAN, *et al.*,

Plaintiffs

v.

Case No.

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

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

ORAL ARGUMENT REQUESTED

Defendants.

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 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.

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.

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 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.

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

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 NCSL3) 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 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).

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

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

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

[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-you-only-know-it-when-you-see-it-7

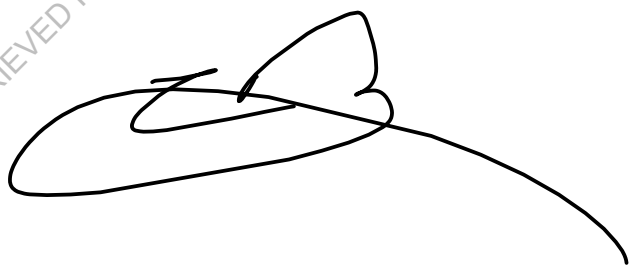
which measures to use or what standard is acceptable.[6] A district that is "most compact" by one compactness measure can easily and frequently be less compact by another. There is no professional consensus on a "right" measure, and every widely used compactness measure works differently. In redistricting, courts have most commonly used compactness measures of Polsby-Popper and Reock scores - and these are the measures I use here.

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



Thomas M. Bryan

[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."

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

Thomas M. Bryan

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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

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:

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

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.-Arkansas_FILED-without-stamp.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-a86c-bb251bf535f1/5f0d01eec8234.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-voting-rights-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-sides-naacp-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-election-system-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-wins-voting-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-independent-school-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/021919/8b_SpecialPresentations.pdf#:~:text=RECOMMENDATION%3A%20It%20is%20recommended%20that%20City%20Council%20receive,its%20Councilmembers%20on%20a%20citywide%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 Hispanics' 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-on-maricopa-county-election-day-disaster/
- https://www.supremecourt.gov/DocketPDF/19/19-1257/142431/20200427105601341_Brnovich%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 redistricting plan and developed numerous draft concept plans.
  - http://www.miamiherald.com/news/politics-government/state-politics/article47576450.html
  - https://www.floridasupremecourt.org/content/download/322990/2897332/file/OP-SC14-1905_LEAGUE%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/14-940_ed9g.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-voting-rights-lawsuit/article_92c256b2-6e51-11e5-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/B640990E9817C5AB85256A9C00631387

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

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
Marietta, GA 1/07
Porter, IN 12/06
Harrison County, MS 9/06
New Albany/Floyd County, IN 9/06
North Charleston, SC 9/06
Fairfax, VA 9/06
Coleman 8/06
DeKalb, GA 8/06
LaPorte, IN 7/06
NW Allen, IN 7/06
Brunswick, NC 7/06
Carmel Clay, IN 7/06
Calhoun, SC 5/06
Hamilton Community Schools, IN 4/06
Dilworth, MN 4/06
Hamilton, OH 2/06
West Noble, IN 2/06
New Orleans, LA 2/06
Norwell, IN 2/06
Middletown, OH 12/05
West Noble, IN 11/05
Madison, MS 11/05
Fremont, IN 11/05
Concord, IN 11/05
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
Elmira, NY 7/05
South Porter/Merriville, IN 7/05
Fargo, ND 6/05
Washington, IL 5/05
Addison, NY 5/05
Kershaw, SC 5/05
Porter Township, IN 3/05
Portage, WI 1/05
East Stroudsburg, PA 12/04
North Hendricks, IN 12/04
Sampson/Clinton, NC 11/04
Carmel Clay Township, IN 9/04
SW Allen County, IN 9/04
East Porter, IN 9/04
Allen County, IN 9/04
Duplin, NC 9/04
Hamilton County / Clay TSP, IN 9/04
Hamilton County / Fall Creek TSP, IN 9/04
Decatur, IN 9/04
Chatham County / Savannah, GA 8/04
Evansville, IN 7/04
Madison, MS 7/04
Vanderburgh, IN 7/04
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-data-explained.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
Professional Peer
david.swanson@ucr.edu
951-534-6336

Dr. Peter Morrison
Professional Peer
petermorrison@me.com
310-266-9580

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BANERIAN, *et al.*,

Plaintiffs

v.

BENSON, *et al.*,

Defendants.

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

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

DocuSigned by:
91859AC777644F2...

Michael Banerian

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BANERIAN, *et al.*,

Plaintiffs

v.

BENSON, *et al.*,

Defendants.

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

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

DocuSigned by:
Michon Bommarito
160741BA22EF4BC...

Michon Bommarito

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BANERIAN, *et al.*,

Plaintiffs

v.

BENSON, *et al.*,

Defendants.

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

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

DocuSigned by:
2B215749AEC14BF...

Peter Colovos

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BANERIAN, *et al.*,

Plaintiffs

v.

BENSON, *et al.*,

Defendants.

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

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

DocuSigned by:
William Gordon D5DC55DDAA5A4A7...

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BANERIAN, *et al.*,

Plaintiffs

v.

BENSON, *et al.*,

Defendants.

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

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

Joseph Graves DocuSigned by: CBC9DF12A3CE4A9...

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BANERIAN, *et al.*,

Plaintiffs

v.

BENSON, *et al.*,

Defendants.

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

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

DocuSigned by:
Beau M LaFave
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Beau LaFave

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BANERIAN, *et al.*,

Plaintiffs

v.

BENSON, *et al.*,

Defendants.

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

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

DocuSigned by:
Sarah Paciorek
796194FD46D0458...

Sarah Paciorek

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BANERIAN, *et al.*,

Plaintiffs

v.

BENSON, *et al.*,

Defendants.

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

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

DocuSigned by:
Cameron Pickford
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Cameron Pickford

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BANERIAN, *et al.*,

Plaintiffs

v.

BENSON, *et al.*,

Defendants.

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

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

DocuSigned by:
Harry Sawicki
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Harry Sawicki

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BANERIAN, *et al.*,

Plaintiffs

v.

BENSON, *et al.*,

Defendants.

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

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

DocuSigned by:
Michelle Smith
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Michelle Smith