STATE OF MICHIGAN
IN THE SUPREME COURT

DETROIT CAUCUS; ROMULUS CITY COUNCIL; INKSTER CITY COUNCIL; TENISHA YANCEY, as a State Representative and individually; SHERRY GAY-DAGNOGO, as a Former State Representative and individually; TYRONE CARTER, as a State Representative and individually; BETTY JEAN ALEXANDER, as a State Senator and individually, Hon. STEPHEN CHISHOLM, as member of Inkster City Council and individually, TEOLA P. HUNTER, as a Former State Representative and individually; Hon. KEITH WILLIAMS, as Chair MDP Black Caucus and individually; DR. CAROL WEAVER, as 14th Congressional District Executive Board Member and individually; WENDELL BYRD, as a Former State Representative and individually; SHANELLE JACKSON, as a Former State Representative and individually; LAMAR LEMMONS, as a Former State Representative and individually; IRMA CLARK COLEMAN, as a Former Senator & Wayne County Commissioner and individually; LAVONIA PERRYMAN, as representative of the Shirley Chisholm Metro Congress of Black Women and individually; ALISHA BELL, as Chair of the Wayne County Commission and individually; NATALIE BIENAIME, as a Citizen of the 13th District; OLIVER COLE, as a resident of Wayne County; ANDREA THOMPSON, as a resident of Detroit; DARRYL WOODS, as a resident of Wayne County, NORMA D. MCDANIEL, as a resident of Inkster; MELISSA D. MCDANIEL, as a resident of Canton, CHITARA WARREN, as a resident of Romulus; JAMES RICHARDSON, as a resident of Inkster, ELENA HERRADA, as a resident of Detroit, *Plaintiffs*,
v
INDEPENDENT CITIZENS REDISTRICTING COMMISSION, *Defendant*.
_____/

Supreme Court Case No. 163926

Jurisdiction: Original, pursuant to 1963 Mich Const Art 4, § 6(19)

This case involves a claim that state governmental action is invalid

PLAINTIFFS' EMERGENCY MOTION FOR REHEARING

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PLAINTIFFS'[1] EMERGENCY MOTION FOR REHEARING

[1] Excluding Wendell Byrd

On February 3, 2022, this Court issued an Order dismissing, with prejudice, Plaintiffs' First Amended Verified Complaint despite it having properly identified that the Michigan Independent Citizens Redistricting Commission's novel redistricting plans illegally shatter Michigan's longstanding "majority-minority districts" and recklessly dilute the voting strength of Black residents. That Order is a terrible mistake, one that is sure to greatly diminish the size and influence of the Black Caucus in the Michigan Legislature. Worse, Plaintiffs were not given an adequate opportunity to prove their case. Now, armed with substantial expert analysis to prove their allegations, Plaintiffs move for rehearing under MCR 7.311(F).[2]

STANDARD OF REVIEW

This proceeding is governed by the Michigan Court Rules, Mich Const 1963, Art VI, § 5; MCR 1.103, including rules like MCR 7.311(F) and MCR 2.119(F)(3), which give this Court authority to grant rehearing if the Court makes a palpable error, correction of which would result in a different disposition. And it also includes rules like MCR 2.116(C)(8), which allows summary disposition on the pleadings, *but only* if the complaint has "failed to state a claim on which relief can be granted." Judgment for a defendant based on a lack of evidence requires notice, discovery, and an opportunity to respond. See generally MCR 2.116. This Court's February 3, 2022 Order breaks those rules and constitutes palpable error, particularly when Plaintiffs are prepared to proffer the evidence the Court thought lacking.

[2] Plaintiffs' retained expert has been qualified by courts and provided expert reports and testimony in numerous redistricting cases in other states. This expert has also been appointed by a court to redraw a state's house, senate, and congressional maps and has served as a Voting Rights Act expert to counsel for another state's independent redistricting commission.

ARGUMENT

I. The Court committed palpable error when it failed to follow the Michigan Court Rules and should grant rehearing to give Plaintiffs an opportunity to provide this Court with evidence in support of their claims.

Plaintiffs' First Amended Complaint adequately alleged that the Commission violated the Voting Rights Act of 1965—and thus also violated Article 4, § 6(13)(a) of the Michigan Constitution—by eliminating nearly all the "majority-minority districts" that have safeguarded the voting rights of African Americans in southeast Michigan for the last half century. Specifically, Plaintiffs adequately alleged facts satisfying each of the prerequisites for establishing a Voting Rights Act § 2 vote-dilution claim:

- First, "The Black citizens of the City of Detroit are a minority group that is 'sufficiently large and geographically compact to constitute a majority in a single-member district' as its population is 77.7% Black as per the 2020 census." First Am Compl ¶ 45 (quoting *Thornburg v Gingles*, 478 US 30, 50 (1986)).

- Second, "The Black citizens of the City of Detroit are 'politically cohesive' as is shown by their voting record. *Id.* ¶ 46 (quoting *Gingles*, 478 US at 51).

- Third, "Bloc voting by other members of the electorate usually defeats the minority-preferred candidates. *Id.* ¶ 47. *Compare with Gingles*, 478 US at 51 ("the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate").

- Fourth, the Black citizens of the City of Detroit bear the effects of discrimination in areas like education, employment, and health, hindering effective participation "in the political process and to elect candidates of their choice." *Id.* ¶¶ 44, 48–50 (quoting *Gingles*, 478 US at 80).

These allegations stated a *prima facie* case of a vote-dilution claim.

In response to this Complaint, the Commission filed its Answer and a "Brief in Support of Its Answer." The Commission did *not* file a motion to dismiss or a motion for summary disposition under MCR 2.116; in fact, the Commission filed no motion at all. In a highly unusual order, this Court then directed that oral argument be scheduled "on the proper disposition of the plaintiffs' complaint, including whether the plaintiffs have sustained their claims on the merits or whether there are disputed questions of fact." 1/21/2022 Order.

In the Court's February 3, 2022 Order dismissing the First Amended Complaint, the majority opinion did not quibble with the Plaintiffs' use of the *Gingles* factors as setting forth the proper analytical framework, nor did the majority contest that Plaintiffs adequately alleged facts satisfying each of the *Gingles* factors. Instead, the majority accepted the Commission's radical assertion that, despite decades of history to the contrary, "the evidentiary basis supporting a need for majority-minority districts was entirely lacking in the public record" at the time the Commission drew its redistricting maps. 2/3/22 Order, p 4. Accord, e.g., *id.* (concluding that the Commission's "decision was the correct one precisely because there was no 'strong basis in evidence' providing 'good reason' for the Commission to believe that the three threshold *Gingles* preconditions were satisfied so as to potentially require race-based district lines").

The majority's conclusions constitute palpable error for two reasons. First, as explained in Section II, below, the Commission *did* have a strong basis in public-record evidence to believe that race-based district lines were required to avoid disenfranchising black voters. Data that was available to anyone, including the

Commission, shows that in Michigan Senate elections, the Black candidate of choice (1) has not been successful in *any* polarized election in greater Wayne County where the black voting-age population (BVAP) was below 47%, and (2) has lost elections with BVAPs even higher than 47%. And while House elections are more difficult to analyze,[3] data shows that Black voters have little success electing candidates of their choice in districts with BVAPs in the 30% to 40% range and struggle even in 50%+ BVAP districts.

Second, at what was in practice a motion-to-dismiss phase, it was inappropriate for the Court majority to require Plaintiffs to come forward with evidence *proving* their allegations at all. A motion to dismiss on the pleadings "tests the *legal sufficiency* of a claim based on the factual allegations in the complaint." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159–60; 934 NW2d 665 (2019) (per curiam) (citation omitted). When considering whether to grant a motion to dismiss on the pleadings, a court "must accept all factual allegations as true, deciding the motion on the pleadings alone." *Id.* at 160 (citations omitted). Indeed, a motion to dismiss "may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify" a ruling in a plaintiff's favor. *Id.* (citation omitted). So, "[w]hile the lack of an allegation can be fatal under MCR 2.116(C)(8), the lack of evidence in support of the allegation cannot." *Id.* at 162. Given the compressed schedule of a redistricting challenge, it was particularly appropriate to give plaintiffs time to gather their supporting evidence, which they now have.

[3] Tellingly, there are no preexisting House districts in the range of 36% to 47% BVAP, the share to which the Commission is reducing many of these districts.

Here, "[t]he majority does not suggest that plaintiffs have failed to state a claim. Nor could it. . . . Here, plaintiffs have alleged that defendant's newly adopted maps dilute Black votes in various districts." 2/3/22 Order, pp 7–9 (Zahra, Viviano, and Bernstein, JJ, dissenting). Indeed, Plaintiffs "have even alleged facts supporting each of the three *Gingles* threshold factors as well as the 'totality of the circumstances' considerations." *Id.* at 9. "These facts, if proven, might not be enough to ultimately prevail in this case. But they would be enough for the case to move forward in any trial court assessing the complaint under a notice-pleading standard, and they should be sufficient for the case to proceed in [this] Court as well." *Id.* at 9 & n. 25 (noting that neither the parties nor the Court has "uncovered any VRA case that has been summarily dismissed on the merits at such an early stage").

In response to the Court's questions at oral argument, Plaintiffs' counsel said that the evidence submitted in the First Amended Complaint was "clear." See 2/3/22 Order, p 2. That statement was accurate in the context of a pseudo (though unnoticed) motion to dismiss. Plaintiffs adequately alleged facts which, if proven true, would sustain their vote-dilution claim. See *Bell Atlantic Corp v Twombly*, 550 US 544, 570 (2007) (courts "do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face").[4] Indeed, given the procedural posture, counsel could not have answered it any other way.

[4] See, e.g., 2/3/22 Order, p 9 (Zahra, Viviano, and Bernstein, JJ. Dissenting) ("they have even alleged facts supportive of each of the three *Gingles* threshold factors as well as the 'totality of circumstances' considerations" to the extent that "they would be enough for the case to move forward in any trial court assessing the complaint under a notice-pleading standard, and they should be sufficient for the case to proceed in our Court as well").

And while counsel "said he did not think further factual development was necessary for plaintiffs to prevail, he said that plaintiffs would welcome the opportunity for further factual development." 2/3/22 Order, p 12 (Zahra, Viviano, and Bernstein, JJ, dissenting).[5] What was wrong was for the Court to deny Plaintiffs any opportunity to develop additional supporting evidence to show the existence of significant white bloc voting in southeast Michigan—something that, prior to this redistricting cycle, was widely acknowledged by just about everyone. And though Plaintiffs could not have had that supporting evidence before, they do now.

The Court's palpable error remains regardless of whether the Court thought it appropriate to appoint a special master to consider the evidence. Compare 2/3/22 Order, p 2 n.1 (majority thought no), with *id.* at 13–14 (three dissenting Justice thought yes). The proper course would have been to designate dates by which: (1) Plaintiffs could designate expert or lay witnesses, (2) the parties could take depositions of those witnesses as well as the Commission members and the Commission's Voting Rights Act expert, (3) the parties could file cross-motions for judgment, and (4) the parties could reconvene before this Court for oral argument.

Instead, the majority opinion denied Plaintiffs due process. As the dissenting opinion notes, this Court's rule governing the procedure of this case "has neither a defined process through which facts are to be developed nor heightened pleading requirements. The court rule does not [even] require the parties to specify their

[5] Even where a plaintiff has failed to prosecute his or her claims with reasonable diligence or otherwise violated discovery orders, this Court has cautioned against dismissals with prejudice for reason that they are "harsh sanctions" and contrary to our legal system's policy favoring disposition of litigation on the merits. *North v Dep't of Mental Health*, 427 Mich 659, 662; 397 NW2d 793 (1986).

factual allegations with particularity, much less present evidence, at this stage." 2/3/22 Order, p 10 (Zahra, Viviano, and Bernstein, JJ, dissenting).

Critically, "no one reading the rule would believe that a plaintiff is on notice that the case will be dismissed if the plaintiff fails to present all of their evidence along with the complaint and [initial] brief. Yet that is exactly what the majority has done, faulting Plaintiffs for their failure to present evidence that [this Court] never requested or required them to present (and that would never be presented at this stage in any trial court)," other than some vague questions at oral argument to which counsel appropriately responded in the context of the procedural posture: consideration of the face of the pleadings. *Id.* at 11.

While this case certainly presents a unique circumstance, the decision of the United States Court of Appeals for the Seventh Circuit in *Choudhry v Jenkins*, 559 F2d 1085 (CA 7, 1977), is nonetheless instructive. There, a state-prison employee was fired after criticizing the prison in the press. *Id.* at 1088. He sued, alleging a First Amendment violation and seeking declaratory and injunctive relief, including a temporary restraining order requiring his reinstatement. *Id.* at 1087-88.

After hearing evidence and arguments on the TRO, the district court denied the TRO and *sua sponte* granted summary judgment to the defendants. *Id.* at 1088. This decision came as quite the surprise to the plaintiff, who was given neither notice nor an opportunity to respond to a motion for judgment as a matter of law. *Id*. The Seventh Circuit held that "fairness of procedure is due process in the primary sense." *Id.* at 1087. And "[w]ithout a party-generated Rule 56 motion or Rue 12(b) motion which may be treated under Rule 12 as a motion for summary

judgment, [a] district court normally lacks power to enter summary judgment." *Id.* at 1089 (citing *Dry Creek Lodge, Inc v United States*, 515 F2d 926, 935–36 (CA 1, 1975), and *Mustang Fuel Corp v Youngstown Sheet and Tube Co*, 480 F2d 607, 608 (CA 10, 1973)). Such a rule makes sense. After all, the "early resolution of factually unsupported claims is a salutary purpose of summary judgment procedure, but that procedure in no way authorizes disposition by surprise." *Id.* at 1087 (quoting *Macklin v Butler*, 553 F2d 525, 530 (CA 7, 1977)).

Similarly, in Michigan, it is established that courts may not grant summary disposition *sua sponte* under MCR 2.116(I)(1) when doing so would be in contravention of a party's due-process rights, *Lamkin v Hamburg Twp Bd of Trustees*, 318 Mich App 546, 549–51; 899 NW2d 408 (2017) (citation omitted), which include basic requirements of notice and a meaningful opportunity to be heard, *Al-Maliki v LaGrant,* 286 Mich App 483, 488; 781 NW2d 853 (2009).

In *Lamkin*, for instance, the Court of Appeals held that plaintiff's due-process rights were violated where the circuit court dismissed the complaint *sua sponte* without notice under MCR 2.116(C)(5) and MCR 2.116(I)(1).[6] 318 Mich App at 549. The Court explained that "the circuit court's failure to notify [the plaintiff] that it was contemplating summary disposition of her claims constitutes a fatal procedural flaw necessitating reversal." *Id.* at 550-51. "It is a matter of simple justice in our system for a party to be given fair notice and an opportunity to be heard [on

[6] Notably, MCL 2.116(I)(5) provides that "If the grounds asserted [for dismissal] are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified."

arguments for summary judgment] before the boom is lowered." *Id.* at 550 (quoting *DKT Mem Fund Ltd v Agency for Int'l Dev*, 281 US App DC 47; 887 F2d 275, 301 n.3 (1989) (Ginsburg, J, concurring in part and dissenting in part)).

Here Plaintiffs were not on notice "that [they] had to come forward with all of [their] evidence." *Id.* at 550–51 (quoting *Celotex Corp v Catrett*, 477 US 317, 326 (1986)). And such a schedule would not have been feasible. Given the "compressed schedule, it would have been difficult if not impossible for plaintiffs to assemble and submit with [their] complaint all the evidence necessary to support their claim." 2/3/22 Order, p 12 (Zahra, Viviano, and Bernstein, JJ, dissenting).

Redistricting matters are "complicated" and "necessarily take time to evaluate." *Id.* "Procedure matters." *Id.* at 14. And the Court's dismissal of this lawsuit is "completely unprecedented," "does not resemble what would normally occur in a case filed in our trial courts or in the federal courts," "does not reflect anything required by [this Court's] rules," and "does not accord with any notion of fair play." *Id.* Rehearing is warranted so Plaintiffs can present their evidence.

In sum, speedy dismissal on the pleadings was palpable error because the Court acted in violation of its own procedural rules on a case that will impact the fundamental rights of Black voters. Palpable error has also been committed because the Court has been misled into believing that Plaintiffs are unwilling or unable to substantiate their well-pled claims. And correction of that error must result in a different disposition—a case-management order. In the dissent's words, it was "too soon to rule on the merits of this case," and Plaintiffs "deserve an opportunity to prove their case." 2/3/22 Order, p 16 (Zahra, Viviano, and Bernstein, JJ, dissenting).

II. Plaintiffs have a retained expert who will substantiate their vote-dilution claim.

Following the 1990 census, this Court appointed three special masters to consider redistricting plans submitted by several parties, including Michigan's major political parties. Finding none of the plans acceptable, the special masters created their own plan. To ensure that Black voters in the Detroit area had an adequate opportunity to elect the candidates of their choice—consistent with the Voting Rights Act—this Court unanimously reconfigured five House districts "to provide a better racial balance throughout these districts" and approved the redistricting plan. *In re Apportionment of State Legislature-1992*, 439 Mich 251, 253; 483 NW2d 52 (1992).

The Court eventually issued a lengthier explication of its Voting Rights Act analysis. *In re Apportionment, State Legislature-1992*, 439 Mich 715; 486 NW2d 639 (1992). The Court began by noting that the masters' plan included five Senate and 13 House districts "in which a majority of persons would have been non-Hispanic blacks." *Id.* at 734. Objections came in two varieties. "One was the assertion that more districts could have been formed in which a racial minority comprised the majority of persons in the district (a so-called minority-majority district)." *Id.* at 735. Another was "that several of the masters' minority-majority districts were 'packed,' i.e., they contained excessive concentrations of minority persons." *Id.*

Applying the *Gingles* factors, this Court concluded in 1992 that—with the minor modifications noted above—the Senate and House maps did not violate the Voting Rights Act. *Id.* at 735–36. That was because those maps neither deprived Black voters of the ability to elect the candidate of their choice nor diluted Black

votes by excessively packing Black citizens into Senate and House districts. And the BVAP in the districts that this Court unanimously adjusted to balance the competing concerns and hit the "VRA sweet spot" were all between 68% and 85%—House District 4: 85.73%, House District 5: 70.02%, House District 11: 79.71%, House District 13: 71.95%, House District 14: 68.17%. *Id.* at 747 n.75.

Up until the Redistricting Commission's work, nearly everyone (and their experts) in Michigan agreed that majority-minority districts in southeast Michigan were necessary so that Black voters could elect the candidates of their choice. Thus, in the 2001 and 2011 legislative redistricting processes, Republicans and Democrats worked together to ensure that Michigan's majority-minority districts remained intact.

And that sentiment was shared by those outside of Michigan. For example, in a 2004 Harvard law review article, now-Secretary of State Jocelyn Benson explained that while some "believe that a decrease in racially polarized voting makes it possible for communities of color to elect their candidates of choice by building coalitions with white voters, [Professor Pamela] Karlan argues it is still nearly impossible for minority candidates to elect the candidate of their choice outside of districts where more than 50% of the voting age population is a combination of minority groups. *Karlan's arguments are supported by current empirical evidence*." Jocelyn Benson, *Turning Lemons into Lemonade: Making* Georgia v Ashcroft *the* Mobile v Bolden *of 2007*, 39 Harv CR-CLL Rev 485, 495 (2004) (emphasis added).

In fact, Secretary Benson sensibly proposed an outright "*ban* on reductions *below 55%* of covered minority populations in any currently majority-minority district, unless the jurisdiction can present convincing evidence that racially polarized voting is nonexistent or that minority voters' participation rates will remain unaffected." Alvaro Bedoya, *The Unforseen Effects of* Georgia v Ashcroft *on the Latino Community*, 115 Yale LJ 2112, 2141–42 (2006) (emphasis added). Yet today, the Commission proposes a plan with no senate district above 46.3% BVAP.

Once this Court grants rehearing, Plaintiffs will promptly present data and expert analysis—now completed and in their possession—showing that no conditions justify such low BVAP districts in southeast Michigan. Instead, that analysis will generally show the following:

- The existing House and Senate maps—which are close descendants of the plans that this Court modified and ultimately approved in 1992 when it comes to minority-majority districts—are largely contained within county lines, extremely compact, and create multiple majority Black districts.
- In contrast, the Commission's new maps divvy up Black voters between multiple districts, fanning outward from Detroit into heavily White suburbs, with the effect of lowering the Black populations in the Detroit-area districts.
- For example, whereas the 2012 map has 10 BVAP-majority house districts, the Commission's Hickory Plan has only 6, and even those six have drastically reduced BVAP percentages.
- The same is true in the Senate. The 2012 map had two BVAP-majority districts and two more above 47%. The Commission's Linden plan has *no* Senate districts that reach even 47% BVAP.
- The Commission relied heavily on the report of Dr. Lisa Handley, its lone VRA expert, whose treatment of the relevant set of election data—i.e., primary election data—was cursory at best.[7] One problem with Dr.

[7] When the majority of voters in the relevant area are of a single party, as here, "primary elections are more probative than general elections of racial voting

Handley's assessment is that it does little to justify the drastically reduced BVAPs in the new districts. Black candidates increasingly have trouble winning primary elections in the heavily Black districts that already exist. Lowering the BVAPs in numerous districts from the 50s to the mid-40s is likely to create an environment where the House and Senate Black caucuses can hold their meetings in an Uber XL.

- On the Senate side, the evidence suggests that the Black candidate of choice has not been successful in any polarized election in greater Wayne County where the BVAP is below 47% and has lost elections with higher BVAPs. Similarly, on the House side, there is no evidence suggesting that the Black candidate of choice can win a polarized primary in a district with a BVAP below 47%.

- *What's more, Dr. Handley's prediction of sufficient white crossover voting to sustain opportunity for Black voters, relies heavily on elections where White candidates are considered the Black "candidate of choice" and ignores elections where non-White candidates are the Black candidate of choice*. As one federal court has explained it, the Voting Rights Act's equal-opportunity guarantee is not met when "[c]andidates favored by blacks can win, but only if the candidates are white." *Smith v Clinton*, 687 F Supp 1310, 1318 (ED Ark, 1988) (three-judge panel).

- Moreover, Dr. Handley ignores the 2014 democratic primary Senate elections where Black candidates either lost or had difficulty against White candidates in heavily Black districts.

- Although disregarded by Dr. Handley, without any meaningful explanation, analogous conclusions may be drawn from the 2018 Gubernatorial race, where now-Governor Whitmer was regularly the candidate of choice for White voters while Black voters preferred challenger Sri Thanedar. There were five districts Thanedar carried under the 2012 map, and no districts under the Commission's map. That outcome makes sense. By taking candidate Thanedar's strongest supporters—Black voters—and placing them in districts with more White voters, their vote is diluted, greatly increasing the likelihood that Black candidates of choice will be unable to win in the new districts.

- In sum, the data will show that the Commission cavalierly dropped the BVAP in Wayne County state legislative districts to dangerously low

patterns" and courts "will give less weight to general elections where the minority-preferred candidate was defeated in the primary." *Pope v County of Albany*, 94 F Supp 3d 302, 332 (2015).

> levels. Polarization in the primary is prevalent enough that, when a strong enough White candidate emerges, the Black candidate of choice will face an uphill battle holding the district, and in the Senate, it is entirely conceivable that the Black delegation could be wiped out of the Michigan Legislature.

The Voting Rights Act guarantees Michigan Black voters will have a meaningful voice in the political process. But this Court's hasty dismissal of Plaintiffs' complaint denied them a meaningful voice even in this proceeding. Again, there is palpable error by which the Court has been misled into believing that Plaintiffs are unable to substantiate their well-pled claims. Correction of that error will not only ensure a different disposition—due process—it is likely to result in a different outcome: a judgment for Plaintiffs on the merits of their Voting Rights Act claim.

Accordingly, Plaintiffs[8] respectfully request that the Court grant rehearing and propose the following case-management order:

- Plaintiffs to designate their expert witness, provide the Commission with their expert report, and designate any lay witnesses no later than Friday, February 18, 2022.
- Parties to take any necessary depositions of opposing parties or experts no later than Friday, March 4, 2022.
- Parties to file cross-motions for judgment as a matter of law and supporting briefs no later than Friday, March 11, 2022.
- The Court to schedule oral argument on the parties' cross motion on Thursday, March 17, 2022.

In no event should the Court allow the Redistricting Commission's proposed maps to extinguish the Black Democratic Caucus in Michigan without the benefit of a full presentation of the evidence.

[8] Excluding Wendell Byrd

Respectfully submitted,

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