

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHAEL BANERIAN, *et al.*,

Plaintiffs

v.

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

Defendants

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

Circuit Judge Raymond Kethledge
District Judge Paul L. Maloney
District Judge Janet T. Neff

**EXPEDITED CONSIDERATION
REQUESTED**

**PROPOSED INTERVENOR-DEFENDANT VOTERS NOT POLITICIANS'
MOTION FOR LEAVE TO INTERVENE AS DEFENDANT**

Proposed Intervenor-Defendant Count MI Vote d/b/a Voters Not Politicians (“VNP”) a Michigan non-profit corporation, respectfully moves this court for leave to intervene as a defendant in the above-captioned action pursuant to Fed. R. Civ. P. 24(b).

For the reasons explained in the accompanying Brief in Support of this Motion, which are incorporated herein by reference, the requirements for permissive intervention under Fed. R. Civ. P. 24(b) have been satisfied and permissive intervention is appropriate.

Expedited consideration of this Motion pursuant to LCivR 7.1(e) is likewise appropriate in this matter. Plaintiffs have filed a Motion for Preliminary Injunction. (Doc. 9 PageID.94-189). VNP seeks expedited consideration of its motion for intervention to allow a timely response to Plaintiffs’ Motion for Preliminary Injunction.

Wherefore, Proposed Intervenor-Defendant VNP respectfully requests that this Court grant its Motion for Leave to Intervene pursuant to Fed. R. Civ. P. 24(b) and enter an order that permits it to participate as a Defendant in this matter.

Dated: February 7, 2022

Respectfully submitted,

/s/ Andrew M. Pauwels

Andrew M. Pauwels (P79167)

Andrea L. Hansen (P47358)

Honigman LLP

222 North Washington Square

Suite 400

Lansing, MI 48933-1800

(517) 484-8282

apauwels@honigman.com

ahansen@honigman.com

Paul M. Smith

Mark P. Gaber

Jonathan M. Diaz*

Campaign Legal Center

1101 14th St. NW, Ste. 400

Washington, DC 20005

Tel.: (202) 736-2200

psmith@campaignlegalcenter.org

mgaber@campaignlegalcenter.org

jdiaz@campaignlegalcenter.org

*Awaiting full admission, sponsored by Mark
P. Gaber

*Counsel for proposed Intervenor-Defendant
Count MI Vote d/b/a Voters Not Politicians*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Western District of Michigan by using the CM/ECF system on February 7, 2022. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the using the CM/ECF system.

February 7, 2022

/s/ Andrew M. Pauwels
Andrew M. Pauwels

Counsel for Intervenor-Defendant VNP

RETRIEVED FROM DEMOCRACYDOCKET.COM

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHAEL BANERIAN, *et al.*,

Plaintiffs

v.

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

Defendants

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

Circuit Judge Raymond Kethledge

District Judge Paul L. Maloney

District Judge Janet T. Neff

**PROPOSED INTERVENOR-DEFENDANT VOTERS NOT POLITICIANS'
BRIEF IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE AS DEFENDANT**

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

CONCISE STATEMENT.....1

INTRODUCTION2

STATEMENT OF FACTS2

LEGAL STANDARD.....3

ARGUMENT.....3

CONCLUSION.....6

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF AUTHORITIES

Cases	Pages
<i>Associated Builders & Contractors v. Perry</i> , 16 F.3d 688 (6th Cir. 1994)	3
<i>Daunt v. Benson</i> , 2019 WL 12050350 (W.D. Mich. Aug. 28, 2019)	1, 3, 4
<i>Donald J. Trump for President, Inc. v. Benson</i> , 2020 WL 8573863 (W.D. Mich. Nov. 17, 2020)	1, 3, 6
<i>King v. Christie</i> , 981 F.Supp.2d 296 (D.N.J. 2013)	3, 5
<i>League of Women Voters of Michigan v. Johnson</i> , 902 F.3d 572 (6th Cir. 2018)	4-5
<i>Michigan State AFL-CIO v. Miller</i> , 103 F.3d 1240 (6th Cir. 1997)	3, 4
<i>Providence Baptist Church v. Hillandale Committee, Ltd.</i> , 425 F.3d 309 (6th Cir. 2005)	5
<i>Ruiz v. Estelle</i> , 161 F.3d 814 (5th Cir. 1998)	3
<i>Yniguez v. Arizona</i> , 939 F.2d 727 (9th Cir. 1991)	3
Regulations & Rules	
Fed. R. Civ. P. 24(a)(2)	4
Fed. R. Civ. P. 24(b)	1, 3, 6
Fed. R. Civ. P. 24(b)(1)	3, 4
Fed. R. Civ. P. 24(b)(3)	3, 5
Fed. R. Civ. P. 24(c)	5
Other Authorities	
Clara Hendrickson and Todd Spangler, <i>Michigan's redistricting commission adopts final congressional map for the next decade</i> , Detroit Free Press (Dec. 28, 2021), https://www.freep.com/story/news/politics/2021/12/28/michigan-redistricting-commission-finalizes-congressional-map/9029285002/	2

CONCISE STATEMENT

Proposed Intervenor-Defendant Count MI Vote d/b/a Voters Not Politicians (“VNP”) has satisfied the requirements for permissive intervention pursuant to Fed. R. Civ. P. 24(b). VNP’s Motion is timely, presents a defense that shares common questions of law and fact with this action, and will neither cause undue delay nor prejudice the other parties’ rights. *See, e.g., Daunt v. Benson*, No. 1:19-cv-614, 2019 WL 12050350 (W.D. Mich. Aug. 28, 2019); *Donald J. Trump for President, Inc. v. Benson*, No. 1:20-cv-1083, 2020 WL 8573863, at *3 (W.D. Mich. Nov. 17, 2020). VNP will offer the Court its unique expertise and insights as the drafter and sponsor of the constitutional amendment that established the Michigan Independent Citizens Redistricting Commission as the Court considers the issues raised in the Plaintiffs’ Complaint.

Introduction

Proposed Intervenor-Defendant Count MI Vote d/b/a Voters Not Politicians (hereinafter, “VNP”) respectfully moves this Court to permit its intervention as a defendant in this matter. VNP’s Motion is timely, raises defenses that share common questions of law and fact with the main action, and will cause neither undue delay nor prejudice to any party.

Statement of Facts

On November 6, 2018, an overwhelming majority of Michigan voters—more than 2.5 million citizens, or 61% of the electorate—approved Proposal 18-2, which amended the Michigan Constitution to create an Independent Citizens Redistricting Commission (the “Commission”) to draw electoral districts in a fair, impartial, and transparent manner. VNP, a nonpartisan non-profit advocacy organization, was the sponsor of that voter-initiated ballot proposal and the drafter of that constitutional amendment, and as such has a unique understanding of the structure and purpose of the amendment and a strong interest in ensuring that the Commission’s work is conducted in a manner consistent with that amendment, free from political interference or reliance on pre-amendment standards.

On December 28, 2021, following the release of the 2020 Census data, the Commission adopted and enacted a new plan for Michigan’s 13 Congressional districts. *See Clara Hendrickson and Todd Spangler, Michigan’s redistricting commission adopts final congressional map for the next decade, Detroit Free Press (Dec. 28, 2021),* <https://www.freep.com/story/news/politics/2021/12/28/michigan-redistricting-commission-finalizes-congressional-map/9029285002/>. Plaintiffs in the instant action filed their Complaint (No. 7, PageID.56-77) and Motion for Preliminary Injunction with accompanying exhibits (No. 9, PageID.94-189) on January 27, 2022.

Legal Standard

Pursuant to Rule 24(b), “[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1). In exercising its discretion to grant permissive intervention, the Court must consider whether such intervention “will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). Permissive intervention requires only that the proposed intervenor establish that the motion is timely and at least one common question of law or fact exists. *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1248 (6th Cir. 1997). After those two requirements are met, consideration of undue delay, prejudice to the original parties, and any other relevant factors are left to the court’s discretion. *Id.*¹

Argument

First, there can be no doubt that VNP’s Motion is timely. “[A] motion for intervention brought within two weeks after the filing of the complaint is timely as a matter of law.” *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245, 1248 (6th Cir. 1997); *Daunt v. Benson*, No. 1:19-cv-614, 2019 WL 12050350, at *2 (W.D. Mich. Aug. 28, 2019). VNP filed its Motion on February 7, 2020—eleven days after Plaintiffs’ First Amended Complaint was filed, thus the motion is timely. *See Donald J. Trump for President, Inc. v. Benson*, No 1:20-cv-1083, 2020 WL 8573863, at *3 (W.D. Mich. Nov. 17, 2020).

¹ Notably, in the Sixth Circuit, an intervenor need not establish Article III standing for permissive intervention. *Associated Builders & Contractors v. Perry*, 16 F.3d 688, 690 (6th Cir. 1994). This is consistent with the view of a majority of the other Circuits. *See, e.g., King v. Christie*, 981 F.Supp.2d 296, 307 (D.N.J. 2013); *Ruiz v. Estelle*, 161 F.3d 814, 903 (5th Cir. 1998); *City of Colo. Springs v. Climax Molybdenum Co.*, 587 F.3d 1071, 1079 (10th Cir. 2009); *Yniguez v. Arizona*, 939 F.2d 727, 731 (9th Cir. 1991).

Next, VNP's defense clearly shares common questions of law and fact with the main action. Since the approval of Proposal 18-2 by Michigan voters in 2018, VNP has continued to maintain its strong interest in ensuring that voters—not politicians, party bosses, or elected officials—control the redistricting process. VNP has previously intervened in federal litigation to defend the constitutionality of the Commission against partisan attack. *See Daunt v. Benson*, No. 1:19-cv-614, 2019 WL 12050350 (W.D. Mich. Aug. 28, 2019) (granting permissive intervention by VNP as a defendant in constitutional challenge to Commission).

As the drafters of the constitutional amendment that created the Commission and the primary supporters of the ballot initiative that approved it, VNP obviously has a strong interest in ensuring that the Commission functions as intended and that efforts to undermine its authority or undo the purpose of the amendment are curbed. VNP's defense of the Commission's use of the constitutional redistricting criteria *in the priority in which they were enshrined into the Michigan Constitution by the amendment* is critical to its mission to ensure that the People of the State of Michigan continue to have a voice in the decisions that shape their government and a separate representative in this case as it moves forward.

In a motion seeking permissive intervention, the proposed intervenor need not demonstrate that the existing Defendants will inadequately defend this case; that requirement applies only to parties seeking intervention as of right. *Compare* Fed. R. Civ. P. 24(a)(2) *with* Fed. R. Civ. P. 24(b)(1); *see also Miller*, 103 F.3d at 1245-48. However, given the nature of this action—namely, whether the Commission fairly complied with the requirements of an amendment designed to take power from politicians and give it directly to the People of the State of Michigan—permitting VNP to intervene would ensure that the distinct interests of the People are represented as the case moves

forward.² *Cf. League of Women Voters of Michigan v. Johnson*, 902 F.3d 572, 579-80 (6th Cir. 2018) (finding an abuse of discretion where the district court, among other things, failed to consider the distinctiveness of proposed permissive intervenors' interest in the litigation). Indeed, by participating in this lawsuit as an intervenor-defendant, VNP will be able to offer its expertise and insights as the drafter and primary sponsor of the amendment that created the Commission as the Court considers the issues raised by the Plaintiffs' Complaint.

Permitting intervention by VNP will not result in undue delay or prejudice to the original parties. *See* Fed. R. Civ. P. 24(b)(3). This case is less than twenty days old, and VNP is fully prepared to participate in preliminary injunction briefing on the existing schedule contemplated by the Federal Rules of Civil Procedure, Local Rules of the Western District of Michigan, and any other scheduling order issued by this Court. Moreover, allowing VNP to participate in the case will not prejudice any of the original parties. Indeed, this Court has previously granted permissive intervention at a similarly early stage in an election-related lawsuit and directed the intervenors to “file responsive pleadings, motions, and briefs on the same schedule as Defendants,” and should take the same approach again here. *See Donald J. Trump for President, Inc.*, 2020 WL 8573863, at *3.

Finally, VNP has complied with the requirements of Rule 24(c) that a motion to intervene “be accompanied by a pleading that sets out the claim or defense for which intervention is sought,” Fed. R. Civ. P. 24(c). VNP has attached a Partial Motion to Dismiss (Exhibit A) and Brief in Support (Exhibit B), as well as a Proposed Answer (Exhibit C) to this Motion—well in advance

² Although there may be some overlap between VNP's interests and those of Secretary Benson and the Defendant Commissioners, “the presence of overlapping interests between [an intervening advocacy group] and the State does not preclude permissive intervention.” *King v. Christie*, 981 F.Supp.2d 296, 307 (D.N.J. 2013).

of the deadline for responsive pleadings for Defendant Benson and the Defendant Commissioners. Courts in the Sixth Circuit “take[] a lenient approach to the requirements of Rule 24(c).” *Providence Baptist Church v. Hillandale Comm., Ltd.*, 425 F.3d 309, 314 (6th Cir. 2005). VNP’s proposed Partial Motion to Dismiss and Answer clearly satisfy this lenient standard.

Conclusion

For the foregoing reasons, Proposed Intervenor-Defendant VNP respectfully requests that this Court grant its Motion for Leave to Intervene pursuant to Fed. R. Civ. P. 24(b) and enter an order permitting VNP to participate as a Defendant in this matter.

Dated: February 7, 2022

Respectfully Submitted,

/s/ Andrew M. Pauwels
Andrew M. Pauwels (P79167)
Andrea L. Hansen (P47358)
Honigman LLP
222 North Washington Square
Suite 400
Lansing, MI 48933-1800
(517) 484-8282
ahansen@honigman.com
apauwels@honigman.com

Paul M. Smith
Mark P. Gaber
Jonathan M. Diaz*
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
Tel.:(202) 736-2200
psmith@campaignlegalcenter.org
mgaber@campaignlegalcenter.org
jdiaz@campaignlegalcenter.org
*Awaiting full admission, sponsored by Mark P. Gaber

Counsel for proposed Intervenor-Defendant

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2022, the foregoing was electronically filed with the Clerk of the Court using the Court's e-filing system, which will send notification of such filing to all attorneys of record.

Dated: February 7, 2022

/s/ Andrew M. Pauwels
Andrew M. Pauwels

Counsel for Intervenor-Defendant

RETRIEVED FROM DEMOCRACYDOCKET.COM

**CERTIFICATE OF COMPLIANCE
WITH LCivR 7.3(b)(ii)**

Pursuant to Local Rule 7.3(b)(ii), I hereby certify that this document was prepared using Microsoft Word, and that the word count for this document as provided by that software is 1,454, which is less than the 4,300-word limit for a brief filed in support of a nondispositive motion.

Dated: February 7, 2022

Respectfully Submitted,

/s/ Andrew M. Pauwels
Andrew M. Pauwels (P79167)
Andrea L. Hansen (P47358)
Honigman LLP
222 North Washington Square
Suite 400
Lansing, MI 48933-1800
(517) 484-8282
ahansen@honigman.com
apauwels@honigman.com

Paul M. Smith
Mark P. Gaber
Jonathan M. Diaz*
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
Tel.:(202) 736-2200
psmith@campaignlegalcenter.org
mgaber@campaignlegalcenter.org
jdiaz@campaignlegalcenter.org
*Awaiting full admission, sponsored by Mark
P. Gaber

Counsel for proposed Intervenor-Defendant

EXHIBIT A

RETRIEVED FROM DEMOCRACYDOCKET.COM

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHAEL BANERIAN, *et al.*,

Plaintiffs

v.

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

Defendants

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

Circuit Judge Raymond Kethledge
District Judge Paul L. Maloney
District Judge Janet T. Neff

**PROPOSED INTERVENOR-DEFENDANT VOTERS NOT POLITICIANS’
PARTIAL MOTION TO DISMISS**

Proposed Intervenor-Defendant Count MI Vote d/b/a Voters Not Politicians (hereinafter, “VNP”) respectfully moves this Court to dismiss Count II of Plaintiffs’ First Amended Complaint (“FAC”) (PageID.57-77) pursuant to Fed. R. Civ. P. 12(b).

As explained further in the accompanying brief, Plaintiffs’ FAC in this case asks this Court to render judgment against state government officials based on an alleged violation of state law by attempting to smuggle those state law claims into a purported federal claim they have wholly invented, with no basis in law or fact. This Court lacks jurisdiction to render such a judgment and should dismiss Plaintiffs’ Count II pursuant to Rule 12(b)(1). *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984)

Alternatively, even if Plaintiffs’ Count II were not barred by *Pennhurst*, they have still failed to adequately state even the bare minimum allegations to establish a denial or infringement of any rights guaranteed under the Equal Protection Clause of the 14th Amendment. Because Plaintiffs have failed to state a claim upon which relief can be granted, this Court should dismiss Plaintiffs’ Count II pursuant to Rule 12(b)(6).

Wherefore, Proposed Intervenor-Defendant VNP respectfully requests that this Court dismiss Count II of Plaintiffs' FAC for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) or, in the alternative, for failure to state a claim pursuant to Rule 12(b)(6).

Dated: February 7, 2022

Respectfully submitted,

/s/ Andrew M. Pauwels

Andrew M. Pauwels (P79167)

Andrea L. Hansen (P47358)

Honigman LLP

222 North Washington Square

Suite 400

Lansing, MI 48933-1800

(517) 484-8282

apauwels@honigman.com

ahansen@honigman.com

Paul M. Smith

Mark P. Gaber

Jonathan M. Diaz*

Campaign Legal Center

1101 14th St. NW, Ste. 400

Washington, DC 20005

Tel.: (202) 736-2200

psmith@campaignlegalcenter.org

mgaber@campaignlegalcenter.org

jdiaz@campaignlegalcenter.org

*Awaiting full admission, sponsored by Mark P. Gaber

*Counsel for proposed Intervenor-Defendant
Count MI Vote d/b/a Voters Not Politicians*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Western District of Michigan by using the CM/ECF system on February 7, 2022. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the using the CM/ECF system.

February 7, 2022

/s/ Andrew M. Pauwels
Andrew M. Pauwels

Counsel for Intervenor-Defendant VNP

RETRIEVED FROM DEMOCRACYDOCKET.COM

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHAEL BANERIAN, *et al.*,

Plaintiffs

v.

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

Defendants

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

Circuit Judge Raymond Kethledge
District Judge Paul L. Maloney
District Judge Janet T. Neff

**PROPOSED INTERVENOR-DEFENDANT VOTERS NOT POLITICIANS'
BRIEF IN SUPPORT OF PARTIAL MOTION TO DISMISS**

RETRIEVED FROM DEMOCRACYDOCKET.COM

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT OF MATERIAL FACTS	1
LEGAL STANDARD.....	5
ARGUMENT	5
I. The Eleventh Amendment Bars the Court’s Consideration of Count II.....	6
A. Count II is Based Entirely on Purported Violations of Michigan State Law.....	6
B. Defendants are Entitled to Eleventh Amendment Immunity	7
C. Neither the State nor the Commission Have Waived Immunity.....	8
II. Plaintiffs Have Failed to State a Claim Upon Which Relief Can Be Granted	9
A. Plaintiffs’ Count II Fails to State a Federal claim for Relief	9
B. Even if Plaintiffs Had Articulated a Cognizable Federal Claim, Count II Fails to State a Claim that the Commission Violated the Michigan Constitution	10
CONCLUSION.....	11
CERTIFICATE OF SERVICE	13
CERTIFICATE OF COMPLIANCE.....	14

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Abick v. Michigan</i> , 803 F.2d 874 (6th Cir. 1986)	8
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	5, 9, 10
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007)	5
<i>Daunt v. Benson</i> , 999 F.3d 299 (6th Cir. 2021)	1
<i>Experimental Holdings, Inc. v. Farris</i> , 503 F.3d 514 (6th Cir. 2007)	7, 8
<i>Gati v. Western Kentucky University</i> , 762 F. App'x 246 (6th Cir. 2019)	5, 7
<i>Gavitt v. Born</i> , 835 F.3d 623 (6th Cir. 2016)	5
<i>Hall v. Medical College of Ohio at Toledo</i> , 742 F.2d 299 (6th Cir. 1984)	7
<i>Henry v. Metropolitan Sewer District</i> , 922 F.2d 332 (6th Cir. 1990)	9
<i>Katz v. Village of Beverly Hills</i> , 677 F. App'x 232 (6th Cir. 2017)	9
<i>Mt. Healthy City School District Board of Education v. Doyle</i> , 429 U.S. 274 (1977)	7
<i>Ohio Rep. Party v. Brunner</i> , 543 F.3d 357 (6th Cir. 2008)	7
<i>Pennhurst State School & Hospital v. Halderman</i> , 465 U.S. 89 (1984)	1, 5, 6, 7
<i>Quern v. Jordan</i> , 440 U.S. 332 (1979)	8
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964)	9
<i>Shaw v. Reno</i> , 509 U.S. 630 (1993)	9
<i>Solo v. United Parcel Service Co.</i> , 819 F.3d 788 (6th Cir. 2016)	9
Regulations & Statutes	
Fed. R. Civ. P. 12(b)(1)	1, 5, 6, 8
Fed. R. Civ. P. 12(b)(6)	1, 5, 6, 9
Mich. Const. Art. IV § 6	2, 7, 8, 11
Other Materials	
<i>2020 Census: Apportionment of the U.S. House of Representatives</i> , U.S. CENSUS BUREAU, April 26, 2021, https://www.census.gov/library/visualizations/2021/dec/2020-apportionment-map.html	3
Approved Minutes of September 17, 2020 Meeting, MICHIGAN INDEPENDENT CITIZENS REDISTRICTING COMMISSION,	

https://www.michigan.gov/documents/sos/Approved_9_17_AND_9.18__ICRC_Mins_711693_7.pdf	3
Meeting Notices and Materials, MICHIGAN INDEPENDENT CITIZENS REDISTRICTING COMMISSION, https://www.michigan.gov/micrc/0,10083,7-418-106525---,00.html	4
Michigan Election Results, MICHIGAN DEPARTMENT OF STATE, Nov. 26, 2018, https://mielections.us/election/results/2018GEN_CENR.html	1
Press Release, <i>Census Bureau Delivers 2020 Census Redistricting Data in Easier-to-Use Format</i> , U.S. CENSUS BUREAU, Sept. 16, 2021, https://www.census.gov/newsroom/press-releases/2021/2020-census-redistricting-data-easier-to-use-format.html	3
<i>Quick Facts: Michigan</i> , U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/MI	3

RETRIEVED FROM DEMOCRACYDOCKET.COM

INTRODUCTION

For the reasons stated herein, proposed Intervenor-Defendant Count MI Vote d/b/a Voters Not Politicians (hereinafter, “VNP”) respectfully moves this Court to dismiss Count II of Plaintiffs’ First Amended Complaint (“FAC”) (No. 7, PageID.57-77) for lack of jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) or, in the alternative, for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).

Count II of Plaintiffs’ FAC improperly asks this Court to render a judgment against state officials based upon state law, in violation of the State of Michigan’s immunity from such judgments in federal court under the Eleventh Amendment. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 98-101 (1984). The court lacks jurisdiction to entertain such a claim. Alternatively, Count II of Plaintiffs’ FAC fails to state a cognizable claim under the Equal Protection Clause of the Fourteenth Amendment, and should be likewise dismissed on that basis.

STATEMENT OF MATERIAL FACTS

Michigan’s Independent Citizens Redistricting Commission

Proposed Intervenor-Defendant VNP was the drafter and chief sponsor of Proposal 18-2 (the “Amendment”), which called for an amendment to the Michigan Constitution “to establish a commission of citizens with exclusive authority to adopt district boundaries for the Michigan Senate, Michigan House of Representatives, and U.S. Congress.” *See Daunt v. Benson*, 999 F.3d 299, 303 (6th Cir. 2021). On November 6, 2018, Michigan voters overwhelmingly voted in favor of Proposal 18-2, and the Michigan Constitution was amended effective December 22, 2018, to establish the Michigan Independent Citizens Redistricting Commission (the “Commission”) and set forth new redistricting criteria for the Commission to use when drawing legislative and Congressional districts. *Id.* at 304; *see also* 2018 Michigan Election Results, MICHIGAN DEP’T OF

STATE, Nov. 26, 2018, https://mielections.us/election/results/2018GEN_CENR.html (visited Feb. 5, 2022).

The Michigan Constitution, as amended by Proposal 18-2, establishes the Commission as a “permanent commission in the legislative branch” composed of thirteen members. Mich. Const. Art. IV § 6. The Amendment also sets forth the selection process and criteria for the commissioners, four of whom each are affiliated with one of the two major political parties, and five of whom are not affiliated with either party. *Id.* § 6(2). The Commission’s work, including the cost of any legal defense of an adopted plan, is entirely funded by the State through legislative appropriations of funds from the state treasury. *Id.* §§ 6(5)-(6).

The Amendment also established the following criteria for the Commission’s use in developing and adopting new redistricting plans, 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.

Id. § 6(13).

Before adopting a plan, “the [C]ommission shall ensure that the plan is tested, using appropriate technology, for compliance with the criteria described above.” *Id.* § 6(14)(a). The Commissioners are directed to perform their duties “in a manner that is impartial and reinforces public confidence in the integrity of the redistricting process.” *Id.* § 6(10).

The 2020 Redistricting Cycle

The U.S. Census Bureau released the 2020 Census Redistricting Data (Pub. L. 94-171) Summary File to states and the public on September 16, 2021. *See* Press Release, *Census Bureau Delivers 2020 Census Redistricting Data in Easier-to-Use Format*, U.S. CENSUS BUREAU, Sept. 16, 2021, <https://www.census.gov/newsroom/press-releases/2021/2020-census-redistricting-data-easier-to-use-format.html> (visited Feb. 5, 2022). According to the 2020 Census, Michigan has a total population of 10,077,331 persons. *Quick Facts: Michigan*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/MI> (visited Feb. 5, 2022). Based on that count, Michigan was apportioned 13 congressional districts. *2020 Census: Apportionment of the U.S. House of Representatives*, U.S. CENSUS BUREAU, April 26, 2021, <https://www.census.gov/library/visualizations/2021/dec/2020-apportionment-map.html> (visited Feb. 5, 2022).

Following the release of the 2020 Census data by the Bureau, the Commission held its first public meeting over two days on September 17-18, 2020. *See* Approved Minutes of September 17, 2020 Meeting, MICHIGAN INDEP. CITIZENS REDISTRICTING COMM’N, https://www.michigan.gov/documents/sos/Approved_9_17_AND_9.18__ICRC_Mins_711693_7.pdf (visited Feb. 5, 2022). The Commission continued to meet at least monthly (and often, more

frequently) following that initial meeting, with the most recent meeting occurring on January 27, 2022. Meeting Notices and Materials, MICHIGAN INDEP. CITIZENS REDISTRICTING COMM'N, <https://www.michigan.gov/micrc/0,10083,7-418-106525---,00.html> (visited Feb. 5, 2022). On December 28, 2021, the Commission adopted the “Chestnut” plan for Congressional districts, which is available at <https://michigan.mydistricting.com/legdistricting/comments/plan/279/23> (visited Feb. 5, 2022).

Procedural History

On January 20, 2022, Plaintiffs filed their Complaint in the instant case, challenging the Congressional district map adopted by the Commission for alleged Constitutional deficiencies. (No. 1). On January 27, 2022, Plaintiffs filed their First Amended Complaint (“FAC”), (No. 7), which contains two counts. Count I of Plaintiffs’ FAC alleges that the Congressional district map violates the “one person, one vote” standard articulated by the U.S. Supreme Court in *Wesberry v. Sanders*, 376 U.S. 1 (1964). (PageID.71-72). Count II alleges that the Commission failed to apply the correct redistricting criteria as set forth in the Michigan Constitution, which Plaintiffs purport is a violation of the Equal Protection Clause of the Fourteenth Amendment. (*Id.*, PageID.72-76). Plaintiffs’ FAC seeks a declaration from this Court that the Congressional plan violates the “one person, one vote” principle and the Fourteenth Amendment’s Equal Protection Clause, as well as injunctive relief that, *inter alia*, prohibits Defendants from holding congressional elections using the adopted map and requires the Commission to redraw the Congressional map by a court-appointed deadline. (*Id.*, PageID.76-77). Concurrently with the FAC, Plaintiffs filed a motion with this Court seeking “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.” (No. 9, PageID.94).

On February 2, 2022, a group of Michigan voters moved to intervene as Defendants in this case. (No.16). Their Motion remains pending. On February 4, 2022, Plaintiffs filed a motion to expedite consideration of their motion for preliminary injunction. (No. 20).

LEGAL STANDARD

Rule 12(b)(1) permits a defendant to move to dismiss a claim for “lack of subject matter jurisdiction.” Fed. R. Civ. P. 12(b)(1). It is a well-established principle that, under the Eleventh Amendment, federal courts lack jurisdiction to enjoin state officials on the basis of state law. *See Gati v. Western Ky. Univ.*, 762 F. App’x 246, 253 (6th Cir. 2019) (citing *Pennhurst*, 465 U.S. at 98-101). When a complaint raises multiple claims, the court “must examine each claim in a case to see if the court’s jurisdiction over that claim is barred by the Eleventh Amendment.” *Gati*, 762 F. App’x at 253.

Pursuant to Rule 12(b)(6), a claim may be dismissed for “failure to state a claim upon which relief can be granted[.]” Fed. R. Civ. P. 12(b)(6). To defeat a motion to dismiss under Rule 12(b)(6), the complaint must present “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547, 570 (2007). When considering a motion to dismiss, the court views the complaint in the light most favorable to the plaintiff, accepting as true all well-pled factual allegations and drawing all reasonable inferences in favor of the plaintiff. *Gavitt v. Born*, 835 F.3d 623, 639–40 (6th Cir. 2016). However, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

ARGUMENT

In their efforts to undermine the Commission’s authority to draw fair Congressional maps for the State of Michigan—and thereby undermining the will of the People of Michigan who

established the Commission by enacting Proposal 18-2 at the ballot box—Plaintiffs have invented a claim that is entirely without merit or basis in federal law. Instead, they attempt to advance half-baked arguments premised wholly on state law by disguising them in the trappings of the Equal Protection Clause to sneak them into federal court. This wholly invented “federal” claim is barred by Eleventh Amendment immunity and should be dismissed for lack of jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1), or in the alternative, for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).

I. The Eleventh Amendment Bars the Court’s Consideration of Count II

This Court lacks jurisdiction to enjoin state officials on the basis of state law violations under the Eleventh Amendment. *See Pennhurst*, 465 U.S. 98-101. In their FAC, Plaintiffs allege an Equal Protection violation based entirely on the Commission’s alleged failure to comply with the redistricting criteria set forth in the Michigan Constitution. (No. 7, PageID.72-126). Because the Commission is an arm of Michigan’s legislative branch, it is entitled to Eleventh Amendment immunity, which neither Congress nor the State have waived in this context. As such, this Court should dismiss Count II for lack of jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1).

A. Count II is Based Entirely on Purported Violations of Michigan State Law.

Despite their invocation of the language of the Equal Protection Clause of the Fourteenth Amendment, Plaintiffs’ Count II is premised entirely on the Commission’s alleged violations of the Michigan Constitution and Michigan law. In their FAC, Plaintiffs allege that the Commission “applied the Michigan constitutional criteria in an inconsistent and arbitrary manner.” (No. 7, PageID.74 ¶ 108). Specifically, Plaintiffs assert that the Commission “fail[ed] to comply with or properly apply” four of the enumerated redistricting criteria in the Michigan Constitution when

adopting the Congressional district plan. (*Id.*, PageID.74 ¶ 109). Although Count II of Plaintiffs’ FAC is replete with citations to Michigan’s Constitution, (*see generally id.*, PageID.72–76 ¶ 97–126), it contains no reference to any caselaw or other legal authority suggesting that a state agency’s alleged failure to comply with state constitutional requirements constitutes a violation of the Equal Protection Clause—nor could it. Such claims are barred by longstanding Supreme Court and Sixth Circuit precedent. “Federal courts are simply not open to such state law challenges to official state action, absent explicit state waiver of the federal court immunity found in the Eleventh Amendment, irrespective of the type of relief sought.” *Gati*, 762 F. App’x at 253 (citing *Experimental Holdings, Inc. v. Farris*, 503 F.3d 514, 521 (6th Cir. 2007)). Indeed, “it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law.” *See Ohio Republican Party v. Brunner*, 543 F.3d 357, 360–61 (6th Cir. 2008) (quoting *Pennhurst*, 465 U.S. at 106).

B. Defendants are Entitled to Eleventh Amendment Immunity.

When an action is brought against a public agency or institution (or its officers acting in their official capacity), the question of whether Eleventh Amendment immunity applies “turns on whether said agency or institution can be characterized as an arm or alter ego of the state, or whether it should be treated instead as a political subdivision of the state.” *Hall v. Medical Coll. of Ohio at Toledo*, 742 F.2d 299 (6th Cir. 1984) (citing *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 280 (1977)). In *Hall*, the Sixth Circuit recognized that the most important factor in making such a determination is whether a judgment, if obtained, would be paid out of the state treasury. 742 F.2d at 304.

As set forth above, the Commission is a “permanent commission in the legislative branch” of the State of Michigan. *See Mich. Const. Art. IV § 6(1)*. The Commission is entirely funded by

legislative appropriations out of the state treasury, including the provision of “adequate funding to allow the commission to defend any action regarding an adopted plan.” Mich. Const. Art. IV §§ 6(5)-(6). As an arm of Michigan’s legislative branch funded entirely by the state treasury, the Commission is clearly entitled to Eleventh Amendment immunity.

C. Neither the State nor the Commission Have Waived Immunity.

Regardless of the form of relief requested, the states (and their departments and agencies) are immune under the Eleventh Amendment from suit in federal court, unless the state has waived immunity or Congress has expressly abrogated Eleventh Amendment immunity by statute. *Brock v. Mich. State Univ.*, No. 1:21-cv-436, 2022 WL 178681, at *2 (W.D. Mich. Jan. 20, 2022). Congress has not expressly abrogated Eleventh Amendment immunity by statute generally, *Quern v. Jordan*, 440 U.S. 332, 341 (1979), nor has the State of Michigan consented to civil rights suits in federal court. *See Abick v. Michigan*, 803 F.2d 874, 877 (6th Cir. 1986).

Neither the State nor Congress have issued an explicit waiver of sovereign immunity such that the Commission would be subject to federal jurisdiction for a claim based in state law. Thus, this Court is without jurisdiction to entertain Plaintiffs’ request for an injunction instructing the Commission on the requirements of the Michigan Constitution and Michigan law. *See Experimental Holdings*, 503 F.3d at 521. Indeed, the Michigan Constitution provides the Michigan Supreme Court with original jurisdiction to “direct the secretary of state or the commission to perform their respective duties . . . review a challenge to any plan adopted by the commission, and . . . remand a plan to the commission for further action if the plan fails to comply with the requirements of [the Michigan] constitution, the constitution of the United States, or superseding federal law.” Mich. Const. art. IV § 6(19). Count II must be dismissed under Rule 12(b)(1).

II. Plaintiffs Have Failed to State a Claim Upon Which Relief Can Be Granted

A. Plaintiffs' Count II Fails to State a Federal Claim for Relief.

When considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), courts must “construe the complaint in the light most favorable to the plaintiff, accept all well-pleaded factual allegations as true, and examine whether the complaint contains ‘sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.’” *Solo v. United Parcel Serv. Co.*, 819 F.3d 788, 793 (6th Cir. 2016) (quoting *Iqbal*, 556 U.S. at 678). Critically, “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

As explained in further detail in Section I.A above, Plaintiffs' Count II is based entirely on allegations involving state law, with only cursory references to the Fourteenth Amendment and § 1983. To state a claim under the Equal Protection Clause in the Sixth Circuit, “a § 1983 plaintiff must allege that a state actor intentionally discriminated against the plaintiff because of membership in a protected class.” *Katz v. Village of Beverly Hills*, 677 F. App'x 232, 237 (6th Cir. 2017) (citing *Henry v. Metropolitan Sewer Dist.*, 922 F.2d 332, 341 (6th Cir. 1990)). Plaintiffs allege no membership in a protected class, nor have they alleged intentional discrimination or disparate treatment on the basis of a suspect classification.

Nor do they refer to any standard for Equal Protection violations in the redistricting context that would entitle them to relief in federal court. *Cf. Reynolds v. Sims*, 377 U.S. 533, 577 (1964) (holding that a redistricting plan violates the Equal Protection Clause when districts substantially deviate from equal population requirements); *Shaw v. Reno*, 509 U.S. 630, 910–12 (1993) (holding that a redistricting plan violates the Equal Protection clause when a state impermissibly uses race to draw district lines). They merely assert that the Commission's application of the state

constitutional redistricting criteria was arbitrary and inconsistent, and therefore violated the Equal Protection Clause. (No. 7, PageID.75-76 ¶¶ 121–125). This perfunctory citation to the Fourteenth Amendment is precisely the kind of “threadbare recital[] of the elements of a cause of action, supported by mere conclusory statements” prohibited by the Supreme Court in *Iqbal*. 556 U.S. at 678.

B. Even if Plaintiffs Had Articulated a Cognizable Federal Claim, Count II Fails to State a Claim that the Commission Violated the Michigan Constitution.

Even if the purported violations of state law in Plaintiffs’ FAC could constitute a federal claim, Plaintiffs have failed to state a sufficient claim that the Commission violated the Michigan Constitution.

In Count II, Plaintiffs allege that the Commission “applied the Michigan constitutional criteria in an inconsistent and arbitrary manner.” (No. 7, PageID.74 ¶ 108). Plaintiffs further allege that the Commission applied the criteria “out of the order of priority mandated by the Michigan Constitution.” (*Id.* at PageID.75 ¶ 123). In support of these allegations, Plaintiffs argue that the Commission failed to correctly apply the “communities of interest” criterion by splitting counties, cities, and townships across multiple Congressional districts. (*Id.* at PageID.74–75 ¶¶ 114-118). But in doing so, Plaintiffs improperly conflate multiple constitutional criteria and subvert the order of priority that Michigan voters adopted when they amended their state’s constitution in 2018.

The Michigan Constitution sets forth the following criteria that the Commission must use when drawing new electoral maps, in the priority in which they must be used.

- (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).

Notably, the requirement that the Commission protect communities of interest is a distinct criterion from the consideration of existing political boundaries. *Id.* Protecting communities of interest is the third criterion in order of priority, and maintenance of county, city, and township boundaries is the sixth criterion—only geographic compactness is a lower priority criterion. *Id.* Plaintiffs’ attempt to conflate communities of interest with Michigan’s existing internal political subdivisions is expressly contravened by the language of the Michigan Constitution. (*See* No. 7, PageID.75 ¶¶ 116–117). Even if their allegations were taken as true, Plaintiffs’ grievance appears to be that the Commission followed the instructions in the Michigan Constitution in the priority in which they were written—a priority they merely disagree with. But Plaintiffs’ displeasure with the redistricting criteria in the Michigan Constitution hardly renders the Commission’s adherence to those criteria “inconsistent or arbitrary,” and certainly does not form the basis of a violation of the Michigan Constitution or federal law.

CONCLUSION

For the foregoing reasons, Proposed Intervenor-Defendant VNP respectfully requests that this Court dismiss Count II of Plaintiffs’ First Amended Complaint.

Date: February 7, 2022

Respectfully submitted,

/s/ Andrew M. Pauwels
Andrew M. Pauwels (P79167)
Andrea L. Hansen (P47358)
Honigman LLP
222 North Washington Square
Suite 400
Lansing, MI 48933-1800
(517) 484-8282
ahansen@honigman.com
apauwels@honigman.com

Paul M. Smith
Mark P. Gaber
Jonathan M. Diaz*
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
Tel.: (202) 736-2200
psmith@campaignlegalcenter.org
mgaber@campaignlegalcenter.org
jdiaz@campaignlegalcenter.org

*Awaiting full admission, sponsored by Mark
P. Gaber

*Counsel for proposed Intervenor-Defendant
Count MI Vote d/b/a Voters Not Politicians*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Western District of Michigan by using the CM/ECF system on February 7, 2022. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the using the CM/ECF system.

February 7, 2022

/s/ Andrew M. Pauwels
Andrew M. Pauwels

Counsel for Intervenor-Defendant VNP

RETRIEVED FROM DEMOCRACYDOCKET.COM

**CERTIFICATE OF COMPLIANCE
WITH LCivR 7.2(b)(ii)**

Pursuant to Local Rule 7.2(b)(ii), I hereby certify that this document was prepared using Microsoft Word, and that the word count for this document as provided by that software is 3,270, which is less than the 10,800-word limit for a brief filed in support of a dispositive motion.

Dated: February 7, 2022

Respectfully Submitted,

/s/ Andrew M. Pauwels
Andrew M. Pauwels (P79167)
Andrea L. Hansen (P47358)
Honigman LLP
222 North Washington Square
Suite 400
Lansing, MI 48933-1800
(517) 484-8282
ahansen@honigman.com
apauwels@honigman.com

Paul M. Smith
Mark P. Gaber
Jonathan M. Diaz*
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
Tel.: (202) 736-2200
psmith@campaignlegalcenter.org
mgaber@campaignlegalcenter.org
jdiaz@campaignlegalcenter.org

*Awaiting full admission, sponsored by Mark P. Gaber

*Counsel for proposed Intervenor-Defendant
Count MI Vote d/b/a Voters Not Politicians*

EXHIBIT B

RETRIEVED FROM DEMOCRACYDOCKET.COM

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MICHAEL BANERIAN, *et al.*,

Plaintiffs

v.

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

Defendants

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

Circuit Judge Raymond Kethledge
District Judge Paul L. Maloney
District Judge Janet T. Neff

**PROPOSED INTERVENOR-DEFENDANT VOTERS NOT POLITICIANS'S
ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

Proposed Intervenor-Defendant Count MI Vote d/b/a Voters Not Politicians (hereinafter, "VNP"), by and through its attorneys, hereby answers the allegations in Plaintiffs' First Amended Complaint (No. 7, PageID.56-77) as follows. Unless expressly admitted, each allegation in Plaintiffs' First Amended Complaint is denied.

INTRODUCTION

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP admits that the Plaintiffs named in this paragraph have brought this suit to challenge Michigan's recently enacted congressional districts, and deny the remainder.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP admits that compliance with federal law is not impossible and denies the remaining allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP admits that the Commissioners had the ability to draw and adopt lawful congressional districts, and did in fact do so. VNP lacks sufficient

information or knowledge to respond to the allegations in this paragraph regarding the map in Plaintiffs' Exhibit A.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

JURISDICTION AND VENUE

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies that this Court has jurisdiction over Count II of this action, and has filed a motion to dismiss on that basis. VNP does not contest this Court's jurisdiction over Count I.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP does not contest the appointment of a three-judge panel to hear and determine this case, and acknowledges that such a panel has already been appointed. (No. 19).

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP states venue is proper in this District for all

claims over which this Court has jurisdiction. Further answering, VNP admits that Secretary Benson's office is located in this District.

THREE-JUDGE COURT REQUESTED

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

Answer: Without waiving any applicable defenses or legal arguments, VNP admits that Plaintiffs purport to challenge the constitutionality of the Commissioners' reapportionment of Michigan's congressional districts.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP does not contest the appointment of a three-judge panel to hear and determine this case, and acknowledges that such a panel has already been appointed. (No. 19).

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP does not contest the appointment of a three-judge panel to hear and determine this case, and acknowledges that such a panel has already been appointed. (No. 19).

PARTIES

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

Answer: VNP lacks sufficient knowledge or information to respond to the allegations in this paragraph.

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

Answer: VNP lacks sufficient knowledge or information to respond to the allegations in this paragraph.

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

Answer: VNP lacks sufficient knowledge or information to respond to the allegations in this paragraph.

21. Plaintiff Peter Colovos lives in Hagar Township, Berrien County, Michigan. Mr. Colovos regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. Colovos resides in the newly created 4th Congressional District.

Answer: VNP lacks sufficient knowledge or information to respond to the allegations in this paragraph.

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

Answer: VNP lacks sufficient knowledge or information to respond to the allegations in this paragraph.

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

Answer: VNP lacks sufficient knowledge or information to respond to the allegations in this paragraph.

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

Answer: VNP lacks sufficient knowledge or information to respond to the allegations in this paragraph.

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

Answer: VNP lacks sufficient knowledge or information to respond to the allegations in this paragraph.

26. Plaintiff Cameron Pickford lives in Charlotte, Michigan, which is in Eaton County. Mr. Pickford regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. Pickford resides in the newly created 7th Congressional District.

Answer: VNP lacks sufficient knowledge or information to respond to the allegations in this paragraph.

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

Answer: VNP lacks sufficient knowledge or information to respond to the allegations in this paragraph.

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

Answer: VNP lacks sufficient knowledge or information to respond to the allegations in this paragraph.

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

Answer: VNP admits that Jocelyn Benson is the Michigan Secretary of State. The rest of the paragraph consists of argument and legal conclusions, to which no response is required.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

32. Defendant Douglas Clark serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Mr. Clark is affiliated with the Republican Party. Plaintiffs sue Mr. Clark solely in his official capacity.

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

GENERAL ALLEGATIONS

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

- A. Districts shall be of equal population as mandated by the United States Constitution, and shall 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.

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. VNP further states that the provisions of the Michigan Constitution referenced in this paragraph speak for themselves.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: This paragraph (and the accompanying footnote) consists of arguments and legal conclusions to which no response is required.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

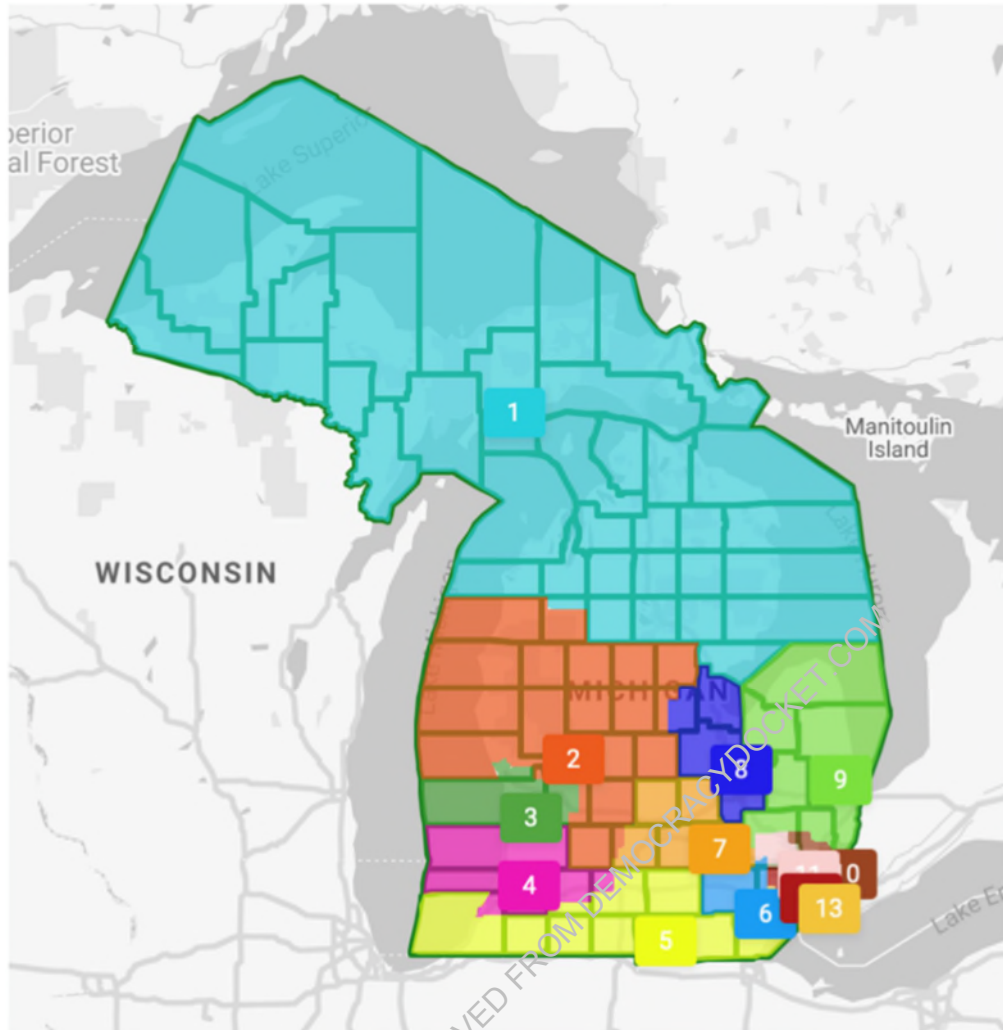
54. To ensure that no district suffers from vote dilution in contravention of the “one person, one vote” principle recognized by the U.S. Supreme Court, the Commissioners were obligated to adopt districts that each have a population as close to 775,179 persons as possible.

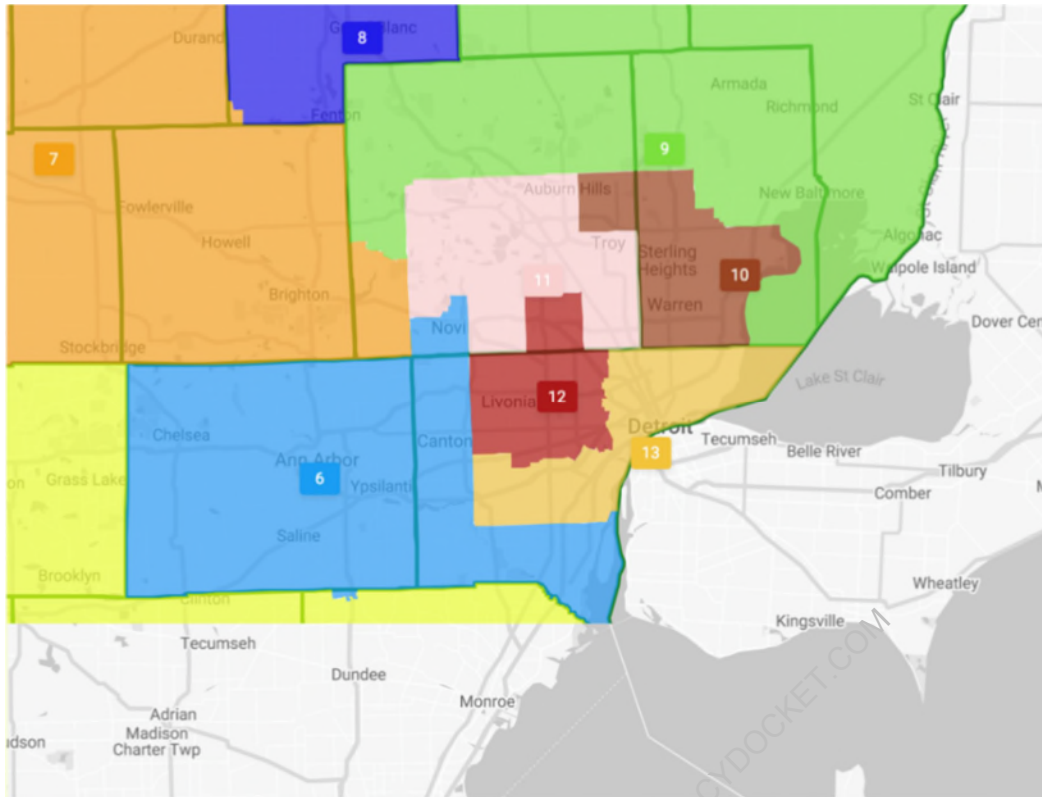
Answer: This paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: VNP admits the allegations in this paragraph.

56. On December 28, 2021, the Michigan Independent Citizens Redistricting Commission adopted and enacted the “Chestnut Plan,” which appears as follows (and is available at <https://michigan.mydistricting.com/legdistricting/comments/plan/279/23> (visited Jan. 6, 2022)):





Answer: VNP admits that the Commission adopted the Chestnut Plan on December 28, 2021, but lacks sufficient information or knowledge to respond to the map images shown in this paragraph.

57. The Chestnut Plan's largest congressional district (District 13) has a population of 775,666 persons, which is 487 persons above the ideal population for congressional districts in Michigan.

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

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

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

78. The remedy map attached to this Complaint (Exhibit A) greatly increases the compactness of several congressional districts, including District 5.²

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph and the accompanying footnote.

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

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

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

Answer: VNP restates and incorporates by reference Paragraphs 1 through 81 of this Answer.

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

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: VNP admits the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

91. The total deviation is therefore 0.14%.

Answer: VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

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

Answer: This paragraph and the accompanying footnote consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph and the accompanying footnote.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: This paragraph consists of arguments and legal conclusions to which no response is required.

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

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

Answer: VNP restates and incorporates by reference Paragraphs 1 through 96 of this Answer.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

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

- B. Districts shall reflect the state's diverse population and communities of interest, *id.* § 6(13)(c);
- C. Districts shall reflect consideration of county, city, and township boundaries, *id.* § 6(13)(f); and
- D. Districts shall be reasonably compact, *id.* § 6(13)(g).

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph and all subparagraphs consist of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph and all subparagraphs.

110. Communities of interest requirements, whole county requirements, and whole township requirements ensure that when casting a vote in a congressional district, the voter is selecting a candidate that can represent both the individual's interests and the common interests of the community within the district.

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and,

in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

114. The Commissioners arbitrarily assigned voters to various locations.

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and,

in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP lacks sufficient information or knowledge to respond to the allegations in this paragraph.

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

Answer: As set forth in VNP’s Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: As set forth in VNP’s Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: As set forth in VNP’s Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments,

this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

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

Answer: As set forth in VNP's Motion to Dismiss, the Court lacks jurisdiction over Count II and, in the alternative, Count II fails to state a claim. Subject to and without waiving these arguments, this paragraph consists of arguments and legal conclusions to which no response is required. To the extent a response is required, VNP denies the allegations in this paragraph.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Convene a three-judge district court to hear and determine Plaintiffs' claims that the Commissioners' Congressional Plan violates the U.S. Constitution;
- B. Declare that the Commissioners' Congressional Plan violates the one person, one vote principle contained in Article I, Section 2 of the U. S. Constitution;
- C. Declare that the Commissioners' Congressional Plan violates the Fourteenth Amendment's Equal Protection Clause;
- D. Enjoin Defendants, their agents, and assigns, from holding any congressional elections using the enacted map, the Chestnut Plan;
- E. Establish a deadline by which the Commissioners must redraw maps, and if the Commissioners do not act by this deadline, assume jurisdiction, appoint a special master, and draw constitutionally compliant congressional districts;
- F. Enjoin Defendants from using any plan for congressional elections that does not comply with the U.S. Constitution;
- G. Award Plaintiffs their costs, expenses, disbursements, and reasonable attorneys' fees incurred in bringing this action, in accordance with 52 U.S.C. §

10310(e) and 42 U.S.C. § 1988;

H. Retain jurisdiction over this matter until all Defendants have complied with all orders and mandates of this Court; and

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

Answer: VNP denies that Plaintiffs are entitled to any relief. Further, VNP respectfully requests that the Court dismiss Plaintiffs' First Amended Complaint with Prejudice, enter judgment in favor of VNP and against Plaintiffs on all counts, award VNP its costs, expenses, disbursements, and reasonable attorneys' fees incurred in bringing this action, and grant such other and further relief as the Court may deem just and proper.

AFFIRMATIVE DEFENSES

VNP sets forth its affirmative defenses to the allegations in Plaintiffs' FAC below. VNP does not assume the burden of proving any fact, issue, or element of a cause of action in the FAC where such burden properly rests with Plaintiffs, nor does anything stated in VNP's affirmative defenses consist of an acknowledgement that any particular issue or subject matter is relevant to the allegations in Plaintiffs' FAC. VNP alleges each of the following as separate and distinct affirmative defenses:

FIRST AFFIRMATIVE DEFENSE – Eleventh Amendment Immunity

1. As to Count II, Plaintiffs' request for relief is barred by Eleventh Amendment immunity. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984). This Court lacks jurisdiction to enjoin state officials for violations of state law.

SECOND AFFIRMATIVE DEFENSE – Failure to State a Claim

2. As to Count II, Plaintiffs' have failed to state a claim upon which relief can be granted. Plaintiffs fail to allege the violation of a federal right.

THIRD AFFIRMATIVE DEFENSE – Failure to State a Claim

3. As to Count II, Plaintiffs have failed to state a claim upon which relief can be granted. Plaintiffs fail to allege a violation of the Michigan Constitution.

FOURTH AFFIRMATIVE DEFENSE – Unlawful Remedy

4. Plaintiffs’ prayer for relief requests that this Court “assume jurisdiction, appoint a special master, and draw constitutionally compliant congressional districts[.]” Such relief is unlawful under the Michigan Constitution. *See* Mich. Const. art. IV, § 6(19) (“In no event shall any body, except the independent citizens redistricting commission acting pursuant to this section, promulgate and adopt a redistricting plan or plans for this state.”).

Dated: February 7, 2022

Respectfully Submitted,

/s/ Andrew M. Pauwels

Andrew M. Pauwels (P79167)
Andrea L. Hansen (P47358)
Honigman LLP
222 North Washington Square
Suite 400
Lansing, MI 48933-1800
(517) 484-8282
ahansen@honigman.com
apauwels@honigman.com

Paul M. Smith
Mark P. Gaber
Jonathan M. Diaz*
Campaign Legal Center
1101 14th St. NW, Ste. 400
Washington, DC 20005
(202) 736-2200

*Awaiting full admission, sponsored by Mark P. Gaber

*Counsel for Intervenor-Defendants Count MI
Vote d/b/a Voters Not Politicians*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States District Court for the Western District of Michigan by using the CM/ECF system on February 7, 2022. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the using the CM/ECF system.

February 7, 2022

/s/ Andrew M. Pauwels
Andrew M. Pauwels

Counsel for Intervenor-Defendant VNP

RETRIEVED FROM DEMOCRACYDOCKET.COM