

**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

**INTERVENOR-DEFENDANT VOTERS NOT POLITICIANS’
ANSWER TO PLAINTIFFS’ FIRST AMENDED COMPLAINT**

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").

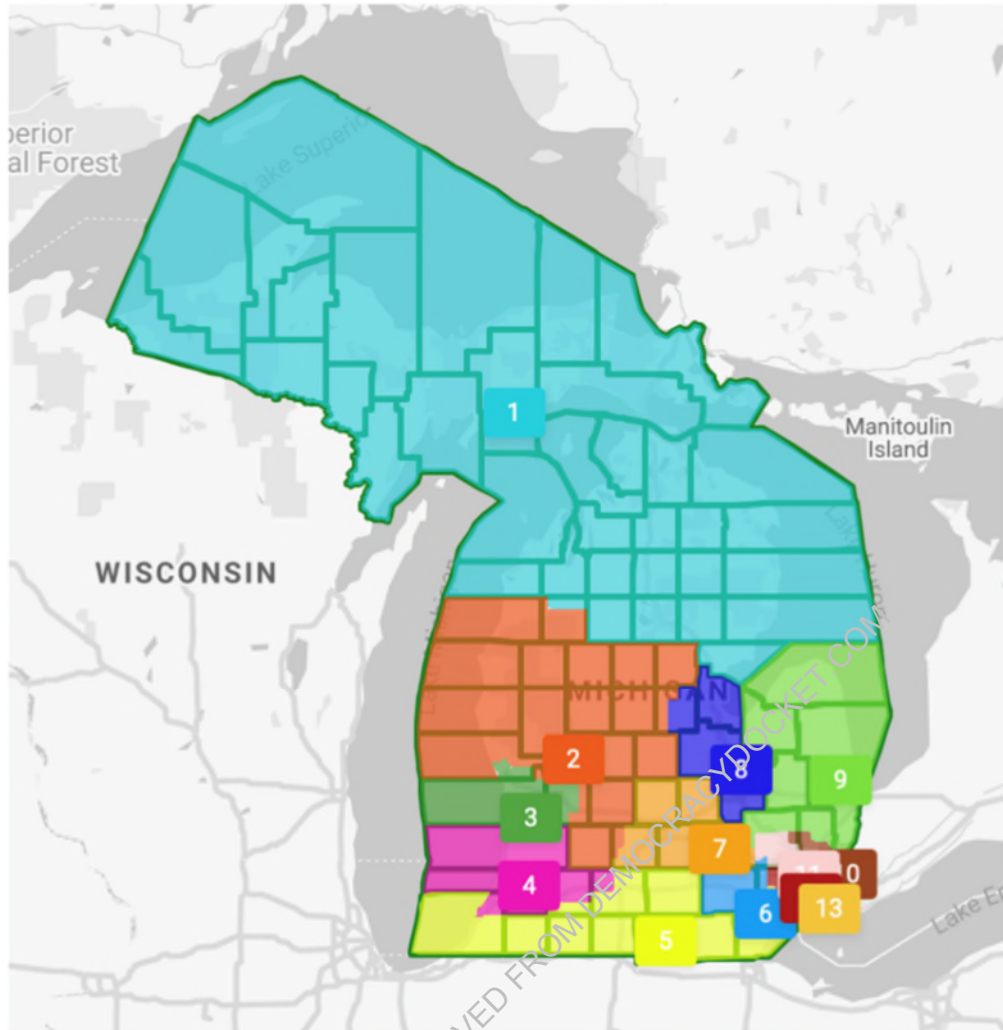
54. To ensure that no district suffers from vote dilution in contravention of the “one person, one vote” principle recognized by the U.S. Supreme Court, the Commissioners were obligated to adopt districts that each have a population as close to 775,179 persons as possible.

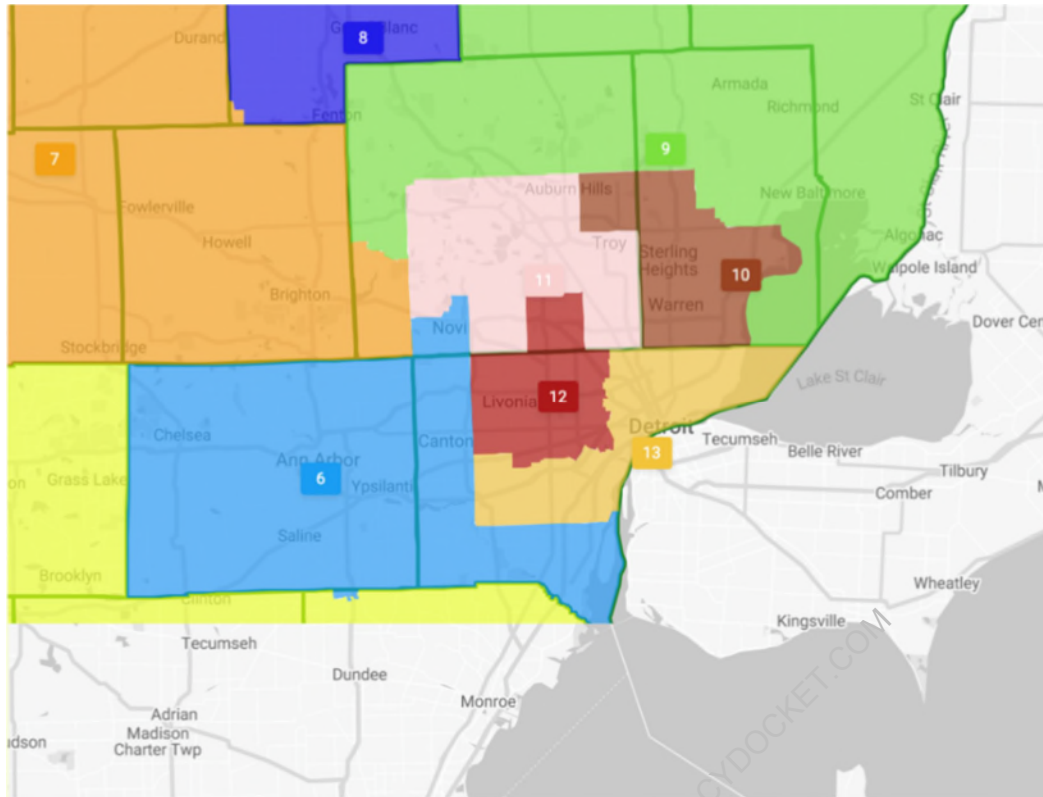
Answer: This paragraph consists of arguments and legal conclusions to which no response is required.

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 11, 2022

Respectfully Submitted,

/s/ Andrew M. Pauwels

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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 11, 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 11, 2022

/s/ Andrew M. Pauwels
Andrew M. Pauwels

Counsel for Intervenor-Defendant VNP

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