

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL BANERIAN, MICHON
BOMMARITO; PETER COLOVOS, WILLIAM
GORDON, JOSEPH GRAVES, BEAU
LaFAVE, CAMERON PICKFORD, HARRY
SAWICKI and MICHELLE SMITH,

No. 1:22-cv-00054

HON. PAUL L. MALONEY

MAG. SALLY J. BERENS

Plaintiffs,

v

JOCELYN BENSON, in her official capacity as
Secretary of State of Michigan, DOUGLAS
CLARK, JUANITA CURRY, ANTHONY EID,
RHONDA LANGE, STEVEN TERRY LETT,
BRITTON KELLOM, CYNTHIA ORTON, M.C.
ROTHORN, REBECCA SZETELA, JANICE
VALLETTE, ERIN WAGNER, RICHARD
WEISS and DUSTIN WITJES, in their official
capacities as Commissioners of the Michigan
Independent Citizens Redistricting
Commission,

**DEFENDANT BENSON'S
ANSWER TO PLAINTIFFS'
FIRST AMENDED
COMPLAINT**

Defendants,

and

JOAN SWARTZ MCKAY, et al,

Intervenor-Defendants,

and

VOTERS NOT POLITICIANS,

Intervenor-Defendant.

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**DEFENDANT BENSON'S ANSWER TO PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Defendant Michigan Secretary of State Jocelyn Benson, by her attorneys,
answers Plaintiffs' First Amended Complaint as follows:

INTRODUCTION

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

ANSWER: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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

ANSWER: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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

ANSWER: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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: The allegations in this paragraph are legal conclusions which require no response. To the extent a response is required, Defendant 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: The allegations in this paragraph are legal conclusions which require no response. To the extent a response is required, Defendant admits that the Commissioners had the ability to draw and adopt lawful congressional districts. Defendant 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: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

JURISDICTION AND VENUE

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

ANSWER: The allegations in this paragraph are legal conclusions which require no response. To the extent a response is required, Defendant denies that this Court has jurisdiction over Count II of this action. Defendant 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: The allegations in this paragraph are legal conclusions which require no response. To the extent a response is required, Defendant 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: The allegations in this paragraph are legal conclusions which require no response. To the extent a response is required, Defendant admits that the Secretary of State's office is 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, Defendant 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: The allegations in this paragraph are legal conclusions which require no response. To the extent a response is required, Defendant 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: The allegations in this paragraph are legal conclusions which require no response. To the extent a response is required, Defendant 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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: Defendant admits that she is Secretary of State. The remaining allegations in this paragraph are legal conclusions which require no response. To the extent and response is required, Defendant admits that the Department of State must update Michigan's qualified voter file to incorporate the congressional district plan drawn by the Independent Citizens Redistricting Commission, and that she is the filing official for nominating petitions filed by congressional candidates.

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: Admitted.

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: Admitted.

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: Admitted.

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: Admitted.

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: Admitted.

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: Admitted.

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: Admitted.

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: Admitted.

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: Admitted.

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: Admitted.

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: Admitted.

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: Admitted.

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: Admitted.

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: Admitted.

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: Admitted.

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: Admitted.

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

ANSWER: Admitted.

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

- A. Districts shall be of equal population as mandated by the United States Constitution, and shall be geographically contiguous. Island areas are considered to be contiguous by land to the county of which they are a part.
- B. Districts shall reflect the state’s diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. Communities

of interest do not include relationships with political parties, incumbents, or political candidates.

- C. Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political party shall be determined using accepted measures of partisan fairness.
- D. Districts shall not favor or disfavor an incumbent elected official or a candidate.
- E. Districts shall reflect consideration of county, city, and township boundaries.
- F. Districts shall be reasonably compact.

ANSWER: The allegations in this paragraph are legal conclusions which require no response. Defendant 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: The allegations in this paragraph are legal conclusions which require no response.

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

ANSWER: The allegations in this paragraph are legal conclusions which require no response.

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: The allegations in this paragraph are legal conclusions which require no response.

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

ANSWER: Admitted.

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

ANSWER: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: Defendant admits that Michigan was apportioned thirteen congressional districts.

54. To ensure that no district suffers from vote dilution in contravention of the "one person, one vote" principle recognized by the U.S. Supreme Court, the

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").

Commissioners were obligated to adopt districts that each have a population as close to 775,179 persons as possible.

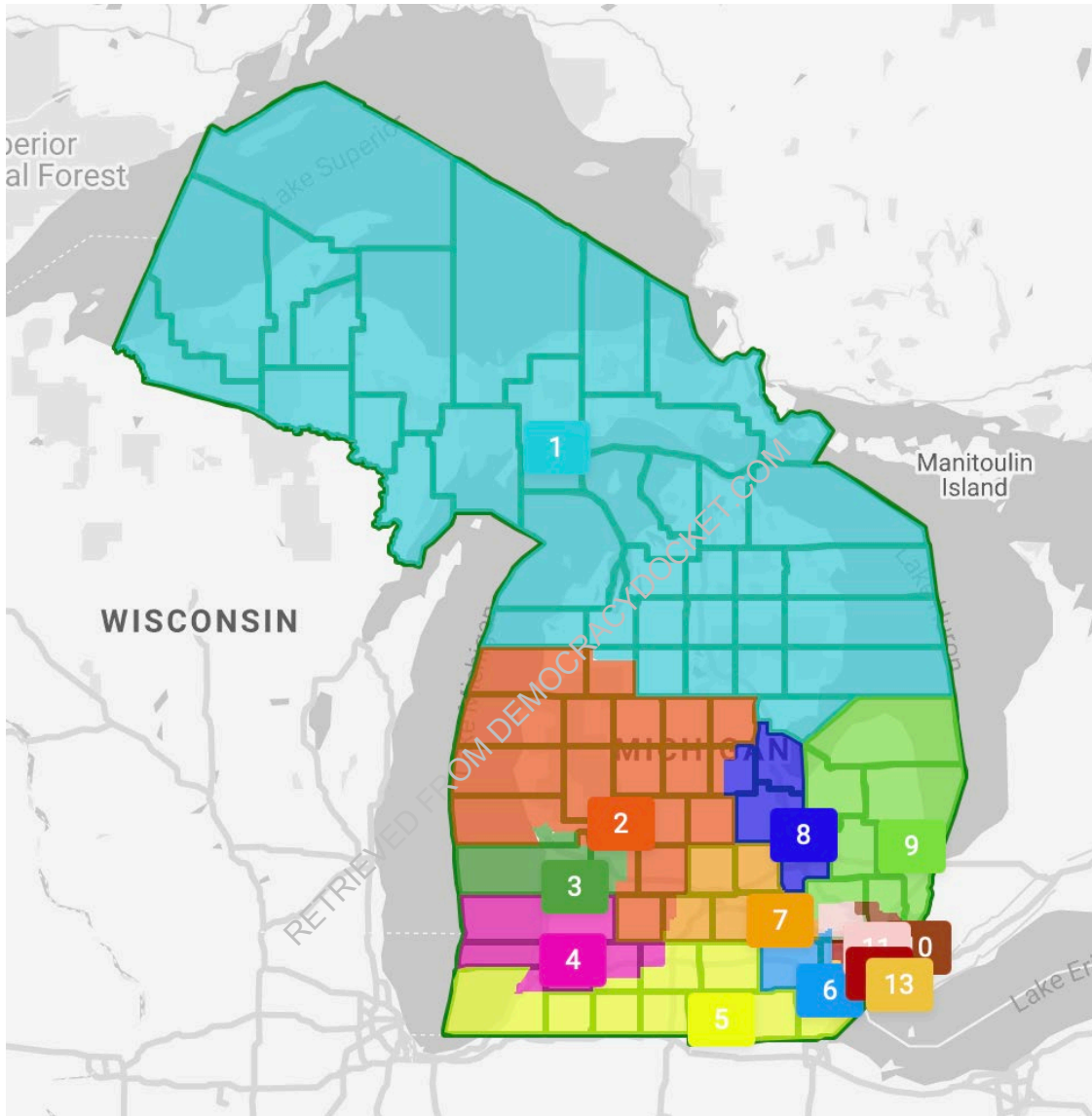
ANSWER: The allegations in this paragraph are legal conclusions which require no response.

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”).

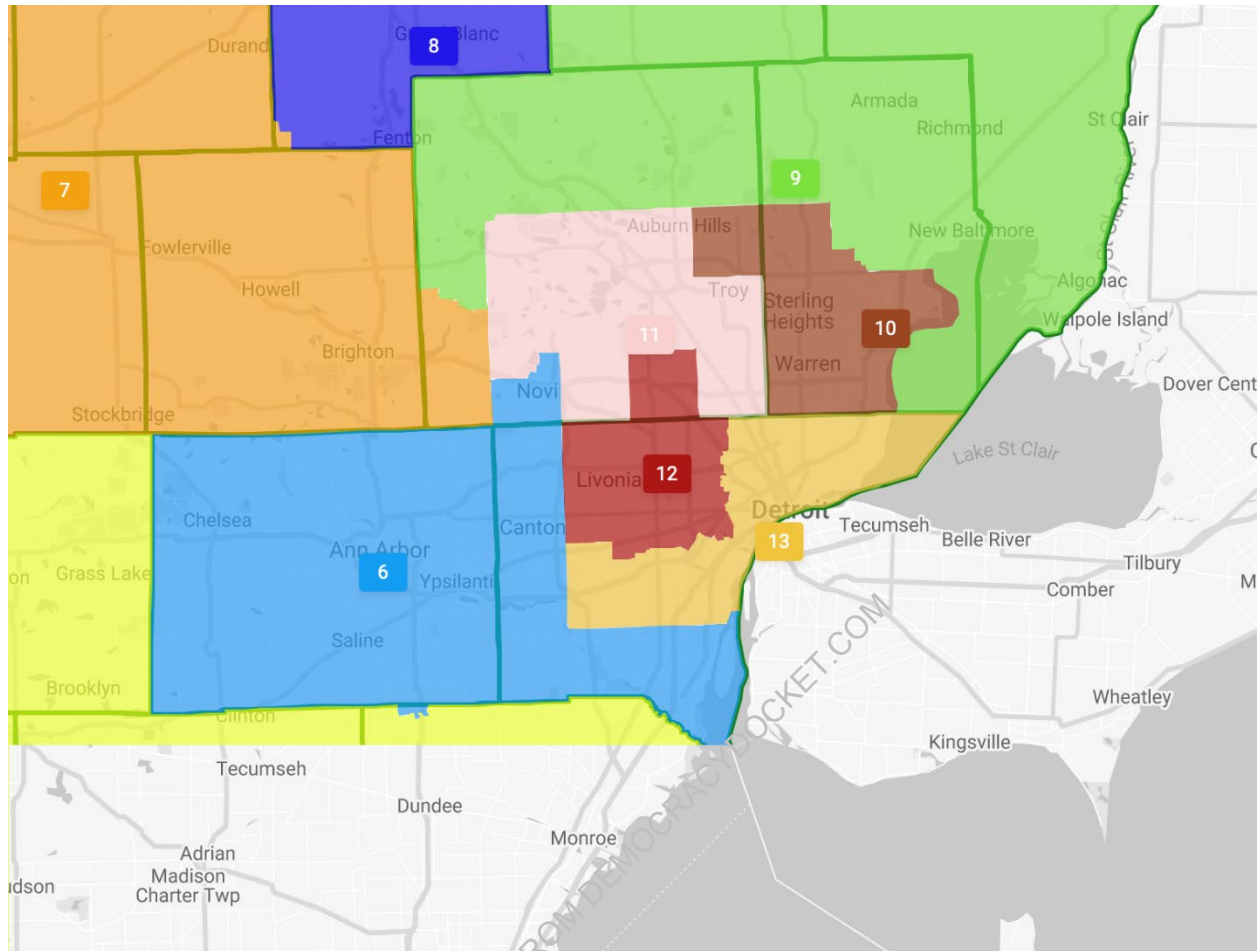
ANSWER: Admitted.

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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: Defendant 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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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

ANSWER: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: Defendant neither admits nor denies the allegations in this paragraph and footnote due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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>.

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: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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).

ANSWER: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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: Defendant 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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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

ANSWER: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: Defendant admits that Michigan was apportioned into thirteen Congressional Districts.

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

ANSWER: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

91. The total deviation is therefore 0.14%.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: The allegations in this paragraph and footnote are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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

ANSWER: Defendant neither admits nor denies the allegations in this paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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).

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

ANSWER: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies 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: The allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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: Defendant 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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, Defendant neither admits nor denies the allegations in this

paragraph due to lack of knowledge and information sufficient to form a belief as to the truth of the matter asserted.

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

ANSWER: As set forth in the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which

require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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

ANSWER: As set forth in the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which

require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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

ANSWER: As set forth in the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which

require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

114. The Commissioners arbitrarily assigned voters to various locations.

ANSWER: As set forth in the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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 the Commission’s Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies 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 the Commission’s Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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 the Commission’s Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which

require no response. To the extent an answer is required, Defendant 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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant 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 the Commission's Motion to Dismiss, the Court lacks jurisdiction over Count II. Subject to and without waiving these arguments, the allegations in this paragraph are legal conclusions which require no response. To the extent an answer is required, Defendant denies the allegations in this paragraph.

DEFENDANT'S SPECIAL AND/OR AFFIRMATIVE DEFENSES

NOW COMES Defendant Secretary Benson, by and through her attorneys, and pursuant to Fed. R. Civ. P. 8(c) for her Special and/or Affirmative Defenses states:

1. Plaintiffs' complaint fails to state a claim upon which relief may be granted.
2. Plaintiffs' claim in Count II is barred by the Eleventh Amendment under *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984).
3. Plaintiffs' claims may be barred due to estoppel, res judicata, waiver, and/or laches.
4. Plaintiffs' claims may be barred due to this Court's lack of jurisdiction to hear this matter.
5. Plaintiffs' losses or damages, if any, may have been caused by their own actions, the actions of other third parties or were the result of unrelated, pre-existing or subsequent conditions that cannot be attributed to this Defendant.
6. To the extent any assertion contained in Defendant's above answers constitutes an affirmative defense, the same is incorporated by reference

as if fully set forth herein.

7. Defendant reserves the right to raise any additional affirmative defenses that Defendant may have following the completion of discovery herein.

WHEREFORE, Defendant respectfully requests that this Court dismiss the complaint, with prejudice, and award Defendant her costs and attorney fees associated with defending this matter.

Respectfully submitted,

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Dated: February 18, 2022

CERTIFICATE OF SERVICE

I hereby certify that on February 18, 2022, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

s/Heather S. Meingast
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