

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

MICHAEL BANERIAN, *et al.*,

Plaintiffs,

v.

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

Defendants.

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

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

JOINT STATUS REPORT

Pursuant to this Court's February 24, 2022 order, ECF 55, PageID.1126-27, the Parties submit this Joint Status Report. In accordance with that order, the Parties held a conference via Microsoft Teams on Monday, February 28, 2022. The Parties also held an additional conference via Microsoft Teams on Tuesday, March 1, 2022.

I. JOINT STATEMENT OF UNDISPUTED MATERIAL FACTS.

A. Census Numbers

1. According to the 2020 Decennial Census, Michigan has a population of 10,077,331 persons. Am. Compl. ¶ 52 (PageID. 65); VNP Answer ¶ 52, ECF 33, PageID.493; Voter-Defs.' Answer ¶ 52, ECF 35, PageID.549-550; Comm'rs Answer ¶ 52, ECF 40, PageID.687.
2. Based on these numbers, Michigan was apportioned thirteen congressional districts. Am. Compl. ¶ 53 (PageID.65). VNP Answer ¶ 53, ECF 33, PageID.493; Voter-Defs.' Answer

¶ 52, ECF 35, PageID.550; Comm’rs Answer ¶ 53, ECF 40, PageID.687; Sec’y Answer ¶ 53, ECF 46, PageID.952.

3. The ideal congressional district population is 775,179 persons. Am. Compl. ¶ 54 (PageID. 65-66). VNP Answer ¶ 87, ECF 33, PageID.502-503; Voter-Defs. Answer ¶ 87, ECF 35, PageID.559; Comm’rs Answer ¶ 54, ECF 40, PageID.687.

B. Plaintiffs

4. All Plaintiffs are natural persons, citizens of the United States, and registered to vote in Michigan. Am. Compl. ¶ 18, ECF 7, PageID.60.
5. Plaintiff Michael Banerian is a resident of Royal Oak, Michigan, in Oakland County. *Id.* ¶ 19, ECF 7, PageID.60. He regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Mr. Banerian resides in the newly created Eleventh Congressional District. *Id.*
6. Plaintiff Michon Bommarito is a resident of Albion, Michigan, in Calhoun County. Am. Compl. ¶ 20, ECF 7, PageID.60. She regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Ms. Bommarito resides in the newly created Fifth Congressional District. *Id.*
7. Plaintiff Peter Colovos is a resident of Hagar Township, Michigan, in Berrien County. Am. Compl. ¶ 21, ECF 7, PageID.60. He regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Mr. Colovos resides in the newly created Fourth Congressional District. *Id.*
8. Plaintiff William Gordon is a resident of Scio Township, Michigan, in Washtenaw County. Am. Compl. ¶ 22, ECF 7, PageID.60. He regularly votes in federal, state, and local

elections in Michigan. *Id.* Under the enacted map, Mr. Gordon resides in the newly created Sixth Congressional District. *Id.*

9. Plaintiff Joseph Graves is a resident of Linden, Michigan, in Genesee County. Am. Compl. ¶ 23, ECF 7, PageID.60. He regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Mr. Graves resides in the newly created Eighth Congressional District. *Id.*
10. Plaintiff Beau LaFave is a resident of Iron Mountain, Michigan, in Dickinson County. Am. Compl. ¶ 24, ECF 7, PageID.61. He regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Mr. LaFave resides in the newly created First Congressional District. *Id.*
11. Plaintiff Sarah Paciorek is a resident of Ada, Michigan, in Kent County. Am. Compl. ¶ 25, ECF 7, PageID.61. She first registered to vote in Michigan at the age of 18 before moving out of the state for work; she returned to Michigan in 2021, where she is currently registered and intends to vote in 2022. *Id.* Under the enacted map, Ms. Paciorek resides in the newly created Third Congressional District. *Id.*
12. Plaintiff Cameron Pickford is a resident of Charlotte, Michigan, in Eaton County. Am. Compl. ¶ 26, ECF 7, PageID.61. He regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Mr. Pickford resides in the newly created Seventh Congressional District. *Id.*
13. Plaintiff Harry Sawicki is a resident of Dearborn Heights, Michigan, in Wayne County. Am. Compl. ¶ 27, ECF 7, PageID.61. He regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Mr. Sawicki resides in the newly created Twelfth Congressional District. *Id.*

14. Plaintiff Michelle Smith is a resident of Sterling Heights, Michigan, in Macomb County.

Am. Compl. ¶ 28, ECF 7, PageID.61. She regularly votes in federal, state, and local elections in Michigan. *Id.* Under the enacted map, Ms. Smith resides in the newly created Tenth Congressional District. *Id.*

C. Defendants

1. Defendant Commissioners

15. Defendant Douglas Clark serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 32, ECF 7, PageID.62; VNP Answer ¶ 32, ECF 33, PageID.489; Voters-Defs.' Answer ¶ 32, ECF 35, PageID.545; Comm'rs Answer ¶ 32, ECF 40, PageID.682; Sec'y Answer ¶ 32, ECF 46, PageID.947. Mr. Clerk is affiliated with the Republican Party and is sued only in his official capacity. Am. Compl. ¶ 32, ECF 7, PageID.62; VNP Answer ¶ 32, ECF 33, PageID.489; Voters-Defs.' Answer ¶ 32, ECF 35, PageID.545; Comm'rs Answer ¶ 32, ECF 40, PageID.682; Sec'y Answer ¶ 32, ECF 46, PageID.947.

16. Defendant Juanita Curry serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 33, ECF 7, PageID.62; VNP Answer ¶ 33, ECF 33, PageID.489; Voters-Defs.' Answer ¶ 32, ECF 35, PageID.545; Comm'rs Answer ¶ 32, ECF 40, PageID.683; Sec'y Answer ¶ 32, ECF 46, PageID.948. Ms. Curry is affiliated with the Democratic Party and is sued only in her official capacity. Am. Compl. ¶ 33, ECF 7, PageID.62; VNP Answer ¶ 33, ECF 33, PageID.489; Voters-Defs.' Answer ¶ 32, ECF 35, PageID.545; Comm'rs Answer ¶ 32, ECF 40, PageID.683; Sec'y Answer ¶ 32, ECF 46, PageID.948.

17. Defendant Anthony Eid serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 34, ECF 7, PageID.62; VNP Answer ¶ 34, ECF 34, PageID.489; Voters-Defs.' Answer ¶ 34, ECF 35, PageID.545; Comm'rs Answer ¶ 34, ECF 40, PageID.683; Sec'y Answer ¶ 34, ECF 46, PageID.948. Mr. Eid is not affiliated with either major political party and is sued only in his official capacity. Am. Compl. ¶ 34, ECF 7, PageID.62; VNP Answer ¶ 34, ECF 34, PageID.489; Voters-Defs.' Answer ¶ 34, ECF 35, PageID.545; Comm'rs Answer ¶ 34, ECF 40, PageID.683; Sec'y Answer ¶ 34, ECF 46, PageID.948.
18. Defendant Rhonda Lange serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 35, ECF 7, PageID.62; VNP Answer ¶ 35, ECF 34, PageID.489; Voters-Defs.' Answer ¶ 35, ECF 35, PageID.545; Comm'rs Answer ¶ 35, ECF 40, PageID.683; Sec'y Answer ¶ 35, ECF 46, PageID.948. Ms. Lange is affiliated with the Republican Party and is sued only in her official capacity. Am. Compl. ¶ 35, ECF 7, PageID.62; VNP Answer ¶ 35, ECF 34, PageID.489; Voters-Defs.' Answer ¶ 35, ECF 35, PageID.545; Comm'rs Answer ¶ 35, ECF 40, PageID.683; Sec'y Answer ¶ 35, ECF 46, PageID.948.
19. Defendant Steven Terry Lett serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 36, ECF 7, PageID.62; VNP Answer ¶ 36, ECF 34, PageID.489-490; Voters-Defs.' Answer ¶ 36, ECF 35, PageID.546; Comm'rs Answer ¶ 36, ECF 40, PageID.683; Sec'y Answer ¶ 36, ECF 46, PageID.948. Mr. Lett is not affiliated with either major political party and is sued only in his official capacity. Am. Compl. ¶ 36, ECF 7, PageID.62; VNP Answer ¶ 36, ECF 34, PageID.489-490; Voters-

Defs.' Answer ¶ 36, ECF 35, PageID.546; Comm'rs Answer ¶ 36, ECF 40, PageID.683; Sec'y Answer ¶ 36, ECF 46, PageID.948.

20. Defendant Brittnei Kellom serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 37, ECF 7, PageID.63; VNP Answer ¶ 37, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 37, ECF 35, PageID.546; Comm'rs Answer ¶ 37, ECF 40, PageID.683; Sec'y Answer ¶ 37, ECF 46, PageID.948. Ms. Kellom is affiliated with the Democratic Party and is sued only in her official capacity. Am. Compl. ¶ 37, ECF 7, PageID.63; VNP Answer ¶ 37, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 37, ECF 35, PageID.546; Comm'rs Answer ¶ 37, ECF 40, PageID.683; Sec'y Answer ¶ 37, ECF 46, PageID.948.

21. Defendant Cynthia Orton serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 38, ECF 7, PageID.63; VNP Answer ¶ 38, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 38, ECF 35, PageID.546; Comm'rs Answer ¶ 38, ECF 40, PageID.683-684; Sec'y Answer ¶ 38, ECF 46, PageID.949. Ms. Orton is affiliated with the Republican Party and is sued only in her official capacity. Am. Compl. ¶ 38, ECF 7, PageID.63; VNP Answer ¶ 38, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 38, ECF 35, PageID.546; Comm'rs Answer ¶ 38, ECF 40, PageID.683-684; Sec'y Answer ¶ 38, ECF 46, PageID.949.

22. Defendant M.C. Rothhorn serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 39, ECF 7, PageID.63; VNP Answer ¶ 39, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 39, ECF 35, PageID.546; Comm'rs Answer ¶ 39, ECF 40, PageID. 684; Sec'y Answer ¶ 39, ECF 46, PageID.949. Mr. Rothhorn is affiliated with the Democratic Party and is sued only in his official capacity. Am. Compl. ¶ 39, ECF

7, PageID.63; VNP Answer ¶ 39, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 39, ECF 35, PageID.546; Comm'rs Answer ¶ 39, ECF 40, PageID. 684; Sec'y Answer ¶ 39, ECF 46, PageID.949.

23. Defendant Rebecca Szetela serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 40, ECF 7, PageID.63; VNP Answer ¶ 40, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 40, ECF 35, PageID.546; Comm'rs Answer ¶ 40, ECF 40, PageID. 684; Sec'y Answer ¶ 40, ECF 46, PageID.949. Ms. Szetela is not affiliated with either major political party and is sued only in her official capacity. Am. Compl. ¶ 40, ECF 7, PageID.63; VNP Answer ¶ 40, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 40, ECF 35, PageID.546; Comm'rs Answer ¶ 40, ECF 40, PageID. 684; Sec'y Answer ¶ 40, ECF 46, PageID.949.

24. Defendant Janice Vallette serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 41, ECF 7, PageID.63; VNP Answer ¶ 41, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 41, ECF 35, PageID.546-547; Comm'rs Answer ¶ 41, ECF 40, PageID. 684; Sec'y Answer ¶ 41, ECF 46, PageID.949. Ms. Vallette is not affiliated with either major political party and is sued only in her official capacity. Am. Compl. ¶ 41, ECF 7, PageID.63; VNP Answer ¶ 41, ECF 34, PageID.490; Voters-Defs.' Answer ¶ 41, ECF 35, PageID.546-547; Comm'rs Answer ¶ 41, ECF 40, PageID. 684; Sec'y Answer ¶ 41, ECF 46, PageID.949.

25. Defendant Erin Wagner serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 42, ECF 7, PageID.63; VNP Answer ¶ 42, ECF 34, PageID.491; Voters-Defs.' Answer ¶ 42, ECF 35, PageID.547; Comm'rs Answer ¶ 42, ECF 40, PageID. 684; Sec'y Answer ¶ 42, ECF 46, PageID.949. Ms. Wagner is affiliated

with the Republican Party and is sued only in her official capacity. Am. Compl. ¶ 42, ECF 7, PageID.63; VNP Answer ¶ 42, ECF 34, PageID.491; Voters-Defs.' Answer ¶ 42, ECF 35, PageID.547; Comm'rs Answer ¶ 42, ECF 40, PageID. 684; Sec'y Answer ¶ 42, ECF 46, PageID.949.

26. Defendant Richard Weiss serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 43, ECF 7, PageID.63; VNP Answer ¶ 43, ECF 34, PageID.491; Voters-Defs.' Answer ¶ 43, ECF 35, PageID.547; Comm'rs Answer ¶ 43, ECF 40, PageID. 684; Sec'y Answer ¶ 43, ECF 46, PageID.949-950. Mr. Weiss is not affiliated with either major political party and is sued only in his official capacity. Am. Compl. ¶ 43, ECF 7, PageID.63; VNP Answer ¶ 43, ECF 34, PageID.491; Voters-Defs.' Answer ¶ 43, ECF 35, PageID.547; Comm'rs Answer ¶ 43, ECF 40, PageID. 684; Sec'y Answer ¶ 43, ECF 46, PageID.949-950.

27. Defendant Dustin Witjes serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Am. Compl. ¶ 44, ECF 7, PageID.64; VNP Answer ¶ 44, ECF 34, PageID.491; Voters-Defs.' Answer ¶ 44, ECF 35, PageID.547; Comm'rs Answer ¶ 44, ECF 40, PageID. 685; Sec'y Answer ¶ 44, ECF 46, PageID.950. Mr. Witjes is affiliated with the Democratic Party and is sued only in his official capacity. Am. Compl. ¶ 44, ECF 7, PageID.64; VNP Answer ¶ 44, ECF 34, PageID.491; Voters-Defs.' Answer ¶ 44, ECF 35, PageID.547; Comm'rs Answer ¶ 44, ECF 40, PageID. 685; Sec'y Answer ¶ 44, ECF 46, PageID.950.

2. Defendant Secretary of State

28. Defendant Jocelyn Benson is the Michigan Secretary of State. Am. Compl. ¶ 29, ECF 7, PageID.61; VNP Answer ¶ 29, ECF 34, PageID.488; Voters-Defs.' Answer ¶ 29, ECF 35,

PageID.544; Comm’rs Answer ¶ 29, ECF 40, PageID. 682; Sec’y Answer ¶ 29, ECF 46, PageID.947. In this capacity, Ms. Benson must enforce the district boundaries for congressional districts and accept declarations of candidacy for congressional candidates. Am. Compl. ¶ 29, ECF 7, PageID.61; VNP Answer ¶ 29, ECF 34, PageID.488; Voters-Defs.’ Answer ¶ 29, ECF 35, PageID.544; Comm’rs Answer ¶ 29, ECF 40, PageID. 682; Sec’y Answer ¶ 29, ECF 46, PageID.947.

3. Defendant Voter Intervenor

29. Intervenor-Defendant Joan Swartz McKay is a resident of the First Congressional District on the enacted map. Voter-Intervenors’ Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.
30. Intervenor-Defendant Grace Huizenga is a resident of the Second Congressional District on the enacted map. Voter-Intervenors’ Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.
31. Intervenor-Defendant Samantha Neuhaus is a resident of the Third Congressional District on the enacted map. Voter-Intervenors’ Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.
32. Intervenor-Defendant Jordan Neuhaus is a resident of the Third Congressional District on the enacted map. Voter-Intervenors’ Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.
33. Intervenor-Defendant Cayley Winters is a resident of the Fourth Congressional District on the enacted map. Voter-Intervenors’ Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

34. Intervenor-Defendant Glenna DeJong is a resident of the Fourth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.
35. Intervenor-Defendant Marsha Caspar is a resident of the Fourth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.
36. Intervenor-Defendant Hedwig Kaufman is a resident of the Fifth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.
37. Intervenor-Defendant Collin Christner is a resident of the Sixth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.
38. Intervenor-Defendant Melany Mack is a resident of the Seventh Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.
39. Intervenor-Defendant Ashley Prew is a resident of the Eighth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.
40. Intervenor-Defendant Sybil Bade is a resident of the Ninth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

41. Intervenor-Defendant Susan Diliberti is a resident of the Tenth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.
42. Intervenor-Defendant Lisa Wigent is a resident of the Eleventh Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.
43. Intervenor-Defendant Matthew Wigent is a resident of the Eleventh Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.
44. Intervenor-Defendant Pamela Tessier is a resident of the Twelfth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.
45. Intervenor-Defendant Susannah Goodman is a resident of the Thirteenth Congressional District on the enacted map. Voter-Intervenors' Memo. in Support of Mot. Intervene at 10 n.1, ECF 16, PageID.254.

4. Defendant Voters Not Politicians Intervenors

46. Intervenor-Defendant Voters Not Politicians ("VNP") is a nonprofit organization that was the primary drafter and sponsor of the constitutional amendment that established the Michigan Independent Citizens Redistricting Commission. VNP Mot. for Leave to Intervene at 1, 7, ECF 22, PageID.345, 351; Comm'rs Opp'n to PI Br. at 5-6, ECF 42, PageID.728-729.

D. Process Of Drafting Michigan's Enacted Plan

47. The Commission held at least 139 public meetings, including at least 16 hearings before drafting maps. Voter-Defs.' Opp'n to PI Br. at 7, ECF 39, PageID.646; Comm'rs' Opp'n. to PI Br. at 5, ECF 42, PageID.731.
48. The Commission received approximately 25,000 public comments through its online portal. Voter-Defs.' Opp'n to PI Br. at 7, ECF 39, PageID.646; Comm'rs' Opp'n. to PI Br. at 7, ECF 42, PageID.731.
49. Commissioner Eid drafted the Chestnut Plan in September of 2021. Comm'rs' Opp'n. to PI Br. at 5, ECF 42, PageID.731.
50. The Commission adopted the Chestnut Plan on December 28, 2021, by a vote of 8-5. Comm'rs' Opp'n. to PI Br. at 8, ECF 42, PageID.732.

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E. Statistics Of The Enacted Plan

51. The Enacted Plan contains the following population deviations in each congressional 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

Bryan Decl. ¶ 15, Table 1 (ECF 9-3) (PageID.148); Comm'rs Answer ¶ 61, ECF 40, PageID.690.

52. The overall population deviation in the Enacted Plan is 1,122 persons. Bryan Decl. ¶ 15, Table 1 (ECF 9-3) (PageID.148); Comm'rs Answer ¶ 90, ECF 40, PageID.695.

53. The overall population deviation in the Enacted Plan is 0.14%. Bryan Decl. ¶ 15, Table 1 (ECF 9-3) (PageID.48); Am. Compl. ¶ 91 (PageID.71); VNP Opp'n to PI Br. at 7, ECF 36, PageID.580; Comm'rs Answer ¶ 91, ECF 40, PageID.696; Comm'rs Opp'n to PI Br. at 7, 21, ECF 42, PageID.731, 745.

F. Statistics Of Plaintiffs' Proposed Map

54. Plaintiffs' Proposed Map, submitted as Exhibit A to the Amended Complaint (PageID 79)

contains the following population deviations in each congressional district:

DISTRICT	TOTAL PERSONS	DEVIATION
District One	775,179	0
District Two	775,180	+1
District Three	775,179	0
District Four	775,180	+1
District Five	775,179	0
District Six	775,180	+1
District Seven	775,179	0
District Eight	775,179	0
District Nine	775,179	0
District Ten	775,179	0
District Eleven	775,179	0
District Twelve	775,179	0
District Thirteen	775,180	+1

Bryan Decl. ¶ 16, Table 2 (ECF 9-3) (PageID.149).¹

¹ In Plaintiffs' Motion for Preliminary Injunction, Plaintiffs asserted that in their proposed map, Congressional District 2 had an ideal population, or a zero-person population deviation and Congressional District 8 had one person above ideal population. Bryan Decl. ¶ 16, Table 2 (ECF 9-3) (PageID.149). During the Parties conference, the Intervenor Defendants Voters Not Politicians noticed that it was Congressional District 2 that had one person above the ideal population and Congressional District 8 had an ideal population. The chart in this filing presents the accurate population deviations of Plaintiffs' Proposed Plan.

II. IDENTIFICATION OF DISPUTED QUESTIONS OF FACTS PERTINENT TO PLAINTIFFS' PRELIMINARY INJUNCTION REQUEST.

A. PLAINTIFFS

1. Whether a new congressional redistricting plan may be adopted with sufficient time to implement that plan prior to the congressional primary election on August 2, 2022. *See Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006).
2. Concerning Plaintiffs' Count I: Whether Plaintiffs are likely to succeed on the merits that the population deviations in the enacted plan "could have been reduced or eliminated altogether by a good-faith effort to draw districts of equal population." *Karcher v. Daggett*, 462 U.S. 725, 730 (1983).
3. Also Concerning Plaintiffs' Count I: Whether Defendants are likely to succeed on the merits in showing that each population variance was necessary to achieve Defendants' goal of maintaining communities of interest. *Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969); *Karcher*, 462 U.S. at 731, 741.

The burden on the state to make this showing is flexible and the level of the burden depends on the following:

- a. the size of the deviations;
- b. the importance of the State's interests;
- c. the consistency with which the plan as a whole reflects those interests;
- and
- d. the availability of alternatives that might substantially vindicate those interests yet approximate population equality more closely.

Tennant v. Jefferson County Comm'n, 567 U.S. 758, 760 (2012).

Stated differently, whether Defendants' asserted goal of maintaining communities of interest applied in a consistent and nondiscriminatory manner. *Karcher*, 462 U.S. at 740-41.

4. Concerning Plaintiffs' Count II, whether the Commissioners' justification of maintaining communities of interest was applied neutrally and consistently, and did not treat voters in an arbitrary manner. *Karcher*, 462 U.S. at 740-41; *Roman v. Sincock*, 377 U.S. 695, 710 (1964); *Bush v. Gore*, 531 U.S. 98, 105-09 (2000).

B. DEFENDANT COMMISSIONERS

1. Whether it is too late to adopt a new congressional redistricting plan in time to implement that plan for the 2022 congressional election process. *Purcell v. Gonzalez*, 549 U.S. 1, 2, 127 S. Ct. 5, 6, 166 L. Ed. 2d 1 (2006); *see also*, *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, No. 1:21-cv-05337 at p. 230-237 (N.D. Ga. Feb. 28, 2022) (order denying preliminary injunction due to proximity of 2022 election).
2. Whether Plaintiffs are likely to show at trial that the population deviation in the enacted plan could have been practically avoided. *Tennant v. Jefferson County Com'n*, 567 U.S. 758, 760 (2012).
3. Whether Defendants are likely to show at trial that the population differences were necessary to achieve some legitimate state objective, as determined through the following inquiries:
 - a. Whether the population deviation is small or large in size;
 - b. Whether the Commission's interests are important;

- c. Whether the Commission's interests are reflected consistently in the Enacted Plan as a whole; and
- d. Whether alternatives are available vindicating the Commission's interests while approximating population equality more closely. *Id.*

III. THE PARTIES' POSITIONS CONCERNING EXPEDITED DISCOVERY PRIOR TO THE MARCH 16, 2022 HEARING.

The Parties have conferred and no Party seeks expedited discovery prior to the hearing on March 16, 2022.

IV. THE PARTIES' POSITION REGARDING WHETHER THE COMMISSION'S PUBLIC RECORD IS PART OF THE RECORD IN THIS CASE.

The Parties agree that pursuant to Federal Rule of Evidence 201, this Court may take judicial notice of any part or the entirety of the Commission's public legislative record. *See Northville Downs v. Granholm*, 622 F.3d 579, 586 (6th Cir. 2010); *Anderson v. Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012).

V. WHETHER FURTHER MOTIONS PRACTICE IS CONTEMPLATED BY ANY PARTY.

The Parties have conferred and no Party contemplates any motions practice prior to the hearing on March 16, 2022.

Dated: March 2, 2022

Respectfully submitted,

/s/ Charles R. Spies

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served to all counsel of record through the Court's CM/ECF system on March 2, 2022.

Dated: March 2, 2022

/s/ Charles R. Spies
Charles R. Spies

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