

**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)**

**PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF THEIR MOTION FOR
PRELIMINARY INJUNCTION**

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INTRODUCTION

When it comes to determining the weight of a vote, rarely has a legislative body acted so cavalierly. Here, the proof of the Commission's cavalier attitude is in the inconsistent and inaccurate reasons it uses to justify its population deviations.

Michigan is not alone in codifying the communities of interest criterion. According to the Congressional Research Service, twenty-one states have communities of interest requirements codified in their state constitutions.¹ But when it comes to population deviations, Michigan is in a small league of its own. Only Rhode Island (1,223 persons)², West Virginia (1,582 persons)³, and Hawaii (2,481 persons)⁴ have higher population deviations.⁵ Thus, when viewed in isolation, a population deviation of 1,122 persons may appear small, but when compared to the other 50 states, Michigan's population deviation is quite large. For example, California, a state with 39,538,223 persons and a communities of interest criterion that holds the same position of priority as Michigan,

¹ See *Congressional Redistricting Criteria and Considerations*, Congressional Research Service at 2, report number IN11618 (Nov. 15, 2021) available at <https://crsreports.congress.gov/product/pdf/IN/IN11618> (last visited March 19, 2022). In addition to states with a constitutional requirement for respecting communities of interest, others have similarly respected the "community of interest" standard while achieving a deviation of +/-1 person. See, e.g., *Establishment of Cong. Districts v. New Jersey Redistricting Commission*, 2022 N.J. Lexis 110 (N.J. Feb 3, 2022) and *In Re Petition of Reapportionment* available at <https://jud.ct.gov/supremecourt/Reapportionment/2021/Docs/FinalOrder.pdf> (visited March 19, 2022) (special master report recommending a map, and the Court adopting a map, that "respects" communities of interest).

² See <https://app.mydistricting.com/legdistricting/comments/plan/111/25>.

³ See https://www.wvlegislature.gov/legisdocs/redistricting/senate/Trump_08_09-28.pdf.

⁴ See Final Report and Reapportionment Plan of the 2021 Reapportionment Commission, at i. <https://elections.hawaii.gov/wp-content/uploads/2021-Reapportionment-Commission-Final-Report-952-pages-February-25-2022.pdf>.

⁵ Each of these three states only have two Congressional districts. See <https://www2.census.gov/programs-surveys/decennial/2020/data/apportionment/apportionment-2020-table01.pdf> (visited March 19, 2022). Only one other state with more than two districts—Arkansas—has congressional deviations exceeding 100 persons. See <https://www.arkansashouse.org/news/post/15077/2021-proposed-congressional-redistricting-maps> (visited March 19, 2022). Arkansas is facing a currently pending lawsuit with population equality among one of several issues. See *Simpson v. Hutchinson*, Case No. 4:22-cv-213 (E.D. Ark. filed Mar. 7, 2022) (appointment of three judge court pending). Iowa (with a whole counties state constitutional requirement), Washington, and Nebraska each have population deviations with a range of less than 100.

Cal. Const. Art. 21, § 2 (d)(1-4), has across 52 congressional districts a population deviation of just +/- 1 person.⁶ Something is amiss in Michigan.

In fact, the reason why the Commission did not equalize population across Michigan's 13 congressional districts is that in the application of the communities of interest criterion, the Commission applied that criterion inconsistently. The Commission also appeared to use public comments to assert justifications that are demonstratively not neutral, but instead either pretextual or inaccurate. Accordingly, this Court should grant Plaintiffs' Motion for Preliminary Injunction.

ARGUMENT

I. THE COMMISSION APPLIED ITS COMMUNITIES OF INTEREST CRITERION IN AN INCONSISTENT MANNER.

The Commission's handling of cultural and religious communities of interest is the most glaring inconsistency. Commissioner Eid asserts that Congressional District 5 was drawn to include all of Michigan's southern border in part because residents from here informed the Commission they cross into Ohio and Indiana to pray. Eid Decl. ¶ 12 (ECF No. 42-4, PageID.781). Commissioner Eid further asserts that Congressional District 10 included Rochester Hills, Macomb County, Sterling Heights, Warren, and St. Clair to unite a Chaldean population. Eid Decl. ¶ 22 (ECF No. 42-4, PageID.784). And lastly, the Commission drew Congressional District 11 to preserve an LGBTQ community in Royal Oak, Ferndale, and Oak Park. Eid Decl. ¶ 24 (ECF No. 42-4, PageID.784).

But when applying its communities of interest criterion to keep religious and cultural groups together, the Commission applied the criterion inconsistently. An Orthodox Jewish

⁶ See U.S. Census Bureau *Quick Facts: California* available at <https://www.census.gov/quickfacts/CA> (last visited March 21, 2022); see also 2020 California Citizens Redistricting Commission Final Congressional District Statistics: https://d3n8a8pro7vhm.cloudfront.net/ccrc/pages/397/attachments/original/1640050154/CD_Proposed_Final_Stats_%281%29.pdf?1640050154 (last visited March 21, 2022).

community was split between Southfield and Oak Park, separating that community into Congressional District 11 and Congressional District 12.⁷ The Commission ignored requests to keep the Orthodox Jewish community whole and to keep Southfield with Oakland County.⁸ The Commission instead split Oakland County six times while Plaintiffs' remedy map splits it only four times and better adhered to the constitutional requirement of one person, one vote. Bryan Decl. ¶¶ 16, 25, 28 (ECF No. 9-3, PageID.149, 153, 55).

Similarly, in Congressional District 13, the Commission sought to keep minority groups whole. But the Commission split the southern portion of Dearborn Heights, removing it from Dearborn. In doing so, it split an Arab Middle Eastern, North African community, despite comments exhorting the Commission to keep this community whole.⁹ By contrast, Plaintiffs kept Dearborn Heights whole in their remedy map and had a population deviation of +/-1. Bryan Decl. ¶¶ 16, 27, 30 (ECF No. 9-3, PageID.149, 153-55).

If the Commission's goal is to keep together cultural and religious communities who request accommodation, this must be applied consistently. Here, the Commission applied it inconsistently.

II. COMMISSIONER EID'S ASSERTIONS IN HIS DECLARATION ARE INACCURATE.

Commissioner Eid's descriptions of what the public requested are often inaccurate and demonstrate a lack of neutrality.

⁷ See Comment of Menachem Hojda, available at <https://www.michigan-mapping.org/submission/c1803> (last visited March 21, 2022).

⁸ Comment of Carol Singer on Chestnut Map, available at <https://michigan.mydistricting.com/legdistricting/comments/plan/254/23> (click on red pin near center of District 12 to view comment).

⁹ See Comment of Mariam Akanan, available at <https://www.michigan-mapping.org/submission/c1510> (last visited March 21, 2022).

First, in Congressional District 2, Commissioner Eid cited comments from Barry County residents requesting that the Commission draw a district that united Barry County with Ionia, Montcalm, Gratiot, and Isabella. Eid Decl. ¶ 6 (ECF No. 42-4, PageID.779). In Dr. Duchin’s report, this district included Clusters 13, 14, 15, 19, 32, and 33, covering Northern Grand Rapids, the Grand Rapids metro area, West Central, Central Zone, Southern Border Counties, and rural Jackson and Calhoun Counties, respectively. All these clusters combined submitted 263 comments.¹⁰

Contained within these 263 comments, none requested a district that included Ionia, Montcalm, Gratiot, and Isabella. Additionally, only two residents of Barry County submitted comments on the Chestnut Map supporting a district of rural connections.¹¹ Furthermore, neither of these two comments mentioned wanting a district that included Ionia, Montcalm, Gratiot, and Isabella. Instead, Barry County commenters requested that the Commission draw Barry County in with the rural counties to the West¹², Southwest¹³, and Southeast.¹⁴ The Commission drew Barry in with counties to the North and East. No comments requested that the Commission draw Barry County together with counties to the North and East.

Second, in Congressional District 3, Commissioner Eid asserts that, due to comments submitted from residents, the Commission sought to preserve a community of interest in Grand

¹⁰ MGGE Redistricting Lab & OPEN-Maps Coalition, *COI Clusters for Michigan* (Sept. 23, 2021) at 15-17, 21, 34-35, available at <https://mggg.org/publications/Michigan-COI.pdf> (hereinafter the “Duchin Report”).

¹¹ Comments of Jessica Smith & Maxwell Bosman, available at <https://michigan.mydistricting.com/legdistricting/comments/plan/254/23> (click on green pins in southernmost portion of District 2 to view comments).

¹² See, e.g., Comment of Jeff VanderWerff, available at <https://www.michigan-mapping.org/submission/c1664> (last visited March 21, 2022).

¹³ See, e.g., Comment of Rick T., available at <https://www.michigan-mapping.org/submission/c2378> (last visited March 21, 2022).

¹⁴ See Comment of Thomas Charron, available at <https://www.michigan-mapping.org/submission/c2859> (last visited March 21, 2022); Comment of Hal Longman, available at <https://www.michigan-mapping.org/submission/c3070> (last visited March 21, 2022).

Rapids, Muskegon, Grand Haven, and Rockford, a wish that residents of these localities expressed in public comments. Eid Decl. ¶ 8 (ECF No. 42-4, PageID.780). This area includes Clusters 13, 14, 15, and 16, and is composed of Northern Grand Rapids, Grand Rapids Metro, West Central, and Van Buren and Allegan Counties, respectively. Within these clusters, 145 comments were submitted.¹⁵

In Dr. Duchin's report, only seven comments requested that the Commission draw Grand Rapids and Muskegon together.¹⁶ Within those seven, only three comments asked the Commission to draw all four localities into one district. More to the point, in Cluster 16—which includes Allegan and Van Buren counties—of 57 comments submitted, only one comment requested that Muskegon and Grand Rapids be drawn together.¹⁷ Clusters 13 and 14—which include the Grand Rapids Metro area and the northern surrounding area—have over 72 comments submitted and none requested that Muskegon and Grand Rapids be in the same district.¹⁸ Additionally, only one comment on the Chestnut Map explicitly requests that the Commission draw all four localities into one district.¹⁹

¹⁵ Duchin Report at 15-18.

¹⁶ See, Comment of Jeff Winston, available at <https://www.michigan-mapping.org/submission/c1825> (last visited March 21, 2022); Comment of Jamal Motley, available at <https://www.michigan-mapping.org/submission/c3346> (last visited March 21, 2022) (this comment is listed twice in Dr. Duchin's report); Comment of Leslie Morton, available at <https://www.michigan-mapping.org/submission/c3349> (last visited March 21, 2022); Comment of Murielle Davis, available at <https://www.michigan-mapping.org/submission/c3354> (last visited March 21, 2022); Comment of Kilian, available at <https://www.michigan-mapping.org/submission/c667> (last visited March 21, 2022); Comment of Jakob Gilleylen, available at <https://www.michigan-mapping.org/submission/p65> (last visited March 21, 2022).

¹⁷ Comment of Jamal Motley, available at <https://www.michigan-mapping.org/submission/c3346> (last visited March 21, 2022).

¹⁸ See Duchin Report at 15-16 (noting 17 comments in support of a Northern Grand Rapids COI and 55 in support of a Grand Rapids Metro COI).

¹⁹ Comment of Micah McFarlane, available at <https://michigan.mydistricting.com/legdistricting/comments/plan/254/23> (click on green pin in northeastern corner of District 3 to view comment).

By contrast, there were over 40 comments submitted requesting either that the Commission keep Grand Rapids and Muskegon separate or were opposed to connecting the two.²⁰ Additionally, there were three comments requesting that the Commission keep the Rockford suburbs within its own communities of interest because they rely on the same services.²¹ Drawing Grand Rapids together with Muskegon, Grand Rapids, and Rockford failed to express the wishes of those residents.

Third, in Congressional District 4, Commissioner Eid asserts that the Commission's goal, at the behest of residents, was to create a western Michigan district and unite a community of interest between Kalamazoo and Battle Creek. Eid Decl. ¶ 10 (ECF No. 42-4, PageID.780).

Cluster 12 includes Battle Creek and Kalamazoo. Cluster 12 received 22 submissions.²² None of those submissions requested that the Commission draw Battle Creek and Kalamazoo together. Instead, these comments generally indicated that Kalamazoo belonged in a district with the neighboring counties to the Southwest.²³ Cluster 32, which includes the southern border counties, submitted 36 comments.²⁴ A mere seven of these comments requested that the Commission draw Kalamazoo and Battle Creek together. Similarly, Cluster 33 includes the rural

²⁰ See, e.g., Comment of Arlene Clark, available at <https://www.michigan-mapping.org/submission/c1452> (last visited March 21, 2022); Comment of Jim Craig, available at <https://www.michigan-mapping.org/submission/c1565> (last visited March 21, 2022); Comment of Karen Obits, available at <https://www.michigan-mapping.org/submission/c1633> (last visited March 21, 2022); Comment of Jeff VanderWerff, available at <https://www.michigan-mapping.org/submission/c1664> (last visited March 21, 2022); Comment of Dustin Chilson, available at <https://www.michigan-mapping.org/submission/c1806> (last visited March 21, 2022); Comment of Kurt Kimball, available at <https://www.michigan-mapping.org/submission/c2031> (last visited March 21, 2022).

²¹ Comment of Gerard Sullivan, available at <https://www.michigan-mapping.org/submission/c2529> (last visited March 21, 2022); Comment of Cheryl, available at <https://www.michigan-mapping.org/submission/p1151> (last visited March 21, 2022); Comment of Cheryl, available at <https://www.michigan-mapping.org/submission/x1153> (last visited March 21, 2022).

²² Duchin Report at 14.

²³ Comment of Lorraine S., available at <https://www.michigan-mapping.org/submission/c2517> (last visited March 21, 2022); Comment of Kaylee, available at <https://www.michigan-mapping.org/submission/c2556> (last visited March 21, 2022); Comment of Don, available at <https://www.michigan-mapping.org/submission/c2377> (last visited March 21, 2022).

²⁴ Duchin Report at 34.

counties of Jackson and Calhoun counties. There were 117 comments submitted with this cluster.²⁵ Only seven comments supported drawing Kalamazoo and Battle Creek together.²⁶ By contrast, 32 comments from this cluster *opposed* drawing Kalamazoo and Battle Creek together.²⁷ In Dr. Duchin's report, 55 comments were submitted requesting that the Commission keep Kalamazoo and Battle Creek separate and noted that Battle Creek was rural and different.²⁸ These commenters consistently mentioned the urban-rural, small town-city divide between Kalamazoo and Battle Creek. These comments also noted the disparate needs and particularly the military interests in Battle Creek and the areas and counties to its southeast.²⁹

Most of the comments supported keeping Battle Creek and Kalamazoo separate. The Commission ignored these comments. Importantly, none of the comments contained in Cluster 12 requested that the Commission draw Battle Creek and Kalamazoo together.

²⁵ *Id.* at 35.

²⁶ Comment of Perry Allen, available at <https://www.michigan-mapping.org/submission/c1536> (last visited March 21, 2022); Comment of Rob Lyerla, available at <https://www.michigan-mapping.org/submission/c1544> (last visited March 21, 2022); Comment of Andy Helmholdt, available at <https://www.michigan-mapping.org/submission/c246> (last visited March 21, 2022); Comment of Beverly, available at <https://www.michigan-mapping.org/submission/c3200> (last visited March 21, 2022); Comment of Tammy T., available at <https://www.michigan-mapping.org/submission/c2380> (last visited March 21, 2022); Comment of Jamal Motley, available at <https://www.michigan-mapping.org/submission/c3346> (last visited March 21, 2022); Comment of Michael McCullough, available at <https://www.michigan-mapping.org/submission/c1843> (last visited March 21, 2022).

²⁷ *See, e.g.*, Comment of Bill Rees, available at <https://www.michigan-mapping.org/submission/c2844> (last visited March 21, 2022); Comment of Mary Anne Charron, available at <https://www.michigan-mapping.org/submission/c2858> (last visited March 21, 2022); Comment of Nancy Moran, available at <https://www.michigan-mapping.org/submission/c3055> (last visited March 21, 2022); Comment of Rusty Herwath, available at <https://www.michigan-mapping.org/submission/c3090> (last visited March 21, 2022); Comment of Christine Finch, available at <https://www.michigan-mapping.org/submission/c3357> (last visited March 21, 2022).

²⁸ *See, e.g.*, Comment of Bonnie Kazmar, available at <https://www.michigan-mapping.org/submission/c2828> (last visited March 21, 2022); Comment of Les and Linda Ecklund, available at <https://www.michigan-mapping.org/submission/c3073> (last visited March 21, 2022); Comment of Hal Longman, available at <https://www.michigan-mapping.org/submission/c3075> (last visited March 21, 2022); Comment of Jill Stout, available at <https://www.michigan-mapping.org/submission/c3103> (last visited March 21, 2022); Comment of Starla Witzki, available at <https://www.michigan-mapping.org/submission/c3359> (last visited March 21, 2022); Comment of Keith Beyke, available at <https://www.michigan-mapping.org/submission/c3364> (last visited March 21, 2022).

²⁹ Comment from Thomas Charron, available at <https://www.michigan-mapping.org/submission/c2859> (last visited March 21, 2022); Comment from Robert Knoblauch, available at <https://www.michigan-mapping.org/submission/p515> (last visited March 21, 2022); Comment from Michael Green, available at <https://www.michigan-mapping.org/submission/p3091> (last visited March 21, 2022).

Fourth, in Congressional District 6, Commissioner Eid asserted that the Commission's goals here were to draw a district that included Ann Arbor, Washtenaw County, and the University of Michigan, and that Novi and Ann Arbor be kept together because they both share a white-collar workforce. Eid Decl. ¶ 14 (ECF No. 42-4, PageID.781).

But the assertion that Novi and Ann Arbor were kept together because they share a white-collar workforce lacks credible support. In fact, only one comment asked that the Commission draw Novi and Ann Arbor together,³⁰ and in contrast, six comments requested that the Commission keep Novi and Ann Arbor separate.³¹

Fifth, in Congressional District 10, Commissioner Eid asserted that the Commission's goals here were to preserve a community of interest between Rochester Hills and Sterling Heights, Warren, and St. Clair Shores because these localities share a large Chaldean population. Eid Decl. ¶ 22 (ECF No. 42-4, PageID.784).

This area includes Clusters 1, 3, and 6 which cover Oakland County, Southwest Macomb County, and Lake St. Clair, respectively. No comments in Dr. Duchin's report support keeping Rochester Hills and Rochester with Macomb County.³² In contrast, however, 25 comments were submitted opposed to this configuration.³³ These comments overwhelmingly supported keeping Rochester and Rochester Hills in with Oakland County and not Macomb.³⁴ Moreover, the

³⁰ Comment from John, available at <https://www.michigan-mapping.org/submission/p3191> (last visited March 21, 2022).

³¹ See, e.g., Comment from JN, available at <https://www.michigan-mapping.org/submission/c1076> (last visited March 21, 2022); Comment from Graham Vaughn, available at <https://www.michigan-mapping.org/submission/c3123> (last visited March 21, 2022).

³² See, e.g., Comment from Michael Webber, available at <https://www.michigan-mapping.org/submission/c1548> (last visited March 21, 2022) (delineating a COI around Rochester and Rochester Hills that does not extend to Macomb County).

³³ See, e.g., Comment from David Blair, available at <https://www.michigan-mapping.org/submission/c3183> (last visited March 21, 2022); Comment from Nancy, available at <https://www.michigan-mapping.org/submission/c3369> (last visited March 21, 2022); Comment from Julia, available at <https://www.michigan-mapping.org/submission/c3377> (last visited March 21, 2022).

³⁴ See, e.g., Comment from David Blair, available at <https://www.michigan-mapping.org/submission/c3183> (last visited March 21, 2022); Comment from Nancy, available at <https://www.michigan-mapping.org/submission/c3369>

comments mentioning the Chaldean communities request that the Commission draw a district from Troy to Sterling Heights.³⁵ Not once do these comments mention Rochester and Rochester Hills.

Sixth, in Congressional District 11, the Commission’s goals were, in part, to preserve the LGBTQ communities in the cities of Royal Oak, Ferndale, and Oak Park. Eid Decl. ¶ 24 (ECF No. 42-4, PageID.784). But there were no comments identified in Dr. Duchin’s report or in the public comment portal for the proposed Chestnut map that support the notion that Royal Oak, Ferndale, or Oak Park represent an LGBTQ Community of Interest. Instead, the report identified only two comments referencing Hazel Park as having a “visible” LGBTQ population.³⁶

Seventh, in Congressional District 12, Commissioner Eid asserted that the Commission’s goals here were to draw a district joining a portion of Detroit with Dearborn and to “preserve the historical neighborhoods in and around Detroit.” Eid Decl. ¶ 26 (ECF No. 42-4, PageID.785). Livonia too was included in this district because of its blue-collar workforce that was consistent with the communities of Detroit, Dearborn, and Southfield. *Id.*

But there is a dearth of commentary regarding Livonia and its workforce. Commissioner Eid does not cite any public comments here. Instead, he relies upon the input from other Commissioners. There were in fact three comments requesting that the Commission not include Livonia with Dearborn.³⁷

(last visited March 21, 2022); Comment from Julia, available at <https://www.michigan-mapping.org/submission/c3377> (last visited March 21, 2022).

³⁵ Multiple comments indicated that Detroit’s Chaldean community stretches to Farmington Hills, Troy, and Warren. *See, e.g.*, Comment from Yousif, available at <https://www.michigan-mapping.org/submission/p7744> (last visited March 21, 2022); Comment from Yousif, available at <https://www.michigan-mapping.org/submission/p7624> (last visited March 21, 2022); Comment from Yousif, available at <https://www.michigan-mapping.org/submission/p7499> (last visited March 21, 2022).

³⁶ Duchin Report at 48 (citing two comments from Charlotte Massey).

³⁷ Comment from Jean Cosola, available at <https://www.michigan-mapping.org/submission/c3190> (last visited March 21, 2022); Comment from Margaret, available at <https://www.michigan-mapping.org/submission/c3169> (last visited March 21, 2022); Comment from Katie, available at <https://www.michigan-mapping.org/submission/c2941> (March 21, 2022).

Eighth, in Congressional District 13, Commissioner Eid asserted that the Commission's goals here were to have a Detroit-centered district that included a portion of Dearborn Heights to keep minority communities whole and preserve townships in Wayne. Eid Decl. ¶ 28 (ECF No. 42-4, PageID.785).

Here, the decision to split Dearborn Heights is inexplicable. None of the comments supported splitting Dearborn Heights. Two in-person public commenters requested that Dearborn and Dearborn Heights be kept in the same district. Six comments submitted on the Chestnut map public portal also requested that Dearborn and Dearborn Heights remain in the same district.³⁸

CONCLUSION

The irony here is that the Commission enacted a map that split more counties, townships, and villages *and* still has a population deviation of 1,122 persons. By contrast, Plaintiffs produced a map that splits fewer counties, townships, and villages *and* has a population deviation of one person. The difference is that the Commission's population deviations were driven by the inconsistent application of the communities of interest criterion. There is no neutral principle or explanation for such inconsistency, as the provided explanation for population deviations is the Commission's ostensible reliance on the publicly submitted comments. But upon even cursory inspection, Commissioner Eid's description of those comments is inaccurate and appears to be a post hoc justification unsupported by evidence. Plaintiffs therefore respectfully request that the Court grant their Motion for Preliminary Injunction.

³⁸ See, e.g., Comment from Mariam Akaan, available at <https://www.michigan-mapping.org/submission/c1510> (last visited March 21, 2022); Comment from JN, available at <https://www.michigan-mapping.org/submission/c1076> (last visited March 21, 2022); Comment from Joe, available at <https://www.michigan-mapping.org/submission/c1829> (last visited March 21, 2022); Comment from Mary Jo Durivage, available at <https://www.michigan-mapping.org/submission/c1861> (last visited March 21, 2022).

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Respectfully submitted,

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I HEREBY CERTIFY that:

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2. The word processing software used to create this Brief and generate the above word count is Microsoft Word 2016.

Dated: March 22, 2022

/s/ Charles R. Spies

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 22, 2022.

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/s/ Charles R. Spies
Charles R. Spies

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