

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

LEAGUE OF WOMEN VOTERS	)	
OF MICHIGAN, ROGER J. BRDAK,	)	
FREDERICK C. DURHAL, JR.,	)	
JACK E. ELLIS, DONNA E.	)	
FARRIS, WILLIAM “BILL” J. GRASHA	)	No. 2:17-cv- 14148
ROSA L. HOLLIDAY,	)	
DIANA L. KETOLA, JON “JACK”	)	Hon. Eric L. Clay
G. LASALLE, RICHARD “DICK”	)	Hon. Denise Page Hood
W. LONG, LORENZO RIVERA AND	)	Hon. Gordon J. Quist
RASHIDA H. TLAIB,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
RUTH JOHNSON, in her official	)	
Capacity as Michigan	)	
Secretary of State,	)	
	)	
Defendant.	)	

**DEFENDANT-INTERVENORS’ ANSWER TO  
PLAINTIFFS’ COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Defendant-Intervenors Jack Bergman, Bill Huizenga, John Moolenaar, Fred Upton, Tim Walberg, Mike Bishop, Paul Mitchell, and David Trott (collectively “Defendant-Intervenors” or “Congressional Intervenors”), through their counsel, submit the following Answer to Plaintiffs’ Complaint for Declaratory and Injunctive Relief (“Complaint”):

## **INTRODUCTION**

1. Denied.
2. Denied.
3. Denied.
4. The Congressional Intervenors deny the allegations contained in the first sentence of Paragraph 4. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.
5. Plaintiffs purport to quote from a Supreme Court opinion. Congressional Intervenors respectfully refer the Court to the case for a full and complete understanding.
6. This paragraph asserts Plaintiffs' intention to prove their case, and accordingly no response is required. To the extent a response is required, the allegations are denied.

## **Parties**

7. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.
8. In response to the first sentence, the Congressional Intervenors admit only

that the Court determined that the League had standing to challenge the current apportionment plan on a district by district basis, affirmatively aver that the Court determined that the League lacks standing to bring statewide claims on behalf of its members and lacks standing to bring statewide claims on its own behalf. All remaining allegations are denied.

9. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.

10. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.

a. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations. The Congressional Intervenors further deny that voters have been “cracked” and that there is a gerrymandered district.

b. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.

c. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations. The Congressional Intervenors further deny that voters have been “cracked” or “packed,” or that there is a gerrymandered district.

d. The Congressional Intervenors lack knowledge or information

sufficient to form a belief as to the truth of these allegations. The Congressional Intervenors further deny that voters have been “cracked” or “packed.”

- e. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations. The Congressional Intervenors further deny that voters were “packed.”
  - f. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.
  - g. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.
  - h. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.
  - i. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations. The Congressional Intervenors deny that voters were “cracked.”
  - j. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.
  - k. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.
11. The Congressional Intervenors admit the allegations in the first two

sentences, and deny the allegations in the last sentence.

### **Jurisdiction and Venue**

12.The Congressional Intervenors deny that Plaintiffs have standing to bring a statewide challenge.

13.Admitted.

14.Admitted.

### **General Allegations**

#### **Response to: “How Gerrymandering Works”**

15.Plaintiffs purport to quote from a Supreme Court opinion. The Congressional Intervenors respectfully refer this Court to the opinion for a full and complete understanding of that case.

16.In the first three sentences, Plaintiffs purport to define gerrymandering and Congressional Intervenors are without knowledge or sufficient information to form a belief as to Plaintiffs’ proposed definition. In the final sentence, Plaintiffs purport to quote from a Supreme Court opinion. The Congressional Intervenors respectfully refer this Court to the opinion for a full and complete understanding of that case.

17.Denied.

#### **Response to: “Michigan’s 2011 Legislature Gerrymandered the State’s Legislative and Congressional Maps”**

18.The Congressional Intervenors admit that redistricting occurs after every 10-

year census, admit that redistricting is provided for by statute, and admit that Michigan's legislative and congressional plans following the 2010 census were a result of legislative enactments, but deny that all new districting plans result from legislative enactments.

19. The Congressional Intervenors admit that a majority in each house and the governor were Republicans in 2001, admit that the 2001 districting plans are no longer in effect, and deny all remaining allegations.

20. The Congressional Intervenors admit that Michigan enacted the alleged legislative and congressional districting plans in 2011, admit that at the time, Republicans held a majority in each house, admit that the bills were signed by Governor Snyder, a Republican, and deny all remaining allegations.

21. Denied.

Response to: "The Michigan Process was Flawed"

22. The Congressional Intervenors deny the allegations in the first sentence, and lack knowledge or information sufficient to form a belief as to the truth of the allegations in the remaining sentence.

23. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence, and deny the allegations in the second sentence.

24. The Congressional Intervenors admit only that SB 498 and HB 4780 were introduced, voted on, and enacted, and as to the remaining allegations, the Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations.

25. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations.

26. Admitted.

27. Admitted.

28. Denied.

29. Denied.

Response to: “*The Gerrymander Created Oddly Shaped Districts Contrary to Neutral Redistricting Principles*”

30. The first two sentences purport to summarize opinions in court decisions.

The Congressional Intervenors respectfully refer the Court to these decisions for a full and complete understanding. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences, and deny the allegations in the last sentence.

31. Denied.

32. Denied.

33. The Congressional Intervenors are unable to verify the accuracy of the

graphic in this paragraph, and therefore deny these allegations.

34.Denied.

35.The Congressional Intervenors are unable to verify the accuracy of the graphic in this paragraph, and therefore deny these allegations.

36.Denied because Plaintiffs do not have an individual plaintiff in each challenged district.

Response to: “Objective Data Confirm the Gerrymander’s Continuing Durable and Severe Burden on Michigan Democrats”

37.Denied.

38.The Congressional Intervenors deny the allegations contained in the first sentence, and lack knowledge or information sufficient to form a belief as to the truth of the allegations in the remaining allegations.

39.The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.

40.The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.

41.The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.

42.The Congressional Intervenors deny the allegations in the first sentence. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.



43.Denied.

44.Plaintiffs purport to quote and characterize Justice Kennedy's concurring opinion in *Vieth v. Jubelirer*, 541 U.S. 267, 312-13 (2004) (Kennedy, J., concurring). The Congressional Intervenors respectfully refer the Court to this opinion for a full and complete understanding of what that opinion says. The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences, and deny the allegations in the last sentence.

45.Denied. The Congressional Intervenors also note that the cited case, *Whitford v. Gill*, 218 F. Supp. 3d 837, 903-10 (W.D. Wis. 2016), has been vacated and remanded. *See Gill v. Whitford*, No. 16-1161, 2018 U.S. LEXIS 3692 (U.S. June 18, 2018).

46.Denied.

47.Denied.

48.Denied. The Congressional Intervenors also respectfully refer the Court to Justice Stevens' opinion in *LULAC v. Perry*, 548 U.S. 399, 466 (2006) (Stevens, J., concurring) for a full and complete understanding of that opinion.

49.Denied.

50.Denied.

51.The Congressional Intervenors deny the allegations in the first sentence.

Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

52.The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.

53.The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.

54.Denied.

55.The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.

Response to: “*The Michigan Plan Cannot Be Justified by Legitimate State Interests*”

56.In the first two sentences, Plaintiffs purport to characterize the U.S. Supreme Court’s decision in *Reynolds v. Sims*. That opinion speaks for itself. The Congressional Intervenors respectfully refer the Court to that opinion for a full and complete understanding. As to the remaining allegations, the Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.

57.Plaintiffs purport to characterize a Michigan Supreme Court decision. That decision speaks for itself and the Congressional Intervenors respectfully refer the Court to that opinion for a full and complete understanding.

58.Plaintiffs purport to characterize a Michigan Supreme Court decision. That decision speaks for itself and the Congressional Intervenors respectfully refer the Court to that opinion for a full and complete understanding.

59.Admitted.

60.The Congressional Intervenors admit the allegations in the first sentence. In the remaining sentences, Plaintiffs purport to characterize a Michigan Supreme Court decision. That decision speaks for itself and the Congressional Intervenors respectfully refer the Court to that opinion for a full and complete understanding.

61.Denied.

62.The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.

63.The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.

64.The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.

65.The Congressional Intervenors lack knowledge or information sufficient to form a belief as to the truth of these allegations.

**Response to: “Michigan’s Current Apportionment Plan  
Violates the Constitution”**

66.Plaintiffs purport to characterize two U.S. Supreme Court decisions. Those

decisions speak for themselves. The Congressional Intervenors respectfully refer the Court to those opinions for a full and complete understanding. Plaintiffs also purport to characterize a holding in a district court opinion. The Congressional Intervenors note that the opinion's validity has been questioned by the U.S. Supreme Court. *See Gill v. Whitford*, No. 16-1161, 2018 U.S. LEXIS 3692 (U.S. June 18, 2018).

67. Plaintiffs purport to characterize and quote U.S. Supreme Court opinions. Those opinions speak for themselves and the Congressional Intervenors respectfully refer the Court to those opinions for a full and complete understanding.

68. Plaintiffs purport to characterize and quote U.S. Supreme Court opinions. Those opinions speak for themselves and the Congressional Intervenors respectfully refer the Court to those opinions for a full and complete understanding. The Congressional Intervenors also note that the district court opinion cited in this paragraph may no longer be good law. *See Gill v. Whitford*, No. 16-1161, 2018 U.S. LEXIS 3692 (U.S. June 18, 2018) (vacating and remanding *Whitford v. Gill*, 218 F. Supp. 3d 837 (W.D. Wis. 2016)).

69. Plaintiffs purport to characterize a U.S. Supreme Court decision. That decision speaks for itself and the Congressional Intervenors respectfully

refer the Court to that opinion for a full and complete understanding. The Congressional Intervenors deny the remaining allegations.

70.Denied.

71.Denied.

72.The Congressional Intervenors deny the allegations in sentences one and two. In the third sentence, Plaintiffs purport to characterize and quote a U.S. Supreme Court opinion. That opinion speaks for itself and the Congressional Intervenors respectfully refer the Court to that opinion for a full and complete understanding.

73.Denied.

### **Count I – First Amendment**

74.The Congressional Intervenors incorporate their answers to paragraphs 1 through 73 as if fully set forth here.

75.The Congressional Intervenors admit that Plaintiffs and all Democratic voters have First Amendment rights, affirmatively aver that all voters have First Amendment rights, aver that general statements as to the parameters of rights do not require an answer, but if deemed to require an answer, the Congressional Intervenors lack knowledge of information sufficient to form a belief as to the truth of these allegations.

76.Denied.

77.Denied.

78.Denied.

79.Denied.

80.Denied.

**Count II – Equal Protection**

81.The Congressional Intervenors incorporate their answers to paragraphs 1 through 80 as if fully set forth here.

82.Denied.

83.Denied.

84.Denied.

85.Denied.

**RELIEF REQUESTED**

WHEREFORE, the Congressional Intervenors respectfully request that the Complaint be dismissed with prejudice and that they be awarded costs, reasonable attorney fees, and such further relief as the Court deems just and equitable.

**AFFIRMATIVE DEFENSES**

1. Plaintiffs have failed to state a claim upon which relief can be granted.
2. Plaintiffs' claims are barred, in whole or in part, by the doctrine of laches.

3. Control of apportionment is reserved to the legislature of each state and may be altered only by Congress, rather than the courts. U.S. Const., Art. I, § 4.
4. The claims of Plaintiff Durhal are barred by res judicata.
5. Plaintiffs lack standing to bring these claims.
6. . Plaintiffs do not have standing to bring a statewide challenge because they do not include a plaintiff from every district.
7. Plaintiffs' claims are non-justiciable because there is no manageable standard for this Court to adjudicate Plaintiffs' claims.
8. The Congressional Intervenors reserve the right to add additional affirmative defenses as the result of discovery or otherwise.

Respectfully Submitted,

Date: September 20, 2018

**Holtzman Vogel Josefiak  
Torchinsky PLLC**

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**CERTIFICATE OF SERVICE**

I hereby certify that on September 20, 2018, I caused to have electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record in this matter.

**/s/ Jason Torchinsky**

Jason Torchinsky