

**UNITED STATE 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, ROSA L. HOLLIDAY,  
DIANA L. KETOLA, JON "JACK"  
G. LASALLE, RICHARD "DICK"  
W. LONG, LORENZO RIVERA  
and RASHIDA H. TLAIB,

Plaintiffs,

v.

JOCELYN BENSON, in her official  
Capacity as Michigan  
Secretary of State,

Defendant.

Case No. 2:17-cv-14148

Hon. Eric L. Clay  
Hon. Denise Page Hood  
Hon. Gordon J. Quist

**MICHIGAN SENATORS' ANSWER  
TO COMPLAINT**

**MICHIGAN SENATORS’ ANSWER TO PLAINTIFFS’  
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Proposed Intervenors Michigan State Senators Tony Stamas, Kenneth Horn, and Lana Their (“Michigan Senators”), through their counsel, submit the following Answer to Plaintiffs’ Complaint for Declaratory and Injunctive Relief (“Complaint”):

**INTRODUCTION**

1. Denied.
2. Denied.
3. Denied.
4. Michigan Senators deny the allegations contained in the first sentence of Paragraph 4. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.
5. Michigan Senators admit that Paragraph 5 contains quotes from a Supreme Court opinion, but deny their applicability to this matter. By way of further answer, Michigan Senators respectfully refer the court to the full text of the cited case.
6. Paragraph 6 asserts a statement of Plaintiffs’ intentions to prove their case, to which no response is required. To the extent a response is required, the allegations are denied.

**Parties**

7. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

8. In response to the first sentence of Paragraph 8, Michigan Senators 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. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

10. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

a. Michigan Senators deny that voters have been cracked and that there is a gerrymandered district. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

b. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

c. Michigan Senators deny that voters have been cracked and that

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there is a gerrymandered district. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

- d. Michigan Senators deny that voters have been cracked or packed. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.
- e. Michigan Senators deny that voters have been cracked or packed. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.
- f. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.
- g. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.
- h. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.
- i. Michigan Senators deny that voters were cracked. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

j. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

k. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

11. Michigan Senators admit only the allegations contained in the first two sentences of Paragraph 11. Michigan Senators deny the allegations in the last sentence.

### **Jurisdiction and Venue**

12. Paragraph 12 contains a statement of law, to which no response is required. To the extent a response is required, Michigan Senators deny that Plaintiffs have standing to bring a statewide challenge.

13. Admitted.

14. Admitted.

### **General Allegations**

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

15. Michigan Senators admit that Paragraph 15 contains a quote from a Supreme Court opinion, but deny it supports Plaintiffs’ claims in this lawsuit. By way of further answer, Michigan Senators respectfully refer the court to the full text of the cited case.

16. Michigan Senators admit that Paragraph 16 contains a quote from a

Supreme Court opinion, but deny it supports Plaintiffs' claims in this lawsuit. By way of further answer, Michigan Senators respectfully refer the court to the full text of the cited case. Michigan Senators deny all remaining allegations in this paragraph.

17. Denied.

**Answer to: "Michigan's 2011 Legislature Gerrymandered the State's Legislative and Congressional Maps"**

18. Michigan Senators 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. Michigan Senators 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. Michigan Senators 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.

Answer to: “The Michigan Process was Flawed”

22. Michigan Senators 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. Denied.

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

25. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of the allegations.

26. Admitted.

27. Admitted.

28. Denied.

29. Denied.

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

30. The first two sentences purport to summarize opinions in court decisions, to which no response is required. By way of further answer, Michigan Senators respectfully refer the court to the full text of the cited case. To the extent a response is required, Michigan Senators 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. Michigan Senators are unable to verify the source or accuracy of the graphic in this paragraph, and therefore deny these allegations.

34. Denied.

35. Michigan Senators are unable to verify the source or 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 and do not have standing to challenge districts in which they do not have an individual plaintiff.

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

37. Denied.

38. Michigan Senators 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 second sentence.

39. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

40. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.



41. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

42. Michigan Senators deny the allegations in the first sentence. Michigan Senators 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), to which no response is required. By way of further answer, Michigan Senators respectfully refer the court to the full text of the cited case. To the extent a response is required, Michigan Senators 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. By way of further answer, 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. Michigan Senators 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. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

52. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

53. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

54. Denied.

55. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

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

56. The first two sentences purport to characterize the U.S. Supreme Court’s decision in *Reynolds v. Sims*, which opinion speaks for itself, and to which no response is required. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations.

57. Plaintiffs purport to characterize a Michigan Supreme Court decision, to which no response is required. To the extent a response is required, that decision speaks for itself.

58. Plaintiffs purport to characterize a Michigan Supreme Court decision, to which no response is required. To the extent a response is required, that decision speaks for itself.

59. Admitted.

60. Michigan Senators admit the allegations in the first sentence. The remaining sentences include Plaintiffs' purported characterization of a Michigan Supreme Court decision, to which no response is required. To the extent a response is required, that decision speaks for itself.

61. Denied.

62. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

63. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

64. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

65. Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations.

**Answer to: "Michigan's Current Apportionment Plan Violates the Constitution"**

66. Plaintiffs purport to characterize two U.S. Supreme Court's decisions, to which no response is required. To the extent a response is required, those

decisions speak for themselves. Plaintiffs also purport to characterize the holding of a district court opinion, to which no response is required. To the extent a response is required, that 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 and a district court opinion, to which no response is required. To the extent a response is required, those opinions speak for themselves. By way of further answer, 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)).

68. Plaintiffs purport to characterize and quote a U.S. Supreme Court opinion, to which no response is required. To the extent a response is required, the opinion speaks for itself.

69. Plaintiffs purport to characterize a U.S. Supreme Court decision, to which no response is required. To the extent a response is required, the decision speaks for itself. Michigan Senators deny the remaining allegations.

70. Denied.

71. Denied.

72. Michigan Senators admit only that the quoted language appears in the cited case and deny all other allegations and inferences therefrom.

73. Denied.

### **Count I – First Amendment**

74. Michigan Senators incorporate their answers to paragraphs 1 through 73 as if fully set forth here.

75. Michigan Senators 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, Michigan Senators lack knowledge or information sufficient to form a belief as to the truth of these allegations. By way of further answer, Michigan Senators deny that Plaintiffs or Democratic voters have had their First Amendment rights violated.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

### **Count II – Equal Protection**

81. Michigan Senators 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, Michigan Senators 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 district apportionment is reserved to the Congress rather than the courts. U.S. Const., Art. I, § 4.
4. The claims of Plaintiff Durhal are barred by res judicata.
5. Plaintiffs do not have standing to bring a statewide challenge because they do not have a plaintiff in every district.
6. In light of the Supreme Court's recent decisions, Plaintiffs lack standing to bring a partisan gerrymandering claim.

7. Plaintiffs' claims are non-justiciable because there is no manageable standard for this Court to adjudicate Plaintiffs' claims.

Michigan Senators reserve the right to add additional affirmative defenses as the result of discovery or otherwise.

Respectfully submitted,

Date: January 22, 2019

DYKEMA GOSSETT PLLC

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 22, 2019, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record. I hereby certify that I have mailed by United States Postal Service the same to any non-ECF participants.

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