

**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, 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

**THE MICHIGAN SENATE'S
ANSWER TO COMPLAINT**

**THE MICHIGAN SENATE’S ANSWER TO PLAINTIFFS’
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Proposed Intervenor the Michigan Senate (the “Senate”), through its counsel, submits the following Answer to Plaintiffs’ Complaint for Declaratory and Injunctive Relief (“Complaint”):

INTRODUCTION

1. Denied.
2. Denied.
3. Denied.
4. The Senate denies the allegations contained in the first sentence of Paragraph 4. Senate lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.
5. The Senate admits that Paragraph 5 contains quotes from a Supreme Court opinion, but denies their applicability to this matter. By way of further answer, the Senate respectfully refers 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. The Senate lacks knowledge or information sufficient to form a belief

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as to the truth of these allegations.

8. In response to the first sentence of Paragraph 8, the Senate admits only that the Court determined that the League had standing to challenge the current apportionment plan on a district by district basis, but affirmatively avers 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 Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

10. The Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

- a. The Senate denies that voters have been cracked and that there is a gerrymandered district. The Senate lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.
- b. The Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.
- c. The Senate denies that voters have been cracked and that there is a gerrymandered district. The Senate lacks knowledge or information sufficient to form a belief as to the truth of the

remaining allegations.

- d. The Senate denies that voters have been cracked or packed. The Senate lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.
- e. The Senate denies that voters have been cracked or packed. The Senate lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.
- f. The Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.
- g. The Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.
- h. The Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.
- i. The Senate denies that voters were cracked. The Senate lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations.
- j. The Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.
- k. The Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

11. The Senate admits only the allegations contained in the first two sentences of Paragraph 11. The Senate denies 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, the Senate denies that Plaintiffs have standing to bring a statewide challenge.

13. Admitted.

14. Admitted.

General Allegations

Answer to: “How Gerrymandering Works”

15. The Senate admits that Paragraph 15 contains a quote from a Supreme Court opinion, but denies it supports Plaintiffs’ claims in this lawsuit. By way of further answer, the Senate respectfully refers the court to the full text of the cited case.

16. The Senate admits that Paragraph 16 contains a quote from a Supreme Court opinion, but denies it supports Plaintiffs’ claims in this lawsuit. By way of further answer, the Senate respectfully refers the court to the full text of the cited case. The Senate denies all remaining allegations in this paragraph.

17. Denied.

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

18. The Senate admits that redistricting occurs after every 10-year census, admits that districting plans have previously been enacted by statute, and admits that Michigan’s legislative and congressional plans following the 2010 census were a result of legislative enactments, but denies that all new districting plans result from legislative enactments. The Senate denies that the Legislature will enact future districting plans by statute because Michigan’s electors adopted a constitutional amendment through Proposal 18-2 at the November 6, 2018 general election that established an independent redistricting commission to reapportion congressional and state legislative districts after each federal decennial census beginning in 2020.

19. The Senate admits that a majority in each house and the governor were Republicans in 2001, admits that the 2001 districting plans are no longer in effect, and denies all remaining allegations.

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

21. Denied.

Answer to: “The Michigan Process was Flawed”

22. The Senate denies the allegations in the first sentence, and lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the remaining sentence.

23. Denied.

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

25. The Senate lacks 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, the Senate respectfully refers the court to the full text of the cited case. To the extent a response is required, the Senate lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences, and

denies the allegations in the last sentence.

31. Denied.

32. Denied.

33. The Senate is unable to verify the source or accuracy of the graphic in this paragraph, and therefore denies these allegations.

34. Denied.

35. The Senate is unable to verify the source or accuracy of the graphic in this paragraph, and therefore denies 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.

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

37. Denied.

38. The Senate denies the allegations contained in the first sentence, and lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence.

39. The Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

40. The Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

41. The Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

42. The Senate denies the allegations in the first sentence. The Senate lacks 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, the Senate respectfully refers the court to the full text of the cited case. To the extent a response is required. The Senate lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first and second sentences, and denies 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. The Senate also respectfully refers 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 Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

52. The Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

53. The Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

54. Denied.

55. The Senate lacks 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. The Senate lacks 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. The Senate admits 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. The Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

63. The Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

64. The Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations.

65. The Senate lacks 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

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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. The Senate denies the remaining allegations.

70. Denied.

71. Denied.

72. The Senate admits only that the quoted language appears in the cited case and denies all other allegations and inferences therefrom.

73. Denied.

Count I – First Amendment

74. The Senate incorporates their answers to paragraphs 1 through 73 as if fully set forth here.

75. The Senate admits 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 Senate lacks knowledge or information sufficient to form a belief as to the truth of these allegations. By way of further answer, the Senate denies 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. The Senate incorporates 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 Senate respectfully requests 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 lacks 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.

The Senate reserves the right to add additional affirmative defenses as the result of discovery or otherwise.

Respectfully submitted,

Date: January 24, 2019

DYKEMA GOSSETT PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 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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