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 AND THE MICHIGAN SENATORS' MOTION FOR STAY OF PROCEEDINGS

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Proposed Intervenors, the Michigan Senate ("the Senate") and Michigan State Senators Jim Stamas, Ken Horn, and Lana Theis (the "Michigan Senators"), by their undersigned counsel, respectfully request that this matter be stayed until such time as this Court has ruled on the Michigan Senators' January 22, 2019 Motion to Intervene and the Senate's January 24, 2019 Motion to Intervene.

In support of this Motion, the Senate and the Michigan Senators submit the accompanying Brief in Support. In accordance with LR 7.1(a), the undersigned counsel sought concurrence in the relief requested in this motion prior to filing. The Intervening Defendants concurred, but the Plaintiffs denied their concurrence. The Senate and the Michigan Senators did not obtain Defendants' concurrence or denial by the time this Motion was filed.

WHEREFORE, the Senate and the Michigan Senators respectfully request that the Court grant their Motion and stay proceedings in this matter, including but not limited to trial, until such time as this Court has considered the Senate's and the Michigan Senators' respective motions.

Respectfully submitted,

DYKEMA GOSSETT PLLC

Date: January 29, 2019

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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 **BRIEF IN SUPPORT OF THE MICHIGAN SENATE AND THE MICHIGAN SENATORS' MOTION FOR STAY OF PROCEEDINGS**

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Movant's answer: Yes

Plaintiffs' answer: No

Defendant Secretary of State's answer: Undetermined

Intervening Defendants' answer: Yes

This Court should answer: Yes

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INTRODUCTION

Each day this case progresses, the Senate and the Michigan Senators continue to be denied the opportunity to vigorously defend the constitutionality of the current congressional and state legislative apportionment plans ("Current Apportionment Plans"), notwithstanding the fact that the executive branch, through newly-elected Secretary of State Jocelyn Benson, has demonstrated an intent and willingness not to do so. As this Court acknowledged in its Order Granting Plaintiffs' Motion for Determination of Privilege, "the Secretary does not intend to defend the current apportionment plans at issue in this case." (ECF No. 216). Without a stay of proceedings during which this Court may consider the Senate's and the Michigan Senators' respective Motions to Intervene, this case will proceed with an adversarial void, and the exclusive interests of the Senate and the Michigan Senators will be irreparably harmed by their nonparticipation.

BACKGROUND

On December 22, 2017, the League of Women Voters of Michigan and other named individuals (collectively, "Plaintiffs") filed a two-count Complaint for Declaratory and Injunctive Relief. (ECF No. 1). Plaintiffs' Complaint asserts that the Current Apportionment Plans are unconstitutional pursuant to 42 U.S.C. § 1983, § 1988, and the First and Fourteenth Amendments to the United States Constitution.

Plaintiffs contend that, by continuing to implement the Current Apportionment Plans, Secretary Benson has impermissibly discriminated against Plaintiffs as an identifiable political group (likely Democratic voters). Plaintiffs assert that Defendant's actions violate the Fourteenth Amendment's Equal Protection Clause, and unreasonably burden Plaintiffs' right to express their political views and associate with the political party of their choice in contravention of the First Amendment. Plaintiffs seek to enjoin further implementation of the Current Apportionment Plans in the 2020 congressional and state legislative elections. *See* Pls' Resp. to Motion for Stay, at 2 (ECF No. 15).

Until her term of office ended on December 31, 2018, former Secretary of State Ruth Johnson vigorously defended the Current Apportionment Plans during the course of this ligation. On January 1, 2019, Secretary of State Jocelyn Benson was sworn into office as former Secretary Johnson's successor and, under Fed. R. Civ. P. 25(d), was automatically substituted as a party in this case in her official capacity.

Just over two weeks later, on January 17, 2019, Secretary Benson filed a Response to Defendants-Intervenors' Emergency Motion to Stay Trial, in which she agreed that an adjournment of the imminent trial scheduled for February 5, 2019, would be appropriate under the circumstances of this case and stated that "[a]n adjournment will permit the Secretary of State and Plaintiffs the opportunity

to focus their efforts on negotiating a mutually agreeable and complete resolution of their disputes." (ECF No. 199, PageID.7601).

In order to protect their unique interests in this matter, and because Secretary Benson has now demonstrated the executive branch's intent not to vigorously defend the constitutionality of the Current Apportionment Plans, the Michigan Senators filed a Motion to Intervene and Brief in Support on January 22, 2019. (ECF No. 206). The Michigan Senators also filed a Motion for Immediate Consideration of their Motion to Intervene and Brief in Support. (ECF No. 207). Following adoption of Senate Resolution No. 6, the Senate also filed a Motion to Intervene and Brief in Support on January 24, 2019, with an accompanying Motion for Immediate Consideration. (ECF Nos. 208 and 209).

Though this Court has yet to rule on the Senate's and the Michigan Senators' respective Motions to Intervene, trial is scheduled to begin on Tuesday, February 5, 2019—just one week from today. If the trial occurs as scheduled, the Senate and the Michigan Senators' interests in defending the Current Apportionment Plans will not be adequately protected. The Senate and the Michigan Senators seek a stay to allow this Court to consider their respective Motions to Intervene before trial begins. Commencement of trial next week without the Senate or the Michigan Senators' participation would result in irreparable harm.

STANDARD OF REVIEW

A court's "power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes in its docket with economy of time and effort for itself, for counsel and for litigants, and the entry of such an order ordinarily rests with the sound discretion of the District Court." *FTC v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 626-627 (6th Cir. 2014) (citing *Ohio Env't Council v. U.S. Dist. Court, S. Dist. of Ohio, E. Div.*, 565 F.2d 393, 396 (6th Cir. 1977)). *See also Clinton v. Jones*, 520 U.S. 681, 706; 117 S. Ct. 1636; 137 L. Ed. 2d 945 (1997) ("[T]he District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.").

While the Sixth Circuit has not specifically articulated factors for courts to examine when determining whether to grant a stay pending a ruling on a motion to intervene, the four-factor balancing test used to evaluate motions for preliminary injunctions and motions for stay pending an appeal is applicable to the interests at stake in a motion to intervene. In those cases, as in this case, the moving party will be irreparably harmed if the relief sought is not granted, and courts weigh this harm against potential harm to others. Therefore, the proposed Senate intervenors urge this Court to adopt the four-factor test used to evaluate preliminary injunctions, stays pending appeal under Fed. R. App. P. 8(a), stays of proceedings to enforce a judgment under Fed. R. Civ. P. 62, and stays in various other contexts:

1. The likelihood that the party seeking the stay will prevail on the merits;

2. The likelihood that the moving party will be irreparably harmed absent a stay;

3. The likelihood that others will be harmed if the court grants the stay; and

4. The public interest in granting the stay.

Mich Coal. of Radioactive Material Users, Inc. v. Griepentrog, 945 F.2d 150, 153 (6th Cir. 1991).

ARGUMENT

This Court should grant the Senate and Michigan Senators' Motion for Stay because they are likely to prevail on the merits and because they will be irreparably harmed if the stay is not granted. Further, granting a stay will not harm any of the other parties in this matter, and there is a strong public interest in granting the stay.

I. THE SENATE AND THE MICHIGAN SENATORS ARE LIKELY TO PREVAIL ON THE MERITS OF THEIR MOTION TO INTERVENE.

The Senate and the Michigan Senators will likely be granted intervenor-defendant status. They seek intervention in this action under the Federal Rules of Civil Procedure, Rule 24(a)(2), or, alternatively, Rule 24(b)(1). "Rule 24 traditionally receives liberal construction in favor of applicants for intervention." *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003).

A. The Senate And The Michigan Senators Are Entitled To Intervene As A Matter Of Right.

Pursuant to Federal Rules of Civil Procedure, Rule 24(a)(2), intervention as a matter of right is appropriate when, upon timely motion, a party "[c]laims an interest relating to the property or transaction that is the subject of the actions, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." The United States Court of Appeals for the Sixth Circuit has recognized a "rather expansive notion of the interest sufficient to invoke intervention of right." *Michigan State AFL-CIO v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997). "As a general rule, a person cannot be deprived of his or her legal rights in a proceeding to which such a person is neither a party nor summoned to appear in the legal proceeding." *Jansen v. Cincinnati*, 904 F.2d 336, 340 (6th Cir. 1990). Therefore, "the need to settle claims among a disparate group of affected persons militates in favor of intervention." *Id.*

The Court of Appeals for the Sixth Circuit has developed a four-factor test to determine whether a party should be granted intervention as of right. *See Triax Co. v. TRW, Inc.*, 724 F.2d 1224, 1227 (6th Cir. 1984); *see also Grubbs v. Norris*, 870 F.2d 343, 345 (6th Cir. 1989); *Appleton v. FDA*, 310 F. Supp. 2d 194, 196 (D.D.C. 2004). Granting a motion for intervention of right is appropriate upon a showing that: (1) the application for intervention is timely; (2) the applicant has a

substantial, legal interest in the subject matter of the pending litigation; (3) the applicant's ability to protect that interest is impaired; and (4) the present parties do not adequately represent the applicant's interest. *Grubbs*, 870 F.2d at 345. The Senate and the Michigan Senators readily meet each of the four criteria and thus are likely to be granted intervenor-defendant status in this matter.

1. The Senate and Michigan Senators' Motions to Intervene Were Timely.

The timeliness of a motion to intervene "should be evaluated in the context of all relevant circumstances." *Jansen*, 904 F.2d at 340 (citing *Bradley v. Milliken*, 828 F.2d 1186, 1191 (6th Cir. 1987)). The Senate and the Michigan Senators' moved to intervene as soon as they knew that newly elected Secretary Benson would no longer defend the Current Apportionment Plan and that their unique interests were at stake. The Senate and the Michigan Senators learned of Secretary Benson's settlement negotiations when they were reported in the Gongwer News Service at 5:50 p.m. on January 17, 2019, and in other media outlets. Until that point, the Senate and the Michigan Senators expected that Secretary Benson, like her predecessor, would uphold and defend duly enacted Michigan law. And until then, the Senate and the Michigan Senators had respected the letter of this Court's August 14, 2018 Order regarding the House Intervenor's initial motion to intervene, which determined that legislative intervention was premature; however, upon learning of Secretary Benson's positional change, the Senate and the

Michigan Senators realized that their interests would be adversely impacted without their participation and immediately prepared and filed motions to intervene. For these reasons and those contained in their earlier briefs, the Senate and the Michigan Senators' Motions were timely.

2. The Senate and the Michigan Senators Have a Sufficient Interest Which May Be Impaired by the Disposition of this Case.

The second and third requirements under Rule 24(a) are that the Senate and the Michigan Senators must have an interest in the litigation and that the disposition of this suit will impair those interests. "To satisfy [the impairment] element of the intervention test, a would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied. This burden is minimal." *Michigan State AFL-CIO*, 103 F.3d at 1247. To intervene, the Senate and the Michigan Senators are not required to show "that impairment will inevitably ensue from an unfavorable disposition; the would-be intervenors need only show that the disposition may impair or impede their ability to protect their interest." *Purnell v. Akron*, 925 F.2d 941, 948 (6th Cir. 1991) (internal quotations and modifications omitted).

The Senate and the Michigan Senators stand to be irrevocably harmed by the invalidation of the duly enacted congressional and state legislative apportionment plans. First, this matter concerns the congressional and state legislative districting

plans enacted and implemented by the Michigan Legislature, which allegedly violate the First and Fourteenth Amendments of the United States Constitution. (See Compl. at ¶1). The Michigan Senate is one of two legislative bodies bestowed with the constitutional obligation to prepare and enact legislation "to regulate the time, place and manner" of elections. Mich. Const. art. II, § 4; *see also* Mich. Const. art. IV, § 1 (vesting the general legislative power with the Legislature); Mich. Comp. Laws § 4.261 (setting out the authority and procedure for conducting reapportionment). Apportionment "is primarily a matter for legislative consideration and determination and . . . judicial relief becomes appropriate only when a legislature fails to reapportion . . . ." *Reynolds v. Sims*, 377 U.S. 533, 586 (1964). Therefore, the Senate and the Michigan Senators would be directly impacted by any order or settlement agreement requiring a modification or redrawing of the Current Apportionment Plan. The Senate and the Michigan Senators thus have a sufficient interest in the subject matter of this litigation that is materially distinguishable from the generalized interest shared by all citizens. *See Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 194 (1972) (recognizing that state legislators have the right to intervene because the State Legislature would be directly affected by a district court's orders.).

Second, the Senate and the Michigan Senators seek to defend a duly enacted law, not to abstractly or generally defend their power to enact legislation but to

defend the statute that establishes the Senate's own district lines and to defend the Michigan Senators' constitutionally established right to fulfill four-year terms of elected office to represent the constituents of their districts. As this Court has indicated, if the congressional and state legislative districts challenged in this case are found to be unconstitutional, the relief granted may include a special Senate election in 2020 based on redrawn districts. The Senate, therefore, has a concrete stake in this litigation beyond its legislative power generally because the challenged law so directly affects the Senate and the Michigan Senators' representation of their constituents. For these reasons and those contained in their earlier briefs, the Senate and the Michigan Senators' have a sufficient interest that may be impaired by the disposition of this case to warrant intervention.

3. No Current Party Adequately Represents the Senate or the Michigan Senators' Interests.

The Senate's and the Michigan Senators' interests are not adequately and fairly represented by any existing party to this action. In the process of an intervention analysis, courts will ask whether the "present parties . . . adequately represent the applicant's interest." *Grubbs*, 870 F.2d at 345. One need only prove that the "representation of [their] interest *may be* inadequate." *Trbovich v. UMW*, 404 U.S. 528, 538, n.10 (1972) (emphasis added); *Michigan State AFL-CIO*, 103 F.3d at 1247 (quoting and citing *Linton v. Comm'r of Health & Env't*, 973 F.2d 1311 (6th Cir. 1992)). Here, inadequacy of representation is obvious.

The Senate's and the Michigan Senators' unique interests are directly adverse to Plaintiffs' interests and different from those of Secretary Benson, whose office lacks the ability to enact new legislation. The Senate and the Michigan Senators, in contrast to the current parties and general citizens of Michigan, have a unique interest in defending a validly enacted law while ensuring that the Court affords due deference—including a presumption of good faith afforded to all legislative enactments—to the Legislature. *See Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018). So do they have an interest in the redrawing of the congressional and state legislative districts, if required by settlement or order. On these issues, neither Secretary Benson nor any other party to this case has the same perspective as the Senate and the Michigan Senators.

The strategies utilized by the parties also differ. *Compare*, *e.g.*, Def.'s Answer ¶¶ 17, 42, 47, 49, with the Senate's Answer ¶¶ 17, 42, 47, 48, 49, 50 (denying that there is ever such a thing as a "wasted" vote and that the so-called efficiency gap supports an inference of partisan gerrymandering). The Senate and the Michigan Senators also differ from Secretary Benson in pleading affirmative defenses. Thus, the inadequacy of representation factor favors the Senate and Michigan Senators such that they will likely be permitted to intervene pursuant to Federal Rule of Civil Procedure 24(a)(2).

B. If The Senate And The Michigan Senators Are Not Granted Intervention As A Matter Of Right, They Are Entitled To Permissive Intervention.

If this Court does not allow the Senate and the Michigan Senators to intervene as a matter of right, they will likely be allowed to intervene permissively pursuant to Federal Rule of Civil Procedure 24(b). This Rule provides for permissive intervention where a party timely files a motion and "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). The Senate and the Michigan Senators have such a claim or defense.

The Senate and the Michigan Senators moved to intervene before trial and have been subject to third-party discovery. Their claims or defenses related to the Current Apportionment Plans share common questions of law or fact. Further, no delay or prejudice to the current parties will follow. Disallowing intervention would also prejudice the interests and rights of the Senate and the Michigan Senators, and thus permissive intervention is likely in the event the Senate and the Michigan Senators are not allowed to intervene as a matter of right.

II. THE SENATE AND THE MICHIGAN SENATORS WILL BE IRREPARABLY HARMED IF THEY ARE NOT PERMITTED TO PARTICIPATE AND VIGOROUSLY DEFEND THIS CASE.

The Senate and the Michigan Senators will be irreparably harmed if the Court does not issue a stay of proceedings pending a ruling by the Court on their respective motions to intervene. As explained in the briefs in support of their

motions to intervene (ECF Nos. 206 and 208), the Senate and the Michigan Senators both have unique, particularized interests in the outcome of this litigation that will be adversely affected if this case goes to trial without their participation. Trial is currently scheduled to begin on February 5, 2019, and this Court has not yet ruled on the Senate's and the Michigan Senators' respective motions to intervene. If no stay is ordered, and this Court does not rule on the proposed intervenors' motions, and the case proceeds to trial without the Senate and the Michigan Senators as parties, their respective interests in defending the Current Apportionment Plan will be harmed.

According to the Sixth Circuit, to evaluate "the harm that will occur depending upon whether or not the stay is granted, [the court] generally look[s] to three factors: (1) the substantiality of the injury alleged; (2) the likelihood of its occurrence; and (3) the adequacy of the proof provided." *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 154 (6th Cir. 1991) (citations omitted). For the first factor, to evaluate the degree of injury, "the key word in this consideration is 'irreparable.' Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough." *Id.* (quoting *Sampson v. Murray*, 415 U.S. 61, 90, 39 L. Ed. 2d 166, 94 S. Ct. 937 (1974)). Additionally, "the harm alleged must be both certain and immediate, rather than speculative or theoretical." *Id.* If a stay is not granted in

this case pending the Court's ruling on the Senate's and the Michigan Senators' motions to intervene, the Senate and the Michigan Senators will be irreparably and substantially harmed because they will not be able to participate in the trial. Regardless of its outcome, the Senate and the Michigan Senators will have lost the opportunity to defend their interests. This harm is certain, immediate, substantial and irreparable because the Senate and the Michigan Senators cannot recover or be compensated for their inability to defend their interests.

As explained in the Senate's brief in support of its motion to intervene, the Senate seeks to defend a law that it duly enacted—not to abstractly or generally defend its power to enact legislation—but to defend the statute that established the Senate's own district lines and the Michigan Senators' constitutionally established right to fulfill four-year terms of elected office to represent the constituents of those districts. Additionally, the Senate seeks to intervene to protect its significant, particularized interests in this litigation because: (1) Plaintiffs seek a court order regulating the Senate's official conduct; (2) any disposition of the case that requires a special election and 2-year terms of office contrary to Article IV, Section 2 of the Michigan Constitution causes an undue burden on the Senate and its members' constituents; (3) the Senate has an interest in protecting the relationship between constituent and representative; and (4) the Senate will be forced to expend significant public funds and resources to have the Legislature

engage in the necessary processes to comply with any remedial order. Likewise, the Michigan Senators seek to defend similar interests. Each of these interests is unique to the Senate and the Michigan Senators. The current parties to the litigation—even the congressional and state House intervening defendants—do not have identical interests, so their participation is inadequate to represent the Senate's and the Michigan Senators' interests.

As for the second factor, the likelihood that the harm will occur, the Senate and the Michigan Senators will be harmed by their inability to participate in the litigation if this Court does not issue a stay pending its ruling on the motions to intervene. If the trial takes place next week without a ruling on the motions, the Senate and the Michigan Senators will be excluded from the trial, which will irreparably harm them and their interests.

As for the third factor, the adequacy of the proof provided, the Senate and the Michigan Senators have provided individual declarations and a Senate resolution authorizing intervention in this case as proof of the interests at stake. These declarations and the resolution were provided as exhibits to the motions to intervene. If a stay of proceedings is not granted until court rules on the motions to intervene, those interests will be irreparably harmed.

III. NO OTHER PARTY WILL BE HARMED BY GRANTING A STAY.

No other party will be harmed by a stay in this case. To the contrary, each party to the case has previously requested that this Court grant a stay or continuance of trial. On January 11, 2019, the congressional and legislative defendants-intervenors filed an emergency motion to stay the trial. (ECF No. 183). On January 17, 2019, Defendant Secretary of State Benson filed her response to the defendants-intervenors' motion to stay trial, in which she indicated her concurrence with the request to adjourn the trial date. (ECF No. 199). On January 25, 2019, the Plaintiffs filed an unopposed motion for continuance of trial. (ECF No. 214). Because all parties agree that the trial date should be adjourned or proceedings stayed, no party would be harmed by a stay pending a ruling on the motions to intervene.

IV. PUBLIC INTEREST FAVORS GRANTING A STAY.

There is a strong public interest in granting a stay in order to allow this Court to consider the pending motions to intervene filed by the Senate and the Michigan Senators because the Senate and the Michigan Senators are currently without the ability to provide a vigorous defense to the constitutionality of the Current Apportionment Plans, and the executive branch, acting through Secretary Benson, is failing to do so. Additionally, the public has a strong interest in the efficient use of government dollars and if a Court order or settlement agreement provides for the redrawing of legislative districts, the Senate and the Michigan

Senators would be required to expend significant legislative funds and resources toward the extraordinary costs of developing apportionment plans.

Additionally, a stay is appropriate and in the public interest in this case because two cases addressing issues that are dispositive in this case are currently pending before the United States Supreme Court and have been granted expedited consideration: *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 799 (M.D.N.C. 2018), *cert. granted*, 138 S. Ct. 923 (2018) (No. 18-422) and *Benisek v. Lamone*, No. 1:13-cv-03233-JKB, 2018 U.S. Dist. LEXIS 190292 (D. Md. Nov. 7, 2018), *cert. granted*, 202 L.Ed.2d 510 (U.S. Jan. 4, 2019) (No. 18-726). The dispositive issues to be decided by the Supreme Court include whether partisan gerrymandering claims are justiciable, whether plaintiffs have standing to pursue those claims, and if so, what the appropriate or accepted standard governing disposition and resolution of the claims should be. The Supreme Court will hear argument on these issues in March 2019, less than a month after trial in this case is set to begin. Awaiting guidance from the Supreme Court is in the public interest because it will provide a legal standard by which to judge the case and prevent any conflict between the decision of this Court and a later decision of the Supreme Court. Waiting for such guidance will also prevent confusion among Michigan citizens as to the status of the congressional and state legislative districts and representation in the legislatures.

CONCLUSION

For the foregoing reasons, the Senate and Michigan Senators' Motion for Stay of Proceedings should be granted, allowing this Court to rule on the Senate's and Michigan Senators' Motions to Intervene before this trial moves forward such that the Senate and Michigan Senators can protect their exclusive interests in the subject matter and outcome of this litigation concerning the constitutionality of the Current Apportionment Plan, and avoid irreparable harm.

Respectfully submitted,

DYKEMA GOSSETT PLLC

Date: January 29, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 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.

By: */s/ Jason T. Hanselman*

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