UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEAGUE OF WOMEN VOTERS OF MICHIGAN, et al.,	)))	Case No. 2:17-cv-14148
Plaintiffs,	))	Hon. Eric L. Clay
	)	Hon. Denise Page Hood
v.	)	Hon. Gordon J. Quist
	)	
JOCELYN BENSON, in her official	)	**VOTERS' TRIAL BRIEF**
Capacity as Michigan	)	
Secretary of State, et al.,	)	
	)	
Defendants.	)	

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Partisan gerrymandering is "incompatible with democratic principles." *Ariz. State Leg. v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2658 (2015) (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 292 (2004)). "On its most fundamental level, partisan gerrymandering violates 'the core principle of republican government . . . that the voters should choose their representatives, not the other way around.'" *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 838 (M.D.N.C. 2018) (quoting *Ariz. State Leg.*, 135 S.Ct. at 2677). These very principles are at stake in this case, where the Republican-controlled Michigan legislature and Republican governor, working in concert with Republican interest groups and donors, precisely targeted Democratic voters by carefully drawing State Senate, State House, and Congressional district lines to dilute the power of Democratic votes, maximize the strength of Republican votes, and protect Republican officeholders against primary and general election challengers.

As a result of the State's unconstitutional actions, Democrats in district after district have had their voting power diluted, the natural strength of their political voices weakened, and their party has been unable to gain control of the legislature or the congressional caucus despite having over or very close to over half of the statewide vote. The results have proved durable and powerful for Republicans, but they have meanwhile undermined the most fundamental and cherished rights in our democracy. At trial, the Voters will prove that this partisan gerrymandering violated both the First and Fourteenth Amendments of the United States Constitution.

I.   **Applicable Legal Standards**

On November 30, 2018, this Court held in its Opinion and Order denying

summary judgment that the individual plaintiffs and the League of Women Voters of

Michigan (the "League," collectively with all plaintiffs, the "Voters") presented

sufficient evidence to establish standing to bring First and Fourteenth Amendment

claims challenging 34 districts where the Voters lived. (Dkt. No. 143 at 21, 25, 27, 30

("Summary Judgment Order").) This Court also held that the Voters' First and

Fourteenth Amendment "partisan gerrymandering claims are justiciable because

judicially manageable standards exist for adjudicating these claims." (*Id.* at 39.) The

Voters' evidence will more than satisfy these standards.

This Court adopted a "three-part discriminatory intent, discriminatory effects,

and lack of justification test for [the Voters'] Fourteenth Amendment partisan

gerrymandering claims." (*Id.* at 34.) With respect to the intent prong, this Court

explained that it would use the "'predominant purpose' test, under which 'a

congressional district amounts to an unconstitutional partisan gerrymander *only if* the

legislative body's *predominant* purpose in drawing the district was to subordinate the

interests of supporters of a disfavored party and entrench a representative of a

favored party in power.'" (Summary Judgment Order at 34-35 (quoting *Rucho*, 318 F.

Supp. 3d at 852) (emphasis in original)); *see also Ariz. State Leg.*, 135 S.Ct. at 2658. This

predominance inquiry is not whether the districts can be justified on some neutral

principal, but, rather, what the actual purpose is. *See, e.g., Bethune-Hill v. Virginia State*

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Board of Elections, 137 S. Ct. 788, 799 (2017) ("By deploying those [neutral redistricting] factors in various combinations and permutations, a State could construct a plethora of potential maps that look consistent with traditional, race-neutral principles. But if race for its own sake is the overriding reason for choosing one map over others, race still may predominate."); *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1271 (2015) (explaining that achieving equal populations in a district might legitimately be the reason that a group of voters was shifted from one district to another – but if the legislature decided which group of voters was to be moved based on race, then race is still predominant under the applicable standard.). For a partisan gerrymander to be justified, the government must prove "'that a legitimate state interest or other neutral factor justified such discrimination.'" (Summary Judgment Order at 34 (quoting *Rucho*, 318 F. Supp. 3d at 867; *see also Cooper v. Harris*, 137 S. Ct. 1455, 1464 (2017); *Brown v. Thomson*, 462 U.S. 835, 843 (1983)).)

To prove a First Amendment violation, the Voters must demonstrate "that those who drew the districts did so with the 'specific intent' to 'burden individuals or entities that support a disfavored candidate or political party.'" (*Id.* at 38 (quoting *Shapiro v. McManus*, 203 F. Supp. 3d 579, 597 (D. Md. 2016).) Second, they "must show that the challenged districting plan actually caused an injury, i.e., 'that the districting plan in fact burdened the political speech or associational rights of such individuals or entities.'" (*Id.* (quoting *Rucho*, 318 F. Supp. 3d at 929)). Third, the Voters "must show causation, i.e., that 'absent the mapmakers' intent to burden a

particular group of voters by reason of their views, the concrete adverse impact would not have occurred.'" (*Id.* (quoting *Shapiro*, 203 F. Supp. 3d at 598)).

The discriminatory intent prong for the Fourteenth Amendment claim and the specific intent prong for the First Amendment claim overlap substantially but not perfectly – the First Amendment claim, for instance, has no "predominant purpose" requirement. Similarly, the discriminatory effects prong for the Fourteenth Amendment claim and the First Amendment claim also overlap substantially. Accordingly, much of the Voters' evidence will concurrently demonstrate liability under both theories.

II.   Voters' Presentation of the Case

The Voters challenge the constitutionality of 34 districts in the Michigan House, Senate, and Congress (the "Challenged Districts"). The evidence will include the testimony and exhibits described below and as described in more detail in the trial witness and trial exhibit lists filed on December 22, 2018.

Voter Witnesses: Citizens who reside in and are registered to vote in the Challenged Districts will testify to establish their standing (and the League's derivative standing) to bring Equal Protection and First Amendment claims. Specifically, the Voters will present the testimony of voter, former officer, and current board member of the League of Women Voters of Michigan, Sue Smith, named plaintiff Rosa Holliday, and League member Karen Sherwood, per stipulation. (Dkt. No. 212). The Voters will also offer testimony of other voter witnesses in Challenged Districts

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through short evidentiary depositions, and a small number – between zero and six – of additional voters will testify live at trial per the parties' pretrial stipulation.

Expert Witnesses. Assistant Professor Christopher Warshaw of George Washington University's Department of Political Science will testify live as an expert witness. Dr. Warshaw will testify generally regarding his quantitative analysis of the Michigan gerrymander, providing a historical and national perspective, and describing its impacts on individual voters. Pursuant to stipulation, the Voters will submit the opinions and analysis of their other experts, Dr. Jowei Chen of the University of Michigan and Dr. Kenneth Mayer of the University of Wisconsin, via their reports and/or depositions, which Dr. Warshaw may comment upon.

Other Witnesses. The Voters plan to call Senate staffer Mike Vatter to testify about district configurations and alternatives. This testimony will be consistent with Mr. Vatter's declaration. (Dkt. No. 129-55.) The Voters may also call current chair of the Michigan Democratic Party Brandon Dillon to testify about how the gerrymander effects Michigan Democrat voters and the political process. Mr. Dillon's testimony will also be generally consistent with his earlier submitted declaration. (Dkt. No. 129-56.)

Remaining potential witnesses are largely participants in the gerrymandering process – members and staff, outside consultants, and then-Republican State Chair Bobby Schostak whose office organized weekly strategy meetings with legislators regarding the gerrymandering process. Pursuant to stipulation, the Voters will offer

transcripts of depositions in which map drawers Terry Marquardt (Senate), Dan

McMaster (House), Brian Began (House), Jeffrey Timmer (Congress), Senate and

House leaders, and Robert LaBrant all make serial admissions about the closed

process and the heavy influence of politics in driving the configuration of the

Challenged Districts.

A. Evidence of Discriminatory Intent

The Voters will offer live testimony, deposition testimony, expert analysis, and

documentary email evidence from the Republicans who drew the 2011 gerrymander

of the Challenged Districts. This evidence reveals a highly secretive, highly political

process of drawing districts with such extreme outcomes that the Voters' experts have

concluded, with high statistical certainty, that the results could not be attributed to

anything other than partisan intent.

1. The map drawers, in concert with Republican politicians, consultants, lawyers, and funders, acted in secret.

The Michigan State Senate map was primarily drawn by Terry Marquardt, a

senior Republican Senate staffer. (Marquardt Dep., Trial Exhibit 509 at 23:1–25:2;

31:2–15.) The task of redistricting the Michigan State House map fell to Daniel

McMaster, a senior Republican advisor in the House, who later retained Brian Began

to assist him. (McMaster Dep., Trial Exhibit 515 at 36:4–5, 49:14, 50:4-51:24.)

Republican lawmakers outsourced the drawing of the Congressional Districts to the

Michigan Redistricting Resource Institute, a nonprofit corporation created for the

purpose of raising money to fund and defend Republican redistricting plans, which in turn hired Jeff Timmer of Sterling Corporation, a Republican consulting and fundraising firm. (LaBrant Dep., Trial Exhibit 508 at 140:6–141:05.)

The draft districts were drawn in a highly secretive environment. For example, as their deposition testimony shows, McMaster and Began worked in a private office "which was locked, no one was allowed in." (McMaster Dep., 51:22-24; 61:23-25; 65:4-9 (explaining that they put paper over the door window and that they would not answer the door)). Timmer, Marquardt, McMaster, and Began also participated in confidential weekly "map drawer meetings" at the Dickinson Wright law firm in Lansing. Also participating in the meetings were Republican legislators, their counsel, and others. This exclusive group included Pete Ellsworth (lawyer), Jeff Stuckey (lawyer), Joe Baumann (counsel for House Republicans), Fred Hall (counsel for Senate Republicans), Dave Murley (counsel for Governor's office), Bob LaBrant (Chamber of Commerce/MRRI) and Randy Richardville (Senate majority leader). (*See, e.g.*, *Id.* at 53:13-54:8; Marquardt Dep. 86:25-92:4; LaBrant Dep. Vol. II 237:17-238-17.)

At the map drawer meetings, in addition to discussing the Apol criteria and the Voting Rights Act, the map drawers shared and discussed draft districts among themselves. (Timmer Dep., Trial Exhibit 513, Vol. I 55:20-57:24; Marquardt Dep. at 82:11-22, 90:5-91:11; McMaster Dep. at 52:7-19 (describing that each map drawer would give a report and discuss any problems they were having); *id.* at 90:24-91:13;

LaBrant Dep. Vol. I at 186:19-187:19; *see also* Trial Exhibit 405 (emails back and forth among map drawers); Trial Exhibit 424 (email from Began to Timmer and Marquardt: "Here is the map, that we will likely use as it doesn't primary two Dems in Wayne County so long as they vote our way."); Trial Exhibit 362 (email from Marquardt to Timmer: "Which numbers did you use to come up with the 5-4-5 political breakdown?").) No one else was allowed in these meetings. (Timmer Dep. I 56:19-22; Timmer Dep. Vol. II 256:18-23 (meetings were "confidential").)

After the maps were essentially complete, they were still held close to the vest by the Republican leadership. For example, as Marquardt testified in his deposition, he participated in meetings with individual Senate Republican caucus members and Senate majority leader Randy Richardville in April and June of 2011. (Marquardt Dep. at 82:23-85:5.) The Republican caucus members were shown only their own districts; no one saw the map in its entirety, and no one was allowed to keep a copy of the materials showing his or her district. (*Id.* at 127:23-128:2.) McMaster participated in similar meetings with Republican members of the Michigan House, where each member was shown only his or her proposed district. These documents were also collected back at the end of the meeting "for security." (McMaster Dep. at 133:23-137:13.)

By statute, the Legislature was allotted roughly seven months from the March release of the census data through November 1 to complete redistricting. Mich. Comp. Laws §§ 3.62, 4.261. Rather than use that seven-month window to engage, for

example, in a bipartisan process or to interact with constituent or public interest groups, after the release of census data on March 22, 2011 the process was crammed into three months.[1] The districts were unveiled around Friday, June 17, 2011. But even this unveiling was not as transparent as one might expect.

As then-League-president Sue Smith will describe in her testimony at trial, she attended a Senate Redistricting Committee hearing on June 22, 2011. Previously, only shell bills had been introduced, and it had been announced that the 2011 redistricting plans would be unveiled at this meeting. Just before the meeting, copies were placed on a table at the back of the room for the meeting attendees. To Smith's surprise, there were no maps—only a list of numbered census tracts and blocks. Maps approximately 30" by 36" were placed on easels. As Smith will attest, it was impossible to determine with any precision what the proposed districts would look like from the information provided during the meeting.

There was no true opportunity for legislators or the public to react to or lobby against the Republican maps. The following day, June 23rd, the Senate passed the bills containing the redistricting plans. The House passed an amended bill on June 28th. The Senate adopted the amended bill on June 29th. The entire process in the legislature took fewer than two weeks, leaving almost three months to spare under the

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[1] Each of the map drawers, however, received a head start and began drawing districts based on census estimates as early as 2009. (Trial Exhibit 272 ("Jeff has engaged in population forecasting and preliminary map drawing in preparation for 2011-2012"); Marquardt Dep. 34:4-35:23; McMaster Dep. 58:18-59:16.)

statutory time frame.[2] The bill was sent to the Governor on July 26th, and he signed it on August 9, 2011.

2. The mapmakers intended a partisan outcome through the careful use of political data in drawing the districts.

It is undisputed that the mapmakers relied heavily on political data to draw the districts. For the Congressional Districts, Timmer used software called "Maptitude" which contained "population . . . and election data." (Timmer Dep. at 29:10–17.) Marquardt, drawer of the Senate Districts, used similar software called "AutoBound" that "digitize[d] all the political data," i.e., "election results through the years," all the way "down to the block level." (Marquardt Dep. at 40:4–43:8.) Marquardt elected to have AutoBound automatically update the partisan composition of the districts as he drew the maps. (*Id.* at 195:16–197:20.) McMaster and Began, who drew the House Districts, also used AutoBound to create their maps. (Began Dep., at 31:16-19.)

The "underlying factor" for the mapmakers was that "if the[] plans don't pass the legislature . . . you've . . . done your work for nothing." (Marquardt Dep. at 56:21–57:4.) The "major consideration as far as getting the [legislature's] vote" was the fact that "sitting . . . representatives or senators . . . want to be re-elected" (*Id.* at 63:5–14.) With these considerations in mind, Marquardt prepared reports for every Republican

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[2] The legislative timelines for House Bill 4780 and Senate Bill 0498 are made available by the Michigan Legislature at http://legislature.mi.gov/(S(33x5mdy35cguhibeapc1snhk))/mileg.aspx?page=getObject&objectName=2011-HB-4780 (House) and http://www.legislature.mi.gov/(S(dwptsuluhz4gdh5u0ecixhsv))/mileg.aspx?page=getobject&objectname=2011-SB-0498 (Senate).

caucus member that showed his or her current district and his or her proposed district. (*Id.* at 100:25–104:15; Trial Exhibits 330-32, 335, 342, 354.) The reports contained two sets of political data to evaluate each current and proposed district: (1) the percentage of voters who voted for the Republican candidate in the previous three governors' races and (2) the percentage of voters who voted Republican in the last three elections for the statewide education boards, a "guideline" for the partisan makeup of the districts. (*Id.* at 102:2–103:22.) Marquardt provided these political data points to Republican senators "[b]ecause the senators obviously would be interested in knowing whether their district got better or worse," better being more Republican or less Democrat. (*Id.* at 103:23–104:15.)

Emails that the mapmakers exchanged similarly illustrate the profound extent to which partisan political considerations played into their redistricting efforts. For instance, Trial Exhibits 399-401, 409, and 411 will demonstrate that Mr. Timmer caused Congressional District 11 to lose significant Democratic territory from its 2001 incarnation (Garden City, Redford Twp., Wayne, and Westland), that he avoided adding areas trending Democratic (Farmington Hills and most of W. Bloomfield Twp.), and that he added substantial GOP territory (Birmingham, Bloomfield Hills City, and Troy). Several draft maps and emails will provide district-specific evidence of this type demonstrating reliance on political data for purposes of drawing districts, communicating with incumbents and their staffs about the draft districts and their partisan tilt, making revisions to specific districts, and otherwise preserving and

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increasing the existing Republican advantage. (*See, e.g.*, Trial Exhibits 401 (discussing "cram[ing] ALL of the Dem garbage . . . into only four districts…" "[i]n a glorious way."); 426 (Congressional staffer saying a draft map is "perfect. It's giving the finger to Sandy Levin. I love it." [sic]); *see also* Trial Exhibits 395, 396, 399, 400, 404, 406, 408, 411, 412, 422, 425, and 432.)

Each of the map drawers' testimony and the available email evidence demonstrates that the overarching objective was to create districts that satisfied the incumbent Republican majority. (*E.g.*, Marquardt Dep. 56:21-57:13 (explaining that 20 senators have to be happy with the map – "that's kind of an unwritten criteria"); *id.* at 62:25-63:3 ("I think I just had a general knowledge of what would be acceptable to many of the sitting senators that were going to vote on the plan."); *id.* at 63:9-13 ("[S]itting, you know, representatives or senators, you know, obviously in many cases want to be re-elected, so that was probably the major consideration as far as getting the vote"); *see also* McMaster Dep. at 82:21-83:11; *id.* at 125:12-24; *id.* at 201:9-11 *id.* at 216:13-16; Began Dep. at 151:22-153:12; Timmer Dep. at 92:9-23; *id.* at 218:4-10; *id.* at 257:3-7.)

3. Other evidence also demonstrates the legislature's partisan intent.

Associate Professor Jowei Chen. Jowei Chen, Associate Professor in the Department of Political Science at the University of Michigan, received his Ph.D. in Political Science from Stanford University, and M.S. in Statistics from Stanford, and

his B.A. in Ethics, Politics, and Economics from Yale. He has testified in other redistricting cases, including *Gill v. Whitford* and *Common Cause v. Rucho.* He will testify by deposition and his expert report will be submitted per stipulation. Dr. Chen used a computer process to create 1,000 simulated randomly-generated maps for each house that satisfy the legal criteria – in fact, they outperform the current maps in this regard – but do not take partisanship into account when drawing districts. (Chen Report, Trial Exhibit 3, at 5 & Appendix A, Trial Exhibit 27.) He then compared those simulations to the corresponding enacted maps.

Dr. Chen shows that with respect to the Congressional map, for instance, the enacted plans were more partisan than all of the 1,000 alternatives he generated using a non-partisan computer algorithm. Dr. Chen also utilized mean-median and efficiency-gap analyses to confirm these conclusions. (*E.g., id.* at 25 ("[T]he level of electoral bias in the enacted congressional plan … is far more biased than even most biased of the 1,000 simulated plans.").) Dr. Chen reached parallel conclusions with respect to the Michigan House and Senate, each of which he concludes with high statistical certainty, is a map driven by partisan intent. (*Id.* at 26 (Senate), 39, 43 (House).)

Dr. Chen's report will further show that the simulated maps demonstrate "with extremely strong statistical certainty" that the three enacted plans at issue are extreme partisan outliers when compared to nearly all of the 3,000 computer-generated alternatives. (*Id.* at 21, 34, 47.) Dr. Chen's report will also explain his methodology

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and his conclusion that certain individual packed and cracked districts within the enacted plans are partisan outliers. Dr. Chen specifically identifies the following Challenged Districts as cracked or packed "partisan outliers" based on his examination of the enacted district as compared to his neutral maps: Congressional Districts 1, 4, 5, 8, 9, 10, 11, and 12; Senate Districts 8, 18, 22, 27, and 32; House districts 32, 51, 52, 55, 60, 62, 63, 75, 76, 91, 92, and 94. (*Id.* at 55-56) Finally, Dr. Chen's report compares individual enacted districts against all the significantly overlapping simulated districts. The data shows, district by district, that the Challenged Districts are by and large very significant partisan outliers to their neutrally-generated counterparts.

Associate Professor Christopher Warshaw. Dr. Warshaw teaches at George Washington University in the Department of Political Science. He received his Ph.D in Political Science from Stanford University, his J.D. from Stanford Law School, and his B.A. from Williams College. His research focuses on whether the government is responsive to the preferences of its citizens. Dr. Warshaw will testify live at trial and explain his measurements of the extent to which the Challenged Districts were gerrymandered in 2011. Dr. Warshaw explained in his expert report, that:

> *Michigan's 2011 redistricting plan does indeed disadvantage one party compared to the other, and does so in ways that are historically extreme. …* The Efficiency Gaps in Michigan in the past three elections were among the most Republican-leaning Efficiency Gaps the nation has ever seen. Michigan's congressional districts had a larger pro-Republican bias after its 2011 redistricting plan took effect in 2012 than 98% of the congressional election maps over the past 45 years. Its state house districts were also

> more pro-Republican than 98% of previous plans and its state senate districts were more pro-Republican than 99.7% of previous plans over the past five decades. It exhibited a similarly large pro-Republican bias using other quantitative measures of gerrymandering, such as the mean-median and declination metrics. Moreover, recent Efficiency Gaps are quite durable. This suggests that partisan gerrymandering is unlikely to be remedied through the normal electoral process.

Warshaw Report at 4-5 (Trial Exhibit 129) (emphasis in original; citation omitted).

Dr. Warshaw will also describe Trial Exhibit 278 (Summary Judgment Exhibit 37, Dkt. No. 129-38, a compilation admissible under FRE 1006). Trial Exhibit 278 takes Dr. Chen's district-level analysis another step—it identifies the individual addresses of named Plaintiffs and League Member voters, links those addresses to the simulated districts they would have lived in under each of Dr. Chen's simulated maps, and then compares the partisanship of those simulated districts to the enacted district for that voter.

The result is compelling. Trial Exhibit 278 demonstrates that at least one plaintiff or League member is cracked or packed into the following districts to such a degree that the district falls entirely outside the range of Dr. Chen's 1,000 hypothetical neutral districts for this same voter. Packed Congressional Districts 5, 9, and 12; Cracked Congressional Districts 8 and 10; Packed Senate District 18; Cracked Senate Districts 10, 14, 22, 36; Packed House Districts 55, 60, 75; Cracked House Districts 24, 32, 51, 52, 63, 76, and 94. Trial Exhibit 278 will also demonstrate that at least one Plaintiff or League member is cracked or packed into the following districts to such a degree that, while not outside *all* of Dr. Chen's hypothetical districts, are at the

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extreme edge of that range. Stated differently, for those in cracked districts, for example, Trial Exhibit 278 shows that at least one plaintiff or League member would have resided in a more Democratic leaning district in an overwhelming majority of the alternative, neutral districts. Cracked Congressional Districts 1, 4, and 7; Packed Senate Districts 11, 27; cracked Senate District 8; Packed House Districts 62 and 92; Cracked House Districts 83 and 91. This analysis establishes not only the Voters' standing but also provides a measurable and visible measure of the vote dilution harm imposed by the gerrymander.

Professor Kenneth Mayer. Dr. Mayer teaches at the University of Wisconsin – Madison in the Department of Political Science. He received degrees in Political Science from Yale Univeristy (Ph.D and M.A.) and University of California -San Diego (B.A.). Professor Meyer will testify by deposition and the Voters will offer his expert report in evidence per the parties' stipulation. Professor Mayer summarized his conclusions about the 2011 gerrymandering in Michigan as follows:

> By every metric used to evaluate the partisan effects of district plans and detect the presence of partisan gerrymandering – partisan bias, seat-bias, vote-bias, partisan symmetry, the Efficiency Gap, mean-median, and declination – the Michigan district plans for all levels of elected offices are extreme gerrymanders.

(Mayer Report, Trial Exhibit 53, at 4; *id.* at 81 ("[W]ithout exception in any of the plans, Democratic voters have been packed into districts where they constitute safe majorities, while they have been cracked in others to allow Republicans to win with comfortable but not overwhelming margins. These patterns are observed both

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prospectively, using data from 2006 to 2010 elections, and empirically, using data from 2012 to 2016. Over a ten year period and 6 electoral cycles, the asymmetry and bias have persisted.").)

B. Evidence of Discriminatory Effects and Causation

The mapmakers' efforts proved extremely successful. In each of the three statewide elections held between 2012 and 2016, the Republicans won 64% of Michigan's Congressional Districts (i.e., 9 of Michigan's 14 seats) despite never winning more than 50.5% of the statewide vote. Similarly, Republicans won at least 53.6% of the House Districts while never winning more than 50.3% of the total vote share. And in 2014, Republicans won only 50.4% of the Senate votes but collected 71.1% of the seats.[3]

The effects of the gerrymandering in the Challenged Districts are devastating. Not only did the State succeed in diluting the voting power of Democratic voters, but the gerrymander also diluted or silenced the political voice of individual voters. "If the relationship between votes and seats systematically advantages one party over another, then some citizens will enjoy more influence—more 'voice'—over political outcomes than others." (Warshaw Report at 4.) The Democratic voters in Michigan "effectively

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[3] Data from the 2018 election will not undermine the undisputable fact that the Challenged Districts were effective gerrymanders. To the contrary, after the 2018 election, the state legislative chambers remained firmly in Republican hands even though Republicans lost the vote share by roughly 3% and over 4% respectively, and the congressional delegation only split evenly despite an over 5-point loss in the two-party vote.

have no political voice." (*Id.* at 5; *see also id.* at 20-29.) "Only about 23% of Michigan

residents trust their representatives [in Congress], which is one of the lowest of any

state in the country." (*Id.* at 29; *id.* at 36-41 (reaching similar conclusions for both state

houses); *see also* Smith Decl. ¶ 31(c) ("The entrenched conservative Republicans refuse

to pass or even consider the bills supported by our organization. This makes our

mission of protecting democracy much more difficult because the election laws and

other policies that have been passed since 2011 no longer comport with the will of a

majority of the people.").)

The Voters intend to rely on the following documentary and testimonial

evidence to prove discriminatory effects (and relatedly, the causation required for the

First Amendment claim) of the Challenged Districts:

Named Plaintiffs and League Members. The Voters will demonstrate that

the individual plaintiffs and identified League members have in fact suffered these

harms through the live testimony of Sue Smith and two other individual Voters, and

stipulated deposition testimony from the others. Sue Smith will testify, as she

explained in her declaration and in her deposition, that the League itself has suffered

harm as well, making the organization's "mission of education and engagement much

harder in a variety of ways." (Smith Decl. ¶¶ 25-31.) For example, it is difficult to get

Republican candidates to participate in candidate forums because "so many

Republican candidates are no longer running in competitive races." (*Id.* ¶ 26.) In

addition, through live testimony and trial depositions, the Voters will identify where

these individuals live, describe their political affiliation, explain their voting practices, and address the harm they have experienced as Democrat voters in gerrymandered districts.

Similarly, the Voters' experts show that these harms to Michigan's citizens are a direct result of the gerrymander. Had the lines been drawn in any of a thousand different ways, these individuals would not have found themselves in an unnaturally cracked or packed district. Using plaintiffs as well exemplar League members, Dr. Warshaw will show, with respect to each voter, that had he or she been placed in a district under a neutrally drawn map, that specific voter would reside in a district that is demonstrably less partisan.

Brandon Dillon. The Voters also expect to call Brandon Dillon to testify. He is the current chair of the Michigan Democratic Party. He is expected to testify about the gerrymander's harm to Michigan Democratic voters generally and those in the Challenged Districts specifically: "In virtually all of the [Challenged Districts] the Michigan Democratic Party and local Democratic parties suffer from a reduced ability to recruit volunteers and turn out Democratic and independent voters to vote for Democratic candidates up and down the ticket."

C. No legitimate justification exists for these harms.

In addition, the Voters' evidence will refute any contention by the Defendants that the legislature had a valid justification for gerrymandering the Challenged Districts. The Voters expect that Defendants will argue that by allegedly following

Apol criteria, the way in which they drew the Challenged District was supposedly justified. In fact, however, under controlling authority, the mere fact that the Michigan legislature may have followed some politically-neutral state criteria does not negate or justify the fact that politics predominated their decision-making process. *See Bethune-Hill*, 137 S. Ct. at 799; *Alabama Legislative Black Caucus*, 135 S. Ct. at 1271.

Again, the deposition testimony of the map drawers and political operatives (Robert LaBrant, Pete Lund, Robert Schostack, James Bolger, Randall Richardville, and Joseph Hune) shows the dominance of politics and partisan intent in the mapdrawing process for the Challenged Districts. The email evidence will demonstrate the same. Likewise, the experts' analyses, demonstrate that other factors, like natural political geography or adherence to other redistricting criteria do not account for the partisan outcome. (*See, e.g.*, Chen Report at 21 ("I thus conclude, with extremely strong statistical certainty, that the enacted plan's extreme Median-Mean Difference is clearly not the result of Michigan's natural political geography, combined with the application of Michigan's statutory redistricting guidelines. *It is the result of partisan intent*.") (emphasis added).)

III.   **The Result: The State of Michigan Has Been Violating Voters' Constitutional Rights For Years, and Will Do It Again In 2020 Absent An Injunction Protecting the Voters.**

The Voters' First and Fourteenth Amendment rights have been violated. The evidence will establish that the Michigan legislature enacted the Challenged Districts with the predominant intent or "specific intent" to discriminate against Democratic

voters, to prevent or minimize Democrats from being elected and to diminish the natural political strength of the Democratic Party. The Challenged Districts had a clear discriminatory effect on individual Democratic voters and entities (through burdening their political speech and associational rights) and through effectively minimizing or preventing Democratic candidates from being elected. The evidence will also show that there was no state interest to validate the map drawing decisions that were made, and absent the mapmakers' intent to burden Democratic voters and candidates, the adverse impact on this group of individuals would not have occurred.

Date: January 29, 2019   /s/ Harmony A. Mappes

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2019, 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.

Respectfully submitted,

/s/ Harmony A. Mappes