

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
)	Hon. Gordon J. Quist
v.)	
)	
)	
JOCELYN BENSON, in her official)	
Capacity as Michigan)	
Secretary of State, et al.,)	
)	
Defendants.)	

**CONGRESSIONAL AND HOUSE INTERVENORS' MOTION FOR
JUDGMENT PURSUANT TO RULE 52(c).**

Congressional and State House Intervenors respectfully move this Court, pursuant to Fed. R. Civ. P. 52(c) for judgment on partial findings of fact that Plaintiffs' lack standing and this Court should therefore dismiss the Complaint. In support of this Motion, Congressional and State House Intervenors rely on the accompanying memorandum of law in support.

Pursuant to Local Rule 7.1, undersigned counsel corresponded with counsel for the Plaintiffs, counsel for the Senate Intervenors, and counsel for the Secretary. Counsel for the Senate Intervenors concurs in the relief sought in this Motion. Counsel to Plaintiffs opposes the relief sought in this Motion. Counsel for the Secretary has not yet indicated the Secretary's position on this Motion.

In filing this Motion, Congressional and State House Intervenors preserve their rights to raise all of their other defenses in their post-trial findings of fact and conclusions of law, including but not limited to justiciability, laches, and that Plaintiffs did not satisfy their burden of proof. Additionally, Congressional and State House Intervenors do not waive any objections they may raise to Plaintiffs' evidence in their post-trial brief, including but not limited to Dr. Warshaw's chart (Pls.' Ex. 278) and Dr. Chen's underlying data.

Wherefore, Congressional and State House Intervenors respectfully request that this Court grant their Motion and dismiss the Complaint for lack of Standing.

Dated: February 18, 2019

Respectfully submitted,

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**CONGRESSIONAL AND HOUSE INTERVENORS' MEMORANDUM IN
SUPPORT OF THEIR MOTION FOR JUDGMENT PURSUANT TO
RULE 52(c).**

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CONCISE STATEMENT OF THE ISSUES PRESENTED

The U.S. Supreme Court ruled, in no uncertain terms, that plaintiffs claiming vote dilution harm and associational harm must *prove* a disadvantage to themselves as individuals. *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018). The harm must arise from the particular composition of the individual’s district and plaintiffs must show that another hypothetical district would remedy that harm. *Id.* at 1931. Harm to the overall partisan composition of the state legislature is not a cognizable injury. *Id.* Stated differently, an alleged injury about group political interests is not cognizable. *Id.* at 1933. Finally, Plaintiffs must show that the remedy sought is tailored to redress each Plaintiffs’ remedy individually. *Id.* at 1934.

Accordingly, the issue is:

UNDER ARTICLE III OF THE U.S. CONSTITUTION, SHOULD THIS COURT DISMISS PLAINTIFFS’ CLAIMS FOR LACK OF STANDING BECAUSE PLAINTIFFS AND LEAGUE MEMBERS FAILED TO PROVE THAT THEY HAVE A COGNIZABLE INJURY AS TO THEIR CHALLENGED CONGRESSIONAL AND STATE HOUSE DISTRICTS?

Movants’ answer: Yes

Plaintiffs’ answer: No.

Defendant Secretary of State: Unknown

The Michigan Senate and Michigan Senators, Intervenor-Defendants: Yes

This Court should answer: Yes.

MOST APPROPRIATE OR CONTROLLING AUTHORITY

CASES

Gill v. Whitford, 138 S. Ct. 1916 (2018).

Pope v. Blue, 809 F. Supp. 392 (W.D.N.C. 1992) *sum. aff'd*. 506 U.S. 801 (1992).

RULES

Fed. R. Civ. P. 52(c).

I. STANDARD OF REVIEW

Federal Rule of Civil Procedure 52(c) provides if the Court, in a non-jury trial, determines that a party has not proven an issue, after the party has been fully heard on the issue, this Court can enter judgment against that party. *See Ketchum v. Khan*, 2017 U.S. Dist. LEXIS 48814, *2-3 (E.D. Mich. March 31, 2017). Here, this Court does not review the evidence in the light most favorable to the plaintiff. *See Johnson v. Luttrell*, No. 98-5375, 1999 U.S. App. LEXIS 19730, *3 (6th Cir. Aug. 13, 1999).

II. PLAINTIFFS AND LEAGUE MEMBERS LACK STANDING.

To establish standing in partisan gerrymandering claims, each Plaintiff in this case has the burden of proving that she or he: “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Gill v. Whitford*, 138 S. Ct. 1916, 1925 (2018) (internal quotation omitted) (unanimous op.) (quotation omitted). The injury complained of must harm the plaintiff in a unique and individualized manner. *Id.* Additionally, the remedy too “must be tailored to redress the plaintiff’s particular injury.” *Id.* at 1934. A “district specific” injury is required because “a person’s right to vote is ‘individual and personal in nature.’” *Id.* at 1929. This threshold requirement is axiomatic given that, “[a]n individual voter . . . is placed in a single district. He votes for a single representative.” *Id.* at 1930.

The harm the following plaintiffs and League member witnesses¹ must have shown at trial “arises from the particular composition of the voter’s own district, which causes his vote—having been packed or cracked—to carry less weight than it would carry in another, hypothetical district.” *Id.* at 1931. The desire to transform “the legislature as a whole” is a “collective political interest” which courts cannot enforce. *Id.* at 1932. At bottom, standing in partisan gerrymandering suits requires Plaintiffs to prove at trial “a burden on the plaintiffs’ votes that is actual or imminent, not conjectural or hypothetical.” *Id.* (internal quotations omitted).

III. CONGRESSIONAL DISTRICTS

a. Congressional District 1

Linda Stoetzer, Jane Speer, Melissa Shaffer-O’Connell, and Trina Borenstein assert that the configuration of Congressional District 1 dilutes their vote and violates their associational rights. *First*, Plaintiffs did not prove that Congressional District 1 diluted the weight of their votes. Ms. Borenstein testified that her district is so culturally Republican, nobody will even listen to a Democratic candidate.” T. Borenstein Dep. Tr. at 25:8-19. That this is a geographically Republican packed district is confirmed in Dr. Warshaw’s chart. Pls.’ Ex. 278. This chart depicts

¹ Norma Sain (CD 5), Ms. Pamela Lynk (HD 92), Frederick Durhal, Jr. , Diana Ketola (CD 1), Jon LaSalle (CD 1), Richard Long (CD 11), Lorenzo Rivera (CD 8), Rashida Tlaib are all Plaintiffs or League Members who did not testify in this case. Their claims should be dismissed.

Congressional District 1 as within the range of Dr. Chen’s simulated maps. Ex. 278 (Page ID 3880-81) (Attached as Ex. A at 1). Furthermore, some of the simulated maps are *more* Republican than the Enacted District. A *more* Republican district cannot remedy these Plaintiffs’ —consistent Democratic voters—alleged injuries. *Gill*, 138 S. Ct. at 1934. L. Stoetzer Dep. Tr. at 15:23-17:3; 19:2-11; 28:2-7; Speer Feb. 6, 2019 Tr. at 10:19-20, 11:5-8; T. Borenstein Tr. at 22:4-14. *Second*, they did not prove harm to their associational rights. Ms. Stoetzer testified that her current congressional representative responds to her outreach and even participated in a League of Women Voters event that Ms. Stoetzer moderated. L. Stoetzer Dep. Tr. at 13:4-14; 22:1-2. Accordingly, she never identifies a harm specific to her as a voter in her districts that results from the 2011 redistricting map. *Gill*, 138 S. Ct. at 1930-32. Similarly, Ms. Speer testified that she has fundraised, hosted fundraisers, and door-knocked for campaigns. Speer Feb. 6, 2019 Tr. at 14:24-25, 15:1-3. Ms. O’Connell admits that the 2011 maps have “not limited the physical expression” of her beliefs. O’Connell Feb. 8, 2019 Tr. at 23. O’Connell instead characterizes her harm as affecting her “mental faith in the system.” O’Connell Feb. 8, 2019 Tr. at 23. That is not a cognizable harm. *Gill*, 138 S. Ct. at 1932-34. Similarly, Ms. Borenstein testified that she has had no problem fundraising or knocking on doors for candidates. T. Borenstein Tr. at 28:4-7. Furthermore, Even though she may not like her representatives’ responses, *see, e.g., id.* at 30:22-24, she has not been prevented from speaking to them about her concerns by sending them letters, *see id.* at 30:13-31:24. These Plaintiffs’ claims should be

dismissed. *Pope v. Blue*, 809 F. Supp. 392, 398-399 (W.D.N.C. 1992) *sum. aff'd*. 506 U.S. 801.

b. Congressional District 4

Karen Sherwood asserted that the configuration of Congressional District 4 dilutes her vote and violates her associational rights. Ms. Sherwood is a Democratic voter who lives in Midland, Michigan. TT Vol. 2 at 6, 8, 14. *First*, Plaintiffs did not prove that that Congressional District 4 diluted the weight of Ms. Sherwood's vote. It is undisputed that her district falls within the range of Professor Chen's simulated, non-partisan districts. Ex. A at 2.; TT Vol. 1 at 112-113, 203; TT Vol. 2 at 25-27. Accordingly, she cannot establish that the alleged partisan gerrymander has caused her harm in her district. *Gill*, 138 S. Ct. at 1924-25, 1933. Additionally, some of the simulated plans are *more* Republican. Ex. A at 1. As a consistent Democratic voter, placing Ms. Sherwood in a more Republican district cannot remedy her alleged injuries. *Gill*, 138 S. Ct. at 1934. Furthermore, the remedy Ms. Sherwood seeks is a redrawing of the districts that generates a congressional delegation that is proportional to the statewide vote share. TT Vol. 2. at 33. But vindicating group political rights is generalized grievance and not a cognizable harm. *Gill*, 138 S. Ct. at 1932-33. *Second*, Plaintiffs did not show that Ms. Sherwood's associational rights suffered an injury. Ms. Sherwood is satisfied with her congressional representative's votes, TT Vol. 2 at 32, has been and remains politically active throughout the life of the Enacted Plan, including knocking on doors to obtain ballot signatures, and making political

contributions to Democratic candidates. TT Vol 2. at 13-18, 35. Her associational rights have not been harmed. *Pope*, 809 F. Supp. at 398-99. Accordingly, this Court should dismiss Plaintiffs' claims with respect to Congressional District 4.

Congressional District 5

Plaintiffs Sherrill Leigh Smith, Doris Sain, Deborah Cherry, Thomas Haley, Rosa Holliday, and Adalea Janice Sain-Steinborn, asserted that the configuration of Congressional District 5 diluted the weight of their vote and violated their associational rights. *First*, Ms. Sherill Smith is typically a Democratic voter and, regardless of the contours of her district, she will vote in 2020. S. Smith Dep. Tr. at 43:2-45:17; 12:13-20. But the harm she articulates is more of a generalized harm to the political parties, not to herself as an individual. During her deposition she testified that her harm is that “between the candidates and the political parties, there would be much more concerted effort in engaging voters if there were more competition in the districts.” *Id.* at 67:19-23. This is insufficient to establish standing. *Gill*, 138 S. Ct. at 1924-25, 1933. An asserted interest in competition is simply not a cognizable harm. *See, e.g., New York State Board of Elections v. Lopez-Torres*, 552 U.S. 196, 205 (2008). Similarly, Ms. Sain testified she believes the map was unfair, but could not indicate why it is unfair or what a fair map would look like to her. D. Sain Dep. Tr. at 52-53. Additionally, Deborah Cherry testified that, she believes she is in packed districts and so even though she continues to vote for and her districts continue to elect Democrats, she feels that her vote is not as important as it would be in tighter

elections. D. Cherry Dep. Tr. at 13:1-8, 14:6-10. Ms. Cherry testified that the way her congressional and state senate districts are drawn results in her vote not counting because she knows the Democratic candidates that she supports will win. *Id.* at 15:1-5. Ms. Cherry testified that she has been happy with her Democratic representatives in her congressional, state senate, and state house districts and that redistricting has not negatively impacted her ability to elect Democratic representatives in those districts. *Id.* at 19:20-25, 20:1-6. Accordingly, Ms. Cherry lacks standing to bring these harms. *Gill*, 138 S. Ct. at 1924-25, 1932-34. Furthermore, Mr. Thomas Haley lacks standing because he votes for Democrats, his elected representatives are Democrats and he is happy with their representation. T Vol. 2 at 230, 235-236, 237, 239, 243-244, 246. Mr. Haley also admitted that if all of his representatives remained the same after the 2020 elections, he would be happy. TT Vol. 2 at 246. This cannot constitute individualized harm. *Gill*, 138 S. Ct. at 1932-34. Moreover, Ms. Rosa Holliday testified that she has always had a Democratic congressperson since the 2011 redistricting and she has been happy with her congressperson since 2011 and that her votes has been cast for the winning candidate. TT Vol. 3 at 26, 43-44, 54, 56, 63. Ms. Holliday also testified that what she wants is proportional representation. TT Vol. 3 at 61. This is a generalized grievance, *Gill*, 138 S. Ct. at 1932-34, and one that the constitution does not recognize. *See, e.g., Vieth v. Jubelirer*, 541 U.S. 267, 288 (2004) (plurality op.) Finally, the vast majority of Dr. Chen's simulations place these Plaintiffs in a Democrat district. Ex. A at 3. *See Gill*, 138 S. Ct. at 1924-25, 1933.

Second, Ms. Smith did not adduce evidence that her associational rights have been harmed. Nothing has prohibited her from supporting the candidate of her choice, whether by voting, donating, or campaigning. S. Smith Dep. Tr. at 56:5-57:16. Ms. Smith has also participated in successful get-out-the-vote drives intended to engage citizens to vote. S. Smith Dep. Tr. at 28:10-29:24; 51:1-52:13. Accordingly, her associational rights have not been harmed. Similarly, Ms. Sain-Steinborn testified that redistricting has not impacted her ability to vote and has not prevented her from reaching out to her representatives. A. Sain-Steinborn Dep. Tr. at 29-30. In fact, she received a response from her State Senator. *Id.* at 29. Accordingly, claims related to Congressional District 5 should be dismissed. *Pope*, 809 F. Supp. at 398-99.

c. Congressional District 7

Ms. Canning-Peterson and Ms. Vertin assert that the configuration of Congressional District 7 dilutes the weight of their vote and violates their associational rights. Ms. Carolyn Vertin has voted for Democrats since 2011, and intends to vote Democrat in the 2020 elections. C. Vertin Dep. Tr. at 11:8-21. *First*, Ms. Vertin did not adduce sufficient evidence to establish standing that the Enacted Plan dilutes the weight of her vote. Ms. Vertin articulated her harm not in terms that her vote was diluted but instead claimed that her congressional representative does not listen to her concerns. She also admitted that staff from her congressional representative has met with her to discuss her concerns. *See id.* at 15:2-12. Nothing has prohibited her from supporting the candidate of her choice, whether by voting,

donating, or campaigning. *Id.* at 33:15-35:16. Accordingly, she never identifies a harm specific to her as a voter in her districts that results from the 2011 Congressional map. *Gill*, 138 S. Ct. at 1933-34. Similarly, Ms. Canning-Peterson is a Democrat and will probably vote Democrat in the 2020 elections. C. Canning-Peterson Dep. Tr. at 10:20-24; *id.* at 11:4-6. Ms. Canning-Peterson generally believes that allowing the “party in power” to draw the district lines is “wrong.” *Id.* at 18:25-19:1. She also generally states that she is less engaged as a voter because she felt that Democratic candidate was not competitive. *Id.* at 14:9-13. This is a generalized grievance, not an allegation that weight of her vote is diluted because of the redistricting plan. *See Gill*, 138 S. Ct. at 1933-34. For these witnesses, both the Enacted Plan and Dr. Chen’s simulations place Plaintiffs within the same range of “partisanship,” if not even more Republican. Ex. A at 4. Accordingly, this Court should dismiss Plaintiffs’ claims as to Congressional District 7.

Second, Ms. Canning-Peterson lacks standing because she testified that the lines of her district have not impacted her ability to vote, campaign, run for office, express her political views, donate to a candidate, endorse a candidate, or contacting her representatives. Canning-Peterson Dep. Tr at 26:2-27:7; *Pope*, 809 F. Supp. at 398-99.

d. Congressional District 8

Mr. Jondahl, Ms. Jill Kroll, and Ms. Andra Yokich assert that the configuration of Congressional District 8 dilutes the weight of their vote and violates their associational rights. *First*, Mr. Harold Lynn Jondahl is a former state legislator in

Michigan and he testified that, as a former Michigan state representative who cast votes on decennial reapportionment plans, he would have welcomed a district “more favorable to [him].” H.L. Jondahl Dep. Tr.at 34. Mr. Jondahl votes consistently and plans to vote in the 2020 elections. *Id.* at 13. *Gill*, 138 S. Ct. at 1924-24, 1933. Similarly, Ms. Yokich acknowledged that: (i) her current congressperson is a Democrat, TT Vol. 2 at 209, 219; (ii) she is happy with the representation she is getting in Congress, TT Vol. 2 at 226; (iii) her current congressperson reflects her values, concerns and interests, TT Vol. 2 at 209, 219-220; (iv) she is pleased a Democratic congressperson was elected in her district, TT Vol. 2 at 209, 219-220; and (v) she is not surprised a Democrat won her congressional district, TT Vol. 2 at 209-210. Not surprisingly then, Ms. Yokich testified, “And so me personally, do I have representation that is reflective of my concerns and interests? Yes.” TT Vol. 2 at 220. As Ms. Yokich admitted at trial, the redistricting has not harmed her personally because she has three representatives, including her congressional representative, who represent her interests. TT Vol. 2 at 226-227. *Gill*, 138 S. Ct. at 1924-24, 1933-34. Similarly, Ms. Kroll “always vote[s] Democratic . . . and will vote for Democrats” in the future. J. Kroll Dep. Tr. at 9:8-14. Democrat Elissa Slotkin won this seat in 2018. *Id.* at 14:11-13. Although Ms. Kroll testified that it took “superhuman” efforts to defeat Republican Tim Bishop, Ms. Kroll did not have any data to support that assertion. *Id.* 14:14-22; 17:3-5. Ms. Kroll has not identified or proven any harm personal to her. *Gill*, 138 S. Ct. at 1933-34.

Second, while Mr. Jondahl testified that he has reduced his volunteer and financial political efforts since 2011, he did not offer any testimony to suggest that the 2011 redistricting was the cause of his reduction in political activity nor that he was prevented from continuing these activities at his previous level of involvement. H.L. Jondahl Dep. Tr. at 15-16, 19-20. Although Mr. Jondahl complained that former Rep. Bishop was less responsive than Mr. Jondahl would prefer, Mr. Jondahl also never attempted to contact Rep. Bishop. *Id.* at 18-19.² Finally, Mr. Jondahl testified that, as a former Michigan state representative who cast votes on decennial reapportionment plans, he would have welcomed a district “more favorable for [him].” *Id.* at 34. Similarly, Ms. Yokich has made political contributions in the 2016 and 2018 elections. TT Vol. 2 at 209. She worked on Senator Debbie Stabenow’s campaign. TT Vol. 2 at 212. She has been a member of League since the 1980s. TT Vol. 2 at 213. And she worked on the campaign for Proposition 2, which is the legislation that will govern the 2021 redistricting. TT Vol. 2 at 215. Proposition 2 was passed by the voters of Michigan and will govern the post-2020 Census redistricting process. Finally, Ms. Kroll admits that the district lines have not impacted her ability to: campaign for a candidate, fundraise for a candidate, endorse any candidate, contact a candidate, or request that a candidate vote for or against a bill. Kroll Dep. Tr. at 23:9-24:1. Furthermore, the redistricting has in no way impaired Ms. Kroll’s ability to support

² Republican Congressman Bishop lost his reelection campaign in 2018 to Elissa Slotkin. Sec. Ex. 29.

any issue or participate in any demonstration for an issue important to her. *Id.* at 24:2-25:3. Her associational rights have not been harmed. *Pope*, 809 F. Supp. at 398-99.

Finally, Dr. Chen's simulations place these individuals in both Democratic-leaning districts and some in Republican leaning districts. In fact, the Enacted District is within Dr. Chen's simulations. Ex. A at 5. Accordingly, this Court should dismiss claims against Congressional District for lack of standing.

e. Congressional District 9

Kathleen Poore, Jack Ellis, Gerald De Maire, William Grasha, Maria Woloson, and Nanette Noorbakhsh all assert that Congressional District 9 dilutes the weight of their vote and violates their associational rights. *First*, Mr. Gerald DeMaire typically votes Democratic. G. DeMaire Dep. Tr. at 10:5-10; 38:5-9. Mr. DeMaire's primary complaint is not that districts contain "a lot of Democrats" or "a lot of Republicans" but rather that districts are not common shapes, or "squared off," or "something like a square or a rectangle." *Id.* at 36:7-37:10, 38:13-14. Mr. Jack Ellis has not suffered a concrete and particularized harm as a result of Michigan's 2011 reapportionment. In spite of Mr. Ellis's personal feelings about the current congressional and legislative apportionments, he testified that he ". . . will vote regardless of the districts." J. Ellis Dep. Tr. at 12-13, 23. Furthermore, Mr. William Grasha testified that that he is pleased with the outcome of these elections, TT Vol. 3 at 24, and that his votes have been expended in the best way possible. TT Vol. 3 at 25. Mr. Grasha also acknowledged that his congressional representative was a Democrat before the 2011

redistricting. TT Vol. 3 at 26. Additionally, Ms. Woloson is not affiliated with a political party but is trending to vote Democratic but may have voted for Gov. Rick Snyder. M. Woloson Dep. Tr. at 10:20-11:1, 39:4-6. Moreover, Ms. Noorbakhsh is “happy” with her current congressional district, which elected her candidate of choice, a Democrat. N. Noorbakhsh Dep. Tr. at 13:16-20, 18:6-15, 37:15-23, 39:4-17. Finally, Congressional District 9 is an example of a geographically packed district. This is because the surrounding Districts are also Democratic. Districts 8 and 11 to the north, District 14 to the south and west, and District 13 all contain substantial Democratic voters.³ Ex. A at 7. Courts cannot remedy plaintiffs’ alleged harms in a district that is geographically packed. *See Gill*, 138 S. Ct. at 1924-25.

Second, neither Ms. Poore’s or Mr. De Maire’s associational rights have been violated. Ms. Poore testified that in spite of her feelings about the current congressional and legislative apportionments, she has contributed to political party committees, knocked on doors, called constituents, stuffed envelopes, and participated in other campaign activity. K. Poore Dep. Tr. at 27. Further, she notes that she “. . . is going to be politically active no matter what[]” and that she intends to vote in 2020 no matter what the district lines are. K. Poore Dep. Tr. at 15, 29. Additionally, nothing has prohibited Mr. DeMaire from supporting the candidate of her choice, whether by voting, donating, or campaigning. G. DeMaire Dep. Tr. at

³ Dr. Chen froze Districts 13 and 14 under his belief that the Voting Rights Act requires these districts to be majority-minority districts.

51:1-21. Nor has he ever been prevented from affiliating with those people who share his values. G. DeMaire Dep. Tr. at 29:19-30:1. Accordingly, he never identifies a harm specific to him as a voter in his districts that results from the 2011 Congressional districting map. *Gill*, 138 S. Ct. at 1924-24, 1933-34. Further, Mr. Ellis did not testify that anyone or anything prevented him from making political contributions or from engaging in campaign activity and seems to have been able to accomplish both to the extent of his desire to participate. J. Ellis Dep. Tr. at 27-29, 31-33. This Court should dismiss all claims related to Congressional District 9. *Pope*, 809 F. Supp. at 398-99.

f. Congressional District 10

Lisa Morse and Nancy Duemling assert that the configuration of Congressional District 10 dilutes the weight of their votes and violates their associational rights. *First*, Ms. Morse did not adduce evidence that her individual vote is diluted. Although she testified that the configuration of her district ensures that her vote does not affect the outcome she could not identify her congressional district and house district on maps presented by plaintiff's counsel, *see* L. Morse Dep. Tr. at 15:19-16:15; *id.* at 12:10-20. However, she has consistently voted since 2011, and always votes Democratic when given the option. *See id.* at 17:21-19:11; *Gill*, 138 S. Ct. at 1924-25, 1932-34. Ms. Duemling similarly stated that her vote was diluted but she always votes for the Democratic candidate and the Democrat has consistently won this district. Duemling Feb. 7, 2019, Tr. 24-35. Ms. Duemling also lacks standing. *Gill*, 138 S. Ct. at 1924-25,

1932-34.⁴ *Second*, Ms. Morse did not adduce evidence that her associational rights are harmed. Nothing has prohibited her from supporting the candidate of her choice, whether by voting, donating, or campaigning. L. Morse Dep. Tr. at 21:4-20. Nor has she ever been prevented from participating in a rally to publicly demonstrate for her values, as she did when she participated in the 2017 Detroit Women's March. *Id.* at 21:21-22:7. She further concedes that she has not contacted her current or former representatives dating back to 2011 for any reason. *Id.* at 24:15-26:18. Accordingly, she never identifies a harm specific to her as a voter in her districts. Accordingly, this Court should dismiss Plaintiffs' claims related to Congressional District 10.

g. Congressional District 11

Angela Ryan, Josephine Feijoo, Janice Watkins, and Paula Bowman assert that the configuration of Congressional District 11 dilutes the weight of their votes and violates their associational rights. *First*, Ms. Ryan did not adduce evidence that the weight of her vote is diluted. Ms. Ryan testified that redistricting has not impacted her ability to vote. A. Ryan Dep. Tr. at 33. She testified she identifies as a Democrat and votes almost exclusively Democratic. *Id.* at 12 and 37. In 2018, a Democrat won in her Congressional district and in fact, she is represented by Democrats in every legislative seat: Congressional, State Senate, and State House. *Id.* at 24-27. She also agreed that districting alone does not necessarily forecast who is going to win and that

⁴ Mr. Brdak alleges harm in Congressional District 10. This Court should dismiss his claims for the reasons stated *infra* at 26-27.

the candidate itself could have something to do with it. *Id.* at 29 and 32. Accordingly, Ms. Ryan does not have standing. *See Gill*, 138 S. Ct. at 1924-25, 1933-34. Similarly, Ms. Bowman believes her congressional district is gerrymandered because of the district's shape and previous Republican successes, notwithstanding Democrat Haley Stevens' victory in 2018. P. Bowman Dep. Tr. at 11:9-25, 38:1-5. Furthermore, the Enacted Map is within Dr. Chen's simulations. Ex. A at 9. It cannot be that Ms. Ryan is harmed from the partisan gerrymander when Plaintiffs' own simulated maps place her in the same type of partisan district in which she currently resides. *See id.* at 1924-25. Similarly, Ms. Josephine Feijoo does not have standing as she readily admitted she votes for both Republicans and Democrats and considers herself an Independent. Feijoo Feb 7, 2019, Tr. at 9. Ms. Feijoo testified that her district is gerrymandered because Democrats are not a majority in the legislature despite winning various statewide elections. *Id.* at 12. This is a generalized grievance, not an individual harm. *Gill*, 138 S. Ct. at 1932-34. Finally, Ms. Watkins has lived in this District since 2015, is not affiliated with any political party, and has voted Republican, including for Governor. J. Watkins Feb. 8, 2019 Tr. at 9:8-25; *id.* at 12:1-25. She lacks standing. *Gill*, 138 S. Ct. at 1924-25, 1932-34.

h. Congressional District 12

Susan K. Smith, Heidi Kromrei, Harvey Somers, and Julia Caroff all assert that the configuration of Congressional District 12 dilutes the weight of their vote and violates their associational rights. *First*, the congressional plan has not diluted the

weight of these individuals' votes. By her own words, Ms. Heidi Kromrei has not suffered a concrete injury. Ms. Kromrei testified that she is harmed only "philosophically." *Id.* at 13. *See Gill*, 138 S. Ct. at 1929 (for standing purposes, injury must be concrete and particularized). Mr. Harvey Somers is represented by Democrat Congresswoman Debbie Dingell. Sec. Ex. 29. Mr. Somers fully intends to vote for the Democratic candidate in the 2020 elections regardless of whether the lines are redrawn. H. Somers Dep. Tr. at 14:4-8. Accordingly, he is not injured. *See Gill*, 138 S. Ct. at 1924-25, 1933-34. Additionally, Ms. Smith testified she voted for Rep. John Dingell and then Rep. Debbie Dingell, both from the Democratic Party. 02/05/2019 Tr. at 71:2-8; 02/05/2019 Tr. at 72:19-20. She voted for her congressmen because both Congressman Dingell and Congresswoman Dingell generally represents Ms. Smith's views. *Id.* at 71:2-8; 72:21-23. Accordingly, Ms. Smith lacks standing to bring her claims. *Gill*, 138 S. Ct. at 1924-25, 1932-34. Ms. Caroff resides in Ann Arbor, a city that she admits is heavily Democrat. Caroff Dep. Tr. at 36:1-15. She is happy with her congressional representative. *Id.* at 8:11-9:14, 70:16-23. Mr. Caroff testified that her harm is more on the national level because Congress is getting less done and is less responsive. *Id.* at 34:1-7. This is a generalized grievance. *Gill*, 138 S. Ct. at 1924-25, 1932-34. Moreover, the vast majority of Dr. Chen's simulations place these witnesses in a Democrat leaning district. Ex. A at 11. Accordingly, regardless of how this district is redrawn, it will be a significant Democrat leaning district. Therefore, the Plaintiffs here are not harmed. *Gill*, 138 S. Ct. at 1924-25, 1933-34.

Second, Ms. Kromrei's associational rights are not harmed. Ms. Kromrei testified nothing prevents her from voting for, campaigning for, contributing to, or recruiting candidates. *See* H. Kromrei Dep. Tr. at 13-15, 23. In fact, Kromrei plans to vote in the 2020 elections. *Id.* at 11. Additionally, Mr. Somers associational rights are also not harmed. Nothing has prohibited him from supporting the candidate of his choice, whether by voting, donating, or campaigning. H. Somers Dep. Tr. at 35:5-35:24. Nor has he ever been prevented from participating in a rally to publicly demonstrate for his values. *Id.* at 36:14-36:24. As such, he never identifies a harm specific to him as a voter in his districts. Additionally Ms. Smith's associational rights are not harmed. In her capacity as an official with the League, she has met with her congressional representatives. 02/05/2019 Tr. at 71:21-22; 73:1-5. She has also met with Republicans about legislation that the League was interested in. 02/05/2019 Tr. at 64:14-18. Some of the League's legislation was passed. 02/05/2019 Tr. at 87:13-16; 89:22-25; 90:1-5; 02/05/2019 Tr. at 90:21-25, 91:1-25. Accordingly this Court should dismiss all claims as to Congressional District 12. *Pope*, 809 F. Supp. at 398-99.

IV. STATE HOUSE DISTRICTS

a. House District 24

As stated *supra* at 19-21, Ms. Poore has not demonstrated any particularized harm or harm to her associational rights. Furthermore, the demonstration map that Plaintiffs produced at trial cannot remedy the alleged harm. One demonstration plan

carves Clinton Township into multiple pieces. See Ex. A at 15. This violates the Apol criteria and, accordingly, cannot be the remedy. *See Gill*, 138 S. Ct. at 1934.

b. House District 32

Mr. Roger Brdak asserts that the configuration of House District 32 dilutes the weight of his vote and violates his associational rights. R. Brdak Dep. Tr. at 17:5-8. *First*, Mr. Brdak did not adduce sufficient evidence to establish that the configuration of House District 32 diluted the weight of his vote. This is because he did not establish that he was a Democrat. Rather, Mr. Brdak testified that he does not “always vote for the Democratic candidates. Instead [He] vote[s] for the person [he] feel[s] is going to best represent [his] district . . . the best.” *Id.* at 13:8-17. In fact, he may vote for a Republican in 2020 depending on the candidate. *Id.* at 47:22-48:10. Mr. Brdak never identifies any harm, either specific to him, or even generalized statewide harm resulting from the redistricting map. He even testified that he believes his districts are fairly competitive. *Id.* at 35:6-36:12. Furthermore, his district is placed within some of Dr. Chen’s simulations. Ex. A at 16. Accordingly, Mr. Brdak never adduced evidence that he is injured. *Gill*, 138 S. Ct. at 1924-25, 1932-34. *Second*, Mr. Brdak’s associational rights are not harmed. Although Mr. Brdak has never attempted to contact his congressional or state representatives, *id.* at 42:11-24, he has never been prevented from donating money to the candidates of his choice, *id.* at 43:10-15, nor has he been prevented for campaigning for a candidate of his choice, *id.* at 43:16-25. Nothing about the way Mr. Brdak’s districts are drawn has impacted his ability to vote

and engage his representatives in whatever way he has desired. *See generally id.* at 42:11-43:25. In sum, Mr. Brdak has never identified any harm specific to him as a voter. This Court should dismiss his claim as to House District 32. *Pope*, 809 F. Supp. at 398-99.

c. House District 51

As noted *supra* at 13-15, Ms. Sain-Steinborn lacks standing. But Plaintiffs have not produced a demonstration map that would remedy the problem. *Gill*, 138 S. Ct. at 1924-25, 1934. One demonstration plan carves splits multiple localities. Ex. A at 18. . This violates the Apol criteria and, accordingly, cannot be the remedy. *See Gill*, 138 S. Ct. at 1934. *See Gill*, 138 S. Ct. at 1934. Ms. Steinborn's challenge to this district should be dismissed.

d. House District 52

For the reasons previously stated, *see supra* at 23-25, Mr. Somers did not assert any harms concerning the dilution of his vote or to his associational rights. Accordingly, his claims as to House District 52 should also be dismissed. Despite Dr. Chen's determinations based on 2006-2010 elections, this district is not "performing" as "expected." Ex. A at 19-20. The Secretary's Exs. 26-29 demonstrates that the Democratic nominee has won every election in this district. Every one of Dr. Chen's simulations would place Mr. Somers in a "packed" Democrat leaning district more substantially Democratic than his district in recent elections. Accordingly, Mr. Somers is not harmed. *Gill*, 138 S. Ct. at 1924-25, 1933-34.

e. House District 55

Ms. Susan Smith⁵ and Ms. Margaret Leary challenge House District 55 asserting that the configuration of that district dilutes their vote and violates their associational rights. *First*, Margret Leary's vote is not diluted. Ms. Leary testified that she was happy with the fact that she has had Democrats representing her in her congressional, state senate, and state house districts. Leary Dep. Tr. at 34. Ms. Leary testified that she has found her representatives to be responsive to her as a constituent. *Id.* at 23. She testified that although she believes her vote carries less weight in her state house district because there are Democrats packed into the districts, she recognizes that she resides in a predominantly Democrat locality, the city of Ann Arbor. Accordingly, Ms. Leary lacks standing to allege that her vote was diluted. *See Gill*, 138 S. Ct. at 1924-25, 1933-34. Dr. Chen's simulations depict this fact neatly: every one of Dr. Chen's simulations, ostensibly run without partisan intent, places Ms. Leary in a predominantly Democrat district. Ex. A at 21. *Second*, Ms. Leary testified that she has not been prohibited from participating in or contributing to any campaign. *Id.* at 18. Accordingly, this Court should dismiss Ms. Leary's claims against House District 55. *Pope*, 809 F. Supp. at 398-99.

⁵ Ms. Susan Smith testified that she lives in House District 54. 02/05/2019 Tr. at 76:11. Ms. Smith's challenge to House District 55 should be dismissed.

f. House District 60

Ms. Denise Hartsough asserts that the configuration of House District 60 dilutes the weight of her vote and violates her associational rights. While she is “generally affiliated with the Democratic party” and “vote[s] for Democrats most of the time”, she has also voted for Republicans when she thought they were the better “quality” candidate. D. Hartsough Dep. Tr. at 9:22-10:2; 23:19-24:11. Ms. Hartsough believes her current State House Representative “is amazing” and “does a very good job.” *Id.* at 17:18-20. She generally complains that she is less inclined to donate money because she feels her candidate will always win. *Id.* at 11:22-13:5. However, notwithstanding her personal imperative to donate or not, she admits that the 2011 redistricting has not impacted her ability to vote, ability to campaign for a candidate, ability to express her views, or contact her representative. *Id.* at 19:2-9, 19:13-15, 20:9-16. In fact, Ms. Hartsough feels her current house representative is responsive. *Id.* at 20:17-22. Ms. Hartsough’s personal choice to not fully engage is not a harm under the constitution. Accordingly, she lacks standing. *Gill*, 138 S. Ct. at 1924-25, 1933-34.

g. House District 62

Ms. Shirley Zeller asserts that the configuration of House District 62 dilutes the weight of her vote and violates her associational rights. *First*, Ms. Zeller lives in a competitive district, one that does not advantage one political party or the other. Zeller Feb 7, 2019, Tr. at 30-31; *see also* Ex. A at 24. She further intends to vote regardless of whether her House District is redrawn. Zeller Feb 7, 2019, Tr. at 10.

Bizarrely, Ms. Zeller testified that while she lives in Albion, she supports candidates in the Jackson area, and was more concerned about redistricting in the Jackson area, because that's where most of her interests are since she lived and worked there for a long time. *Id.* at 14. Ms. Zeller did not establish that she was harmed. *Gill*, 138 S. Ct. at 1932, 1933-34. *Second*, Ms. Zeller's associational rights are not harmed. Ms. Zeller testified that the way the district is drawn does not prohibit her from campaigning for or donating money to any candidate, protesting, running for office herself. *Id.* at 30-31. Ms. Zeller also testified that she campaigned for Secretary Benson, the Defendant in this action, in 2018. *Id.* at 41. *Pope*, 809 F. Supp. at 398-99.

h. House District 63

Jessica Reiser cannot establish an injury because she would vote for a Republican and, in fact, has done so in the past. Reiser Dep Feb. 12, 2019 at 37-38. That is, Ms. Reiser cannot show that redrawing the maps would remedy any alleged harm because there is no evidence in the record that she will only vote for a Democrat. Ms. Reiser testified that the 2011 redistricting has not caused her injury, as: (i) her ability to express her political views has not been impacted; (ii) she has not been precluded from fundraising for Democratic candidates; (iii) she can contact her representative and ask her representative to vote a certain way; and (iv) she is free to speak out on an issue she disagrees with her representative on. Reiser Dep Feb. 12, 2019 at 28-30. Dr. Chen's and Dr. Warshaw's own data, Ex. A. at 26, depict Ms. Reiser in a Republican leaning district under every simulation. Accordingly, her

alleged harms cannot be remedied. *Gill*, 138 S. Ct. at 1924-25, 1933-34; *Pope*, 809 F. Supp. at 398-99.

i. House District 75

Elianna Bootzin is represented by a Democrat, who she admits is in “very strong alignment with her views. Bootzin Dep Feb. 8, 2019 at 15; *see Gill*, 138 S. Ct. at 1924-25, 1933-34. There is no evidence in the record that Ms. Bootzin suffered any harm as a result of the 2011 maps. Indeed, Ms. Bootzin admits that: (i) her ability to elect a Democratic representative has never been negatively impacted by redistricting; (ii) she has always been able to vote for a Democratic representative; (iii) the redistricting has never impacted her ability to engage in campaign activity; and (iv) the redistricting has not impacted her ability to run for public office, express her political views or donate money. Bootzin Dep Feb. 8, 2019 at 16-18. Even Dr. Chen’s simulations place her within a Democratic leaning district. Ex. A at 27. Ms. Bootzin’s alleged injury is that there is no proportional representation in the State House. Bootzin Dep Feb. 8, 2019 at 24. As discussed above, vindicating group political rights is not cognizable. *Gill*, 138 S. Ct. at 1933. Plaintiffs’ challenge to House District 75 should be rejected.

j. House District 76

Donna Farris is represented by a Democrat, Rachel Hood. Ms. Farris admits that Hood represents what she believes in and she is happy with Hood’s representation. D. Farris Feb. 8, 2019 at 23. In addition to having a representative

who is aligned with her interests, Ms. Farris admits that the 2011 maps have not: (i) affected her ability to vote; (ii) prevented her from engaging in political activity; and (iii) kept her from being able to communicate with her representative. D. Farris Feb. 8, 2019 at 25. Even Dr. Chen’s simulations place her within a Democratic leaning district. Ex. A at 28. The challenge to House District 76 should be dismissed.

k. House District 83

For the same reasons stated *supra* at 21-22, Ms. Morse lacks standing. Furthermore, her enacted district is within the range of Dr. Chen’s simulations. Ex. A at 30. Accordingly, her alleged harms cannot be remedied. *See Gill*, 138 S. Ct. at 1934.

l. House District 91

Linda Aerts cannot show any recognizable injury as a result of living in a House District that is represented by a Republican. Ms. Aerts asserted harm is “I can’t get a blue candidate elected very easily.” Aerts Dep Feb. 8, 2019 at 14. To remedy this, Ms. Aerts wants “proportional representation.” Aerts Dep Feb. 8, 2019 at 38-39. This is generalized grievance. Additionally, Ms. Aerts admits that her house falls within some of simulations Dr. Chen produced. Aerts Dep Feb. 8, 2019 at 37. *See also* Ex. A at 33. Accordingly, Ms. Aerts has failed to demonstrate individualized harm with an remedy for her individual district. *See Gill*, 138 S. Ct. at 1932-34.

m. House District 94

Mr. Purcell asserts that the configuration of House District 94 dilutes the weight of his vote and violates his associational rights. But his membership with the

League of Women Voters seems manufactured for the purposes of this lawsuit. He testified that he only joined the League in approximately March of 2018 when Plaintiffs' counsel, Mark Brewer, asked him to join so he could be a part of this lawsuit. Purcell Dep. Tr. at 7:17-25; 38:10-15. In any event, Mr. Purcell consistently votes for Democrats. Purcell Dep. Tr. at 11:21-25. Although he testified that he believes his vote weighs less, *id.* at 33:4-10, the elections in 2012 and 2018 were competitive. Sec. Exs. 26 and 29. Accordingly, his alleged harms cannot be remedied. *See Gill*, 138 S. Ct. at 1924-25, 1934. Additionally, Mr. Purcell lacks standing to bring his associational harm because he is politically active, an active member of his local political party, and ran for public office himself. Purcell Dep. Tr. at 24:9-10, 25:11-12, 20-22; *Pope*, 809 F. Supp. at 398-99.

n. House District 95

For the reasons stated *supra* at 13-15, Ms. Sherrill Smith lacks standing to bring these claims. Additionally, Dr. Chen's simulations place her within the same range of partisanship as the Enacted Map, meaning any alleged harm cannot be remedied. Ex. A at 36. *See Gill*, 138 S. Ct. at 1934.

V. CONCLUSION

In light of the foregoing, this Court should dismiss the case for lack of standing.

Dated: February 18, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been filed via the CMECF system which instantaneously sent a Notice of Electronic Filing to all counsel of record.

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