

**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'
PROPOSED FINDINGS OF FACT**

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. FINDINGS OF FACT4

 A. FINDINGS OF FACT RELATED TO THE 2011 MICHIGAN APPORTIONMENT PLAN4

 i. General Background on Apportionment Requirements in Michigan and the Apol Criteria.....4

 ii. The 2011 Michigan Apportionment Plan10

 iii. Michigan’s Current Electoral System.....15

 B. THE CURRENT LITIGATION AND THE PARTIES.....16

 C. PLAINTIFFS’ EXPERTS AND THEIR PROPOSED TEST22

 D. FINDINGS OF FACT RELATED TO STANDING TO CHALLENGE THE NAMED SENATE DISTRICTS.28

 i. The Individual Plaintiffs30

 a. Senate District 8.....31

 b. Senate District 10.....33

 c. Senate District 1135

 d. Senate District 12.....36

 e. Senate District 14.....37

 f. Senate District 1839

 g. Senate District 22.....42

 h. Senate District 27.....43

 i. Senate District 32.....44

 j. Senate District 36.....46

 ii. The League of Women Voters.....48

 E. FINDINGS OF FACT REGARDING CLAIMS OF LACHES51

 F. FINDINGS OF FACT REGARDING THE EFFECTS OF THE REDISTRICTING STATUTES.54

 G. FINDINGS OF FACT REGARDING THE ABILITY TO GRANT RELIEF.....57

III. CONCLUSION59

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**THE MICHIGAN SENATE AND THE MICHIGAN SENATORS’
PROPOSED FINDINGS OF FACT**

The following Proposed Findings of Fact are submitted on behalf of the Michigan Senate and three individual Senators (the “Senate Intervenors”) who were permitted to intervene into this case on February 1, 2019. (Order Granting Mich. Senate’s and Senators’ Mots. to Intervene, ECF No. 237). Although many of the Proposed Findings of Fact are narrowly tailored to address the specific issues relating to the Senate Intervenors, the Senate Intervenors adopt and incorporate by reference those Findings of Fact that are concurrently submitted by the Congressional and Michigan House Intervening Defendants.

I. INTRODUCTION

Plaintiffs present a nonjusticiable political question to the Court. Plaintiffs—who have not suffered any legally cognizable harm—ask the Court to intervene in a core legislative function: legislative redistricting. Plaintiffs claim that the congressional and state legislative districts in which they reside were gerrymandered for political advantage in violation of the United States Constitution. The existing districts, enacted after the 2010 United States Census as Michigan Public Acts 128 and 129 of 2011, were *not* drawn by mapmakers, however, with political considerations in the forefront of their minds. Mapmakers established the district boundaries by following the guidelines of Michigan law. By statute, congressional and state legislative districts must comply with standards

that are commonly known as the “Apol” Criteria¹ which encompass legitimate state interests in maintaining the integrity of political subdivisions wherever possible within allowable population deviations. While Plaintiffs attempt to paint a picture of pure political gerrymandering, such characterizations fail in the face of the facts here. The only direct evidence in the record addressing the standards and motives for drawing the districts is the sworn testimony of current and former members of Michigan’s Legislature and the sworn testimony of the individuals who actually drew the maps attesting to the fact that the predominant factors considered in drawing the maps were the Apol Criteria.

Plaintiffs attempt to make their case by suggesting that partisan bias played an outsized, exaggerated role in drawing district maps. Not only did Plaintiffs fail to prove a predominant partisan motive in Michigan’s redistricting process, but they also failed to overcome two threshold issues: standing and justiciability. As the United States Supreme Court recently articulated in *Gill v. Whitford*, 138 S. Ct. 1916; 201 L. Ed. 2d 313 (2018), a plaintiff seeking relief in federal court for alleged partisan gerrymandering must demonstrate that he or she lives in a district that is “packed or cracked” and that his or her injury stems from that district’s

¹ The Michigan Supreme Court established the so-called “Apol” Criteria for redistricting in 1982 in *In re Apportionment of State Legislature-1982*, 413 Mich. 96, 154-56; 321 N.W.2d 565 (Mich. 1982). These standards were codified into Michigan law (see Mich. Comp. Laws §§ 3.63 and 4.261) and focus on minimizing splits of counties as well as other political subdivisions.

gerrymandered boundaries. Plaintiffs' theory of harm, vote dilution, alleges that their votes count for less in packed and cracked districts, that each person's vote has less influence than it would in an alternative district. Plaintiffs have not demonstrated with any reliable evidence that this is the case. Rather than showing *individualized* harm, Plaintiffs' experts measured *statewide* impacts of gerrymandering—using flawed algorithms, no less—and individual witnesses could not articulate a single way in which the boundaries of individual districts have burdened their votes, political speech, or association. Plaintiffs do not and cannot make this demonstration because, as a general matter, districting does not prevent individuals from *doing* anything—they can register to vote, vote, contribute to candidates, participate in election activities, campaign, and share political ideas. These Plaintiffs, and other plaintiffs like them, cannot demonstrate standing under *Gill*.

The intrinsically elusive nature of partisan gerrymandering claims—how to articulate harm, what standards to measure by, how to prove the claim—epitomizes the other issue at the center of this case, which the Supreme Court has been juggling for decades: justiciability. Because political districting is not unconstitutional in and of itself, establishing a standard as to how much partisanship is too much is an unanswered question. Indeed, the Supreme Court is currently considering this exact issue in *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).

Accordingly, this Court should adopt the Senate Intervenors' proposed findings of fact and conclusions of law² and reject the Plaintiffs' challenge.

II. FINDINGS OF FACT

1. The Senate Intervenors adopt and incorporate the Congressional and House Intervenors' findings of fact, including the specific findings with respect to the Parties. The Senate Intervenors also provide the following findings.

A. Findings of Fact Related to The 2011 Michigan Apportionment Plan

i. General Background on Apportionment Requirements in Michigan and the Apol Criteria

2. The Michigan Legislature draws Michigan's congressional and state legislative lines, as a statute that is subject to gubernatorial veto. Mich. Comp. Laws § 3.62 and 4.261.

3. Mich. Const. art. IV, § 6 provided for a commission to redistrict state legislative seats, but the Michigan Supreme Court found it be unconstitutional in

² The Senate Intervenors' Conclusions of Law are provided in a separate brief per this Court's instructions at the close of trial. (Trial Tr. vol. 3, 2/7/19, at 163, ECF No. 250, PageID.9350).

1982. *In re Apportionment of State Legislature-1982*, 413 Mich. 96, 154-56, 321 N.W.2d 565 (Mich. 1982).

4. Instead, the Michigan Supreme Court established the so-called Apol Criteria for redistricting.³ *Id.* The Michigan Legislature codified the Apol Criteria into Michigan law as Mich. Comp. Laws § 3.63 and 4.261.

5. The Apol Criteria meet legitimate state interests in maintaining the integrity of county lines, township, and other municipal boundaries. Further, the Michigan Supreme Court, through correspondence from Justice Charles Levin to Mr. Apol, stated that where application of the standards might create an irregular appearing district, the standards should prevail. (Trial Tr. vol. 3, 2/7/19, at 99, ECF No. 250, PageID.9286); Def. Sec’y of State Ex. 6, p. 11).

6. In addition to the Apol Criteria, compliance with the federal Voting Rights Act (“VRA”) is also required by federal law and Mich. Comp. Laws § 4.261a. The criteria for drawing Congressional districts are similar and found in statute at MCL § 3.63. (Trial Tr. vol. 3, 2/7/19, at 79-80; ECF No. 250, PageID.9266-67).

³ The Apol Criteria derives its name from Bernard Apol, whom the Michigan Supreme Court appointed to draw new district lines in *In re Apportionment of the State Legislature-1982*.

7. The Apol Criteria focus on minimizing splits of counties as well as other political subdivisions. *Id.* at 140-142; (Marquardt Dep., ECF No. 129-46, PageID.4361-62; Trial Tr. vol. 1, 2/5/19, ECF No. 248, PageID.8741).

8. The Apol Criteria provide that the Michigan House of Representatives shall consist of 110, and the Michigan Senate shall consist of 38, single-member districts consisting of territory contiguous by land. Under Mich. Comp. Laws § 4.261(d), districts must have population variations of not more than plus or minus 5% from the ideal district size, as determined by dividing Michigan's population by 110 or 38 respectively. In Michigan, in 2011, this resulted in an ideal House district population of 89,851 persons, with an allowable deviation range between 85,359 and 94,343; and an ideal Senate district population of 260,095, with an allowable deviation range between 247,091 and 273,100. (Trial Tr. vol. 3, 2/7/19, at 82-83, 116, ECF No. 250).

9. In addition to the above, the Apol Criteria establish guidelines to follow based on preservation of political subdivision boundaries and population equality. In descending order of priority, the state legislative redistricting statute states the Apol Criteria as follows:

(e) Senate and house of representative district lines shall preserve county lines with the least cost to the principle of equality of population provided for in subdivision (d).

(f) If it is necessary to break county lines to stay within the range of allowable population divergence provided for in subdivision (d), the fewest whole cities or whole townships necessary shall be shifted. Between 2 cities or townships, both of which will bring the districts into compliance with subdivisions (d) and (h), the city or township with the lesser population shall be shifted.

(g) Within those counties to which there is apportioned more than 1 senate district or house of representatives district, district lines shall be drawn on city and township lines with the least cost to the principle of equality of population between election districts consistent with the maximum preservation of city and township lines and without exceeding the range of allowable divergence provided for in subdivision (d).

(h) If it is necessary to break city or township lines to stay within the range of allowable divergence provided for in subdivision (d), the number of people necessary to achieve population equality shall be shifted between the 2 districts affected by the shift, except that in lieu of absolute equality the lines may be drawn along the closest street or comparable boundary.

Mich. Comp. Laws § 4.261(e)-(h). (Def. Sec’y of State Ex. 6, at 8-9).

10. Additionally, the Apol Criteria provide that within a city such as Detroit (which has more than one district), districts shall be drawn to achieve maximum compactness within a population range of 98% to 102% of each other.

Mich. Comp. Laws § 4.261(i). (Def. Sec’y of State Ex. 6, at 9).

11. In descending order of priority of application, the Congressional redistricting statute states the Apol Criteria as follows:

(ii) Congressional district lines shall break as few county boundaries as is reasonably possible.

(iii) If it is necessary to break county lines to achieve equality of population between congressional districts as provided in subdivision (a), the number of people necessary to achieve population equality shall be shifted between the 2 districts affected by the shift.

(iv) Congressional district lines shall break as few city and township boundaries as is reasonably possible.

(v) If it is necessary to break city or township lines to achieve equality of population between congressional districts as provided in subdivision (a), the number of people necessary to achieve population equality shall be shifted between the 2 districts affected by the shift.

(vi) Within a city or township to which there is apportioned more than 1 congressional district, district lines shall be drawn to achieve the maximum compactness possible.

Mich. Comp. Law § 3.63(c)(ii)-(vi).

12. With regard to the state legislative districts, Mich. Comp. Laws § 4.261(f) specifies shifting the fewest and least populous cities and/or townships when breaking county lines. This criterion is routinely misunderstood or ignored by persons lacking in experience with Michigan legislative redistricting. (Trial Tr. vol. 3, 2/7/19, at 83, ECF No. 250, PageID.9270; Def. Sec’y of State Ex. 6, at 10).

13. A passage written by Michigan Supreme Court Justice Charles Levin, in which a series of questions were posed by Mr. Apol and answered by Justice Levin, is helpful, as it explains that odd district shapes are to be expected in a redistricting plan:

There may be concern that the shape of the resulting district will be asymmetrical, and a preference may be expressed for more squareness or rectangularity. The general principle, however, is that the desire for a pleasingly shaped district is to be subordinated to the primary goal of breaking the fewest county lines statewide and the secondary goal of breaking the fewest city and township lines in the senatorial districts affected. The goal of preserving local autonomy (in the instant case, keeping as many Inghamites or Inghamers or Inghamists as possible in Ingham) takes precedence over forming a more pleasingly shaped district.

(Trial Tr. vol. 3, 2/7/19, at 99, ECF No. 250, PageID.9286; Def. Sec’y of State Ex. 6, at 11).

14. In other words, the Michigan Supreme Court has clarified that it is more important to avoid breaking jurisdictional lines than ensuring evenly shaped districts. (Def. Sec’y of State Ex. 6, at 11).

15. As observed by one witness, “It’s often the odd shapes of these districts containing territory shifts from another county that cause the most discomfort to political observers, commentators and critics of the resulting redistricting maps.” (Trial Tr. vol. 3, 2/7/19, at 100, ECF No. 250, PageID.9287).

As articulated by Justice Levin, though, the application of this neutral and objective criteria, sometimes combined with city or townships boundaries that are strangely shaped to being with, will force mapdrawers to configure a district that is

not “pleasingly shaped” in furtherance of the “goal of preserving local autonomy.” (Trial Tr. vol. 3, 2/7/19, at 99, ECF No. 250, PageID.9286).

16. In Michigan, a redistricting plan must obtain a majority of votes in the Legislature for passage. (Trial Tr. vol. 3, 2/7/19, at 155-56, ECF No. 250, PageID,9343-44; Def. Sec’y of State Ex. 6, at 12).

17. Achieving majority support is necessary in Michigan to enact a map, and concessions that are in tension with the Apol Criteria are sometimes made during the legislative process in order to obtain bipartisan support for a particular map or district. (Trial Tr. vol. 3, 2/7/19, at 101, 155-59, ECF No. 250, PageID.9288, 9342-46).

ii. The 2011 Michigan Apportionment Plan

18. In 2011, the Legislature draw new lines for legislative and Congressional districts (the “2011 Apportionment Plan”). *See In re Apportionment of State Legislature-1982*, 413 Mich. 96, 138-40; 321 N.W.2d 565 (1982) (invalidating the 1963 Michigan Constitution’s Commission on Legislative Apportionment and putting responsibility for redistricting back in the hands of the Legislature).

19. On behalf of the Republican Caucuses in the Michigan House and Senate, Mr. Jeffrey Timmer assisted in the drafting of districting plans for consideration by the Michigan Legislature after 2010 census data became

available. He had previously served as a mapdrawer and was involved in that capacity in the drafting of Michigan's redistricting plans in 1991 and 2001. (Trial Tr. vol. 3, 2/7/19, at 75, ECF No. 250, PageID.9262).

20. In 2011, Mr. Timmer was the principal Congressional mapdrawer and advised and consulted with regard to the application of the Apol Criteria in the legislative plans. (Trial Tr. vol. 3, 2/7/19, at 75-77, 86-88, ECF No. 250, PageID.9262-64, 9273-75; Def. Sec'y of State Ex. 6, at 10).

21. The Michigan State Senate map was primarily drawn by Mr. Terry Marquardt, a senior Senate staffer. (Marquardt Dep., ECF No. 129-46, PageID.4354, 4356).

22. Plaintiffs deposed the mapdrawers of the Congressional districts and the Michigan House and Senate districts as well as legislative leadership in office at the time the 2011 Apportionment Plan was drafted and passed. (*See* Begin Dep., ECF No. 129-41; Bolger Dep., ECF No. 129-42; Hune Dep., ECF No.129-43; Lund Dep., ECF No. 129-45; Marquardt Dep., ECF No. 129-46, 129-47; Timmer Dep., ECF No. 129-49).

23. All testified that the mapdrawers were instructed to utilize the Apol Criteria to the extent possible. (Mich. Comp. Laws § 3.63 (congressional) and § 4.261 (legislative); *In re Apportionment of State Legislature—1982*, 413 Mich. 96 (1982)) (*See also* Began Dep., ECF No. 129-41, PageID.3902; Bolger Dep., ECF

No. 129-42, PageID.3990; Hune Dep., ECF No. 129-43, PageID.4091; Lund Dep., ECF No. 129-45, PageID.4273; Marquardt Dep., ECF No. 129-46, PageID.4364; McMaster Dep., ECF No. 129-47, PageID.4463; Schostak Dep., ECF No. 129-48, PageID.4533; Timmer Dep., ECF No. 129-49, PageID.4635)).

24. In fact, Defendant's Expert Witness Jeff Timmer (and drawer of the Congressional districts) specifically asserted in his June 29, 2018 Report that the Congressional, Senate, and House plans follow state statutory criteria or other non-partisan considerations. He specifically stated that "partisan considerations did not predominate over non-partisan considerations." (Def. Sec'y of State Ex. 6, at 5).

25. Current and former elected officials, legislative staff, and outside consultants—all directly involved in drawing and/or approving the redistricting maps enacted into Michigan law—testified that the maps were drawn without predominate partisan considerations and in compliance with Michigan law. (*See* ¶¶ 23-24, *supra*).

26. The Apol Criteria were the predominant considerations of Terry Marquardt, a senior Republican Senate staffer, who was primarily responsible for drawing the Michigan Senate Districts. (Marquardt Dep., ECF No. 129-46, PageID.4356, 4362-63). Mr. Marquardt began the drawing process by examining population estimates and anticipating drawing districts based on minimizing county line breaks. (Marquardt Dep., ECF No. 129-46, PageID.4356-57). When

the census data became available in 2011, he focused on population numbers and racial data to comply with the VRA. (Marquardt Dep., ECF No. 129-46, PageID.4358). Ensuring that the maps had the fewest county, city, and township breaks possible in compliance with the Apol Criteria and that the districts complied with the VRA were major considerations. (Marquardt Dep., ECF No. 129-46, PageID.4361, 4363). After following the Apol Criteria and complying with the VRA, “there’s very little discretion” left to the mapmaker. (Marquardt Dep., ECF No. 129-46, PageID.4364 (“[The Apol] criteria was the driving force.”)).

27. Mapdrawers only considered political data as a secondary consideration, after the Apol Criteria were satisfied, to ensure that the maps could garner enough votes in the Senate to be enacted. (Marquardt Dep., ECF No. 129-46, PageID.4365-66 (“I would only add, though, that [political data] came into play very little because the [Apol] criteria was driving almost every decision that was made.”)).

28. The e-mail evidence purporting to demonstrate that partisan considerations predominated the drawing of the maps was, in large part, unsolicited “incoming” mail that do not reflect the opinions of the recipients and do not show intent. (*See* Pls.’ Email Exs., ECF Nos. 129-18, 129-24, 129-30, 129-31).

29. Further, to the extent that mapdrawers made individual isolated comments regarding the maps, they are inadequate to overcome the sworn testimony of legislators, former legislators and staff. (*See e.g.*, Began Dep., ECF No. 129-41; Bolger Dep., ECF No. 129-42; Hune Dep., ECF No. 129-43; Lund Dep., ECF No. 129-45; Marquardt Dep., ECF No. 129-46; McMaster Dep., ECF No. 129-47; Schostak Dep., ECF No. 129-48; Timmer Dep., ECF No. 129-49; Trial Tr. vol. 3, 2/7/19, at 74, ECF No. 250, PageID.9261).

30. Additionally, none of the comments Plaintiffs identified were from elected officials who voted to implement the 2011 Apportionment Plan. (*See Pls.’ Resp. to Mot. Summ. J.*, ECF No. 129, PageID.3342-47; *Pls.’ Trial Br.*, ECF No. 223, PageID.8204-10).

31. No evidence shows that partisan considerations were the primary motivation for drawing the maps the Michigan Legislature adopted.

32. The Michigan Legislature finalized the current plan for Michigan’s Congressional, State House, and Senate Districts in 2011. (11/30/18 Op. & Order, ECF No. 143, PageID.5300; Marquardt Dep., ECF No. 129-46, PageID.4369)

33. The 2011 Apportionment Plan was based on the 2010 United States Census data (Marquardt Dep., ECF No. 129-46, PageID.4357-58) and was completed in 2011 with the enactment of Public Acts 128 and 129 of 2011 (signed

by Governor Richard Snyder on August 9, 2011). Mich. Comp. Laws §§ 3.51a, 4.2001a, and 4.2002a.

iii. Michigan's Current Electoral System

34. The Michigan Senate consists of 38 members all of whom are elected at the same election as the governor for four-year terms concurrent with the term of the governor. Mich. Const. art. 4, § 2.

35. The governor and the Michigan Senate were elected for four-year terms at the election held in November of 2018.⁴ (11/30/18 Op. & Order, ECF No. 143, PageID.5303); *see* Ex. A, Michigan Sec'y of State, Dep't of State, 2018 Michigan Election Results (Nov. 26, 2018, 2:47 PM) https://mielections.us/election/results/2018GEN_CENR.html (last visited Feb. 22, 2019).

36. Under Michigan's Constitution, elections for the Michigan Senate will not be held until November 2022—after the next redistricting of the Michigan Congressional seats, the Michigan House, and the Michigan Senate. (8/3/18 Order, ECF No. 88, PageID.2047).

37. At the November 2018 election, the Democratic Party gained two congressional seats so the Michigan Congressional delegation consists of seven

⁴ This Court erroneously stated in its November 30, 2018 Opinion (ECF No. 143, PageID.5303) that elections were not held for Senate districts in the November 2018 election.

Democrats and seven Republicans. At the same election, Democrats gained five seats in the Michigan House and five seats in the Michigan Senate. Ex. A, Michigan Sec’y of State, Dep’t of State, *2018 Michigan Election Results* (Nov. 26, 2018, 2:47 PM) https://mielections.us/election/results/2018GEN_CENR.html (last visited Feb. 22, 2019)); (Trial Tr. vol. 1, 2/5/19, at 176, ECF No. 248, PageID.8891).

B. The Current Litigation and the Parties

38. The Michigan League of Women Voters adopted a position statement in 2012 regarding redistricting:

The LWVMI supports population as the primary criterion for redistricting. Other factors of importance are contiguity, maintaining political and geographical boundaries and minority representation. Additional factors to be considered are communities of interest, competitiveness and compactness. There should be no preferential treatment for any party and no protection of incumbents. Redistricting should take place only once a decade following the decennial census.

Exs. B & C, League of Women Voters of Michigan, *Redistricting for the State Legislature and the U.S. House of Representatives: Statement of Position adopted 2012*, (last visited Feb. 22, 2019) <https://www.lwvmi.org/issues/redistricting.html> and <https://lwvmi.org/documents/RedistPosit.pdf>.

39. Plaintiffs retained experts on January 16, 2015 and February 17, 2016. (Def.’s Mot. for Summ. J., ECF No. 121, PageID.2784).

40. Plaintiffs did not file their Complaint until December 22, 2017 (ECF No. 1)—over six years after enactment of the redistricting laws and after three election cycles for Congress and the Michigan House and after one election cycle for the Michigan Senate.

41. Plaintiffs' Complaint was originally a state-wide challenge without designating specific districts in Congress, the Michigan House, or the Michigan Senate. In response to Defendant and Intervening Defendants' Motions for Summary Judgment, Plaintiffs substantially reduced the scope of their allegations and limited their challenge to certain identified districts. (Pls.' Resp. to Mot. Summ. J., ECF No. 129, PageID.3370).

42. Plaintiffs are now challenging the following districts: United States Congressional districts 1, 4, 5, and 7 through 12; Michigan Senate districts 8, 10 through 12, 14, 18, 22, 27, 32, and 36; and Michigan House districts 24, 32, 51, 52, 55, 60, 62, 63, 75, 76, 83, 91, 92, 94, and 95. (Pls.' Resp. to Mots. for Summ. J., ECF No. 129, PageID.3370).

43. All of Plaintiffs' claims allege vote-dilution. (Pls.' Compl., ECF No. 1, PageID.30 ("The Current Apportionment Plan violates the First Amendment because it intentionally diminishes and marginalizes the votes of [individual Plaintiffs] based on partisan affiliation.") and PageID.32 ("The Current Apportionment Plan is a partisan gerrymander that violates individual Plaintiffs ...

Fourteenth Amendment right to Equal Protection of the laws. The Current Apportionment Plan intentionally and materially packs and cracks Democratic voters, thus diluting their votes’’)).

44. Secretary of State Ruth Johnson was named as the initial Defendant in this case (ECF No. 1), and she vigorously defended the 2011 Apportionment Plan. (*See, e.g.*, ECF Nos. 11, 20, 59, 63, 69, 73, 119, 127, 132, 147, 148).

45. At the 2018 Michigan General Election, Jocelyn Benson was elected to the office of Michigan Secretary of State and took office on January 1, 2019. (Def. Sec’y’s Trial Br., ECF No. 222, PageID.8187; Mich. Const. art. 5, § 3; Mich. Comp. Laws § 168.79).

46. Upon taking office, Secretary of State Benson changed lead counsel and commenced undisclosed negotiations with Plaintiffs seeking to have a number of House Districts declared to be unconstitutional. The result of those negotiations was Plaintiffs and the Secretary filing a Joint Consent Decree with the Court and moving for its approval. (Joint Mot. to Approve Consent Decree, ECF No. 211, PageID.7857, 7880; *see also* Def. Sec’y’s Tr. Br., ECF No. 222, PageID.8188).

47. The Proposed Consent Decree included the Secretary of State’s concession that 11 Michigan House of Representative Districts were unconstitutionally gerrymandered, even though this Court had made no finding to

support her conclusion. (Joint Mot. to Approve Consent Decree, ECF No. 211, PageID.7871).

48. On February 1, 2019, this Court denied the Motion to Approve Joint Consent Decree finding, in part, that “. . . contrary to her contention, Benson lacks the authority to enter into the Proposed Consent Decree on behalf of the State of Michigan.” (Order Den. Joint Mot., ECF No. 235, PageID.8377).

49. Even though this Court rejected the Consent Decree, Secretary Benson announced prior to trial commencing that she “does not intend to defend the current apportionment plans at issue in this case.” (Order Granting Pls.’ Mot. For Determination of Privilege, ECF No. 216, PageID.8122 n.1).

50. Additionally, Secretary Benson indicated prior to trial commencing that “the Secretary does not intend to call any witnesses in her case-in-chief” including expert witnesses. (Sec’y’s Amended Suppl. Witness List, ECF No. 213-4, PageID.8075).

51. Secretary Benson did not call any witnesses at the trial, nor did her counsel ask any questions of any witness. (*See* Trial Tr. vol. 1-3, 2/5/19-2/7/19, ECF Nos. 248-250).

52. Secretary Benson, however, consistent with case law and the positions of both sets of Intervening Defendants (*see* Senate Intervenor’s Conclusions of Law, Section IV.B., pp. 40-42), took the position in both her counsel’s opening

statement and in her Trial Brief that, “[c]ontrary to the Plaintiffs’ position, a special election for State Senate offices during the upcoming State House election cycle in 2020 is not an appropriate remedy under the circumstances, and would be a substantial disruption to the normal electoral process.” (Def.’s Tr. Brief, ECF No. 222, PageID.8191).

53. Secretary Benson’s Trial Brief contains extensive legal argument supporting her position. (Def.’s Tr. Brief, ECF No. 222, PageID.8191-95).

54. As ordered by the Court, the Parties entered into several Proposed Stipulations governing the admission of evidence, the use of depositions, and allowing additional depositions of Plaintiffs’ proffered witnesses who attempted to meet the standing mandate of *Gill, supra*, which was decided during the pendency of the instant matter. (2/1/19 Order re Parties’ Stipulations, ECF No. 234).

55. On January 22, 2019 and January 24, 2019, the Senate Intervenors moved to intervene in the instant case. (Senate and Senators’ Mots. to Intervene, ECF Nos. 206 and 208).

56. The Senate Intervenors include the Michigan Senate and Michigan State Senators Jim Stamas, Kenneth Horn, and Lana Theis. (Order Granting Senate’s and Senators’ Mots. to Intervene, ECF No. 237).

57. State Senator Jim Stamas is the duly elected senator for Michigan Senate District 36. (Stamas Decl., ECF No. 206-5, PageID.7754). Senator Stamas

was elected to the state Senate on November 6, 2018 for a four-year term, beginning on January 1, 2019 and ending December 31, 2022. (*Id.* at PageID.7754-55).

58. State Senator Kenneth Horn is the duly elected senator for Michigan Senate District 32. (Horn Decl., ECF No. 206-6, PageID.7759). Senator Horn was elected to the state Senate on November 6, 2018 for a four-year term, beginning on January 1, 2019 and ending December 31, 2022. (*Id.* at PageID.7759-60).

59. State Senator Lana Theis is the duly elected senator for Michigan Senate District 22. (Theis Decl., ECF No. 206-4, PageID.7749). Senator Theis was elected to the state Senate on November 6, 2018 for a four-year term, beginning on January 1, 2019 and ending December 31, 2022. (*Id.* at PageID.7749-50).

60. As the Senate Intervenors explained in their motions to intervene, their decision to intervene was based in large part on learning of the new Secretary of State's change in position. (ECF No. 206, PageID.7715).

61. The District Court granted the Senate Intervenors' Motions to Intervene on February 1, 2019. (ECF No. 237, PageID.8391).

62. The trial was held from February 5-7, 2019. (*See* Trial Tr. vols. 1-3, 2/5/19-2/7/19, ECF Nos. 248-250).

63. At the close of trial, the Court required that Proposed Findings of Fact and, in a separate document, Conclusions of Law be filed by February 22, 2019. (Trial Tr. vol. 3, 2/7/19, ECF No. 250, PageID.9350).

C. Plaintiffs' Experts and their Proposed Test

64. Plaintiffs allege that the 2011 Apportionment Plan is unconstitutional because it: (1) was adopted with partisan intent; and (2) had a partisan effect. (Pls.' Compl., ECF No. 1, PageID.28).

65. Plaintiffs allege that Michigan's 2011 Apportionment Plan violates individual Plaintiffs' First Amendment rights, as well as Fourteenth Amendment equal protection rights. (Pls.' Compl., ECF No. 1, PageID.2).

66. Plaintiffs allege that the 2011 Apportionment Plan was developed in "a private, secret process by Republican consultants, legislative staff and legislators to the exclusion of Democrats and the public." (Pls.' Compl., ECF No. 1, PageID.3).

67. Plaintiffs allege that the Republican legislative majority worked to create maps that "further tilted the existing Republican-favored maps by hiring Republican political operatives to manipulate the district lines to further advantage Republicans. Republican operatives have publicly boasted that the maps were intended to maintain Republican control over the State Legislature for the entire decade." (Pls.' Compl., ECF No. 1, PageID.12).

68. To demonstrate partisan effect, the Plaintiffs rely, in large part, on an “efficiency gap” analysis, which “compares the number of votes each party wastes for any election.” (Pls.’ Compl., ECF No. 1, PageID.20).

69. To support its claims, Plaintiffs rely on three experts: Jowei Chen, Kenneth Mayer, and Christopher Warshaw. (Pls.’ Trial Br., ECF No. 223, PageID.8203).

70. Jowei Chen is an associate professor in the Department of Political Science at the University of Michigan, Ann Arbor. (Chen Report, ECF No. 81-5, PageID.1852). Professor Chen prepared a report in this case in which he purported to analyze Michigan’s current House, Senate, and Congressional districting plans and whether “these three enacted districting plans has the effect of producing an extreme partisan outcome that diverges from possible alternative maps.” (Chen Report, ECF No. 81-5, PageID.1853). Dr. Chen relied primarily on an “efficiency gap” analysis. (*Id.* at PageID.1854, 1863).

71. Kenneth Mayer is on the faculty of the University of Wisconsin. (Mayer Report, ECF No. 129-52, PageID.4803). Dr. Mayer prepared a report in this case and was asked by Plaintiffs to evaluate whether the redistricting plans for Michigan’s current House, Senate, and Congressional district “constituted an extreme partisan gerrymandering.” (Mayer Report, ECF No. 129-52, PageID.4802).

72. Christopher Warshaw is an assistant professor of political science at George Washington University. (Warshaw Report, ECF No. 129-53, PageID.4911). Professor Warshaw prepared a report in this case, analyzing the degree of partisan bias in the 2011 Apportionment Plan, to place that bias into historical context, to examine the growing polarization of members of Congress and state legislatures and the representational effects of gerrymandering, and to examine the consequences of the 2011 Apportionment Plan on the representation of Michigan citizens. (Trial Tr. vol. 1, 2/5/19, at 108, ECF No. 248, PageID.8823). Mr. Warshaw testified that the efficiency gap was the primary measurement tool used as the basis for his findings. (Trial Tr. vol. 1, 2/5/19, at 150, ECF No. 248, PageID.8865).

73. The United States Supreme Court previously rejected relying on partisan asymmetry to demonstrate burden, which is the theory upon which Plaintiffs base this case. *League of United Latin Am. Citizens v. Perry* (“LULAC”), 548 U.S. 399, 419-20 (KENNEDY, J., concurring).

74. Using the efficiency gap and other “group political success measures” (Def.’s Mot. Summ. J., ECF No. 119, PageID.2422) to demonstrate cracked and packed voters is insufficient because such analyses only depict harm on political parties, not on individual voters. Furthermore, the tests only show averages, not the specific harm required. Indeed, Dr. Warshaw testified that the efficiency gap

“addresses the votes, the average effects on Democrats and Republicans in the state. It doesn’t characterize the individual voters.” (Trial Tr. vol. 1, 2/5/19, at 171, ECF No. 248, PageID.8886; Timmer Dep., ECF No. 129-49, PageID.4590 (discussing Dr. Chen’s report). *See also Gill*, 138 S. Ct. at 1932-33.

75. Dr. Mayer also admitted that an efficiency gap is not calculated for specific harm. (*See* Mayer Dep., ECF No. 119-17, PageID.2583 (“An efficiency gap is not calculated for a single district.”)).

76. Dr. Warshaw stated that he did not demonstrate which districts were packed and cracked. (Warshaw Dep., ECF No. 119-14, PageID.2553).

77. Dr. Chen’s analysis has the same failings as he uses social science metrics to calculate statewide asymmetry. (*See* Def.’s Mot. Summ. J., ECF No. 119, PageID.2423-24, 2427-28).

78. None of these tests are a “well-accepted” measure of partisan-fairness and these measures are subject of “serious criticism by respected political scientists.” (*See* Def.’s Mot. Summ. J., ECF No. 119, PageID.2428).

79. Dr. Warshaw admitted that there is not a precise range of an efficiency gap score that would indicate whether a district is unacceptable or an extreme gerrymander. (Trial Tr. vol. 1, 2/5/19, at 154, ECF No. 248, PageID.8869).

80. The starting point for Dr. Warshaw's analysis is proportional representation for political parties based on the percentage of votes received statewide. He explained that "what you might expect is that a party that wins half the votes should win half the seats, and if you win more than half the votes then you should win more than half the seats." (Trial Tr. vol. 1, 2/5/19, at 118, ECF No. 248, PageID.8833).

81. Dr. Warshaw admitted that some political scientists do not believe that the efficiency gap is capable of measuring a partisan gerrymander. (Trial Tr. vol. 1, 2/5/19, at 154, ECF No. 248, PageID.8869).

82. Dr. Warshaw admitted that:

- The efficiency gap can be affected by intentional drawing of district lines to accomplish goals other than maximizing partisan seats such including racial minorities;
- These districts would be heavily packed; and
- The packing would be "natural" and for reasons other than partisan gerrymandering and that the described districts would be heavily Democratic.

(Trial Tr. vol. 1, 2/5/19, at 168, ECF No. 248, PageID.8883).

83. Dr. Warshaw testified that there are many reasons why a district may be "naturally" packed and may be so due to reasons other than gerrymandering. (Trial Tr. vol. 1, 2/5/19, at 168, ECF No. 248, PageID.8883). These types of districts will always exist, even if Michigan's voting maps are redrawn. (Trial Tr., vol. 1, 2/5/19, at 169-70, ECF No. 248, PageID.8884-85). The efficiency gap does

nothing to factor in whether a vote in these naturally packed districts is “wasted” for non-partisan reasons. (Trial Tr. vol. 1, 2/5/19, at 169, ECF No. 248, PageID.8884).

84. Mr. Timmer testified that Dr. Chen utilized the wrong fundamental building blocks for his models, thereby precluding any possibility that his simulated maps would agree with the enacted legislative plan. (Trial Tr. vol. 3, 2/7/19, at 93-95, ECF No. 250, PageID.9280-82; Def. Secretary of State Ex. 6, at 20).

85. As also concluded by Dr. Liu, Mr. Timmer stated that Dr. Chen utilized the wrong fundamental building block—Voter Tabulation Districts (“VTDs”)—and **not** the building blocks required by the State of Michigan by the bipartisan technical redistricting committee—Census Tracts and Blocks. (Trial Tr. vol. 3, 2/7/19, at 95, ECF No. 250, PageID.9282; Vatter Decl., ECF No. 129-55; Def. Secretary of State Ex. 6, at 20).

86. By utilizing the wrong building blocks, Dr. Chen concluded that the enacted legislative plan maps were inappropriate or biased since they were not comparable to the more than 1,000 maps generated by his erroneously configured simulation algorithm. (Trial Tr. vol. 3, 2/7/19, at 85-86, ECF No. 250, PageID.9272-73).

87. Significantly, Census Tracts and Blocks are based upon the ten-year census, whereas the VTDs are adjusted every two years, meaning that any conclusions drawn by utilizing this erroneous building block is based on different geographical data, leading to unreliable and varying conclusions. (Trial Tr. vol. 3, 2/7/19, at 93-95, ECF No. 250, PageID.9280-82).

D. Findings of Fact Related to Standing to Challenge the Named Senate Districts.

88. Plaintiffs challenge Senate Districts 8, 10 through 12, 14, 18, 22, 27, 32, and 36 (the “named Senate districts”). (Pls.’ Resp. to Mot. Summ. J., ECF No. 129, PageID.3370).

89. The Court allowed the trial testimony and deposition testimony of individuals, not disclosed by Plaintiffs in discovery responses, regarding the district-by-district individualized claims of harm as required by *Gill, supra*. Some of these depositions took place during trial and some after the close of trial—but all were taken after the close of discovery. (Order Den. Def.’s Mot. to Exclude Testimony of Undisclosed League Members, ECF No. 197; 2/1/19 Order re Parties’ Stipulations, ECF No. 234).

90. The United States Supreme Court decided *Gill v. Whitford* on June 18, 2018. Subsequent to the *Gill* decision, Secretary of State Johnson and the Initial Intervenors filed Motions for Summary Judgment based, in part, on the fact that Plaintiffs had not asserted district specific claims of individualized harm and,

therefore, Plaintiffs' Complaint should be dismissed. (Mots. for Summ. J., ECF Nos. 119 & 121).

91. This Court held that Plaintiffs lacked standing to challenge the 2011 Apportionment Plan on a statewide basis and dismissed Plaintiffs' statewide claims on May 16, 2018. (*See* 5/16/18 Op. & Order, ECF No. 54).

92. This Court found that the Plaintiffs had standing at the summary judgment stage to challenge individual districts but stated, "[t]he Court is not deciding the ultimate issue of whether Plaintiffs have definitively established standing for each challenged district. The Court will determine the ultimate issue of whether Plaintiffs have established standing for each challenged district at trial." (11/30/18 Op. & Order, ECF No. 143, PageID.5306).

93. The Senate Intervenors filed a Rule 52(c) motion on February 14, 2019, arguing Plaintiffs have not presented evidence sufficient to demonstrate that Plaintiffs experienced individualized or organizational harm from Senate District boundaries that could be redressed by a favorable ruling from this Court under the standard the Supreme Court articulated in *Gill*. (Senate Intervenors' Mot. for J. on Partial Findings, ECF No. 252).

94. The Congressional Intervenors filed a parallel Rule 52(c) motion with respect to the Congressional and House District boundaries. (Congressional Intervenors' Mot. for J. on Partial Findings, ECF No. 253).

i. The Individual Plaintiffs

95. Article III of the United States Constitution requires that a plaintiff demonstrate standing to bring a particular claim. *Allen v. Wright*, 468 U.S. 737, 750-51 (1984).

96. The familiar three-part test for Article III standing is: (1) The plaintiff must have “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. at 1929.

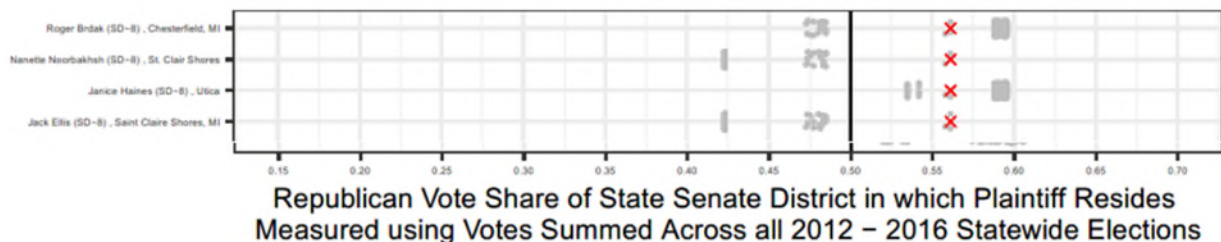
97. In *Gill*, the Court held that “a plaintiff asserting a partisan gerrymandering claim based on a theory of vote dilution must prove that she lives in a packed or cracked district in order to establish standing.” 138 S. Ct. at 1934 (Kagan, J., concurring). Additionally, a plaintiff must prove that the proposed remedy, “revision of the boundaries of the individual’s own district,” would redress the injury. *Id.* at 1930. In *Gill*, the Court found that the plaintiffs “alleged that they had such a personal stake in this case, but never followed up with the requisite proof.” 138 S. Ct. at 1923.

98. To prove a concrete, particularized, and remediable injury from partisan gerrymandering, a plaintiff must prove that redrawing the district’s boundaries would result in a district that is not cracked or packed. *Gill*, 138 S. Ct. at 1931.

99. Plaintiffs have not provided any evidence that they have suffered a concrete, particularized, or remediable injury with respect to the named Senate districts.

a. Senate District 8

100. For Senate District 8, Plaintiffs presented the testimony of Mr. Jack Ellis, Ms. Nanette Noorbkahsh, and Mr. Roger Brdak. (Ellis Dep., Noorbkahsh Dep., and Brdak Dep., ECF Nos. 252-2, 252-3, & 252-4). Dr. Warshaw’s chart, presented by Plaintiffs, appears here, showing the ranges of proposed, simulated Senate districts compared with the existing district (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883):



101. Existing Senate District 8 places these witnesses within the range of Dr. Chen’s so-called “non-partisan” simulations. (Chen Report, ECF No. 129-51, PageID.4707).

102. With respect to Mr. Brdak, a significant number of simulations would place his home in a *more* Republican-packed district, when currently, Mr. Brdak’s home is within the range of nonpartisan simulations produced by Dr. Chen. (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883).

103. When deposed, Mr. Ellis confirmed that he has never chosen not to vote for a particular candidate because he believed that he was voting in a gerrymandered district. (Ellis Dep., ECF No. 252-2, PageID.9397). He also personally campaigns for candidates through the Michigan Democratic Party. (Ellis Dep., ECF No. 252-2, PageID.9399).

104. Similarly, Ms. Noorbkahsh testified that she will always vote regardless of how the districts are drawn, but indicated that she did not donate to or participate in one Democratic Senate candidate's campaign because the candidate did not have a "very good chance of winning." (Noorbkahsh Dep., ECF No. 252-3, PageID.9426, 9429, & 9430). Mr. Ellis indicated that he does not donate to campaigns when he believes the outcome is set. (Ellis Dep., ECF No. 252-3, PageID.9426, 9429, & 9430).

105. These decisions by Mr. Ellis and Ms. Noorbkahsh are not necessitated or caused by the borders of their Senate district, however. Their choices are personal, based on their own subjective judgment as to whether a particular candidate can and will win or not.⁵ They were not prevented from voting, campaigning, or donating to a campaign—they could freely exercise these rights

⁵ Mr. Ellis testified that other considerations, such as a particular candidate's personality, whether he or she is engaging, whether he or she has name recognition or a family history in politics, and whether voters show up at the polls or are apathetic during any given election, also contribute to a candidate's likelihood of winning. (Ellis Dep., ECF No. 252-2, PageID.9404 & 9407).

any time they like. (Ellis Dep., ECF No. 252-2, PageID.9397, 9399, 9426, 9429, 9430; Noorbkahsh Dep., ECF No. 252-3, PageID.9426, 9429, & 9430).

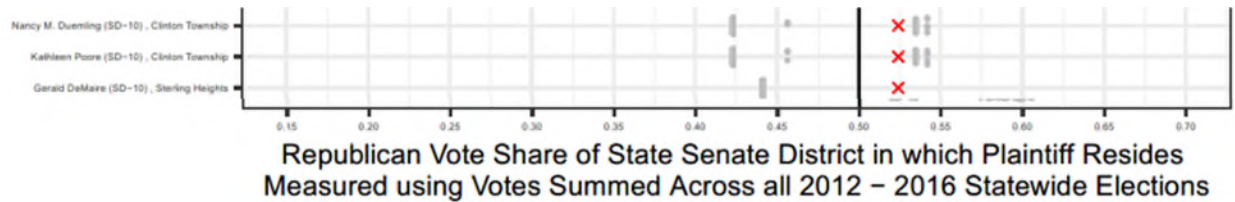
106. When Mr. Brdak was deposed, he presented no evidence that his district boundaries affect how he votes, campaigns, or donates. To the contrary, he confirmed that nothing about his 2011 districts stop him from voting, prevents him from donating to particular candidates, or discourages from campaigning. (*See* Brdak Dep., ECF No. 252-4, PageID.9469). Although he believes that his legislative districts are gerrymandered, he also believes that they are currently competitive. (Brdak Dep., ECF No. 252-3, PageID.9463, 9467). Mr. Brdak did not testify that he was harmed in any way.

107. While Mr. Ellis, Ms. Noorbkahsh, and Mr. Brdak asserted that they *believe* they live in gerrymandered districts (Ellis Dep., ECF No. 252-2, PageID.9395; Noorbkahsh Dep., ECF No. 252-3, PageID.9426; Brdak Dep., ECF No. 252-4, PageID.9463), Plaintiffs' own experts have demonstrated that Senate District 8 is within the range of simulations that they consider to be "non-partisan." (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883).

b. Senate District 10

108. For Senate District 10, Plaintiffs presented the testimony of Ms. Nancy Duemling, Ms. Kathy Poore, and Mr. Gerald DeMaire. Dr. Warshaw's

chart, as presented by Plaintiffs, appears here (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883):



109. For this Senate District, using Dr. Warshaw’s proposed 45-55% range for competitive districts, all three witnesses currently reside in a reliably “competitive” district, which they testified they wanted. (Duemling Dep., ECF No. 252-5, PageID.9498; Poore Dep., ECF No. 252-6, PageID.9527; DeMaire Dep., ECF No. 252-7, PageID.9557).

110. Ms. Poore and Ms. Duemling’s current district is within the range of Dr. Chen’s nonpartisan simulations and Dr. Warshaw’s 45-55% competitive range. (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883).

111. Under all of Dr. Chen’s simulations, Mr. DeMaire would be “packed” into a more reliably Democratic district, to the point that his district would no longer be “competitive.” (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883).

112. When deposed, all three witnesses confirmed that they would vote regardless of whether their district was redrawn; they have never chosen not to vote based on their beliefs that their Senate District is gerrymandered. (Duemling Dep., ECF No. 252-5, PageID.9494, 9496, 9498; Poore Dep., ECF No. 252-6,

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PageID.9522; DeMaire Dep., ECF No. 252-7, PageID.9555). Ms. Duemling’s belief that the district was gerrymandered has not prevented her from donating or campaigning, or impacted her enthusiasm to vote. (Duemling Dep., ECF No. 252-5, PageID.9496). Ms. Poore’s belief in gerrymandering has not impacted her donation decisions; instead, it “encourages” and “motivates” her to be politically active. (Poore Dep., ECF No. 252-6, PageID.9525). Mr. DeMaire testified that his belief that gerrymandering occurred has not prevented him from affiliating with people who share his values. (DeMaire Dep., ECF No. 252-7, PageID.9557).

c. Senate District 11

113. For Senate District 11, Plaintiffs presented the testimony of Mr. William Grasha. Dr. Warshaw’s chart appears here (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883):



114. Mr. Grasha currently lives in a Democratic-leaning Senate district. (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883). Like his current district, most of Dr. Chen’s simulated districts would result in Democratic candidates picking up far more than 55% of the district’s votes, meaning that Mr. Grasha would not be any less “packed” in a redrawn district than he claims to be now. (*Id.*). On the other hand, some of the simulated districts would result in Mr.

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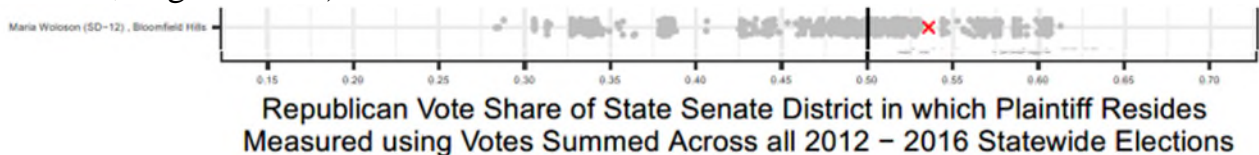
Grasha being “cracked” into a more Republican district that is outside Dr. Warshaw’s 45-55% “competitive” range. (*Id.*).

115. Mr. Grasha believes that his Senate District became much more Democratic after the 2011 redistricting. (Trial Tr. vol. 3, 2/7/19, at 15, ECF No. 250, PageID.9202). When asked whether he thought his vote would have more power if his district had fewer Democrats, he stated that “if those Democratic votes were shifted to other districts and the power structure changed in [the Legislature],” then his vote would have more power. (*Id.* at 18, ECF No. 250, PageID.9205).

116. Mr. Grasha complains that Democratic candidates do not hold a majority across the state in other districts. (*See* Trial Tr. vol. 3, 2/7/19, at 20, ECF No. 250, PageID.9207 (“[I]n the districts I’m currently in I have Democratic representation, [but] my representative will never get to sit as a majority leader”)).

d. Senate District 12

117. For Senate District 12, Ms. Maria Woloson testified. Dr. Warshaw’s chart, as presented by Plaintiffs, appears here (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883):



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118. Dr. Warshaw’s chart shows that Ms. Woloson’s current Senate District is well within his 45-55% “competitive” range, with around 53 or 54% of the vote share going to a Republican from 2012 to 2016. (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883).

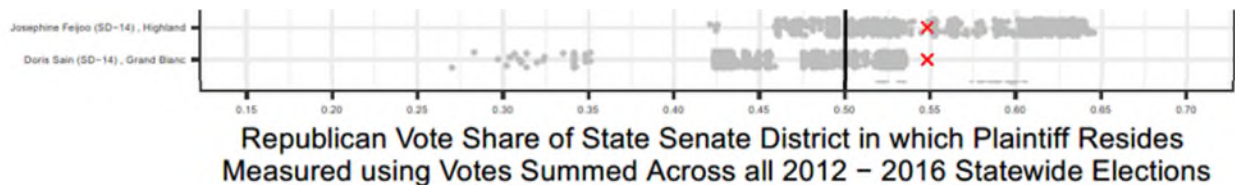
119. District 12 elected a Republican Senator in 2014, but elected a Democratic Senator in 2018. (Woloson Dep., ECF No. 252-8, PageID.9582).

120. Ms. Woloson did not show that Senate District 12 is gerrymandered as a result of the 2011 redistricting or that election outcomes are “predetermined” as she claims. (Woloson Dep., ECF No. 252-8, PageID.9585).

121. Plaintiffs’ experts have not presented evidence that their proposed alternatives would result in a “better” or “more fair” district for Ms. Woloson.

e. Senate District 14

122. Ms. Josephine Feijoo and Ms. Doris Sain testified for Senate District 14 for Plaintiffs. Dr. Warshaw’s chart appears here (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883):



123. For this Senate District, Ms. Sain lives within the range of what Dr. Warshaw testified is a competitive district. (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883). Therefore, Dr. Chen and Dr. Warshaw’s evidence does not

prove that Ms. Sain's district is packed or cracked. A significant number of Dr. Chen's simulations would "pack" Ms. Sain into a Democratic district, taking her out of one that is in Dr. Warshaw's "competitive" range. (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883). This would not resolve any alleged cracking.

124. Ms. Sain testified that she does not donate to candidates when she believes the outcome is predetermined because then her political donations have very little influence. (Sain Dep., ECF No. 252-9, PageID.9617). Ms. Sain's decision not to donate is not caused by the borders of her Senate District, however. Her choice is based on her subjective judgment as to whether a particular candidate will win or not. (Sain Dep., ECF No. 252-9, PageID.9617). Even after the redistricting, she has never been prevented from exercising her rights to vote, speak, and associate; she has always had the choice to contribute as she saw fit politically. (Sain Dep., ECF No. 252-9, PageID.9620). Ms. Sain did not articulate any personal harm from living in an allegedly gerrymandered district.

125. Dr. Warshaw's chart shows that Ms. Feijoo's current Senate District is within his 45-55% "competitive" range. (Warshaw Decl. Chart, No. 129-38, PageID.3883). Most of Dr. Chen's simulations would place her in a *more* Republican district, however. (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883). When deposed, Ms. Feijoo testified that she is just as likely to vote in future elections if her Senate District is redrawn or not. (Feijoo Dep., ECF No.

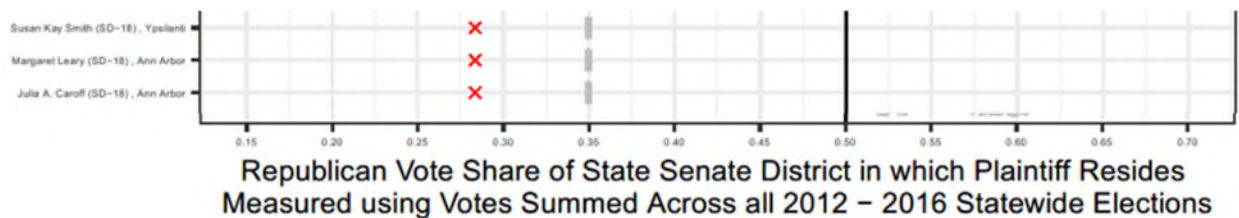
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252-10, PageID.9642). She believes that her districts are gerrymandered because in 2018, Democrats were elected to statewide offices—the Governor, Attorney General, and Secretary of State—but did not take over a majority in the State Legislature. (Feijoo Dep., ECF No. 252-10, PageID.9642). Like Mr. Grasha in Senate District 11, Ms. Feijoo did not claim an individualized, district-specific injury. Instead, her claimed injury is statewide.

126. Plaintiffs have not demonstrated harm from Senate District 14 or proven that redrawing the district would remedy the alleged harm.

f. Senate District 18

127. Dr. Susan Smith, Ms. Margaret Leary, and Ms. Julie Caroff testified for Senate District 18. (Trial Tr. vol. 1, 2/5/19, at 36, ECF No. 248, PageID.8751; Leary Dep., ECF No. 252-11, PageID.9669; & Caroff Dep., ECF No. 252-12, PageID.9698). Dr. Warshaw’s chart, as presented by Plaintiffs, appears here (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883):



128. Dr. Warshaw’s charts show that these witnesses currently live in a Democratic district, and every alternative district produced by Dr. Chen’s “nonpartisan” simulations also puts them in a heavily Democratic district.

(Warshaw Decl. Chart, ECF No. 129-38, PageID.3883). Not one simulation puts them in the “competitive” district they claim to desire. (Trial Tr. vol. 1, 2/5/19 at 66, ECF No. 248, PageID.8781; Leary Dep., ECF No. 252-11, PageID.9676; Caroff Dep., ECF No. 252-12, PageID.9704). Although these witnesses claim that they have been intentionally “packed” into a district with other Democratic voters (Trial Tr. vol. 1, 2/5/19 at 42-43, ECF No. 248, PageID.8757-58), their districts will be heavily Democratic regardless of how the lines are drawn.

129. When deposed, the only harm that Dr. Smith stated she felt as an individual is that her vote does not have the influence she believes it should have. (Trial Tr. vol. 1, 2/5/19 at 43, ECF No. 248, PageID.8758). She indicated that her vote may have more impact if her district was not so packed with Democrats. However, as noted above, every proposed simulation would put Dr. Smith in a district that is still heavily Democratic, and a Democrat would likely always win the general election. This “packing” is not based on how the district boundaries were drawn, but on the natural concentration of Democrats in the area Dr. Smith lives. (*See* Trial Tr. vol. 1, 2/5/19 at 58, 68-69, ECF No. 248, PageID.8773, 8883-84). Therefore, Dr. Smith has not alleged harm from her district that could be redressed by redrawing her district.

130. Although Dr. Smith testified that Senate District 18 and Congressional District 12 are packed districts (Trial Tr. vol 1, 2/5/19, at 42, ECF No. 248,

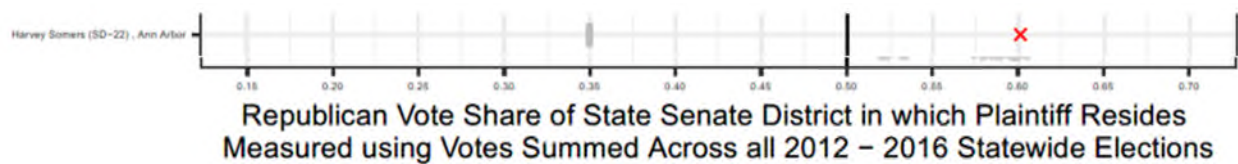
PageID.8757), she is not qualified as an expert (*see* Trial Tr. vol 1, 2/5/19, at 37, ECF No. 248, PageID.8752 (Dr. Smith has a Ph.D. in business policy and is not a legal, political science, or elections expert)). Additionally, none of the individual League members or Plaintiffs were qualified as an expert witness and, therefore, were not qualified to testify to conclusions of law, including whether a district is packed or cracked.

131. Ms. Leary and Ms. Caroff also did not demonstrate any individual harm from their district: Ms. Leary testified that she is just as likely to vote and has always participated to the full in elections, irrespective of district lines. (Leary Dep., ECF No. 252-11, PageID.9672, 9678). Ms. Leary indicated that she is satisfied with her current elected officials and prefers them to others. (Leary Dep., ECF No. 252-11, PageID.9678). Ms. Caroff testified that she continues to be politically active and donate to candidates. (Caroff Dep., ECF No. 252-12, PageID.9705). In her view, the “harm overall” from the alleged gerrymandering is at a “national level”—leading to a divided country and Congress and concentrating power in the executive branch at the expense of the legislative branch. (Caroff Dep., ECF No. 252-12, PageID.9706-07). She, like Mr. Grasha in District 11 and Ms. Feijoo in District 14, does not allege individual, district-specific harm, but a statewide injury that is not cognizable for standing purposes under *Gill*. 138 S. Ct. at 1931.

132. Plaintiffs have not demonstrated harm from Senate District 18 or proven that redrawing the district would remedy the alleged harm.

g. Senate District 22

133. Mr. Harvey Somers testified for Senate District 22. Dr. Warshaw’s chart, as presented by Plaintiffs, appears here (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883):



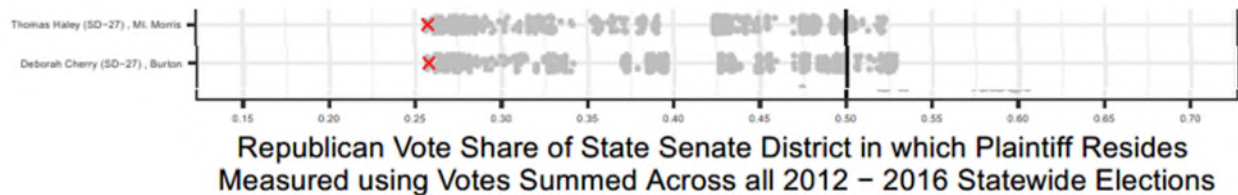
134. All of Dr. Chen’s simulations place Mr. Somers into a district that would be, according to Dr. Chen’s analysis, a “packed” Democratic district. (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883). Plaintiffs presented no evidence that moving Mr. Somers from what they describe as a “packed” Republican district into a “packed” Democratic district resolves any cognizable harm for Mr. Somers. Mr. Somers could not articulate any concrete harm from his district: Mr. Somers remains “heavily engaged” in the political process and “very active” politically. (Somers Dep., ECF No. 252-13, PageID.9738-39). Since 2011, he has “donated a lot to a lot of candidates in and outside of [his] district.” (Somers Dep., ECF No. 252-13, PageID.9740). Mr. Somers stated that percentages of victory in a district do not matter—all that matters to him are that there are “[g]ood debates and [an] exchange of ideas.” (Somers Dep., ECF No. 252-13,

PageID.9740). Mr. Somers was very positive about the 2018 election, testifying that, in spite of the alleged gerrymandering, achieving “his ideal [of competitive races] is possible” with districts drawn as they are. (*Id.* at PageID.9745).

135. Plaintiffs have not demonstrated harm from Senate District 22 or proven that redrawing the district would remedy the alleged harm.

h. Senate District 27

136. Mr. Thomas Haley and Ms. Deborah Cherry testified for Senate District 27. Dr. Warshaw’s chart appears here (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883):



137. Like Mr. Haley and Ms. Cherry’s current Senate district, most of Dr. Chen’s simulated districts would result in Democratic candidates picking up far more than 55% of the district’s votes. (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883). There is no evidence that Dr. Chen’s simulated alternative districts would result in a “better” or “more fair” district for Mr. Haley and Ms. Cherry. In addition to a lack of redressability, neither Mr. Haley nor Ms. Cherry could articulate any concrete harm caused by Senate District 27’s lines. After 2011, Mr. Haley remained politically active and continues to donate to political candidates,

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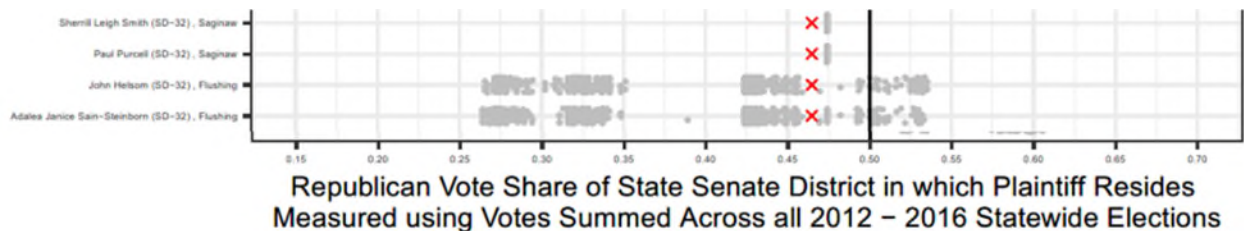
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including his State Senator; he will vote regardless of his district’s shape; he is content with his elected officials and will be happy if they get re-elected. (Trial Tr. vol. 2, 2/6/19, at 238–240, 247, ECF No. 249, PageID.9175-77, 9184). Ms. Cherry will continue to exercise her right to vote, regardless of district shape. (Cherry Dep., ECF No. 252-14, PageID.9763-64). When asked to articulate the 2011 district lines’ harm to her, she stated that she does not “feel like” her vote is “as important” as it could be. (*Id.* at PageID.9765). Ms. Cherry, a former Michigan Representative and Senator, could not explain whether or how the districts’ shapes limited her campaign activities or political expression. (*Id.* at PageID.9756).

138. Plaintiffs have not demonstrated harm from Senate District 27 or proven that redrawing the district would remedy the alleged harm.

i. Senate District 32

139. Ms. Adalae “Jan” Sain-Steinborn, Ms. Sherrill Smith, and Mr. Paul Purcell testified for Senate District 32. Dr. Warsaw’s chart appears here (Warsaw Decl. Chart, ECF No. 129-38, PageID.3883):



140. Dr. Warsaw’s chart shows that the current Senate District 32 is well within his 45-55% “competitive” range for all three witnesses. (Warsaw Decl.

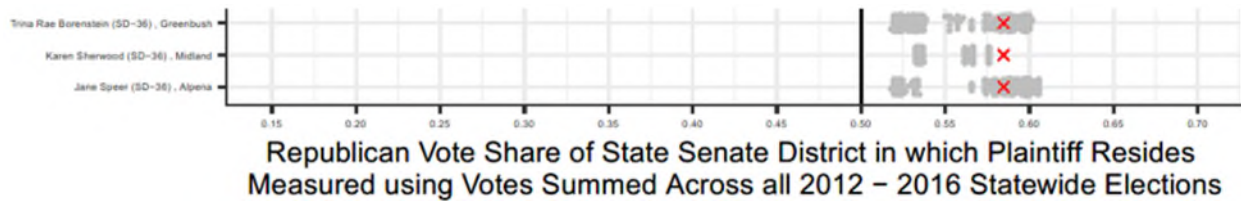
Chart, ECF No. 129-38, PageID.3883). The majority of Dr. Chen's simulations would actually take Ms. Sain-Steinborn out of the "competitive" range and place her into a district that he would deem "packed." (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883). For Mr. Purcell and Ms. Smith, the *only* alternative districts are nearly identical to their current district. (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883). Redrawing the district would not redress Mr. Purcell's and Ms. Smith's alleged harm would not be redressed if the district was redrawn.

141. Both Ms. Sain-Steinborn and Ms. Smith are extremely committed to the political process and believe in voting no matter how the district lines are drawn. (Sain-Steinborn Dep., ECF No. 252-15, PageID.9778-79, 9781, 9784, 9785; Smith Dep., ECF No. 252-16, PageID.9804-05, 9809, 9816). Both believe that alleged gerrymandering has energized the political process. (Sain-Steinborn Dep., ECF No. 252-15, PageID.9787; Smith Dep., ECF No. 252-16, PageID.9815). When asked about the effects of the alleged gerrymandering, Ms. Smith said that she has not actually seen "th[e] effect" of gerrymandering in Senate District 32. (Smith Dep., ECF No. 252-16, PageID.9811). Mr. Purcell's only non-self-inflicted alleged harm is that he has philosophical differences with his elected officials. (Purcell Dep., ECF No. 252-17, PageID.9847).

142. Plaintiffs have not presented evidence that these witnesses have been harmed by partisan gerrymandering or that these alleged injuries are redressable.

j. Senate District 36

143. For Senate District 36, Plaintiffs presented the testimony of Ms. Trina Rae Borenstein, Ms. Karen Sherwood and Ms. Jane Speer. Dr. Warsaw’s chart, as presented by Plaintiffs, appears here (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883):



144. Dr. Warsaw’s charts show that Ms. Borenstein and Ms. Speer currently fall within the proffered range of nonpartisan district simulations. (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883). Many of Dr. Chen’s simulations would actually “crack” Ms. Borenstein and Ms. Speer into districts that would garner a greater Republican vote share, according to Dr. Chen’s definitions. (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883). With respect to Ms. Sherwood, all of Dr. Chen’s simulations put her in a Republican district according to his definition, many uncompetitively so. (Warshaw Decl. Chart, ECF No. 129-38, PageID.3883). There is no evidence that any of these proposed alternatives would result in a “better” or “more fair” district: a Republican candidate would likely represent the district regardless of how the lines are drawn, according to Dr. Chen.

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145. Additionally, these three witnesses could not articulate any concrete, particularized harm to them based on the district. The only harm that Ms. Speer could articulate is that she now “feel[s] frustrated” and “less enthusiastic about voting” because she knows what result is more likely. (Speer Dep., ECF No. 252-18, PageID.9871, 9876). Ms. Borenstein feels harmed because some unidentified nonparties supposedly tell her they feel that their votes do not count. (Borenstein Dep., ECF No. 252-19, PageID.9894). The only articulatable harm she has suffered is a worsening of the “attitude” with which she approaches the political process. (Borenstein Dep., ECF No. 252-19, PageID.9901). Ms. Sherwood testified that the harm from redistricting is not individual in nature, but is “average” harm. (Trial Tr. vol. 2, 2/6/19, at 32, ECF No. 249, PageID.8969). She admits that redrawing maps very well may not help anything. (Trial Tr. vol. 2, 2/6/19, at 32, ECF No. 249, PageID.8978). These harms are not concrete in nature and redrawing District 36 would not redress any harm.

146. Because no new district boundaries can be drawn that would “unpack” or “uncrack” Plaintiffs’ districts, see *Gill*, 138 S. Ct. at 1931—or that would not repack or recrack Plaintiffs into new districts—Plaintiffs have not demonstrated that their alleged injuries are redressable.

147. No individual Plaintiff has presented evidence that they have standing for either First or Fourteenth Amendment claims.

ii. The League of Women Voters

148. Plaintiffs did not present any evidence that the League of Women Voters of Michigan's ability to further its goals has been perceptively impaired. (*See, e.g.*, Poore Dep., ECF No. 252-6, PageID.9520, 9526).

149. To the contrary, Ms. Poore—who cofounded the Macomb Chapter of the League—confirmed that she does not think that gerrymandering has affected her ability to serve the League and accomplish its goals. (Poore Dep., ECF No. 252-6, PageID.9520, 9526). Her belief that Michigan districts have been gerrymandered “encourages” and “motivates” her to promote her ideals and “makes [her] want to fight all the harder . . . [t]o educate other voters,” which she asserted “is [the League’s] main . . . purpose for existing.” (*Id.* at PageID.9525-26). Rather than burdening the League’s First Amendment rights to free speech and association, the manner in which the State Senate Districts were drawn in 2011 has, if anything, increased the League’s ability to spread its message and make voters aware of the issues that concern it.

150. The League has not had trouble reaching voters with election information: Dr. Susan Smith⁶ testified that, in the context of voters using the

⁶ Dr. Smith has been involved with the League of Women Voters of Michigan for about 48 years. She has been part of the Lansing, Mount Pleasant, and Ann Arbor Leagues; she was President of the State League from 2011 to 2015; and she is currently on the State League Board as Redistricting Director and is

League's voter education and information guides, "Michigan has the biggest percentage of people participating in the country as far as the League is concerned." (Trial Tr. vol. 1, 2/5/19, at 48, ECF No. 248, PageID.8763). She also testified that the Ann Arbor League was able to register over 1,000 high school students to vote. (*Id.* at PageID.8767).

151. With regard to convincing candidates to participate in forums and provide responses for voter guides since the 2011 redistricting, Dr. Smith testified that the League has had trouble convincing Republican candidates to participate. (Trial Tr. vol. 1, 2/5/19, at 52, ECF No. 248, PageID.8767). Dr. Smith's testimony implied that Republicans in certain districts did not respond or participate because their districts were gerrymandered so that they had an overwhelming chance of winning. (*See id.*). However, Dr. Smith did not establish such a causal connection; the implication is only speculative. Republican candidates may not have wanted to participate for a number of reasons, including that they may have believed that those who attend League candidate forums are Democratic voters unlikely to vote for a Republican candidate and opposed to Republican views. (*See, e.g., id.* at PageID.8754; Poore Dep., ECF 252-6, PageID.9521). Rather than

President of the Ann Arbor League. (Trial Tr. vol. 1, 2/5/19, at 49-50, ECF No. 248, PageID.8764-65).

spend valuable campaign time meeting with voters who will not support them, these candidates focus their campaign efforts elsewhere.

152. Plaintiffs also attempted to show that since the 2011 redistricting, they have had setbacks advocating for and passing voter rights legislation. Dr. Smith testified that in 2012 the League “met with Secretary of State Johnson to talk about the possibility of getting a bill introduced and passed” for no-reason absentee ballot voting. (Trial Tr. vol. 1, 2/5/19, at 64, ECF No. 248, PageID.8779). The Secretary “told [the League] she was interested in supporting that kind of legislation, but she wanted it introduced by the Republicans and that she would work with her staff to have a bill introduced. Eventually a bill was introduced.” (*Id.* at PageID.8779-80). Although the bill ultimately did not pass, the League was able to meet and communicate with the Secretary and with legislators, including meeting with House and Senate Election Committee Chairs to “talk about the League’s interest in voting rights” and no-reason absentee voting. (*Id.* at PageID.8780). Neither the First nor Fourteenth Amendment protects a right to have preferred legislation passed, and a bill’s failure to be enacted is not a cognizable injury for purposes of organizational standing. The League was by all accounts able to further its voting rights policy goals.

153. As a case in point, Dr. Smith stated that when the League did not succeed in passing legislation, it instead focused its efforts on passing Proposal 3

through a ballot initiative to amend the State Constitution to include certain voting rights, which was successful. (Trial Tr. vol. 1, 2/5/19, at 67, ECF No. 248, PageID.8782).

E. Findings of Fact Regarding Claims of Laches

154. The Plaintiffs unreasonably delayed in filing the instant matter. Plaintiffs filed their Complaint (ECF No. 1) more than 6 years after the Michigan Legislature adopted the 2011 Apportionment Plan, after three Congressional and Michigan House elections and after 1 Senate election.

155. Nine-year old data is unreliable, as demonstrated by the last election results in which Democrats gained two seats in Congress, five in the Michigan House, and five in the Michigan Senate. (*See* Trial Tr. vol. 1, 2/5/19, at 177-83, ECF No. 248, PageID.8892-8898).

156. The Defendant and Intervening Defendants have been harmed and their ability to defend against Plaintiffs' claims has been greatly hindered. This is demonstrated by the inability of various witnesses to recall conversations, the context of e-mail, the reasons why various actions took place. (*See, e.g.*, Hune Dep., ECF No. 129-43, PageID.4095-96; Marquardt Dep., ECF No. 129-46, PageID.4355). Additionally, various e-mails and other documents were undoubtedly lost due to elected officials leaving office and standard data purge

processes, changing personal computers and communication devices. (*See, e.g.*, Marquardt Dep., ECF No. 129-46, PageID.4407).

157. Due to “decay” of the districts due to movement of individuals between townships, cities and counties, the demographic make-up of the districts as established in 2011 is unknown. (Trial Tr. vol. 1, 2/5/19, at 177, ECF No. 248, PageID.8892; Trial Tr. vol. 2, 2/6/19, at 146-47, ECF No. 249, PageID.9083-84; Trial Tr. vol. 3, 2/7/19, at 104, ECF No. 250, PageID.9291).

158. Professor Warshaw acknowledged that the effects of a partisan gerrymander decay or wane over time. (Trial Tr. vol. 1, 2/5/19, at 177, ECF No. 248, PageID.8892). This is consistent with Professor Warshaw’s findings that the alleged pro-Republican bias in Michigan’s voting maps decreased 6.5% from 2012 to 2016. (Trial Tr. vol. 1, 2/5/19, at 177, 179, ECF No. 248, PageID.8892, 8894).

159. Mr. Timmer testified that since the 2010 census, upon which the 2011 legislative districts are based, at least 70,000 people have left Wayne County—almost enough for one House district. There is no data showing where these people have moved. (Trial Tr. vol. 3, 2/7/19, at 104, ECF No. 250, PageID.9291).

160. If new districts are drawn, they will be based on 2010 census data. Any districts drawn in 2019 using this data will likely establish districts in violation of established population variances, which by definition will be unconstitutional. (Trial Tr. vol. 3, 2/7/19, at 104, ECF No. 250, PageID.9291; Trial

Tr. vol. 2, 2/6/19, at 146-47, ECF No. 249, PageID.9083-84; *In re Apportionment of State Legislature—1982*, 413 Mich. 96, 141-142 (1982)). In other words, there is no current, reliable census data for the State that could be used for redistricting for the 2020 election.

161. If the instant Complaint had been filed in closer temporal proximity to enactment of the 2011 statutes redistricting the State of Michigan, the evidentiary problems and the lack of ability to craft a reasonable remedy would have largely be alleviated.

162. Plaintiffs' experts did not analyze data from the 2018 election and, therefore, no expert testified that the districts are currently gerrymandered or that Republicans received a partisan advantage in any particular district during the 2018 election. (*See* Chen Report, ECF No. 160-2, PageID.6408; Warshaw Report, ECF No. 161-3, PageID.6833-6834; Mayer Report, ECF No. 161-4, PageID.6895).

163. The Michigan League of Women Voters adopted a position statement in 2012 regarding redistricting:

The LWVMI supports population as the primary criterion for redistricting. Other factors of importance are contiguity, maintaining political and geographical boundaries and minority representation. Additional factors to be considered are communities of interest, competitiveness and compactness. There should be no preferential treatment for any party and no protection of incumbents. Redistricting should take place only once a decade following the decennial census.

(See ¶ 38 *supra*).

164. Despite previously asserting its claim, Plaintiff LWV waited over 6 years to file its Complaint in this matter. (Pls.’ Compl., ECF No. 1). The LWV seeks equitable relief. (*Id.*). It is appropriate for this Court to consider the impact of Plaintiffs’ delay in prosecuting their claims damaged Defendant and both Intervening Defendants. Additionally, the delay adversely impacts this Court’s ability to fashion relief consistent with constitutional population standards due to this delay. (*See* Senate Intervenors’ Conclusions of Law, Section IV.A., pp. 34-40).

F. Findings of Fact Regarding the Effects of the Redistricting Statutes.

165. Plaintiff produced the testimony and reports of experts asserting that the effect of the Michigan redistricting Acts is to unconstitutionally gerrymander the state. (Chen, Mayer & Warshaw Reports, ECF Nos. 129-51-129-53; Trial Tr. Vol 1, 2/5/19, ECF No. 248).

166. It is not controverted that the demonstration of illegal gerrymandering must be made on a “district-by-district” basis. (Pls.’ Resp. to Mot. Summ. J., ECF. No. 129, PageID.3362).

167. The “starting point” for Plaintiffs’ experts’ analysis was that the number of elected Democratic Party sponsored officials in Congress and the Michigan House and Senate was, as a percentage of statewide Democratic vote less

than the percentage of elected congressional and legislative officials. (Chen Report, ECF No. 129-51, PageID.4712; Mayer Report, ECF No. 129-52, PageID.4810; Warshaw Report, ECF 129-53, PageID.4916-17). In other words, the Plaintiffs' experts place primary reliance on "proportional" voting. (Mayer Dep., ECF No. 148-1, PageID.5531-32; Trial Tr. vol. 1, 2/5/19, at 118-19, ECF No. 248, PageID.8833-34).

168. "Proportional voting" has not been recognized as a valid measurement of partisan gerrymandering. (*See* Senate Intervenors' Conclusions of Law, Section II.A.3., pp. 16-18).

169. All experts used measurement tools to demonstrate alleged disparity of Democrat elected officials as to elected Republican officials on a statewide basis. (Def.'s Mot. in Limine, ECF No. 148, PageID.5505; Mayer Dep., ECF No. 148-1, PageID.5531; Trial Tr. vol. 1, 2/5/19, at 111-12, ECF No. 248, PageID.8826-27).

170. *Gill, supra*, requires demonstration of unconstitutional gerrymandering to be made on a district by district basis. None of the measurement tools utilized by the Plaintiffs' experts are capable of making this demonstration. (*See* Chen Report, ECF No. 129-51, PageID.4712; Mayer Report, ECF No. 129-52, PageID.4810; Warshaw Report, ECF 129-53, PageID.4916-17).

171. None of the Plaintiffs' experts' measurement tools consider other factors to explain votes such as the quality of candidates, fundraising, the quality of the opponent, impact of national issues, or demographic data showing that persons who vote democratic are largely located in cities whereby Republicans are more widely dispersed.

172. Mike Vatter is a State of Michigan employee who works for the Michigan Senate Democrats. He has done so for over 30 years. He was hired out of college by the Michigan Senate Democrats as a programmer/data specialist. Much of his work over the years has been in data processing, data research and IT work, such as setting up computers. (Trial Tr. vol. 2, 2/6/19, at 48, 152, ECF No. 249, PageID.8985, 9089).

173. Mr. Vatter also performed map drawing services for the Senate Democrats. He was the Senate Democrats' principal map drawer for 2000 and 2010 cycles. In this role, he was "an advocate for Democrats." (Trial Tr. vol. 2, 2/6/19, at 153, ECF No. 249, PageID.9090).

174. Mr. Vatter testified that "[t]here are a lot of factors that go into whether a Senate district is won or lost. The Democrats won those districts based on a very big Democratic year. Took them eight years to accomplish that, so but demographics do change." (Trial Tr. vol. 2, 2/6/19, at 141, ECF No. 249, PageID.9078).

175. In 2018, Congressional districts 8 and 11; State Senate districts 7, 12, 13, 20 and 29; and State House districts 19, 20, 40, 41 and 71 flipped from Republican to Democrat. (Trial Tr. vol. 2, 2/6/19, at 141-142, ECF No. 249, PageID.9078-79).

176. With respect to the Senate seats that flipped from Republican to Democrat in 2018, Vatter admitted that a “durable and lasting gerrymander” did not exist after 2018. (Trial Tr. vol. 2, 2/6/19, at 141-142, ECF No. 249, PageID.9078-79).

G. Findings of Fact Regarding the Ability to Grant Relief

177. Because of the delay between the 2011 enactment of the redistricting statutes and the filing of the Complaint, any relief may only apply to the Congressional and Michigan House Districts for the 2020 election due to the next redistricting census which will be in place for the 2022 elections.⁷

178. Due to demographic shifts of population in the nine years from the 2010 census, any new districts may violate mandated population standards for all districts. (*See* Senate Intervenors’ Conclusions of Law, Section IV.A., pp. 35-38).

⁷ Senate elections occur every four years with the last election for Senate occurring in November of 2018. Therefore the next Senate election will not take place until November 2022—after the next redistricting. (*See* Senate Intervenors’ Conclusions of Law, Section IV.B., pp. 40-42, finding that calling a special election truncating terms established by the Michigan Constitution by two years, and requiring the Senate to be elected three times in six years, is not supported by any findings herein and exceeds the probable authority of this Court).

Additionally, no expert stated that he could predict the outcome of an election in any new district for 2020, thereby defeating the purpose of establishing new districts which may have far fewer people than those currently in place. (*See* Chen Dep., ECF No. 147-1, PageID.5436; Mayer Dep., ECF No. 148-1, PageID.5544; Trial Tr. vol. 1, 2/5/19, at 178-79, ECF No. 248, PageID.8893-94).

179. When deposed, some individual Plaintiffs and League members stated that they do not always vote for the Democratic candidate in every race or that they do not have a political party affiliation. (*See, e.g.*, Brdak Dep., ECF No. 252-4, PageID.9461; Poore Dep., ECF No. 252-6, PageID.9526-9527; DeMaire Dep., ECF No.252-7, PageID.9553; Woloson Dep., ECF No. 252-8, PageID.9582; Sain Dep., ECF No. 252-9, PageID.9615). In addition to a candidate's political party, they consider many things before voting, such as the candidate's platform, experience, viewpoints, engagingness, name recognition, and affiliations. (*See, e.g.*, Ellis Dep., ECF No. 252-2, PageID.9404; Duemling Dep., ECF No. 252-5, PageID.9502; Poore Dep., ECF No. 252-6, PageID.9522, 9527; DeMaire Dep., ECF No.252-7, PageID.9553; Woloson Dep., ECF No. 252-8, PageID.9582, 9590.)

The outcome of any particular race may also be impacted by voter turnout in an election. (*See e.g.*, Ellis Dep., ECF No. 252-2, PageID.9404; Duemling Dep., ECF No. 252-5, PageID.9501; Sain Dep., ECF No. 252-9, PageID.9625-9626.).

III. CONCLUSION

For the reasons stated herein and the related Conclusions of Law, Plaintiffs have failed to demonstrate standing to bring their claims, and their claims should be dismissed. If this Court finds that Plaintiffs have standing, their First and Fourteenth Amendment partisan gerrymandering claims should be dismissed as nonjusticiable political questions. If this Court finds Plaintiffs' claims to be justiciable, Plaintiffs have failed to produce the evidence required to prove their claims and their claims are barred by laches. This Court is unable to grant Plaintiffs any relief because the 2010 census data that would be used to redraw district boundaries is no longer accurate and the redrawn districts would violate the federal "one person, one vote" standard. In every aspect of this case, Plaintiffs are unable to succeed, and judgment should be entered for the Defendant Secretary and the Congressional, House, and Senate Intervenors.

Respectfully submitted,

DYKEMA GOSSETT PLLC

Date: February 22, 2019

By: /s/ Jason T. Hanselman
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CERTIFICATE OF SERVICE

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

DYKEMA GOSSETT PLLC

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