

**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.

No. 2:17-cv-14148

Hon. Eric L. Clay
Hon. Denise Page Hood
Hon. Gordon J. Quist

**DEFENDANT'S PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

As ordered by the Court in its Case Management Order No. 2 (ECF 140, PageID.5225), and at the conclusion of the trial in this case on February 7, 2019, Defendant Jocelyn Benson, in her official capacity as Michigan Secretary of State, by her counsel, Miller, Canfield, Paddock and Stone, P.L.C., respectfully proposes the following findings of fact and conclusions of law:

FINDINGS OF FACT

A. Background on Redistricting in Michigan.

1. By statute, the districts for Michigan's State Senate and House of Representatives and Michigan's federal congressional seats are redrawn every ten years following the decennial United States census. Mich. Comp. Laws §§ 3.62–3.63 (congressional districts); Mich. Comp. Laws § 4.261 (state legislative districts).

2. The Michigan Legislature is tasked with redrawing the state and federal district maps. *Id.*

3. Redistricting plans for both the state legislative and federal congressional districts must comply with certain criteria commonly known as the “Apol standards.” *See* Mich. Comp. Laws §§ 3.63, § 4.261.

4. For congressional districts, each district is required to “achieve precise mathematical equality” of population with every other district and must also comply with the Voting Rights Act's provision for majority-minority districts. (*See* Pls.' Trial Ex. 1, Mich. Comp. Laws §§ 3.63(b).)

5. To the extent possible, congressional redistricting plans are also required to be geographically contiguous; break as few county boundaries as possible; shift the minimum population necessary to achieve numerical equality; break as few city and township boundaries as possible; and, where a city or

township is split between two districts, achieve maximum compactness. (*See* Pls.' Trial Ex. 1, Mich. Comp. Laws § 3.63(c).)

6. Similarly, state legislative districts must be contiguous; contain a population between 95% and 105% of the arithmetic ideal; break as few county boundaries as possible; shift the minimum number of cities or townships necessary to achieve the requisite population; break as few city and township boundaries as possible; and, where a split occurs, shift the minimum population necessary and achieve maximum compactness. (*See* Pls.' Trial Ex. 2, Mich. Comp. Laws §§ 4.261.)

7. Michigan received the 2010 census data in March 2011. (*See* ECF 250, Test. of Jeffrey Timmer, Feb. 7 Trial Tr. at 157, PageID.9344.)

8. On June 16, 2011, the Michigan Legislature introduced two bills proposing new districts for the State House and Senate and for Michigan's congressional seats. These bills were ultimately enacted into law as 2011 PA 128 and 2011 PA 129.

9. The Secretary of State is the State's chief election officer and charged with administering the State's electoral system. Mich. Comp. Laws § 168.21; *see also* Mich. Const. 1963, art. V, §§3, 21. As the chief election officer, the Secretary's duties include promulgating rules for the conduct of elections, publishing information and forms relating to elections, and advising and directing

local election officials regarding the conduct of elections. *See* Mich. Comp. Laws § 168.31 (enumerating duties of Secretary under Michigan’s Election Law); *see also* *Elections in Michigan*, MICH. SECRETARY OF STATE, <https://www.michigan.gov/sos/0,4670,7-127-1633---,00.html>.

10. In the course of exercising oversight over the election process, the Secretary also enforces and administers the district lines demarcated by the 2011 maps that Plaintiffs challenge. *See* Mich. Comp. Laws §§ 3.53; 4.2003.

11. The 2011 district maps are slated to remain in place through the 2020 election cycle, after which Michigan’s nonpartisan, Independent Citizens Redistricting Commission will draw district maps under Michigan’s Constitution, as amended by Proposal 2 (2018).

B. The 2011 Redistricting Process.

12. The Michigan Republican Caucus contracted with the Michigan Redistricting Resource Institute (“MRRI”) to draw the 2011 congressional maps. (Pls.’ Trial Ex. 508A, Labrant Dep. at 140–41.)

13. MRRI’s goal for the map-drawing process was to “ensure [the Republicans] have a solid 9-5 [congressional] delegation in 2012 and beyond.” (Pls.’ Trial Ex. 252; *see also* ECF 250, Test. of Jeffrey Timmer, Feb. 7 Trial Tr. at 130, PageID.9317.)

14. MRRI in turn retained Dykema Gossett (Pls.' Trial Ex. 379), Dickinson Wright (Pls.' Trial Ex. 378), Jones Day (Pls.' Trial Ex. 240), and Sterling Corporation (Pls.' Trial Ex. 273) to assist Michigan House and Senate Republicans with the 2011 map drawing. (*See also* ECF 250, Test. of Jeffrey Timmer, Feb. 7 Trial Tr. at 75, 119, PageID.9262, 9306.)

15. Sterling Corporation is a Republican consulting firm. (*Id.* at 118, PageID.9305.)

16. Jeffrey Timmer of Sterling Corporation was principally responsible for drawing the congressional districts; Terry Marquardt for the State Senate districts; and Daniel McMaster for the State House districts. (*Id.* at 133, PageID.9320.)

17. The map drawers used political voting data in drawing the districts. (*See* ECF 250, Feb. 7 Trial Tr. at 129, PageID.9316; Pls. Trial Ex. 513A, Timmer Dep. at 29; Pls.' Trial Ex. 509, Marquardt Dep. at 40–43, 195–97.)

18. Timmer, Marquardt, and McMaster, along with David Murley, a representative of the Governor's office, and a number of attorneys participated in a series of regular map drawing meetings at the Dickinson Wright law firm in Lansing throughout the first half of 2011. (*Id.*; Pls.' Trial Ex. 513A, Timmer Dep. at 56; Pls.' Trial Ex. 509, Marquardt Dep. at 82; Pls.' Trial Ex. 515, McMaster Dep. at 52–54; Pls.' Trial Ex. 508B, Labrant Dep. at 235–37.)

19. No Democratic legislators or representatives were present at any of the map drawing meetings. (Pls.' Trial Ex. 513A, Timmer Dep. at 56; *also* ECF 250, Test. of Jeffrey Timmer, Feb. 7 Trial Tr. at 133, PageID.9320.)

20. During the map-drawing process, the map drawers shared proposed district maps with members of Michigan's Republican congressional delegation and State House and Senate caucuses. The map drawers received feedback on the maps from Michigan Republicans and in some instances made changes to the proposed maps or created new draft maps in response to that feedback. (*See, e.g.*, Pls.' Trial Exs. 186, 222, 223, 321, 244–49, 252, 412, 470.) That included feedback from congressional representatives who, since they were not members of the Michigan Legislature, would not be voting on the plans. (*See generally id.*)

21. The final proposed maps were introduced in the Legislature in June 2011, several months before the November statutory deadline.

22. Democratic Senate Minority Leader Gretchen Whitmer and Democratic map drawer Michael Vatter met with the Republican map drawers in June of 2011 after the proposed redistricting maps had been published. (ECF 250, Test. of Jeffrey Timmer, Feb. 7 Trial Tr. at 134, PageID.9321.)

23. Then-Senator Whitmer introduced a substitute plan in the Senate on June 23, 2011, which was not adopted. (*Id.* at 116–17, PageID.9303–04; Sec'y Trial Ex. 6, Timmer Report at 16, 22 n.5.)

24. When the Republican-led House Elections and Redistricting Committee introduced the redistricting bills, the committee initially provided only a “shell bill,” without any information on the redistricting, and then later provided a copy of the bill containing descriptions of the districts using census data and property tract descriptions; the bill did not contain a visual map of the districts. (ECF 248, Test. of Susan Smith, Feb. 5 Trial Tr. at 56–58, PageID.8771–73.)

25. Voters reviewing the draft redistricting bills had difficulty discerning to which districts they would belong based on the census and tract data provided by the House Committee. (*Id.* at 57–58, PageID.8772–73.)

26. The changes made to the district maps for Congressional Districts 1, 4, 7, 8, 10, and 11; Senate Districts 8, 10, 12, 13, 14, 22, 32, and 36; and House Districts 24, 32, 51, 52, 63, 76, 91, and 94 made each district more Republican. The changes made to the district maps for Congressional Districts 5, 9, and 12; Senate Districts 9, 11, 18, and 27; and House Districts 53, 54, 55, 60, 61, 62, 75, 92, and 95 made each district more Democratic. (ECF 249, Test. of Michael Vatter, Feb. 6 Trial Tr. at 62–100, PageID.8999–9037 ECF; ECF 249, Test. of Brandon Dillon, Feb. 6 Trial Tr. at 173–74, PageID.9110–11.)

27. Both bills were passed by the Republican-controlled Legislature and signed into law by Republican Governor Rick Snyder. The congressional district plan passed the House by a vote of 63–47, and by the Senate with a vote of 29–13.

HOUSE BILL 4780 (2011), available at:

[http://www.legislature.mi.gov/\(S\(ddwuiqc5ct2wp4hy3xf5p4tq\)\)/mileg.aspx?page=getObject&objectName=2011-HB-4780](http://www.legislature.mi.gov/(S(ddwuiqc5ct2wp4hy3xf5p4tq))/mileg.aspx?page=getObject&objectName=2011-HB-4780). The State legislative district plan passed

the House by a vote of 65–42, and by the Senate with a vote of 29–9. SENATE BILL

0498 (2011), available at:

[http://www.legislature.mi.gov/\(S\(ddwuiqc5ct2wp4hy3xf5p4tq\)\)/mileg.aspx?page=getObject&objectName=2011-SB-0498](http://www.legislature.mi.gov/(S(ddwuiqc5ct2wp4hy3xf5p4tq))/mileg.aspx?page=getObject&objectName=2011-SB-0498).

28. The 2011 enacted districts assume a number of strange and abstract shapes that did not exist under the previous maps and cannot be reasonably explained by the Apol standards, including but not limited to:

- a. Congressional District 4, which resembles a “chef with a pipe” (ECF 249, Test. of Karen Sherwood at 9, PageID.8946);
- b. Congressional District 5, the border of which contains a number of jagged inlets (*see* Sec’y Trial Ex. 3);
- c. Congressional District 7, which carves out Calhoun County, the home county of the Democratic representative who held the seat at the time of the redistricting (ECF 249, Test. of Michael Vatter at 72, PageID.9009);
- d. State House District 32, which is shaped like a cross (*see* Sec’y Trial Ex. 1);

- e. State House District 51, which resembles a dented tuning fork (*see id.*); and
 - f. State House District 76, which wraps around the city of Grand Rapids in approximately the shape of a three-leaf clover (*see id.*).
29. The Plaintiffs subsequently brought suit challenging Congressional Districts 1, 4, 5, and 7–12; Senate Districts 8, 10–12, 14, 18, 22, 27, 32, and 36; and House Districts 24, 32, 51, 52, 55, 60, 62, 63, 75, 76, 83, 91, 92, 94, and 95, asserting that they were purposefully either “packed” or “cracked” based on partisan reasons to favor Republicans by diluting Democratic voters in violation of the First and Fourteenth Amendments to the U.S. Constitution (the “Challenged Districts”). (ECF 143, Op. & Order re Dispositive Mots., PageID.5304; ECF 249, Feb. 6 Trial Tr. at 156–57, PageID.9093–94.)

C. The Impact of the 2011 District Maps on Michigan Voters.

30. The enacted 2011 district maps “packed” Democratic voters into certain districts to create an abnormally high concentration of Democratic votes and “cracked” the remaining Democratic voters across a number of other districts to disperse their votes.

31. This packing and cracking of Democratic voters has had real and lasting impacts on voter participation and citizen engagement across Michigan, particularly among Democratic voters.

32. Specifically, in cracked districts, the Democratic Party has had difficulty recruiting candidates to run for office, raising money, and energizing volunteers because, based on historical election results, voters and donors believe that the Democratic candidate is very unlikely to win. (ECF 249, Test. of Brandon Dillon, Feb. 6 Trial Tr. at 162–63, PageID.9099–100.)

33. Democratic voters in cracked districts have decreased their participation in the campaigning and election process because they believe that the cracked nature of their district decreases their political power, leads to their representatives being less responsive, and makes it more likely that their efforts to elect their preferred candidate will be futile. (*E.g., id.* at 163–64, PageID.9100–01; ECF 248, Test. of Susan Smith, Feb 5. Trial Tr. at 63–64, PageID.8778–79; ECF 249, Test. of Karen Sherwood, Feb. 6 Trial Tr. at 16, PageID.8953; ECF 249, Test. of Andrea Yokich, Feb. 6 Trial Tr. at 210–13, PageID.9147–50; ECF 250, Test. of Rosa Holliday, Feb. 7 Trial Tr. at 41–44, PageID.9228–31; Trial Dep. of Adalea Janice Sain-Steinborn at 18–20, 58–59; Trial Dep. of Angela Ryan at 14–17, 43; Trial Dep. of Harold Lynn Jondahl at 15–21; Trial Dep. of Carolyn Vertin at 13–15; Trial Dep. of Christine Canning-Peterson at 13–18; Trial Dep. of Jane Speer at 12–20; Trial Dep. of Jill Corrine Kroll at 9–13; Trial Dep. of Linda Stoetzer at 12–14; Trial Dep. of Lisa Morse at 12–15; Trial Dep. of Shirley Zeller at 19–21; Trial Dep. of Donna Farris at 13–17; Trial Dep. of Janice Yannello Watkins at 17–19,

27–34, 74–75; Trial Dep. of Linda Aerts at 12–19; Trial Dep. of Melissa Shaffer-O’Connell at 10–14; Trial Dep of Paula Bowman at 21–26, 31–33; Trial Dep. of Trina Rae Borenstein at 28–35.)

34. Democratic donors are reluctant to contribute to races in cracked districts where they do not believe their money is going to impact the outcome. (ECF 249, Test. of Brandon Dillon, Feb. 6 Trial Tr. at 163, PageID.9100.)

35. Election results in the Challenged Districts tend to bear out this sentiment. As an example, in Congressional District 11, two elections were held simultaneously for the seat in 2012 after the incumbent resigned, a special election under the pre-2011 map and the regularly-scheduled election using the 2011 map. (*Id.* at 166, PageID.9103.) Under the old map, the Republican candidate lost the special election to fill a vacant seat for the remainder of a term; under the new map, the same Republican candidate won the election. (*Id.* at 166–67, PageID.9103–04.)

36. After the 2011 maps were enacted, Republican candidates running in cracked districts have also tended to be less responsive to invitations to candidate forums, and Republican legislators elected in those districts have likewise tended to be less willing to meet with voters regarding their concerns. (ECF 248, Test. of Susan Smith, Feb 5. Trial Tr. at 61–63, PageID.8776–78.)

37. In packed districts, Democratic voters and donors tend to be similarly disengaged because they believe that their preferred candidate will win regardless of their efforts, including whether they vote. (ECF 249, Test. of Brandon Dillon, Feb. 6 Trial Tr. at 172–73, PageID.9109–10; ECF 249, Test. of Thomas Haley, Feb. 6 Trial Tr. at 238–41, PageID.9175–78; ECF 250, Test. of William Grasha, Feb. 7 Trial Tr. at 15–16, PageID.9202–03; ECF 250, Test. of Rosa Holliday, Feb. 7 Trial Tr. at 41–44, PageID.9228–31; Trial Dep. of Doris Sain at 16–23; Trial Dep. of Heidi Kromrei at 13–15; Trial Dep. of Deborah Cherry at 13–18; Trial Dep. of Denise Hartsough at 13–16; Trial Dep. of Margaret Leary at 18–21; Trial Dep. of Elianna Bootzin at 11–13, 26–28; Trial Dep. of Julia Caroff at 13–15, 23–29, 33–39.)

38. The experience of Democratic candidates in the Challenged Districts tends to bear out this voter sentiment. For example, in House District 75, in the 2010 election, the Democratic candidate won by a very small margin in “one of the most contributed-to races” in the State, after “knock[ing] on 20,000 doors” with “hundreds of volunteers.” (*Id.* at 173–74, PageID.9110–11.) By contrast, under the 2011 maps, the same Democratic candidate knocked on “virtually zero doors” and received almost 76% of the vote. (*Id.*)

39. Overall, voters in both “packed” and “cracked” districts have decreased their participation in the political process, believe that their districts are

unfair and that their votes carry less weight, and feel that their representatives are less responsive as a result of the 2011 district maps. (*E.g.*, Trial Dep. of Gerald DeMaine at 25–35; Trial Dep. of Jack Ellis at 24–39; Trial Dep. of Kathleen Poore at 25–32; Trial Dep. of Sherrill Leigh Smith at 23–26, 31–37; Trial Dep. of Harvey Somers at 17–23; Trial Dep. of Josephine Feijoo at 11–13, 19, 22–25; Trial Dep. of Nancy Duemling at 24–27; Trial Dep. of Nanette Noorbaksh at 30–34; Trial Dep. of Paul Purcell at 22–35; Trial Dep. of Maria Woloson at 23–34.)

D. Expert Evidence on the Impact of the 2011 District Maps.

40. Each of Plaintiffs’ experts Jowei Chen, Ph.D., Kenneth R. Mayer, Ph.D., and Christopher Warshaw, Ph.D., has the requisite knowledge, skill, experience, training, and education to be qualified as an expert for purposes of this case. (*See generally* Pls.’ Trial Ex. 52, Chen CV; Pls.’ Trial Ex. 125, Mayer CV; Pls.’ Trial Ex. Pls.’ Trial Ex. 156, Warshaw CV.)

41. The opinions and testimony of Plaintiffs’ experts are based on sufficient facts and data and are the product of reliable principles and methods, which each expert has reliably applied to the facts of this case. (*See generally* Pls.’ Trial Ex. 3, Chen Report; Pls.’ Trial Ex. 53, Mayer Report; Pls.’ Trial Ex. 129, Warshaw Report.)

42. The statistical analysis and metrics used by Plaintiffs’ experts are generally accepted by their social scientific community. *See, e.g., Common Cause*

v. Rucho, 318 F. Supp. 3d 777, 885–94 (M.D.N.C. 2018); *Whitford v. Gill*, 218 F. Supp. 3d 837, 903–10 (W.D. Wis. 2016), *vacated and remanded*, 138 S. Ct. 1916 (2018). (*See generally* Pls.’ Trial Ex. 3, Chen Report at 5–13; Pls.’ Trial Ex. 53, Mayer Report at 2–28; Pls.’ Trial Ex. 129, Warshaw Report at 5–12.)

43. No opposing expert witness has offered any opinion or evidence using the same, or equally reliable, statistical methods and measures as Plaintiffs’ experts that contradict the findings and conclusions of Plaintiffs’ experts.

44. Further, no opposing expert witness has provided any alternative statistical measure to assess the 2011 district maps’ partisan symmetry or bias.

45. The expert evidence presented in this case confirms that the enacted 2011 maps display more extreme partisan bias than alternative maps not drawn with partisan intent.

46. Specifically, the enacted congressional district plan contains more pro-Republican districts than any of the 1,000 alternative districts simulated by Plaintiffs’ expert Dr. Jowei Chen using Michigan’s statutory redistricting criteria. (Pls.’ Trial Ex. 3, Chen Report at 14; Pls.’ Trial Ex.5, Chen Report tbl. 2; Ex. 6, Chen Report fig. 1; Ex. 7, Chen Report fig. 2).

47. The same is true for Michigan’s enacted Senate plan. (Pls.’ Trial Ex. 3, Chen Report at 26; Pls.’ Trial Ex.12, Chen Report tbl. 3; Ex. 13, Chen Report fig. 7; Ex. 14, Chen Report fig. 8.)

48. Dr. Chen also made the same finding as to the Michigan House plan. (Pls.' Trial Ex. 3, Chen Report at 39; Pls.' Trial Ex.19, Chen Report tbl. 4; Ex. 20, Chen Report fig. 13; Ex. 21, Chen Report fig. 14.)

49. The districts of the enacted congressional plan are also less geographically compact and contain more county and municipal breaks than any of Dr. Chen's 1,000 simulated maps. (*See* Pls.' Trial Ex. 3, Chen Report at 14; Pls.' Trial Ex.5, Chen Report tbl. 2.) The same is true for Michigan's enacted Senate and House plans. (Pls.' Trial Ex. 12, Chen Report tbl. 3; Pls.' Trial Ex.19, Chen Report tbl. 4.)

50. One of the metrics for measuring a redistricting plan's partisan bias is the mean-median difference, which calculates the difference between a party's vote share in the median district versus that party's average vote share across all districts. (Pls.' Trial Ex. 129, Warshaw Report at 9.) If a party wins more votes in the median district than in the average district, that party has an advantage in translating votes to seats. (*Id.*)

51. The enacted congressional plan's mean-median difference indicates that the enacted plan distributes voters across districts in such a way that most districts are significantly more Republican-leaning than the average congressional district, while Democratic voters are more heavily concentrated in a minority of districts. (Pls.' Trial Ex. 3, Chen Report at 18.) The same is true of the enacted

Senate and House plans. (Pls.’ Trial Ex. 3, Chen Report at 33–34, 46–47; *see also* Pls.’ Trial Ex. 129, Warshaw Report at 42.)

52. The extremity of the enacted plans’ mean-median difference cannot be explained by natural variations in Michigan’s voter geography and is more extreme than any of Dr. Chen’s 1,000 simulated districts. (Pls.’ Trial Ex. 3, Chen Report at 23, 36, 49; Pls.’ Trial Ex. 10, Chen Report fig. 5; Pls.’ Trial Ex. 17, Chen Report fig. 11; Pls.’ Trial Ex. 24, Chen Report fig. 17.)

53. The degree of the enacted plans’ mean-median difference indicates both cracking and packing. (Pls.’ Trial Ex. 53, Mayer Report at 32, 41, 51.)

54. Declination is an alternative formula for measuring the partisan asymmetry of a district plan by calculating the slope of the vote percentages for each party under the plan on either side of the 50% “neutral” line; this metric shows how election results under the enacted plan diverge from the randomized pattern expected under a nonpartisan plan. (Pls.’ Trial Ex. 53, Mayer Report at 25–27.) A larger absolute declination value indicates more cracked and packed districts. (*Id.*)

55. The declination values for Michigan’s elections following the 2011 redistricting plan strongly indicate a pro-Republican bias resulting from a number of districts that Democrats lost by a narrow margin (i.e., cracked districts) in combination with several districts that Democrats won by a significant margin (i.e.,

packed districts). (See Pls.’ Trial Ex. 129, Warshaw Report at 20, 36; Pls.’ Trial Ex. 53, Mayer Report at 34–35, 43–45, 53–54; Pls.’ Trial Ex. 65, Mayer Report fig. 7; Pls.’ Trial Ex. 66, Mayer Report fig. 8; Pls.’ Trial Ex. 75, Mayer Report fig. 15; Pls.’ Trial Ex. 76, Mayer Report fig. 16; Pls.’ Trial Ex. 85, Mayer Report fig. 23; Pls.’ Trial Ex. 86, Mayer Report fig. 24.)

56. Another metric used to evaluate a plan’s partisan bias is the efficiency gap, which measures the proportion of “wasted” votes across a district map in a given election (or series of elections) by assessing how many votes were cast (1) for the losing candidate and (2) for the winning candidate in excess of the 50% + 1 vote needed to win, in comparison to the total votes. (Pls.’ Trial Ex. 53, Mayer Report at 19–20.) The efficiency gap aggregates and “mathematically captures” the cracking and packing that characterize a partisan gerrymander. (Pls.’ Trial Ex. 129, Warshaw Report at 8.)

57. Michigan’s enacted 2011 congressional district map resulted in an efficiency gap more extreme than any of Dr. Chen’s 1,000 simulated maps. (Pls.’ Trial Ex. 3, Chen Report at 25; Pls.’ Trial Ex. 11, Chen Report fig. 6. The same is true for the enacted Senate and House maps. Pls.’ Trial Ex. 3, Chen Report at 38, 51; Pls.’ Trial Ex. 18, Chen Report fig. 12; Pls.’ Trial Ex. 25, Chen Report fig. 18; (ECF 248, Test. of Christopher Warshaw, Ph.D, Feb 5. Trial Tr. at 61–63, PageID.8776–78.)

58. The efficiency gap resulting from the 2011 district maps is extreme relative both to the historical efficiency gap in Michigan and to the efficiency gap in other states. (Pls.' Trial Ex. 129, Warshaw Report at 16–17, 33–36; Pls.' Trial Ex. 133, Warshaw Report fig. 2; Pls.' Trial Ex. 136, Warshaw Report fig. 5; Pls.' Trial Ex. 137, Warshaw Report fig. 6; Pls.' Trial Ex. 144, Warshaw Report fig. 12; Pls.' Trial Ex. 147, Warshaw Report fig. 15; Pls.' Trial Ex. 148, Warshaw Report fig. 16.)

59. Specifically, the pro-Republican tilt of Michigan's efficiency gap increased sharply between the 2010 and 2012 election cycles, following the 2011 redistricting. (Pls.' Trial Ex. 129, Warshaw Report at 16–17, 33–36; Pls.' Trial Ex. 136, Warshaw Report fig. 5; Pls.' Trial Ex. 147, Warshaw Report fig. 15.)

60. The acute change in Michigan's efficiency gap between the 2010 and 2012 election cycles has substantially endured through the 2014 and 2016 election cycles. (Pls.' Trial Ex. 53, Mayer Report at 31–32, 41, 51; Pls.' Trial Ex. 129, Warshaw Report at 16–17, 33–36; Pls.' Trial Ex. 135, Warshaw Report fig. 4; Pls.' Trial Ex. 136, Warshaw Report fig. 5; Pls.' Trial Ex. 146, Warshaw Report fig. 14; Pls.' Trial Ex. 147, Warshaw Report fig. 15.)

61. Michigan's large efficiency gap is correlated with the overall low level of trust that Michigan residents indicated they have in their representatives.

(Pls.' Trial Ex. 129, Warshaw Report at 28–29; Pls.' Trial Ex. 143, Warshaw Report fig. 11.)

62. A large efficiency gap also correlates with increasing legislative polarization and more extreme partisan policy outcomes. (Pls.' Trial Ex. 129, Warshaw Report at 24–25, 39–41; Pls.' Trial Ex. 140, Warshaw Report fig. 9; Pls.' Trial Ex. 141, Warshaw Report tbl. 3; Pls.' Trial Ex. 142, Warshaw Report fig. 10; Pls.' Trial Ex. 151, Warshaw Report tbl. 4; Pls.' Trial Ex. 152, Warshaw Report tbl. 5; *see also* ECF 248, Test. of Susan Smith, Feb 5. Trial Tr. at 66–67, PageID.8781–82.)

63. The 2011 district lines were drawn in such a way that Republican control over Michigan's Legislature and Congressional delegation would have been durable even under a reasonable range of alternative electoral conditions. (Pls.' Trial Ex. 3, Chen Report at 53; Pls.' Trial Ex. 6, Chen Report tbl. 51 Pls.' Exs. 29–35, Chen Report App'x C.)

64. A comparison of the statewide vote share won by each party with the corresponding seat share attained by each party under the 2011 district maps displays a significant partisan bias in favor of the Republican Party. (Pls.' Trial Ex. 53, Mayer Report at 30–31, 41, 51.)

65. Dr. Chen identified Congressional Districts 1, 4, 5, 8, 9, 10, 11, and 12 as partisan outliers; Senate Districts 8, 9, 18, 22, 24, 27, and 32 as partisan

outliers; and House Districts 11, 12, 14, 16, 19, 20, 21, 30, 31, 32, 36, 43, 44, 45, 51, 52, 53, 55, 57, 60, 62, 63, 65, 69, 75, 76, 80, 87, 91, 92, 94, 98, 103, 105, 106, and 107 as partisan outliers. (Pls.’ Trial Ex.3, Chen Report at 56; Pls.’ Exs. 36–51, Chen Report App’x D.)

66. These “partisan outliers” are also known as “packed” or “cracked” districts. (Pls.’ Trial Ex.3, Chen Report at 55.)

67. There are alternative district maps that could have been adopted that would have met the statutory redistricting criteria—in some instances better than the enacted districts—and Voting Rights Act requirements that would have resulted in less partisan bias and a less severe efficiency gap. (*See generally* Pls.’ Trial Ex. 53, Mayer Report at 59–81; ECF 249, Test. of Michael Vatter, Feb. 6 Trial Tr. at 97–107, PageID.9034–44; Pls.’ Demonstrative Exs. 1–75.)

68. Defendant-Intervenors have not presented any affirmative expert evidence, using the same, or equally reliable, statistical metrics and analysis as Plaintiffs’ experts that the 2011 districting plan did not result from partisan gerrymandering.

CONCLUSIONS OF LAW

A. Standard of Review.

69. As this Court previously held in its November 30, 2018 Opinion and Order, an electoral map constitutes a partisan gerrymandering in violation of the

Fourteenth Amendment’s Equal Protection Clause where (1) “a legislative map drawer’s predominant purpose in drawing the lines of a particular district was to subordinate adherents of one political party and entrench a rival party in power” (discriminatory intent) and (2) “the lines of a particular district have the effect of discriminating against—or subordinating—voters who support candidates of a disfavored party, if the district dilutes such voters’ votes by virtue of cracking or packing” (discriminatory intent). ECF 143, Op. & Order, PageID.5330–31 (internal quotation marks omitted).

70. If the Plaintiffs prove the foregoing elements, the burden shifts to the Defendant-Intervenors to “prove that a legitimate state interest or other neutral factor justified such discrimination.” *Id.*, PageID.5331.

71. Similarly, to demonstrate a violation of voters’ First Amendment associational rights with respect to partisan gerrymandering, the Plaintiffs must show (1) that the challenged districting plan was intended to burden individuals that support a disfavored candidate or political party; (2) that the plan in fact burdened those individuals’ political speech or associational rights; and (3) that a causal relationship existed between the discriminatory motive and the First Amendment burden. *Id.*, PageID.5334.

B. Plaintiffs Have Shown that the Predominant Purpose and Intent of the 2011 District Maps was to Dilute Democratic Votes and Burden the Political Speech and Associational Rights of Democratic Voters.

72. Plaintiffs have presented sufficient evidence to show that the predominant purpose and intent of the configuration of Michigan's 2011 district maps was to dilute Democratic votes and burden Democratic voters' political speech and associational rights.

73. The districts enacted by the 2011 plan include a number of visually strange and abstract shapes, including House District 76, which wraps around the city of Grand Rapids in the shape of a three-leaf clover; House District 32, in the shape of a cross near St. Clair; and Congressional District 10, which contains a thin "finger" of unpopulated land extending down into the adjacent district. (*See* Sec'y Trial Exs. 1, 2, 3; *see also* ECF 249, Test. of Andrea Yokich, Feb. 6 Trial Tr. at 215, PageID.9152; ECF 250, Test. of William Grasha, Feb. 7 Trial Tr. at 20, PageID.9207; Pls.' Trial Ex. 426 ("I was altering the map . . . but thought it simply looked weird.")) The bizarre irregularity of many of the district shapes suggests that considerations beyond the traditional statutory criteria were taken into account when drawing the maps. *See Davis v. Bandemer*, 478 U.S. 109, 116, 128 (1986) (plurality op.); *see also Bandemer*, 478 U.S. at 173–77 (Powell, J., concurring in part and dissenting in part).

74. In configuring the 2011 districts, the map-drawers routinely utilized political data to measure whether and to what extent a change in district lines would impact the percentage of the voters who were likely to vote Republican, including by displaying partisan polling data at the bottom of proposed maps, some of which were shared with legislators. (*See* ECF 250, Test. of Jeffrey Timmer, Feb. 7 Trial Tr. at 129, 186 – 87, PageID.9316, 9323–24; Pls. Trial Ex. 513A, Timmer Dep. at 29; Pls.’ Trial Ex. 509, Marquardt Dep. at 40–43, 195–97; Pls.’ Trial Exs. 227, 396, 412, 460.) The use of political data to evaluate a plan’s projected performance supports a finding that subordinating Democratic votes, and inversely favorably benefitting Republican votes, was a primary consideration. *Rucho*, 318 F. Supp. 3d at 869–70.

75. The 2011 district maps, as ultimately enacted, shifted clusters of population that could be identified by partisanship from historical election data; these shifts had the effect of making the resulting districts quantifiably more or less Democratic or Republican. (*See* ECF 249, Test. of Michael Vatter, Feb. 6 Trial Tr. at 62–100, PageID.8999–9037.) This shifting of population based on partisan election data makes it more likely that the redistricting intended to dilute Democratic votes. *Rucho*, 318 F. Supp. 3d at 868–70.

76. The map drawers also altered district boundaries and constituent populations in response to feedback and requests from incumbent Republican

legislators. (*See, e.g.*, Pls.’ Trial Ex. 513B, Timmer Dep. at 126–31, 141, 191, 220–29; ECF 250, Test. of Jeffrey Timmer at 88, 140–43, PageID.9275, 9327–30; Pls.’ Trial Exs. 186, 222, 223, 321, 244–49, 252, 412, 470.) This direct partisan input into the redistricting process suggests that securing a continuing partisan advantage was a primary consideration in drawing the districts. *See Rucho*, 318 F. Supp. 3d at 869; *see also Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977).

77. Democratic legislators were not invited to participate in the map drawing process until the maps were in nearly final form. (*See* ECF 250, Test. of Jeffrey Timmer at 155–58, PageID.9342–45.) This exclusion from and inability “to effectively influence the political process” lends support to the notion that the districts were designed to subordinate Democratic political voices. *Rucho*, 318 F. Supp. 3d at 868–69; *Bandemer*, 478 U.S. at 132–33.

78. Alternative district configurations existed for the State House, State Senate, and federal Congressional districts that would have complied with Michigan’s statutory redistricting criteria as well as or better than the enacted plan but resulted in fewer pro-Republican districts. (*See* Pls.’ Trial Ex. 3, Chen Report at 14, 26, 39; Pls.’ Trial Ex.5, Chen Report tbl. 2; Ex. 6, Chen Report fig. 1; Ex. 7, Chen Report fig. 2.; Pls.’ Trial Ex.12, Chen Report tbl. 3; Ex. 13, Chen Report fig. 7; Ex. 14, Chen Report fig. 8; Pls.’ Trial Ex. 19, Chen Report tbl. 4; Pls. Trial Ex.

20, Chen Report fig. 13; Pls. Trial Ex. 21, Chen Report fig. 14.) Where, as here, “a computer randomly draws ... hundred[s] [of] redistricting plans following traditional redistricting criteria, and the actual enacted plans fall completely outside the range of what the computer has drawn, one can conclude that the traditional criteria do not explain that enacted plan,” thereby providing further evidence of intent. *Raleigh Wake Citizens Ass’n v. Wake Cty. Bd. of Elections*, 827 F.3d 333, 344 (4th Cir. 2016); *Rucho*, 318 F. Supp. 3d at 875.

79. Additionally, the Intervenors have not offered any set of simulated or demonstrative maps to contradict Plaintiffs’ experts or to show that the enacted maps fall within a normal statistical range of districts.

80. In sum, through anecdotal evidence, the map drawers’ testimony, the irregular district boundaries, the availability of alternative district maps, and the map drawers’ express consideration of partisan voting data, the Plaintiffs have shown that the predominant purpose and intent of 2011 redistricting maps was to subordinate Democratic votes and burden the associational rights and political speech of Democratic voters. *See* ECF 143, Op. & Order, PageID.5330–31, 5334.

C. Plaintiffs Have Shown that the 2011 District Maps Have Caused the Durable Effect of Subordinating Democratic Votes and Burdening Democratic Voters' Political Speech and Associational Rights.

81. Plaintiffs have also presented substantial empirical evidence demonstrating that the 2011 district maps have resulted in a significant, lasting pro-Republican bias in Michigan's post-2010 elections.

82. Since the 2011 redistricting, Democrats have won a majority of the statewide vote in the State House, State Senate, and United States House elections but have attained only 44.5%, 36.8%, and 35.7% of the seats in each chamber, respectively. (Pls.' Trial Ex. 52, Mayer Report tbl. 5; Pls.' Trial Ex. 72, Mayer Report tbl. 7; Pls.' Trial Ex. 82, Mayer Report tbl.9.) If "a redistricting 'plan that more closely reflects the distribution of state party power seems a less likely vehicle for partisan discrimination,' then a plan that deviates this strongly from the distribution of statewide power suggests the opposite." *Whitford*, 218 F. Supp. 3d at 902 (quoting *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 419 (2006) (opinion of Kennedy, J.)).

83. This data is further borne out by the enacted plans' significant mean-median difference, which indicates that most of Michigan's districts are more Republican-leaning than the average district, whereas Democratic voters are concentrated in a minority of districts. (Pls.' Trial Ex. 3, Chen Report at 18, 33–34, 46–47.) "[W]hen the mean and the median diverge significantly, the

distribution of district-level vote shares is skewed in favor of one party and against its opponent—consistent with the classic gerrymandering techniques of ‘packing’ partisans into a relatively small number of districts and/or ‘cracking’ partisans among a larger number of districts.” *Rucho*, 318 F. Supp. 3d at 892–93.

84. Michigan’s significant declination value following the 2011 redistricting—which was greater than at least 90% of previous elections and more pro-Republican than at least 95% of previous elections for each of the three chambers—constitutes further evidence that these election results were influenced by partisan gerrymandering. (*See* Pls.’ Trial Ex. 129, Warshaw Report at 20, 36; Pls.’ Trial Ex. 53, Mayer Report at 34–35, 43–45, 53–54; Pls.’ Trial Ex. 65, Mayer Report fig. 7; Pls.’ Trial Ex. 66, Mayer Report fig. 8; Pls.’ Trial Ex. 75, Mayer Report fig. 15; Pls.’ Trial Ex. 76, Mayer Report fig. 16; Pls.’ Trial Ex. 85, Mayer Report fig. 23; Pls.’ Trial Ex. 86, Mayer Report fig. 24.)

85. The 2011 redistricting plan also resulted in an historically large efficiency gap in Michigan, beginning with the 2012 election and enduring through the 2016 election, relative both to Michigan’s own past elections and elections for corresponding legislative seats nationwide. (*See* Pls.’ Trial Ex. 3, Chen Report at 25; Pls.’ Trial Ex. 11, Chen Report fig. 6; Pls.’ Trial Ex. 3, Chen Report at 38, 51; Pls.’ Trial Ex. 18, Chen Report fig. 12; Pls.’ Trial Ex. 25, Chen Report fig. 18; ECF 248, Test. of Christopher Warshaw, Ph.D, Feb 5. Trial Tr. at 61–63,

PageID.8776–78; Pls.’ Trial Ex. 129, Warshaw Report at 16–17, 33–36; Pls.’ Trial Ex. 133, Warshaw Report fig. 2; Pls.’ Trial Ex. 136, Warshaw Report fig. 5; Pls.’ Trial Ex. 137, Warshaw Report fig. 6; Pls.’ Trial Ex. 144, Warshaw Report fig. 12; Pls.’ Trial Ex. 147, Warshaw Report fig. 15; Pls.’ Trial Ex. 148, Warshaw Report fig. 16.)

86. The efficiency gap metric “does not dictate strict proportional representation” but is instead premised “on the notion that the magnitude of the winner’s bonus [i.e., the ability of the party attaining a slight majority of votes to translate those votes into seats] should be approximately the same for both parties.” *Rucho*, 318 F. Supp. 3d at 889. The extreme, statistically unlikely value of the efficiency gap in this case corroborates that the 2011 district maps have had the effect of muting an abnormally high number of Democratic voices.

87. In other words, while the voters could not state a claim for proportional partisan representation, “[t]o say that the Constitution does not require proportional representation is not to say that highly *disproportional* representation may not be evidence of a discriminatory effect.” *Whitford*, 218 F. Supp. 3d at 906–07.

88. In total, the post-2011 electoral data presented by Plaintiffs evidences a significant and enduring pro-Republican partisan asymmetry that has impacted legislative policy output and diluted Democratic votes and political speech in

Michigan since 2011. (See Pls.’ Trial Ex. 129, Warshaw Report at 24–25, 39–41; Pls.’ Trial Ex. 140, Warshaw Report fig. 9; Pls.’ Trial Ex. 141, Warshaw Report tbl. 3; Pls.’ Trial Ex. 142, Warshaw Report fig. 10; Pls.’ Trial Ex. 151, Warshaw Report tbl. 4; Pls.’ Trial Ex. 152, Warshaw Report tbl. 5.) Where a group of voters is systematically denied an effective opportunity to participate in the political process, as evidenced by “continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process,” that group is denied equal protection. *Davis*, 478 U.S. at 132–33.

89. Plaintiffs here have adduced sufficient evidence to show that the 2011 maps have had the lasting effect of diluting Democratic votes and burdening Democratic voters’ associational and political speech rights. See ECF 143, Op. & Order, PageID.5330–31, 5334.

90. This same expert statistical evidence—in particular, the strong temporal correlation between the injury Plaintiffs claim and the enactment of the 2011 maps, as measured by the significant and enduring change in Michigan’s efficiency gap and persistent mean-median difference and declination values—likewise demonstrates that a causal relationship exists between the enactment of the 2011 maps and the dilution of Democratic votes and political speech rights. See *id.*, PageID.5334.

D. The Intervenors Have Not Offered a Neutral Justification for the Maps Sufficient to Rebut Plaintiffs' Showing.

91. The Intervenors have not offered any affirmative evidence that the 2011 district maps were not drawn with partisan intent. Rather, the Intervenors argue that the maps are the result of a valid legislative process and the maps are valid so long as they were enacted by the Michigan Legislature.

92. However, the simple fact that a statute was enacted by the legislative branch with a minimal degree of bipartisan support after negotiation and compromise does not insulate that law from constitutional review. *Ohio A. Philip Randolph Inst. v. Householder*, No. 1:18-CV-357, 2019 WL 652980, at *14 (S.D. Ohio Feb. 15, 2019) (rejecting proposition that some Democratic legislators voting in favor of a redistricting plan means that partisan effects of map are not attributable to partisan intent); *Jones Bros., Inc. v. Sec'y of Labor*, 898 F.3d 669, 674 (6th Cir. 2018). (See also ECF 249, Test. of Brandon Dillon, Feb. 6 Trial Tr. at 157, PageID.9094.)

93. Nor does Michigan's decision to assign the redistricting process to the Legislature in the first instance validate an otherwise unconstitutional plan. See Mich. Comp. Laws §§ 3.71–3.74, 4.262–4.264 (providing for judicial review of districting plans); cf. *City of Boerne v. Flores*, 521 U.S. 507, 535–36 (holding that legislative branch may not override judicial branch's interpretation of Constitution by statute).

94. To the extent that it was necessary to take into account partisan and incumbency considerations in order to achieve the legislative margins needed to enact a plan, the evidence in the record is that the 2011 district lines entrench Republican control to a greater degree than would be sufficient to withstand a reasonable range of electoral conditions. (*See* Pls.’ Trial Ex. 3, Chen Report at 53; Pls.’ Trial Ex. 6, Chen Report tbl. 51 Pls.’ Exs. 29–35, Chen Report App’x C.) *Cf. Common Cause v. Rucho*, 318 F. Supp. 3d 777, 898 (M.D.N.C. 2018) (rejecting argument that protection of incumbents justified district lines using Chen data). Moreover, the 2018 election results do not rebut Plaintiffs’ evidence of partisan intent and partisan effect; rather, they demonstrate at most that the gerrymandered maps from 2011 were less effective at diluting Democratic votes in that isolated year.

95. The results of the 2018 election and the modest number of seats picked up by the Democratic Party in that race does not negate the partisan bias of the 2011 district maps or the impact of those maps on Democratic political advocacy. (*See* ECF 248, Test. of Christopher Warshaw, Ph.D., Feb. 5 Trial Tr. at 178 – 80, PageID.8893–95; ECF 249, Test. of Brandon Dillon, Feb. 6 Trial Tr. at 193–96, PageID.9130–33.)

96. No legitimate state interest or neutral justification has been offered that can explain the otherwise substantial and enduring partisan bias of Michigan’s 2011 district maps.

E. The Facts of this Case Do Not Warrant a Special Election.

97. Even though Plaintiffs have established that unconstitutional partisan gerrymandering occurred within and among the State Senate districts at issue, no appropriate remedy is available to Plaintiffs under the circumstances vis-à-vis the State Senate districts. More specifically, despite Plaintiffs’ demand, a special election for State Senate offices during the upcoming State House, federal congressional, and presidential election cycle in 2020 is not an appropriate remedy under the circumstances, and would be a substantial disruption to the normal electoral process.

98. The Michigan Constitution provides that state senators “shall . . . be elected . . . at the same election as the governor for four-year terms concurrent with the term of office of the governor.” Mich. Const. art. IV, § 2.

99. The most recent Michigan gubernatorial election—and therefore most recent Michigan Senate election—occurred in November 2018.

100. Ordering a special election in 2020 would therefore have the effect of removing legislators from office and forcing them to seek re-election only two years into a constitutionally-mandated four-year term.

101. Such a measure would also have the effect of forcing some Senators to run for office three times during a six-year period (2018, 2020, and 2022), rather than the cycle of once-every-four-years contemplated by the Michigan Constitution.

102. Removing elected, incumbent legislators from office is an extreme measure inappropriate in all but the most egregious circumstances of “discriminatory practices [that] so infect the processes of the law as to be stricken down.” *Bell v. Southwell*, 376 F.2d 659, 664 (5th Cir. 1967).

103. No court has ever overseen a special election as a remedy for partisan gerrymandering, and the Supreme Court has never decided if or under what circumstances a special election may be an appropriate remedy for such a problem. ECF 88, Op. on Mot. to Dismiss, PageID.2052. *See also North Carolina v. Covington*, 137 S. Ct. 1624, 1625–26 (U.S. 2017) (finding that district court did not give sufficient weight to the burden of a special election and declining to address propriety of remedy for partisan gerrymander in the first instance); *see also Covington v. North Carolina*, 270 F. Supp. 3d 881, 898–99 (M.D.N.C. 2017) (after remand) (finding special election administratively impracticable and denying remedy).

104. This case does not present the extraordinary circumstances necessary for a special election—such as racially-motivated voter intimidation, repeated

failures to cure discrimination, or the practical necessity of holding an imminent election under an unconstitutional map. *Compare with Bell*, 376 F.2d at 663–64 (ordering special election where polling places were racially segregated and minority voters subject to brute intimidation tactics due to the “gross, spectacular, completely indefensible nature of this state-imposed, state-enforced racial discrimination”); *Garrard v. City of Grenada*, No. 3:04CV76-B-A, 2005 WL 2175729, at *1, *2 (N.D. Miss. Sept. 8, 2005) (ordering special election only after city “egregious[ly] . . . fail[ed] for over ten years to redistrict the annexed area in a constitutional manner” and ordering special election in accordance with state’s usual special election procedures); *Vera v. Bush*, 933 F. Supp. 1341, 1344, 1347 (S.D. Tex. 1996) (imposing temporary redistricting plan for impending election and adjusting election schedule where legislature was “uninterested in and would be inconvenienced by” calling special session to redistrict); *Burton v. Hobbie*, 561 F. Supp. 1029, 1032–34 (M.D. Ala. 1983) (allowing impending election to occur under legally inoperative redistricting plan and ordering special election to follow once Voting Rights Act-approved plan was in place); *Duncan v. Poythress*, 515 F. Supp. 327, 331–34, 343 (N.D. Ga. 1981), *aff’d*, 657 F.2d 691 (5th Cir. Unit B Sept. 1981) (ordering special election mandated by statute that governor refused to hold); *Hackett v. President of City Council of City of Phila.*, 298 F. Supp. 1021,

1023–25 (E.D. Pa. 1969), *aff'd*, 410 F.2d 761 (3d Cir. 1969) (challenging timing of statutorily mandated special election for city council).

105. Moreover, as a result of Michigan voters enacting Proposal 2 in the November 2018 election, no Senate election will ever again occur under a system of districts drawn by a partisan legislature. Rather, an Independent Citizen Redistricting Commission will be responsible for drawing all legislative and congressional districts in Michigan beginning after the 2020 census.

106. Forcing a special election for what would effectively be a two-year term that diverges from Michigan’s constitutional requirements is not supported by the case law or appropriate under the circumstances when a permanent solution to partisan gerrymandering in Michigan has already been chosen by the voters and will be implemented before the next Senate election cycle, thereby ensuring that no future State Senate election will use a gerrymandered map.

107. Holding a special election for the Senate in conjunction with the 2020 presidential, federal congressional, and State House elections would not mitigate the disruption to the electoral process, as running the multiple contests concurrently would effectively force donors, volunteers, and supporters to choose or split their support between candidates, thereby siphoning campaign resources and other support from the regularly scheduled State and federal races.

108. This potential scarcity of resources may be particularly significant in light of the fundraising difficulties that Michigan State legislative candidates have faced following the 2011 redistricting. (*See* ECF 249, Test. of Brandon Dillon, Feb. 6 Trial Tr. at 164–73, PageID.9101–10.)

109. The disadvantages of this scenario would ultimately be borne by the Michigan voters who lack the normal degree of access to and information regarding their candidates.

110. These unique circumstances further weigh against the propriety of a special election remedy.

CONCLUSION

Based upon the foregoing evidence and analysis, the Secretary respectfully requests that this Court find that:

A. Plaintiffs have shown that Michigan’s 2011 state legislative and federal congressional redistricting plans (2011 PA 128 and 2011 PA 129) cracked and packed Democratic voters into the Challenged Districts with the discriminatory intent of subordinating Democratic voting power and in practice have the discriminatory effect of diluting Democratic votes, in violation of the Fourteenth Amendment to the U.S. Constitution, and no legitimate state interest or neutral explanation justifies that discrimination;

B. Plaintiffs have shown that Michigan’s 2011 state legislative and federal congressional redistricting plans (2011 PA 128 and 2011 PA 129) cracked and packed Democratic voters into the Challenged Districts with the discriminatory intent—and which in practice have caused the discriminatory effect—of burdening Democratic voters’ political speech and associational rights, in violation of the First Amendment to the U.S. Constitution;

C. A special election for the Michigan Senate is not an appropriate remedy under the facts and circumstances of this case, particularly given that the Independent Citizens Redistricting Commission, a permanent solution to partisan gerrymandering adopted by the Michigan voters, will draw district lines for all future Senate elections.

In closing, the Secretary, as a longtime proponent of nonpartisan redistricting and the chief elections officer for the State of Michigan, is committed to ensuring a fair, accessible, and equitable elections system for the State’s voters that remains true to the constitutional principle of “one person, one vote.” The Secretary looks forward to engaging the citizens of Michigan in the coming months and years to implement the Independent Citizens Redistricting Commission and ensure a future of nonpartisan redistricting for the voters of Michigan.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK AND STONE, P.L.C.

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Dated: February 22, 2019

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 CM/ECF system, which will send notification of such filing to all counsel of record in this matter.

Respectfully submitted,

/s/Scott R. Eldridge