

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

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

**CONGRESSIONAL AND STATE HOUSE INTERVENORS'
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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COMES NOW, Congressional and State House Intervenors, by counsel, and respectfully asks the Court to make the following Findings of Fact and Conclusions of Law in this Matter.

FINDINGS OF FACTS

I. VOTER AND LAY WITNESSES

A. SUSAN K. SMITH, on behalf of League of Women Voters of Michigan

INTRODUCTORY FACTS FOR SUSAN SMITH.

1. Ms. Smith resides in Ypsilanti Township. TT Vol. 1 - 02/05/2019 Tr. at 36:19-20 (Exhibit 1).
2. Ms. Smith lives in Senate District 18. *Id.* at 40:25.
3. Ms. Smith lives in Congressional District 12. *Id.* at 41:1-2.
4. Ms. Smith lives in House District 54. *Id.* at 76:11.
5. Ms. Smith is affiliated with the Democratic Party. *Id.* at 37:23-25.
6. Ms. Smith has consistently voted for Democrats over the years. *Id.* at 38:3.
7. Ms. Smith may have voted for an occasional Republican. *Id.* at 69:19.

8. In those elections where Ms. Smith may have voted for a Republican for office, on the same ballot she would have voted for Democrats campaigning for different offices. *Id.* at 70:1-4.

9. For the 2020 elections, Ms. Smith intends to vote for Democratic candidates. *Id.* at 39:13-14.

10. Ms. Smith considers herself a Democratic voter. *Id.* at 39:17.

11. Ms. Smith subscribes to the general philosophy of what she believes the Democratic Party stands for. *Id.* at 39:19-20.

12. Voting rights is an important philosophy that Ms. Smith subscribes to and that Democrats also subscribe to. *Id.* at 40:7-8.

13. In fact, Ms. Smith supports Senator Rebekah Warren because Ms. Smith generally agrees with Senator Warren's public policy positions and because Senator Warren is "a big supporter of voting rights." *Id.* at 73:19-21, 25, 74:1; 103:14-16.

14. Senator Warren voted for the legislative redistricting. R. Richardville Tr. at 260:1.

**INTRODUCTORY FACTS FOR THE LEAGUE OF WOMEN
VOTERS OF MICHIGAN.**

15. Ms. Smith has been a member of the League for 48 years. TT Vol. 1 - 02/05/2019 Tr. at 49:23-24.

16. Ms. Smith was the president of the League of Women Voters of Michigan from 2011-2015. *Id.* at 50:10-11.

17. Ms. Smith is on the League's state board with and serves as redistricting director. *Id.* at 50:16-17.

18. Ms. Smith is currently the president of the Ann Arbor Area League. *Id.* at 50:21-22.

19. The League of Women Voters of Michigan is nonpartisan. *Id.* at 93:4-6.

20. The League does have Republican members. *Id.* at 93:7-8.

**FACTS DEMONSTRATING THAT NEITHER MS. SMITH NOR
THE LEAGUE HAS STANDING.**

21. Democratic candidates are often elected to the Ann Arbor City Council. *Id.* at 100:21-22.

22. Many board members on the Ypsilanti Township Board are Democrats. *Id.* at 101:6-8.

23. According to Dr. Warshaw, no matter how Ms. Smith's Senate district is redrawn, her district will be packed. Plaintiffs' Exhibit 278.

24. According to Dr. Warshaw, no matter how Ms. Smith's Congressional district is redrawn, her district will be packed. Plaintiffs' Exhibit 278.

25. Without identifying which districts, without identifying who the candidates were, Ms. Smith stated that in only a handful of districts “Republican candidates *for whatever reason* did not submit responses to the...questions submitted by the local league. TT Vol. 1 - 02/05/2019 Tr. at 61:23-25, 62:1 (emphasis added).

26. Without identifying the districts, some local Leagues have had difficulty obtaining a positive response from Republican candidates to attend League events. *Id.* at 78:24-25; 79:3-4.

27. If placed in a different district, Ms. Smith testified that she “might” have an impact or “might” have more influence as to the outcome of a particular election. *Id.* at 43:11-14.

28. Without identifying the district or locality where these individuals reside, Ms. Smith testified that some people have told her that they don’t bother to vote because they know who is going to win anyway. *Id.* at 64:5-6.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. SMITH’S VOTE.

29. Ms. Smith voted for Rebekah Warren for State Senate in 2014. *Id.* at 73:12-13.

30. Ms. Smith voted for Rebekah Warren because Ms. Smith generally agreed with Senator Warren’s public policy positions. *Id.* at 73:19-21.

31. Senator Warren won her election in 2014. Secretary Exhibit 27.
32. In 2018, Ms. Smith voted for Jeff Irwin for State Senate. TT Vol. 1 - 02/05/2019 Tr. at 75:20-21.
33. Senator Irwin won his election. Secretary Exhibit 27
34. Ms. Smith voted for Senator Irwin because she generally agrees with Senator Irwin's public policy positions. TT Vol. 1 - 02/05/2019 Tr. at 76:4-9.
35. In 2012, Ms. Smith voted for Rep. John Dingell because she generally agreed with his public policy positions. *Id.* at 71:2-8.
36. Rep. John Dingell won his election. Secretary Exhibit 26.
37. In 2014, 2016, and 2018, Ms. Smith voted for Rep. Debbie Dingell. TT Vol. 1 - 02/05/2019 Tr. at 72:19-20.
38. Rep. Debbie Dingell won her elections in 2014, 2016, and 2018. Secretary Exhibit 27-29.
39. Ms. Smith voted for Rep. Dingell in 2014, 2016, and 2018, because Ms. Smith generally agrees with Rep. Dingell's public policy positions. TT Vol. 1 - 02/05/2019 Tr. at 72:21-23.
40. For the 2018 general election, a Democrat won the Governor's office, the Attorney General's office, and the Secretary of State's office. TT Vol. 1 - 02/05/2019 Tr. at 98:16-25. Secretary Exhibit 29.

41. After the 2018 elections, a number of Republican seats flipped to the Democrats in both the House and Senate. TT Vol. 3 at 104.

42. The current composition of Michigan's congressional delegation is 7 Republicans and 7 Democrats. [TT Vol. 3 at 59] TT Vol. 3 at 103:23.

43. Dr. Chen's simulated maps produced the same partisan composition. Plaintiffs' Exhibit 3 at 13.

**FACTS DEMONSTRATING THAT MS. SMITH'S AND THE
LEAGUE'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.**

44. Ms. Smith has campaigned for public office as a Democrat. TT Vol. 1 - 02/05/2019 Tr. at 38:5-9.

45. Ms. Smith served on the city commission of Mount Pleasant and was mayor of Mount Pleasant. *Id.* at 39:21-24.

46. Ms. Smith served several terms on the Mount Pleasant city commission and, in the 1990s was elected several times as mayor of Mount Pleasant. *Id.* at 46:22.

47. Ms. Smith served on the school board and for five of her years on the school board, she was president. *Id.* at 45:10-16

48. Ms. Smith has at certain times made political contributions to Democratic candidates. *Id.* at 38:16-18.

49. The League of Women Voters of Michigan prohibits its officers from making political contributions. *Id.* at 38:19-25, 39:1; 76:22-25.

50. As President of the League of Women Voters of Michigan and as President of the Ann Arbor League, Ms. Smith is prohibited from making political contributions. *Id.* at 38:23-25; 39:1.

51. The League of Women Voters also prohibits Ms. Smith from volunteering on campaigns. *Id.* at 77:4-6.

52. Absent the League of Women Voters' prohibition, Ms. Smith makes political contributions to the Democratic party and some of its candidates. *Id.* at 39:1-3.

53. If the League determines that a rally is a nonpartisan event about the issues, the League will attend the rally. *Id.* at 78:2-5.

54. The League of Women Voters of Michigan has a "very ambitious project for voter education, some of which is carried out by our local leagues and some by the state league." *Id.* at 48:1-3.

55. The state league publishes a voter guide that provides information that the League has gathered from candidates running for office. *Id.* at 48:3-6.

56. The local league collects information about candidates who are running for local offices while the state league collects information about

candidates who are running for statewide office, legislative offices, and Congress. *Id.* at 48:6-15.

57. The League has an on-line voter guide called vote411.org. “Michigan has the biggest percentage of people participating in the country as far as the League is concerned.” For the 2018 election, the League had over 100,000 hits on its on-line voter. *Id.* at 48:17-21.

58. The League also prints a voter guide. *Id.* at 48:21.

59. In the past election, the League distributed over 100,000 copies to libraries, clerks’ offices, and various communities with the assistance of the local leagues. *Id.* at 49:2-4.

60. From 2012-2016, Ms. Smith was very involved with those voter guides and was able to see how candidates responded. *Id.* at 61:19-23.

61. Plaintiffs’ Exhibit 258 discusses the activities that the state league was involved in from 2015-2016. *Id.* at 50:23; 51:5-8

62. Exhibit 258 discusses a League publication, Michigan Voter, which is published four times a year. *Id.* at 51:9-10.

63. Exhibit 258 contains documents that discuss some of the League’s advocacy activities that the League conducts in the state legislature. *Id.* at 51:12-14.

64. The League is very active in advocating at the state legislature. *Id.* at 51:25-52:1.

65. Plaintiffs' Exhibit 258 contains a list of 64 bills covering one election cycle from 2017-2018. These 64 bills are pieces of legislation that the League either supports or opposes. *Id.* at 52:1-6.

66. Ms. Smith generally agrees with the position the League took concerning the 64 bills depicted in Exhibit 258. *Id.* at 95:9-12.

67. Ms. Smith generally agrees with the League's issue statement positions. *Id.* at 96:6-9.

68. Ms. Smith generally agrees with the positions that the League takes on legislation in both the current and previous legislative cycles. *Id.* at 96:12-18.

69. Speaker Chatfield sponsored HB4148, a bill to bring the Michigan legislature under the Freedom of Information Act, during the legislative session from 2017-2018. *Id.* at 87:13-16; 89:22-25; 90:1-3.

70. The League supported this legislation. *Id.* at 90:4-5.

71. The legislation passed the House. *Id.* at 90:9-11.

72. The House was controlled by the Republican party. *Id.* at 90:12-13.

73. The chief sponsor of SB 425, and 429, a bill to permit online voter registration, was Senator Simmons. *Id.* at 90:21-25, 91:1, 4-5.

74. Senator Simmons is a Republican. *Id.* at 91:2-3.
75. The League supported the legislation. *Id.* at 91:6-7.
76. The legislation passed the Michigan legislature *Id.* at 91:8-9.
77. Governor Rick Snyder signed the legislation into law. *Id.* at 91:12-14.
78. Rick Snyder is a Republican. *Id.* at 91:24-25.
79. In 2012, the League met with Secretary of State Johnson to discuss passing legislation called No Reason Absentee. TT Vol. 1 - 02/05/2019 Tr. at 64:14-18.
80. Secretary of State Johnson stated that she was interested in supporting that legislation. *Id.* at 64:24-25.
81. Secretary of State Johnson is a Republican. *Id.* at 86:21-22.
82. Ms. Smith and another State Board member met with the committee chairs of the Michigan State House and Senate elections committees to discuss with them the League's position on, among other things, voting rights and no reason absentee voting. *Id.* at 65:5-9.
83. The League registers voters. For example, the Ann Arbor league registers "lots" of voters, including 1,000 high school students. *Id.* at 52:10-12.
84. Voter registration activity is very important activity for the League across the state and all local leagues participate. *Id.* at 52:12-13.

85. As part of its mission to educate and empower voters, the League organizes candidate forums. *Id.* at 59:21-25.

86. For the most part, candidate forums are conducted by the local leagues. *Id.* at 60:1-7.

87. The Ann Arbor Area League, candidates for public office there “recognize the value of being able to communicate their views to voters, and so they participate.” *Id.* at 61:6-8.

88. Ms. Smith agreed that, if true, that Republican legislators talked with members of a local teacher’s union who disagreed with some votes the Republican legislators had taken. *Id.* at 84:3-8, 86:1-7; Intervenors’ Ex. 8.

89. In June of 2012, the state League adopted a redistricting position in support of an independent redistricting commission. TT Vol. 1 - 02/05/2019 Tr. at 53:22-24.

90. In approximately the fall of 2015, the League selected and trained approximately eight people to speak about redistricting and educate Michigan citizens about redistricting. *Id.* at 55:8-12, 16.

91. In approximately the fall of 2015, the League gave redistricting presentations at 37 town hall meetings throughout the state. *Id.* at 55:14-21; 77:8-12.

92. Ms. Smith, then the President of the League of Women Voters of Michigan, attended the hearing where the redistricting maps were unveiled in June of 2011. *Id.* at 56:1-11.

93. For many years, the State League has encouraged local leagues to contact their legislators to have a cup of coffee and an informal conversation. *Id.* at 62:8-20.

94. Some legislators representing some communities agree to meet for these informal conversations while other legislators representing other communities do not agree to meet for these informal conversations. *Id.* at 63:2-7.

a. As President of the State League, Ms. Smith visited Rep. Dingell in his office and talked with him. *Id.* at 71:21-22.

b. As a League member and on behalf of the State League, Ms. Smith also met with and spoke to Rep. Debbie Dingell. Ms. Smith communicated with Rep. Dingell concerning voting rights and other issues that the League was interested in supporting at the congressional level. *Id.* at 73:1-5.

c. As President of the State League, Ms. Smith communicated with Senator Warren about legislation the League was interested in if that legislation was in the Senate. *Id.* at 75:5-10.

d. Senator Warren was receptive to these communications. Senator Warren also joined Ms. Smith in her capacity as a representative of the Ann Arbor Area League in having an informal meeting over coffee. *Id.* at 75:13-19.

FACTS DEMONSTRATING THAT MS. SMITH AND THE LEAGUE OF WOMEN VOTERS WAS DILATORY IN ASSERTING THEIR RIGHTS.

95. The League of Women Voters was part of the Michigan Redistricting Collaborative. *Id.* at 101:20-22.

96. The Michigan Redistricting Collaborative in August of 2011 issued a press release stating that the redistricting maps were the product of a secret non-transparent meetings that produced maps that divided communities of interest, increased partisanship, and decreased competitiveness. Intervenors' Exhibit 6.

97. Furthermore, in June of 2012, the state League adopted a redistricting position in support of an independent redistricting commission. TT Vol. 1 - 02/05/2019 Tr. at 53:22-24.

B. WILLIAM GRASHA, Plaintiff

LACKS STANDING TO CHALLENGE HIS CONGRESSIONAL AND STATE SENATE DISTRICTS

98. William Grasha is a Democratic voter who lives in Madison Heights, Michigan. [TT Vol. 3 at 8-10] (Exhibit 3).

99. Mr. Grasha is not challenging House District 26, which has always had a Democratic representative since the 2011 redistricting. [TT Vol. 3 at 21-23].

100. Mr. Grasha is only challenging Congressional District 9 and Senate District 11. TT Vol. 3 at 21:4-5, 22:3-4

101. Although Mr. Grasha is challenging his state Senate district, his district falls within the range of Professor Chen's simulated, non-partisan districts. [Plaintiff Trial Ex. 278; TT, Vol. I, p. 203-204].

102. Despite the fact that Mr. Grasha is challenging these districts, he acknowledged his current congressperson and state Senator are Democrats. [TT Vol 3. at 26].

103. Since the 2011 redistricting, all of Mr. Grasha's representatives have been Democrats for whom he has voted. [TT Vol. 3 at 23-24].

104. Mr. Grasha acknowledged that he is pleased with the outcome of these elections, and that his votes have been expended in the best way possible. [TT Vol. 3 at 24-25].

105. Mr. Grasha acknowledged that his congressional representative was a Democrat before the 2011 redistricting. [TT Vol. 3 at 26].

106. While Mr. Grasha testified, he is concerned that his elected Democratic officials are limited by what level they can rise to [TT Vol. 3 at 24], he acknowledged that his congressperson has an opportunity to further policies he supports because the Democrats control the U.S. Congress. [TT Vol. 3 at 26].

107. Mr. Grasha also testified that he would prefer a Democrat win his districts, which is exactly what has happened since the 2011 redistricting. [TT Vol. 3 at 31].

C. ROSA HOLLIDAY, Plaintiff

LACKS STANDING TO CHALLENGE HER CONGRESSIONAL DISTRICT.

108. Rosa Holliday is a Democratic voter who lives in Frankenlust Township, Michigan. [TT Vol 3. at 36-37].

109. Although Ms. Holliday believes House District 96 is a “packed” Democratic district, she is not challenging that district. [TT Vol. 3 at 49].

110. Nor is she challenging Senate District 31, which has had a Republican representative since the 2011 redistricting. [TT Vol. 3 at 47-48, 52-54].

111. Ms. Holliday is only challenging Congressional District 5. [TT Vol. 3 at 36:8-9,48:9-12.

112. Despite the fact that Ms. Holliday is challenging her congressional district, she acknowledged that she has always had a Democratic

congressperson since the 2011 redistricting and she has been happy with her congressperson since 2011. [TT Vol. 3 at 26, 43-44, 54].

113. Ms. Holliday also acknowledged that she is happy that her vote has gone to the congressional winner. [TT Vol. 3 at 56, 63].

114. Ms. Holliday further acknowledged that her congressional representative is in the majority, which places him in a position to advance Democratic policies. [TT Vol. 3 at 57].

115. In addition, Ms. Holliday acknowledged that since the 1990s, she has voted for a Democratic congressperson and her vote has always gone to a winning Democrat. [TT Vol. 3 at 55-56].

116. While Ms. Holliday testified that her primary objective in this lawsuit is to ensure all districts become “competitive,” [TT Vol. 3 at 46, 61], she acknowledged that Democrats can pick up seats in “cracked” districts. [TT Vol. 3 at 58-59].

117. She also acknowledged that the current makeup of Michigan’s congressional delegation is even, *i.e.*, seven Democrats and seven Republicans. [TT Vol. 3 at 59].

118. But Ms. Holliday wants Michigan to have proportional representation. [TT Vol. 3 at 61].

D. ROGER BRDAK, Plaintiff

INTRODUCTORY FACTS FOR ROGER BRDAK

119. Mr. Brdak is a Plaintiff in this suit. R. Brdak Dep. Tr. at 61:18-20.

120. Since 1976, Roger Brdak has lived at 48834 Jamaica, Chesterfield Township, Michigan, 48047. R. Brdak Dep. Tr. at 10:3-15.

121. Mr. Brdak may possibly move before the 2020 election, although the exact location is not yet known. R. Brdak Dep. Tr. at 10:16-25, 11:1-6.

122. Mr. Brdak is a registered Democrat and votes consistently for Democrats. R. Brdak Dep. Tr. at 12:1-6, 13:2-7.

123. Mr. Brdak used to vote for Republican candidates when George H.W. Bush was president, but began voting for Democrats when Bill Clinton ran for president. R. Brdak Dep. Tr. at 12:10-23, 40:18-25, 41:1.

124. Mr. Brdak does not automatically vote for Democrats, but makes an evaluation of individual candidates. R. Brdak Dep. Tr. at 13:14-25, 14:1.

125. Mr. Brdak plans to vote for Democratic candidates for president, congressman, state house, and state senate in the 2020 elections. R. Brdak Dep. Tr. at 15:5-25, 16:1-9.

126. Mr. Brdak lives in the 10th congressional district, currently represented by Republican Paul Mitchell. R. Brdak Dep. Tr. at 16:12-20.

127. Mr. Brdak lives in Michigan's 8th state senate district, currently represented by Republican Peter Lucido. R. Brdak Dep. Tr. at 16:21-25, 17:1-4.

128. Mr. Brdak lives in Michigan's 32nd state house district, currently represented by Republican Pamela Hornberger. R. Brdak Dep. Tr. at 17:5-12.

129. Mr. Brdak did not have any involvement in the 2011 redistricting process. R. Brdak Dep. Tr. at 38: 17-25.

130. Mr. Brdak is not a member of the League of Women Voters. R. Brdak Dep. Tr. at 61:9-11, 62:11-20.

FACTS DEMONSTRATING THAT MR. BRDAK LACKS STANDING.

131. Mr. Brdak believes the term "gerrymandering" to mean "one-sided where no-- one particular party has an advantage over the other in the respect to voting." R. Brdak Dep. Tr. at 18:12-16.

132. Despite living in Congressional, state house, and state senate districts that are represented by Republicans, and have been so since 2011, Mr. Brdak testified that he believes he is gerrymandered by being "packed", R. Brdak Dep. Tr. at 20:5-13, despite acknowledging that he is a Democrat and understands the definition of "packed" to mean "a district where, for example there are so many Democrats that a Democrat is bound to win, or

vice versa, that there are so many Republicans that a Republican is bound to win . . .” R. Brdak Dep. Tr. at 19:5-17.

133. Mr. Brdak testified that there is no guarantee that every political issue that he supports would be supported by his representative in congress even if that representative is a Democrat. R. Brdak Dep. Tr. at 46:20-25, 27:1-21.

134. Mr. Brdak does not foreclose the possibility that he votes for Republicans in the future. R. Brdak Dep. Tr. at 47:22-25, 48:10.

135. Mr. Brdak would like to see more competitive districts by reducing the margin of victory of the candidates. R. Brdak Dep. Tr. at 48:11-19.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MR. BRDAK’S VOTE.

136. Mr. Brdak testified that he believes that his legislative districts are competitive. R. Brdak Dep. Tr. at 6-9.

137. Mr. Brdak testified that it is very hard, when discussing the boundaries of districts to figure out or balance out what is more competitive as opposed to what is non-competitive because of variables such as voter turnout. R. Brdak Dep. Tr. at 50:1-25, 51:1-14.

FACTS DEMONSTRATING THAT MR. BRDAK’S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

138. Mr. Brdak had never reached out to his congressman, state senator, or state representative for constituent services or policy reasons. R. Brdak Dep. Tr. at 42:11-25, 43:1.

139. Nothing has stopped Mr. Brdak from voting, contributing to candidates, or campaigning for candidates. R. Brdak Dep. Tr. at 43:4-25.

**FACTS DEMONSTRATING THAT MR. BRDAK WAS DILATORY
IN ASSERTING HIS RIGHTS.**

140. Mr. Brdak began paying attention 2011 district boundaries, and his perceived problems with them, while the redistricting process was underway. R. Brdak Dep. Tr. at 56:12-25, 57:10-20. Mr. Brdak did not become involved in this case until 2017, when Mark Brewer, the former head of the Michigan Democratic Party contacted him. R. Brdak Dep. Tr. at 57:22-25, 58:1-8, 58:17-25, 59:1-19

141. Mr. Brdak likely heard about the case around 2015 or 2016. R. Brdak Dep. Tr. at 58:2-16.

142. Mr. Brdak testified that had Mark Brewer, or anyone else on behalf of the League not contacted him, he would not be a plaintiff in this suit. R. Brdak Dep. Tr. at 60:1-5.

E. JACK ELLIS, Plaintiff

INTRODUCTORY FACTS FOR JACK ELLIS.

143. Mr. Ellis resides in St. Clair Shores. J. Ellis Dep. Tr. at 8:24-25.

144. Mr. Ellis lives in Congressional District 9. J. Ellis Dep. Tr. at 9:3-7.
145. Mr. Ellis lives in Michigan House District 18. J. Ellis Dep. Tr. at 9:11-13.
146. Mr. Ellis lives in Michigan Senate District 8. J. Ellis Dep. Tr. at 9:19-21.
147. Mr. Ellis has voted consistently for Democrats over the years. J. Ellis Dep. Tr. at 10:5-13.
148. Mr. Ellis does not vote for Republicans. J. Ellis Dep. Tr. at 10:14-16, 43:16-18.
149. Mr. Ellis considers himself a Democrat. J. Ellis Dep. Tr. at 10:17-19, 43:19-21.
150. Mr. Ellis intends to vote in the 2020 congressional election for Andy Levin, the incumbent Democrat. J. Ellis Dep. Tr. at 10:23-11:2.
151. Mr. Ellis intends to vote in the 2020 Michigan House election for Kevin Hertel, the incumbent Democrat. J. Ellis Dep. Tr. at 11:3-6.
152. Mr. Ellis is not a member of the League of Women Voters. J. Ellis Dep. Tr. at 6:9-11.
153. Mr. Ellis is a precinct delegate and has served in this role since the 1980s. J. Ellis Dep. Tr. at 34:9-11.

FACTS DEMONSTRATING THAT MR. ELLIS DOES NOT HAVE STANDING.

154. Mr. Ellis's candidate of choice, Democrat Andy Levin, won election in Congressional District 9. *See* J. Ellis Dep. Tr. at 10:5-13, 10:14-16, 10:17-19, and 10:23-11:2. Secretary Exhibit 29.

155. Mr. Ellis's candidate of choice, Democrat Kevin Hertel, won election to Michigan House District 18. *See* J. Ellis Dep. Tr. at 9:14-18, 10:5-13, 10:14-16, 10:17-19, 11:3-6.

156. Mr. Ellis made political contributions to former U.S. Representative Sander Levin in spite of Mr. Ellis's perception that Congressional District 9 is gerrymandered. J. Ellis Dep. Tr. at 30:14-25.

157. Mr. Ellis made political contributions to Kevin Hertel in spite of Mr. Ellis's perception that Michigan House District 18 is gerrymandered. J. Ellis Dep. Tr. at 30:14-31:1, 44:23-45:11.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MR. ELLIS'S VOTE.

158. Democrat Andy Levin won election in Congressional District 9 in 2018. Secretary Exhibit 29.

159. Andy Levin was Mr. Ellis's candidate of choice. *See* J. Ellis Dep. Tr. at 10:5-13, 10:14-16, 10:17-19, and 10:23-11:2.

160. Democrat Kevin Hertel won election in Michigan House District 18 in 2018. Secretary Exhibit 29.

161. Kevin Hertel was Mr. Ellis's candidate of choice. *See* J. Ellis Dep. Tr. at 10:5-13, 10:14-16, 10:17-19, 11:3-6, 45:2-3.

162. Mr. Ellis testified that political realities, such as name recognition, affect election outcomes and political involvement. J. Ellis Dep. Tr. at 64:14-65:16.

**FACTS DEMONSTRATING THAT MR. ELLIS'S FIRST
AMENDMENT RIGHTS WERE NOT HARMED.**

163. Mr. Ellis testified that he found his former Michigan state Senator to be unresponsive, but on an occasion when he tried to meet with him, he passed a note to a third-party who *was not* the Senator and *did not* make an appointment but showed up unannounced. J. Ellis Dep. Tr. at 35:13-16, 57:7-61-2.

164. Mr. Ellis testified that former state Senator Brandenburg did not respond to his emails; however, to the extent Brandenburg was unresponsive, Michigan's system worked: Brandenburg is no longer a state senator J. Ellis Dep. Tr. at 35:13-16, 50:7-9.

165. Mr. Ellis contributes every election cycle to candidates, political parties, and PACs. 02/05/2019 Tr. at 42:21-43:10.

166. Mr. Ellis testified that he votes in every election, regardless of his belief with respect to a candidate's chances. J. Ellis Dep. Tr. at 62:11-17.

167. Mr. Ellis testified that it is his personal decision to contribute or not to contribute to a particular candidate. J. Ellis Dep. Tr. at 44:5-11, 63:5-16.

168. *Without naming or specifying districts*, Mr. Ellis testified that if certain congressional and state senate races were “. . . really going to be a race. . .” he and his wife would “. . . focus their activities more toward those particular races.” J. Ellis Dep. Tr. at 33:25-34:7.

169. Mr. Ellis testified that it was a personal decision not to contribute to Democratic candidates in Congressional District 9. J. Ellis Dep. Tr. at 31:3-18.

170. Mr. Ellis testified that he contributed to former Representative Sander Levin in 2016 in spite of his perception that Congressional District 9 was gerrymandered. J. Ellis Dep. Tr. at 30:14-25.

171. Mr. Ellis testified that he contributed to Representative Hertel in 2016 in spite of his perception that Michigan House District 18 was gerrymandered. J. Ellis Dep. Tr. at 30:14-31:1.

172. Mr. Ellis testified that is his personal decision to engage or not to engage politically. J. Ellis Dep. Tr. at 31:19-32:20, 63:17-22.

173. Mr. Ellis testified that he volunteered his political time in support of races in his congressional, state senate, and state house districts. J. Ellis Dep. Tr. at 32:11-20.

174. Mr. Ellis testified that all other Michiganders have the same personal freedom to decide whether to engage politically. J. Ellis Dep. Tr. at 63:17-22.

175. Mr. Ellis testified that voters decide whether to exercise their right to vote. J. Ellis Dep. Tr. at 65:17-20.

176. Mr. Ellis testified that many registered voters do not engage. J. Ellis Dep. Tr. at 63:17-22.

FACTS DEMONSTRATING THAT MR. ELLIS WAS DILATORY IN ASSERTING HIS RIGHTS.

177. Mr. Ellis first became involved in this suit in 2015. J. Ellis Dep. Tr. at 40:10-12.

178. Mr. Ellis testified that the suit was filed two years later, in 2017. J. Ellis Dep. Tr. at 41:19-20.

F. DONNA FARRIS, Plaintiff

179. Donna Farris lives in Grand Rapids, Michigan. (D. Farris Dep at p. 5).

180. She currently lives in Congressional District 3, which is represented by a Republican; Senate District 29, which is represented by a Democrat; and House District 76, which is represented by a Democrat (D. Farris Dep at pp. 12-13).

181. Ms. Farris determined that the 2011 maps may have been improperly drawn in 2012. (D. Farris Dep at p. 32)

182. Ms. Farris is challenging only House District 76 in this lawsuit; a district currently being represented by Rachel Hood. (D. Farris Dep at p. 20)

183. While Ms. Farris was able to define what “packed” and “cracked” means, she does not know whether her House District is packed or cracked. (D. Farris Dep at p. 21)

184. Ms. Farris is not challenging Congressional District 3 or Senate District 29. (D. Farris Dep at pp. 18-20)

185. She has “no idea” why she is not challenging Congressional District 3 or Senate District 29 in this lawsuit. (D. Farris Dep at p. 19-20)

186. Ms. Farris’ House District has been won by a Democrat in every election since the 2011 redistricting. (D. Farris Dep at p. 22)

187. She testified that Hood represents what she believes in and she is happy with Hood’s representation. (D. Farris Dep at p. 23)

188. Before Hood was elected to represent House District 76, Ms. Farris was fairly represented by her previous representative, Winnie Brinks, who is also a Democrat. (D. Farris Dep at p. 24)

189. Ms. Farris admits that as a result of the 2011 redistricting: (i) her ability to vote has not been affected (D. Farris Dep at p. 25); (ii) she has been able to continue to engage in political activity; and (iii) she has been able to communicate with her representative (D. Farris Dep at p. 25).

190. Ms. Farris is active in the Kent County Democratic Party both before and after the 2011 redistricting. (D. Farris Dep at pp. 6, 32-33)

191. She has been a precinct captain, a position she obtained with the intent of “flipping” seats from Republican to Democrat, which she successfully did “in two election cycles.” (D. Farris Dep at p. 8) She was vice chair of the Party during the 2010-2012 election cycle, and has been on the executive committee since the 2011 redistricting. (D. Farris Dep at p. 8) She also attended the Democratic national convention as an “official delegate” in 2012. (D. Farris Dep at p. 8)

192. Ms. Farris acknowledges that Democrats do not agree on all issues. (D. Farris Dep at p. 28)

193. Ms. Farris admits that “anything is possible in an election.” (D. Farris Dep at p. 25)

G. ANDREA YOKICH

LACKS STANDING TO CHALLENGE HER CONGRESSIONAL DISTRICT

194. Andrea Yokich is a Democratic voter who lives in Okemos, Michigan. [TT Vol. 2 at 202, 204] (Exhibit 2).

195. Ms. Yokich is not challenging House District 68 or Senate District 23, both of which are represented by Democrats. [TT Vol. 2 at 217-219].

196. She is only challenging Congressional District 8. [TT Vol. 2 at ____].

197. Despite the fact that Ms. Yokich is challenging this district, she acknowledged her current congressperson is a Democrat. [TT Vol. 2 at 209, 219].

198. Ms. Yokich also acknowledged she is happy with the representation she is getting in Congress [TT Vol. 2 at 226], her current congressperson reflects her values, concerns and interests [TT Vol. 2 at 209, 219-220], she is pleased a Democratic congressperson was elected in her district [TT Vol. 2 at 209, 219-220], and (v) she is not surprised a Democrat won her congressional district. [TT Vol. 2 at 209-210].

199. Ms. Yokich admitted that the 2011 redistricting has not harmed her personally because she has three representatives, including her congressional representative, who represent her interests. [TT Vol. 2 at 226-227].

200. Specifically, Ms. Yokich testified, “And so me personally, do I have representation that is reflective of my concerns and interests? Yes.” [TT Vol. 2 at 220].

201. While Ms. Yokich is not challenging her state House and Senate districts, she acknowledged that since the 2011 redistricting: (i) all of her House and Senate representatives have been Democrats [TT Vol. 2 at 219]; (ii) she is happy with the representation she is getting in her state House and

Senate districts [TT Vol. 2 at 221, 226]; and (iii) she has cast votes for the Democratic representative in her state House and Senate districts and those candidates have always won [TT Vol. 2 at 221-222].

202. Ms. Yokich also admitted that if her current congressional, House and Senate representatives remained the same after the 2020 elections, she would be happy. [TT Vol. 2 at 225].

203. Although Ms. Yokich identifies primarily with the Democrats, she would vote for a Republican congressional candidate if that candidate represented her interests. [TT Vol. 2 at 225].

204. The 2011 redistricting has not impacted Ms. Yokich's ability to remain politically active as evidenced by the fact that she made political contributions in the 2016 and 2018 elections. [TT Vol. 2 at 209].

205. She also worked on Senator Debbie Stabenow's campaign. [TT Vol. 2 at 212].

206. Further, Ms. Yokich worked on the campaign for Proposition 2, which is the legislation that will govern the 2021 redistricting. [TT Vol. 2 at 215].

207. She has been a member of the Michigan League of Women Voters since the 1980s. [TT Vol. 2 at 213].

H. THOMAS HALEY

LACKS STANDING TO CHALLENGE HIS CONGRESSIONAL AND STATE SENATE DISTRICTS

208. Thomas Haley is a Democratic voter who lives in Mt. Morris, Michigan. [TT Vol. 2 at 230, 235-236].

209. Mr. Haley is not challenging House District 49, which has always had a Democratic representative since the 2011 redistricting. [TT Vol. 2 at 242-243].

210. Although Mr. Haley is challenging his state Senate district, his district falls within the range of Professor Chen's simulated, non-partisan districts. [Plaintiff Trial Ex. 278; TT, Vol. I, p. 203-204].

211. Despite the fact that Mr. Haley is challenging his congressional and state Senate districts, he acknowledged his current congressperson and state senator are Democrats. [TT Vol. 2 at 237, 239].

212. Indeed, all of Mr. Haley's representatives have been Democrats since the 2011 redistricting. [TT Vol. 2 at 237, 239, 243].

213. Mr. Haley admitted that he is happy with the representation he is getting in Congress, his state House district and his state Senate district. [TT Vol. 2 at 243-244, 246].

214. He also admitted that if all of his representatives remained the same after the 2020 elections, he would be happy. [TT Vol. 2 at 246].

215. Mr. Haley further admitted that since the 2011 redistricting, he has always had Democratic representatives who he prefers. [TT Vol. 2 at 244].

216. Moreover, Mr. Haley testified that his vote for his state senator matters, and that he regularly donates to his state Senator's campaign. [TT Vol. 2 at 240].

217. The 2011 redistricting has not negatively impacted Mr. Haley's ability to remain politically active as evidenced by his participation in the Sierra Club, the ACLU and Michigan League of Women Voters. [TT Vol. 2 at 233-235].

I. KAREN SHERWOOD

**LACKS STANDING TO CHALLENGE HER CONGRESSIONAL
AND STATE SENATE DISTRICTS.**

218. Karen Sherwood is a Democratic voter who lives in Midland, Michigan. [TT Vol. 2 at 6, 8, 14].

219. Ms. Sherwood is not challenging House District 98, which is represented by Republican Annette Glen. [TT Vol. 2 at 20-21].

220. Although Ms. Sherwood is challenging her congressional district, her district falls within the range of Professor Chen's simulated, non-partisan districts. [Plaintiff Trial Ex. 278; TT Vol. 1 at 112-113, 203; TT Vol. 2 at 25-27].

221. Ms. Sherwood had Republican representatives in her Congressional District and state Senate District prior to the 2011 redistricting. [TT Vol. 2 at 46].

222. Ms. Sherwood admitted that her current congressperson has cast votes that she is “fine with.” [TT Vol. 2 at 32].

223. She also admitted that she does not know her current congressperson’s voting history, so she did not know if she differed with him on everything he has done while in Congress. [TT Vol. 2 at 31].

224. While Ms. Sherwood testified that she does not agree with many of her state senator’s positions on the issues, the only issue she identified at trial was education. [TT Vol 2. at 13].

225. She has met with her current Republican congressperson. [TT Vol 2. at 29].

226. Ms. Sherwood has Republican family members in Congressional District 4 and Senate District 36 who are happy with their elected officials. [TT Vol 2. at 32].

227. She agreed it is possible that Republicans from her congressional district who are members of the League could agree with her congressperson. [TT Vol 2. at 31].

228. Ms. Sherwood has been very politically active since 2011. [TT Vol 2. at 35].

229. Specifically, Ms. Sherwood has: (i) been a League member since 1994 and has been a “really active member” since 2004 [TT Vol 2. at 13]; (ii) served as the president and treasurer of the Midland local chapter of the League [TT Vol 2. at 13-14]; (iii) “manned” offices for the Democratic party [TT Vol 2. at 15]; (iv) “carried petitions,” knocked on doors to get signatures, and “stood at the library several evenings” in connection with Proposition 2 [TT Vol 2. at 17-18]; and (v) made contributions to the Democratic candidate who has run in her state Senate District [TT Vol 2. at 16, 36].

230. Ms. Sherwood wants proportional representation as evidenced by her testimony that “more than half of Michigan voters vote Democratic, but when you go to our State House and our State Senate, you don’t see that.” [TT Vol. 2. at 33].

231. She does not know what factors were used to draw the voting maps. [TT Vol. 2. at 38].

232. She became concerned about the voting maps shortly after they were adopted in 2011. [TT Vol. 2. at 41].

233. She never explored the possibility of filing a lawsuit relating to the 2011 redistricting prior to when she was contacted about participating in this matter. [TT Vol. 2. at 45].

J. LINDA AERTS

234. Linda Aerts is a Democratic voter who lives in Twin Lake, Michigan. (L. Aerts Dep at pp. 5, 11).

235. She is only challenging House District 91, which is represented by a Republican. (L. Aerts Dep at pp. 10, 14)

236. Despite the fact that Ms. Aerts is challenging House District 91, she acknowledged: (i) she has only “paid attention” to one vote cast by her representative (L. Aerts Dep at p. 29); and (ii) her representative makes himself available to meet with his constituents, which she views as a positive (L. Aerts Dep at p. 31)

237. In addition, Ms. Aerts has looked at the simulated maps involved in this lawsuit and acknowledges that her house falls within some of the maps drawn by the computer. (L. Aerts Dep at p. 37)

238. Ms. Aerts is not challenging Congressional District 2 or Senate District 34, districts in which she resides and seats that are also both represented by Republicans. (L. Aerts Dep at pp. 24-25)

239. She is not aware that Congressional District 2 and Senate District 34 are not being challenged. (L. Aerts Dep at pp. 24-25) Ms. Aerts has no knowledge of why those districts are not being challenged. (L. Aerts Dep at pp. 24-25)

240. Ms. Aerts acknowledges that members of the Democratic and Republican parties can disagree internally on issues. (L. Aerts Dep at p. 33)

241. Ms. Aerts does not believe it is impossible to elect a democratic candidate. Her objection is that, “I can’t get a blue candidate elected very easily.” (L. Aerts Dep at p. 14)

242. Ms. Aerts testified that she wants “proportional representation” in the Michigan House of Representatives. (L. Aerts Dep at p. 38-39)

243. Ms. Aerts first realized that she disagreed with the 2011 maps “a couple years ago.” (L. Aerts Dep at p. 39)

244. The 2011 redistricting has not impacted Ms. Aerts’ ability to remain politically active. In fact, Ms. Aerts admits she is “just as active” in politics as she was before the redistricting. (L. Aerts Dep at p. 32) This is further evidenced by Ms. Aerts’ decision to run for elected office in the next election. (L. Aerts Dep at p. 31)

245. Ms. Aerts considers herself “active in Democratic politics.” (L. Aerts Dep at p. 6) She is a “member of the Muskegon Democratic party” and is on

the executive committee for the 2nd Congressional District. (L. Aerts Dep at p. 15)

246. Ms. Aerts has voted “every year. All the time.” (L. Aerts Dep at p. 11)

247. Ms. Aerts is also a precinct delegate, and in 2016 knocked on doors in her district using a “Democrat list.” (L. Aerts Dep at pp. 13-14)

248. In 2018, she “did some fundraising events” for Rob Davidson, the Democratic nominee for Congressional District 2 and Poppy Sias-Hernandrz, the Democratic nominee for Senate District 34. (L. Aerts Dep at p. 22)

K. ELIANNA BOOTZIN

249. Elianna Bootzin lives in Grand Rapids, Michigan. (E. Bootzin Dep at p. 5) She is not affiliated with any political party, but typically votes for Democrats. (E. Bootzin Dep at pp. 9-10).

250. Out of the three legislative offices Ms. Bootzin is represented by, she is challenging only House District 75, which is represented by a Democrat. (E. Bootzin Dep at p. 9)

251. She first believed that this district is “packed” two to three years ago. (E. Bootzin Dep at p. 24-25)

252. Ms. Bootzin has been represented by a Democrat in the State House ever since she has lived in her current home. (E. Bootzin Dep at p. 15) Ms. Bootzin is currently represented in House District 75 by David LaGrand. (E. Bootzin Dep at p. 15)

253. Despite challenging House District 75 in this lawsuit, Ms. Bootzin admits: (i) there is a “very strong alignment” between her views and LaGrand’s views (E. Bootzin Dep at p. 15); (ii) her ability to elect a Democratic representative has never been negatively impacted by redistricting (E. Bootzin Dep at p. 16); (iii) she has always been able to vote for a Democratic representative (E. Bootzin Dep at pp. 16-17); (iv) the redistricting has never impacted her ability to engage in campaign activity (E. Bootzin Dep at p. 17); and (v) the redistricting has not impacted her ability to run for public office, express her political views or donate money (E. Bootzin Dep at p. 18).

254. In essence, Ms. Bootzin wants proportional representation in the State House. (E. Bootzin Dep at p. 24)

255. Ms. Aerts is not challenging Congressional District 3, which is represented by a Republican, or Senate District 29, which is represented by a Democrat. (E. Bootzin Dep at pp. 13)

256. Her understanding of why Congressional District 3 and Senate District 29 are not being challenged is that “it’s easiest to deal simply with the house districts within the state, that it would be more complicated to handle senate and congressional districts.” (E. Bootzin Dep at p. 14)

257. Ms. Bootzin testified that it is not “ironclad” she will vote for Democratic candidates in 2020. (E. Bootzin Dep at pp. 10-11) Indeed, Ms. Bootzin admits that with respect to “Democrat interests,” there are “certainly broad ranges within the public and even party members.” (E. Bootzin Dep at p. 22)

L. MELISSA SHAFFER-O’CONNELL

258. Melissa Shaffer-O’Connell lives in Pickford, Michigan. (M. O’Connell Dep at p. 5). She considers herself an “Independent,” but leans Democrat. (M. O’Connell Dep at p. 9)

259. Ms. O’Connell resides in Congressional District 1, House District 107 and Senate District 37. (M. O’Connell Dep at p. 8)

260. Despite being represented by Republicans in all three legislative offices based on where she resides, Ms. O’Connell is challenging only Congressional District 1, a seat currently held by Jack Bergman, as part of this lawsuit. (M. O’Connell Dep at p. 5, 17-18)

261. Ms. O’Connell testified that the “same issues apply” to the House and Senate Districts she is represented by, but is not challenging either map. (M. O’Connell Dep at p. 18) Ms. O’Connell does “not know” why those districts are not being challenged. (M. O’Connell Dep at p. 18)

262. She first believed that the maps were improperly drawn after the 2012 election. (M. O’Connell Dep at pp. 27-28)

263. The 2011 maps “has not limited the physical expression” of Ms. O’Connell’s beliefs. (M. O’Connell Dep at p. 23) Instead, it has an impact on her “mental faith in the system.” (M. O’Connell Dep at p. 23)

264. Ms. O’Connell disagrees with the 2011 maps because they do not provide for proportional representation. (M. O’Connell Dep at p. 19)

265. She described the impact of being in a “cracked district” as having “less ability to have representation statewide because we are seen as being a red district rather than a blue district.” (M. O’Connell Dep at p. 11)

266. Ms. O’Connell testified as a political science teacher at Lake Superior State University, if the maps were drawn in a more “competitive” manner, she would “feel more comfortable telling [her students their vote matters.” (M. O’Connell Dep at p. 15)

267. Ms. O’Connell has made the personal decision to not work on any political campaigns because she does not “want to bias” her students through her actions. (M. O’Connell Dep at p. 24)

268. With respect to her Congressman, Ms. O’Connell testified that she agrees with Bergman’s position regarding the Sault Locks. (M. O’Connell Dep at pp. 20-21)

269. Ms. O’Connell admits that she has never been prevented from contacted Bergman. (M. O’Connell Dep at p. 20) She also admits that she does not follow his voting record. (M. O’Connell Dep at p. 20)

270. Ms. O’Connell believes that there are “multiple” Democratic interests that can be “truly” divergent. (M. O’Connell Dep at pp. 24-25)

271. In addition, Ms. O’Connell admits that there is a “fair amount of bipartisanship legislation which is passed no matter how divided the legislature is.” (M. O’Connell Dep at p. 22)

M. JESSICA REISER

272. Jessica Reiser lives in Richmond Michigan. (J. Reiser Dep at p. 9).

273. The only legislature district Ms. Reiser is challenging in this lawsuit is House District 63, which is currently represented by a Republican. (J. Reiser Dep at pp. 9-10)

274. Ms. Reiser testified that she has voted for Republicans in the past. (J. Reiser Dep at p. 37-38)

275. When asked if Ms. Reiser would vote for a Republican in the future, she testified, “Sure.” (J. Reiser Dep at p. 37)

276. Mr. Reiser contacted her previous Republican State House representative, Dave Maturen, asking him to vote a certain way on a particular issue. (J. Reiser Dep at p. 17) Maturen acknowledged Ms. Reiser’s contact, which was what she “anticipated.” (J. Reiser Dep at p. 18)

277. Ms. Reiser admits that the 2011 redistricting has not: (i) impacted her ability to express her political views; (ii) precluded her from fundraising for democratic candidates; (iii) prevented her from contacting her representative and ask that her representative vote a certain way; or (iv) prevented her from speaking out on an issue she disagrees with her representative on. (Reiser Dep at pp. 28-30)

278. Dr. Chen’s and Warshaw’s data depict Ms. Reiser in a Republican leaning House District under every simulation. Plaintiffs’ Ex.278 at 26.

279. Ms. Reiser admits that if the lines are redrawn, she could continue to live in a district that is represented by a Republican. (J. Reiser Dep at p. 20)

N. ANGELA RYAN

INTRODUCTORY FACTS FOR ANGELA RYAN

280. Ms. Ryan resides in 15512 Liverpool Street, Livonia, Michigan. A.

Ryan Dep. Tr. at 12:1-2.

281. Ms. Ryan lives in Congressional District 11. *Id.* at 13:4-6.

282. Ms. Ryan identifies with the Democratic Party. *Id.* at 12:9-12.

283. Ms. Ryan has consistently voted for Democrats. *Id.* at 12:13-22.

284. Ms. Ryan is pretty certain she voted for a Republican when she lived in Virginia in the 1990's and a local election in Michigan. *Id.* at 37-38:9-13, 20-1.

285. For the 2020 elections, Ms. Ryan intends to vote for Democratic candidates. *Id.* at 12-13:23-3.

**INTRODUCTORY FACTS FOR THE LEAGUE OF WOMEN
VOTERS OF MICHIGAN.**

286. Ms. Ryan has been involved with the League since 1981 when she began donating to the national League. *Id.* at 9:7-10.

287. Ms. Ryan has been actively involved in the League since her retirement in 2004. *Id.* at 8, 9:23-24, 7-12.

288. Ms. Ryan is currently the president of her local League. *Id.* at 9:20-23.

289. Ms. Ryan has been president of the local League since July 1, 2012. *Id.* at 10:11-13.

**FACTS DEMONSTRATING THAT NEITHER MS. RYAN NOR THE
LEAGUE HAS STANDING.**

290. Ms. Ryan's representative in Congress is a Democrat. *Id.* at 25:8-12.

291. Ms. Ryan's representative in the State House of Representatives is a Democrat. *Id.* at 26:2-4.

292. Ms. Ryan's representative in the State Senate is a Democrat. *Id.* at 27:19-20.

293. Ms. Ryan identifies with the Democratic Party. *Id.* at 12:9-12.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. RYAN'S VOTE.

294. Ms. Ryan's representative in Congress is a Democrat. *Id.* at 25:8-12.

295. Ms. Ryan's representative in the State House of Representatives is a Democrat. *Id.* at 26:2-4.

296. Ms. Ryan's representative in the State Senate is a Democrat. *Id.* at 27:19-20.

297. Ms. Ryan identifies with the Democratic Party. *Id.* at 12:9-12.

FACTS DEMONSTRATING THAT MS. RYAN'S AND THE LEAGUE'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

298. Ms. Ryan has been able to reach out to her congressional representative since 2011. *Id.* at 15:16-18.

299. Ms. Ryan has been able to reach out to her congressman by email. *Id.*

300. Ms. Ryan has always received a response from her congressman to her emails. *Id.* at 15:19-22.

301. Ms. Ryan appreciated the response, but did not like what the response said. *Id.* at 15-16:23-7.

302. Ms. Ryan has not attended events hosted by her congressman. *Id.* at 16:8-10.

303. Ms. Ryan stated her congressman, Dave Trott, did not hold very many events. *Id.* at 16:11-17.

304. Ms. Ryan agrees that there are varying degrees of positions on issues within a political party. *Id.* at 21:7-13.

305. Ms. Ryan agrees that districting alone does not necessarily forecast an election and that the individual candidate can make the difference of who wins an election. *Id.* at 29,32:16-24, 13-22.

306. Ms. Ryan states that the redistricting has not impacted her ability to vote. *Id.* at 33:1-3.

307. Ms. Ryan states that if she were not a League president, the redistricting would not have impacted her ability to campaign for someone. *Id.* at 33:4-9.

308. Ms. Ryan would like to live in a district where there is actual competition. *Id.* at 36:19-21.

309. Ms. Ryan stated how the recent congressional race was a close race.

Id. at 40:7-11.

**FACTS DEMONSTRATING THAT MS. RYAN AND THE LEAGUE
OF WOMEN VOTERS WAS DILATORY IN ASSETING THEIR
RIGHTS.**

313. Ms. Ryan was a member of the League in 2011. *Id.* at 8, 9:23-24, 7-12.

314. Redistricting was of interest to Ms. Ryan since the Census was completed. *Id.* at 25:13-14.

315. Ms. Ryan became involved in the lawsuit as a witness in August 2018.

Id. at 39:2-3.

O. DORIS SAIN

INTRODUCTORY FACTS FOR DORIS SAIN

316. Ms. Sain resides in 8139 Fenton Road, Grand Blanc, Michigan. D.

Sain Dep. Tr. at 11:13.

315. Ms. Sain lives in Senate District 14. *Id.* at 14:5-6.

316. Ms. Sain lives in Congressional District 5. *Id.* at 12:23-25.

317. Ms. Sain is affiliated with the Democratic Party. *Id.* at 11-12:23-2.

318. Ms. Sain has consistently voted for Democrats over the years. *Id.* at 12:3-5.

319. Ms. Sain voted for a Republican at one point in her lifetime. *Id.* at 12:5-6.

320. For the 2020 elections, Ms. Sain intends to vote for Democratic candidates. *Id.* at 12:14-22.

**INTRODUCTORY FACTS FOR THE LEAGUE OF WOMEN
VOTERS OF MICHIGAN.**

321. Ms. Sain has been a member of the League of Women Voters of Michigan (“League”) since 2009. *Id.* at 9:16-18.

322. Ms. Sain received the Making Democracy Work Award from the League in 2009. *Id.* at 9:12-13.

323. The League gave her a year’s membership in 2009. *Id.* at 9:13-15.

**FACTS DEMONSTRATING THAT NEITHER MS. SAIN NOR THE
LEAGUE HAS STANDING.**

324. Congressman Dan Kildee represents Ms. Sain. *Id.* at 24:7-9.

325. Congressman Dan Kildee is a Democrat. *Id.* at 26:8-14.

326. Ms. Sain is happy with her representative in Congress. *Id.* at 27:1-4.

**FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING
PLANS DID NOT DILUTE MS. SAIN’S VOTE.**

327. Ms. Sain is happy with her representatives in Congress and the State House. *Id.*

328. Ms. Sain’s representatives in Congress and the State House are Democrats. *Id.*

329. Ms. Sain is happy with her representatives in Congress and the State House because as Democrats, they align with her interests. *Id.* at 27:1-6.

330. Ms. Sain votes for Democrats pretty much all of the time. *Id.* at 27:19-21.

FACTS DEMONSTRATING THAT MS. SAIN'S AND THE LEAGUE'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

331. Ms. Sain's ability to vote has never been impacted. *Id.* at 28:22-24.

332. Ms. Sain has always voted. *Id.* at 29:1.

333. Redistricting did not impact Ms. Sain's ability to vote. *Id.* at 29:5-7.

334. Ms. Sain was able to reach out to Senator Johnson's office. *Id.* at 31:14-15.

335. Ms. Sain was able to express her concerns to Senator Johnson's staff. *Id.* at 32:3-6.

336. Ms. Sain has participated in protests since 2011. *Id.* at 32:11-15.

337. Ms. Sain has had the ability to contribute as she saw fit politically. *Id.* at 32-33:24-1.

338. Redistricting has not stopped Ms. Sain from speaking out against the voting record or views of a representative. *Id.* at 44:17-21.

339. Ms. Sain agrees that bipartisan pieces of legislation make their way through the State House and State Senate. *Id.* at 36:18-21.

340. Ms. Sain agrees that within any given political issue there are varying degrees of where people within the Democratic party fall on that issue. *Id.* at 48:3-8.

341. Ms. Sain believes that computers should draw the maps. *Id.* at 49-50:20-16.

342. Ms. Sain does not know if redistricting would be better if districts were in the shape of blocks, squares, or rectangles. *Id.* at 51-52:24-3.

343. Ms. Sain would like a district that is half Republicans, half Democrats, or close to it. *Id.* at 53:5-9.

344. Ms. Sain is not sure whose way is fair if it's 50/40 or 60, 70 percent. *Id.* at 53:11-15.

345. Ms. Sain agrees that there are registered voters who do not vote usually, but a particular candidate can energize them to bring them to the polls. *Id.* at 53:18-25.

**FACTS DEMONSTRATING THAT MS. SAIN AND THE LEAGUE
OF WOMEN VOTERS WAS DILATORY IN ASSETING THEIR
RIGHTS.**

346. Ms. Sain was a member of the League in 2011. *Id.* at 25:3-4.

347. The League brought the issue of redistricting to Ms. Sain in 2011. *Id.* at 25:7-12.

348. Redistricting was of interest to Ms. Sain in 2011. *Id.* at 25:13-14.

349. Ms. Sain became involved in the lawsuit when she received a telephone call from Mark Brewer. *Id.* at 57:6-23.

350. Ms. Sain did not know she was involved in the lawsuit until the law few days prior to the deposition. *Id.* at 58:8-17.

O. ADALEA JANICE SAIN-STEINBORN

INTRODUCTORY FACTS FOR ADALEA JANICE SAIN-STEINBORN.

351. Ms. Sain-Steinborn resides in 5448 North Seymour Road, Flushing, Michigan. A. Sain-Steinborn Dep. Tr. at 9:13-15.

352. Ms. Sain-Steinborn lives in Senate District 32. *Id.* at 12:9-11.

353. Ms. Sain-Steinborn lives in Congressional District 5. *Id.* at 10:21-22.

354. Ms. Sain-Steinborn identifies with the Democratic Party. *Id.* at 10:5-8.

355. Ms. Sain-Steinborn has consistently voted for Democrats. *Id.* at 9-10:25-4.

356. Ms. Sain-Steinborn once voted for a Republican in a local race 15 or 20 years ago. *Id.* at 35-36:23-10.

357. For the 2020 elections, Ms. Sain-Steinborn intends to vote for Democratic candidates. *Id.* at 10:9-17.

FACTS DEMONSTRATING THAT NEITHER MS. SAIN-STEINBORN NOR THE LEAGUE HAS STANDING.

358. Congressman Dan Kildee represents Ms. Sain-Steinborn. *Id.* at 10:21-22.

359. Congressman Dan Kildee is a Democrat. *Id.* at 22:12-14.

360. Ms. Sain-Steinborn's state representative is a Republican. *Id.* at 22:15-16.

361. Ms. Sain-Steinborn identifies as a Democrat. *Id.* at 10:5-8.

362. Ms. Sain-Steinborn agrees that certain legislation can have bipartisan support. *Id.* at 37-38:22-13.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. SAIN'S VOTE.

363. Ms. Sain-Steinborn is represented by a Democrat in Congress. *Id.* at 10:21-22.

FACTS DEMONSTRATING THAT MS. SAIN-STEINBORN'S AND THE LEAGUE'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

364. Ms. Sain-Steinborn has been able to reach out to her state senator. *Id.* at 28-29:25-3.

365. Ms. Sain-Steinborn received a response from her state senator's office. *Id.* at 29:12-13.

366. Ms. Sain-Steinborn has been able to contact her congressman. *Id.* at 29:14-16.

367. Ms. Sain-Steinborn received a response from Congressman Kildee's Office. *Id.* at 29-30:24-2.

368. Ms. Sain-Steinborn believes that the map could be made fair by looking at the counties and making that a priority. *Id.* at 33:7-11.

369. Ms. Sain-Steinborn is aware that certain legislation can receive bipartisan support. *Id.* at 37-38:22-13.

370. Ms. Sain-Steinborn agreed that there was nothing in the redrawing of the districts in 2011 that prohibited her from donating to any candidates. *Id.* at 48:13-17.

371. Ms. Sain-Steinborn stated that nothing has prohibited her from expressing her political views. *Id.* at 49:6-8.

372. Ms. Sain-Steinborn stated that nothing has prohibited her from protesting for an issue. *Id.* at 49:9-11.

373. Ms. Sain-Steinborn agrees that within the Democratic Party there are varying degrees and opinions on certain issues. *Id.* at 51:9-12

**FACTS DEMONSTRATING THAT MS. SAIN-STEINBORN AND
THE LEAGUE OF WOMEN VOTERS WAS DILATORY IN
ASSETING THEIR RIGHTS.**

374. Ms. Sain-Steinborn became actively engaged in redistricting in 2018. *Id.* at 42:5-10.

375. Ms. Sain-Steinborn became involved in the lawsuit in 2018. *Id.* at 44:2-4.

376. Ms. Sain-Steinborn became involved in the lawsuit after she received a phone call. *Id.* at 44:5-10.

377. Ms. Sain-Steinborn does not remember who reached out to her. *Id.* at 44:11-12.

Q. CHRISTINE CANNING-PETERSON

INTRODUCTORY FACTS FOR CHRISTINE CANNING-PETERSON

378. Ms. Canning-Peterson resides at 10249 Tims Lake Boulevard, Grass Lake, Michigan. C. Canning-Peterson Dep. Tr. at 5:2-3.

379. Ms. Canning-Peterson lives in Senate District 16. *Id.* at 10:5-6.

380. Ms. Canning-Peterson lives in Congressional District 7. *Id.* at 9-10:25-2.

381. Ms. Canning-Peterson lives in State House District 65. *Id.* at 10:3-4.

382. Ms. Canning-Peterson considers her a member of the Democratic Party. *Id.* at 8:1-2.

383. Ms. Canning-Peterson has considered herself a Democrat since the 1960's. *Id.* at 10-11:25-1.

384. For the 2020 elections, Ms. Canning-Peterson intends to vote for Democratic candidates. *Id.* at 11:14-16.

**INTRODUCTORY FACTS FOR THE LEAGUE OF WOMEN
VOTERS OF MICHIGAN.**

385. Ms. Canning-Peterson has been a member of the League of Women Voters of Michigan (“League”) since 2015. *Id.* at 8:5-7.

386. Ms. Canning-Peterson was part of the resurgence of the Jackson area League in 2015 because it had been defunct for several years. *Id.* at 8:8-14.

387. Ms. Canning-Peterson is currently chairing a committee called Community Stability. *Id.* at 8:19-23.

**FACTS DEMONSTRATING THAT NEITHER MS. CANNING-
PETERSON NOR THE LEAGUE HAS STANDING.**

388. Ms. Canning-Peterson did not know that some Democrats voted in favor of the current district maps. *Id.* at 24:14-16.

**FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING
PLANS DID NOT DILUTE MS. CANNING-PETERSON’S VOTE.**

389. Ms. Canning-Peterson was not sure if people within a party hold the same views about every issue. *Id.* at 24:4-13.

390. Ms. Canning-Peterson agrees that the purpose of a primary is to decide between different individuals of the same party who hold different views. *Id.* at 23-24:25-3.

**FACTS DEMONSTRATING THAT MS. CANNING-PETERSON’S
AND THE LEAGUE’S FIRST AMENDMENT RIGHTS WERE NOT
HARMED.**

391. Ms. Canning-Peterson's husband ran for House District 65 in 2014.
Id. at 16:14-20.

392. Ms. Canning-Peterson took care of the finances on her husband's
campaign. *Id.* at 16:20-21.

393. Ms. Canning-Peterson reduced her partisan political activities
because she believed her candidate could not win in her district. *Id.* at 20:1-
5.

394. Ms. Canning-Peterson did not know if she had continued her partisan
political activities that could have helped a Democrat win in her district. *Id.*
at 20:12-16.

395. Ms. Canning-Peterson's ability to vote has not been affected by the
2011 redistricting. *Id.* at 26:2-5.

396. Ms. Canning-Peterson's ability to engage in campaign activity has
not been affected by the 2011 redistricting. *Id.* at 26:6-8.

397. Ms. Canning-Peterson's ability to run for office has not been affected
by the 2011 redistricting. *Id.* at 26:9-11.

398. Ms. Canning-Peterson's ability to express her political views has not
been affected by the 2011 redistricting. *Id.* at 26:12-14.

399. Ms. Canning-Peterson's ability to fundraise for a chosen candidate
has not been affected by the 2011 redistricting. *Id.* at 26:21-23.

400. Ms. Canning-Peterson's ability to endorse and campaign for a candidate has not been affected by the 2011 redistricting. *Id.* at 26-27:24-1.

401. Ms. Canning-Peterson's ability to put up a yard sign for a candidate has not been impacted by the 2011 redistricting. *Id.* at 27:2-4.

402. Ms. Canning-Peterson's ability to contact her representatives has not be affected by the 2011 redistricting. *Id.* at 27:5-7.

403. The 2011 redistricting has not prevented Ms. Canning-Peterson from moving to another district. *Id.* at 27:13-16.

404. Ms. Canning-Peterson has participated in a protest since the 2011 redistricting. *Id.* at 27:17-21.

FACTS DEMONSTRATING THAT MS. CANNING-PETERSON AND THE LEAGUE OF WOMEN VOTERS WAS DILATORY IN ASSETING THEIR RIGHTS.

405. Ms. Canning-Peterson first became aware of the redistricting when Mark Schauer did not appear on the ballot. *Id.* at 28:13-25.

R. DENISE HARTSOUGH

INTRODUCTORY FACTS FOR DENISE HARTSOUGH

406. Ms. Hartsough resides in Kalamazoo, Michigan. D. Hartsough Dep. Tr. at 5:8-9.

407. Ms. Hartsough lives in State House District 60. *Id.* at 9:2-4.

408. Ms. Hartsough is affiliated with the Democratic Party. *Id.* at 9:22-23.

409. Ms. Hartsough has not voted for a Republican since 2012. *Id.* at 10:5-6.

410. Ms. Hartsough has voted for a Republican about four times overall. *Id.* at 23:19-22.

411. For the 2020 elections, Ms. Hartsough intends to vote for Democratic candidates. *Id.* at 10:7-10.

**INTRODUCTORY FACTS FOR THE LEAGUE OF WOMEN
VOTERS OF MICHIGAN.**

412. Ms. Hartsough is a member of the League of Women Voters (“League”). *Id.* at 7:4-5.

413. Ms. Hartsough has been a member of the League for 25 years. *Id.* at 7:23-24.

414. Ms. Hartsough is a past president of the local League. *Id.* at 7:13.

415. Ms. Hartsough is currently on the board of the state League and serves as treasurer. *Id.* at 7:15-16.

**FACTS DEMONSTRATING THAT NEITHER MS. HARTSOUGH
NOR THE LEAGUE HAS STANDING.**

416. Ms. Hartsough believes that her current representative in the 60th State House District is amazing and does a very good job. *Id.* at 17:18-20.

417. Ms. Hartsough believes that her representative in the 60th State House District represents her interests. *Id.* at 27:4-7.

418. Redistricting has not affected Ms. Hartsough's ability to vote. *Id.* at 19:2-5.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. HARTSOUGH'S VOTE.

419. Ms. Hartsough is affiliated with the Democratic Party. *Id.* at 9:22-23.

420. Ms. Hartsough believes a qualified Democrat represents the 60th State House District. *Id.* at 19-20:25-3.

421. Ms. Hartsough believes that her representative in the 60th State House District represents her interests. *Id.* at 27:4-7.

FACTS DEMONSTRATING THAT MS. HARTSOUGH'S AND THE LEAGUE'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

422. Ms. Hartsough has voted for the 60th State House District in every election the seat was on the ballot since 2012. *Id.* at 9:16-18.

423. Ms. Hartsough has participated in distributing voter guides for the elections. *Id.* at 15:3-4.

424. Ms. Hartsough's participation in distributing voter guides has not been impacted by the 2011 redistricting. *Id.* at 15:6-12.

425. Ms. Hartsough feels that her current representative in the 60th State House District is very responsive. *Id.* at 15:17-19.

426. Redistricting has not affected Ms. Hartsough's ability to vote. *Id.* at 19:2-5.

427. Ms. Hartsough indicates that her desire to participate in campaigns has been affected by redistricting, but her ability to participate in campaigns has not been affected. *Id.* at 19:13-16.

428. Redistricting has not impacted Ms. Hartsough's ability to express her political views. *Id.* at 20:9-12.

429. Redistricting has not affected Ms. Hartsough's ability to contact her representative. *Id.* at 20:13-16.

430. Ms. Hartsough has contacted her representative since redistricting. *Id.* at 20:20-22.

431. Ms. Hartsough's representative has always been responsive to her since redistricting. *Id.* at 20:17-19.

432. Ms. Hartsough has voted for a Republican in the past. *Id.* at 23:19-22.

433. Ms. Hartsough believes that two of the Republicans who she voted for acted in her interests. *Id.* at 24:12-14.

**FACTS DEMONSTRATING THAT MS. HARTSOUGH AND THE
LEAGUE OF WOMEN VOTERS WAS DILATORY IN ASSETING
THEIR RIGHTS.**

435. Ms. Hartsough was a member of the League in 2011. *Id.* at 7:23-24.

436. Ms. Hartsough became aware of the redistricting prior to the 2012 election. *Id.* at 25-26:22-1.

437. Ms. Hartsough became concerned with redistricting prior to the 2012 election. *Id.* at 26:2-6.

S. TRINA RAE BORENSTEIN

INTRODUCTORY FACTS FOR TRINA RAE BORENSTEIN

438. Trina Rae Borenstein has been a member of the League of Women Voters of Michigan since 1995, when she moved to Michigan. T. Borenstein Dep. Tr. at 9:2-8.

Since 2009, Ms. Borenstein lives at 4680 Wismiller Rd., Greenbush, Michigan 48738. T. Borenstein Dep. Tr. at 10:17-25, 11:1-3.

439. Ms. Borenstein lives in Congressional District 1, currently represented by Republican Jack Bergman. T. Borenstein Dep. Tr. at 11:17-25.

440. Ms. Borenstein lives in State Senate District 36, currently represented by Republican Jim Stamas. T. Borenstein Dep. Tr. at 12:1-7.

441. Ms. Borenstein lives in state house district 106, currently represented by Republican Sue Aller. T. Borenstein Dep. Tr. at 12:8-14.

442. Ms. Borenstein identifies as a Socialist but votes for Democrats almost exclusively. She testified that she would register as a Socialist but there is no point in doing so since “it just is not going to happen, and the Democrats are the next best choice. She has voted for some third-party candidates such as Green Party. T. Borenstein Dep. Tr. at 21:21-25, 22:1-14.

443. Ms. Borenstein caucused for Republican John Anderson in 1980 when she lived in Iowa. T. Borenstein Dep. Tr. at 22:24-25, 23:1-4.

444. Ms. Borenstein would like to also see her state house district redrawn, but the League is not challenging that district in this suit. T. Borenstein Dep. Tr. at 49:24-25, 50:1-25, 51:4-25.

445. Ms. Borenstein was not part of the 2011 redistricting process at all. T. Borenstein Dep. Tr. at 65:9-22.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. BORENSTEIN'S VOTE.

446. If her congressional district is redrawn, Ms. Borenstein would like to see more Democratic voters in her district. Borenstein Dep. Tr. at 32:21-25, 33:1-5.

447. Ms. Borenstein's districts, at the same address, elected predominantly Republicans prior to the 2011 plan. T. Borenstein Dep. Tr. at 40:4-25, 41:1-15.

448. Ms. Borenstein's County, Alcona County, has a Republican County Sheriff, a completely Republican County Commission, and is a very Republican county. T. Borenstein Dep. Tr. at 55:25, 56:1-25, 57:1-4

449. Ms. Borenstein believes her districts are largely "packed", despite each having elected Republican candidates. T. Borenstein Dep. Tr. at 45:20-25, 46:1-25, 47:1-25, 48:1-25, 49:1-21, 80:11-25, 81:1-2.

450. Ms. Borenstein testified that Alcona county has more registered Democrats than registered republicans but the registered Democrats do not vote. T. Borenstein Dep. Tr. at 57:2-7.

FACTS DEMONSTRATING THAT MS. BORENSTEIN'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

451. Ms. Borenstein considers herself politically active and donates to political campaigns and committees, advocates, writes letters to the editor and letters to her congressmen, has worked actively on campaigns, marches, manning booths, is a member/secretary of the Alcona Democratic Party, and is member of its candidate search committee for her state house district. T. Borenstein Dep. Tr. at 23:5-25, 24:1-4. She also participates in fundraising, knocking on doors. T. Borenstein Dep. Tr. at 28:4-7.

452. Ms. Borenstein testified that she prefers to donate to political organizations rather than candidates because Democratic candidates for the most part “don’t have a fighting chance”, however she went on to describe her experience running as a Democrat for Township Trustee in 2018 and how she could not get elected as a Democrat in her Township. This fact demonstrates that Ms. Borenstein simply lives in a more Republican area/community, since she is not alleging that her township itself is a partisan gerrymander. T. Borenstein Dep. Tr. at 24:12-15, 25:1-25, 26:1-25, 27:1-10.

453. Nothing about her district boundaries has stopped Ms. Borenstein from voting, donating money to a candidate or party, publicly endorsing candidates, or participating in marches or protests. T. Borenstein Dep. Tr. at 62:3-25, 63:1-9.

**FACTS DEMONSTRATING THAT MS. BORENSTEIN WAS
DILATORY IN ASSERTING HIS RIGHTS.**

454. Ms. Borenstein has been aware of redistricting for the past 10 years and has been aware of “gerrymandering” since elementary school. T. Borenstein Dep. Tr. at 35:25, 36:1-11.

455. Ms. Borenstein was paying attention to the redistricting process in 2011 as the maps were being drawn and paid even closer attention since 2014. T. Borenstein Dep. Tr. at 64:7-11.

456. Ms. Borenstein did not agree to testify in this suit until November 2018. T. Borenstein Dep. Tr. at 68:1-9.

T. JANICE YANNELLO WATKINS

INTRODUCTORY FACTS FOR JANICE WATKINS

457. Janice Yannello Watkins has lived in Michigan all of her life. J. Yannello Dep. Tr. at 6:24-25, 7:1.

458. Ms. Yannello has been a member of the League of Women Voters for roughly a year and a half. J. Yannello Dep. Tr. at 7:2-6.

459. Ms. Watkins currently lives in the 11th Congressional District, which is represented by Democrat Hailey Stevens. J. Yannello Dep. Tr. at 10:20-25, 11:1.

460. Ms. Watkins congressional district, Congressional District 11, flipped during the 2018 elections. Congressional District 11 elected a Democrat in 2018, Haley Stevens, with roughly 52% of the vote. In 2016, Congressional District 11 elected Republican David Trott with approximately 53% of the vote. In 2014, Congressional District 11 elected Republican David Trott with about 56% of the vote. In 2012, Congressional District 11 election Republican Kerry Bentivolio with less than 51% of the vote. Watkins Exhibit 1.

461. While Ms. Watkins testimony was being offered to challenge only CD 11, she feels the same way about her state house district. J. Watkins Dep. Tr. at 37:19-24.

FACTS DEMONSTRATING THAT MS. WATKINS LACKS STANDING.

462. Ms. Watkins has only lived in Michigan's Congressional District 11, the one Plaintiffs are using her testimony to challenge since December 2015, before that she lived in Congressional District 8. J. Watkins Dep. Tr. at 9:8-25.

463. Ms. Watkins testified that between 2011 and 2015 she voted consistently in the major (presidential-year) elections, but probably did not vote consistently during other elections or primary elections. J. Watkins Dep. Tr. at 10:2-9. Ms. Watkins testified that since 2015 she voted in “every election that came up. J. Watkins Dep. Tr. at 11:21-22.

464. Ms. Watkins testified that, while she tends to vote for Democrats, she is not “embedded with any party”, and has voted for Republicans including candidates for Governor. J. Watkins Dep. Tr. at 12:1-25.

465. Ms. Watkins believes Michigan is gerrymandered because it visually it looks “all cut up stupid” and she believes that there can be no other explanation other than partisan gerrymandering. J. Watkins Feb. 8, 2019 Tr. at 17:18-25, 18:1-2. Ms. Watkins essentially uses a visual test to determine that she lives in a gerrymandered district. Id.; J. Watkins Dep. Tr. at 22:21-25, 24:9-11, 24-25.

466. In fact, the exact specific portion of the map Ms. Watkins pointed to as being “all cut up stupid”, “crazy”, and direct evidence of partisan gerrymandering, is present in the Chen Proposed district. J. Watkins Dep. Tr. at 55:11-25, 56:25, 57:1-19.

467. Ms. Watkins also believes her congressional district is gerrymandered because she believes quizzically that for the previous three or four elections

Democrats have received more votes in her congressional district but Republicans keep winning. J. Watkins Dep. Tr. at 24:12-21, 25:1-18. Ms. Watkins doubles down on this bizarre assertion numerous throughout her testimony, at times turning it into a literal vote non-counting claim, and at other times arising as a proportional election claim. J. Watkins Dep. Tr. at 57:20-25, 58:1-25, 59:1-25, 60:1-16, 62:6-9 (Q. Congressional District 11 needs to be redrawn, in your opinion, so that more people are energized to vote? A. So that more people's votes really count.).

468. When asked if she considered herself to be harmed by the 2011 Plan, Ms. Watkins testified “Only that it makes me feel that my vote doesn’t count, and that’s what a lot of people are saying, that they feel their vote doesn’t count. And I -- I have felt that my vote wasn’t counting. . . .” but then went on to describe in detail a time when she attempted to attend a forum with her then congressman, David Trott, where a very large convention center was full of constituents, even during a snow storm. J. Watkins Dep. Tr. at 26:18-25, 27:1-25, 28:1-7. This certainly weighs against any claims of lack voter participation due to lack of enthusiasm.

469. Despite not being a plaintiff in this case, Ms. Watkins testified that she believed that she was a plaintiff in this action, that she was told she was

a plaintiff, and she indicated that she would not be testifying if she was not a plaintiff. J. Watkins Dep. Tr. at 74:5-12.

470. Ms. Watkins testified that there are a lot of factors other than the way districts are drawn that go into voter turnout for the congressional 11th district including candidate performance, presidential incumbency, direction the state is going, and gubernatorial popularity. J. Watkins Dep. Tr. at 66:1-25, 67:1-12.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. WATKINS'S VOTE.

471. Ms. Watkins testified that she believes her vote carries less weight in her congressional district based on how the lines were drawn, but then bizarrely explained that belief is based on her belief that so many people who live in her area are Democrats and they do not run for office. J. Watkins Feb. 8, 2019 Tr. at 33:17-25, 35:1-24.

472. Yet, Ms. Watkins acknowledges that the 2018 election yielded different results than prior elections because of, voters' widespread motivation to act. J. Watkins Dep. Tr. at 35:3-9.

473. At times, it appears that Ms. Watkins misunderstands plaintiffs' claims, for example, she testified that she wants to see her district "drawn keeping in mind number of people" which tends to demonstrate that she believes her district runs afoul of one-person-one-vote. J. Watkins Dep. Tr.

at 50: 3-6. See also J. Watkins Dep. Tr. at 52:17-25. Another example is that Ms. Watkins testified that she believes racial gerrymandering is taking place in Michigan, despite the absence of any racial gerrymandering claims in this case. J. Watkins Dep. Tr. at 54:8-21.

474. Ms. Watkins was not a part of the 2011 redistricting process. J. Watkins Dep. Tr. at 50:23-25, 51:3-5.

FACTS DEMONSTRATING THAT MS. WATKIN'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

475. Ms. Watkins testified that she has contacted her representatives, by phone or email, and has also met them at events such as coffee hours. J. Watkins Dep. Tr. at 15:9-15.

476. Ms. Watkins has donated money to politically affiliated organizations such as League of Women Voters, Democratic Congressional Committee, Southern Poverty Law, MoveOn.org, and Voters Not Politicians. J. Watkins Feb. 8, 2019 Tr. at 25:4-11. She has also volunteered for Voters Not Politicians. J. Watkins Feb. 8, 2019 Tr. at 25:11-14. She made these contributions in 2018. J. Watkins Dep. Tr. at 43:16-17.

477. Ms. Watkins also volunteered for League of Women Voters and Voters Not Politicians in 2018. J. Watkins Dep. Tr. at 43:20-24.

478. Ms. Watkins is not as comfortable contributing to partisan organizations or campaigns because she wants to “encourage everyone to be involved and vote”. J. Watkins Dep. Tr. at 25:16-22.

479. See convention center discussion above.

480. Ms. Watkins testified that she is more politically active than she used to be and that she did not know if her level of political activity would increase if her district was changed as a result of this action. J. Watkins Dep. Tr. at 30:18-25, 31:1-6.

481. Ms. Watkins testified that she did not think that her efforts to engage voters of all stripes in her congressional district would be different if the district were drawn differently. J. Watkins Dep. Tr. at 33:7-14.

482. Ms. Watkins testified that the way the 11th Congressional District was drawn did not stop her from voting in the congressional election and she has voted in congressional elections for as long as she can recall. J. Watkins Dep. Tr. at 45:2-23.

483. Ms. Watkins testified that the way the 11th Congressional District is drawn did not prohibit her from donating money to candidates. J. Watkins Dep. Tr. at 47:4-8.

484. Ms. Watkins testified that the way the 11th Congressional District is drawn did not prohibit her from participating in protests or outward displays of her political beliefs. J. Watkins Dep. Tr. at 47:11-17.

**FACTS DEMONSTRATING THAT MS. WATKINS WAS
DILATORY IN ASSERTING HER RIGHTS.**

485. Ms. Watkins only became involved in this action in December of 2018. J. Watkins Dep. Tr. at 39:1-15.

486. Ms. Watkins first started paying attention to 2011 redistricting roughly 2 years ago. J. Watkins Dep. Tr. at 39:16-24.

U. DEBORAH LEE CHERRY

INTRODUCTORY FACTS FOR DEBORAH CHERRY

487. Deborah Cherry lives at 3068 Falcon Drive, Burton, Michigan, 48519, and has lived there since at least 2011. Cherry Feb 6, 2019 Tr. at 5:6-12.

488. Ms. Cherry has lived in Michigan almost all of her life. Cherry Feb 6, 2019 Tr. at 7:2-4.

489. Ms. Cherry is a member of the League of Women Voters and has been a member for about 10 to 15 years. Cherry Feb 6, 2019 Tr. at 7:11, 21-23.

490. Ms. Cherry served in a number of political offices, including as a county commissioner in Genesee County starting in 1988 and for 6 years, as a Michigan state representative in the Michigan house from District 50 for 6 years, as a state senator from 2002 to 2010, and Genesee County treasurer

since (she is currently Genesee County Treasurer). Cherry Feb 6, 2019 Tr. at 9:10-24. She has been a precinct delegate for many years. Cherry Feb 6, 2019 Tr. at 10:1-3.

491. Ms. Cherry has always been active in the Democratic party, Cherry Feb 6, 2019 Tr. at 10:10-11, and has considered herself a Democrat for the last 40 years. Cherry Feb 6, 2019 Tr. at 11:11-16.

492. Ms. Cherry lives in the 5th Congressional district and the 27th state senate district. Cherry Feb 6, 2019 Tr. at 15-19.

493. Ms. Cherry voted for Democrats in both her congressional and state senate elections from 2012 through 2018. Cherry Feb 6, 2019 Tr. at 11:5-8.

494. Ms. Cherry testified that she primarily has voted for Democrats but she may have voted for candidates from other parties once or twice. Cherry Feb 6, 2019 Tr. at 11:17-22.

**FACTS DEMONSTRATING THAT MS. CHERRY LACKS
STANDING.**

495. Ms. Cherry considers her congressional district and state senate district to be “packed” because she believes that it is almost impossible for a Republican to win in those districts. Cherry Feb 6, 2019 Tr. at 13:1-25, 14:1-3.

496. Ms. Cherry testified that the alleged packing into those districts affects her because she doesn’t feel like her vote is as important as if she

were voting in a much tighter election. Cherry Feb 6, 2019 Tr. at 14:4-10. But that, admittedly, would be making it more difficult for the candidates she prefers to get elected. Cherry Feb 6, 2019 Tr. at 14:6-25.

497. Ms. Cherry testified that if she lived in a more competitive state senate or congressional district it would mean that she would “pay more attention to the districts that [she] live[s] in.” Cherry Feb 6, 2019 Tr. at 16:24-25, 17:1-2.

498. Ms. Cherry testified that the allegedly closed process in which the 2011 maps were drawn has affected her view of government because it made the Michigan legislature controlled by Republicans, yet she has absolutely no first-hand knowledge that the process was actually closed. Cherry Feb 6, 2019 Tr. at 19:6-19.

499. Ms. Cherry testified that she has been happy with her Democratic representatives in her congressional, state senate, and state house districts since 2012 and that redistricting has not negatively impacted her ability to elect Democratic representatives in those districts. Cherry Feb 6, 2019 Tr. at 19:20-25, 20:1-6.

500. Ms. Cherry testified that based on the results of the 2018 congressional elections, demographics in a district could change making the

district flip from being controlled by one party to being controlled by the other party. Cherry Feb 6, 2019 Tr. at 28:12-17.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. CHERRY'S VOTE.

501. Ms. Cherry testified that her vote “doesn’t mean as much because [she] know[s] [her preferred candidates are] going to win.” Cherry Feb 6, 2019 Tr. at 15:1-5.

FACTS DEMONSTRATING THAT MS. CHERRY'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

502. Ms. Cherry has donated to many races, but she testified that she donates more to areas where she thinks the races are more competitive. Cherry Feb 6, 2019 Tr. at 15:14-23. Specifically, Ms. Cherry testified that she has given less money to candidates in her congressional and state senate district because she thinks her “dollar can mean more somewhere else” so she contributes to in districts other than her own. Cherry Feb 6, 2019 Tr. at 16:4-13.

503. Ms. Cherry has participated in elections in other ways like door-knocking, get-out-the-vote efforts many times, Cherry Feb 6, 2019 Tr. at 16:14-17, but has focused that work on candidates other than her congressional and state senate candidates. Cherry Feb 6, 2019 Tr. at 16:18-

23. This means essentially that Ms. Cherry gets to amplify her electoral voice—i.e. she can elect more Democratic representatives.

**FACTS DEMONSTRATING THAT MS. CHERRY WAS DILATORY
IN ASSERTING HER RIGHTS.**

504. Ms. Cherry has been involved with the League of women voters and Democratic politics in general since the 2011 redistricting, she knew what the 2011 districts were like when they were drawn, and paid attention to media coverage of the 2011 redistricting process. Cherry Feb 6, 2019 Tr. at 23:16-25.

505. Ms. Cherry was aware right then the 2011 Plan was passed in 2011. Cherry Feb 6, 2019 Tr. at 24:1-6.

506. Ms. Cherry knew that she believed that the 2011 Plan “packed” her district at the time it was passed or shortly afterward. Cherry Feb 6, 2019 Tr. at 24:7-10, 18-20.

V. JANE ELIZABETH SPEER

INTRODUCTORY FACTS FOR JANE SPEER

507. Jane Speer lives at 10790 Robert Boulevard, Alpena, Michigan, 49707, and has lived there since 2011. Speer Feb. 6, 2019 Tr. at 6:6-12.

508. Ms. Speer has been a member of the League of Women Voters for 8 years. Speer Feb. 6, 2019 Tr. at 8:20-23.

509. Ms. Speer lives in the 1st Congressional District and the 36th state senate district. Speer Feb. 6, 2019 Tr. at 10:8-11.

510. Ms. Speer affiliates with the Democratic party because it supports and endorses most of the philosophies that she adheres to, especially with respect to education the environment, and gun control. Speer Feb. 6, 2019 Tr. at 10:19-23.

511. From 2012 onward, Ms. Speer has voted consistently for Democrats. In one instance she did vote for a Republican, but that was because he was functionally a Democrat (i.e. she believed he knew he could not be successful running as a Democrat in that district so he ran as a Republican.). Speer Feb. 6, 2019 Tr. at 11:2-9.

512. Ms. Speer intends to vote for Democratic candidates in the 2020 elections. Speer Feb. 6, 2019 Tr. at 11:12-15.

513. Ms. Speer served on the board of the league of women voters from 2012-2016. Speer Feb. 6, 2019 Tr. at 31:23-25, 32:1-4.

FACTS DEMONSTRATING THAT MS. SPEER LACKS STANDING.

514. Ms. Speer asserted no individual interests at stake in this litigation except for her “frustration” “enthusiasm” and confidence” which she repeated stated were shared by many others. Speer Feb. 6, 2019 Tr. at 15:4-11, 19:1-20. This includes her testimony that if the maps were redrawn in a

way, she believes is fairer, it “would help to really more reflect the collective votership and move away from this extreme partisanship that seems to be in existence right now.” Speer Feb. 6, 2019 Tr. at 19:21-25, 20:1, 33:8-13. Her testimony elicited absolutely no individual interest beyond these generalized harms.

515. Ms. Speer’s testimony regarding the harm she is suffering by being represented by Republicans is unclear and contradictory. For example, she testified that her Republican representatives have never voted in her interests, but then testified that she is not familiar with every one of their votes and then testified that they have not always voted against her interest. Speer Feb. 6, 2019 Tr. at 21:9-25, 22:1-10.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. SPEER’S VOTE.

516. Ms. Speer believes she lives in districts that are “cracked” specifically the 1st congressional district and the 36th state senate district, because she believes her “vote is weakened due to the fact that [her] voting district is configured by politicians who are taking that advantage of, in a sense, selecting their voters”. Speer Feb. 6, 2019 Tr. at 12:10-21. Ms. Speer’s issue with the districts seems to be that they are drawn by the legislature. Id.

FACTS DEMONSTRATING THAT MS. SPEER’S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

517. Ms. Speer testified that she is less enthusiastic about voting because she is not surprised by the election results (i.e. that Republicans will win), Speer Feb. 6, 2019 Tr. at 12:24-25, 13:1-2, yet, she has donated money to Democratic candidates in her districts. Speer Feb. 6, 2019 Tr. at 13:7-12, 14:12-14. Ms. Speer did testify that her donations were “on a more minimal level” due to her lack of enthusiasm. Id. at 14:7-11.

518. Ms. Speer has fundraised for candidates in her districts, hosted fundraisers, and has door knocked for those candidates. Speer Feb. 6, 2019 Tr. at 15:1-3.

519. Ms. Speer has reached out to her Republican congressman and receives responses, but she is not satisfied with those responses because she receives them so quickly and believes they are “canned” responses. Speer Feb. 6, 2019 Tr. at 16:2-14, 17:22-25. She attributes this lack of responsiveness to her belief that her congressman “picks his voters”. Speer Feb. 6, 2019 Tr. at 16:17-23.

520. Ms. Speer testified that the 2011 redistricting did not affect her ability to campaign for, or donate to any candidate. Speer Feb. 6, 2019 Tr. at 23:16-21.

521. Ms. Speer testified that she has contacted her congressional, state senate, and state house representatives and they have all responded to her. Speer Feb. 6, 2019 Tr. at 24:4-8.

FACTS DEMONSTRATING THAT MS. SPEER WAS DILATORY IN ASSERTING HER RIGHTS.

522. Ms. Speer became aware of the 2011 redistricting plan in 2011, right around the time it was passed. Speer Feb. 6, 2019 Tr. at 30:12-18.

523. Ms. Speer became aware of the new maps because as part of her membership in the league of women voters, there was discussion about it and she knew immediately that she believed the new map would negatively affect her. Speer Feb. 6, 2019 Tr. at 30:19-25. These issues were discussed with other league members at the time and that at the time there was a concern about the 2011 maps and their impact. Speer Feb. 6, 2019 Tr. at 31:1-17.

W.SHIRLEY EVELYN ZELLER

INTRODUCTORY FACTS FOR SHIRLEY ZELLER

524. Shirley Zeller has lived in the state of Michigan since 1958. Zeller Feb 7, 2019 Tr. at 6:11-13.

525. Ms. Zeller has been a member of the League of Women Voters for about a year and a half, but she had been a member many years previously

before taking a break from the organization. Zeller Feb 7, 2019 Tr. at 6:14-19.

526. Since at least 2011, Ms. Zeller has lived at 702 Burr Oak Street, Albion, Michigan 49224. Zeller Feb 7, 2019 Tr. at 8:1-2.

527. Ms. Zeller resides in the 3rd congressional district. Zeller Feb 7, 2019 Tr. at 8:7-9

528. Ms. Zeller resides in the 62nd state house district. Zeller Feb 7, 2019 Tr. at 8:10-11

529. Ms. Zeller resides in the 19th state senate district. Zeller Feb 7, 2019 Tr. at 8:12-13

530. Ms. Zeller votes most often for Democrats and considers herself politically active with the Democrats. Zeller Feb 7, 2019 Tr. at 8:17-25.

531. Ms. Zeller intends to vote in the 2020 elections but does not know who she is going to vote for at this time. Zeller Feb 7, 2019 Tr. at 9:1-4.

532. The issues that will inform Ms. Zeller's vote are candidates' stance on pro-choice issues and healthcare. Zeller Feb 7, 2019 Tr. at 9:5-11.

533. While Ms. Zeller's testimony was being offered to challenge only her state house district, she testified that she believed that she was also challenging her congressional district and state senate district, and she did

not understand that she was being offered only to challenge her house district. Zeller Feb 7, 2019 Tr. at 23:22-25, 24:1-25, 25:1-10

**FACTS DEMONSTRATING THAT MS. ZELLER LACKS
STANDING.**

534. Ms. Zeller is no more or less likely to vote if her congressional, state senate, and state house seats are redrawn—she will vote regardless. Zeller Feb 7, 2019 Tr. at 10:3-14.

535. Ms. Zeller believes her Michigan house district is gerrymandered because it is only a portion of her county, however she admits that it is not “as gerrymandered as a couple of other []” districts. Zeller Feb 7, 2019 Tr. at 11:1-24.

536. Ms. Zeller lives in state house district 62, which, since 2011 has been won by Democratic candidates twice, and Republican candidates twice. Exhibit Zeller 1. In 2012 Democrat Kate Segal won the district with roughly 58 percent of the vote to Republican Mark Behnke’s 42 percent of the vote. Exhibit Zeller 1. In 2014, Republican John Bizon won the district with roughly 51 percent of the vote to Democrat Andy Helmboldt’s 49 percent. Exhibit Zeller 1. In 2016 Republican John Bizon won the district with roughly 48 percent of the vote to Democrat Jim Haadsma’s 47.5 percent. Exhibit Zeller 1. In 2018, Democrat Jim Haadsma won the district with

roughly 52 percent of the vote to Republican Dave Morgan's 48 percent.

Exhibits Zeller 1.

537. Ms. Zeller ran unsuccessfully for state senate as a Republican in 1986.

Zeller Feb 7, 2019 Tr. at 14:14-22.

538. Ms. Zeller testified that she has communicated with her state house representatives and they were responsive and receptive to their constituents.

Zeller Feb 7, 2019 Tr. at 33:2-25, 34:1-25, 35:1-24.

539. Ms. Zeller would like to see house district 62 redrawn to be more geographic, but she is "more concerned about redistricting in the Jackson area [because] that's where [her] interests lie." Zeller Feb 7, 2019 Tr. at 36:1-15. As far as house district 62, she would like to see her whole county included in the district as opposed to split between districts. Zeller Feb 7, 2019 Tr. at 37:2-21.

540. Ms. Zeller testified that, based on the electoral history, house district 62 appears to be competitive. Zeller Feb 7, 2019 Tr. at 36:17-24.

541. Ms. Zeller campaigned for the Defendant, Secretary Benson during the 2018 election. Zeller Feb 7, 2019 Tr. at 41:8-14.

542. Ms. Zeller was happy with the results of the 2018 election in her state house district. Zeller Feb 7, 2019 Tr. at 43:5-9.

543. Ms. Zeller testified that regardless whether the maps are drawn fairly or not, she cares more about the results, i.e. Democrats getting elected, rather than the fairness of the maps. Zeller Feb 7, 2019 Tr. at 44:17-25, 46:23-25, 47:4-7. She currently is represented by a Democrat and Democrats have been elected to that seat as many times as Republicans since 2011. Exhibit Zeller 1.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. ZELLER'S VOTE.

544. Ms. Zeller believes her vote carried less weight because her district favors the Battle Creek area, which is more Republican and is a heavier populated area while her immediate area is Democratic but people there do not have access to vote or do not vote. Zeller Feb 7, 2019 Tr. at 21:3-17.

545. Ms. Zeller testified that she believes that the district needs to be redrawn so every person's vote carries more weight but then agreed that every person gets one vote which counts once. Zeller Feb 7, 2019 Tr. at 26:8-17.

546. Ms. Zeller believes that there is an unfair advantage to Republicans in house district 62, Zeller Feb 7, 2019 Tr. at 26: 18-23, yet the district has been won equal times by Republicans and by Democrats since 2011. See Exhibit Zeller 1, Zeller Feb 7, 2019 Tr. at 29:16-20. After examining the election results since 2011, Ms. Zeller testified that there clearly is not an

overwhelming advantage to one party or the other in her state house district.

Zeller Feb 7, 2019 Tr. at 29:21-25, 30:1.

**FACTS DEMONSTRATING THAT MS. ZELLER'S FIRST
AMENDMENT RIGHTS WERE NOT HARMED.**

547. Ms. Zeller has never chosen to not vote in either a primary or general election for a particular candidate because of perceived gerrymandering—she votes no matter what. Zeller Feb 7, 2019 Tr. at 11:25, 12:1-6.

548. Ms. Zeller has never thought about donating to political candidates in her district but chose not to because of what she believed to be gerrymandering. Zeller Feb 7, 2019 Tr. at 12:10-20.

549. Ms. Zeller has never donated to candidates in her districts, but has donated to candidates in the Jackson area because most of her interests are in that area including the fact that she lived there for a long time, worked there, is generally interested in the politics of that area, and likes the candidates from that area. Zeller Feb 7, 2019 Tr. at 12:21-25, 13:1-5, 14:5-8, 32:12-16. She testified that this was completely her choice. Zeller Feb 7, 2019 Tr. at 32:21-25, 33:1

550. Ms. Zeller has volunteered for political candidates or parties, in another district because she felt those races were more competitive, she didn't know the candidates in her own district as well, and the other district

is “a more heavier populated district” than her own. Zeller Feb 7, 2019 Tr. at 13:15-25, 14:1-11.

551. Ms. Zeller runs a group that provides information to people about candidates and runs candidate forums. She has never had any trouble getting political candidate to show up for those forums. Zeller Feb 7, 2019 Tr. at 15:2-14.

552. The way state house district 62 is drawn does not prohibit Ms. Zeller from campaigning for any candidate, donating money to any candidate, actively running for office herself, or protesting. Zeller Feb 7, 2019 Tr. at 30:12-25, 31:1-9.

553. By contributing her money in another house district, Ms. Zeller testified that she was actually able to get more for her money because not only were some of those out-of-district candidates successful, but she received a favorable outcome in her home state house district. Zeller Feb 7, 2019 Tr. at 43:5-13.

**FACTS DEMONSTRATING THAT MS. ZELLER WAS DILATORY
IN ASSERTING HER RIGHTS.**

554. Ms. Zeller only began paying attention to how her district was drawn in roughly the fall of 2017. Zeller Feb 7, 2019 Tr. at 37:22-25, 38:1-20.

X. MARGARET ANNE LEARY

INTRODUCTORY FACTS FOR MARGARET LEARY

555. Margaret Leary has lived in the state of Michigan for 46 years. Leary Feb 7, 2019 Tr. at 6:3-5.

556. Ms. Leary has lived at 1056 Newport Road, Ann Arbor, Michigan 48103 since 2011. Leary Feb 7, 2019 Tr. at 9:1-5

557. Ms. Leary has been a member of the League of Women Voters since 2015. Leary Feb 7, 2019 Tr. at 6:6-11.

558. Ms. Leary lives in the 12th congressional district, represented by Democrat Debbie Dingell, the 18th state senate district, represented by Democrat Jeff Irwin, and the 55th state house district, represented by Democrat Rebekah Warren. Leary Feb 7, 2019 Tr. at 6:6-12.

559. Ms. Leary consistently votes for candidates from the Democratic Party and considers herself to be affiliated with the Democratic party. Leary Feb 7, 2019 Tr. at 6:16-25.

560. Ms. Leary was running for election to be Trustee of the Ann Arbor District Library, a non-partisan position, and was successful three times. Leary Feb 7, 2019 Tr. at 20:13-23.

561. Ms. Leary became a League of Women Voters member in 2015 and then began engaging in more activities in 2017. Leary Feb 7, 2019 Tr. at 22:7-11.

**FACTS DEMONSTRATING THAT MS. LEARY LACKS
STANDING.**

562. Ms. Leary is no less likely to vote if her district is not redrawn as a result of this action—she will vote no matter what happens. Leary Feb 7, 2019 Tr. at 10:22-25, 11:1-11.

563. Ms. Leary has found her representatives to be responsive to her as a constituent. Leary Feb 7, 2019 Tr. at 23:21-23.

564. Ms. Leary testified that having Democrats as her representatives in the state house, state senate, and congress aligns with her political views and that she prefers to have them representing her as opposed to Republicans. Leary Feb 7, 2019 Tr. at 33:12-17, 24-25, 34:1-3.

565. Ms. Leary is happy with the fact that she has Democrats representing her in Congress and the legislature. Leary Feb 7, 2019 Tr. at 34:4-13.

566. Ms. Leary testified that she has had good experiences and good interactions with her representatives since 2011. Leary Feb 7, 2019 Tr. at 35:12-16.

567. Ms. Leary has communicated with her state legislators since 2011 as a constituent and has received what she describes as good responses from them. Leary Feb 7, 2019 Tr. at 36:3-14.

568. Ms. Leary would like to see the district lines drawn to include more Republicans and less Democrats in her districts. Leary Feb 7, 2019 Tr. at 46:12-22.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. LEARY'S VOTE.

569. Ms. Leary believes she lives in “packed” districts because, looking at election results Democrats won by larger margins in her districts than state wide candidates. Leary Feb 7, 2019 Tr. at 12:24-25, 13:1-25.

570. Ms. Leary stated that she believes her district is “packed” because it is difficult for strong Republican candidates to win in those districts, but then used examples of that tended to demonstrate those candidates were not strong (due to, for example, running few ads). Leary Feb 7, 2019 Tr. at 24:19-25, 25:1-19.

571. Ms. Leary testified that she believed her vote carried less weight in both her congressional, state senate, and state house districts due to the number of Democratic votes in those districts, Leary Feb 7, 2019 Tr. at 25:20-25, 26:1-15, despite living in Ann Arbor, a predominately Democrat city. Leary Feb 7, 2019 Tr. at 27:1-4.

572. Ms. Leary testified that Congressperson Debbie Dingell, the wife of the late congressman John Dingell, a long serving congressman, possessed a politically well-known name. Leary Feb 7, 2019 Tr. at 27:24-25, 28:1-20.

**FACTS DEMONSTRATING THAT MS. LEARY'S FIRST
AMENDMENT RIGHTS WERE NOT HARMED.**

573. Ms. Leary has never considered not voting for a particular candidate in a general or primary election because of what she describes as gerrymandering. Leary Feb 7, 2019 Tr. at 17:19-24.

574. Ms. Leary has continued to vote in elections and donate to political candidates in her districts. Leary Feb 7, 2019 Tr. at 17:25, 18:1-4.

575. Ms. Leary has never knocked on doors, called constituents, or otherwise volunteered for political campaigns in her districts, or in any other districts, Leary Feb 7, 2019 Tr. at 19:5-21, but has volunteered for local candidates. Leary Feb 7, 2019 Tr. at 20:4-7.

576. Ms. Leary testified that the way her districts have been drawn under the 2011 Plan has not prohibited her from voting in any election. Leary Feb 7, 2019 Tr. at 34:15-25.

577. Ms. Leary testified that the way her districts have been drawn under the 2011 Plan has not prohibited her from contributing her money to particular candidates in those districts. Leary Feb 7, 2019 Tr. at 35:1-6.

578. Ms. Leary testified that the way her districts have been drawn under the 2011 Plan has not prohibited her from campaigning for any candidate in any of her districts. Leary Feb 7, 2019 Tr. at 35:7-11.

**FACTS DEMONSTRATING THAT MS. LEARY WAS DILATORY
IN ASSERTING HER RIGHTS.**

579. Ms. Leary became interested in the League of Women Voters' position on redistricting in April of 2017. Leary Feb 7, 2019 Tr. at 39:1-7.

580. Ms. Leary agreed to become a witness in this suit in August of 2018. Leary Feb 7, 2019 Tr. at 40:13-20.

Y. JOSEPHINE MARIE FEIJOO

INTRODUCTORY FACTS FOR JOSEPHONE FEIJOO

528. Josephine Feijoo was born December 7, 1946. Feijoo Feb 7, 2019 Tr. at 5:18-19.

529. Ms. Feijoo has lived in Michigan all of her life. Feijoo Feb 7, 2019 Tr. at 6:1-3.

530. Ms. Feijoo is a member of the League of Women Voters and has been so for two or three years. Feijoo Feb 7, 2019 Tr. at 6:4-9.

531. Ms. Feijoo has lived at 5241 North Milford Road, Highland Michigan 48356 since at least 2011. Feijoo Feb 7, 2019 Tr. at 9:19-25, 10:1-3

532. Ms. Feijoo thinks she is in the 11th and 14th districts but cannot remember which one is her congressional district and which one is her state senate district and she cannot remember which state house district she lives in Feijoo Feb 7, 2019 Tr. at 8:1-20.

533. Ms. Feijoo always votes. Feijoo Feb 7, 2019 Tr. at 8:21-25.

534. Ms. Feijoo decides who to vote for by looking at all the candidates and their policies, values, and beliefs. Feijoo Feb 7, 2019 Tr. at 9:19-23

535. Ms. Feijoo has not participated in many League of Women Voters activities as a member—she merely has attended a couple of meetings. Feijoo Feb 7, 2019 Tr. at 22:8-18.

**FACTS DEMONSTRATING THAT MS. FEIJOO LACKS
STANDING.**

536. Ms. Feijoo does not consistently vote for the candidates of one party or another, she considers herself an Independent. Feijoo Feb 7, 2019 Tr. at 9:1-3.

537. Ms. Feijoo splits her vote between candidates from both major parties very often and votes for Republicans. Feijoo Feb 7, 2019 Tr. at 9:4-14.

538. Ms. Feijoo testified that she was a registered Republican “when [she] was younger”, was a campaign manager for a local Republican candidate, and contributed to that Republican candidate’s campaign. Feijoo Feb 7, 2019 Tr. at 20:9-19.

539. Ms. Feijoo does not consider herself political active, but rather politically informed—she tries to listen to political information from both the right and the left. Feijoo Feb 7, 2019 Tr. at 21:16-21.

540. Ms. Feijoo testified that she would not be any more politically active or informed if she lived in a district that she thought was more competitive,

she would still care about the issues she cares about. Ms. Feijoo does not consider herself political active, but rather politically informed—she tries to listen to political information from both the right and the left. Feijoo Feb 7, 2019 Tr. at 21:22-25, 22:1-6.

541. Ms. Feijoo has not attempted to contact her congressman, state senator, or state representative as a constituent. Feijoo Feb 7, 2019 Tr. at 23:20-25, 24:1-23, 27:8-25, 28:1-16.

542. Ms. Feijoo voted for both Republicans and Democrats during the 2016 general election. She split her vote. Feijoo Feb 7, 2019 Tr. at 38:1-11.

543. During the 2018 general election, Ms. Feijoo voted for the Democratic candidate for congress Hailey Stevens. Feijoo Feb 7, 2019 Tr. at 38:16-25, 39:1-3.

544. Hailey Stevens won the 2018 general election, so Ms. Feijoo voted for the successful candidate, in a district that had historically been held by Republican representatives. Feijoo Feb 7, 2019 Tr. at 39:13-21.

545. Ms. Feijoo testified that there are varying positions within the respective political parties on just about any political issue. Feijoo Feb 7, 2019 Tr. at 49:14-20.

546. Ms. Feijoo testified that if she could “fix” the way her districts are drawn, she would like to see a citizen commission responsible for it. Feijoo Feb 7, 2019 Tr. at 51:4-17.

547. Ms. Feijoo is happy that a Democrat represents her in Congress currently. Feijoo Feb 7, 2019 Tr. at 59:20-23.

548. Regardless of any purported gerrymandering, Ms. Feijoo cares about the candidates that are elected to represent her. Feijoo Feb 7, 2019 Tr. at 59:23-25, 60:1-5.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. FEIJOO’S VOTE.

549. Ms. Feijoo believes that the 2011 Plan disadvantages her because everyone does not “get an equal shot at winning . . .” Feijoo Feb 7, 2019 Tr. at 11:21-22.

550. Ms. Feijoo is not familiar with the terms “cracked” or “packed.” Feijoo Feb 7, 2019 Tr. at 11:25, 12:1-4.

551. Ms. Feijoo believes she lives in gerrymandered districts because looking at the 2018 general election, the Democratic party did not change the majority in the legislature despite Democratic candidates winning statewide offices. Feijoo Feb 7, 2019 Tr. at 12:5-25, 13:1-6.

552. Ms. Feijoo further believes that the districts she lives in are gerrymandered because “it’s what [she] believes, it’s what everyone that

[she] know[s] believes” and that elections are often unopposed.” Feijoo Feb 7, 2019 Tr. at 13:8-20. Despite her testimony, Plaintiffs’ own exhibit, Feijoo 2, demonstrates that since 2011 there has been no unopposed election in either of Ms. Feijoo’s challenged districts.

553. Ms. Feijoo believes that her vote carries less weight in her US Congressional District based on how the district was drawn because of historical election results and “how policies don’t change.” Feijoo Feb 7, 2019 Tr. at 25:2-16.

554. Ms. Feijoo believes her vote carries less weight in her state senate district based on her “wisdom and age and [her] voting and all the years of being aware as a voter and a citizen.” Feijoo Feb 7, 2019 Tr. at 25:17-25, 26:1-4.

555. This is despite the fact that Ms. Feijoo’s congressional district, Michigan’s 11th congressional district, flipped from a Republican to a Democrat during the 2018 general election. Ex. Feijoo 2.

556. Ms. Feijoo was unable to point to what election results would have to look like in order for her to say that her vote was not diluted. Feijoo Feb 7, 2019 Tr. at 55:5-25, 56:1-25, 57:1-25, 58:1-18.

**FACTS DEMONSTRATING THAT MS. FEIJOO’S FIRST
AMENDMENT RIGHTS WERE NOT HARMED.**

557. Ms. Feijoo will vote irrespective of whether her districts remain the same as under the 2011 Plan. Feijoo Feb 7, 2019 Tr. at 10:4-15.

558. Ms. Feijoo has never chosen not to vote for a particular candidate or at all in a primary or general election based on what she describes as gerrymandering. Feijoo Feb 7, 2019 Tr. at 18:5-9.

559. Ms. Feijoo has not donated to political candidates in her district, but has donated to Hillary Clinton's presidential campaign. Feijoo Feb 7, 2019 Tr. at 19:18-25, 20:1-6.

560. Besides her time as a Republican campaign manager, Ms. Feijoo has never volunteered for a campaign. Feijoo Feb 7, 2019 Tr. at 20:23-25, 21:1-4.

561. Ms. Feijoo testified that the way her state senate and congressional districts are drawn does not prohibit her from voting, campaigning for a candidate, donating to a candidate political party, political issue, attending rallies or protests. Feijoo Feb 7, 2019 Tr. at 29:17-25, 30:1-18, 31:22-25

**FACTS DEMONSTRATING THAT MS. FEIJOO WAS DILATORY
IN ASSERTING HER RIGHTS.**

562. Ms. Feijoo started paying attention to the way her state senate and congressional districts were drawn around 2014 or 2015. Feijoo Feb 7, 2019 Tr. at 32:1-12

Z. NANCY MAE DUEMLING

INTRODUCTORY FACTS FOR NANCY DUEMLING

563. Nancy Duemling is Married with one child. Duemling Feb. 7, 2019 Tr. at 5:17-22.

564. Nancy Duemling has lived in Michigan all of her life. Duemling Feb. 7, 2019 Tr. at 5:23-25.

565. Nancy Duemling has been a member of the League of Women Voters since roughly 2016, although she was a “paper member” years earlier. Duemling Feb. 7, 2019 Tr. at 5:25, 6:1-4, 9-12.

566. Nancy Duemling joined the League of Women Voters after they publicized that there were going to start a chapter in McComb County. Duemling Feb. 7, 2019 Tr. at 6:5-8.

567. Nancy Duemling’s real paid employment was in 2010 for when she worked as a team leader for the Census. Duemling Feb. 7, 2019 Tr. at 7:4-15.

568. Nancy Duemling lives at 20776 Moxon Drive, in Clinton Township, and she has lived there since at least 2011. Duemling Feb. 7, 2019 Tr. at 7:18-24.

569. Nancy Duemling lives in Congressional District 9 and is currently represented there by Andy Levin. Duemling Feb. 7, 2019 Tr. at 8:3-11.

570. Nancy Duemling lives in Michigan House District 31 and is currently represented there by William Sowerby. Duemling Feb. 7, 2019 Tr. at 8:12-16.

571. Although Nancy Duemling testified that she lives in Michigan Senate District 9, she actually lives in Senate District 10, but she did correctly know that she is currently represented there by Michael McDonald. Duemling Feb. 7, 2019 Tr. at 8:17-22, 36:4-9.

572. Ms. Duemling successfully ran for office, a non-partisan position on the Romeo Community School Board, for one four-year term. Duemling Feb. 7, 2019 Tr. at 21:20-25, 22:1-8.

573. Ms. Duemling's involvement with the League of Women Voters includes attending meetings, the state conference, and serving as the membership chair of the McComb County branch. Ms. Duemling considers herself to be politically active and would not be involved any differently if she lived in a more competitive district. Duemling Feb. 7, 2019 Tr. at 22:19-25, 23:1-2.

FACTS DEMONSTRATING THAT MS. DUEMLING LACKS STANDING.

574. Nancy Duemling votes for candidates from the Democratic Party the majority of the time and considers herself to be affiliated with the Democratic Party. Duemling Feb. 7, 2019 Tr. at 9:1-10.

575. Ms. Duemling described that she believes her district is “cracked” because the map breaks up areas of common interest which might be trying to give an advantage to one-party over the other in the district. Duemling Feb. 7, 2019 Tr. at 30:22-25, 31:1-24

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. DUEMLING’S VOTE.

576. Ms. Duemling “believes” her vote carried less weight in her congressional district because she believes the way the district is drawn makes it solidly enough Democratic that there is a lack of competition meaning, she does not have as much “choice” as she would like, but in the same breath she testified that she agrees with the incumbent on most issues. Duemling Feb. 7, 2019 Tr. at 15:7-22.

577. But Ms. Duemling defines “choice” as having an equal opportunity to elect Republican and Democratic representatives in her congressional district, despite the fact that she votes for Democrats the majority of the time. Duemling Feb. 7, 2019 Tr. at 24:23-25, 25:1-22.

578. Ms. Duemling “believes” that her vote carried less weight in her state senate district because her Democratic candidate of choice has an uphill battle to unseat Republican incumbents. Duemling Feb. 7, 2019 Tr. at 25:24-25, 26:14.

579. Ms. Duemling has no personal knowledge of the legislative processes that lead to the 2011 Plan at all. Duemling Feb. 7, 2019 Tr. at 32:2-13.

580. Ms. Duemling testified that certain candidates, such as Republican Tory Rocca who won her state senate district in 2014, have politically known names. Duemling Feb. 7, 2019 Tr. at 35:1-8.

581. Tory Rocca, a Republican, won the 10th Michigan Senate District general election in 2014 with roughly 63 percent of the vote. Duemling 1 (Exhibit 42).

582. In 2018, Tory Rocca was term limited out and Republican Michael MacDonald won the 10th Michigan Senate District general election in 2018 with roughly 51% of the vote. Duemling Feb. 7, 2019 Tr. at 37:6-18.

583. Ms. Duemling testified that the 2018 general election in Michigan State Senate district 10 was much tighter than the 2014 general election because it was an open seat, and the Republican candidate did not hold a significant election post thus far, while the Democratic candidate did. Duemling Feb. 7, 2019 Tr. at 38:14-25, 39:1-8.

584. Ms. Duemling testified that the 30,000-vote increase in voter turnout during the 2018 general election in the Michigan State Senate District 10 could account for why that race was so much closer than the race in 2014 in

the same district, along with the fact that there was not a Rocca incumbent.

Duemling Feb. 7, 2019 Tr. at 40:3-12.

585. Essentially, Ms. Duemling admitted in her testimony that factors other than the lines of the district could drastically affect electoral outcomes. See above.

586. Regarding 9th congressional district, Ms. Duemling testified that Levin, the last name of the congressman from that district, was a known quantity and not unknown in politics in that district. Duemling Feb. 7, 2019 Tr. at 42:12-25, 43:1-12.

587. Ms. Duemling testified that while candidate Levin was very well known, his Republican opponent in the 2018 general election was unknown at least to her. Duemling Feb. 7, 2019 Tr. at 43:14-25, 44:1-20.

588. Ms. Duemling testified that she has been voting for Sander Levin, Andy Levin's father, since 2000. Duemling Feb. 7, 2019 Tr. at 45:3-9.

**FACTS DEMONSTRATING THAT MS. DUEMLING'S FIRST
AMENDMENT RIGHTS WERE NOT HARMED.**

589. Nancy Duemling is no more or less likely to vote if her districts remain drawn under the 2011 Plan—she would vote not matter how her districts are drawn. Duemling Feb. 7, 2019 Tr. at 10:12-25, 11:1.

590. Ms. Duemling has never chosen not to vote for a particular candidate or not to vote at all in her district as a result of what she believes to be gerrymandered districts. Duemling Feb. 7, 2019 Tr. at 19: 18-25.

591. Ms. Duemling has voted and donated to political candidates in her district. Duemling Feb. 7, 2019 Tr. at 20:4-11.

592. Ms. Duemling has never thought about donating to a candidate in her district but decided not to on the basis of what she believed to be gerrymandering. Duemling Feb. 7, 2019 Tr. at 20:12-18.

593. Ms. Duemling testified what she believes is gerrymandering does not impact her enthusiasm to vote or donate. Duemling Feb. 7, 2019 Tr. at 20:20-25.

594. Ms. Duemling has knocked on doors, called constituents, and volunteered with political campaigns and/or political parties. Duemling Feb. 7, 2019 Tr. at 21:2-6.

595. Ms. Duemling has never thought about participating in a campaign but decided not to do so on the basis of what she believes to be gerrymandering. Duemling Feb. 7, 2019 Tr. at 21:7-11.

596. Ms. Duemling considers herself to be politically active and would not be involved any differently if she lived in a more competitive district. Duemling Feb. 7, 2019 Tr. at 22:9-17.

597. The way her districts are drawn has not stopped or prohibited Ms. Duemling from voting in any way. Duemling Feb. 7, 2019 Tr. at 28:2-12.

598. The way her districts are drawn has not prohibited Ms. Duemling from campaigning for any candidate or political issue. Duemling Feb. 7, 2019 Tr. at 28:16-20.

599. The way her districts are drawn has not prohibited Ms. Duemling from donating money to a candidate, political party or political interest group in any way. Duemling Feb. 7, 2019 Tr. at 28:21-25.

600. The way her districts are drawn has not prohibited Ms. Duemling from exercising her ability to protest for a particular issue, candidate or party. Duemling Feb. 7, 2019 Tr. at 29:1-7.

601. The district maps, as drawn, have not prohibited Ms. Duemling from running for office. Duemling Feb. 7, 2019 Tr. at 30:6-12.

602. Ms. Duemling testified that her Republican state senator, Tory Rocca, and his staff were responsive to her whenever she contacted them. Duemling Feb. 7, 2019 Tr. at 45:14-25, 46:3-25, 47:2-13.

**FACTS DEMONSTRATING THAT MS. DUEMLING WAS
DILATORY IN ASSERTING HER RIGHTS.**

603. Ms. Duemling was paying attention to media coverage via newspaper, radio and tv reports of the redistricting process as early as 2011. Duemling Feb. 7, 2019 Tr. at 32:14-23, 47:21-25.

604. Despite paying attention to the redistricting process, Ms. Dueling did not choose to become involved in a lawsuit until she was approached by the League of women voters in the Summer of 2018. Duemling Feb. 7, 2019 Tr. at 48:1-11, 24-25, 49:1-3.

AA. **PAULA BOWMAN**

INTRODUCTORY FACTS FOR PAULA BOWMAN.

605. Ms. Bowman is a resident of Plymouth. 02/08/2019 Tr. at 8:5-11.

606. Ms. Bowman lives in Congressional District 11. 02/08/2019 Tr. at 8:15-19.

607. Ms. Bowman consistently votes for Democratic candidates. 02/08/2019 Tr. at 9:8-12.

608. Ms. Bowman considers herself a Democrat. 02/08/2019 Tr. at 9:13-14.

609. Ms. Bowman intends to vote in 2020 for candidates affiliated with the Democratic Party. 02/08/2019 Tr. at 9:15-22.

610. Ms. Bowman joined the League of Women Voters approximately 25 years ago. 02/08/2019 Tr. at 6:10-15.

611. Ms. Bowman is Vice President of Voter Services for her local League of Women voters. 02/08/2019 Tr. at 17:7-17.

612. Ms. Bowman serves on the state board of the League of Women Voters of Michigan. 02/08/2019 Tr. at 55:10-13.

613. Ms. Bowman voted on the League state board to file this suit. 02/08/2019 Tr. at 55:13-14.

**INTRODUCTORY FACTS FOR THE LEAGUE OF WOMEN
VOTERS OF MICHIGAN**

614. The local League of Women Voters chapter conducts candidate forums. 02/08/2019 Tr. at 17:7-10.

615. The local League prepares a voter guide. 02/08/2019 Tr. at 17:7-11.

616. The local League conducts voter registration events. 02/08/2019 Tr. at 20:2-3.

617. The local League sponsors voter education activities. 02/08/2019 Tr. at 20:2-5, 25:21-25.

618. The League supported the “Voters not Politicians” ballot initiative. 02/08/2019 Tr. at 28:17-29:12.

**FACTS DEMONSTRATING THAT NEITHER MS. BOWMAN NOR
THE LEAGUE HAVE STANDING.**

619. Ms. Bowman testified that she would vote in Congressional District 11 regardless of district lines. 02/08/2019 Tr. at 10:15-23.

620. Ms. Bowman's candidate of choice, Democrat Haley Stevens, won election in 2018 to Congressional District 11. 02/08/2019 Tr. at 49:12-13; Secretary Exhibit 29.

621. Ms. Bowman has never chosen not to vote in a primary election for Congressional District 11 in spite of her belief that the district is gerrymandered. 02/08/2019 Tr. at 16:3-23.

622. Ms. Bowman has never chosen not to vote in a general election for Congressional District 11 in spite of her belief that the district is gerrymandered. 02/08/2019 Tr. at 16:3-25.

623. Ms. Bowman received responses to her "... kind of boilerplate ... " inquiries when she contacted former Rep. Trott. 02/08/2019 Tr. at 31:11-32:14.

624. Ms. Bowman received responses to her inquiries to her state House and state Senate representatives. 02/08/2019 Tr. at 31:5-21.

625. Ms. Bowman testified that she is happy to have a Democrat as her congressional representative. 02/08/2019 Tr. at 49:4-13.

626. Ms. Bowman is happy with the outcome of the 2018 elections, which were held under the 2011 maps. 02/08/2019 Tr. at 54:14-17, 49:4-13.

627. Ms. Bowman testified that her personal, political interests will be more represented in the U.S. House following the 2018 elections under the 2011 maps. 02/08/2019 Tr. at 54:14-24, 49:4-13.

628. The League published its voter guide in 2018. 02/08/2019 Tr. at 27:15-21.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. BOWMAN'S VOTE.

629. Ms. Bowman's candidate of choice, Democrat Haley Stevens, won election in Congressional District 11 in 2018 under the 2011 maps, replacing an incumbent Republican. Secretary Exhibit 29. 02/08/2019 Tr. at 13:9-16, 9:8-12, 9:13-14, 45:11:15, 49:4-13.

630. Ms. Bowman testified that she believed her vote was diluted until 2018, when her candidate of choice won the election for Congressional District 11. 02/08/2019 Tr. at 33:5-12; Secretary Exhibit 29.

631. Ms. Bowman testified that the results of the 2018 election in Congressional District 11 were determined by “. . . an historic voter turnout” and more voters exercising their right to vote and voting for the Democrat. 02/08/2019 Tr. at 41:1-42:3, 42:8-44:17.

632. Ms. Bowman's party, the Democrats, picked up five seats in the Michigan House in 2018 under the 2011 maps. 02/08/2019 Tr. at 46:23-47-7, 9:8-12, 9:13-14, 9:15-22.

633. Ms. Bowman's party, the Democrats, picked up five seats in the Michigan Senate in 2018 under the 2011 maps. 02/08/2019 Tr. at 47:3-7, 9:8-12, 9:13-14, 9:15-22.

634. Ms. Bowman testified that she has one vote to cast in an election, just like every other registered voter in Michigan. 02/08/2019 Tr. at 51:7-11.

635. Ms. Bowman testified that her one vote counts as much as the one vote of any other registered voter in Michigan. 02/08/2019 Tr. at 51:7-13.

FACTS DEMONSTRATING THAT MS. BOWMAN'S AND THE LEAGUE'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

636. Ms. Bowman chooses not to contribute to legislative candidates in her districts because of restrictions placed upon her political engagement by the League of Women Voters. 02/08/2019 Tr. at 17:3-17.

637. Ms. Bowman chooses not to engage in partisan campaign activity, such as placing signs in her yard or knocking on doors or attending functions, because of restrictions placed upon her political engagement by the League of Women Voters. 02/08/2019 Tr. at 17:18-23.

638. Ms. Bowman's "... overt political activity. . ." is governed purely by her involvement with the League. 02/08/2019 Tr. at 18:19-19:7.

639. The League prevents Ms. Bowman from actively campaigning for any candidate. 02/08/2019 Tr. at 47:16-20.

640. Ms. Bowman testified that district lines do not prevent a person from campaigning for a candidate. 02/08/2019 Tr. at 48:10-17.

641. Ms. Bowman testified that district lines do not prevent her from contributing to a candidate in her districts. 02/08/2019 Tr. at 48:18-23.

642. Ms. Bowman testified that district lines do not prevent her from participating in political gatherings. 02/08/2019 Tr. at 48:24-49:3.

643. The state League hosts candidate forums for federal candidates, and both Republican and Democratic candidates attend and participate. 02/08/2019 Tr. at 21:1-23.

644. Ms. Bowman testified that Republican candidates in *unnamed* and *unspecified* districts sometimes do not attend League functions. 02/08/2019 Tr. at 22:12-24.

645. Ms. Bowman testified that she is not prevented from voting by the 2011 reapportionment plans. 02/08/2019 Tr. at 47:8-12.

646. The League published its voter guide in 2018. 02/08/2019 Tr. at 27:15-21.

647. The League held candidate forums in 2018 for candidates running for the Democratic and Republican nominations for Congressional District 11. 02/08/2019 Tr. at 21:13-23, 39:11-16.

FACTS DEMONSTRATING THAT MS. BOWMAN AND THE LEAGUE WERE DILATORY IN ASSERTING THEIR RIGHTS.

648. Ms. Bowman believed in 2012 that her district lines were gerrymandered. 02/08/2019 Tr. at 33:24-35:8.

649. Ms. Bowman's of a "problem" with her district lines grew in 2014. 02/08/2019 Tr. at 35:11-16.

650. The local League began discussing redistricting issues in 2014. 02/08/2019 Tr. at 35:17-36:2.

651. There are several state League functions each year, including a biannual state convention, that includes members from all over Michigan. 02/08/2019 Tr. at 36:3-25.

BB. HAROLD LYNN JONDAHL

INTRODUCTORY FACTS FOR HAROLD LYNN JONDAHL

652. Mr. Jondahl resides in Lansing, Michigan. 02/04/2019 Tr. at 12:2-4.

653. Mr. Jondahl lives in the eighth congressional district. 02/04/2019 Tr. at 13:15-18.

654. Mr. Jondahl lives in the 23rd Michigan Senate district. 02/04/2019 Tr. at 23:16-25, 24:19-21.

655. Mr. Jondahl lives in the 69th Michigan House district. 02/04/2019 Tr. at 23:16-25, 24:1-4.

656. Mr. Jondahl identifies with the Democratic Party. 02/04/2019 Tr. at 13:5-9.

657. Mr. Jondahl has voted consistently for Democrats over the years.
02/04/2019 Tr. at 13:2-4.

658. In the 2020 elections, Mr. Jondahl intends to vote for Democratic
candidates. 02/04/2019 Tr. at 13:12-14.

**FACTS DEMONSTRATING THAT MR. JONDAHL DOES NOT
HAVE STANDING**

659. Mr. Jondahl was unaware that his Michigan House and Senate
districts were challenged in this lawsuit. 02/04/2019 Tr. at 23:16-24:1.

660. Mr. Jondahl's candidate of choice, a Democrat, won election to U.S.
House in 2018, defeating an incumbent Republican. 02/04/2019 Tr. at 25:5-
21. *See* 02/04/2019 Tr. at 13:2-4. Secretary Exhibit 29.

661. Mr. Jondahl testified that his personal choices determine how he
spends his "political time working on campaigns and so on." 02/04/2019 Tr.
at 24:5-25:6, 25:10-21.

662. Without identifying the district or locality, Mr. Jondahl testified that
public engagement ". . . was lessened -- has been reduced, less participation
and enthusiasm . . ." 02/04/2019 Tr. at 17:10-18:5.

663. Mr. Jondahl testified that *unnamed others* had difficulties making
appointments with former Congressman Bishop. 02/04/2019 at 18:6-19:2.

664. Mr. Jondahl testified that he has made political contributions to candidates running in his congressional district. 02/04/2019 Tr. at 19:20-20:8.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING DID NOT DILUTE MR. JONDAHL'S VOTE

665. Mr. Jondahl supported Elissa Slotkin for U.S. House in 2018. *See* 02/04/2019 Tr. at 13:2-4. 02/04/2019 Tr. at 25:5-16.

666. Congresswoman Slotkin won her election in 2018. Secretary Exhibit 29.

667. Mr. Jondahl supported Curtis Hertel, Jr., for Michigan Senate. 02/04/2019 Tr. at 24:19-25:4.

668. Mr. Jondahl believes Senator Hertel is a good senator. 02/04/2019 Tr. at 24:19-25:4.

669. Senator Hertel currently represents Mr. Jondahl's district. Secretary Exhibit 29.

670. Mr. Jondahl voted for Julie Brixie for Michigan House in 2018. 02/04/2019 Tr. at 24:2-18.

671. Representative Brixie won her election to the Michigan House in 2018. Secretary Exhibit 29.

672. After the 2018 elections, Democrats gained five seats in the State House and in the State Senate. Secretary Exhibit 29.

673. The current composition of Michigan's congressional delegation is 7 Republicans and 7 Democrats. . TT Vol. 3 at 103.

674. Mr. Jondahl supported Jocelyn Benson in her campaign for Michigan Secretary of State in 2018. 02/04/2019 Tr. at 36:2-19.

675. Secretary Benson won election in 2018. Secretary Exhibit 29.

676. Mr. Jondahl testified that voters' partisan preferences are not immutable but that they may change over time. 02/04/2019 Tr. at 28:21-29:6.

677. Mr. Jondahl testified that the presence of individual candidates in a particular race affect the race's outcome. 02/04/2019 Tr. at 29:13-15.

FACTS DEMONSTRATING THAT MR. JONDAHL'S FIRST AMENDMENT RIGHTS WERE NOT HARMED

678. Mr. Jondahl is a former Michigan state representative. 02/04/2019 Tr. at 8:7-10, 30:21-33:19.

679. Mr. Jondahl served as a Michigan state representative for 22 years. 02/04/2019 Tr. at 8:7-10.

680. Mr. Jondahl voted on a variety of reapportionment plans. 02/04/2019 Tr. at 30:20-31:3.

681. Mr. Jondahl testified that, as a former Michigan state representative who cast votes on decennial reapportionment plans, he would have

welcomed a district “more favorable for [him].” 02/04/2019 Tr. at 35:20-26:7

682. Mr. Jondahl ran for the Democratic nomination for Senate in 1970. 02/04/2019 Tr. at 10:20-21.

683. Mr. Jondahl ran for the Democratic nomination for Governor of Michigan in 1994. 02/04/2019 Tr. at 8:11-14.

684. Mr. Jondahl has contributed to congressional candidates in his congressional district. 02/04/2019 Tr. at 19:16-19.

685. Mr. Jondahl contributed to Secretary Benson’s 2018 campaign. 02/04/2019 Tr. at 36:2-19.

686. Mr. Jondahl contributed less than \$300 to Secretary Benson’s 2018 campaign. 02/04/2019 Tr. at 36:18-19.

CC. HEIDI KROMREI

INTRODUCTORY FACTS FOR HEIDI KROMREI.

687. Ms. Kromrei is a resident of Wyandotte. 02/04/2019 Tr. at 10:2-4.

688. Ms. Kromrei lives in Congressional District 12. 02/04/2019 Tr. at 11:24-12:1.

689. Ms. Kromrei has been a member of the League of Women Voters since 2016. 02/04/2019 Tr. at 8:24-25:9.

690. Ms. Kromrei does not attend League meetings. 02/04/2019 Tr. at 28:25-29:8.

691. Ms. Kromrei identifies with the League's mission, which she describes as "... focused on women voting" 02/04/2019 Tr. at 9:21-10:1.

692. Ms. Kromrei does not identify with a particular political party. 02/04/2019 Tr. at 10:14-16.

693. Ms. Kromrei intends to vote in the 2020 elections. 02/04/2019 Tr. at 11:17-18.

694. Ms. Kromrei votes most often for candidates affiliated with the Democratic Party. 02/04/2019 Tr. at 15:24-16:3.

695. On occasion, Ms. Kromrei has voted for third-party candidates. 02/04/2019 Tr. at 35:9-36:8.

696. Ms. Kromrei she last voted for a candidate affiliated with the Republican Party who was running for position on the Wayne State University Board of Governors. 02/04/2019 Tr. at 16:4-7.

697. Ms. Kromrei testified she does not remember ever voting for a Republican for Congress, Michigan House, or Michigan Senate. 02/04/2019 Tr. at 16:4-16.

FACTS DEMONSTRATING THAT MS. KROMREI DOES NOT HAVE STANDING.

698. Ms. Kromrei testified that the greatest impact she has suffered from the 2011 maps is philosophical. 02/04/2019 Tr. at 12:24-13:9.

699. Ms. Kromrei testified that the 2011 maps “. . . further [], sort of, the feelings of apathy that I had others possess relative to a lack of faith in the fairness of the political process.” 02/04/2019 Tr. at 13:12-18.

700. Ms. Kromrei testified that her philosophical harm from the 2011 maps is not necessarily grounded in fact but is a theoretical belief. 02/04/2019 Tr. at 2:8-12.

701. Ms. Kromrei has been able to vote in spite of redistricting. 02/04/2019 Tr. at 23:6-11.

702. Ms. Kromrei testified that she believes her voting habits are not predictable. 02/04/2019 Tr. at 35:1-2.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. KROMREI'S VOTE.

703. Ms. Kromrei's candidate of choice, Democrat John Dingell, won election to the U.S. House before the 2011 maps were in place. 02/04/2019 Tr. at 18:11-19:2.

704. Following the implementation of the 2011 maps, Ms. Kromrei's candidate of choice, Democrat Debbie Dingell, won election to the U.S. House. 02/04/2019 Tr. at 16:21-17:1, 15:24-16:3, 16:4-16.

**FACTS DEMONSTRATING THAT MS. KROMREI'S FIRST
AMENDMENT RIGHTS WERE NOT HARMED.**

705. Ms. Kromrei has made financial contributions to political candidates in her district. 02/04/2019 Tr. at 14:12-14.

706. Ms. Kromrei testified that making a financial contribution to a political candidate is her choice and that she can do whatever she wants with her money. 02/04/2019 Tr. at 14:19-15:2, 23:24-24:1, 31:19-32:12.

707. Ms. Kromrei testified that she has *chosen* not to contribute to candidates. 02/04/2019 Tr. at 30:9-15.

708. Ms. Kromrei testified that she is able to recruit candidates to run for public office if she desires. 02/04/2019 Tr. at 24:2-6.

709. Ms. Kromrei testified that she is able to campaign for a candidate in spite of redistricting. 02/04/2019 Tr. at 23:12-23.

**FACTS DEMONSTRATING THAT MS. KROMREI WAS
DILATORY IN ASSERTING HER RIGHTS.**

710. Ms. Kromrei testified she has been aware of what she perceives to be problems with the 2011 maps “. . . for a number of years.” 02/04/2019 Tr. at 24:7-15.

711. Ms. Kromrei was asked to become a witness in this suit a couple of months ago. 02/04/2019 Tr. at 24:22-25.

DD. NANETTE NOORBAKSH

INTRODUCTORY FACTS FOR NANETTE NOORBAKHSH.

712. Ms. Noorbakhsh is a resident of St. Clair Shores. 02/08/2019 Tr. at 8:2-11.

713. Ms. Noorbakhsh lives in Congressional District 9. 02/08/2019 Tr. at 8:22-25.

714. Ms. Noorbakhsh lives in Michigan Senate District 8. 02/08/2019 Tr. at 8:22-9:1.

715. Ms. Noorbakhsh lives in Michigan House District 18. 02/08/2019 Tr. at 8:22-9:2.

716. Ms. Noorbakhsh has been a member of the League of Women voters for “. . . a couple years.” 02/08/2019 Tr. at 6:11-13.

717. Ms. Noorbakhsh supports the League’s voting and voter education activities. 02/08/2019 Tr. at 6:14-19.

718. Ms. Noorbakhsh intends to vote in the 2020 election. 02/08/2019 Tr. at 8:17-18.

719. Since 2011, Ms. Noorbakhsh has voted consistently for candidates affiliated with the Democratic Party. 02/08/2019 Tr. at 9:10-22.

720. Ms. Noorbakhsh has never voted for a Republican for Congress. 02/08/2019 Tr. at 39:18-20.

721. Ms. Noorbakhsh is not sure if she has ever voted for a Republican for Michigan House. 02/08/2019 Tr. at 39:18-22.

722. Ms. Noorbakhsh does not remember ever voting for a Republican for Michigan Senate. 02/08/2019 Tr. at 39:18-40:7.

723. Ms. Noorbakhsh does not consider herself affiliated with or a member of any political party. 02/08/2019 Tr. at 10:3-8.

FACTS DEMONSTRATING THAT MS. NOORBAKHSH DOES NOT HAVE STANDING.

724. Ms. Noorbakhsh testified that she will vote in 2020 regardless of district lines and that she votes no matter what. 02/08/2019 Tr. at 11:4-10.

725. Ms. Noorbakhsh described Michigan Senate District 8 as “. . . the one district [she’s] concerned about[.]” 02/08/2019 Tr. at 21:7-8.

726. Ms. Noorbakhsh testified that she *chose* not to vote in the primary election in 2014 for Michigan Senate District 8. 02/08/2019 Tr. at 21:3-18.

727. Ms. Noorbakhsh considers her harm from the 2011 maps to be limited to a different candidate, Republican Jack Brandenburg, winning the Michigan Senate District 8 election. 02/08/2019 Tr. at 27:5-28:1.

728. Ms. Noorbakhsh testified that former Sen. Brandenburg responded to her inquiries explaining his positions on issues. 02/08/2019 Tr. at 28:2-11, 49:19-51:2.

729. Ms. Noorbakhsh testified she is happy with how Congressional District 9 is drawn. 02/08/2019 Tr. at 37:15-18.

730. Ms. Noorbakhsh's candidate of choice, Democrat Andy Levin, won election in 2018 in Congressional District 9. 02/08/2019 Tr. at 37:19-23; Secretary Exhibit 29.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. NOORBAKHSH'S VOTE.

731. Ms. Noorbakhsh testified that she believes Michigan Senate District 8 is cracked but 02/08/2019 Tr. at 13:3:3-7, 18:6-18

732. Ms. Noorbakhsh testified that she believes Congressional District 9 is packed but 02/08/2019 Tr. at 13:16-20, 19:8-20:7.

733. Ms. Noorbakhsh supported Andy Levin in 2018 for election in Congressional District 9. 02/08/2019 Tr. at 37:19-21.

734. Democrat Andy Levin won election to Congressional District 9 in 2018. 02/08/2019 Tr. at 37:22-23; Secretary Exhibit 29.

735. Ms. Noorbakhsh does not believe the 2011 maps have caused her vote in Congressional District 9 to carry less weight. 02/08/2019 Tr. 30:15-22.

736. Ms. Noorbakhsh believes her vote carries equal weight because she is a Democrat and Congressional District 9 elects Democrats. 02/08/2019 Tr. 30:24-31:19, 9:10-22.

737. Ms. Noorbakhsh believes the 2011 maps made her vote in Michigan Senate District 8 worth less because the district elects Republicans and she is a Democrat. 02/08/2019 Tr. 30:32:9-33:1.

738. Ms. Noorbakhsh testified that she believes it is good for everyone when Democrats win elections. 02/08/2019 Tr. 46:24-47:8, 47:23-25.

739. Ms. Noorbakhsh appears concerned with proportional congressional representation on a statewide basis. 02/08/2019 Tr. at 48:4-10.

FACTS DEMONSTRATING THAT MS. NOORBAKHSH'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

740. Ms. Noorbakhsh makes political contributions to candidates in her districts. 02/08/2019 Tr. at 22:19-21.

741. Ms. Noorbakhsh testified that she has *chosen* not to make political contributions to candidates because of her belief her districts are gerrymandered. 02/08/2019 Tr. at 22:22-23:7, 23:11-16.

742. Ms. Noorbakhsh engages in campaign activity in her Michigan House district. 02/08/2019 Tr. at 26:7-11.

743. Ms. Noorbakhsh has *chosen* not to engage in campaign activity because of her belief her districts are gerrymandered. 02/08/2019 Tr. at 26:15-21.

744. Ms. Noorbakhsh testified that engaging in campaign activity or making political contributions are personal choices. 02/08/2019 Tr. at 28:16-29:2.

FACTS DEMONSTRATING THAT MS. KROMREI WAS DILATORY IN ASSERTING HER RIGHTS.

745. Ms. Noorbakhsh testified that she first started paying attention to the 2011 maps when they were first released in 2011 and was surprised with how they looked. 02/08/2019 Tr. at 35:11:11-19.

746. Ms. Noorbakhsh first joined this suit in fall 2018. 02/08/2019 Tr. at 36:11-16.

EE. KATHLEEN POORE

INTRODUCTORY FACTS FOR KATHLEEN POORE.

747. Ms. Poore resides in Clinton Township. 02/05/2019 Tr. at 11:2-6.

748. Ms. Poore lives in Congressional District 9. 02/05/2019 Tr. at 11:16-12:2.

749. Ms. Poore lives in Michigan House District 24. 02/05/2019 Tr. at 12:7-12.

750. Ms. Poore lives in Michigan Senate District 10. 02/05/2019 Tr. at 12:7-18.

751. Ms. Poore joined the League of Women Voters in 2015. 02/05/2019 Tr. at 8:24-9:3.

752. Ms. Poore joined the League of Women Voters at the recommendation of the local Democratic Party organization. 02/05/2019 Tr. at 9:4-25.

753. Ms. Poore is a founder of the McComb, Mich., League of Women Voters. 02/05/2019 Tr. at 9:22-25.

754. Ms. Poore has consistently voted for Democratic candidates. 02/05/2019 Tr. at 13:13-18.

755. Ms. Poore does not recall an instance since January 1, 2011, in which she voted for a candidate who was not affiliated with the Democratic Party. 02/05/2019 Tr. at 13:13-14:1.

756. Ms. Poore last voted for a Republican in the 2000 Republican presidential nomination process. 02/05/2019 Tr. at 33:24-34: 12.

757. Ms. Poore does not affiliate with a particular political party. 02/05/2019 Tr. at 14:2-11.

758. Ms. Poore testified that her “. . . goals, [her] values, pretty much align with . . .” the Democratic Party. 02/05/2019 Tr. at 14:12-21.

759. Ms. Poore intends to vote in the 2020 elections. 02/05/2019 Tr. at 14:22-24.

**INTRODUCTORY FACTS FOR THE LEAGUE OF WOMEN
VOTERS OF MICHIGAN**

760. The McComb League of Women Voters was founded in 2015.

02/05/2019 Tr. at 9:22-25.

761. The McComb League is subordinate to the League of Women Voters of Michigan. 02/05/2019 Tr. at 29:21-22.

762. The McComb League's main purpose is voter education. 02/05/2019 Tr. at 29:21-30:11.

FACTS DEMONSTRATING THAT NEITHER MS. POORE NOR THE LEAGUE HAVE STANDING.

763. Ms. Poore intends to vote, district lines notwithstanding. 02/05/2019 Tr. at 16:1-5, 25:21-26:2.

764. Ms. Poore does not know if Congressional District 9 is gerrymandered. 02/05/2019 Tr. at 19:10-16.

765. Ms. Poore has engaged in campaign activity in her districts to promote candidates or issues and to educate voters. 02/05/2019 Tr. at 27:21-28:4, 28:11-15.

766. Ms. Poore's perception that her districts are gerrymandered has encouraged and motivated her to engage in more campaign activity in her districts. 02/05/2019 Tr. at 28:5-15.

767. Ms. Poore decision to engage politically in her districts is unaffected by her perception that her districts are gerrymandered. 02/05/2019 Tr. at 28:24-29:6.

768. The McComb League engages politically by hosting candidate forums. 02/05/2019 Tr. at 29:21-23.

769. The McComb League engages politically by preparing and publicizing a voter guide. 02/05/2019 Tr. at 29:21-22:11.

770. The McComb League engages in voter education. 02/05/2019 Tr. at 29:21-30:11.

771. The McComb League's ability to serve the state League and accomplish its goals has not been affected by gerrymandering. 02/05/2019 Tr. at 30:12-17.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. POORE'S VOTE.

772. Ms. Poore's complaint rests on statewide concerns. 02/05/2019 Tr. at 37:24-38:20.

773. Ms. Poore agrees that the partisan divide is not clear-cut and that members of a single party have differing views. 02/05/2019 Tr. at 51:2-21.

774. Ms. Poore testified that a single person's involvement can make a difference. 02/05/2019 Tr. at 52:21-22.

775. Ms. Poore's candidate of choice, Democrat Andy Levin, won election to Congressional District 9. 02/05/2019 Tr. at 11:16-6, 13:13-14:1, 14:12-21, 33:24-34:12; Secretary Exhibit 29.

FACTS DEMONSTRATING THAT MS. POORE'S AND THE LEAGUE'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

776. Ms. Poore has made political contributions to political parties.

02/05/2019 Tr. at 27:3-7.

777. Ms. Poore has knocked on doors, called constituents, stuffed envelopes, and engaged in other campaign activity in her districts.

02/05/2019 Tr. at 27:21-25.

778. Ms. Poore is more willing to engage in campaign activity in her districts because of her belief that her districts are gerrymandered.

02/05/2019 Tr. at 28:5-15.

779. Ms. Poore testified that she will “. . . be politically active no matter what.” 02/05/2019 Tr. at 28:24-29:6.

780. Ms. Poore has found her current Republican representatives to be responsive to her as a constituent. 02/05/2019 Tr. at 31:18-32:11.

781. Ms. Poore testified that she has “. . . gotten through . . .” when contacting her representatives. 02/05/2019 Tr. at 41:10-17.

782. The League prevents Ms. Poore from making political contributions.

02/05/2019 Tr. at 53:22-54:4.

FACTS DEMONSTRATING THAT MS. POORE WAS DILATORY IN ASSERTING HER RIGHTS.

783. Ms. Poore did not become involved in this suit until two or three months ago. 02/05/2019 Tr. at 46:12-17.

784. Ms. Poore was contacted by the League two or three months ago to become involved in this suit. 02/05/2019 46:12-25.

FF. JILL KROLL

785. Jill Kroll lives in Holt, Michigan. (J. Kroll Dep at p. 5). She has been a member of the League of Women Voters since 2016. (J. Kroll Dep at p. 7)

786. Ms. Kroll is only challenging Congressional District 8 in this lawsuit. (J. Kroll Dep at pp. 8-9) She also resides in Senate District 23 and House District 67. (J. Kroll Dep at pp. 8-9) Ms. Kroll is not challenging either of these legislative districts. (J. Kroll Dep at pp. 8-9)

787. Ms. Kroll admits that it was possible to elect a Democrat in Congressional District 8. (J. Kroll Dep at p. 20)

788. Ms. Kroll testified that when Mike Bishop was the representative from Congressional District 8, he believed he was in a “safe” district and did not “listen to a big chunk of his constituents.” (J. Kroll Dep at p. 10)

789. A group called “Indivisible District 8” organized to elect another candidate to represent Congressional District 8. (J. Kroll Dep at p. 12)

790. The effort to defeat Bishop was successful in 2018, as Elissa Slotkin defeated Mike Bishop for the 8th Congressional seat. Ms. Kroll testified that

it took “more than just voting,” it took “organizing” to defeat Bishop. (J. Kroll Dep at p. 14) Kroll’s primary complaint is that her “vote should have been enough.” (J. Kroll Dep at p. 14)

791. Ms. Kroll testified that there were times Bishop voted in a way that reflected her interests, which she views as positive. (J. Kroll Dep at pp. 20-21) Indeed, Ms. Kroll acknowledges that “[p]eople vote for things for different reasons.” (J. Kroll Dep at p. 26)

792. Ms. Kroll admits that she has not tracked every vote Bishop took while in Congress. (J. Kroll Dep at p. 21)

793. Ms. Kroll admits that the district lines have not impacted her ability to: (i) campaign for a candidate; (ii) fundraise for a candidate; (iii) endorse any candidate; (iv) contact a candidate; (v) or request that a candidate vote for or against a particular bill. (J. Kroll Dep at pp. 23-24)

794. With respect to the Senate and House districts that Ms. Kroll is not challenging, she testified that she is happy with her representatives. (J. Kroll Dep at pp. 28-29) She could not explain how she was able to elect these two Democratic representatives if there was in fact a gerrymander in place. (J. Kroll Dep at p. 29)

GG. CAROLYN VERTIN

795. Carolyn Vertin lives in Tecumseh, Michigan. (C. Vertin Dep at p. 10). She is a member of the League of Women Voters and is identifying with the Democratic Party. (C. Vertin Dep at pp. 8, 11)

796. Ms. Vertin does not vote for candidates based on party affiliation or the issues. She votes for candidates based on whether they are “qualified.” (C. Vertin Dep at p. 30)

797. Ms. Vertin did not become “politically active” until 2016. (C. Vertin Dep at p. 20) She did not campaign for any candidate before or after 2016. (C. Vertin Dep at p. 20)

798. Ms. Vertin resides in Congressional District 7 (C. Vertin Dep at pp. 11-12)

799. Ms. Vertin does not claim that her current Congressman, Tim Walberg, gives “short shrift” to Democrat issues and only focuses on Republican issues. (C. Vertin Dep at p. 25)

800. She also admits that she does not aware of how Walberg has voted on all important issues that have come across his desk since he was elected to Congress. (C. Vertin Dep at p. 33)

801. Ms. Vertin acknowledges that Walberg’s obligations as an elected Congressman is to his constituents, not just those in his district who are Republican. (C. Vertin Dep at pp. 36-37)

802. After the 2011 redistricting went into effect, Ms. Vertin has: (i) been able to vote in each election; (ii) been able to campaign for the candidate of her choosing; and (iii) not been prohibited from donating money to certain candidates. (C. Vertin Dep at pp. 33-34)

HH. LINDA STOETZER

803. Linda Stoetzer lives in Sault St. Marie, Michigan. (L. Stoetzer Dep at p. 10) She has been a member of the League of Women Voters since 2013. (L. Stoetzer Dep at p. 8).

804. Ms. Stoetzer resides in Congressional District 1, which she is challenging in this lawsuit. (L. Stoetzer Dep at p. 11)

805. She also resides in Senate District 37 and House District 107. (L. Stoetzer Dep at pp. 23-24) She does “does not know” if she has an issue with the way either of these districts are drawn because they are “not of interest” to her. (L. Stoetzer Dep at pp. 24-25)

806. She does not vote for Democrats in all elections, estimating that she only does so between 80 and 90 percent of the time. (L. Stoetzer Dep at p. 15)

807. When the 2011 maps were enacted, Ms. Stoetzer “wasn’t aware of what was going on.” (L. Stoetzer Dep at p. 19) Instead, she just “wasn’t pleased with who was representing her.” (L. Stoetzer Dep at p. 19) Ms.

Stoetzer preferred her previous representative, Democrat Bart Stupak, who retired. (L. Stoetzer Dep at pp. 19-20)

808. Ms. Stoetzer testified that her current congressional representative responds to her outreach and even participated in a League of Women Voters event that Ms. Stoetzer moderated. (L. Stoetzer Dep at pp. 13, 22)

809. Ms. Stoetzer has not given any thought to how Congressional District 1 should be redrawn, nor was she able to articulate what the District should be redrawn. (L. Stoetzer Dep at p. 27)

II. **JULIA CAROFF**

810. Since August 2013, Julia Caroff has lived in Ann Arbor, Michigan. (J. Caroff Dep at p. 7). She lived in Birmingham, Michigan at the time the maps were enacted in 2011. (J. Caroff Dep at p. 7)

811. Ms. Caroff currently resides in Congressional District 12; State Senate District 18; and State House District 53. (J. Caroff Dep at pp. 8-9) All of her current representatives are Democrats. (J. Caroff Dep at pp. 8-9)

812. Ms. Caroff believes that her State House district is “packed.” (Caroff Dep at p. 62) She is not, however, challenging House District 53 in this lawsuit. (Caroff Dep at pp. 63-64)

813. Ms. Caroff is not surprised that Plaintiffs are not challenging House District 53, because “they focused on just certain districts.” (Caroff Dep at p.

64) If Ms. Caroff was asked by Plaintiffs, she would have asked Plaintiffs to consider a challenge to House District 53. (Caroff Dep at p. 66)

814. Ms. Caroff has been a member of the League of Women Voters since November 2016. (J. Caroff Dep at p. 29)

815. She is happy with her congressional representative, which she describes as “effective.” (J. Caroff Dep at pp. 37, 70)

816. With respect to her Congressional District, Ms. Caroff testified that her alleged harm is at “the national level” because Congress is getting less done and is less responsive. (J. Caroff Dep at pp. 33-34)

817. Ms. Caroff admits that regardless of whether her Congressperson is a Republican or Democrat, she has access to that representative and “will almost inevitably receive some kind of response.” (Caroff Dep at p. 45) She does not know whether the representative would consider her views. (Caroff Dep at p. 45)

818. Ms. Caroff testified that voter turnout in a particular election can change the makeup of a legislative body. (Caroff Dep at pp. 51-52)

819. When asked what would make a particular legislative map fair in her mind, Ms. Caroff testified that the primary requirement would be compliance with the Constitution and Voting Rights Act, which protects racial minorities. (Caroff Dep at pp. 52-53)

820. Ms. Caroff admits that it is “inherent” that certain legislative districts must have more Democrats or Republicans. She testified: “you have large areas that are rural, and at this point in the political affiliations, they do tend to identify more with the Republican Party. So, it may not be possible to necessarily achieve all of those goals of having an absolutely perfect balance because then you would end up sacrificing things like districts being contiguous and compact as you try to achieve that balance.” (Caroff Dep at p. 54-55)

821. In addition, “people move. In 10 years, a lot of changes and political interests can change over those 10 years depending on just, you know, passage of time, how policies impact people.” (Caroff Dep at p. 55)

822. Ms. Caroff testified that she wants proportional representation in the legislative bodies. (Caroff Dep at p. 49) For example, “let’s say you had, among the voters, 60 percent Republican votes cast versus 40 percent Democrat votes cast for the legislative bodies in the State Senate as a whole. You’d want to see pretty much 60 percent of the Representatives be Republican and 40 percent be Democrat, because that represents the overall vote patterns of the people in Michigan. (Caroff Dep at p. 49)

JJ.RANDY RICHARDVILLE

PROPOSED FINDINGS OF FACT FOR RANDY RICHARDVILLE

825. Senator Randy Richardville, did not think the Enacted Redistricting maps were drawn with partisan intent. R. Richardville Tr. at 60:17-22.

826. During the 2011 redistricting process, Senator Richardville was the Senate Majority Leader. R. Richardville Tr. at 65:10-15.

827. Senator Richardville's role was to ensure the right people were placed in the right job to do the right things. But Senator Richardville did not micromanage every aspect of the redistricting plan. R. Richardville Tr. at 76:1-8.

828. Senator Richardville did not draw redistricting maps and was not in the room when maps were drawn. R. Richardville Tr. at 76:11-18.

829. Senator Richardville appointed Senator Hune as chair of the Senate Redistricting Committee. R. Richardville Tr. at 77:3-10.

830. Senator Richardville had a collegial relationship with then Democratic minority leader Gretchen Whitmer. R. Richardville Tr. at 77:15-25, 78:1-8.

831. Senator Richardville did not know if Jeff Timmer was involved preparing plans for the Michigan House or the Michigan Senate. R. Richardville Tr. at 69:3-12.

832. Senator Richardville did not know who hired Timmer and did not know who Mr. Timmer was working for. R. Richardville Tr. at 160:3-6.

833. Senator Richardville attended three-six meetings at Dickinson Wright law offices. R. Richardville Tr. at 84:8-11, 85:13-14.

834. Senator Richardville would simply stop in at Dickinson Wright to make sure everything was going ok. R. Richardville Tr. at 85:16-17

835. His primary purpose for doing this was to see if anything could be done. The meetings occurred at the law office with lawyers was to ensure that the map drawing process was done legally. R. Richardville Tr. at 89:22-25, 90:3-12.

836. Senator Richardville was not involved in the details of the discussions at the Dickinson Wright meetings. R. Richardville Tr. at 93:1-4.

837. Senator Richardville does not remember there being any discussion of political data at any of the Dickinson Wright meetings he attended. R. Richardville Tr. at 108:4-7.

838. No Democrats or outside interest groups attended the meetings at Dickinson Wright because the meetings were with lawyers to make sure the map was legal. R. Richardville Tr. at 130:23-25, 131:1-2.

839. The discussions at the Dickinson Wright meetings were primarily about the Apol criteria. R. Richardville Tr. at 134:12-25.

840. Five Democrats in the Senate ultimately voted for the redistricting legislation. R. Richardville Tr. at 144:1-10.

841. Senator Richardville does not remember there being any unusual or atypical complaints about the lack of transparency concerning the redistricting legislation. R. Richardville Tr. at 120:16-20; 164:12-20.

842. Senator Richardville did not know to whether or to what extent a map released on May 9, 2011 by Target-Insyght was considered by the people who were drawing the maps. R. Richardville Tr. at 173-177.

843. Senator Richardville agreed that after drawing districts that follow the Apol criteria, there is still options to draw districts for other reasons, including reasons that may favor one party or another. R. Richardville Tr. at 180:7-17.

844. But Senator Richardville did not know why some plans were discarded over the plans that were ultimately enacted. R. Richardville Tr. at 180:18-23.

845. Senator Richardville met with Republican caucus members to discuss their proposed new district. R. Richardville Tr. at 192:5-11. A few of the Republican caucus members had significant changes, some wanted to understand the changes to their districts, and some didn't like their new proposed districts. R. Richardville Tr. at 192:12-24.

846. Senator Dave Robertson, a Republican, was one of the Senators who did not like his new proposed district because it added new population to his

district, not necessarily new partisan changes, which required Senator Robertson to go out and meet many more new people. R. Richardville Tr. at 162:21-25, 163-164, 192:19-24.

847. Additionally, Senator Schuitmaker, a Republican, was not happy with her district because the new proposed district, to comply with the requirement of least county and municipal breaks, redid her district substantially. R. Richardville Tr. at 195:11-25. Her previous district was a Democrat-based district but she worked the district hard to get to know her constituents. *Id.* The new district had more of a Republican base and, despite being a Republican, Senator Schuitmaker was not happy with the new district. *Id.* at 195:21-196:1-13. This mean that despite working hard to be a good representative of the Kalamazoo area, and getting to know her constituents, she was upset that she would have to redo the work of getting to know her constituents. 263:8-24.

848. Senator Richardville understood that it was the goal of the three redistricting plans to not draw the lines with an intent to favor one party over the other. R. Richardville Tr. at 214:3-12.

849. Senator Richardville does not remember receiving complaints from Democratic Senators or the public about not having sufficient time to consider the redistricting plans. R. Richardville Tr. at 222:1-3. In any event,

Senator Richardville believed there was sufficient time to consider the bill.

Id. at 222:5-11; 226:4-20.

850. Senator Richardville's amendment to the redistricting bill was the product of collaborating with African-American Democrats in the Detroit area to make sure they were happy with the composition of their districts. Four of the five Detroit Democrats voted for the redistricting bill. R. Richardville Tr. at 228-29.

851. Democrat Senator Rebekah Warren also voted for the bill. R. Richardville Tr. at 260:1.

852. The political composition of the Senate, House, and Michigan's congressional delegation is attributable to a smart electorate and that the Republicans fielded better candidates and better leadership. For example, Senator Richardville won 66% of the vote in a Democrat seat. R. Richardville Tr. at 285-87.

853. Apol rules and guidelines make it difficult to gerrymander districts. R. Richardville Tr. at 287.

KK. JAMES PATRICK "JASE" Bolger
FINDINGS OF FACT FOR JAMES PATRICK "JASE" BOLGER

854. During the 2011 redistricting process for the State House, State Senate, and Congressional districts, Speaker Bolger's role was the same as it

was for any legislation; he was in charge with securing ultimate passage. J. Bolger Dep. Tr. at 65:5-11, 66:6-7.

855. This included conducting any negotiations for final passage to get votes. J. Bolger Dep. Tr. at 65:5-11, 66:6-7

856. This included talking with certain representatives who were not happy with how their districts were drawn. J. Bolger Dep. Tr. at 66:23-5, 67:1.

857. One of these conversations was with two Republican legislators who were not happy with their districts because they were “combined into the same district.” J. Bolger Dep. Tr. at 67:5-11.

858. This involved two sets of parings between four Republican legislators. J. Bolger Dep. Tr. at 69:11, 24-25, 70:1.

859. Another conversation was with Rick Olson who was not happy with the partisan composition of his new district because he no longer thought he could win the district. Mr. Olson is a Republican. J. Bolger Dep. Tr. at 67:5-8, 21-23, 68:2-7, 79:3-12.

860. Speaker Bolger told Mr. Olson that the district had to be drawn this way because of population shifts. J. Bolger Dep. Tr. at 68:19-22.

861. Speaker Bolger did not permit incumbent protection to override Michigan’s redistricting legal requirements. J. Bolger Dep. Tr. at 70:24-25, 71:1-3, 16-22, 75:12-19.

862. Demographic changes did not allow Michigan to draw a district that “protected” Mr. Olson. J. Bolger Dep. Tr. at 75:21-25, 76:1.

863. The district was not changed to benefit Mr. Olson. J. Bolger Dep. Tr. at 190:17-21.

864. Drawing districts to protect incumbents, whether Republican or Democrat, was not a factor in the 2011 redistricting. J. Bolger Dep. Tr. at 77:19-25.

865. Congressman Amash was not happy with the partisan composition of his district, but this was necessitated by keeping the city of Grand Rapids intact. J. Bolger Dep. Tr. at 78:19-25, 79:3-12.

866. Congressman Amash was not happy with the partisan composition of his district that resulted from keeping Grand Rapids whole. Speaker Bolger did not make any changes to address Congressman Amash’s concern. J. Bolger Dep. Tr. at 191:13-19, 192:10-17.

867. Congressman McCotter was also not happy with his district and consistently expressed his dissatisfaction to Speaker Bolger. No changes were made to address Congressman McCotter’s concerns. J. Bolger Dep. Tr. at 191:10-13, 192:4-6.

868. Senator Schuitmaker, a Republican, was also not happy with the change of the lines of her district. J. Bolger Dep. Tr. at 147:5-14.

869. Speaker Bolger agreed that once Michigan's redistricting requirements are applied, there is "still a range of possible outcomes you can have in terms of where district lines are drawn." J. Bolger Dep. Tr. at 86:1-7.

870. To get passage of legislation, you need 56 members of the House, 20 Senators, and 1 Governor's signature. This was a necessary requirement for Speaker Bolger. J. Bolger Dep. Tr. at 86:24-25, 87:21.

871. During the redistricting, Speaker Bolger assumed there was bipartisan support for the various redistricting plans and bipartisan opposition to the various redistricting plans. J. Bolger Dep. Tr. at 87:4-6.

872. Some legislators expressed concerns that their new districts would require them to march in more parades; or expressed concern that the new map changed the Representative's district number. J. Bolger Dep. Tr. at 80:11-25, 81:1-22, 88:2-17.

873. Speaker Bolger focused on following the Apol standards and not on things like parades, district numbers, or anything else. The district lines are to be drawn based upon the Apol standards. J. Bolger Dep. Tr. at 90:2-7, 96:23-25.

874. When the maps were initially drafted, the mapdrawers did not have political data. J. Bolger Dep. Tr. at 79:16-24; 84:17-18, 99:4-19, 194:2-4.

875. Redistricting legislation passed with bi-partisan support and despite bi-partisan opposition. J. Bolger Dep. Tr. at 112:20-23.

876. Democrats were involved in the map-making process. J. Bolger Dep. Tr. at 112:23-24.

877. Republicans legislators and Democrat legislators, had an equal voice, equal opportunity to weigh in on the 2011 redistricting legislation. J. Bolger Dep. Tr. at 113:7-15.

878. The 2011 redistricting process was open and public and the legislature encouraged people to participate. J. Bolger Dep. Tr. at 117:15-19.

879. Although Democrats did not participate in meetings held at the Dickinson Wright law firm, it is not unusual for Republican caucus members or Democrat caucus members to have private meetings to discuss legislation. It is common practice to have meetings within just one caucus where not everyone is invited. J. Bolger Dep. Tr. at 113:17-20, 114:11-16; Timmer Trial Tr. Vol. III at 78 (Feb. 7, 2019).

880. The Michigan House in 2008 was 67 Democrat and 47 Republican.

881. After the 2010 elections, the House was 63 Republicans and 47 Democrats. J. Bolger Dep. Tr. at 162: 19-22. This demonstrates that elections matter. J. Bolger Dep. Tr. at 162:25, 185:22-25, 186:1-3.

882. Michigan citizens are able to participate in Michigan legislative committee hearings. J. Bolger Dep. Tr. at 180:18-24.

883. Elections matter. Voters decide elections in districts and the candidates matters. Accordingly, Speaker Bolger does not call districts Republican districts or Democrat districts. 185:1-25-186:1-3.

884. District 32's shape is driven by community lines and is conformity with the Apol standards. The jagged portions of the district are driven by lake. J. Bolger Dep. Tr. at 210:6-9.

885. Speaker Bolger does not recall any such discussion about the partisan composition the drove the lines in District 83. J. Bolger Dep. Tr. at 212: 14-24.

886. The Apol standards drove the lines in District 51. J. Bolger Dep. Tr. at 214:7-9.

887. The Apol standards drove the lines in Districts 91 and 92. J. Bolger Dep. Tr. at 216:23-25, 217:1-23.

888. Speaker Bolger represented the 63 District. J. Bolger Dep. Tr. at 223:18-24.

889. Speaker Bolger was not happy that Schoolcraft Township was not included in the new districts. He did not ask that it be placed within his district. J. Bolger Dep. Tr. at 224:6-24.

LL. SHERRILL LEIGH SMITH

INTRODUCTORY FACTS FOR SHERRILL LEIGH SMITH

890. Sherrill Smith is 69 years old and has lived in Michigan all of her life.

Dep. of Sherrill Smith at 5.

891. Sherrill Smith has been a member of the League of Women Voters since roughly 1976. Dep. of Sherrill Smith at 5-6.

892. Sherrill Smith has lived at 129 North Alexander, Saginaw, Michigan since 2011. Dep. of Sherrill Smith at 8.

893. Sherrill Smith resides in Michigan's 5th Congressional District currently represented by Democrat Bill Kildee. Dep. of Sherrill Smith at 7.

894. Sherrill Smith resides in the 32nd state house district currently represented by Republican Ken Horn. Dep. of Sherrill Smith at 8.

895. Sherrill Smith resides in the 95th state house district currently represented by Democrat Vanessa Guerra. Dep. of Sherrill Smith at 8.

896. Sherrill Smith has been president of her local League chapter for about 10 years and is currently president. Dep. of Sherrill Smith at 9.

STANDING

897. Sherrill Smith testified that the general public finds special elections quite confusing and that special elections need to be well advertised. Dep. of Sherrill Smith at 8-9.

898. Sherrill Smith does not regard herself as being affiliated with one political party or another—she has adopted a very non-partisan stance. Dep. of Sherrill Smith at 9. She has attended political events from both parties. Id.

899. Sherrill Smith does not understand what the terms “cracked” and “packed” mean. Dep. of Sherrill Smith at 13.

900. Sherrill Smith testified that she believes her congressional district is gerrymandered because it is “drawn . . . along the I-75 corridor where it could be more compact” and “it pits Saginaw against Flint” which causes more grant dollars to flow to Flint for public projects than Saginaw. Dep. of Sherrill Smith at 20-21.

901. When asked whether her state senate district was gerrymandered, Sherrill Smith testified that she has “been less aware of that”. Dep. of Sherrill Smith at 26.

902. The only harm Sherrill Smith alleges she suffers because of perceived gerrymandering is generalized. She is not happy that her representative, who is a Democrat, cannot pursue her legislative agenda fully because she is in the minority party. Dep. of Sherrill Smith at 39-40.

903. Sherrill Smith considers herself non-partisan and votes for candidates of both political parties. Dep. of Sherrill Smith at 42-43.

904. Sherrill Smith has voted for candidates from both parties in the elections for U.S. Senate. Dep. of Sherrill Smith at 43-44.

905. Sherrill Smith has voted for Republicans for governor of Michigan such as Rick Snyder. Dep. of Sherrill Smith at 46.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE SHERRILL LEIGH SMITH'S VOTE.

906. Sherrill Smith testified that she doesn't see gerrymandering having an effect on the weight on her vote. Dep. of Sherrill Smith at 36.

FACTS DEMONSTRATING THAT SHERRILL LEIGH SMITH'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

907. Sherrill Smith testified that if her current congressional and state districts remain the same, it will have no impact on the likelihood of her voting in 2020 because she will be voting regardless. Dep. of Sherrill Smith at 12.

908. Sherrill Smith testified that the perceived gerrymandering of her congressional, state senate, and state house districts has not dissuaded her from voting at all and she will vote no matter how badly she perceives herself as being gerrymandered. Dep. of Sherrill Smith at 26.

909. Sherrill Smith testified that she does not engage in partisan politics so she does not make contributions to parties and campaigns and therefore could not be dissuaded from doing so because of perceived gerrymandering. Dep. of Sherrill Smith at 30.

910. Sherrill Smith testified that what she describes as gerrymandering has never prohibited her from voting, campaigning for any candidate, donating money to any candidate, or engaging in the political process. Dep. of Sherrill Smith at 55-57.

911. Sherrill Smith has met with both her Republican and Democratic elected representatives in the state house and state senate. Dep. of Sherrill Smith at 61-63.

FACTS DEMONSTRATING THAT SHERRILL LEIGH SMITH WAS DILATORY IN ASSERTING HIS RIGHTS.

912. Sherrill Smith became involved in this lawsuit in spring 2018. Dep. of Sherrill Smith at 57-58.

MM.GERALD DeMAIRE

INTRODUCTORY FACTS FOR GERALD DeMAIRE

913. Gerald DeMaire has been a member of the League of Women Voters for about 2 years. Dep. of DeMaire at 6-7.

914. Since at least 2011 Mr. DeMaire has lived at 12429 Lyford Dr., Sterling Heights, Michigan 48312. Dep. of DeMaire at 8.

915. Mr. DeMaire lives in the 9th Congressional district, currently represented by Democrat Andy Levin. Dep. of DeMaire at 8.

916. Mr. DeMaire lives in the 25th state house district, currently represented by Democrat Nate Shannon. Dep. of DeMaire at 8-9.

917. Mr. DeMaire lives in the 10th state senate district, currently represented by Republican Michael MacDonald. Dep. of DeMaire at 9.

918. Mr. DeMaire believes all of his districts are gerrymandered despite historically close elections in his state senate and state representative districts. Dep. of DeMaire at 14, DeMaire Deposition Exhibit 1 (Exhibit 43 and 2 (Exhibit 44).

919. Mr. DeMaire considers himself to be politically active. Dep. of DeMaire at 27.

STANDING

920. Mr. DeMaire does not tend to vote for candidates from a particular party, but has voted for more Democrats than Republicans. Dep. of DeMaire at 10.

921. Mr. DeMaire does not claim a political party affiliation and calls himself an independent. Dep. of DeMaire at 10.

922. Mr. DeMaire testified that it would be “really difficult” to change districting in Michigan prior to the implementation of the Redistricting Commission. Dep. of DeMaire at 34-37

923. Mr. DeMaire testified that have a special state senate election in 2020 would also be very difficult to do. Id.

924. Mr. DeMaire believes the 2011 maps are unfair due to a visual test—he believes the districts should be more geographically compact and squared off. Id.

925. Mr. DeMaire testified that not every district can be competitive. Id at 37.

926. Mr. DeMaire during his deposition actually pointed to Plaintiffs’ Demonstrative 10, one of the hypothetical maps produced by Plaintiffs’ expert, as an example of a gerrymandered district due to it being not geographically compact or including communities of interest together. Dep. of DeMaire at 44-45

927. Mr. DeMaire was unaware that under the current maps Democrats gained 5 seats in the state house and 5 seats in the state senate. Dep. of DeMaire at 52.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE Mr. DeMAIRE’S VOTE.

928. Mr. DeMaire testified that he believes his vote is diluted but attributed that dilution to “outside interests” and the U.S. Supreme Court case Citizens United. Dep. of DeMaire at 33.

FACTS DEMONSTRATING THAT MR. DeMAIRE’S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

929. Mr. DeMaire's likelihood of voting is not affected if his legislative and congressional districts stay the same as they are currently. Dep. of DeMaire at 10-11.

930. Mr. DeMaire has never chosen not to vote, either for a particular candidate or at all, in an election because he lived in a district that was gerrymandered. Dep. of DeMaire at 20.

931. Mr. DeMaire has not been prevented from affiliating with people who share his values. Dep. of DeMaire at 29.

FACTS DEMONSTRATING THAT MR. DeMAIRE WAS DILATORY IN ASSERTING HIS RIGHTS.

932. Mr. DeMaire has been paying attention to the 2011 redistricting process since the process began, prior to the passage of the plan. Dep. of DeMaire at 52-53.

933. Mr. DeMaire was asked to become a witness in this case sometime in 2018. Dep. of DeMaire at 55.

NN. LISA MORSE

INTRODUCTORY FACTS FOR LISA MORSE

934. Ms. Morse resides in Port Huron, Michigan. L. Morse Dep. Tr. at 9.

935. Ms. Morse lives in State House District 83. *Id.* at 11.

936. Ms. Morse lives in Congressional District 10. *Id.* at 10.

937. Ms. Morse identifies with the Democratic Party. *Id.* at 9.

938. Ms. Morse has voted for a Republican on one occasion when she believed that candidate was truly a Democrat. *Id.* at 19.

939. For the 2020 elections, Ms. Morse intends to vote for Democratic candidates. *Id.* at 9-10.

**INTRODUCTORY FACTS FOR THE LEAGUE OF WOMEN
VOTERS OF MICHIGAN.**

940. Ms. Morse is a member of the League of Women Voters (“League”).
Id. at 10.

**FACTS DEMONSTRATING THAT NEITHER MS. MORSE NOR
THE LEAGUE HAS STANDING.**

941. Ms. Morse does not know the boundaries of her congressional district. *Id.* at 15-16.

942. Ms. Morse does not know the boundaries of her state house district.
Id. at 16.

943. Ms. Morse voted for a Republican in a county-wide race because she believed the candidate was truly a Democrat and he cannot win if he runs as a Democrat so he runs as a Republican. *Id.* at 19.

944. Ms. Morse acknowledged that county-wide races are not affected by redistricting. *Id.* at 19-20.

945. Ms. Morse has never tried to contact her congressman’s office. *Id.* at 24.

946. Ms. Morse has never tried to contact her state house representative.

Id. at 25.

**FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING
PLANS DID NOT DILUTE MS. MORSE'S VOTE.**

947. Ms. Morse believes that there are varying shades of positions on issues within the Democratic Party. *Id.* at 27.

948. Ms. Morse believes that there are varying shades of positions on issues within the Republican Party. *Id.* at 28.

949. Ms. Morse acknowledges that just because a Republican wins does not conclude that there is anything unfair about the district. *Id.* at 49.

**FACTS DEMONSTRATING THAT MS. MORSE'S AND THE
LEAGUE'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.**

950. Ms. Morse has consistently voted since living at her current address since 2004. *Id.* at 9.

951. Ms. Morse acknowledged that redistricting has not prevented her from voting. *Id.* at 21.

952. Redistricting has not prevented Ms. Morse from campaigning for a candidate. *Id.*

953. Redistricting has not prevented Ms. Morse from donating money to a candidate. *Id.*

954. Redistricting has not prevented Ms. Morse from protesting or going to a rally. *Id.*

955. Ms. Morse participated in the Women's March in Detroit in 2017. *Id.* at 22.

FACTS DEMONSTRATING THAT MS. MORSE AND THE LEAGUE OF WOMEN VOTERS WAS DILATORY IN ASSETING THEIR RIGHTS.

956. Ms. Morse was aware and paying attention to the redistricting process in 2011. *Id.* at 40.

957. Ms. Morse joined the lawsuit in late summer of 2018. *Id.* at 41.

958. Ms. Morse was approached by Mark Brewer to join the lawsuit. *Id.*

OO. HARVEY SOMERS

INTRODUCTORY FACTS FOR HARVEY SOMERS

959. Mr. Somers is a resident of Scio Township. H. Somers Tr. at 12.

960. Mr. Somers lives in Congressional District 12. *Id.* at 14.

961. Mr. Somers lives in Michigan Senate District 22. *Id.*

962. Mr. Somers lives in Michigan House District 52. *Id.*

963. Mr. Somers is a member of the League of Women Voters. *Id.* at 11.

964. Mr. Somers joined the League in 2013. *Id.* at 11.

965. Mr. Somers believes the League's mission is to "... educate voters, to encourage voting." *Id.* at 11.

966. Mr. Somers shares the League’s mission as he understands it. Id. at 11.

967. Mr. Somers votes consistently. Id. at 13.

968. Mr. Somers is a “. . . strong supporter of the Democratic Party.” Id. at 13.

969. Mr. Somers identifies as a member of the Democratic Party. Id. at 13-14.

970. Mr. Somers intends to vote in the 2020 elections. Id. at 14.

971. Mr. Somers intends to vote in the 2020 elections “[f]or the Democrats as much as I can.” Id. at 14.

972. Mr. Somers voted for a Republican in 1988, George H.W. Bush. Id. 47-48.

973. Mr. Somers voted for a Republican in 2009, Rick Snyder. Id. at 48.

974. Mr. Somers was elected in 2014 as a precinct delegate. Id. at 19.

FACTS DEMONSTRATING THAT MR. SOMERS DOES NOT HAVE STANDING.

975. Mr. Somers appears to testify that his only “harm” from the 2011 redistricting plan was a reduction in his personal “enthusiasm level.” H. Somers Tr. at 35.

976. Mr. Somers testified that Michigan House District 52 had “. . . a Democratic challenger to an incumbent Republican” in 2012. Id. at 17.

978. Mr. Somers testified that this Democratic challenger's strength in Michigan House District 52 was such that "... it was an exciting time." Id. at 18.

979. Mr. Somers testified that Michigan House District 52 was competitive, but that the "... competitiveness was less than he hoped for." Id. at 18 (emphasis added).

980. Mr. Somers testified that he was "saddened" by the results of elections in his districts. Id. at 18-19; See id. at 20-21.

981. Mr. Somers testified that he chose to reduce his political engagement and activity following the 2014 elections. Id. at 19-20.

982. Mr. Somers doesn't remember missing an opportunity to vote. Id. at 21.

983. Mr. Somers testified that he chose to reduce his political contributions following the 2014 elections. Id. at 22.

984. Mr. Somers testified that individual candidates' attractiveness to voters plays a major role in the electoral successes of those candidates. Id. at 24.

985. Mr. Somers testified that his representatives were responsive to the extent he has contacted them. Id. at 31-34.

986. Mr. Somers testified that the 2011 redistricting plan has not precluded him from being able to vote. Id. at 35.

987. Mr. Somers is uncertain whether he is a plaintiff. Id. at 62.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MR. SOMERS'S VOTE.

988. Mr. Somers testified that many voters were not engaged. Id. at 20.

989. Mr. Somers testified that the 2011 redistricting plan has not precluded him from being able to vote. Id. at 35.

990. Mr. Somers testified that both major parties allow individual members to have a range of philosophies or remedies for given issues. Id. at 38.

FACTS DEMONSTRATING THAT MR. SOMERS'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

991. Mr. Somers participated in several League activities focused on political issues. H. Somers Tr. at 11.

992. Mr. Somers chaired a League discussion on “. . . the impact of reduced State support on city and township finances.” Id. at 11.

993. Mr. Somers served as a timer for League-sponsored, televised candidate debates. Id. at 11.

994. Mr. Somers has made political contributions, including to candidates in his districts. Id. at 18, 22.

995. Mr. Somers attended many campaign events. Id. at 18.

996. Mr. Somers encouraged others to vote. Id. at 19.

997. Mr. Somers has knocked on doors to speak with voters. Id. at 20.

998. Mr. Somers has invited people to political organizing meetings. Id. at 20.

999. Mr. Somers testified that the 2011 redistricting plan has not precluded him from engaging politically. Id. at 35.

1000. Mr. Somers testified that the 2011 redistricting plan has not precluded him from making political contributions. Id. at 35.

1001. Mr. Somers testified that the 2011 redistricting plan has not prevented him from engaging in issue advocacy. Id. at 35.

1002. While Mr. Somers testified that reduced voter engagement has reduced his ability to participate in public protests and rallies, he testified that he has only ever participated in a single protest or rally. Id. at 36.

**FACTS DEMONSTRATING THAT MR. SOMERS WAS DILATORY
IN ASSERTING HIS RIGHTS.**

1003. Mr. Somers testified that the League of Women Voters reached out to him 2018 to discuss his participation in this suit. H. Somers Tr. at 50-51.

1004. Mr. Somers testified that no one asked him to participate in a similar suit between 2012 and 2018. Id. at 52.

1005. Mr. Somers testified that the League had an interest in how elections were playing out under the 2011 maps beginning in 2012. Id. at 53.

1006. Mr. Somers testified that he became “. . . heavily engaged . . .” in Michigan politics in 2014. *Id.* at 17.

PP. PAUL PURCELL

INTRODUCTORY FACTS FOR PAUL PURCELL

1007. Mr. Purcell resides in Saginaw, Michigan. P. Purcell Dep. Tr. at 10:16-20 (Exhibit 75).

1008. Mr. Purcell lives in Senate District 32. *Id.* at 11:10-13.

1009. Mr. Purcell lives in Congressional District 5. *Id.* at 10:21-24.

1010. Mr. Purcell lives in State House District 94. *Id.* at 11:2-5.

1011. Mr. Purcell has consistently voted for Democrats. *Id.* at 11:21-25.

1012. Mr. Purcell has voted for a Republican in the past. *Id.* at 47:20-22.

1013. The last Republican Mr. Purcell voted for was Gerald Ford. *Id.* at 47:23-24.

**INTRODUCTORY FACTS FOR THE LEAGUE OF WOMEN
VOTERS OF MICHIGAN.**

1014. Mr. Purcell has been a member of the League of Women Voters (“League”) for about one year. *Id.* at 7:14-16.

1015. Mr. Purcell joined the League after he received a call from Mark Brewer who asked him if he wanted to be involved in this litigation. *Id.* at 7:17-20.

1016. Mark Brewer told Mr. Purcell that to be involved in the litigation he would need to join the League. *Id.* at 7:18-22.

1017. Mr. Purcell cannot say what the League's mission is. *Id.* at 7:23-25.

1018. Mr. Purcell has not participated in the League's activities since he has joined. *Id.* at 26:17-20.

FACTS DEMONSTRATING THAT NEITHER MR. PURCELL NOR THE LEAGUE HAS STANDING.

1019. Congressman Dan Kildee represents Mr. Purcell. *Id.* at 10-11:21-1.

1020. Congressman Kildee has always been responsive to Mr. Purcell as a constituent. *Id.* at 29:15-19.

1021. Mr. Purcell has consistently voted. *Id.* at 11:16-20.

1022. Mr. Purcell gets involved with political campaigns by going door-to-door and calling voters. *Id.* at 21:19-22.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MR. PURCELL'S VOTE.

1023. Mr. Purcell is represented by Congressman Kildee. *Id.* at 10-11:21-1.

1024. Mr. Purcell is aware that in 2018 the state congressional delegation switched two representatives to Democrats making it seven Republicans and seven Democrats for Michigan in the U.S. House of Representatives. *Id.* at 44:7-17.

1025. Mr. Purcell is aware that in 2018 the state senate delegation switched five more seats for the Democratic Party. *Id.* at 44-45:23-4.

1026. Mr. Purcell agrees that Kildee is a known name in Congressional politics. *Id.* at 49:19-23.

1027. Mr. Purcell is not sure if a Republican who lived in his district voted for Dan Kildee. *Id.* at 51:6-9.

FACTS DEMONSTRATING THAT MR. PURCELL'S AND THE LEAGUE'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

1028. Mr. Purcell has consistently voted. *Id.* at 11:16-20.

1029. Mr. Purcell gets involved with political campaigns by going door-to-door and calling voters. *Id.* at 21:19-22.

1030. Mr. Purcell believes his Congressman, Dan Kildee, is responsive to him as a constituent. *Id.* at 29:15-19.

1031. Mr. Purcell believes his State Representative, Rodney Wakeman, is too new to tell whether or not he is responsive and Mr. Purcell does not know him. *Id.* at 29:20-21.

1032. Mr. Purcell believes his State Senator, Ken Horn, is kind of responsive. *Id.* at 29:22-25.

1033. Mr. Purcell worked for certain candidates around 2011 when the districts were redrawn. *Id.* at 39:3-11.

1034. Mr. Purcell made donations to candidates around 2011 when the districts were redrawn. *Id.* at 39:3-12.

FACTS DEMONSTRATING THAT MR. PURCELL AND THE LEAGUE OF WOMEN VOTERS WAS DILATORY IN ASSETING THEIR RIGHTS.

1035. Mr. Purcell became involved in the litigation after he received a call from Mark Brewer. *Id.* at 36:5-10.

1036. Mr. Purcell got involved in the litigation around March 2018. *Id.* at 38:10-15.

1037. Mr. Purcell joined the League in 2018. *Id.* at 7:17-20.

1038. Although Mr. Purcell did not study the map after the districts were redrawn, he was aware that the districts had been redrawn by the 2012 elections. *Id.* at 39:14-18.

QQ. MARIA WOLOSON

INTRODUCTORY FACTS FOR MARIA WOLOSON

1039. Ms. Woloson lives in Bloomfield, Michigan. M. Woloson Dep. Tr. at 8.

1040. Ms. Woloson lives in State House District 40. *Id.* at 9.

1041. Ms. Woloson lives in State Senate District 12. *Id.* at 10.

1042. Ms. Woloson lives in Congressional District 9. *Id.* at 9.

1043. Ms. Woloson does not consider herself to have a political affiliation.
Id. at 10.

1044. Ms. Woloson has more recently tended to vote for Democrats. *Id.* at
11.

**INTRODUCTORY FACTS FOR THE LEAGUE OF WOMEN
VOTERS OF MICHIGAN.**

1045. Ms. Woloson is a member of the League of Women Voters
("League"). *Id.* at 6.

1046. Ms. Woloson has been a member of the League since 2017. *Id.*

**FACTS DEMONSTRATING THAT NEITHER MS. WOLOSON NOR
THE LEAGUE HAS STANDING.**

1047. Ms. Woloson only considers herself politically active with the
League. *Id.* at 28.

1048. Ms. Woloson has never tried to contact her congressman. *Id.* at 32.

1049. Ms. Woloson has never tried to contact her state senator. *Id.*

1050. Ms. Woloson is generally confused as to who is her state senator and
who is her state legislator. *Id.* at 33.

1051. Ms. Woloson is unsure of her voting history for individual candidates, but may have voted for a Republican as recently as Governor Snyder. *Id.* at 39.

FACTS DEMONSTRATING THAT THE 2011 REDISTRICTING PLANS DID NOT DILUTE MS. WOLOSON'S VOTE.

1052. Ms. Woloson agrees that name recognition helps candidates win. *Id.* at 42.

1053. Ms. Woloson has more recently voted for Democrats in the past years. *Id.* at 11.

1054. Ms. Woloson voted for State Senator Rosemary Bayer. *Id.* at 34.

1055. Ms. Woloson voted for State Representative Mari Manoogian. *Id.* at 33.

1056. Ms. Woloson voted for U.S. Congressman Andy Levin. *Id.* at 40.

FACTS DEMONSTRATING THAT MS. WOLOSON'S AND THE LEAGUE'S FIRST AMENDMENT RIGHTS WERE NOT HARMED.

1057. Ms. Woloson agrees the boundary of a district does not prevent her from voting. *Id.* at 55.

1058. Ms. Woloson agrees the boundary of a district does not prevent her from campaigning. *Id.* at 56.

1059. Ms. Woloson agrees the boundary of a district does not prevent her from donating to a candidate. *Id.*

1060. Ms. Woloson agrees the boundary of a district does not prevent her from contacting her representative. *Id.* at 57.

FACTS DEMONSTRATING THAT MS. WOLOSON AND THE LEAGUE OF WOMEN VOTERS WAS DILATORY IN ASSETING THEIR RIGHTS.

1061. Ms. Woloson started paying attention to the 2011 district maps when she started going to League presentations in 2016. *Id.* at 52.

1062. Ms. Woloson became involved in the lawsuit in 2018. *Id.* at 52-53.

1063. Ms. Woloson became involved in the lawsuit after she heard an announcement about it at a League meeting. *Id.* at 53.

II. PROPOSED FINDINGS OF FACT FOR PLAINTIFFS' EXPERT WITNESSES

RR. DR. JOWEI CHEN

1064. Plaintiffs' Expert, Jowei Chen, Ph.D., is an Associate Professor in the Department of Political Science at the University of Michigan. In his June 1, 2018 expert report, Dr. Chen explains that he was engaged by Plaintiffs' counsel to utilize "computer simulation programming techniques" to draft

1,000 allegedly “non-partisan” redistricting plans for each of the Michigan House, Senate, and Congressional delegations that would “optimize districts with respect to various traditional districting goals,” while ignoring partisan factors. (Chen Report, Plaintiffs’ Exhibit 3, p. 2).

1065. Plaintiffs hired Dr. Chen on February 17, 2016, nearly two years before this litigation was commenced. Dr. Chen began preparing draft plans for this litigation shortly after he was engaged, and long before the Complaint was filed. (Plaintiff’s Exhibit 505, Chen Dep, 40:22-23, 41:1-2.)

1066. In his report, Dr. Chen describes how his coded software created 3,000 simulated maps, and upon review of these maps, Dr. Chen to “found” that the 2011 enacted plan was more partisan (i.e., more Republican) than his simulated maps. Because of this, Dr. Chen concluded that his simulated maps demonstrate partisan intent resulting in an “extreme” political gerrymander. (Chen Report, Plaintiffs’ Exhibit 3).

DR. CHEN MISAPPLIED THE APOL CRITERIA WHEN DRAFTING HIS ALGORITHM

1067. Dr. Chen explained that he drafted a computer algorithm that would apply the “Apol Criteria” when drawing the simulated maps. The Apol Criteria are codified in MCL § 4.261 (as to State House and Senate Districts) and MCL § 3.63 (as to U.S. Congressional districts).

1068. Dr. Chen describes the Apol Criteria as mandatory (Chen Report, Plaintiffs' Exhibit 3, p. 59), notwithstanding that the statutory Apol criteria are to be utilized as guidance only and are non-mandatory. *LeRoux v. Secretary of State*, 465 Mich. 594, 615 (2002). Dr. Chen's mistaken application of the Apol criteria was perfectly described by Defendant Secretary of State's expert, Dr. Douglas Johnson, as follows:

Dr. Chen also took his (mistaken) view of the guidelines of Section 4.261 and Section 3.63 as absolute and binding, completely ignoring (and not even mentioning) the State Supreme Court's ruling in *LeRoux v Secretary of State* that "Thus, as even plaintiffs concede, the 2001 Legislature was not bound to follow the guidelines in M.C.L. § 3.63(c) adopted by the 1999 Legislature. It could repeal, amend, or ignore them, as it pleased." Dr. Chen took those guidelines as absolute, despite the clear language of the State Supreme Court ruling that the legislature is free to "ignore" them. And, as described below, Dr. Chen did not accurately follow the guidelines of Sections 4.261 and 3.63, even after making the claim on page 3 of his report that those guidelines are binding and "exhaustive." (Defendant Secretary of State's Exhibit 14, Report of Douglas Johnson, p. 5, ¶ 14).

INSTRUCTIONS FROM PLAINTIFF'S COUNSEL SKEWED DR. CHEN'S ALGORITHM

1069. During his deposition on September 7, 2018, numerous flaws in Dr. Chen's methodology were exposed. For example, he testified that despite the assertion in his report that the Apol criteria are to be mandatorily followed, he admitted that he applied certain other criteria based on instructions *received directly from Plaintiffs' counsel* – instructions that were incorporated into his algorithm. (Plaintiffs' Exhibit 505, Chen Dep., 144:15-144:20).

1070. These "instructions" from Plaintiff's counsel that Dr. Chen incorporated into his algorithm skewed the results of the simulations. For example, one of the Apol criteria states that if county lines must be broken, the fewest whole cities or townships shall be shifted, and in choosing between two cities or townships to shift, the city or township with lesser population shall be shifted. (MCL § 4.261(f)). Dr. Chen testified that this was not followed by him. (Plaintiffs' Exhibit 505, Chen Dep., 103:12-106:5). By ignoring MCL § 4.261(f), Dr. Chen rendered it impossible to replicate what the map drawers were doing in 2011 (*See* Declaration of Timmer, Defendant Secretary of State's Exhibit 50, p. 2 ¶ 10; Exhibit 6 to Secretary's 12/4/18 Motion in Limine Re: Dr. Chen).

1071. In a separate example, another of the Apol criteria states that when more than one district is drawn within a city or township, district lines shall

be drawn to achieve the maximum compactness possible within a population range of 98% to 102% of ideal (MCL §§ 3.63(c)(vi), 4 .261(i). Once again, in his report, Dr. Chen ignored this critical compactness criterion, and instead, Dr. Chen maximized compactness in all cases, not just cities and townships with more than one district. (Chen Report, Plaintiffs' Exhibit 3, p. 63; Plaintiffs' Exhibit 505, Chen Dep., 144:15-144:20.). By maximizing compactness in *all* cases, Dr. Chen rendered it impossible to replicate what the map drawers were doing in 2011. (*See* Declaration of Timmer, Defendant Secretary of State's Exhibit 50, p. 2 ¶ 11; Exhibit 6 to Secretary's 12/4/18 Motion in Limine Re: Dr. Chen).

JEFFREY TIMMER'S TRIAL TESTIMONY EXPOSED NUMEROUS FLAWS WITH DR. CHEN'S ANALYSIS

1072. Defendant Secretary of State's Expert Jeffrey Timmer was personally involved, as a map drawer, with the drawing of Michigan's Legislative and Congressional Redistricting plans in 2011, as well as previously in both 1991-1992 and in 2001. In 2011, Mr. Timmer was the principal Congressional map drawer and advised and consulted with regard to the application of the Apol Criteria in the Legislative plans. (Trial Transcript, Vol. III, p. 75-76; Defendant Secretary of State Exhibit 6, p. 10; Declaration of Timmer, Defendant Secretary of State's Exhibit 50; Exhibit 6 to Secretary's 12/4/18 Motion in Limine Re: Dr. Chen).

1073. During the Trial, Mr. Timmer testified that Dr. Chen utilized the wrong fundamental building block—Voter Tabulation Districts (VTD's) and *not* the building blocks required by the state of Michigan by the partisan technical redistricting committee, known as Census Tracts and Blocks. (Trial Transcript, Vol. III, p. 93-97; Timmer Report, Defendant Secretary of State Exhibit 6, p. 20).

1074. This glaring error alone undermines the reliability of any of Dr. Chen's findings. The information used by the 2011 Michigan map drawers, Census Tracts and Blocks, is based upon information from the ten-year census whereas the VTD's (utilized by Dr. Chen) *vary with each election*, meaning that any conclusions drawn by utilizing this erroneous building block is also less stable and fluctuates much more frequently, leading to unreliable and varying conclusions. (Trial Transcript, Vol. III, p. 93-97; Timmer Report, Defendant Secretary of State Exhibit 6, p. 20).

DR. CHEN'S ANALYSIS WAS RESOUNDINGLY REJECTED BY DR. YAN LIU

1075. Dr. Chen's findings were also criticized by Defendants' Expert, Dr. Yan Liu. Dr. Liu prepared a report dated June 29, 2018 (Defendant Secretary of State's Exhibit 16) as well as a Declaration in Support of Defendant Secretary of State Ruth Johnson's Motion in Limine to Exclude the Expert Report of Dr. Jowei Chen. (Defendant Secretary of State's

Exhibit 52; Exhibit 2 to Secretary's 12/4/18 Motion in Limine Re: Dr. Chen).

1076. Dr. Liu is a Senior Research Programmer at the National Center for Supercomputer Applications at the University of Illinois. He received his Ph.D. in Informatics from the University of Illinois. He has a Masters in Computer Science from the University of Iowa, an M.E. in Computer Engineering from Wuhan University in Wuhan, China, and a B.S. in Computer Science from Wuhan University. Dr. Liu regularly drafts and reviews software source code written in multiple computer programming languages, including Java. (Defendant Secretary of State's Exhibit 52; Exhibit 2 to Secretary's 12/4/18 Motion in Limine Re: Dr. Chen).

1077. Dr. Liu determined that Dr. Chen's entire simulation methodology was unreliable, as follows:

- a. Dr. Chen did not provide a proper comparison set. His comparison set is too small and is not a random sample. (Liu Report, Defendant Secretary of State's Exhibit 16, p. 2-5);
- b. Dr. Chen's algorithm does not yield a random sample and so produces biased results; (Defendant Secretary of State's Exhibit 16, p. 3-7);
- c. Since Dr. Chen does not have any theoretical basis for his work in either statistics or operations research, he cannot make claims about

optimization, outliers, or statistical certainty in his analysis. (Defendant Secretary of State's Exhibit 16, p. 6-7, 9);

d. Even if Dr. Chen had a proper sample, his interpretation of his analysis is problematic because he conflates small numerical differences as substantively important findings. (Defendant Secretary of State's Exhibit 16, p. 7-9);

e. Dr. Chen presents his results in a misleading manner by playing with the presentation of the plots. (Defendant Secretary of State's Exhibit 16, p. 14-16);

f. Dr. Chen's argument for how to determine if a plan is drawn with partisan intent is logically flawed. (Defendant Secretary of State's Exhibit 16, p. 18-22);

g. Dr. Chen made numerous errors through his analysis and the reporting of his analysis, including inconsistencies in his tables, and in describing which data set is being used. (Defendant Secretary of State's Exhibit 16, p. 25-26).

DR. CHEN'S COMPACTNESS ANALYSIS IS FLAWED IN NUMEROUS

1078. Dr. Chen's measures of compactness are also extremely problematic. Specifically, Dr. Chen used the Reock measure of compactness to create a "Reock score," despite the fact that the Reock score is not required by

Michigan law. Dr. Chen himself even testified that calculation of a Reock score is simply “something he commonly does,” but it is not required by law (Plaintiffs’ Exhibit 505, Chen Dep., 17:12-19; 128:17-129:20).

1079. The compactness of Dr. Chen’s simulated maps is not meaningfully different than the 2011 enacted map even though he describes them as “significant.” (Liu Report, Defendant Secretary of State’s Exhibit 16, p. 11-14).

1080. By erroneously maximizing compactness in all cases, not just cities and townships with more than one district, Dr. Chen’s compactness conclusions are skewed. (Chen Report, Plaintiffs’ Exhibit 3, p. 63; Plaintiffs’ Exhibit 505, Chen Dep., 144:15-144:20; (*See* Declaration of Timmer, Defendant Secretary of State’s Exhibit 50, p. 2 ¶ 11; Exhibit 6 to Secretary’s 12/4/18 Motion in Limine Re: Dr. Chen).

1081. As Mr. Timmer testified during trial, it is often the odd shapes of districts containing territory shifted from another county that cause the most discomfort to political observers, commentators, and critics of the resulting redistricting maps. These people will point to districts with strange boundaries as being illustrative of political manipulation, when, at least in Michigan, it is the application of the neutral and objective criteria, sometimes combined with city or townships boundaries that are strangely

shaped to being with, that force map drawers to configure a district as such. These criteria not only preserve the principle of county boundary integrity in the districting process to the extent possible, but also makes the decision of shifting territory objective. (Trial Transcript, Vol. III, p. 98-101; Defendant Secretary of State Exhibit 6, p. 11).

1082. The meaningless nature of the Reock score in Michigan notwithstanding, Mr. Timmer was nonetheless easily able to draw maps that were “comparably compact to Dr. Chen’s simulations” *and* which had a very comparable Reock score. (Declaration of Timmer, Defendant Secretary of State’s Exhibit 50, p. 4, ¶21; Exhibit 6 to Secretary’s 12/4/18 Motion in Limine Re: Dr. Chen.). These maps are attached as “Exhibit A” to Mr. Timmer’s Declaration (*See* Declaration of Timmer, Defendant Secretary of State’s Exhibit 50; Exhibit 6 to Secretary’s 12/4/18 Motion in Limine Re: Dr. Chen, Exhibit A).

**DR. CHEN’S FALSE ASSUMPTIONS REGARDING PARTISAN
INTENT**

1083. Dr. Chen also fails to explain and cannot explain at what point an outlier becomes “extreme” or unconstitutional. In reality, Dr. Chen’s simulated plans are not particularly different from results that can be predicted under the actual plans. (Defendant Secretary of State’s Exhibit 19, Report of Thomas Brunell, p. 13-15).

1084. In fact, according to Dr. Brunell, “[a] shift of one or two seats does not suggest that a statewide plan is an “extreme” partisan outlier or that the shift could have only resulted from partisan considerations. The shift could be the result of any number of neutral and permissible factors not included in the instructions Prof. Chen applied in drawing his simulations.” (Defendant Secretary of State’s Exhibit 19, Report of Thomas Brunell, p. 15).

BY FAILING TO PRESERVE HIS SOURCE CODE, THE INTRUSTIONS THAT DR. CHENGAVE TO HIS COMPUTER TO DRAW THE SIMULATED MAPS HAVE NEVER BEEN PRODUCED, COULD NOT BE TESTED, AND RENDER HIS FINDINGS COMPLETEY UNRELIABLE

1085. In addition, and importantly, Dr. Liu, in preparing his findings, had requested the Secretary of State’s counsel to obtain and provide a copy of Dr. Chen’s “source code,” which is written by a programmer in a human-readable programming language and is the source of the byte code. Review of the source code would precisely disclose the instructions Dr. Chen gave to the computer for it to draw his simulated redistricting plans. (*See* Declaration of Liu, Defendant Secretary of State’s Exhibit 52, p. 2, ¶ 12; Liu Report, Defendant Secretary of State’s Exhibit 16, p. 25).

1086. Dr. Liu and counsel for the Secretary of State made extreme effort to obtain the source code utilized by Dr. Chen, but were met with inexplicable claims by Dr. Chen and his counsel that he had deleted the instructions he

had given to his computer, which was discovered to have been allegedly destroyed in the middle of discovery in this matter and after the Secretary of State requested copies of those instructions. (Declaration of Liu, Defendant Secretary of State's Exhibit 52, p. 2, ¶ 12; Liu Report, Defendant Secretary of State's Exhibit 16, p. 25).

1087. Since adapting this computer program in 2013, Dr. Chen has further adapted the program to run state-specific simulations for litigation purposes; these have been the basis for amicus briefs or testimony in support of plaintiffs in other redistricting cases, including in North Carolina, Pennsylvania, and Wisconsin. Dr. Chen has *never*, however, been required in these other proceedings to produce the source code for his programs; no other litigant's expert has opined on the validity, accuracy, or propriety of Dr. Chen's idiosyncratic source code. (Plaintiffs' Exhibit 505, Chen Dep. 62:20-62:24.).

1088. On or about June 12, 2018, Plaintiffs' counsel provided to the Secretary's counsel three-byte *code* files for Dr. Chen's software. Consistent with the above definitions, these byte code files did not disclose Dr. Chen's instructions for his simulation software in a human readable format. (Declaration of Liu, Defendant Secretary of State's Exhibit 52, p. 2, ¶ 11.)

906. The Secretary then specifically requested that Plaintiffs provide Dr.

Chen's "source code"—not his byte code. Plaintiffs' counsel next provided to the Secretary a set of text files that contained “decompiled byte code.” As explained by Dr. Liu in his Declaration:

Decompiled byte code is binary machine code that has been re-translated back into coding language. The re-translation process must guess at the original coding language and substitute values and terms to fill in its assumptions—it is thus highly imperfect. Though portions may be readable, most portions generally are not. Much is lost in translation.... I was surprised to receive decompiled bytecode. As a research programmer who frequently collaborates with others in drafting code, I would not share decompiled byte code and I would not expect my collaborators to understand my decompiled byte code. When we share code to review or to collaborate in drafting a program, we always share the actual source code. (Declaration of Liu, Defendant Secretary of State’s Exhibit 52, p. 2, ¶¶ 16-18).

1089. The Secretary's counsel again requested source code from Plaintiffs' counsel, noting that the decompiled byte code was insufficient. Plaintiffs' counsel ultimately refused to provide source code for Dr. Chen's report before the Secretary's report filing deadline. (Declaration of Liu, Defendant Secretary of State’s Exhibit 52, p. 2-5). This resulted in Dr. Liu including the following narrative in his report: If I had received a copy of Dr. Chen's

source code and been able to review and analyze it as he had personally drafted it, I would have been able to critique additional flaws as to his methodology, including any flaws that may exist with respect to his implementation of Michigan's redistricting criteria in his simulations. (Liu Report, Defendant Secretary of State's Exhibit 16, p. 25).

1090. On June 12, 2018, the Secretary served her First Set of Interrogatories and Document Requests. (ECF No. 73-1). In her discovery requests, the Secretary *formally* requested a copy of Dr. Chen's "source code," which apparently still existed when the Secretary served her discovery. As explained in Dr. Liu's declaration:

It is possible from reviewing the .jar files (the files with names that end in ".jar") to tell when those files were compiled from the source code. This is because the .jar files, which are generated by the Java compiler and contain "Java Class" byte code, preserve the last modified date of the byte code, which is the compiling date. The .jar files provided by the Plaintiffs' counsel to the Secretary on June 12, 2018, and subsequently provided to me, showed a compiling date of June 12, 2018 for the byte code. This means that the source code used to generate the byte code existed as of June 12, 2018. One cannot compile byte code without source code. (Declaration of Liu, Defendant Secretary of State's Exhibit 52, p. 2, ¶ 13.]

1091. Dr. Chen testified at deposition that he primarily used Eclipse—a Java code drafting tool—in creating his source code. (Plaintiffs’ Exhibit 505, Chen Dep., 65:5-65:7.). As explained by Dr. Liu, this failure to preserve source code is inexplicable:

Eclipse and other code drafting tools typically prompt a user to save all changes to their source code before exiting the tool. A user would have to affirmatively decide not to save their changes for the changes not to be preserved in the ordinary course. It is programming 101 to save the source code file, and incredible that a programmer that has spent considerable time and energy in drafting code—especially code that will be used to generate thousands of maps over the course of months for use in litigation—would not save the final version of the source code that was compiled into the byte code. (Declaration of Liu, Defendant Secretary of State’s Exhibit 52, p. 4, ¶¶ 27-28).

1092. At his September 7, 2018 deposition, Dr. Chen repeatedly confirmed that he did not retain the final version of his source code. (Plaintiffs’ Exhibit 505, Chen Dep. 52:8-52:27; 54:4-54:17.)

1093. Dr. Chen explained that he did not save every change to his code file before compiling it, and repeatedly stated that his code was not automatically backed up. Plaintiffs’ Exhibit 505, Chen Dep. 52:8-52:27;

54:4-54:17). He could not recall all of the changes he had made to the draft version before the final version, but asserted that such changes were only “cosmetic” and would not have altered the drawing of the simulated maps. (*Id.*, Chen Dep. 55:11-57:25). Yet, Dr. Chen's testimony—that his "draft code" only differs "cosmetically" from the final source code—is demonstrably untrue. As further explained by Dr. Liu: By comparing the decompiled byte code and the "draft" source code for each of Dr. Chen's three programs (i.e., his programs for the Michigan House, Michigan Senate, and Congress), I can tell that at least 10 functions ("Java class methods") present in the draft source code files were modified or deleted prior to compiling in each set. I cannot, however, tell in every instance which functions were deleted or changed ... because, as explained above, decompiled byte code is very difficult or impossible to read in most instances. ...I can, however, tell that the decompiled byte code dramatically differs with respect to the instructions for how the simulation process should seek to achieve compactness in both the State Senate and State House simulations. Dr. Chen also appears to have changed (compared to the “draft” code) the output limitations in his State House simulation concerning the permissible number of county breaks, and he appears to have changed the output limitations concerning the permissible number of MCD breaks in

both the State Senate and State House Plans. These new instructions, not present in the draft source code provided by Plaintiffs, would have altered how the plans were drawn and thus cannot reasonably be characterized as being “cosmetic.” Any one or even all of the multiple changed functions identified in my review could have a significant impact on the rendering of plans. So too could there be still other changed functions that I was unable to identify from the decompiled byte code. A function does not need to be long or complex to have a significant effect on the output. Without final source code, however, I am not able to determine the effect of the functions that Dr. Chen deleted, modified, or potentially added to his source code between the “draft” version supplied and the final version actually compiled and used. (Declaration of Liu, Defendant Secretary of State’s Exhibit 52, p. 4-5, ¶¶ 29-31).

1094. One or more of these functions added by Dr. Chen—and then concealed by his purported failure to save his source code—may have been an instruction to the computer to only output those simulations that were more favorable to Democrats than the Enacted Plan. As Dr. Liu explains: From the draft source code, it is apparent that Dr. Chen did not allow for his simulations to produce plans that would be similar to the Enacted Plan. Dr. Chen included, for example, a command that his program should *only* output

those simulated plans that had fewer county breaks than the Enacted Plan.

Michigan law does not require that a plan must minimize county breaks to be "permissible." *LeRoux v. Sec'y*, 465 Mich. 594, 615 (2002). This assured that his simulations would never be like the Enacted Plan. (Declaration of Liu, Defendant Secretary of State's Exhibit 52, p. 4-5, ¶ 23).

1095. Based on all of the foregoing, this Court adopts the conclusions of Dr. Liu and rejects, based both on lack of merits and due to discovery violations and improprieties, any and all conclusions reached by Dr. Chen.

SS. DR. KENNETH MAYER.

1096. Plaintiffs' Expert, Kenneth Mayer, Ph.D., is a Professor in the Department of Political Science at the University of Wisconsin. In his June 1, 2018 expert report, Dr. Mayer explains that he was engaged by Plaintiffs' counsel to use various metrics to provide an opinion as to whether the Michigan 2011 Congressional, State House and State Senate redistricting plans constituted an "extreme partisan gerrymander." (Mayer Report, Plaintiffs' Exhibit 53, p. 2).

1097. The metrics employed by Dr. Mayer included partisan bias, seat bias, vote bias, partisan symmetry, the Efficiency Gap, mean-median, and declination. (Mayer Report, Plaintiffs' Exhibit 53, p. 4).

1098. Dr. Mayer's calculations were prepared using a variety of election data that were compared with certain "demonstration maps" that he received from another of Plaintiffs' experts, Dr. Jowei Chen. (Mayer Report, Plaintiffs' Exhibit 53, p. 59).

1099. During his deposition, Dr. Mayer testified that Dr. Chen created the maps, but was unaware if anyone assisted him. (Plaintiffs' Exhibit 510, Mayer Dep., 157:1-157:7).

1100. He was unaware as to whether the demonstration maps that he received from Dr. Chen were the same as those that were attached to the Plaintiffs' Complaint. (Plaintiffs' Exhibit 510, Mayer Dep., 155:20-156:20).

919. Dr. Mayer did not know what traditional districting principles Dr. Chen used (or did not use) when creating the maps and did not know whether Dr. Chen followed the Apol standards. (Plaintiffs' Exhibit 510, Mayer Dep., 160:3-160:13).

1101. Dr. Mayer testified that he does not know whether traditional districting principles including incumbency protection, preservation of the cores of districts or protecting communities of interest were applied during the Michigan redistricting process. (Plaintiffs' Exhibit 510, Mayer Dep., 37:4-38:17)

1102. Dr. Mayer was also unaware as to whether the demonstration maps that Dr. Chen created considered traditional redistricting factors, such as incumbency protection. (Plaintiffs' Exhibit 510, Mayer Dep., 160:11-13).

1103. Most of Dr. Mayer's work in this case simply duplicates the material in Dr. Chen's report. In Tables 5, 7, and 9, Dr. Mayer summarizes a variety of election statistics in an attempt to demonstrate how the Republicans' average win percentage is lower than that for Democrats. (Mayer Report, Plaintiffs' Exhibit 53, p. 30-50).

1104. As explained by Defendant Secretary of State's expert Thomas Brunell, Ph.D., the information in Dr. Mayer's expert report does nothing to advance the Plaintiff's claims. "Like Prof. Chen, Prof. Mayer utilizes a "uniform partisan swing" (page 12-13 of the Mayer report) to assess what the seats-votes curve looks like using the unlikely assumption that vote totals swing by a uniform amount (1 percent, 2 percent, etc.) across all districts in the state...this approach is flawed. Naturally, the actual seats-votes curve will look different since each district will respond differently to local, state, and national political forces; there are no such things as uniform swings in the real world." (Expert Report of Thomas Brunell, Defendant Secretary of State Exhibit 19, p. 19).

1105. For example, In Table 5, using the 2006-2010 elections, Democrats win with 69.1 percent on average and Republicans win with 55.4 percent. As explained by Dr. Brunell, “[t]his puts the average Republican seat well within the bounds that political scientists usually consider to be “competitive”. A swing of just over five points swings the average Republican seat to the Democrats.” (Expert Report of Thomas Brunell, Defendant Secretary of State Exhibit 19, p. 18-19).

1106. The same is true for the calculations in Table 7 of Dr. Mayer’s report. As explained by Dr. Brunell, Table 7 of the Mayer report, indicates that in the lower House of the state legislature, Republican candidates win by 59.4 percent. This is well within the range of what is considered a competitive election. (Expert Report of Thomas Brunell, Defendant Secretary of State Exhibit 19, p. 19).

1107. In addition, for the Michigan state Senate (Table 9 of the Mayer Report), the average Republican wins with 55.8 percent of the vote. Once again, this is competitive. As explained by Dr. Brunell, the Mayer report conclusively establishes that many Republican seats are at risk and with a relatively small shift in electoral fortunes, the Republican party could lose many of their seats in Michigan. (Expert Report of Thomas Brunell, Defendant Secretary of State Exhibit 19, p. 19).

1108. The underlying data used by Dr. Mayer – data that he admits he received directly from Dr. Chen – is questionable at best and completely unreliable at worst. As explained by Defendant Secretary of State’s expert Douglas Johnson, Ph.D., the “Demonstration Map” that is analyzed by Dr. Mayer on pages 59-81 of his report) are unable to be fully analyzed “because only imprecise PDF maps were provided and Defendant [was not] provided with the underlying data. Dr. Chen made no mention of those demonstration maps or his work on them in his report.” (Expert Report of Douglas Johnson, Defendant Secretary of State Exhibit 14, p. 12).

1109. In his calculations of the Efficiency Gap, Dr. Mayer implores that his calculations are “consistent with Stephanopoulos and McGhee's calculations” (the creators of the Efficiency Gap measure). However, Dr. Mayer fails to mention (or never knew) that Stephanopoulos and McGhee concluded that Michigan's Congressional district map is not an unconstitutional partisan gerrymander. (Expert Report of Douglas Johnson, Defendant Secretary of State Exhibit 14, p. 14).

1110. During his deposition, Dr. Mayer testified that he is unaware of any books, chapters, articles or other political science literature that deal with the issue of methods or metrics to measure partisan gerrymandering. (Plaintiffs’ Exhibit 510, Mayer Dep., 29:24 – 30:5).

1111. Dr. Mayer also admitted that there is no threshold to measure the partisan bias that has any consensus in the political science community. (Plaintiffs' Exhibit 510, Mayer Dep., 148:17-20).

1112. Dr. Mayer admitted that he "did not have a threshold in mind" when he reached the conclusions in his report. (Plaintiffs' Exhibit 510, Mayer Dep., 182:18-183:4 and 187:1-6).

1113. In fact, Dr. Mayer's testimony that no threshold exists to measure a partisan gerrymander is consistent with the opinion of Defendant Secretary of State's expert, Dr. Johnson. As Dr. Johnson explained in his report, the attempt to set a "threshold" for partisan gerrymandering is an activity that has no hope of success: Dr. Mayer's Table 11 highlights the inherent challenges of attempting to set a threshold in law for partisan gerrymandering. Where Stephanopoulos and McGhee had recommended that a partisan advantage of two or more Congressional Districts reaches an extreme that should be considered unconstitutional partisan gerrymandering, the simple efficiency gap itself in Michigan has a two-seat margin of error: the simple choice of what data to use swings the Efficiency Gap result by two districts (without any change to the map). The percentage-driven Efficiency Gap numbers highlight the challenges that would face any legislature attempting to comply with an Efficiency-Gap-driven legal

threshold: using the data available at the time of redistricting, the demonstration map Efficiency Gap measured 0.1% or 2.3% (with/without the VRA districts). But once the map was in place those measures rocketed up to 12.6% / 12.2% using post-redistricting data. The same map registered as almost perfectly neutral and as significantly higher than the Stephanopoulos and McGhee 8% “unconstitutional partisan gerrymander” threshold, simply depending on what dataset was used. (Expert Report of Douglas Johnson, Defendant Secretary of State Exhibit 14, p. 14-15).

1114. Worst of all, Plaintiffs’ own experts – Dr. Chen and Dr. Mayer – cannot even agree on how to calculate the Efficiency Gap. This glaring defect was described by Dr. Johnson in his report: Most confusingly, the partisan bias measurements of plaintiffs’ experts do not even match. Dr. Chen states on page 18 that the enacted Congressional map has a Median-Mean Difference of 6.72%, using the 2006-2010 data. Dr. Mayer in Table 6 says the same map using the same data has a Mean-Median score of 2.8%. On page 25 Dr. Chen states that the enacted map using 2006-2010 data has an efficiency gap of -20.7% while Dr. Mayer in Table 6 says -22.2%. These are only a few examples of the measurement differences that run throughout their reports...[t]he fact that plaintiffs’ two experts cannot agree on how to calculate these figures even seven years after the plans were adopted gives a

sense of the challenge facing the legislature when trying to accurately meet a hypothetical judicially-designated threshold — a task it would have to complete while holding public hearings, rounding up the votes of a majority of each chamber and facing a rapidly approaching election deadline to have a map in place. (Expert Report of Douglas Johnson, Defendant Secretary of State Exhibit 14, p. 15-16).

1115. Based on all of the foregoing, this Court rejects any and all conclusions reached by Dr. Mayer.

TT. DR. WARSHAW

THE EFFICIENCY GAP DOSE NOT MEASURE PARTISAN BIAS

1116. The efficiency gap is the primary measurement tool Professor Warsaw used as the basis for his findings. [TT, Vol. I, p. 150].

1117. However, the efficiency gap is just one of ten approaches that purport to measure asymmetry and the efficiency of the vote seat relationships of the two parties (*i.e.*, Republicans and Democrats). [TT, Vol. I, pp. 149-150].

1118. None of these approaches has been accepted in the political science community as the preferred method. [TT, Vol. I, p. 150].

1119. Nor is there an agreement in the political science community that the efficiency gap is the proper tool for measuring asymmetry. [TT, Vol. I, p. 150].

1120. A number of well-respected political scientists have criticized the efficiency gap as being inherently flawed and susceptible to providing misinformation. [TT, Vol. I, p. 150-152]

1121. In fact, these political scientists do not believe the efficiency gap is even capable of measuring a partisan gerrymander. [TT, Vol. I, p. 150-152, 154, 167-168].

1122. As such, these political scientists would disagree with Professor Warshaw's conclusion that the efficiency gap showed a partisan gerrymander existed in Michigan from 2012-2016. [TT, Vol. I, p. 154, 167-168].

1123. Indeed, even Professor Warshaw admitted that "... an efficiency gap could be caused by factors other than intentional gerrymandering" [TT, Vol. I, p. 164].

1124. One reason political scientists do not believe the efficiency gap is able to measure partisan bias is because it can show a partisan gerrymander exists when, in fact, it does not. [TT, Vol. I, p. 163].

1125. This is especially true where one party wins most of the competitive districts, *i.e.*, districts where the vote share is 55-45 or closer, in a particular election. [TT, Vol. I, p. 159, 161, 163, 193].

1126. This is true, in part, because the efficiency gap does not measure competitiveness. [TT, Vol. I, p. 195-196].

1127. Therefore, if one party wins a number of competitive races in a particular election for reasons wholly unrelated to partisanship, the efficiency gap could show there was a partisan bias in the election when, in fact, there was not. [TT, Vol. I, pp. 158-159, 198; SOS Ex. 44, p. 6; SOS Ex. 46.

1128. As Professor Warshaw acknowledged, winning a large number of seats by a small margin could be indicative of something other than a partisan gerrymander. [TT, Vol. I, p. 190].

1129. Another problem with the efficiency gap is that it can be affected by the intentional drawing of district lines to accomplish goals other than maximizing partisan seat share, such as ensuring the representation of racial minorities. [TT, Vol. I, p. 168].

1130. These non-partisan districts, which can be referred to as naturally packed districts, tend to be heavily populated with African-American voters. [TT, Vol. I, p. 168].

1131. They also tend to be heavily populated Democratic districts. [TT, Vol. I, p. 168-169].

1132. These districts are “packed” for reasons other than partisan gerrymandering. [TT, Vol. I, p. 168].

1133. These types of districts will always exist, even if Michigan’s voting maps are redrawn. [TT, Vol. I, p. 169-170].

1134. However, the efficiency gap does nothing to factor in whether a vote in these naturally packed districts is “wasted” for non-partisan reasons. [TT, Vol. I, p. 169].

1135. The efficiency gap counts these votes in the exact same manner votes that would be “wasted” in the event of a partisan gerrymander. [TT, Vol. I, p. 169].

1136. While wasted votes are the sole factor used under the efficiency gap for attempting to determine whether a partisan gerrymander exists, Professor Warshaw admitted that votes can be “wasted” for reasons other than partisan gerrymandering. [TT, Vol. I, p. 155; SOS Ex. 44, p. 59].

1137. Professor Warshaw also admitted there is no baseline for establishing the degree of “wasted” votes that indicate a partisan gerrymander. [TT, Vol. I, p. 153; SOS Ex. 44, p. 5].

1138. Nor is there a bright line test for what efficiency gap number shows a partisan gerrymander. [TT, Vol. I, p. 179].

1139. There also is no well-respected view in the political science community as to what efficiency gap number renders a redistricting plan unacceptable or an extreme partisan gerrymander. [TT, Vol. I, p. 153].

1140. In fact, there is not even a precise range of efficiency gap scores that indicate whether a particular redistricting plan is unacceptable or an extreme partisan gerrymander. [TT, Vol. I, p. 154].

THERE IS NO EVIDENCE OF A PARTISAN GERRYMANDER IS CURRENTLY IN EFFECT

1141. Professor Warshaw acknowledged that the effects of a partisan gerrymander decay or wane over time. [TT, Vol. I, p. 177].

1142. 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. [TT, Vol. I, p. 177, 179].

1143. Moreover, because the effects of partisan gerrymanders are easily undone, "[t]he partisan legacy of the last plan is usually gone by the following redistricting, and redistricting itself is not as disruptive a force as symmetry would suggest." [SOS Ex. 45, p 75].

1144. Professor Warshaw does not know whether or what kind of plausible shifts in voter sentiment will occur in Michigan elections after 2016. [TT, Vol. I, p. 177].

1145. Nor does Professor Warshaw know what, if any, efficiency gap existed after the 2018 election with regard to the State House, the State Senate, or U.S. Congress. [TT, Vol. I, p. 179].

1146. Indeed, Professor Warshaw did not analyze the efficiency gap following the 2018 election. [TT, Vol. I, p. 177].

1147. It follows that Professor Warshaw could not say that the alleged efficiency gap will not drop in the 2020 election and that the Democrats will not pick even more seats than they did in Michigan's 2018 election. [TT, Vol. I, p. 177].

1148. More importantly, Professor Warshaw admits there is no evidence showing a partisan gerrymander will exist at the time of the 2020 elections. [TT, Vol. I, p. 183].

THE SIMULATED MAPS DRAWN BY PROFESSOR CHEN SHOW THAT SOME PLAINTIFFS/VOTERS CURRENTLY LIVE IN NON-PARTISAN DISTRICTS

1149. Professor Warshaw is not an expert with regard to simulated maps, so he relied exclusively on Professor Chen's mapping data when he prepared Plaintiff's Exhibit 278. [TT, Vol. I, p. 185, 201].

1150. The gray areas/circles on Plaintiff's Exhibit 278 show all of Professor Chen's simulated maps. [TT, Vol. I, p. 109].

1151. The gray areas/circles on Plaintiff's Exhibit 278 represent districts or potential maps that allegedly do not take into account any type of partisanship. [TT, Vol. I, p. 202-203].

1152. If a particular voter's enacted district falls within the gray areas/circles on Plaintiff's Exhibit 278, it means that voter's district is within Dr. Chen's simulated maps. [TT, Vol. I, p. 202].

1153. It also means that if a particular voter's enacted district falls within the gray areas/circles on Plaintiff's Exhibit 278, that voter lives in a non-partisan district. [TT, Vol. I, p. 203-204].

1154. Because Professor Warshaw has no expertise in drawing simulated maps, he has no basis upon which to challenge Professor Liu's criticisms of Professor Chen's simulated maps. [TT, Vol. I, p. 185].

THE EFFICIENCY GAP DOES NOT ADDRESS INDIVIDUAL VOTERS

1155. The efficiency gap does not address the effect that an alleged partisan gerrymander has on the votes of particular citizens. [TT, Vol. I, p. 171].

1156. Nor does it measure a particular voter's ideology. [TT, Vol. I, p. 171-172].

1157. Although Professor Warshaw uses the terms "ideological view" or "what voters want" in his expert report, he never defined those terms in his report. [TT, Vol. I, p. 210].

1158. Instead, Professor Warshaw's attempts to illustrate these terms in his report by using a single example of the Affordable Care Act ("ACA"). [TT, Vol. I, p. 210-211].

1159. However, even under Professor Warshaw's ACA example, one in four Democrats in Michigan wanted the ACA repealed in 2014, which shows there is not universal agreement amongst Democrats regarding this issue. [TT, Vol. I, p. 211].

1160. Professor Warshaw also acknowledged that if one of these Democrats had a Republican congressperson in 2014, that congressperson represented the Democratic voter's interest when he or she voted to repeal the ACA. [TT, Vol. I, p. 212].

1161. Professor Warshaw's report does not address what impact, if any, a partisan gerrymander has "ticket splitters" in Michigan. [TT, Vol. I, p. 213].

1162. Nor did Professor Warshaw research the number of "ticket splitters" in Michigan. [TT, Vol. I, p. 214].

1163. Professor Warshaw's report also does not address a household that has some Republicans and some Democrats. [TT, Vol. I, p. 214].

1164. Professor Warshaw acknowledged that redrawing Michigan's voting maps would not fix this type of "split" household. [TT, Vol. I, p. 214].

1165. Professor Warshaw also acknowledged that the impact of redrawing the voting maps for the 2020 election is that it could result in a voter who is entirely happy with her district because she has a Democratic congressman, a Democratic state senator and a Democratic state house representative moving into a Republican district. [TT, Vol. I, p. 208-209].

1166. According to Professor Warshaw's expert report, only 23% of Michiganders trust their congressional representative to do the right thing. [Plaintiff Ex. 129, pp. 28-29].

1167. However, even in states where there is no efficiency gap, only 30% of people stated that they trust their congressional representative to do the right thing. [Plaintiff Ex. 129, pp. 28-29].

1168. At most, the alleged difference between Michiganders and states where there is no efficiency gap is only 7%. [Plaintiff Ex. 129, pp. 28-29].

1169. While Professor Warshaw asserts that this alleged 7% difference is consequential, he acknowledged that the margin of error for the survey of Michiganders regarding their trust in their congressional representatives is 3%. [SOS Ex. 42, p. 233-234].

1170. Professor Warshaw also acknowledged that the margin of error in the national survey of voters regarding their trust in their congressional representatives is approximately 1%. [SOS Ex. 42, p. 235-236].

1171. When accounting for the margins of error, Professor Warshaw acknowledged that he did not know if the trust intervals between Michiganders and the national average actually overlap. [SOS Ex. 42, p. 236].

1172. There may be no material difference between the trust Michiganders have in congressional representatives and the trust of the rest of country has in its congresspersons. [SOS Ex. 42, p. 236].

1173. Professor Warshaw also acknowledged that the surveys relate to the individual's actual congressperson, which means some Democrats do not trust their Democratic representative and vice versa. [SOS Ex. 42, p. 229].

1174. Professor Warshaw acknowledged that the right-to-work law, the law banning benefits for same-sex partners of government employees benefits, and other "conservative" legislation occurred under the 2001 redistricting. [SOS Ex. 42, p. 252].

1175. He also acknowledged that 2001 redistricting was not nearly as extreme as the alleged pro-Republican efficiency gap in 2012. [SOS Ex. 42, p. 252].

1176. Professor Warshaw did not know whether the Michigan legislature has pursued more conservative policies since the alleged shift in the

efficiency gap in 2012 than the legislature did prior to 2012. [SOS Ex. 42, p. 253].

1177. Professor Warshaw could not articulate what the alleged pro-Republican efficiency gap means in terms actual policies being adopted by the Michigan legislature since 2012. [SOS Ex. 42, p. 241-242].

1178. In other words, Professor Warshaw has no “real life” examples to support his position that the alleged pro-Republican efficiency gap in Michigan since 2012 has resulted in more “conservative” legislation. [SOS Ex. 42, p. 241-242].

MEAN-MEDIAN DOES NOT MEASURE PARTISAN BIAS

1179. The mean-median test has been subjected to “serious criticism.” [Warshaw dep., p 171].

1180. There is no wide scholarly acceptance of mean-median as the best or proper measure of partisan gerrymanders. [Warshaw dep., p 171].

1181. Given the fact that the mean-median test does not directly incorporate information about the seat’s parties win, it is “not ideal from a theoretical point of view.” [Warshaw dep., p 166].

1182. Another flaw with the mean-median test is that it does not factor in voter turnout. [Warshaw dep., p 175].

1183. Yet another criticism of the mean-median test is that packing and cracking can occur without any change in the mean-median. [Warshaw dep., p 171].

1184. There is no well-respected view in the political science profession about what mean-median score renders a redistricting plan unacceptable or an extreme partisan gerrymander. [Warshaw dep., p 57-58, 172].

1185. Professor Warshaw acknowledged that he did not conduct any analysis using the mean-median test to determine whether the alleged gerrymander in this case is durable. [Warshaw dep., p 185].

1186. Professor Warshaw also acknowledged that he did not draw any conclusions about whether the 2014 and 2016 mean-median scores were similar to the mean-median score for 2012. [Warshaw dep., p 187].

DECLINATION DOES NOT MEASURE PARTISAN BIAS

1187. Professor Warshaw acknowledged there has not been wide acceptance of declination in the political science community as a proper measure for partisan bias or gerrymandering. [Warshaw dep., p 177].

1188. Professor Warshaw also acknowledged there is no well-respected view in the political science profession about what declination score renders a redistricting plan unacceptable or an extreme partisan gerrymander. [Warshaw dep., p 57-58].

1189. Professor Warshaw further acknowledged that “[a] weakness of the declination approach vis-a-vis the efficiency gap is that declination lacks a clear interpretation in terms of the number of seats that a party gains through gerrymandering.”

[Warshaw dep., p 179].

1190. Professor Warshaw acknowledged that he did not draw any conclusions about whether the 2014 and 2016 declination scores were similar to the one the declination score for 2012. [Warshaw dep., p 187].

1191. Warshaw did not look at the prior declination scores for Michigan congressional or Michigan state legislative plans. [Warshaw dep., p 189].

UU. **MIKE VATTER**

1192. 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 Transcript, Vol. II, pp. 48, 152)

1193. 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 Transcript, Vol. II, p. 152)

1194. A majority of Vatter’s 95 minutes of direct examination was used pointing to various sections of demonstrative maps of the state of Michigan. His testimony involved providing potential alternatives to the redistricting legislation map which was actually passed and in effect. (Trial Transcript, Vol II, pp. 62-107)

1195. Vatter admitted that the redistricting process is legislative and that any redistricting bill is required to be passed by the state legislature. (Trial Transcript, Vol. II, pp. 108-109)

1196. Vatter admitted that he is not a political scientist and has no ability to know what was going on in the mind of a voter. (Trial Transcript, Vol. II, p. 112)

1197. He also admitted that he could not draw conclusions regarding the mindset of someone who was at a meeting he did not attend. (Trial Transcript, Vol. II, p. 112)

1198. Vatter admitted he had no personal knowledge regarding the intent of: (1) anyone who drew the congressional maps; (2) anyone who drew the State Senate maps; and (3) anyone who drew the State House maps. (Trial Transcript, Vol. II, pp. 134-135)

1199. Vatter admitted he had no personal knowledge regarding the intent of: (1) any Republican legislators involved in the congressional map drawing process; (2) any Republican legislators involved in the State Senate map drawing process; and (3) any Republican legislators involved in the State House map drawing process. (Trial Transcript, Vol. II, p. 135)

1200. Vatter testified that he was “not sure” whether the use of the word “intentional” in paragraphs 21, 32 and 40 of his Declaration was “the right word or not.” Vatter agrees, however, that using the word “intentional” in the context of someone’s “frame of mind” would not be correct. (Trial Transcript, Vol. II, p. 136-137; Intervenor’s Exhibit 22 (Exhibit 45))

1201. 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 Transcript, Vol. II, pp. 141-142)

1202. Vatter testified that “there 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 Transcript, Vol. II, p. 141)

1203. 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 Transcript, Vol. II, pp. 141-142)

DEFENDANT'S EXPERT WITNESSES

VV. JEFFREY TIMMER

1204. Jeffrey Timmer is currently Managing Director with the Sterling Corporation and as such deals with public affairs and political consulting. (Trial Transcript, Vol. III, p. 75)

1205. Jeffrey Timmer was first hired by the Michigan Legislature in 1991 as a special assistant to the House Republican leader. Since then, he has worked in the Michigan Senate as deputy communications director, as political director for the Senate Republican Campaign Committee, and has been a private sector public affairs and campaign consultant. Among other roles, he was previously appointed by Governor Granholm and served several years on the Michigan Board of State Canvassers. (Trial Transcript, Vol. III, p. 75; Defendant Secretary of State's Exhibit 50)

1206. Jeffrey Timmer was previously a member of the National Conference of State Legislatures ("NCSL") Redistricting Task Force from 1991 to 2001. The task force advised NCSL's Redistricting and Elections Standing Committee, which in turn focused on redistricting, election law, and campaign finance regulation. (Trial Transcript, Vol. III, p. 75; Defendant Secretary of State's Exhibit 50)

1207. On behalf of the Republican Caucuses in the Michigan House and Senate, Jeffrey Timmer was engaged in the drafting of districting plans for consideration by the Michigan Legislature after the decennial census was released in March 2011. He had previously served as a map drawer and was involved in that capacity in the drafting of Michigan's redistricting plans in 1991 and 2001. (Trial Transcript, Vol. III, p. 75; Defendant Secretary of State's Exhibit 50)

1208. In the State of Michigan, the redistricting process which follows the ten year census is legislative and inherently political. (Trial Transcript, Vol. III, p. 77)

1209. As such, as with any other Bill in the legislature whether it involves education, insurance, or any other topic, there are often political fault lines, political alliances and political party divisions. (Trial Transcript, Vol. III, p. 77)

1210. As in any other legislation, a wide array of discussions and meetings take place, both on a partisan basis or with both parties present in such meetings and discussions. (Trial Transcript, Vol. III, p. 78)

1211. To put a historical context on the redistricting process in the State of Michigan, in 1981 and 1991, with split government, the legislative process

failed and court intervention became necessary. (Trial Transcript, Vol. III, p. 76)

1212. Heading into the 2010 census and anticipated redistricting, there was a heightened level of desire to make the legislation succeed versus necessitating the involvement of courts. (Trial Transcript, Vol. III, p. 79)

1213. Michigan's legislative redistricting criteria are commonly known as the "Apol Criteria." The Apol Criteria were developed in 1982 by the Michigan Supreme Court for use by Special Master Bernard J. Apol who had been appointed by the Michigan Supreme Court to propose redistricting maps for the state legislature after a legislative impasse. The Apol Criteria are very detailed and are designed to significantly limit the map drawers' discretion. The Supreme Court expressly stated in its 1982 opinion that it was trying to minimize the opportunity for gerrymandering. (Trial Transcript, Vol. III, pp. 82-84; Defendant Secretary of State Exhibit 6, p. 8)

1214. In the 1990s, the Apol Criteria were codified at MCL § 4.261.

Compliance with the federal Voting Rights Act is also required by federal law and the same statute, MCL § 4.261a. The criteria for drawing Congressional districts are similar and found in statute at MCL § 3.63.

Jeffrey Timmer was involved at a staff level in the drafting of those statutes.

(Trial Transcript, Vol. III, pp.79-80; Defendant Secretary of State Exhibit 6, p. 8)

1215. 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 MCL § 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 Transcript, Vol. III, pp. 116, 82-83; Defendant Secretary of State Exhibit 6, p. 8)

1216. The decennial apportionment of the U.S. House of Representatives allotted 14 congressional districts to Michigan that are required to be precisely equal in population, resulting in 14 Congressional Districts that contain exactly 705,974 or 705,975 persons. (; Defendant Secretary of State Exhibit 6, p. 8)

1217. The Apol Criteria next establish a hierarchy of considerations based on preservation of political subdivision boundaries and population equality.

In descending order of priority, the Legislative redistricting statute (MCL § 4.261) states them as follows:

1218. (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).

1219. (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 two 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.

1220. (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).

1221. (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 two districts affected by the shift, except that in lieu of absolute equality the lines may be drawn along the closest street or comparable boundary. Defendant Secretary of State Exhibit 6, pp. 8-9)

1222. Additionally, the Apol Criteria as applied to Legislative districting plans 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. MCL § 4.261(i).

(Defendant Secretary of State Exhibit 6, p. 9)

1223. In descending order of priority for application, the Congressional redistricting statute (MCL § 3.63) states the 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 two 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 two districts affected by the shift.

(vi) Within a city or township to which there is apportioned more than one congressional district, district lines shall be drawn to achieve the maximum compactness possible. (Trial Transcript, Vol. III, pp. 83-84; Defendant Secretary of State Exhibit 6, pp. 9-10)

1224. Mr. Timmer was personally involved, as a map drawer, with the drawing of Michigan's Legislative and Congressional Redistricting plans in 2011, as well as previously in both 1991-1992 and in 2001. In 2011, Mr. Timmer was the principal Congressional map drawer and advised and consulted with regard to the application of the Apol Criteria in the Legislative plans. (Trial Transcript, Vol. III, pp. 75-77, 86-88; Defendant Secretary of State Exhibit 6, p. 10)

1225. The application of the Apol Criteria in the drawing of Legislative districts is that subdivision (f), which specifies the shifting of the absolute fewest and smallest possible cities and/or townships necessary when moving population from one county to another, is routinely misunderstood or ignored by persons lacking in experience with legislative redistricting. (Trial Transcript, Vol. III, p. 83; Defendant Secretary of State Exhibit 6, p. 10)

1226. A specific passage from Michigan Supreme Court Justice Charles Levin, in which a series of questions were posed by Mr. Apol and answered by Justice Levin, is helpful, especially with respect to explaining that odd shapes of districts are expected in a redistricting plan:

1227. 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 Transcript, Vol. III, p. 99; Defendant Secretary of State Exhibit 6, p. 11)

1228. It is often the odd shapes of these districts containing territory shifted from another county that cause the most discomfort to political observers, commentators, and critics of the resulting redistricting maps. These people will point to districts with strange boundaries as being illustrative of political manipulation, when, at least in Michigan, it is the application of the neutral

and objective criteria, sometimes combined with city or townships boundaries that are strangely shaped to being with, that force map drawers to configure a district as such. This criteria not only preserves the principle of county boundary integrity in the districting process to the extent possible, but also makes the decision of shifting territory objective. (Trial Transcript, Vol. III, p. 100; Defendant Secretary of State Exhibit 6, p. 11)

1229. In Michigan, it is further necessary that a redistricting plan obtain a majority of votes in the Legislature for passage. (Trial Transcript, Vol. III, pp. 155-156; Defendant Secretary of State Exhibit 6, p. 12)

1230. Achieving majority support is also a necessary criterion in Michigan to the enactment of a map, and concessions that are in tension with the Apol Criteria are sometimes made in the legislative process to obtain, e.g., support for a particular map or district. (Trial Transcript, Vol. III, pp. 101, 155-159; Defendant Secretary of State Exhibit 6, p. 12)

1231. The 2011 redistricting plan took into account Apol Criteria appropriately, but at time, due to the inherent political nature of legislation, required taking into consideration interest of incumbent legislatures and others. (Trial Transcript, Vol. III, pp. 114-115, 149)

1232. At times, these interests were those of Democrats, and at other times, interests of Republicans. (Trial Transcript, Vol. III, p. 149-150)

1233. Ultimately, multiple Democrats voted for the redistricting plan and multiple Republicans voted against it. (Trial Transcript, Vol. III, pp. 101-102, 155-156) Vol. II pp. 127-129)

1234. Not all considerations of Republicans were taken into account and, in fact, many inquiries and suggestions were disregarded at times leading to tension within the Republican group. (Trial Transcript, Vol. III, p. 102)

1235. Multiple experts in this matter have provided significant and astute criticisms of Jowei Chen and his report on behalf of Plaintiffs, but none are more important than Jeffrey Timmer's testimony that Dr. Chen utilized the wrong fundamental building blocks for his models, thereby absolutely precluding any possibility that his simulated maps would agree with the enacted legislative plan. (Trial Transcript, Vol. III, pp. 93-95; Defendant Secretary of State Exhibit 6, p. 20)

1236. As also concluded by Dr. Liu, Timmer stated that Dr. Chen utilized the wrong fundamental building block—Voter Tabulation Districts (VTD's) and NOT the building blocks required by the state of Michigan by partisan technical redistricting committee which is Census Tracts and Blocks. (Trial Transcript, Vol. III, p. 95; Defendant Secretary of State Exhibit 6, pp. 6, 13, 20; Vatter October Declaration referencing this committee)

1237. By utilizing the wrong building blocks, Dr. Chen was then able to conclude that the enacted legislative plan maps were inappropriate or partisan biased since they were not among the more than 1,000 maps which his erroneously configured drawings resulted in. (Trial Transcript, Vol. III, pp. 85-86; Defendant Secretary of State Exhibit 6, p. 39)

1238. It is significant that Census Tracts and Blocks are based upon the ten-year census whereas the VTD's vary with each election, meaning that any conclusions drawn by utilizing this erroneous building block is also less stable and fluctuates much more frequently, leading to unreliable and varying conclusions. (Trial Transcript, Vol. III, pp. 93-95; Defendant Secretary of State Exhibit 6, pp. 6, 13, 20)

1239. The districts identified by Dr. Chen as "partisan outliers" absent "another explanation" include a "key flaw." That is, the simulated maps fail to take into account the actual approach used by map drawers. As a result, Dr. Chen's maps did not include the "limitations of human map drawers, using the jigsaw puzzle trial and error method described to initially group counties together in a manner which minimized county breaks." (Defendant Secretary of State Exhibit 6, p. 23)

1240. In the Report of Jeff Timmer Concerning the 2011 Michigan Apportionment Plan, Timmer evaluated the districts identified by Dr. Chen

at page 56 of his report. The Timmer Report sets forth the requisite understanding and considerations of “how and why other districts in the same county grouping were drawn.” (Defendant Secretary of State Exhibit 6, pp. 23-46)

1241. For example, Timmer explained that in House Districts 11, 12, 14, 16, 19, 20 and 21, slight configurations to proposed districts that shifted one extra city or township were needed because it would result in districts that were “more compliant with the Apol Criteria” because “it would reduce the number of cities or townships that would need to subsequently be split.” (Defendant Secretary of State Exhibit 6, pp. 23-24)

1242. After this change, the map drawers drew 20 districts that: (i) complied with statutory criteria, (ii) did not violate the federal Voting Rights Act of 1964, and (iii) could achieve the requisite votes for passage of the overall plans.” (Defendant Secretary of State Exhibit 6, p. 24)

1243. In Dr. Chen’s report, however, he “does not acknowledge and perhaps is not aware that Wayne County is an example of extreme partisan self-segregation,” where residents of certain cities within Wayne County predominantly vote for a specific party. (Defendant Secretary of State Exhibit 6, p. 24)

1244. The Wayne County map configuration was ultimately supported by incumbent Democratic representatives who districts were identified by Dr. Chen as being partisan outliers. (Defendant Secretary of State Exhibit 6, p. 25)

1245. In summary, Dr. Chen's determination that the various House Districts identified in his report are "partisan outliers" was "unfounded." The basis for Timmer's conclusion was that:

a. He, not Dr. Chen, had "knowledge of the map drawing process, local geography, and the nature of discussions between Democrats and Republicans leading to the enacted House plan;

b. The districts "comply in substantial degree with the statutory Apol criteria, and where they do not strictly do so, it was for other than partisan reasons."

c. Dr. Chen's analysis did not adhere to the proper application of the Apol Criteria with regard to the "standard that the fewest number of whole cities or townships are to be shifted when breaking county lines to equalize population."

d. Partisan intent cannot be inferred simply because the map drawers did not use simulation software or algorithms. (Defendant Secretary of State Exhibit 6, p. 34)

1246. The House Plan contains 17 county breaks and 24 city and township breaks. Sec. Ex.6 at 13-15. No other plan was introduced or presented that contained fewer breaks. Id. at 13-15.

1247. District 32, for example, contains portions of Macomb County, as Districts 30, 31, and 36 are wholly contained within Macomb County. Sec. Ex. 6 at 25. Some of the lines were driven by population concerns in Sanilac County which was too small to have its own House district. This meant combining population from other townships in St. Clair County to satisfy the one person, one vote requirement. Id. Similarly, the remaining population of St. Clair County was too large to be in a single district. The remaining portion of Macomb County was required to be shifted to it to satisfy one person, one vote requirements. Id. House District 32 is the result of the St. Clair-Macomb district, which was drawn with strict adherence to Apol. Id. at 26.

1248. District 51 is in Genesee County. Id. Genesee County has sufficient population to fit four House Districts entirely within the County, but not a fifth district. Id. This fact necessitated a shift in population from certain townships in Oakland County into Genesee County so that a fifth district had sufficient population. This fifth district is House District 51. Id. It contains portions of Rose, Groveland, and Holy townships and the portion of the City

of Fenton contained in Oakland County. Id. It was not possible to combine fewer cities to satisfy one person, one vote and other Apol criteria. Id. at 26-27.

1249. Districts 52 and 55 were both contained entirely within Washtenaw County. Id. at 27. The City of Ann Arbor is the only city within Washtenaw County to have sufficient population to have one district (HD 53) drawn entirely within the city. Id. at 28. Once this was done, the remaining portion of Ann Arbor was combined with other whole cities and townships within Washtenaw County. Id. District 52 contains the majority of the western portion of Washtenaw County and two whole townships north of districts 53, 54, and 55. Id. District 55 comprises of the remainder of the City of Ann Arbor, the islands of Ann Arbor Township, all of Pittsfield, Augusta, and York townships, and all of Milan city. Id. These districts adhered to the Apol criteria and were considered the best examples of squarely compact districts in the entire enacted House plan. Id.

1250. Districts 60, 62, and 63 are contained within the grouping of Kalamazoo and Calhoun counties. Sec. Ex. 6 at 29. Districts 60 and 61 are wholly contained within Kalamazoo County. The population of Kalamazoo is sufficiently large to support two House districts but not three. Similarly,

the population of Calhoun county was sufficiently large to support one House district wholly contained within it, House District 62.

1251. The population of Van Buren was not sufficient to support one district within the county. Thus some of the population of Kalamazoo was shifted to Van Buren to create District 66. Additionally, portions of Kalamazoo that were not contained in House District 60 or District 61 were combined with the portion of Calhoun County that was not House District 62. *Id.* at 29.

1252. District 62 was drawn using whole cities or townships in Calhoun County, including both the largest city, City of Battle Creek, and the small City of Albion. *Id.* District 60 The City of Kalamazoo was combined with the bulk of Kalamazoo Township.

1253. The remaining population from Kalamazoo County and Calhoun County was drawn in together to form District 63. *Id.* at 30.

1254. The population of the City of Grand Rapids was sufficiently large to merit two House Districts and both 75 and 76 are wholly contained within the City. *Id.* at 31. Due to the strange shape of the boundaries of the City of Grand Rapids, District 75 remains relatively compact. District 75 is wholly contained within the City of Grand Rapids. District 76 wraps around the remaining portion of the City “in a fashion that appears strange to the eye.” *Id.* Having two districts contained within the City is suggested by the Apol

criteria. Id. Democrats are geographically packed within this district and the strange shape of the district cannot be ascribed to partisan motives. Id.

1255. House Districts 91 and 92 are wholly contained within Muskegon County. Id. at 31. This is due to the map-makers precise application of the Apol criteria. Id. at 32.

1256. The population of Saginaw County was sufficient to support two districts, including House Districts 94 and 95. Id. at 32. Democrat representative Stephanie Erwin Oakes, who represented District 95, supported this plan. Id. It was determined at that time to satisfy the Apol criteria and no one suggested otherwise. Id.

1257. With respect to the Enacted Senate Plans, Dr. Chen's analysis again made the unfounded conclusion that various Senate districts were "partisan outliers." (Defendant Secretary of State Exhibit 6, p. 34-38)

1258. As Timmer's Report states, there exist multiple "other explanations" for why "those districts identified by Dr. Chen depart from the rigid simulations described in his report." (Defendant Secretary of State Exhibit 6, pp. 37-38)

1259. Indeed, the Enacted Senate Plan included Senate districts that "comply in substantial degree with the statutory Apol Criteria, and where

they do not strictly do so, it was for other than partisan reasons.” (Defendant Secretary of State Exhibit 6, pp. 34-38)

1260. The same is true with respect to the Enacted Congressional Plan. Dr. Chen’s conclusions were “unsupported.” (Defendant Secretary of State Exhibit 6, pp. 38-46)

1261. The Congressional Plan contained 11 county breaks, and 13 city or township breaks. Sec. Ex. 6 at 18-19. No Congressional plan was introduced or presented that contained fewer county or city and township splits. Id. at 18-19.

1262. Congressional District 1 was the first district drawn with the precise population required. Sec. Ex. 6 at 40. It achieved minimal county breaks (only in Mason County), break as few cities or townships as reasonably possible (only Hamlin Township in Mason County). Id.

1263. Congressional District 4 had approximately 87,500 people too many to achieve the precise population equality. This population was shifted, in compliance with the Apol criteria, to District 5. This population shift followed the location of the shifted population that existed under the prior 2001 Congressional Plan, thus maintain the core district. Id. at 41.

1264. Congressional District 5 took the population shifted from Congressional District 4 and combined the population with the whole

counties of Iosco, Arenac, Bay, Genesee, and Tuscola Counties. Id. at 41.

This resulted in having 37,770 persons too many. Id. Similar to Congressional District 4, Congressional District 5 maintained the core district adopted after the 2001 redistricting when it shifted this population into whole cities from Tuscola County into Congressional District 10. Id. at 42. Congressional District 5 also contained Buena Vista Township, a district subject to Section 5 of the Voting Rights Act. The configuration followed both the 2001 redistricting model that received preclearance but also the 1992 district which received preclearance. Id. Significant changes to this district risked the Department of Justice denying preclearance. Id.

1265. Congressional District 7 contained the whole of Eaton, Jackson, Branch, Hillsdale, Lenawee, and Monroe counties, and the whole of Washtenaw County. Id. at 42. However, to comply with one person, one vote, 250,673 persons had to be shifted out of the District. In compliance with Apol, in shifting population from the fewest number of cities or townships, population was shifted out of Ann Arbor and Ypsilanti, as well as four other townships in Washtenaw County. Id. This population was shifted into Congressional District 12. Id.

1266. Congressional District 8 contains all of Ingham and Livingston counties. To satisfy one person, one vote, approximately 40% of Oakland

County are brought into the district. Id. at 43. The shape of the district is a result from adherence to the Apol criteria, not from partisan considerations. Id.

1267. Congressional District 9 combined portions of Macomb County and portions of Oakland County. Id. at 43. This resulted in keeping the cities of Hazel Park, Madison Heights, Ferndale, Pleasant Ridge, Huntington Woods, Berkley, Royal Oak, and the whole of Southfield and Bloomfield townships all whole. Congressional District 9 also maintained much of the 2001 district. Id. The resulting shape of the district was due to adherence to the Apol criteria.

1268. Congressional District 10, took the portion shifted from Tuscola County and added the whole counties of Huron, Sanilac, Lapeer, St. Clair, and Macomb. Id. at 43. This led to District 10 having 500,365 persons too many. In compliance with Apol, this meant breaking Macomb into two districts and shifting a portion of population to Oakland County. Id. at 44. The best way to satisfy Apol was to shift the population of whole of Warren, Eastpoint, Fraser, Roseville, St. Clair Shores, Centerline, Grosse Point Shores, and Mt. Clemens, along with the whole of Clinton Township, and a portion of the City of Sterling Heights. Id.

1269. Congressional District 11 was drawn at the end of the process. This limited the map drawer's options when trying to achieve population equality. *Id.* at 44. Accordingly, it took whole cities or townships from Oakland County and united this with a portion of West Bloomfield Township. *Id.* at 44. The District further combines several whole cities and townships from Wayne County. *Id.* After satisfying Apol, the legitimate concerns of incumbents were addressed. *Id.*

1270. District 12 took some whole cities and townships from Washtenaw County that remained after some were placed in District 7. These whole cities and townships were combined with whole cities and townships in Wayne County. *Id.* at 45. The overall configuration largely followed the corresponding district from the 2001 congressional plan. Also too, District 12 had to have been largely configured as it was in the enacted plan. The shape resulted from adherence to the Apol criteria and other legitimate non-partisan considerations.

1271. In addition, Timmer noted that there are "significant" concerns that Dr. Chen's maps "are in configurations that either do not comply with other Apol Criteria or depart so radically from the existing map they could not achieve the necessary support in the Legislature for passage." (Defendant Secretary of State Exhibit 6, p. 39)

1272. Based on Timmer's training and experience, he concluded that the "Apol Criteria substantially governed" the 2011 map drawing process, and "are reflected in the drawing of the enacted House, Senate, and Congressional plans." (Defendant Secretary of State Exhibit 6, p. 46)

1273. To the extent there were any departures from the Apol Criteria during the process, they were "wholly permissible" and supported by Michigan Supreme Court precedent. (Defendant Secretary of State Exhibit 6, p. 46)

1274. In summary, Timmer concluded that "(1) the enacted House, Senate, and Congressional plans resulted primarily from application of the Apol Criteria and other neutral factors, and (2) that Dr. Chen's assertions that various districts represent 'partisan outliers' is incorrect." (Defendant Secretary of State Exhibit 6, p. 46)

1275. Any relief granted to Plaintiffs which could include new maps or redistricting could have devastating impact on certain districts and counties due to vast fluctuations in certain concentrated populations. Unintended consequences could negatively impact those who Plaintiffs intend to benefit. (Trial Transcript, Vol. III, p. 105)

1276. The 2018 election results in the State of Michigan are significant in that they provided Plaintiffs with significant gains and relief they were originally seeking to achieve. (Trial Transcript, Vol. II, p. 103)

1277. Democrats achieved significant gains in the State House, State Senate and Congress, reflective of the lack of lasting or durable nature of any partisan bias even if it had arguably existed at any point in time. (Trial Transcript, Vol. II, pp. 103-104)

WW. DR. THOMAS BRUNELL

1278. Defendant Secretary of State's Expert Thomas Brunell, Ph.D. is a Professor of Political Science at the University of Texas at Dallas. He received a Ph.D. in political science from the University of California, Irvine in 1997. (Expert Report of Thomas Brunell, Defendant Secretary of State's Exhibit 19, p. 1).

1279. Professor Brunell has published a book and dozens of referred journal articles on redistricting, elections, and representation. His research has been published in, among other outlets, the *American Political Science Review*, the *Journal of Politics*, *Electoral Studies*, *Election Law Journal*, and *Legislative Studies Quarterly*. (See Prof. Brunell's curriculum vitae, Defendant Secretary of State's Exhibit 20).

1280. Professor Brunell was engaged by Defendant Secretary of State to analyze to the Plaintiff's expert reports written by Professors Chen, Mayer, and Warshaw.

**PROF. THOMAS BRUNELL'S ANALYSIS OF THE REPORT OF
PROF. JOWEI CHEN**

1281. In Dr. Brunell's opinion, there is no way to know if any of Prof. Chen's 3,000 simulated maps constitute a very real substitute for the 2011 Michigan enacted map. (Expert Report of Thomas Brunell, Defendant Secretary of State's Exhibit 19, p. 3).

1282. The method that Prof. Chen uses to generate the maps failed to consider things like incumbency or the location of prior districts. It is therefore highly unlikely that any of Prof. Chen's maps would be seriously considered by the Legislature. (Expert Report of Thomas Brunell, Defendant Secretary of State's Exhibit 19, p. 1).

1283. As Jeffrey Timmer testified during the Trial, the Michigan redistricting process is a legislative process that occurs after each ten-year census and it is an inherently political process. (Trial Transcript, Vol. III, p. 77). As such, as with any other Bill in the legislature – whether it involves education, insurance, or any other topic – there are often political fault lines, political alliances and political party divisions. (*Id.*, at p. 77). As in any other legislation, a wide array of discussions and meetings take place, both on a partisan basis or with both parties present in such meetings and discussions. (*Id.*, at p. 78).

1284. Mr. Timmer's Trial testimony regarding the inherently political nature of the redistricting process is exactly consistent with Prof. Brunell's

statements in his report: Redistricting is a complicated process. Deciding where to draw the lines forces the map-maker to simultaneously consider dozens of competing criteria and demands. Contiguity, equal population, preserving existing political subdivision boundaries, respecting communities of interest, complying with the Voting Rights Act, incumbency considerations, and preserving the cores of current districts are just some of the factors that affect redistricting when done by a Legislature. Moreover, people drawing the districts have to try to accommodate demands by citizens, local and state officials, and incumbents regarding the specific boundaries of all of these districts. (Expert Report of Thomas Brunell, Defendant Secretary of State's Exhibit 19, p. 3).

1285. In his report, Dr. Brunell explained the existence of numerous flaws in Prof. Chen's analysis. For example, Dr. Brunell noted that Prof. Chen completely misunderstood that Michigan's statutory Apol criteria are not exhaustive: A quick read of the statutes might lead one to believe that these are the only criteria and that legislators may never deviate from them in drawing legislative and congressional districts. However, the Michigan State Supreme Court decided in *LeRoux v. Secretary of State* (640 NW 2d 849) that the legislature cannot bind future Legislatures and that "the 2001 Legislature was not bound to follow the guidelines in M.C.L. § 3.63 (c)

adopted by the 1999 Legislature. It could repeal, amend, or ignore them, as it pleased.” Thus, Prof. Chen’s algorithm for drawing electoral districts does not at all reflect the reality of what is possible in Michigan. If the comparison districts are not really comparable, then all of the analyses in Prof. Chen’s report have no utility in determining whether a particular map is an “outlier” or what might have caused it to be classified as one. (Report of Thomas Brunell, Defendant Secretary of State’s Exhibit 19, p. 4).

1286. Dr. Brunell also challenges Prof. Chen’s measurement of the partisanship of districts in his simulations by averaging recent statewide election results. As Brunell explains, this approach is wrought with problems: At the bottom of page 10 [of his report], Prof. Chen admits there are differences between statewide elections and legislative and congressional election outcomes. His model predicts Republicans will win 61 seats out of 110 in the state House, but the actual outcomes were 59, 63, and 63 in the three elections between 2012 and 2016. So, there were at least two errors each time, though there could have been more. For the state Senate, the error rate was even higher – his model predicted 23 or 24 Republican seats (depending on which set of elections he used) and in reality, the Republicans won 27 seats. These kinds of discrepancies with predictions based on statewide races are bound to happen and make such predictions dubious –

each election will be affected by the underlying partisan composition of the district, but they are also subject to other factors like incumbency, the quality of the candidates, the fundraising abilities of the candidates, the changing national political mood, the weather on election day, etc. It is crucial to keep this in mind when Prof. Chen uses the disaggregated statewide election results throughout his analyses that these are merely estimates, and as small errors get carried forward, the results of all of his analyses are affected. (Report of Thomas Brunell, Defendant Secretary of State's Exhibit 19, p. 6).

1287. Dr. Brunell also challenges Prof. Chen's measurement of the efficiency gap, since the efficiency gap produces false, illogical equivalence. (Report of Thomas Brunell, Defendant Secretary of State's Exhibit 19, p. 7). For example, elections that result in a 50-50 tie and elections that result in a 75-25 victory both yield an efficiency gap of zero. Therefore, the efficiency gap calls for a bright line limit of, say, 5, 6, or 7 percent. Because such measures are completely arbitrary, the efficiency gap is not useful. (Id.).

1288. Perhaps most importantly, Dr. Brunell eliminates Dr. Chen's map simulations as overly simplistic and effectively meaningless in the real world of legislative redistricting. As Dr. Brunell explains, "Prof. Chen does not explain and cannot explain at what point an outlier becomes "extreme"

or unconstitutional. All he can do is show (apparently) that the human plan drafters did not achieve the same relative precision of his simulation as concerns the application of the statutory standards (which Prof. Chen has mistakenly identified as being inflexible and exhaustive).” (Report of Thomas Brunell, Defendant Secretary of State’s Exhibit 19, p. 13).

1289. In addition, Dr. Brunell underscores the uselessness of Dr. Chen’s premise that all of his simulated maps were visually more compact than the enacted map. As Dr. Brunell explains: When Prof. Chen demonstrates on page 19 [of his report] that the enacted congressional map is less compact than all of his simulations, this is no surprise. He told the computer to draw compact districts and it did. The algorithm is too simplistic to take into account the realities of redistricting. Redistricting is a messy puzzle to put together with dozens of competing factors and thousands of people demanding their priorities be taken into account. But, would any of Prof. Chen’s maps be acceptable to a majority of state legislators? The most relevant way that the enacted maps are outliers is that they all received enough votes to be duly enacted into law, while Prof. Chen’s 3,000 maps received a combined vote total of zero. (Report of Thomas Brunell, Defendant Secretary of State’s Exhibit 19, p. 9-10).

1290. In summary, Dr. Brunell concludes that Prof. Chen’s simulated “neutral” plans as largely meaningless that are easily prone to false inferences. “A shift of one or two seats does not suggest that a statewide plan is an “extreme” partisan outlier or that the shift could have only resulted from partisan considerations. The shift could be the result of any number of neutral and permissible factors not included in the instructions Prof. Chen applied in drawing his simulations.” (Report of Thomas Brunell, Defendant Secretary of State’s Exhibit 19, p. 15).

**PROF. THOMAS BRUNELL’S ANALYSIS OF THE REPORT OF
PROF. CHRISTOPHER WARSHAW.**

1291. Dr. Brunell challenges the lack of reliability of Prof. Warshaw’s statistical model that he used to “predict” vote totals based on statewide elections (presidential, gubernatorial, and senatorial), with a variable allowed for the presence (and party) of an incumbent, and a variable for region (congressional) or state (legislative models). According to Dr. Brunell, “[Dr. Warshaw’s] statistical method, or any other method, makes assumptions to generate an estimate for districts that experience no contest for the general election. The more uncontested elections there are in a state, the more the data matrices used to calculate the various estimates of gerrymandering are based on estimated, rather than actual data.” (Report of Thomas Brunell, Defendant Secretary of State’s Exhibit 19, p. 16-17).

1292. Dr. Brunell also undermines Dr. Warshaw's devotion to the Efficiency Gap. According to Dr. Brunell, "[t]he efficiency gap in Michigan for congressional seats looks a great deal like the national trend over time. Comparing Figures 3 and 5 [on pages 14-17 of Dr. Warshaw's report], it is apparent that in Michigan and more generally across the country there was a modest pro-Democratic Efficiency Gap until between 1990 and 2000, when the trend lines both trend toward modest pro-Republican Efficiency Gaps." (Report of Thomas Brunell, Defendant Secretary of State's Exhibit 19, p. 17).

1293. Dr. Brunell also makes the critical point that both nationwide and at the local level, numerous factors affect the percentage of votes that candidates receive. As Dr. Brunell explained, "[t]he state of the economy, the presence of an incumbent, the amount of money raised, whether there was a scandal or not, all affect vote totals and election outcomes. So, the efficiency gap is not etched in stone for a decade based on redistricting."

1294. In fact, Dr. Brunell rightly predicted that the Democrats would perform well in the 2018 elections (Report of Thomas Brunell, Defendant Secretary of State's Exhibit 19, p. 17-18). The Efficiency Gap is rendered meaningless when the myriad outside forces and other factors affecting the current political climate during any given election are analyzed.

**PROF. THOMAS BRUNELL'S ANALYSIS OF THE REPORT OF
PROF. KENNETH MAYER**

1295. As explained by Defendant Secretary of State's expert Thomas Brunell, Ph.D., the information in Prof. Mayer's expert report does nothing to advance the Plaintiff's claims.

1296. According to Dr. Brunell, "[l]ike Prof. Chen, Prof. Mayer utilizes a "uniform partisan swing" (page 12-13 of the Mayer report) to assess what the seats-votes curve looks like using the unlikely assumption that vote totals swing by a uniform amount (1 percent, 2 percent, etc.) across all districts in the state...this approach is flawed. Naturally, the actual seats-votes curve will look different since each district will respond differently to local, state, and national political forces; there are no such things as uniform swings in the real world." (Expert Report of Thomas Brunell, Defendant Secretary of State Exhibit 19, p. 19).

1297. For example, In Table 5, using the 2006-2010 elections, Democrats win with 69.1 percent on average and Republicans win with 55.4 percent. As explained by Prof. Brunell, "[t]his puts the average Republican seat well within the bounds that political scientists usually consider to be "competitive". A swing of just over five points swings the average Republican seat to the Democrats." (Expert Report of Thomas Brunell, Defendant Secretary of State Exhibit 19, p. 18-19).

1298. The same is true for the calculations in Table 7 of Prof. Mayer's report. As explained by Prof. Brunell, Table 7 of the Mayer report, indicates that in the lower House of the state legislature, Republican candidates win by 59.4 percent. This is well within the range of what is considered a competitive election. (Expert Report of Thomas Brunell, Defendant Secretary of State Exhibit 19, p. 19).

1299. In addition, for the Michigan state Senate (Table 9 of the Mayer Report), the average Republican wins with 55.8 percent of the vote. Once again, this is competitive. As explained by Prof. Brunell, the Mayer report conclusively establishes that many Republican seats are at risk and with a relatively small shift in electoral fortunes, the Republican party could lose many of their seats in Michigan. (Expert Report of Thomas Brunell, Defendant Secretary of State Exhibit 19, p. 19).

XX. DR. DOUGLAS JOHNSON.

1300. Defendant Secretary of State's Expert Douglas Johnson, Ph.D. is the President of National Demographics Corporation. He received an MBA from UCLA in 1999 and a Ph.D. in political science from the Claremont Graduate University in 2015. (Defendant Secretary of State's Exhibit 14, Report of Douglas Johnson, p. 1, ¶ 2).

1301. Since 2001, Dr. Johnson has served as a Fellow at the Rose Institute of State and Local Government at Claremont McKenna College. In that capacity he has issued numerous white papers, op-ed pieces, in-depth analyses and other reports on the Census, demographics, districting and redistricting. His opinions have been published in numerous outlets, including the New York Times and the Los Angeles Times. He has been quoted in over one hundred national and local news articles and has appeared on redistricting-related news pieces on CNN, Fox News, and a number of public and commercial television and radio news broadcasts. (Defendant Secretary of State's Exhibit 14, Report of Douglas Johnson, p. 1 ¶ 3; See *also* Dr. Jonson's curriculum vitae, Defendant Secretary of State's Exhibit 15).

1302. Dr. Johnson has testified on demographic matters as an expert witness for the City of Palmdale in *Jauregui, et al. v. City of Palmdale*; as an expert witness for the City of Highland in *Garrett v. City of Highland*; for the state of North Carolina in *Covington v North Carolina*; and as an expert witness for Kern County (CA) in *Luna v. County of Kern*; and as 30(b)(6) "Most Knowledgeable" witness for the Arizona Independent Redistricting Commission in *Arizona Minority Coalition v. Arizona Independent Redistricting Commission*. He has also testified in the related federal court

case regarding Arizona's 2001 redistricting. (Defendant Secretary of State's Exhibit 14, Report of Douglas Johnson, p. 2 ¶ 6).

1303. Dr. Johnson was engaged by Defendant Secretary of State to analyze to the Plaintiff's expert reports written by Professors Chen, Mayer, and Warshaw.

**DR. DOUGLAS JOHNSON'S ANALYSIS OF THE REPORT OF
PROF. JOWEI CHEN**

1304. Dr. Johnson notes that Dr. Chen's computer programmed redistricting software ignores the complexities of legislative redistricting, and Dr. Chen makes the obvious mistake that the Apol criteria are to be utilized as guidance only and are non-mandatory. *LeRoux v. Secretary of State*, 465 Mich. 594, 615 (2002). Dr. Chen's mistaken application of the Apol criteria was perfectly described by Dr. Johnson, as follows: Dr. Chen also took his (mistaken) view of the guidelines of Section 4.261 and Section 3.63 as absolute and binding, completely ignoring (and not even mentioning) the State Supreme Court's ruling in *LeRoux v Secretary of State* that "Thus, as even plaintiffs concede, the 2001 Legislature was not bound to follow the guidelines in M.C.L. § 3.63(c) adopted by the 1999 Legislature. It could repeal, amend, or ignore them, as it pleased." Dr. Chen took those guidelines as absolute, despite the clear language of the State Supreme Court ruling that the legislature is free to "ignore" them. And, as described below, Dr. Chen

did not accurately follow the guidelines of Sections 4.261 and 3.63, even after making the claim on page 3 of his report that those guidelines are binding and “exhaustive.” (Defendant Secretary of State’s Exhibit 14, Report of Douglas Johnson, p. 5, ¶ 14).

1305. Dr. Johnson discovered numerous errors within Dr. Chen’s simulations that erroneously skewed the maps that were supposedly randomly drawn by Dr. Chen’s computer. For example, Dr. Johnson noted that on page 4 of his report, Dr. Chen stated that the “algorithm freezes the enacted plan’s boundaries for Senate Districts 1 through 7...and for House Districts 1 through 10, ...House District 15 . . . and House District 35.” Yet, on page 80, Appendix D8, the chart clearly shows a range of values generated for the supposedly-frozen House District 2. This means House District 2 is not frozen in the program. (Defendant Secretary of State’s Exhibit 14, Report of Douglas Johnson, p. 6, ¶¶ 18-19).

1306. Similarly, on page 76 of Dr. Chen’s report at Appendix D4, Senate Districts 6 and 7 are shown with a range of values generated for these supposedly-frozen Senate Districts, meaning they are also not frozen in the program. Since Appendix D4 indicates the program’s results for Senate Districts 6 and 7 were not frozen, by Dr. Chen’s own words the program

could not have been following the confines of M.C.L. 4.261. (Defendant Secretary of State's Exhibit 14, Report of Douglas Johnson, p. 6, ¶¶ 20-21).

1307. In Dr. Johnson's opinion, the method that Prof. Chen uses to generate the simulated maps was not as "random" as he suggests. For example, while Dr. Chen states that his algorithm caused the software to make "10 million randomly-proposed, iterative changes," Dr. Johnson points out that those iterative changes were "limited to the 1,520 MCDs in the state — and limited even further by the 'frozen' nature of significant numbers of those MCDs — [therefore], the range of possible maps rapidly narrows due to a discretionary decision by the programmer and the maps are no longer 'random.' The same can be said for claims of making '10 million randomly-proposed, iterative changes' when working with only 5,042 VTDs. The decision to use the 5,042 VTDs or the 1,520 MCDs, instead of the 329,886 Census Blocks, is a significant 'judgment' by the programmer that has clear impacts and limitations on the maps." (Defendant Secretary of State's Exhibit 14, Report of Douglas Johnson, p. 7-8, ¶¶ 24-25).

1308. Dr. Johnson also challenges Prof. Chen's measurement of the Efficiency Gap. In fact, Dr. Johnson makes the resounding point that Dr. Stephanopoulos and McGhee specifically analyzed Michigan's 2012

Congressional districting plan and concluded that their Efficiency Gap proposal would not consider it an unconstitutional partisan gerrymander:

At the congressional level, Florida, Michigan, North Carolina, Ohio, Pennsylvania, Texas, and Virginia had efficiency gaps of at least two seats in the 2012 election (all in the Republicans' favor). But the sensitivity testing shows that plausible shifts in voter sentiment could result in the Michigan, North Carolina and Texas plans advantaging Democrats instead. Thus, only the Florida, Ohio, Pennsylvania, and Virginia plans would be presumptively unlawful. (Defendant Secretary of State's Exhibit 14, Report of Douglas Johnson, p. 9-10, ¶ 32, *citing* Stephanopoulos, Nicholas and Eric M. McGhee, *Partisan Gerrymandering and the Efficiency Gap*, p. 864.).

1309. Perhaps most importantly, Dr. Johnson obliterates Dr. Chen's conclusion on page 56 of his report wherein Dr. Chen states that 'when an enacted district has zero computer-simulated districts that overlap with 50% of enacted district's population [*sic*], such a finding indicates that the enacted district was drawn in a manner that did not follow Michigan's statutory redistricting guidelines.' According to Dr. Johnson, "it could also indicate the computer simulation was flawed [as Dr. Johnson repeatedly demonstrated in his report], and it indicates with near-certainty that the maps drawn by the computer simulation were tightly controlled by the

programmer, and not random.” (Defendant Secretary of State’s Exhibit 14, Report of Douglas Johnson, p. 11, ¶ 38).

**DR. DOUGLAS JOHNSON’S ANALYSIS OF THE REPORT OF
PROF. KENNETH MAYER**

1310. As explained by Dr. Johnson, the information in Professor Kenneth Mayer’s expert report does nothing to advance the Plaintiff’s claims.

1311. According to Dr. Johnson, the “Demonstration Map” that is analyzed by Dr. Mayer on pages 59-81 of his report are unable to be fully analyzed “because only imprecise PDF maps were provided and Defendant [was not] provided with the underlying data. Dr. Chen made no mention of those demonstration maps or his work on them in his report.” (Defendant Secretary of State’s Exhibit 14, Report of Douglas Johnson, p. 12, ¶ 43).

1312. In his calculations of the Efficiency Gap, Dr. Mayer implores that his calculations are “consistent with Stephanopoulos and McGhee's calculations” (the creators of the Efficiency Gap measure). However, Dr. Mayer fails to mention (or never knew) that Stephanopoulos and McGhee concluded that Michigan's Congressional district map is not an unconstitutional partisan gerrymander. (Defendant Secretary of State’s Exhibit 14, Report of Douglas Johnson, p. 14, ¶ 48).

1313. In fact, Dr. Mayer’s testimony that no threshold exists to measure a partisan gerrymander is consistent with the opinion of Defendant Secretary

of State's expert, Dr. Johnson. As Dr. Johnson explained in his report, the attempt to set a "threshold" for partisan gerrymandering is an activity that has no hope of success: Dr. Mayer's Table 11 highlights the inherent challenges of attempting to set a threshold in law for partisan gerrymandering. Where Stephanopoulos and McGhee had recommended that a partisan advantage of two or more Congressional Districts reaches an extreme that should be considered unconstitutional partisan gerrymandering, the simple efficiency gap itself in Michigan has a two-seat margin of error: the simple choice of what data to use swings the Efficiency Gap result by two districts (without any change to the map).

The percentage-driven Efficiency Gap numbers highlight the challenges that would face any legislature attempting to comply with an Efficiency-Gap-driven legal threshold: using the data available at the time of redistricting, the demonstration map Efficiency Gap measured 0.1% or 2.3% (with/without the VRA districts). But once the map was in place those measures rocketed up to 12.6% / 12.2% using post-redistricting data. The same map registered as almost perfectly neutral and as significantly higher than the Stephanopoulos and McGhee 8% "unconstitutional partisan gerrymander" threshold, simply depending on what dataset was used.

(Defendant Secretary of State's Exhibit 14, Report of Douglas Johnson, p. 14, ¶¶ 50-51).

1314. Worst of all, Plaintiffs' own experts – Dr. Chen and Dr. Mayer – cannot even agree on how to calculate the Efficiency Gap. This glaring defect was described by Dr. Johnson in his report: Most confusingly, the partisan bias measurements of plaintiffs' experts do not even match. Dr. Chen states on page 18 that the enacted Congressional map has a Median-Mean Difference of 6.72%, using the 2006-2010 data. Dr. Mayer in Table 6 says the same map using the same data has a Mean-Median score of 2.8%. On page 25 Dr. Chen states that the enacted map using 2006-2010 data has an efficiency gap of -20.7% while Dr. Mayer in Table 6 says -22.2%. These are only a few examples of the measurement differences that run throughout their reports...[t]he fact that plaintiffs' two experts cannot agree on how to calculate these figures even seven years after the plans were adopted gives a sense of the challenge facing the legislature when trying to accurately meet a hypothetical judicially-designated threshold — a task it would have to complete while holding public hearings, rounding up the votes of a majority of each chamber and facing a rapidly approaching election deadline to have a map in place. (Defendant Secretary of State's Exhibit 14, Report of Douglas Johnson, p. 15, ¶¶ 54-55).

**DR. DOUGLAS JOHNSON'S ANALYSIS OF THE REPORT OF
PROF. CHRISTOPHER WARSHAW**

1315. Dr. Johnson exposes numerous flaws in the report of Professor Christopher Warshaw. For example, Dr. Johnson challenges Dr. Warshaw's explanation of the Efficiency Gap. According to Dr. Johnson, "Dr. Warshaw's opening point that "A key attribute of democracy, if not its very definition, is 'responsiveness of the government...', " (p. 4) leading into a discussion of the Efficiency Gap as a measure of partisan gerrymandering, reflects a common misconception that the Efficiency Gap is at all related to competitiveness or responsiveness. The efficiency gap measures partisan fairness, not responsiveness or competitiveness." (Defendant Secretary of State's Exhibit 14, Report of Douglas Johnson, p. 16, ¶¶ 56).

1316. Dr. Johnson also challenges Dr. Warshaw's far-flung conclusions that are cloaked underneath the Efficiency Gap measure. For example, Dr. Johnson states that on page 19 of his report, "Dr. Warshaw states '[a]fter the most recent redistricting, Michigan had more extreme pro-Republican Efficiency Gaps than it has ever had before. This further suggests that geographic factors are unlikely to be the root cause of the large Efficiency Gap in Michigan in recent elections.'" According to Dr. Johnson, this conclusion is extremely suspect. In reaching this conclusion, "[Prof. Warshaw] does not look at any data regarding whether those geographic

factors could be growing in influence, and he ignores his fellow plaintiff experts' numbers that show the efficiency gap is growing from 2012 to 2016, which reflects larger political changes moving voters toward the Republicans (since the map did not change in that time frame)." (Defendant Secretary of State's Exhibit 14, Report of Douglas Johnson, p. 20, ¶¶ 65).

1317. Dr. Johnson also undermines the "National Political Awareness Test" cited by Dr. Warshaw for his analysis on pages 36 through 38. Dr. Johnson makes the important point: [T]his test "has well known problems of extremely low response rates and debatable decisions regarding whether particular votes truly indicate partisanship. I note that Dr. Warshaw does not cite how many Michigan legislators responded to the survey. In the limited time available for this report I was only able to do a brief online search for possible respondent counts, but I found one website claiming to list 2006 Congressional respondents to the survey. According to that listing, in 2006 none of the Republican or Democratic candidates for any Michigan Congressional district responded. It is also worth noting that in 2008 the seemingly neutral and non-partisan "National Political Awareness Test" title was changed to a more advocacy-oriented name, seemingly more accurately reflecting its true advocacy purpose: "The Political Courage Test."

(Defendant Secretary of State's Exhibit 14, Report of Douglas Johnson, p. 21-22, ¶ 68).

1318. Finally, Dr. Johnson's report concludes with the irrefutable point that the talismanic theories propounded by the Plaintiffs' experts are resoundingly defeated by the simple reality of the redistricting process itself.

As Dr. Johnson puts it, "Plaintiff's experts highlight the challenges of legislating thresholds and requirements when their own calculation results differ and their own neutral map flips to partisan gerrymander with a simple change in datasets used. Their own demonstration map looks neutral at the time of drafting, and unconstitutionally partisan gerrymandered after the next election. And many of their computer-generated 1,000 maps took safely-Republican districts and made them even more safely Republican."

(Defendant Secretary of State's Exhibit 14, Report of Douglas Johnson, p. 22, ¶ 70).

YY. DR. YAN LIU.

1319. Expert Yan Liu prepared a report dated June 29, 2018 (Defendant Secretary of State's Exhibit 16) as well as a Declaration in Support of Defendant Secretary of State Ruth Johnson's Motion in Limine to Exclude the Expert Report of Dr. Jowei Chen. (Defendant Secretary of State's Exhibit 52; Exhibit 2 to Secretary's 12/4/18 Motion in Limine Re: Dr. Chen)

1320. Dr. Liu is a Senior Research Programmer at the National Center for Supercomputer Applications at the University of Illinois. He received his Ph.D. in Informatics from the University of Illinois. He has a Masters in Computer Science from the University of Iowa, an M.E. in Computer Engineering from Wuhan University in Wuhan, China, and a B.S. in Computer Science from Wuhan University. Dr. Liu regularly drafts and reviews software source code written in multiple computer programming languages, including Java. (Defendant Secretary of State's Exhibit 52; Exhibit 2 to Secretary's 12/4/18 Motion in Limine Re: Dr. Chen)

1321. Dr. Liu was asked to comment on Plaintiffs' expert report of Jowei Chen, who had examined enacted redistricting plans for Michigan's House, Senate and U.S. Congress. (Defendant Secretary of State's Exhibit 16)

1322. Dr. Liu understood that Dr. Chen was asked whether the districting plans have "the effect of producing an extreme partisan outcome that diverges from possible alternative maps." (Defendant Secretary of State's Exhibit 16)

1323. It is the finding of this Court that Dr. Liu's opinion that Dr. Chen could not make these conclusions is accurate for multiple, independent reasons as stated by Dr. Liu. (Defendant Secretary of State's Exhibit 16)

1324. Dr. Liu's opinion that Dr. Chen's conclusion was not warranted was based upon the reasons listed in paragraphs 7-14 of this section.

1325. Dr. Chen did not provide a proper comparison set. His comparison set is too small and is not a random sample. (Defendant Secretary of State's Exhibit 16)

1326. The type of algorithm that Dr. Chen employs does not yield a random sample and so produces biased results. (Defendant Secretary of State's Exhibit 16)

1327. Since Dr. Chen does not have any theoretical basis for his work in either statistics or operations research, he cannot make claims about optimization, outliers, or statistical certainty in his analysis. (Defendant Secretary of State's Exhibit 16)

1328. Even if Dr. Chen had a proper sample, his interpretation of his analysis is problematic. He conflates small numerical differences as substantively important findings. (Defendant Secretary of State's Exhibit 16)

1329. Dr. Chen's measures are problematic. Specifically, Reock compactness is not the one required by Michigan law, and the differences in compactness that he finds between the Michigan maps and his simulation maps are not meaningful even though he describes them as "significant."

The efficiency gap has similarly been widely criticized by the mathematical community. Dr. Chen's measure of partisanship is described as basic and common, but has obvious problems. (Defendant Secretary of State's Exhibit 16)

1330. Dr. Chen presents his results in a misleading manner by playing with the presentation of the plots. (Defendant Secretary of State's Exhibit 16)

1331. Dr. Chen's data are not precise even though his measure of partisanship requires precision. Dr. Chen states that he utilized Voter Tabulation Districts (VTD's) as the fundamental building block in his model. While voting data are available at the VTD level, this was not the proper building block to utilize. He should have utilized Census Tracts and Blocks as required in the state of Michigan by a bipartisan committee. By using the wrong building blocks, Dr. Chen ensured that his simulated maps would exclude the maps under the enacted legislative plan. (Defendant Secretary of State's Exhibit 16)

1332. Dr. Chen's argument for how to determine if a plan is drawn with partisan intent is logically flawed. (Defendant Secretary of State's Exhibit 16)

1333. Dr. Chen made numerous errors through his analysis and the reporting of his analysis, including inconsistencies in his tables, and in describing

which data set is being used. See Dr. Liu's report at pages 25 and 26 which lists out the numerous errors referred to here. (Defendant Secretary of State's Exhibit 16)

1334. In addition, and importantly, Dr. Liu, in preparing his findings, had requested the Secretary of State's counsel to obtain and provide a copy of Dr. Chen's "source code," which is written by a programmer in a human-readable programming language and is the source of the byte code. Review of the source code would precisely disclose the instructions Dr. Chen gave to the computer for it to draw his simulated redistricting plans. (Defendant Secretary of State's Exhibit 52, p. 2, ¶ 12)

1335. Dr. Liu and counsel for the Secretary of State made extreme effort to obtain the source code utilized by Dr. Chen, but were met with inexplicable claims by Dr. Chen and his counsel that he had deleted the instructions he had given to his computer, which was discovered to have been allegedly destroyed in the middle of discovery in this matter and after the Secretary of State requested copies of those instructions. (Defendant Secretary of State's Exhibit 52, p. 2, ¶ 12- there are a number of paragraphs to form this statement, where to end?)

1336. While Defendant Secretary of State Ruth Johnson's Motion in Limine to Exclude the Expert Report of Dr. Jowei Chen was previously denied,

upon further reflection, this Court finds that this improper conduct and destruction of his instructions, and refusal to provide the source code, in and of themselves wholly invalidated Dr. Chen's report and any conclusions he had drawn. (See Defendant Secretary of State Ruth Johnson's Motion in Limine to Exclude the Expert Report of Dr. Jowei Chen, Docket Entry 147) 1337. In sum, this Court adopts the conclusions of Dr. Liu and rejects, based both on lack of merits and due to discovery violations and improprieties, any and all conclusions reached by Dr. Chen. It is important to point out that this rejection of Dr. Chen's report and conclusions is also fully supported on the record by other lay and expert witnesses, but most specifically Jeffrey Timmer, whose testimony and conclusions are adopted in a different section of these proposed findings of fact. (Defendant Secretary of State's Exhibit 52; Exhibit 2 to Secretary's 12/4/18 Motion in Limine Re: Dr. Chen)

III. DEFENDANT'S MAP DRAWER WITNESSES.

ZZ. DANIEL MCMASTER

GENERAL

1338. Mr. McMaster is a is a libertarian. Dep. of D. McMaster (Intervenors' Ex. 10 at p. 10).

1339. He currently is a partner at a non-partisan/bipartisan consulting firm called Grassroots Midwest. *Id.* at 10-11.

Redistricting

1340. Mr. McMaster had some exposure to the redistricting process in 2001, *Id.* at 23-24, but was not directly involved in the mapmaking process at that time. *Id.* at 25.

1341. Mr. McMaster showed interest in a redistricting position after the 2010 elections. *Id.* at 38-39

1342. Mr. McMaster was hired to draft the maps for the Michigan State House of Representatives after January 1, 2011. *Id.* at 40, 43.

1343. He attended a conference in January or February of 2011. *Id.* at 40.

1344. Also, in attendance were Elections Committee Chair Pete Lund and Democratic Rep. Barb Byrum. *Id.* at 41-42.

1345. Mr. Lund was his supervisor. *Id.* at 49.

1346. The conference was not particularly valuable because the examples that were used from other jurisdictions were not applicable to Michigan because Michigan has “some of the strictest standards in the country” when it comes to redistricting. *Id.* at 44-45.

1347. Mr. McMaster had no previous experience with redistricting software. *Id.* at 56.

1348. Both McMaster and Began taught themselves how to draw maps. *Id.* at 59.

1349. Once Mr. McMaster realized the enormity of the redistricting process, he asked to hire an employee and Mr. Brian Began was hired. *Id.* at 50-51.

1350. The primary concern when drafting the House maps was compliance with Michigan's Apol criteria. *Id.* at 59-60, 72-73, 83, 86, 89, 103-104, 113, 128-29, 158, 165-66, 167, 195, 196.

1351. In fact, Mr. McMaster was under "strict guidance from Pete [Lund] to keep everything within Apol standards." *Id.* at 130.

1352. Mr. McMaster also had to ensure that the Voting Rights Act was followed. *Id.* at 73.

1353. If a mapmaker follows the legal standards (Apol and Voting Rights Act etc.) there is "very very very little wiggle room" to seek partisan advantage. *Id.* at 80.

1354. Mr. McMaster drew maps that pitted incumbents together, including Republicans, because the Apol standards dictated it. *Id.* at 83-84.

1355. He never considered the protection of incumbents when drawing the State House maps. *Id.* at 83-84, 113

1356. Jocelyn Benson and others offered maps that in Mr. McMaster's opinion did not conform to Apol's legal requirements. *Id.* at 89, 103-104,

1357. It was Mr. McMaster's understanding of Apol that "when you break a county line, you need to go to the largest populated township." *Id.* at 196.

1358. There were meetings at the Dickinson Wright law firm in order for the mapmakers to ask legal questions. *Id.* at 110.

1359. Mr. McMaster made slight alterations, still following the Apol criteria, in order to get the votes to pass the legislature, including the votes of the Speaker and the Majority Leader. *Id.* at 125, 201.

1360. However, there were some changes that he was unable to make because the changes would not have complied with the Apol criteria. *Id.* at 128-29. Some other requested changes were not possible because they would have caused a cascading effect requiring the change of multiple additional districts due to the Apol standards. *Id.* at 160-61. Other changes were made as he was able to make the changes and still comply with the Apol criteria. *Id.* at 167-68, 171-72.

1361. He also made some modifications for Democratic Representative Erwin Oakes at her request to secure her vote. Mr. McMaster was only able to accommodate her because her change could still comply with the Apol criteria. *Id.* at 138-143.

1362. In the end, not everyone was happy with the way their districts were drawn. *Id.* at 210-11.

1363. He has no interest in drawing maps again. *Id.* at 48, 216-17.

Laches

1364. He no longer remembered the exact details of the Apol standards because it has been “seven, eight years since” he has read about it. *Id.* at 80, 82-83.

1365. He does not remember the name of his Democratic counterpart who also received a redistricting laptop. *Id.* at 57-58.

1366. He does not remember needing advice on two specific districts. *Id.* at 98.

1367. In fact, he does not remember a number of conversations that are material to the redistricting process. *Id.* at 119. These include conversations about specifically requested changes or the reason for some changes. *Id.* at 119-121, 127, 129, 140, 156-57, 161-62, 164, 167, 168, 213-14. He does not remember any meetings with legislators prior to the public release of the map. *Id.* at 155-56.

1368. He does not specifically remember the reaction of Democratic Rep. Woodrow Stanley to a draft map other than he thinks Rep. Stanley was fine with it. *Id.* at 154.

AAA. BRIAN BEGAN

1369. Mr. Began currently works a non-partisan/bipartisan consulting firm called Grassroots Midwest for Mr. McMaster. Dep. of B. Began (Intervenors’ 13 at 139, 142).

1370. Mr. Began started working on redistricting for the Michigan House of Representatives with Dan McMaster around April of 2011. *Id.* at 25, 35. He requested the position because he was interested in the process. *Id.* at 25-26.

1371. Mr. Began and Mr. McMaster did not look at election or political data until late in the map making process “after [the] maps were drawn or largely settled on.” *Id.* at 34, 38, 106-107. Him and Mr. McMaster did not want the political data to influence their decision making. *Id.* at 98.

1372. Mr. Began’s primary concern was to ensure the process used in drafting the maps was “fair and legal” by following the Apol standards. *Id.* at 37-38, 46, 152-53, 161-62.

1373. Any considerations of partnership were subordinate to making a legally compliant map. *Id.* at 152-53.

1374. In the 2012 election immediately after the enacted plan Republicans lost five seats. *Id.* at 155.

1375. He was not involved with discussions with legislators. *Id.* at 44.

1376. Mr. Began occasionally made changes that were told to him by Mr. McMaster, but the changes were made with Apol in mind. *Id.* at 46-47.

1377. He used the 2001 map as a reference point. *Id.* at 87.

1378. Certain districts from the 2001 map did not change. *Id.* at 87.

1379. He also made changes for Democratic Reps. Stacy Erwin Oaks, Doug Geiss, Paul Clemente, and Rebekah Warren so that they would vote for the plan. *Id.* at 49-51. In the end, Democrat House members Clemente, Geiss, Kandrevas, Liss, and Oakes all voted for the legislative districts. *See* SB 498 (Roll Call Vote 244 June 28, 2011). Democrat Senators Hood, Smith, Warren also voted for the legislative districts. SB 498 (Roll Call Vote 376 June 29, 2011). Republican Senator Emmons voted against the Congressional Districts. (Roll Call Vote 375 June 29, 2011) as did Republican House Members Genetski and McMillin. (Roll Call Vote 213 June 22, 2011). Genetski and Republican House Member Rogers also voted against the legislative districts. (Roll Call Vote 244 June 28, 2011).

1380. He made a change to avoid a paring of Reps. Olson and Ouimet. *Id.* at 65-66.

1381. He only spoke with Mr. McMaster and Mr. Lund about the redistricting process. *Id.* at 71-72

1382. He did not consider making a district as Republican as it could have been. *Id.* at 95-96.

1383. Mr. Began collected data on how President Obama performed against caucasian candidates to test how the majority-minority district preformed.

Id. at 109-110. There was additional political data that was collected for Voting Rights Act purposes. *Id.* at 115-116.

1384. He used compactness while drawing districts. *Id.* at 135-36. But does not remember exactly how he did so. *Id.* at 137. He does remember that compactness was less important than Voting Rights Act compliance. *Id.* at 179.

1385. There are certain areas where safe districts exist because of their political geography, like Detroit for Democrats or Ottawa County for Republicans. *Id.* at 147-148.

1386. There are a variety of factors that go into any election, including the political environment, the quality of the candidates. *Id.* at 157.

1387. Mr. Began and Mr. McMaster never discussed the concepts of packing or cracking nor did the concept come up at all during the redistricting process. *Id.* at 165.

1388. He had addresses for incumbents but not until after the final draft map was made. *Id.* at 185-86.

1389. No one instructed Mr. Began to draw maps in a manner to maintain a Republican majority. *Id.* at 209.

1390. After he received political data no significant changes were made to the map. *Id.* at 209. Some of the changes that were made were made to accommodate Democrats and get them to pass the plan. *Id.* at 209.

Laches

1391. Mr. Began could not remember any discussions he had with Mr. LaBrant as it was seven and a half years ago. *Id.* at 55-56.

1392. He also does not remember the specific discussions he had, if any, with Mr. Lund. Dep. p. 58. He also does not remember many specific discussions with Mr. McMaster. *Id.* at 70-71.

1393. He generally complains that he “cannot accurately . . . transcribe the events of seven and a half years ago.” *Id.* at 67, 72

1394. Mr. Began does not remember his specific methodology in drawing maps from seven and a half years ago. *Id.* at 93.

BBB. TERRY MARQUARDT

1395. Mr. Marquardt is currently the Director of Caucus Services for the Senate Majority Office. Dep. of Marquardt (Pls’ Ex. 509 p. 18).

1396. He has been involved in redistricting since 1990. *Id.* at 20.

1397. In 2011 he was the sole mapmaker for the Michigan Senate. *Id.* at 31, 46.

1398. He likely looked a census estimates because he is a “demographic geek[]” before the final census data was released. Id. at 34.

1399. The census estimates also helped him understand how certain counties may fit together since county breaks are an important factor when redistricting. Id. at 35. The work product from these exercises were for his own benefit and were not shared with anyone else. Id. at 35-36. This initial process is not done with computers and is instead looking at which counties can form whole districts within the populations ranges. Id. at 37-38. This is because population changes from the last decade impact which districts need to grow in area because a county lost population and which districts can perhaps shrink in area because a county gained population. Id. at 38-39.

1400. When drawing maps, population is the most important data you receive form the census, but racial data is also important to comply with the Voting Rights Act. Id. at 40-41.

1401. He also had access to political data. Id. at 42-43. However, the political data was used very rarely since the Apol criteria drove most of the decision making process. Id. at 71. He does not recall ever systematically looking all of the districts to get a sense of the political outcomes for the whole map. Id. at 71. He did not even think he made a guess as to what the overall political results would be. Id. at 71. Because of the way the political

environment changes from year to year he feels it would have been “useless” anyway. Id. at 71-72. Political considerations could only be used if all the other Apol criteria were met. Id. at 74. Therefore, there were “very few” instances where partisanship was considered. Id. at 74. Typically this could only occur in larger counties where there are “several combinations” that are possible with the Apol criteria. Id. at 75-76. To his recollection, he only had discretion in Oakland, Kent, and Macomb counties. Id. at 76. Politics were not discussed at these meetings. Id. at 91.

1402. He believes that no districts that he drew for the Senate map are gerrymandered. Id. at 77-78

1403. He would occasionally ask for input for Jeff Timmer to see if there was a configuration that was better—e.g. would break fewer counties. Id. at 50-51.

1404. Mr. Marquardt would also seek legal advice from counsel on the legal requirements of making a map but he did not often need it since the requirements are spelled out in the Apol standards. Id. at 53, 82. This was typically done at Dickinson Wright. Id. at 89. The mapmakers—Mr. Marquardt, Mr. McMaster, and Mr. Timmer—as well as legal counsel were in attendance. Id. at 89. Occasionally some other individuals would attend, such as Brian Began, Mr. LaBrant, and Mr. Richardville. Id. at 89

1405. The factors he would use to draft a map were set out in the Apol criteria, the “first and foremost” requirements are population and eliminating breaks. Id. at 56-57.

1406. There is the “unwritten criteria” that the map must pass the legislature, which he kept in mind. Id. at 57. However, there were no specific 20 Senators that he had in mind to be happy with a draft map. Id. at 57.

1407. The Apol criteria set out in order of importance how the maps are drawn. Id. at 58-59. However, he was more familiar with the criteria in 2011 than he was when he sat for his deposition. Id. at 59.

1408. The Voting Rights Act requirements become important when looking at the Detroit area. Id. at 57-58.

1409. He learned the Apol criteria through his experience with the redistricting process. Id. at 60-61.

1410. If you follow the Apol criteria there is “very little discretion” on how to draft a map. Id. at 62.

1411. There are multiple factors to consider when drawing maps, including that the map needs to pass the legislature and that certain Senators have preferences about, for example, what specific areas would be in a certain district. Id. at 63. However, these desires were subordinate to the Apol

criteria. Id. at 64. As such, not every Senator was happy with their district because the Apol criteria dictated certain outcomes. Id. at 64-66.

Furthermore, he was never contacted directly by a Senator with a request to change a map. Id. at 79-80. However, his sense was that Senators likely wanted a district that was as close as possible to their old district. Id. at 81. Just like in every other respect, that presumed desire was subordinated to the Apol criteria. Id. at 81.

1412. There are certain areas where safe districts exist because of their political geography, like Detroit for Democrats or Ottawa County for Republicans. Id. 78-79.

1413. At sometime between April and June of 2011, the maps were shown to Senate Majority leader Richardville, his Chief of Staff, Tony Stamas, and the individual Republican Senators. Id. at 83-84. There was partisan data available at these meetings. Id. at 104. However, there were no changes that he remembers being implemented as a result of those meetings. Id. at 85. There may have been some “tweaking” with the map to fix errors or to further comply with the Apol criteria. Id. at 85-86.

1414. Senate District 8 fully complies with the Apol criteria. Id. at 119-21.

1415. Mr. Marquardt, because of population considerations as dictated by the Apol criteria, was forced to break Clinton Township in Senate District

10. Id. at 122-123. The population considerations predominated over other considerations with the drawing of Senate District 10. Id. at 122-23.

1416. The shape of Senate District 12 was dictated largely by populations shifts in Oakland County as well as city boundaries. Id. at 129-130. The lack of visual compactness of the new District 12 was driven by the hierarchy of the Apol criteria. Id. 130-131.

1417. The shape of Senate District 14 was based on changes in population and the way the surrounding counties fit together under the Apol criteria. Id. at 147-149. He would consider Senate District 14 a competitive district in terms of partisanship. Id. at 151.

1418. The configuration of Senate District 22 was driven by minimizing breaks and the fact that extra population needed to be transferred from Washtenaw to Livingston County. Id. at 160-162. Ann Arbor was broken in the way it was due to the “islands” or “little pieces of townships that are within the borders of Ann Arbor.” Id. at 162. He does not believe he could have created District 22 and District 18 into more competitive districts without creating additional breaks. Id. at 163.

1419. The configuration of Senate District 32 is related to the fact that an even number of districts could fit within Saginaw, Genesee, and Oakland Counties. Id. at 185. Other considerations when drawing Senate District 32

were the City of Flint and other large municipalities which dictated where population needed to be shifted. Id. at 186.

1420. He does not remember there being any talking point for the Senate plan nor does he think it was necessary since he did all the work and new the material. Id. at 217-218.

1421. He never had any contact with the State or National Republican Party with respect to the redistricting process. Id. at 230.

1422. He does not think an independent commission will be more fair than the legislative process because it will not necessarily be independent because everyone has biases. Id. at 248-49.

IV. OTHER LAY WITNESSES

CCC. JOE HUNE

FINDINGS OF FACT FOR JOE HUNE

1423. During the 2011 redistricting, Joe Hune was the chairman of the Senate Redistricting Committee. J. Hune. Dep. Tr. at 19:2-5. His specific responsibilities were to come up with redistricting plans that were fair and legal. J. Hune. Dep. Tr. at 56:7-9.

1424. The Senate put forth a redistricting plan that was fair, legal, and constitutional. J. Hune. Dep. Tr. at 26:24-25.

1425. This is because the map complied with the Apol standards, standards provides one of the most fair processes and criteria because it minimizes the number of times you can cross municipal lines. Also we were required to follow the Voting Rights Act. J. Hune. Dep. Tr. at 27:8-12, 21-25.

1426. The Senate Redistricting Committee held public hearings to obtain input from citizens concerning redistricting. J. Hune. Dep. Tr. at 30:2-9.

1427. Public comments concerning redistricting were received and reviewed. J. Hune. Dep. Tr. at 31:2-11.

1428. Apol standards are rigid and when complied with, particularly the requirement to no break municipal boundaries, there is not much discretion left to the map-drawer. J. Hune. Dep. Tr. at 35:23-25, 36:1; 98:10-14.

1429. Mr. McCotter believed that Apol permitted map-makers wide discretion when drawing the lines. Senator Hune absolutely and fundamentally disagreed. J. Hune. Dep. Tr. at 111:25-112:1-7.

1430. There is however, little if any room for politics in redistricting under the Apol standards. J. Hune. Dep. Tr. at 107:17-22.

1431. Senator Hune disputes the notion that the enacted redistricting maps benefited one political party at the expense of another and that the 2011 redistricting process was designed to enhance the Republican party's power. J. Hune. Dep. Tr. at 53-54:1.

1432. Senator Hune disputes the notion that any individual district were drawn with the goal to enhance one political party because of the rigidity of the Apol standards. J. Hune. Dep. Tr. at 54:1-9.

1433. Senator Hune spent time with the Terry Marquardt, the map maker who drew the Senate maps. J. Hune. Dep. Tr. at 57:20-23.

1434. Without a doubt, members of the Democratic party were consulted concerning the 2011 redistricting maps before the final map was presented to the Democrats. J. Hune. Dep. Tr. at 60:5-9.

1435. These Democrats included, Senator Virgil Smith, Senator Rebekah Warren. Senator Hune described Senator Smith and Senator Warren as “our two key players.” J. Hune. Dep. Tr. at 60:10-13.

1436. In fact, Senator Smith was “integral in being the architect of designing the districts within Wayne County.” J. Hune. Dep. Tr. at 61:7-10.

1437. Senator Warren and Senator Hune had discussions concerning redistricting and there was a willingness from both sides to come to the table. J. Hune. Dep. Tr. at 61:21-24.

1438. Senator Joe June met with Democratic Senator Johnson, Senator Hood, Senator Gregory, Senator Hopgood, and Senator Young to have discussions about redistricting. J. Hune. Dep. Tr. at 66-67.

1439. Senator Joe Hune does not remember Bobby Schostak, chair of the Republican Party, being involved in redistricting. J. Hune. Dep. Tr. at 71.

1440. Michigan voters have a history of ticket splitting. J. Hune. Dep. Tr. at 202:10-11.

DDD. ROBERT SCHOSTAK

1441. Robert Schostak was elected Chairman of the Michigan Republican Party in 2011. (Schostak Dep at p. 7) He held that position for four years. (Schostak Dep at p. 7)

1442. Mr. Schostak was not a map drawer. (Schostak Dep at p. 40) Nor did he have any direct role in how the 2011 lines were drawn. (Schostak Dep at p. 40)

1443. As Chairman of the Michigan Republican Party, Mr. Schostak attended meetings regarding drawing the 2011 maps because he was interested in “good management of the process, efficiency.” (Schostak Dep at p.39) This included helping to coordinate schedules and arrange meeting times. (Schostak Dep at p. 38)

1444. By participating in the meetings, Mr. Schostak was able to “have knowledge of what’s going on and be able to answer questions from legislators or donors or interested parties.” (Schostak Dep at p. 39)

1445. Mr. Schostak also sought to make “sure we were following the law and the standard – Apol standard and the Voting Rights Act.” (Schostak Dep at p. 39)

1446. He also wanted to ensure that the maps were legal so that they would not be subject to challenge by a court. (Schostak Dep at p. 94)

1447. Mr. Schostak testified that those involved in the map drawing process sought to draw maps that “were following the standards required by law and the Voting Rights Act.” (Schostak Dep at p. 25) This included following Apol criteria. (Schostak Dep at p. 26)

1448. With respect to the meetings Mr. Schostak attended to discuss the map drawing process, “it was about, you know, drawing the maps to meet the criteria and to draw districts. I mean, that was the whole purpose of the meeting.” (Schostak Dep at p. 27)

1449. When Mr. Schostak was contacted by an individual who sought to give input on the 2011 map drawing process, he would “regularly respond” that “we have to follow the Voting Rights Act, we have to follow Apol standards, and regardless of what you’d like to see, we are limited on how far we can go.” (Schostak Dep at p. 112)

1450. When Mr. Schostak would contact Jeffrey Timmer regarding the map drawing process, Timmer would “look into” questions that Mr. Schostak asked of him. (Schostak Dep at p. 122-123)

1451. Mr. Schostak never made requests of Timmer to “do specific drawing.” (Schostak Dep at p. 123) The purpose of him contacting Timmer was “to answer questions that were posed of me,” which Timmer would then “do his best to answer.” (Schostak Dep at p. 123) That is all Schostak “expected of” Timmer in this process. (Schostak Dep at p. 123)

EEE. PETE LUND

1452. Pete Lund did not receive a letter of a subpoena in this case because they were sent to the wrong address. Dep. of P. Lund at 11-13 (Intervenors’ Ex. 11).

1453. Mr. Lund currently works for Americans for Prosperity, a public policy nonprofit organization. Id. at 19-20.

1454. He won an open seat election in House District 36 in 2008 even though it was a Democratic years. Id. at 22-23.

1455. In 2010, starting in 2011, he was assigned to be the committee chair for the Redistricting and Elections Committee. Id. at 23.

1456. He had no previous redistricting experience. Id. at 24.

1457. He understood his role to be “[g]etting bills through the legislature that met the legal standards.” Id. at 25, 68.

1458. He attended a conference about redistricting early in the process with Mr. McMaster. Id. at 28. One of his more memorable experiences at the conference was looking at what appeared to be obviously “gerrymandered” districts but were instead districts that were drawn to comply with legal requirements, such as the Voting Rights Act. Id. He left the conference with the understanding that redistricting is an incredibly “technical and legal process” and is also a legislative process. Id. at 31.

1459. Plaintiffs’ counsel Mr. Brewer was also in attendance along with many other Democrats. Id. at 28.

1460. He understood the Apol criteria as well as the Voting Rights Act to be a limit on how one can draw districts. Id. at 32. With the assistance of counsel he attempted to follow those. Id. at 33.

1461. Mr. McMaster was the one who was actually in chare of drawing the maps with the help of Mr. Began. Id. at 35-37.

1462. He did not deal with the data personally and so does not remember what data Mr. McMaster had access to. Id. at 36.

1463. Ms. Suzanne Miller Allen, the speakers Chief of Staff, was occasionally involved. Id. at 38-39. Her only input was to keep the map “legal and fair.” Id. at 39.

1464. He understood “legal and fair” to mean that if the plan was challenged in court that, since they “followed the rules”, the courts would accept the lines. Id. at 40.

1465. To be fair he attempted to get the maps to the Democrats when they were ready and not “lie to the committee members about the process.” Id. at 42. He wanted the process to be different than it had been in the past, where it had not been straightforward. Id. at 42, 44.

1466. The phrase “legal and fair” was both the position and goal of the Republican caucus, which was made clear to the members and the public. Id. at 65.

1467. The overarching concern during the mapmaking process is that they followed the law. Id. at 45, 96-97, 99.

1468. The initial group who saw the maps, including counsel, McMaster, Began, and maybe Ms. Allen, was kept small because Mr. Lund was concerned that his fellow committee members who did not fully understand all the legal constraints would start complaining. Id. at 47.

1469. Mr. Lund instructed Mr. McMaster and Mr. Began to follow the law.
Id. at 52-53.

1470. Mr. Lund does not know why most of the lines were drawn the way
they were because Mr. McMaster and Mr. Began were the map drawers.
See, e.g., id. at 129, 138.

1471. He remembers no conversations where it was communicated that the
maps be made more favorable to Republicans. Id. at 53.

1472. He does not remember ever instructing someone to protect a certain
incumbent. Id. at 55. He also does not recall ever saying or intending to
protect a certain person of Republicans generally. Id. at 57, 58.

1473. “Sometimes people in the map drawing process got hurt and there was
nothing that could be done about it, Republican or Democrat.” Id. at 55.

1474. While “everybody wants their district to look good for them . . . it
doesn’t necessarily mean that we’re going to be able to accommodate them
or even try to accommodate them” Id. at 56.

1475. He met with both Republican and Democratic—but more
Republican—members during the process about the maps. Id. at 60. The
meetings were very brief. Id. at 61.

1476. Since the process of passing a map was a legislative one, Mr. Lund
spoke to Democrats to see what he could do to get their vote. Id. at 64. Even

though there was a Republican majority, it does not mean you have the votes to get a bill passed. Id. at 64.

1477. There was a desire to make the redistricting legislation bipartisan. Id. at 64. Mr. Lund felt it would be better for the process. Id. at 64. He tried to be fair and was not “out there to punish people” Id. at 64.

1478. The Democrats were hard to deal with because they were attacking the process before it was even started. Id. at 65-66.

1479. Mr. Lund collaborated with some Democrats in an attempt to, while still following the Apol criteria, give them a district that was more favorable to them. Id. at 70-71. More favorable does not necessarily mean politically but could also mean that the representative may not have to move. Id. at 70-71. For example, he was able to collaborate with Democratic Rep.

Kandrevas to avoid pairing him to get his vote. Id. at 72.

1480. He attempted to collaborate with the Democratic representatives from Detroit allowing them to draw their districts in Detroit in an effort to make the plan bipartisan. Id. at 76-77. The effort fell through because the maps the Democrats drew in Detroit did not meet with the legal requirements. Id. at 77. The Democratic representatives were told multiple times that their attempts did not meet the legal requirements but they were unable to produce a plan that would get the approval of counsel. Id. at 77-78, 224-231.

1481. Mr. Lund never had any dealings with REDMAP. Id. at 79. He also never got any assistance from any national Republican organization with respect to redistricting.

1482. He had meetings with members near the end of the process to show them their districts before and after the redistricting. Id. at 84.

1483. Mr. Lund can only remember one district where a change was made based on a complaint from a Representative. Id. at 86. However, even in this instance they could only give Representative Scott some of what he asked for due to the legal criteria when drawing the map. Id. at 86.

1484. He occasionally attended meetings at Dickinson Wright with some people involved with the legislative process as well as attorneys. Id. at 93. The meetings were mostly about process and so that the map drawers and attorneys could consult on the maps following the laws. Id. at 95.

1485. The members of the House of Representatives “were not quite as interested in the particulars of the congressional map as they were in the House map.” Id. at 102.

1486. The new 32nd District required a member to move in order to not be paired with an incumbent in the 33rd district. Id. at 105, 109. He asked specifically about this district but was told by there were no other options. Id. at 105.

1487. Mr. McMaster explained to him that the way the 81st and 32nd districts had to be drawn dictated how the 83rd district had to be drawn following the Apol standards. Id. at 106-107.

1488. Districts 91 and 92 were drawn to comply with Apol and the law. Id. at 114.

1489. The mapmakers did not draw maps with an idea of who would run in an open seat because following the law was the foremost consideration. Id. at 117-18.

1490. It is hard to quantify how reliably Republican or Democratic a district is because there are a number of other factors that are involved, such as the quality of the candidate, the quality of the campaign. Id. at 126.

Fundamentally, its not all about the districts when you talk about elections. Id. at 126. Even a 57% seat is not safe because candidates and the electoral environment matter. Id. at 127.

1491. Mr. Lund understood he was supposed to avoid packing and cracking as that could endanger the map in court. Id. at 144.

1492. When there is a district that is drawn around a city, that is a consequence of attempting not to break that city to comply with the legal requirements. Id. at 150-151.

1493. In 2012 “in the State House, the Democrats ran absolutely horrible campaigns, they had horrible candidates, they mismanaged their money and [Republicans] did everything effectively, efficiently and [Republicans] should have lost the majority if not for their incompetence.” Id. at 167.

1494. Political geography plays a role in the outcome of elections because in places like Detroit there are so many Democrats and Democrats tend to live closer together, which is one of the reasons the statewide vote share numbers do not align with the outcomes of statewide elections. Id. at 169, 172. The district lines “accurately represented the way people lived in Michigan.” Id. at 172.

1495. The goal of the 2011 redistricting was not partisan gains. Id. at 174.

1496. Nothing regarding REDMAP reflected what happened in Michigan. Id. at 176.

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1314. He does not remember all the various legal requirements for drafting maps because it was seven years ago. Id. at 34.

1315. He does not recall the contents of the counsel approved questionnaire that was provided to the members to find out some basic information about their districts. Id. at 62-63.

1316. Mr. Lund also forgets the details of certain meetings with Democrats because they were seven years ago. Id. at 74. That includes meetings with the Speaker and Detroit Democratic representatives. Id. at 75-76.

FFF. Robert LaBrant

1317. At the time of the 2011 Michigan redistricting, Mr. LaBrant worked for the Michigan Chamber of Commerce. Dep. of LaBrant Vol. 1 at 7 (Pls' Ex. 508A).

1318. Mr. LaBrant was not a mapdrawer. Dep. of LaBrant Vol. 2 at 240 (Pls' Ex. 508B)

1319. Mr. LaBrant does not recall any specific questions from a congressman other than maybe with Rep. McCotter. Dep. of LaBrant Vol. 1 at 14 (Pls' Ex. 508A).

1320. There was a department of the State of Michigan that would gather election data to be used in redistricting and distribute it to both political parties. Id. at 17.

1321. The Apol standards lessen partisan advantage when drawing districts. Id. at 45, 47-48.

1322. In 2001 the Michigan Chamber of Commerce wanted districts that were compliant with Apol standards. Id. at 60.

1323. Under the Apol standards there is some latitude to take partisanship into account but not much. Id. at 62.

1324. The 2001 plan was not a gerrymander because it followed the Apol criteria. Id. at 65.

1325. The Michigan Redistricting Resource Institute (“MRRI”) was formed in part for the purpose of redistricting litigation. Id. at 73-76.

1326. Mr. LaBrant was the president of MRRI until 2012. Id. at 85.

1327. The interest of the Michigan Redistricting Resource Institute was identical to the Michigan legislative caucuses with regards to the 2011 redistricting insofar as the 2011 Plan adhered to the Apol criteria. Id. at 98-100.

1328. Irrespective of the district lines, elections come down to recruiting good candidates and running good campaigns. Id. at 100.

1329. It is Mr. LaBrants opinion that the Republican redistricting Chairs—Mr. Lund and Mr. Hune—would be happy with any map that could survive a court challenge and “whatever an election result might bring would result in whatever that election might bring.” Id. at 100.

1330. Proportional representation is unlikely in Michigan because of Michigan’s political geography. Id. at 105-107.

1331. Before the Apol criteria existed the core urban Democratic vote could be easily stretched out into the suburban and rural areas. Id. at 107. With the Apol criteria in effect, stopped the practice of stretching the Democratic vote out over large areas. Id. at 108.

1332. MRRI worked to ensure that the 2011 redistricting was done in accordance with the Apol criteria and was ready to defend a compliant plan if necessary. Id. at 120-121.

1333. Mr. LaBrant's role in the 2011 redistricting was to provide advice and counsel to legislators and committee chairs, primarily about the congressional maps.

1334. The job of the law firms was to counsel the legislature about the Apol criteria. Id. at 127.

1335. The scope of the proposal in Timmer Exhibit 415 was limited after negotiations. Id. at 140.

1336. Mr. LaBrant informed Congressman McCotter and his chief of staff that the legislature should comply with the Apol criteria. Id. at 145-146. After that he "tuned out" McCotter's chief of staff Jack Daley. Id. at 151.

1337. Neither Mr. LaBrant nor Mr. Timmer were not interested in a map that had a potential partisan outcome of ten Republicans and four Democrats. Id. at 153-154.

1338. Mr. LaBrant was fine with protecting incumbents as long as it did not violate Apol. Id. at 170.

1339. Mr. LaBrant hired Mr. Timmer to be a consultant on the congressional map. Dep. of R. Labrant Vol. 2 at 199 (Pls' Ex. 508B).

1340. Mr. LaBrant's was concerned since 1982 that the Apol standards would be ignored and "partisan redistricting would rear its ugly head again." Id. at 202.

1341. That is why MRRI engaged legal counsel to assist the Michigan legislature with redistricting, to ensure redistricting was done in compliance with the law. Id. at 250.

CONGRESSIONAL AND STATE HOUSE INTERVENORS’
PROPOSED CONCLUSIONS OF LAW

I. PLAINTIFFS LACK STANDING

To maintain a suit in the federal courts Plaintiffs must establish standing. “The facts necessary to establish standing . . . must not only be alleged at the pleading stage, but also proved at trial.” *Gill v. Whitford*, 138 S. Ct. 1916, 1931 (2018). To establish standing, Plaintiffs must show they (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The purpose of the *Lujan* test is to ensure that plaintiffs have “a personal stake in the outcome of the controversy,” *Baker v. Carr*, 369 U.S. 186, 204 (1962), so that the courts are not turned into “a forum for generalized grievances.” *Lance v. Coffman*, 549 U.S. 437, 439 (2007). “That threshold requirement ‘ensures that [the Court] act[s] as *judges*, and do not engage in policymaking properly left to elected representatives.’” *Gill*, 138 S. Ct. at 1923, quoting *Hollingsworth v. Perry*, 570 U.S. 693, 700 (2013). Plaintiffs and the League of Women Voters (“League Members,” “Members”) (together “Voters”) lack Article III standing.

A. Plaintiffs’ Experts Have Not Established the Plaintiffs and League Members Suffered an Injury In Fact that is Redressable.

1. Chen’s Simulations Fail as Evidence of Injury in Fact and Redressability.

Dr. Chen’s simulations do nothing to show that Plaintiffs have suffered an injury in fact that is redressable by this Court. The principal injury in fact inquiry in the partisan gerrymandering context is the proving of “facts showing disadvantage to [voters] as individuals.” *Gill*, 138 S. Ct. at 1930. In partisan gerrymandering cases, “the harm arises from the particular composition of the voter’s own district, which causes his vote—having been packed or cracked—to carry less weight than it would carry in another, hypothetical district.” *Gill*, 138 S. Ct. at 1931. The “hypothetical district” is *necessary* to prove vote dilution since the only way to prove both injury and remedy is in relation to a hypothetical non-dilutionary district. *See id.* Therefore, if this case were a challenge to all of Michigan’s State and Congressional districts on a statewide basis, Dr. Chen’s simulations might have at least some value. However, as the *Gill* Court stated:

Remedying the individual voter’s harm, therefore, does not necessarily require restructuring all of the State’s legislative districts. **It requires revising only such districts as are necessary to reshape the voter’s district—so that the voter may be unpacked or uncracked, as the case may be.**

Id. (emphasis added) This is because a “remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established.” *Id.* at 1931 (quoting *Lewis v. Casey*, 518 U.S. 343, 357 (1996)). Dr. Chen’s simulations,

graphs, charts, and the like became effectively worthless when the Plaintiffs decided to challenge only certain specific districts.

The only “hypothetical district[s]”¹ in this case are the simulations offered by Dr. Chen. Dr. Chen conducted simulations wherein he allegedly² drew *every* state house, state senate, and congressional district 1,000 times to determine what enacted districts were “partisan outliers” as compared to his non-partisan simulated plans. FOF ¶¶1064-65, 1068, 1076. These simulations were done *statewide*.³

The simulation maps only show what a specific district would look like if *all the other districts in the state were redrawn*.⁴ Dr. Chen produced no “hypothetical

¹ As discussed *infra* Dr. Chen’s simulations are significantly flawed as they are, *inter alia*, not reliable under the Federal Rules of Evidence and did not follow the Apol criteria as required by Michigan law.

² It is ultimately unclear what Dr. Chen actually did as he never produced—and in fact deleted—his code for inspection and review by Secretary’s experts. *See infra* ; *see also* Secretary of State Mot. in *Limine* (ECF No. 147); Intervenor’s Response (ECF No. 158) (concurring in Secretary’s Motion’s in *Limine*).

³ Dr. Chen, in order to feign compliance with the Voting Rights Act, “froze” certain districts so that they would not be redrawn.

⁴ Imagine Plaintiffs are playing a game of poker and have five cards in their hand: Ace of Clubs (unchallenged district), Ace of Hearts (unchallenged district), Ace of Spades (unchallenged district), Two of Clubs (challenged district), and a Five of Diamonds (challenged district). The final hand (map) is *directly related* to the number of cards Plaintiffs decide to discard (challenged districts) and the cards that are dealt in their place (remedial districts). Since Plaintiffs are only discarding two cards (only challenging certain districts), the two of clubs and the five of diamonds, Plaintiffs have eliminated a large number of possible final hands (final maps). For example, Plaintiffs can no longer draw a flush—five cards of the same suit—or a straight—five cards in order—because the cards they kept (unchallenged districts) *dictate*, to at least some extent, the final hand (remedial map) they will have. Dr. Chen discarded *all of the cards* (redrew all the districts). Therefore, over

district[s]” that could exist *if one attempted to remedy only the challenged districts* to be more or less packed or cracked. Dr. Warshaw’s chart does nothing to fix this problem because the data underlying the chart—Dr. Chen’s simulations—is an irrevocably flawed statewide measurement.

2. Chen’s Expert Report Should Be Excluded Since He Destroyed His Source Code

Federal Rule of Evidence 702(c) and (d) dictate that expert testimony must be “the product of reliable principles and methods” and “the expert has reliably applied the principles and methods to the facts of the case.” Fed. R. Evid. 702(c), (d). On the post-trial record, any reliance upon Dr. Chen’s report and simulations would be clearly erroneous. *See Deal v. Hamilton County Bd. of Educ.*, 392 F.3d 840, 851 (6th Cir. 2004). As fully set out in the Secretary’s Motion *in Limine*, the legal arguments of which are also incorporated herein by reference,⁵ Dr. Chen did not save and provide his source code so that his work could be properly evaluated. *See generally* Secretary’s Mot. *in Limine* (ECF No. 147) (PageID# 5367-5391). As

the course of 1000 hands of poker (simulations) Dr. Chen could deal (simulate) a flush or a straight because he discarded all the cards (redrew all the maps). Dr. Chen’s simulations tell the Court nothing about final hand Plaintiffs will have (actual plans and districts) and whether those final hands are winning (remedy the harm and are compliant with the law) or are losing (do not remedy the harm or are not compliant with the law) because he was not using the same variables as the Plaintiffs.

⁵ While the Motion was initially offered by then Secretary of State Johnson, Congressional Intervenors (and now too State House Intervenors) informed this Court that they will adopt the Secretary’s Motions as their own. *See* ECF No. 158) (PageID# 6326-6327).

such, his report should be excluded from evidence or, alternatively, be given no weight by this panel.

“The statements constituting a scientific explanation must be capable of empirical test.” *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 593 (1993) (citation omitted). Accordingly, the mere presentation of an “experts’ qualifications, their conclusions, and their assurances of reliability” is “not enough” under *Daubert*. *Daubert v. Merrell Dow Pharmaceuticals, Inc.* 43 F.3d 1311, 1319 (9th Cir. 1995).

Dr. Chen’s code is unique to this case. FOF ¶¶1064, 1069, 1087. Even if it were not, no litigants’ expert has ever opined on the validity or appropriateness of his source code in other matters. And though the Secretary retained an expert—Dr. Liu—to do that in this case, Dr. Chen’s “deletion” or failure to produce his final source code robbed any party of the chance to examine the validity of Dr. Chen’s simulation methods. FOF ¶¶1085-1094, 906.

Thus, the failure to preserve and produce details of the methodology underlying an expert’s opinions warrants either exclusion or that the evidence be given no weight in this Court’s deliberations. *See Green Party of Tenn. v. Hargett*, 2017 U.S. App. LEXIS 18270, *9 (6th Cir. 2017) (expert opinion was “unpersuasive and unhelpful” and therefore was given little weight). This is because, in the absence of such evidence, the expert’s results are not capable of

being verified, refuted, or tested. *See, e.g., Am. & Foreign Ins. Co. v. General Elec. Co.*, 45 F.3d 135, 138 (6th Cir. 1995) (upholding exclusion of expert testimony where, among other things, there was “a real question about how [the expert] conducted his tests” because “[t]he raw data was not preserved[.]”). The “elementary” failure of Dr. Chen to preserve his methodology “makes it impossible for a court or adversary to test . . . [that] methodology . . . for veracity and reliability.” *LVL XIII Brands, Inc. v. Louis Vuitton Malletier S.A.*, 209 F. Supp. 3d 612, 645 (S.D.N.Y. 2016). Depriving a party from being able to test an experts reliability is a failure under both *Daubert* and the Federal Rule of Evidence. Dr. Chen’s report and simulations, including Plaintiffs’ exhibits 3-51, 253, should be either excluded or given no weight in this Court’s deliberations.

3. Chen’s Failure to Use the Apol Criteria is Fatal to his Methodology and Ultimate Conclusions

Dr. Chen’s description of his simulations and the conclusions he draws from the simulations cannot be relied upon because the criteria he claims he used for the simulations was different than Michigan’s statutory criteria, *i.e.*, the Apol criteria. *See* Secretary’s Mot. *in Limine* (ECF No. 147) (PageID# 5383) (chart comparing the Apol criteria to the criteria Chen claimed to have used); *id.* at (PageID# 5386-5388). When drafting the 2011 Plans, the actual mapmakers relied first and foremost on the Apol criteria. It is undisputed, however, that Dr. Chen failed to comprehend and faithfully program the Apol criteria when creating the code for his

simulated maps based on his own description of how he claims to have coded his simulations Chen FOF ¶¶1067-1071. Stated differently, Dr. Chen failed to properly program his “non-partisan” variables when he gave his computer the instructions it should follow when drawing the simulated maps, and he admitted as much in his deposition. FOF ¶¶1067-1071.

For example, the Apol criteria include a directive that when choosing between two municipalities to shift, the map drawer must shift the fewest whole municipalities necessary, and in choosing between two municipalities to shift, must only shift the municipality with the lesser population. Mich. Comp. Laws § 4.261(f); Mich. Comp. Laws § 3.63(iii)-(vi) (the congressional criteria largely follow the state legislative criteria). However, Dr. Chen testified that his simulations *were not drawn with this limitation*. FOF ¶1070. By ignoring this requirement, Dr. Chen rendered it impossible to replicate through his simulations what the map drawers were doing in 2011. FOF ¶¶1085-94. Thus, Dr. Chen’s simulation code as he described it had significantly more choices when drawing his simulated district lines than the original map drawers. FOF ¶¶1067-1074,

Dr. Chen’s own description of his code also indicates that he ignored Apol’s requirement that when more than one district is drawn within a city or township, district lines shall be drawn to achieve the maximum compactness possible within

a population range of 98% to 102% of ideal. FOF ¶1071; MCL §§3.63(c)(vi), 4.261(i).

Additionally, Dr. Chen utilized Voter Tabulation Districts (“VTDs”) as the building blocks for his simulated maps. Pls.’ Ex. 3 at 59-60; FOF ¶¶1073-1074, 1236-1238. However, Michigan law required the mapmakers to use Census tracts and Census blocks when drawing the maps. TT, Vol. III, p. 93-97; Defendant SOS Ex. 6, p. 20; FOF ¶¶1073-1074. This is significant because Census Tracts and Blocks are based upon the ten-year federal data, while VTDs vary with each election, meaning that any conclusions drawn by utilizing this erroneous building block is also less stable and fluctuates much more frequently. TT, Vol. III, pp. 93-95; Defendant SOS Ex. 6, pp. 6, 13, 20; FOF ¶¶1073-1074. It was never made clear in any report or testimony which year’s VTDs Dr. Chen used in his simulations. Because Dr. Chen’s own testimony indicates he used the wrong building blocks, his simulated maps are meaningless, as is his conclusion that the enacted legislative plan maps were inappropriate or partisan biased because they were not among the more than 1,000 maps he created using the wrong data. TT, Vol. III, pp. 85-86; Defendant SOS Ex. 6, p. 39; FOF ¶¶1073-1074.

Dr. Chen’s simulations, as he described his code, also “maximize[]” compactness “in all cases,” which is significantly different than Michigan’s state and congressional districting criteria. *Compare* Chen Report p. 59 *and* Chen Dep.

144:15-144:20 *with* Mich. Comp. Laws §§ 3.63(c)(vi), 4.261(i); *see also* FOF ¶1071. Dr. Chen even explained this compactness priority instruction was provided to him by counsel for the Plaintiffs. FOF ¶¶1069-1070. This is significant because densely populated and geographically concentrated areas, such as cities and municipalities, tend to favor Democratic candidates. TT, Vol. I, p. 168-169. Thus, by ignoring permissible compactness criteria, the simulated maps produced skewed results.

Because Dr. Chen’s simulations—once again, as he described his code since it was impossible to examine his deleted code—used parameters not employed by the actual mapmakers as codified in statute, his simulations tell us nothing about the universe of possible maps that can be drawn using *correctly applied criteria*. His simulations then, tell us nothing about what a map would look like under the correct criteria used by the actual mapmakers at the time the maps were drawn. This fundamental flaw destroys any hope that Dr. Chen’s maps have any bearing on this case.

Dr. Chen effectively admits his simulation methodology is flawed. When Dr. Chen was asked whether or not he considered that the 2011 Plans would fall outside of his simulations for an alternative reason, he stated that he “would have no basis for saying that it [was possible] or [was not possible]” Pls.’ Ex. 505 at 152:24-152:7. Dr. Chen never studied whether a simulation that did not

overemphasize compactness—above what Apol requires—would have been similar or dissimilar from the 2011 Plans. Pls.’ Ex. 505 at 149:12-24; *see* FOF ¶¶1069-71. Even if this Court feels exclusion is improper under the “gatekeeping” doctrine articulated in *Deal*, 392 F.3d at 851, it should not give Dr. Chen’s simulations any weight as they were created using criteria demonstrably and materially different from that which Michigan law dictates, and utilized simulation coding that has never been examined by anyone other than Dr. Chen.

4. Plaintiffs’ Experts Only Address Alleged Harm On a Statewide Basis, Not on an Individual Basis

Outside of the Voters’ testimony directly contradicting their own standing, Plaintiffs’ case has another fundamental flaw which was not remedied at trial. Plaintiffs are *not* challenging the 2011 Plans as a whole. Instead, after their statewide challenge was dismissed, Order Granting in Part Mot. Dismiss (ECF No. 54) (PageID# 943-950), Plaintiffs decided to challenge only 34 total districts: 9 Congressional Districts, 15 State Legislative Districts, and 10 State Senate Districts. *See* Pls’ Response Mot. Summ. J. (ECF No. 129, n. 11) (PageID# 3349) (filed October 13, 2018). Plaintiffs conducted this about face after the close of discovery.⁶ Case Mgt. Order No. 1 (ECF No. 53) (PageID# 939-940) (discovery deadline set for August 24, 2018).

⁶ It is also pertinent to note that each of Plaintiffs’ reports were completed *before* the Supreme Court’s decision in *Gill* was published. As such, Plaintiffs’ expert

Plaintiffs provided three expert reports. Each report focuses *exclusively* on statewide harms, typically related to the relative success of a political party on a statewide basis. None of Plaintiffs' evidence is specific to the challenged districts.

Dr. Mayer applied five different tests to assess partisan bias or asymmetry on a statewide basis. Mayer Report, Pls.' Ex. 53, pp. 15-25; FOF ¶1097. However, he never draws any conclusion that any particular district is packed or cracked. *See generally* Pls.' Ex 10. This is unsurprising since none of the metrics he uses are capable of evaluating any specific district. Even though he did calculate vote shares for districts under the 2011 Plans as compared to "demonstration plans," he made no assessments of packing or cracking, or whether any voter in any district would be remedied by the adoption of the demonstration plans that he reviewed. *Id.* Further, the demonstration plans are *statewide* plans that were provided by Dr. Chen. FOF ¶¶1097-1100, 919. Mayer's analysis is insufficient to prove district specific harm or the availability of a remedy to *only* the challenged districts. *See infra*. Additionally, the "demonstration plans" are highly objectionable as these plans were prepared by Dr. Chen and therefore share all the faults associated with

reports suffer from the same flaws as those experts in *Gill*. This is at least circumstantial evidence that the various analyses proposed by these experts were never intended to apply to a post-*Gill* standing analysis. And, as is clear from a review of the reports, they all suffer from the infirmity identified in *Gill*: one cannot prove district specific harm through statewide analysis. *Gill*, 138 S. Ct. at 1931, 1933.

Dr. Chen's simulations. *See supra*. As such, Plaintiffs' Exhibits 567-569 should be excluded from evidence, or, alternatively, be given no weight by this Court.

Similarly, Dr. Warshaw's report used similar "group political success" metrics similar to those used by Dr. Mayer. Warshaw Report, Ex. 11, pp. 6-12. The primary focus of Dr. Warshaw's report, as well as his testimony at trial, was the efficiency gap. TT, Vol. I, p. 150. The efficiency gap was the precise measure of partisan asymmetry that was insufficient to find standing in *Gill*. *Gill*, 138 S. Ct. at 1933. In fact, any measure predicated on "partisan-asymmetry metrics such as the efficiency gap" is insufficient under *Gill* to prove district and voter specific harm because these metrics only measure "the effect that a gerrymander has on the fortunes of political parties." *Gill*, 138 S. Ct. at 1933. Indeed, Professor Warshaw admitted at trial that the efficiency gap does not address the effect that an alleged partisan gerrymander has on the votes of particular citizens. TT, Vol. I, p. 171; FOF ¶¶1121, 1119. Nor does it measure a particular voter's ideology. TT, Vol. I, p. 171-172. Each and every metric offered by both Dr. Warshaw and Dr. Mayer suffers from the same fatal flaw, they each set out statewide harm and, if they identify any remedy at all, that remedy is itself statewide. This is insufficient under *Gill*. *See, e.g., Gill*, 138 S. Ct. at 1931.

Dr. Warshaw's chart, belatedly introduced after the close of discovery in response to Defendants' Motions for Summary Judgment, is a poor *ex post facto*

attempt at solving Plaintiffs’ standing quagmire. The Warshaw The Warshaw Chart purports to place the current district of each Plaintiff or Member in the context of Dr. Chen’s 1000 simulated plans. *See* Pls’ Ex. 278; FOF ¶1149-1154. It is through this method that Plaintiffs’ purport to prove standing. However, the Chart is flawed on multiple fronts.⁷

Even if one accepts the Warshaw Chart at face value, it shows that many Plaintiffs and Members live in challenged districts whose exact “partisanship” could well have resulted from what the Plaintiffs present as a non-partisan districting process. There are a large number of Voters who live in a challenged district within the range of Chen’s simulations as shown on the Warshaw Chart. *See* Pls’ Ex. 278; *see also* Mot. J. Partial Findings (ECF No. 253) (ECF No. 253-253-2) (PageID# 9924-9997). If the Voters’ enacted district falls within the grey area on the chart, then the Voter lives in a district that could have been created through a so-called non-partisan districting process. TT, Vol. I, p. 203-04. If the Voter lives in a district that could have been created by Dr. Chen’s simulations—a district that is by Plaintiffs’ own definitions are not “packed” or “cracked”—the Voter has not been harmed. FOF ¶1153.

⁷ The primary flaw of the Warshaw Chart is that the simulations underlying the data (the little grey dots) are *statewide* simulations.. Plaintiffs, however, are only challenging specific districts. As such, the Chen data underlying the Warshaw Chart tells us nothing of the packing, cracking, or availability of a remedy in the specifically challenged districts..

5. Plaintiffs' Experts' Social Science Metrics are Unreliable Under the Federal Rules of Evidence and Should Be Excluded

Plaintiffs' three expert witnesses employed five different social science metrics that purport to identify the existence and to what extent the 2011 Plans are a partisan gerrymander. The five metrics are: (1) Partisan Bias; (2) Partisan Symmetry; (3) Efficiency Gap; (4) Mean-Median; and (5) Declination . This Court has broad discretion in deciding whether to admit or exclude expert testimony. *See Nelson v. Tennessee Gas Pipeline Co.*, 243 F.3d 244, 249 (6th Cir. 201). *Daubert* requires that "all scientific testimony or evidence admitted [be] not only relevant, but reliable." *Daubert*, 509 U.S. at 589. The burden of demonstrating the admissibility of expert testimony rests on the party offering it. *Muzzey v. Kerr-McGee Chemical Corp.* 921 F. Supp. 511, 518 (N.D. Ill. 1996). The five social science metrics employed by Plaintiffs' experts are neither reliable or generally accepted. *See* Fed. R. Evid. 702. As such, the testimony regarding experts five metrics, including deposition testimony, should be excluded from evidence. *See e.g., Daubert*, 509 U.S. at 589; Fed R. Evid. 702. Alternatively, this Court should give no weight to Plaintiffs' experts social science metrics. *See Green Party of Tenn. v. Hargett*, 2017 U.S. App. LEXIS 18270, *9 (6th Cir. 2017).

There is no widespread acceptance that any of these metrics are appropriate to determine if there is a partisan gerrymander. FOF ¶¶1110-1111, 1113, 1119-1120; TT, Vol. I, pp. 149-150. There is no consensus as to what, if any, specific

threshold or score indicates that a plan is or is not an impermissible gerrymander. TT, Vol. I, pp. 149-150; Warshaw Dep., p 57-58, 172; FOF 1116-1140. Finally, all of these metrics use statewide data and are applied statewide, so they do nothing to identify harm in any specific challenged district. *See supra*.

Professor Warshaw admitted that with regard to the efficiency gap, which was the primary basis for his findings, (i) there is no bright line test for what efficiency gap number shows a partisan gerrymander, (ii) there is no well-respected view in the political science community as to what efficiency gap number renders a redistricting plan unacceptable or an extreme partisan gerrymander; and (iii) there is not even a precise range of efficiency gap scores that indicate whether a particular redistricting plan is unacceptable or an extreme partisan gerrymander. *See e.g.*, FOF ¶ 1136-37; TT, Vol. I, pp. 153-154, 179.

More importantly, Professor Warshaw admitted that a number of well-respected political scientists do not believe the efficiency gap is even capable of measuring a partisan gerrymander. FOF 1119-20. One reason political scientists do not believe the efficiency gap is able to measure partisan bias is because it can show a partisan gerrymander exists when, in fact, it does not, such as when the “efficiency gap” identifies maps drawn by federal courts as partisan gerrymanders. FOF ¶¶ 1121-1140. As such, these political scientists would disagree with

Professor Warshaw's conclusion that the efficiency gap showed a partisan gerrymander existed in Michigan from 2012-2016. *Id.*

With regard to the mean-median test, Professor Warshaw acknowledged that the test has been subjected to "serious criticism" and that there is no wide scholarly acceptance of mean-median as the best or proper measure of partisan gerrymanders. FOF ¶¶1179-1186. Professor Warshaw also acknowledged that the mean-median test is "not ideal from a theoretical point of view" because it fails to directly incorporate information about the seats parties win, and does not factor in voter turnout. *See id.*; FOF ¶ 1181.

As for declination, Professor Warshaw acknowledged there has not been wide acceptance of declination in the political science community as a proper measure for partisan bias or gerrymandering. FOF ¶¶1187-1190. Professor Warshaw also acknowledged that "[a] weakness of the declination approach vis-a-vis the efficiency gap is that declination lacks a clear interpretation in terms of the number of seats that a party gains through gerrymandering." *Id.* Clearly, the metrics relied upon by Plaintiffs' experts are neither generally accepted nor reliable.

This is especially true with regard to the efficiency gap, which is the primary metric the League and Plaintiffs rely upon in this case. In addition to the flaws identified above, Professor Warshaw admitted that "... an efficiency gap could be

caused by factors other than intentional gerrymandering” FOF 1123. This is true, in part, because the efficiency gap does not measure competitiveness. FOF 1126. Therefore, if one party wins a number of competitive races in a particular election for reasons wholly unrelated to partisanship, the efficiency gap could show there was a partisan bias in the election when, in fact, there was not. FOF 1116-1140.

Another problem with the efficiency gap is that it can be affected by the intentional drawing of district lines to accomplish goals other than maximizing partisan seat share, such as ensuring the representation of racial minorities. FOF ¶1129. These federally required districts, which can be referred to as naturally packed districts, tend to be heavily populated with African-American voters. FOF ¶1130. They also tend to be heavily populated with Democratic voters. FOF ¶1131. These districts are “packed” for reasons other than partisan gerrymandering. FOF ¶1132. These types of districts will always exist, even if Michigan’s voting maps are redrawn, because either the state or this Court will be required to maintain them. FOF ¶1133. However, the efficiency gap does nothing to factor in whether a vote in this type of district is “wasted” for non-partisan reasons. FOF ¶1133-36. The efficiency gap counts these votes in the exact same manner votes that would be “wasted” in the event of a partisan gerrymander. *Id.*

Further, while wasted votes are the sole factor used under the efficiency gap for attempting to determine whether a partisan gerrymander exists, Professor Warshaw admitted that votes can be “wasted” for reasons other than partisan gerrymandering. *Id.* Professor Warshaw also admitted there is no baseline for establishing the degree of “wasted” votes that indicate a partisan gerrymander. FOF ¶1137.

Clearly, there are significant flaws with the metrics the League and Plaintiffs rely upon in this case to show the existence of an alleged partisan gerrymander. This Court should not exclude these metrics and the findings of Plaintiffs’ experts, all of which are based upon these faulty or otherwise questionable metrics. *See Green Party of Tenn.*, 2017 U.S. App. LEXIS 18270 at *9.

Plaintiffs’ experts clearly have not established that the 2011 Plans were the result of partisan gerrymandering. As such, Plaintiffs’ entire lawsuit should be dismissed.

B. Plaintiffs and Individual League Members Have Not Proven They Suffered an Injury In Fact Under the First or Fourteenth Amendments Based on a Vote Dilution Theory

In addition to Plaintiffs’ experts inability to show—on a statewide basis—that the 2011 Plans were the result of partisan gerrymandering, individual Plaintiffs and League Members have not demonstrated injury in fact. “Foremost among [the standing] requirements is injury in fact—a plaintiff’s pleading and proof that he

has suffered the invasion of a legally protected interest that is concrete and particularized, *i.e.*, which affects the plaintiff in a *personal and individual way*.” *Gill*, 138 S. Ct. at 1929 (emphasis added). Here, Plaintiffs alleged injury is that their votes were diluted under the First and Fourteenth Amendments. Specifically, Plaintiffs’ alleged harm under the First Amendment is that “[t]he Current Apportionment Plan . . . intentionally diminishes and marginalizes the votes of the individual Plaintiffs [and] Democratic members of the League” Compl. ¶ 76 (ECF No. 1) (PageID# 30). Plaintiffs’ Fourteenth Amendment claim is also based exclusively on vote dilution. Compl. at ¶83 (ECF No. 1) (PageID# 32) (“The Current Apportionment Plan intentionally and materially packs and cracks Democratic voters, thus diluting their votes”).

“A person’s right to vote is individual and personal in nature.” *Gill*, 138 S. Ct. at 1929. “To the extent the plaintiffs’ alleged harm is the dilution of their votes, that injury is district specific.” *Id.* at 1930. Accordingly, a plaintiff alleging a vote dilution claim under the First or Fourteenth Amendments must prove facts demonstrating that the redistricting plan places her at a material disadvantage in their own specific individual district. *Id.* at 1929, 1931. Proof of a “shared interest in the composition of the legislature as a whole” is insufficient for standing purposes. *Id.* at 1924-25, 1932.

Likewise, it is insufficient for Plaintiffs to merely adduce statistical analyses of partisan asymmetry—*e.g.*, that Democratic voters cannot translate votes into seats as effectively as Republicans—because their analyses are statistical averages. *Id.* at 1933. As such, these averages “do not address the effect that a gerrymander has on the votes of particular citizens.” *Id.* Under *Gill*, evidence of statewide harm is insufficient to prove standing. *Id.* at 1931.

**1. Plaintiffs and League Members Who Are Not Democrats
Have Not Suffered an Injury In Fact**

Plaintiffs⁸ and League Members must be Democrats in order to prove harm in this case. *See, e.g.*, Compl. at ¶28 (ECF No. 1) (PageID# 14) (“The Michigan Legislature intentionally tilted the Current Apportionment Plan heavily against Democrats and in favor of Republicans The legislature accomplished this by cracking and packing Democratic voters. . . .”). However, several Members often vote for Republicans or have admitted they may do so in the future. *See, e.g.* FOF¶¶134, 274. And some Voters are members of a third-party like independents and socialists. FOF¶¶442, 536. Because these individuals do not identify exclusively with the Democratic party, they have not shown that they redistricting prevented them voting for the candidate of their choice. Thus, they have not been harmed by the redistricting.

⁸ The following League Members were not produced for trial in any form and therefore should be immediately dismissed from this action: Frederick Durhal, Diana Ketola, Jon LaSalle, Richard Long, Lorenzo Rivera, and Rashida Tlaib.

2. Plaintiffs and League Members With Democratic Representatives Have Not Suffered an Injury In Fact

The fact that a Plaintiff or League Member has the “ability to vote for and elect a Democrat” in his or her district prevents that individual from having standing. *Gill*, 138 S. Ct. at 1925 (internal alterations omitted). Many of the Plaintiffs and League Members have only had Democratic representatives in their challenged districts since the 2011 redistricting. *See, e.g.*, FOF¶¶29-39, 103,112. Several Plaintiffs and League Members testified that they are pleased with their current Democratic representation, *see, e.g.*, FOF¶¶29-39, 104, 112, 187, 198, 213, 326, or would like to continue to be represented by their Democratic representative, *see, e.g.*, FOF¶¶9, 150, 285, 320, 357, 384, 512. At least one other League Member claims to have only been harmed “philosophically,” and has experienced no actual tangible harm. FOF¶¶698, 700. If a “philosophical” harm is indeed any harm, it is at best a “generalized grievance[.]” and not a cognizable harm in the federal courts. *See Gill*, 138 S. Ct. at 1929. These individuals have not been harmed because the redistricting has not negatively impacted their ability to vote for the elected official of their choice. The only harm that these Voters allege is to their lack of statewide representation. *See infra* at _____. This is also not a harm recognized under the First and Fourteenth Amendments. *Gill*, 138 S.Ct. at 1932-34. As such, these voters have not suffered a harm personal to them as individuals and therefore they each lack standing.

3. Plaintiffs and League Members Who Live in Close Geographic Proximity to Other Democrats Have Not Suffered an Injury In Fact

Another example of Voters undermining their own standing is the simple fact they live in geographically discrete and densely populated parts of Michigan.⁹ This type of voter concentration occurs when, due to the natural sorting of population and/or the need to protect the rights of minorities, voters live in close geographical proximity close to other likeminded voters. This is a phenomenon that occurs in Michigan. FOF¶¶1254, 1316, 1385, 1494. The reverse is true in some districts as an individual voter is completely surrounded by voters of the opposite party. Voters readily admit that this is an issue for some of them. *See, e.g.*, FOF¶¶448, 452. The redistricting did not harm these individuals because they will always live in districts they claim are “packed” districts. This is the exact situation that the Supreme Court found applied to Professor Whitford—the lead plaintiffs in *Gill v. Whitford*, who lived in what he admitted at trial is the heavily Democratic leaning City of Madison, Wisconsin. No matter how the maps were drawn, he would likely live in a district that would elect a Democrat. *Gill*, 138 S.Ct. at 1924-25.

⁹ Political geography was the subject of the expert report properly produced by Congressional Intervenors. This report was improperly excluded in violation of Congressional Intervenors’ due process rights. *See* Mot. Alter Case Mgt. Order No. 1 (ECF No. 137).

4. Plaintiffs and League Members Desiring Proportional Representation Have Not Suffered an Injury In Fact

A large number of Plaintiffs' and Members' primary complaint about the 2011 redistricting is that the composition of the representational body as a whole is not proportional to the general support Democrats have statewide. *See* FOF ¶¶ 118, 230, 242, 254 467, 551, 739; 772. In other words, these individuals want proportional representation. However, the *Gill* court clearly held that an "interest in [one's] collective representation in the legislature and in influencing the legislature's overall composition and policymaking" is not a cognizable injury. *Gill*, 138 S. Ct. at 1931 ("[S]tatewide harm to [ones] interest in their collective representation in the legislature" including its "overall . . . composition" is not "an individual and personal injury of the kind required for Article III."). Neither proportional representation nor statewide harm are sufficient to demonstrate standing. *See Gill*, 138 S. Ct. at 1931; *id.* at 1933.

C. Plaintiffs and League Members Have Not Proven They Suffered an Injury In Fact Under an Associational Theory of the First Amendment

If this Court believes that Plaintiffs have articulated a separate cause of action based on the burden on the right to associate, Plaintiffs have not proved the existence of an associational burden. "The Constitution guarantees freedom of association . . . as the indispensable means of preserving other individual liberties." *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984). "Consequently, we

have long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Id.* at 622.

What the Constitution does not mandate or guarantee to any voter is a right to win. *See Badham v. March Fong Eu*, 694 F. Supp. 664, 675 (N.D. Cal. 1988) (three-judge court) *sum aff’d*. 488 U.S. 1024 (1989); *see also Bandemer*, 478 U.S. at 132; *Shaw v. Reno*, 509 U.S. 630, 682 (1993) (Souter, J., dissenting) (“As we have held, one’s constitutional rights are not violated merely because the candidate one supports loses the election or because a group (including a racial group) to which one belongs winds up with a representative from outside that group.”) (citing *Whitcomb v. Chavis*, 403 U.S. 124, 153-155 (1971)). Further, there is a presumption that “an individual . . . who votes for a losing candidate . . . is adequately represented by the winning candidate and [has] as much opportunity to influence that candidate as other voters in the district.” *Bandemer*, 478 U.S. at 132. “This is true even in safe districts where the losing group loses election after election.” *Id.*

For an associational burden to be established under the First Amendment, “a plaintiff must establish that he or she is regulated, constrained, or compelled *directly* by the government’s actions” *ACLU v. NSA*, 493 F.3d 644, 661 (6th

Cir. 2007) (emphasis added); *see also Badham*, 694 F. Supp. at 675 (noting that First Amendment harm is not shown where they are not subject to “any criminal or civil penalties for engaging in their protected expression.”). At base, there must be some “device that directly inhibits participation in the political process” for Plaintiffs to be successful in their associational claim. *See Pope v. Blue*, 809 F. Supp. 392, 398 (W.D.N.C. 1992) (three-judge court) *sum. aff’d Pope v. Blue*, 506 U.S. 801 (1992); *see also Washington v. Finlay*, 664 F.2d 913, 928 (4th Cir. 1981).

Plaintiffs have proven no injury directly attributable to the 2011 Plans. This is because “[t]he carefully guarded right to expression does not carry with it any right to be listened to, believed or supported in one’s views.” *Finlay*, 664 F.2d at 928. Plaintiffs, however, are in fact requesting a right to be listened to, FOF¶¶25-27, but also—even more ambitiously—to be *electorally successful*. *See, e.g., FOF¶¶117-18*. The Constitution has no such right. *Badham*, 694 F. Supp. at 675 (“The First Amendment guarantees the right to participate in the political process; it does not guarantee political success.”). “While plaintiffs may be discouraged by their lack of electoral success, they cannot claim that the redistricting plan regulates their speech or subjects them to any criminal or civil penalties for engaging in protected expression.” *Pope*, 809 F. Supp. at 398.

Plaintiffs did not demonstrate harm because they were not prevented from registering individuals to vote, *See, e.g., FOF¶83*, campaigning on behalf of

candidates, *see, e.g.*, FOF¶139 205,, volunteering on behalf of campaigns and political organizations, *see, e.g.*, FOF¶173, 476, speaking in favor of candidates and political organizations, *see, e.g.*, FOF¶552, and making political contributions, *see, e.g.*, FOF¶139.

Additionally, the League claims to be scrupulously non-partisan, even going so far as to restrict the partisan political activities of its officers and other officials. FOF¶19, 53. Yet, the entire basis of Plaintiffs’ lawsuit is that Democratic Party candidates have not won “enough” seats. Given the non-partisan mission of the League, it cannot be harmed if Democrats do not hold a certain level of elected seats as a matter of law.

Plaintiffs’ First Amendment rights have not been harmed. *See, e.g., League of Women Voters v. Quinn*, No. 1:11cv-5569, 2011 U.S. Dist. LEXIS 125531 *12-13 (N.D. Ill. Oct. 28, 2011) (“The redistricting plan does not prevent any LWV member from engaging in any political speech, whether that be expressing a political view, endorsing and campaigning for a candidate, contributing to a candidate, or voting for a candidate.”); *Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, 835 F. Supp. 2d 563, 575 (N.D. Ill. 2011); *Pope*, 809 F. Supp. at 398-99 (rejecting freedom of association claim because there is no “device that directly inhibits participation in the political process.”); *Badham*, 694 F. Supp. at 675 (“Plaintiffs here are not prevented from fielding candidates or from voting

for the candidate of their choice. The First Amendment guarantees the right to participate in the political process; it does not guarantee political success.”)

Certain Plaintiffs and Members complain that they would do more if their district lines were drawn differently. *see, e.g., FOF ¶¶25-26 FOF*. However, subjective “chill” is not a cognizable First Amendment harm. *See e.g., ACLU*, 493 F.3d at 660 (“Allegations of a subjective ‘chill’ are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.” (quoting *Laird v. Tatum*, 408 U.S. 1, 13-14 (1972); *Badham*, 694 F. Supp. at 675; *Pope*, 809 F. Supp. at 398).

D. Plaintiffs and League Members Lack Standing Because they Failed to Prove Redressability

“[A] plaintiff’s remedy must be ‘limited to the inadequacy that produced his injury in fact.’” *Gill*, 138 S. Ct. at 1930. As such, “standing is not dispensed in gross’: A plaintiff’s remedy must be tailored to redress the plaintiff’s particular injury.” *Gill*, 138 S. Ct. at 1934. Therefore, “[t]he nature of the . . . remedy is to be determined by the nature and scope of the constitutional violation.” *Casey*, 518 U.S. at 357. The Plaintiffs use of statewide metrics do nothing to identify an injury in a specific district nor do they identify how any specific district could be remedied separate and apart from a statewide redistricting. *See supra*. Furthermore, neither the League nor the Plaintiffs have any evidence of an “injury” that needs to be redressed.

Professor Warshaw admitted at trial that there is no evidence showing a partisan gerrymander will exist at the time of the 2020 elections:

Q. The question is, sitting here today, you cannot tell the Court that there is definitive evidence of a partisan gerrymander that would exist at the time of the 2020 elections, correct?

A. I think the evidence I provided is very consistent that there has been a partisan asymmetry in favor of Republicans across this entire decade, but I can't definitively say that will still exist in 2020. [TT, Vol. I, p. 183].

Professor Warshaw also admitted that: (i) the effects of a partisan gerrymander decay or wane over time; (ii) the alleged pro-Republican efficiency gap in Michigan decreased 6.5% from 2012 to 2016; (iii) he did not analyze the efficiency gap following the 2018 election; (iv) he does not know what, if any, efficiency gap existed after the 2018 election with regard to the State House, the State Senate, or U.S. Congress; (v) he does not know whether or what kind of plausible shifts in voter sentiment will occur in Michigan elections after 2016; and (vi) he could not say that the alleged efficiency gap in 2016 will not drop in the 2020 election and that the Democrats will not pick even more seats than they did in Michigan's 2018 election. FOF¶1142. In short, Professor Warshaw and by extension, the League and Plaintiffs, have no facts or evidence showing a partisan gerrymander currently exists or that one will exist at the time of the 2020 elections.

The League and Plaintiffs have failed to offer any evidence showing that there is a current injury which needs to be redressed.

This is especially true considering the testimony from a significant number of the Plaintiffs and League Members that they are happy with their current representatives and would be pleased if those representatives are re-elected in 2020. FOF¶9, 25. Plaintiffs and League Members cannot show they have standing as they failed to establish that their alleged injury is likely to be redressed by a favorable decision.

E. The League of Women Voters Lacks Standing.

“An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization’s purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000).

The League of Women Voters does not meet the first or third *Friends of the Earth* factors. First, as shown *supra*, the individual Members have no standing to sue in their own right. *See supra*. Second, both the “claim asserted” and the “relief requested” required the participation of the individual Members. The harm in the vote dilution context flows, not to the League as an entity, but to the individual

League members who must, in their individual capacities, prove that their votes were diluted in their individual districts. This is not a case in which “[a]n association may have standing to assert an injury itself regardless of whether its members also have standing.” *See Am. Canoe Ass’n, Inc. v. City of Louisa Water & Sewer Comm’n*, 389 F.3d 536, 544 (6th Cir. 2004); *see also* Order Denying Summ. J. (ECF No. 143) (PageID# 5326). The *Gill* Court foreclosed such, at least for vote dilution claims, since the injury is *always* voter and district specific. *See Gill*, 138 S. Ct. at 1929. The League as an entity cannot vote in its own right nor can it vote on behalf of its members. Plaintiffs all but admit the League’s lack of standing since they endeavored to identify and produce for trial deposition at least one named Plaintiff or Member in each of their challenged districts. Therefore, because the League of Women Voters’ members have no standing and the individual members were necessary for the Plaintiffs to attempt to prove their case, the League, as an entity, does not have associational standing.

II. EVEN IF PLAINTIFFS/LEAGUE MEMBERS PROVED STANDING, THEY FAILED TO ESTABLISH THE ELEMENTS OF THEIR CLAIM UNDER THE FOURTEENTH AMENDMENT

If this Court determines that Plaintiffs have standing, Plaintiffs must then submit evidence sufficient to refute the presumption that the Michigan legislature in drafting legislation, even redistricting legislation, acted in good faith. *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018) (quoting *Miller v. Johnson*, 515 U. S. 900,

915 (1995)). As Congressional and State House Intervenor will demonstrate below, Plaintiffs cannot rebut the presumption that the legislature acted in good faith, much less show that partisan intent predominated. Instead, the evidence shows that the map-makers complied with the Apol provisions and this compliance drove the lines of the districts. Politics only played an incidental role in drawing the districts.

A. Plaintiffs' Proposed Standard

Based on the standard adopted by this Court at the summary judgment stage, to establish their claims under the Fourteenth Amendment, Plaintiffs/League Members must prove two elements: (1) discriminatory intent under the predominant purpose standard, *i.e.*, that “a legislative mapdrawer’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,’” *Common Cause v. Rucho*, 318 F.Supp. 3d 777, 864 (M.D.N.C. 2018) and (2) discriminatory effects, *i.e.*, that “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.” *Id.* at 867. If Plaintiffs/League Members prove these elements, the burden shifts to the government to prove “that a legitimate state interest or other neutral factor justified such discrimination.” *Id.*

Under this framework, Plaintiffs' vote dilution claims "must proceed on a district-by-district basis." *Id.* at 868 (citing *Gill*, 138 S.Ct. at 1930).

B. Plaintiffs Failed to Establish the Predominant Purpose Prong

1. Precedent Establishes That Drawing Districts To Adhere To Traditional Redistricting Criteria Prevents A Finding That Illicit Intent Predominated.

Plaintiffs' failed to prove that the legislature's "predominant purpose in drawing the district was to subordinate the interests of supporters of a disfavored party and entrench a representative from a favored party in power." *See League of Women Voters of Mich.*, 2018 U.S. Dist. LEXIS 202805 at * 45.

This is because Michigan's legislature adhered to traditional redistricting principles. This insulated a redistricting plan from constitutional challenge. *See Miller*, 515 U.S. at 915-916 (stating that to overcome redistricting legislation's presumption of good faith, a plaintiff must show either through the demographics or shapes of districts or through legislative purpose that race was the predominating factor). In addition to the Apol criteria, Michigan's redistricting principle, drawing districts that are compact, contiguous, and respect political subdivisions, as well as drawing districts for incumbency protection, and political affiliation. *Ala. Legislative Black Caucus*, 135 S.Ct. at 1270. Accordingly, if adherence to traditional redistricting principles produced the challenged districts, then Plaintiffs' claims that partisanship predominated must fail. *Cf. Miller*, 515

U.S. at 916 (“Where these or other race-neutral considerations are the basis for redistricting legislation, and are not subordinated to race, a State can defeat a claim that a district has been gerrymandered on racial lines.”) (internal quotation marks omitted); *Bush v. Vera*, 517 U.S. 952, 978 (1996) (stating that a state may avoid strict scrutiny “by respecting their own traditional districting principles.”).

In proposing tests to evaluate partisan gerrymandering claims, several Justices have emphasized that adherence to traditional redistricting principles insulates a redistricting plan from partisan gerrymandering claims. *Vieth*, 541 U.S. at 307 (Kennedy, J., concurring) (stating that to prove an unconstitutional partisan gerrymander, Plaintiffs must show that the political classifications were applied in an “invidious manner” or in a manner “unrelated to any legitimate legislative objective.”); *id.* at 318 (Stevens, J., dissenting) (“a partisan gerrymander must be one where “partisanship is the legislature's sole motivation -- when any pretense of neutrality is forsaken unabashedly and all traditional districting criteria are subverted for partisan advantage.”); *id.* at 348 (Souter, J., dissenting) (“[A] plaintiff would need to show that the district of his residence paid little or no heed to those traditional districting principles whose disregard can be shown straightforwardly: contiguity, compactness, respect for political subdivisions, and conformity with geographic features like rivers and mountains.”); *Bandemer*, 478 U.S. at 165 (Powell, J., concurring in part, dissenting in part) (“[T]he merits of a

gerrymandering claim must be determined by reference to the configurations of the districts, the observance of political subdivision lines, and other criteria that have independent relevance to the fairness of redistricting.”); *LULAC*, 548 U.S. at 492 (Breyer, J., concurring in part, dissenting in part) (stating that plaintiffs had proven an unconstitutional partisan gerrymander in part because “partisan considerations have partisan considerations [have] render[ed] the traditional district-drawing compromises irrelevant,” and “no justification other than party advantage can be found.”). This too is consistent with racial gerrymandering claims where plaintiffs in those cases focused on the bizarre and irregular shape of the challenged districts. *Miller*, 515 U.S. at 908-909.

2. The Map Drawers Considered Legitimate Criteria In Drafting the 2011 Enacted Maps

The presumption of constitutionality should be upheld by this Court because, as Timmer and others testified, the 2011 Enacted Maps were drafted primarily using Apol Criteria and other legitimate criteria. *See, e.g.*, FOF¶1272.

The Apol Criteria were developed in 1982 by the Michigan Supreme Court. The Apol Criteria are very detailed and are designed to significantly limit the map drawers’ discretion. FOF¶1213. Included in the Apol Criteria is a statement that the absolute fewest and smallest possible cities and/or townships should be shifted when necessary when moving population from one county to another. FOF¶1215-

1223. Once the Apol criteria are followed, it does not leave much discretion to the map-maker to do much else. FOF¶1213

Additionally, following Apol may lead to the drawing of “asymmetrical” districts, which under the Apol Criteria should predominate over “pleasingly shaped districts.” FOF¶1227. Consequently, Plaintiffs’ reliance on the “asymmetrical” shape of certain districts is legally insufficient to support their claim.

Because adherence to the Apol criteria, Michigan’s traditional redistricting principle, predominated the drawing of districts, this Court should deny Plaintiffs’ claims. *See, e.g., Miller*, 515 U.S. at 915-916.

a. The House Districts

The House Districts “comply in substantial degree with the statutory Apol criteria.” FOF¶1245. The Enacted House Districts contain 17 county breaks and 24 city and township breaks, the fewest of any plan introduced. FOF¶1246. In fact, several of the challenged House districts are wholly contained within counties. For those Districts that break county and municipal lines, these breaks were necessitated for compliance with the one person, one vote requirement. The necessary population shift was done in accordance with the Apol criteria. FOF¶1246-56. Respect for political subdivisions is a traditional redistricting criteria. *Ala. Legis. Black Caucus*, 135 S. Ct. at 1270. Following a state’s

traditional redistricting criteria, here Apol, allows Michigan to avoid strict scrutiny altogether. *Bush*, 517 U.S. at 978.

The shape of House District 32, for example, is driven by community lines and is in conformity with the Apol standards. The jagged portions of the district are driven by the lake. FOF¶884. Similarly, Districts 74 and 75 are wholly contained within the City of Grand Rapids. The Apol criteria in fact suggest this and following the suggestion produces an odd shape in District 76 which wraps around the City. District 75 remains relatively compact. This is due to the strange borders of Grand Rapids. FOF¶1254. Districts 94 and 95 are wholly contained within Saginaw County. Having District 95 wholly within Saginaw County won the support of its Democratic representative Stephanie Erwin Oakes. FOF¶1256.

Accordingly, the legislature's adherence to the Apol criteria is what drive the district lines, as well as other traditional redistricting principles.

b. Congressional Districts

The Congressional Districts comply in substantial degree with the statutory Apol criteria, and where they do not strictly do so, it was for other than partisan reasons. FOF¶¶1259-60. The enacted Congressional plan contained only 11 county breaks and 13 city or township breaks, the fewest breaks of any plan introduced or presented. FOF¶1261. The strict population requirement of one person, one vote drove many of the district lines. FOF¶¶1261-70. Additionally, the map-makers

followed the Apol requirement that when additional population is needed for population equality, the population of the fewest number of townships and cities should be shifted. FOF¶1223. Additionally, the weird shapes of the districts were a product of adherence to the Apol criteria and not for partisan reasons. FOF¶1228. In adhering to Apol's requirements, the map-makers were following traditional redistricting principles. *See Ala. Legis. Black Caucus*, 135 S. Ct. at 1270.

3. The District Lines Are The Result Of Apol And Bi-Partisan Negotiations.

With what little discretion the map-makers had after complying with Apol, the use of that discretion was the product of bi-partisan compromise and adherence to traditional redistricting principles. Given the inherent political nature of legislation, required taking into consideration interest of incumbent legislators and others. FOF¶1231. The map-makers also drew the map with the intent of obtaining the votes of Democratic legislators. FOF¶1230. This resulted in multiple Democrats voting for the redistricting plan and multiple Republicans voting against it. FOF¶1233

This included recognizing the interests of Democrats, and at other times, interests of Republicans. FOF¶1232; FOF¶¶1434-35. In fact, some of the House districts in Wayne County were the product of bi-partisan discussions between then Republican majority leader Senator Richardville, Republican Joe Hune, and Democratic Senator Virgil Smith. FOF¶1435. Senator Joe Hune, chairman of the

Michigan Senate Redistricting Committee, testified that he viewed Senator Rebekah Warren and Senator Virgil Smith as key players in the redistricting process. FOF¶1435. Additionally, Senator Hune viewed Senator Smith at “integral in being the architect of designing the districts within Wayne County.” FOF¶1436.

By contrast not all considerations of Republicans were taken into account. Several Republicans were unhappy with the composition of their districts, but these concerns went unaddressed. For example, four Republican incumbents were not happy that they were paired together in new districts. FOF¶858. Another incumbent, Rick Olsen, was not happy with the partisan composition of his district because believed he could no longer win his district. FOF¶¶859-61. Speaker Bolger informed Mr. Olsen that there was nothing he could do; that the district was drawn this way because of population shifts. FOF¶860. The district was not changed to benefit Mr. Olsen.

Similarly, Republican Congressman Amash was not happy with the composition of his district. FOF¶865-66. Speaker Bolger made no changes to this district to address Rep. Amash’s concerns. *Id.* Congressman McCotter was also not happy with his district, but Speaker Bolger did not address his concerns. FOF¶867.

Senator Schuitmaker, a Republican, was also not happy with the change of the lines of her district. FOF¶868. In complying with the Apol criteria, Senator

Schuitmaker's district was substantially remade. FOF¶847. Even though the district became more Republican, Senator Schuitmaker had to become acquainted with many new constituents. *Id.* Republican Senator David Robertson had the same complaint. FOF¶846.

In summary, many inquiries and suggestions were disregarded at times leading to tension within the Republican group. FOF¶1234. Ultimately, two House Republicans voted against the legislative districts, while one Senate Republican and two House Republicans voted against the congressional districts. FOF¶1379. Unlike the legislature in *Shaw*, where the Court found race predominated because it was the one issue that the legislature did not compromise on, clearly here, partisanship, partisan gain, and even incumbency protection were sacrificed to comply with Apol. *See Shaw v. Hunt*, 517 U.S. 899, 907 (1996).

By contrast, two Democrats in the House voted for the congressional districts, while five Democrats in the House and three Democrats in the Senate voted in favor of the legislative districts. FOF¶1379 This includes Senator Rebekah Warren who former League of Women's Voter President, Susan Smith, testified is a supporter of Voting Rights. FOF¶¶13-14, 1379. Accordingly, partisan intent could not have predominated as evidence by the number of Democrats who supported the legislation. FOF¶¶850, 1379. Plaintiffs failed to overcome the presumption that Michigan's redistricting legislation is constitutional, as they have

not established that partisan intent predominated. *Cf. Miller*, 515 U.S. at 916. Plaintiffs' claims must fail.

3. Plaintiffs' Experts Have No Evidence of Intent

To the extent Plaintiffs attempt to establish "intent" implicitly through the use of metrics, such attempt fails as well. As shown in section I above, none of the metrics Plaintiffs' experts rely upon are capable of demonstrating whether a partisan gerrymander exists. This is because their data is unreliable and non-compliant with Michigan law. *See supra* at 3-13. According, Plaintiffs' experts do not demonstrate that partisan intent predominated.

B. Plaintiffs Have No Evidence Discriminatory Effects

Even if Plaintiffs could establish the predominant purpose prong, they have no evidence of discriminatory effects.

1. Plaintiffs Failed To Prove Discriminatory Effects

First, Plaintiffs must prove discrimination against a readily identifiable group, here, Democrats. See *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986) (stating that in the context of vote dilution claims brought under Section 2 of the Voting Rights Act, plaintiffs must prove discrimination against a readily identifiable group that also constitutes a cohesive unit); *Shaw v. Reno*, 509 U.S. 630, 642-43 (1993) (same for racial gerrymandering claims).

The U.S. Supreme Court has previously ruled that “a person’s politics is rarely as readily discernible—and never permanently discernible—as a person’s race.” *Vieth*, 541 U.S. at 287; *Bandemer*, 478 U.S. at 156 (O’Connor, J., concurring) (“[W]hile membership in a racial group is an immutable characteristic, voters can -- and often do -- move from one party to the other or support candidates from both parties.”). This is because people’s politics shift from one election to the next and even within the same election. *Vieth*, 541 U.S. at 287. These facts alone “make it impossible to assess the effects of partisan gerrymandering, to fashion a standard for evaluating a violation, and finally to craft a remedy.” *Id.* at 287.

Many witnesses in this case testified to voting for Republicans, being Socialists, Independents, and splitting their tickets. FOF¶¶258, 442 536, 905, 921, 973, 1051, 1440. Because Plaintiffs have failed to show a readily identifiable group exists. Plaintiffs’ claims must fail.

Second, Plaintiffs/League Members failed to prove that any of their votes were diluted. As stated *supra* at 3-13. Plaintiffs’ various social science metrics fails because they are not reliable. Furthermore, the U.S. Supreme Court has previously expressed skepticism in relying on hypothetical maps and how the districts in hypothetical maps might perform in an election. *LULAC*, 548 U.S. at 419-20 (Kennedy, J.) (rejecting a proposed standard that would compare how many

districts the political parties would win if they win a certain percentage of votes in hypothetical elections because a court cannot reliably invalidate a map based upon results that would occur in a hypothetical state of affairs).

Third, with respect to the Congressional Districts, the vast majority of Dr. Chen's simulations produce seven Republican districts and seven Democrat districts, and many others produced six to eight Republican districts. FOF¶43. The current composition of the Congressional Districts is evenly split, which explains why Dr. Warsahw has no evidence that a partisan gerrymander will exist in 2020. FOF¶1147. Given this result in a hypothetical state of affairs, where Dr. Chen uses Voter Tabulation Districts rather than Census Tracts, FOF¶1073, and fails to accurately account for the Apol criteria, FOF¶¶1068-1071, Plaintiffs failed to prove that 9 Congressional Districts is the result of predominant intent that dilutes the weight of Plaintiffs' votes.

This is similar to the House Districts where the vast majority of Dr. Chen's simulations produce 54 to 56 Republican districts with a range of 53 to 58 districts. Pls.' Ex. 3 at 39. This is the current composition of the House of Representatives. Because the 2011 maps are in the range of Dr. Chen's "nonpartisan" simulated maps, Plaintiffs cannot show a discriminatory effect.

III. EVEN IF PLAINTIFFS/LEAGUE MEMBERS PROVED STANDING, THEY FAILED TO ESTABLISH THE ELEMENTS OF THEIR CLAIM UNDER THE FIRST AMENDMENT

Even If Plaintiffs have standing, and even if Plaintiffs proposed First Amendment standard is judicially manageable, Plaintiffs did not prove a First Amendment injury. First, the plaintiff must demonstrate that those who drew the districts did so with the “specific intent” to “burden individuals or entities that support a disfavored candidate or political party.” *League of Women Voters of Mich.*, 2018 U.S. Dist. LEXIS 202805, *53. Second, the plaintiff must show that the challenged districting plan actually caused an injury, i.e., “that the districting plan in fact burdened the political speech or associational rights of such individuals or entities.” *Id.* Third, the plaintiff must show causation, i.e., that “absent the mapmakers’ intent to burden a particular group of voters by reason of their views, the concrete adverse impact would not have occurred.” *Id.* Plaintiffs/League Members cannot meet their burden.

A. Plaintiffs Have No Evidence of Specific Intent

First, to have the “specific intent” to burden individuals from a political party, this group must be readily identifiable. As shown above, Plaintiffs fail to establish that a readily identifiable group exists. They cannot show there was a “specific intent” to discriminate against a group that does not exist.

Second, the map drawers’ primary intent was to follow Apol Criteria when drawing the Enacted Plans. Following the Apol criteria significantly limits what a map-drawer can do. FOF¶1213. Accordingly, Plaintiffs cannot prove that the map

drawers drew districts with a specific intent to burden Democrats. This is particularly true because of the significant number of Michigan Democrats who voted to enact the 2011 Plan. FOF¶¶1379.

B. Plaintiffs Have Not Established an Injury

At the outset, Michigan's redistricting statutes do not burden any speech rights. Laws that impose constitutionally significant burdens on speech occurs where a person's speech is prohibited, *see Citizens United v. FEC*, 558 U.S. 310, 318-19, (2010), or where the law compels speech, *id.* at 366-67 (disclaimer statutes), or requires the speaker to do something either before speaker speaks, *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 130 (1992) (permit to protest statutes constitutional so long as permitting authority is not given wide discretion nor is permit regime content-based) or after speaking, *Citizens United*, 558 U.S. at 366, 370 (disclosure statutes). Michigan's redistricting statute imposes no requirements on speaking or associational activity and therefore it cannot be said the redistricting statute burdens Plaintiffs' associational rights. *ACLU*, 493 F.3d at 661 ("[T]o allege a sufficient injury under the First Amendment, a plaintiff must establish that he or she is regulated, constrained, or compelled directly by the government's actions...").

In addition, Plaintiffs have not proven that their free speech and associational rights have been violated, i.e., because they admitted nothing

prevented them from speaking to, endorsing, campaigning for, making political contributions to, and/or voting for, candidates. *See, e.g.*, FOF¶44-96, 163-76, 204-07, 475-77, *See, e.g., League of Women Voters*, No. 2011 U.S. Dist. LEXIS 125531, at *12-13 (“The redistricting plan does not prevent any LWV member from engaging in any political speech, whether that be expressing a political view, endorsing and campaigning for a candidate, contributing to a candidate, or voting for a candidate.”); *Comm. for a Fair & Balanced Map*, 835 F. Supp. 2d at 575; *Pope*, 809 F. Supp. at 398-99 (rejecting freedom of association claim because there is no “device that directly inhibits participation in the political process.”); *Badham*, 694 F. Supp. at 675 (“Plaintiffs here are not prevented from fielding candidates or from voting for the candidate of their choice. The First Amendment guarantees the right to participate in the political process; it does not guarantee political success.”). Plaintiffs’ Free Speech rights have therefore not been violated.

As for the League, Ms. Smith testified only in broad generalities that certain Republicans in certain districts—without specifying which Republicans, what districts—did not attend League of Women Voters events. Ms. Smith also did not testify as to the reason why these unnamed Republicans in unnamed districts did not attend. FOF¶25. This cannot be sufficient proof of a First Amendment injury. This is particularly true when the Supreme Court has dismissed a First Amendment challenge on behalf of a candidate and his supporters that a California statute

banned individuals from campaigning for office for one year after those individuals switched political parties. *See Storer v. Brown*, 415 U.S. 724 (1974).

Accordingly, Plaintiffs have not proven that Michigan's 2011 Enacted Plan is the cause of the alleged burdens on their First Amendment rights.

THE EQUITABLE DOCTRINE OF LACHES BARS RELIEF

Laches applies when “(1) the plaintiff delayed unreasonably in asserting his rights and (2) the defendant was prejudiced by this delay.” *Id.* at 647. “Laches” is a counter to the inequity of a party sleeping on their rights. *See Black's Law Dictionary* 953 (9th Ed. 2009).

When “a plaintiff seeks solely equitable relief, his action may be barred by the equitable defense of laches.” *ACLU of Ohio v. Taft*, 385 F.3d 641, 647 (6th Cir. 2004). There is nothing special about a constitutional claim in the laches context as “[a] constitutional claim can become time-barred just as any other claim can.” *Block v. North Dakota*, 461 U.S. 273, 292 (1983). This includes redistricting claims. *See Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018); *Ariz. Minority Coal. for Fair Redistricting v. Ariz. Indep. Redistricting Comm'n*, 366 F. Supp. 2d 887, 908 (D. Ariz. 2005); *see also White v. Daniel*, 909 F.2d 99, 102-04 (4th Cir. 1999).

Here, Congressional and House Intervenors have proved that The League of Women Voters of Michigan (“League”) and Plaintiffs unreasonably delayed in filing this lawsuit and that delay prejudiced its defense. The League and Plaintiffs

were aware of alleged gerrymander as early as 2011 and surely by 2015 when the League hired expert witnesses. Intervenors' Exs. 16-17; The same is true for many of the Plaintiffs. Intervenors' Ex. 4-6. However, the League and the Plaintiffs almost seven years, *i.e.*, until the end of 2017, to file this lawsuit and participated in four elections under the current maps. *See generally* Compl. (ECF No. 1). The League and the Plaintiffs unreasonably delayed in bringing their suit.

The parties defending this case were also prejudiced by the untimely filing of the Complaint, rendering it "inequitable to permit the claims to be enforced." *McClafferty*, 661 F. Supp. 2d at 840 (citing *Ford Motor Co. v. Catalanotte*, 342 F.3d 543, 550 (6th Cir. 2003)). The prejudice to Defendants in this case is severe. Many of the fact witnesses do not remember significant portions about the exact events that occurred during the process of drafting the maps. This includes unsure memories about meetings, FOF¶¶837, 1316. Discussions regarding what specifically occurred while drafting the maps and why certain decisions were made are lost. Plaintiffs will likely disparage these lost memories as "convenient." However, no one can know what those lost memories reveal. As such, there is certainly prejudice to the Defendants as they were unable to potentially mount as vigorous defense due to Plaintiffs' unreasonable and unwarranted delay.

JUSTICIABILITY

Although this Court has ruled that Plaintiffs' claims are justiciable, *League of Women Voters of Mich*, 2018 U.S. Dist. LEXIS 202805, *42, Congressional and State House Intervenor maintain that they are not.

First, the text of the Constitution vests the various state legislatures with the authority to draw districts and Congress to make or alter any of the state's actions. U.S. Const. art. I, § 4; *Grove v. Emison*, 507 U.S. 25, 34 (1993); *See LULAC*, 548 U.S. at 414 (Kennedy, J.); *Vieth*, 541 U.S. at 275 (2004) (plurality op.). The framers purposefully chose this form of checks and balances. *Vieth*, 541 U.S. at 285; *Agre v. Wolf*, 284 F. Supp. 3d 591, 595, 598 (E.D. Pa. 2018) (three-judge court). Because the Constitution vests a coordinate political department with the authority over partisan gerrymandering, Plaintiffs' claims are non-justiciable. *Baker*, 369 U.S. at 217; *Nixon v. United States*, 506 U.S. 224, 228 (1993).

Second, Plaintiffs do not propose a judicially manageable standard, despite decades of attempts to do so. *Gill*, 138 S. Ct. at 1931. Plaintiffs proposed predominant intent test has been previously rejected. *See Vieth*, 541 U.S. at 285-86 (plurality op.); *id.* at 308 (Kennedy, J., concurring). Furthermore, although the predominant intent standard is manageable in the racial gerrymandering context, it is not manageable in the partisan gerrymandering context. This is because racial classifications are always suspect, whereas partisan classifications are not only expected, but are a traditional redistricting principle. *City of Cleburne v. Cleburne*

Living Ctr., 473 U.S. 432, 440 (1985); *Alabama Legislative Black Caucus*, 135 S. Ct. at 1270; *Gaffney*, 412 U.S. at 753. Therefore, the predominant intent standard to determine excessive partisanship is both “indeterminate,” “vague,” and “neither discernable nor manageable.” *Id.* at 284-285, 290. Additionally, politics, unlike race, is mutable and not readily discernible. *See, e.g., Bandemer*, 478 U.S. at 156.

Plaintiffs’ social science metrics do not establish what level of vote dilution triggers constitutional scrutiny. *FOF*¶1119; *Vieth*, 541 U.S. at 296; *LULAC*, 548 U.S. at 420. (Kennedy, J.). Nor are Plaintiffs’ social science metrics reliable. *Supra* at 3-13. Nor do they measure individual harm. *Supra* at 3-13.

Furthermore, Plaintiffs’ First Amendment standard is not judicially manageable for similar reasons, but also because there does not appear to be a First Amendment claim separate from the Equal Protection Claim. *See Gill*, 138 S. Ct. at 1925. Accordingly, Plaintiffs’ proposed standard is not judicially manageable.

CONCLUSION

For the foregoing reasons, this Court should deny Plaintiffs the relief they seek.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

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

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