

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD AGEE, JR. et al.,

Plaintiffs,

v.

JOCELYN BENSON, et al.,

Defendants.

Case No. 1:22-CV-00272-PLM-RMK-JTN

THE COMMISSION'S BRIEF IN
OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

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INTRODUCTION

Plaintiffs do not even attempt to argue to the summary-judgment standard. It is “unusual” for plaintiffs to obtain summary judgment in Section 2 Voting Rights Act (VRA) cases, *Georgia State Conf. of NAACP v. Fayette Cnty. Bd. of Comm’rs*, 775 F.3d 1336, 1345 (11th Cir. 2015), and it is “rarely granted in a plaintiff’s favor” in racial-gerrymandering cases, *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999) (*Cromartie I*). Plaintiffs cite no case where this has happened under either theory.

Instead, Plaintiffs ask this Court to address the “probative weight” of evidence and decide fact disputes in their favor. Plaintiffs’ Motion for Summary Judgment (MSJ) 22, PageID.603; *see also id.* at 1, 18–22, 26, 27, 30–32, 41, PageID.582, 599-603, 607, 608, 611-613, 622 (using variants of “weigh” or “probative”). But the governing standard forbids “the weighing of the evidence,” *Cromartie I*, 526 U.S. at 552 (citation omitted), and the mere existence of conflicting evidence defeats Plaintiffs’ motion. On material elements, the Commission’s three experts challenge the opinions of Plaintiffs’ expert, Mr. Trende, and demonstrate that he cherrypicked evidence and withheld information from his report that contradicts his assertions. The Commission also submits a detailed declaration of Commissioner Anthony Eid, which addresses various districting considerations informing the Commission’s configuration of the challenged districts. Material fact disputes regarding, *inter alia*, the proper meaning of compactness in this context and the Commission’s primary motivation in configuring each challenged district preclude summary judgment.

The Court should summarily deny Plaintiffs’ motion, without oral argument, because it does not argue to the controlling standard. It should focus the July 13 hearing on the Commission’s motion for summary judgment, which argues to the correct test.

THE LEGAL STANDARD

“Summary judgment is appropriate where there is ‘no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *Romans v. Michigan Dep’t of Hum. Servs.*, 668 F.3d 826, 835 (6th Cir. 2012) (quoting Fed. R. Civ. P. 56(a)). The burden is “on the moving party to show that no genuine issue of material fact exists,” *Bennett v. City of Eastpointe*, 410 F.3d 810, 817 (6th Cir. 2005), and the facts and inferences must be viewed in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

When the party with the burden of persuasion moves for summary judgment, that party must satisfy a “substantially higher hurdle.” *Cockrel v. Shelby Cty. Sch. Dist.*, 270 F.3d 1036, 1056 (6th Cir. 2001) (citation omitted). In that situation, “the moving party’s initial summary judgment burden is ‘higher in that it must show that the record contains evidence satisfying the burden of persuasion and that the evidence is so powerful that no reasonable jury would be free to disbelieve it.’” *Arnett v. Myers*, 281 F.3d 552, 561 (6th Cir. 2002) (quoting *Cockrel*, 270 F.3d at 1056). A party with the burden of proof must show at the summary-judgment stage “that no reasonable trier of fact could find other than for the moving party.” *Calderone v. United States*, 799 F.2d 254, 259 (6th Cir. 1986).

“Summary judgment in favor of the party with the burden of persuasion . . . is inappropriate when the evidence is susceptible of different interpretations or inferences by the trier of fact.” *Cromartie I*, 526 U.S. at 553. “[T]he nonmoving party’s evidence ‘is to be believed, and all justifiable inferences are to be drawn in that party’s favor.’” *Id.* at 552 (citation and edit marks omitted). The Court may not “make credibility determinations nor

weigh the evidence when determining whether an issue of material fact remains for trial.”

Laster v. City of Kalamazoo, 746 F.3d 714, 726 (6th Cir. 2014) (citation omitted).

ARGUMENT

I. Threshold Deficiencies

The Commission’s motion for summary judgment (Comm’n MSJ) explains that Plaintiffs have no viable claim against HD13, HD26, and SD5 based on threshold deficiencies. Comm’n MSJ 12–15, PageID.649–652. Plaintiffs’ summary-judgment motion does not address these deficiencies. Plaintiffs say nothing of *Detroit Caucus v. Indep. Citizens Redistricting Comm’n*, 969 N.W.2d 331 (Mich.), *reconsideration denied*, 969 N.W.2d 515 (Mich. 2022), or their basis to press the claims of a Plaintiff who was denied relief by the final judgment in that case.

Plaintiffs do discuss standing, acknowledging that Plaintiff Jerome Bennett no longer resides in HD13 but asserting that Plaintiff Dennis Leroy Back, Jr. continues to have standing to challenge that district. JA00855, PageID.1542. But Plaintiff Black resides in HD9, not HD13. *See* JA00542, Pl. Black, Jr.’s Objs. & Responses to ROG No. 1, PageID.1224. Because no Plaintiff resides in HD13, Plaintiffs are not entitled to summary judgment on that district.

II. Plaintiffs Are Not Entitled To Summary Judgment on Their VRA Claims

Plaintiffs cannot obtain summary judgment on their Section 2 claims. Although summary judgment in Section 2 cases is often “granted to the *defendants*,”¹ “it is unusual to

¹ Summary judgment is often granted to the defense where plaintiffs fail to produce evidence on one or more elements of their Section 2 claims. *See, e.g., Kingman Park Civic Ass’n v. Williams*, 348 F.3d 1033, 1042 (D.C. Cir. 2003); *Johnson v. DeSoto Cnty. Bd. of Commr’s*, 204 F.3d 1335, 1343 (11th Cir. 2000); *Burton v. City of Belle Glade*, 178 F.3d 1175, 1199 (11th Cir. 1999); *Bradley v. Work*, 154 F.3d 704, 710–11 (7th Cir. 1998); *Valladolid v. City of National City*, 976 F.2d 1293, 1297 (9th Cir. 1992). *See also, e.g., White-Battle v. Moss*, 222 F. App’x 304, 305 (4th Cir. 2007) (affirming summary-judgment to defendant in vote-denial claim).

find summary judgment awarded to the plaintiffs in a vote dilution case.” *Georgia State Conf. of NAACP*, 775 F.3d at 1345. That is because “the ultimate finding of vote dilution [is] a question of fact,” that requires the court “to consider the ‘totality of the circumstances,’” based “‘upon a searching practical evaluation of the ‘past and present reality’” of the jurisdiction in an analysis “peculiarly dependent upon the facts of each case.” *Thornburg v. Gingles*, 478 U.S. 30, 78–79 (1986) (plurality opinion). Plaintiffs cite no case awarding summary judgment to a Section 2 plaintiff, and this case is not a plausible candidate to be the first.

A. The First *Gingles* Precondition

1. The first precondition requires proof that the minority group is “sufficiently large and geographically compact to constitute a majority in some reasonably configured legislative district.” *Cooper v. Harris*, 581 U.S. 285, 301 (2017) (quotation marks omitted). This precondition “specifically contemplates the creation of hypothetical districts.” *Magnolia Bar Ass’n, Inc. v. Lee*, 994 F.2d 1143, 1151 (5th Cir. 1993). But as the Commission’s summary-judgment memorandum demonstrates, Comm’n MSJ 16–20, PageID.653-657, no evidence shows that an “alternative to the districting decision at issue would . . . enhance the ability of minority voters to elect the candidates of their choice.” *Abbott v. Perez*, 138 S. Ct. 2305, 2332 (2018).

In their summary-judgment motion, Plaintiffs do “not offer *any* evidence . . . that would show how” Black-preferred “candidates would fare . . . under their Remedial Plan.” *Harding v. Cnty. of Dallas, Texas*, 948 F.3d 302, 309 (5th Cir. 2020). The record therefore does not “contain[] evidence satisfying the burden of persuasion,” *Arnett*, 281 F.3d at 561 (citation omitted), that Plaintiffs’ alternatives provide “an increased opportunity,” *Harding*, 948 F.3d at 309. Even if such evidence existed, it would at best create a triable fact question. The

Commission’s expert Dr. Maxwell Palmer analyzed the performance of Mr. Trende’s plans under the 2018 Democratic gubernatorial primary and concluded that the candidate Mr. Trende identifies as Black-preferred would lose in all but two districts. JA00141, Palmer Rep. 26, PageID.820.

2. Plaintiffs’ motion fails the first precondition for the independent reason that their demonstrative plans do not honor criteria governing the Commission’s work. Plaintiffs assert that the first precondition presents a “straightforward question” that is “easily” answered in their favor. Comm’n MSJ 11, PageID.592. Not so. Supreme Court precedent addressing the “compactness” component of the first precondition explains that “no precise rule has emerged” to define it. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006) (*LULAC*) (plurality opinion). Section 2 districts must be “reasonably configured,” *Cooper*, 581 U.S. at 301; *accord Wisconsin Legislature v. Wisconsin Elections Comm’n*, 142 S. Ct. 1245, 1248 (2022), which means they “should take into account traditional districting principles such as maintaining communities of interest . . . ,” *Abrams v. Johnson*, 521 U.S. 74, 92 (1997) (quotation marks omitted); *accord LULAC*, 548 U.S. at 432–33 (plurality opinion).

In this fact-intensive inquiry, “local districting preferences are certainly relevant.” *Luna v. Cnty. of Kern*, 291 F. Supp. 3d 1088, 1113 (E.D. Cal. 2018). When a legislative body “adopts a redistricting plan according to certain traditional districting principles . . . , the district court must consider all such principles relied on by the locality, any opposition to such reliance by § 2 plaintiffs, and any traditional districting principles which § 2 plaintiffs may incorporate into their hypothetical plan in an effort to demonstrate comparable consistency with the plan.” *Gonzalez v. Harris Cnty., Tex.*, 601 F. App’x 255, 260 (5th Cir. 2015). Although this inquiry might not demand that traditional principles be applied “in the same manner” as the

redistricting authority applied them, courts “must, at a minimum, give *some* consideration” to the authority’s “principles.” *Luna*, 291 F. Supp. 3d at 1112. Triable fact questions exist under this standard in at least two respects.

First, the Commission was obligated to prepare and pass plans that “reflect the state’s diverse population and communities of interest.” Mich. Const. art. IV, § 6(13)(c). Under this criterion, redistricting in Michigan is “animated by a principle of self-determinism” based on “public comments.” *Banerian v. Benson*, 597 F. Supp. 3d 1163, 1167 (W.D. Mich.), *appeal dismissed*, 143 S. Ct. 400 (2022). As in *Banerian*, the Commission in crafting the Linden and Hickory plans was informed by public comments concerning communities of interest. *See* Exhibit 1, Declaration of Anthony Eid ¶¶ 5–6. The Commission was also informed by a detailed map of Detroit’s more than 200 neighborhoods. *See id.* ¶ 5. The attached declaration of Commissioner Eid identifies how communities of interest and neighborhoods were grouped in both the Linden and Hickory plans on a district-by-district basis. *See* Ex. 1, Eid Decl. ¶¶ 8–73; *see also* Exhibit 2, Declaration of Kimball Brace ¶ 8.

As in *Banerian*, “plaintiffs’ own plan[s] do[] not preserve those communities of interest or even attempt to; instead it does not apply the community-of-interest criterion at all, apart from the plan[s]’ emphasis on preserving county and municipal lines.” 597 F. Supp. 3d at 1167. Mr. Trende made no effort to respect Detroit neighborhood lines, Exhibit 3, Trende Dep. 42:13–19, he did not consider public input about which neighborhoods in Detroit should be joined into electoral districts, *id.* at 40:11–14, and he did not recall reviewing a Detroit neighborhood map to inform his line-drawing, *id.* at 42:9–12. Mr. Trende’s demonstrative plans divide Detroit neighborhoods in practically every challenged district, Ex. 1, Eid Decl. ¶¶ 8–74, do not incorporate public feedback the Commission deemed probative, *id.* ¶¶ 14, 30–

32, 36, 60–62, 65, and combine neighborhoods and communities the Commission concluded should not be joined, *id.* ¶¶ 36, 49, 52, 58. The court “must, at a minimum, give *some* consideration” to this information, *Luna*, 291 F. Supp. 3d at 1112, and that can occur only after trial.

Second, the Commission’s plans could not “provide a disproportionate advantage to any political party.” Mich. Const. art. IV, § 6(13)(d). If illustrative comparators violate the state constitution, they are not “reasonably configured.” *Cooper*, 581 U.S. at 301; *see Abbott*, 138 S. Ct. at 2332 (rejecting alternative configuration that would result in “breaking” a rule of “the Texas Constitution”). Yet Plaintiffs do not address the partisan-fairness requirement. *See* MSJ 10–13, PageID.591-594. Mr. Trende conceded he “didn’t look at the partisan fairness of [his] demonstration plan,” according to the metrics the Commission applied to its own plans. Ex. 3, Trende Dep. 49:3–7. The Commission’s expert Dr. Rodden concludes that Mr. Trende’s demonstrative plans “packed Democrats into extremely homogenous districts,” diluting their statewide voting strength. JA00247, Rodden Rep. 21, PageID.925; *see also* Ex. 1, Eid Decl. ¶¶ 75, 77–79. This raises a “battle of the experts,” which is “a factual dispute.” *Quigley v. Tuong Vinh Thai*, 707 F.3d 675, 682 n.4 (6th Cir. 2013); *see also, e.g., Reyazuddin v. Montgomery Cnty., Md.*, 789 F.3d 407, 417 (4th Cir. 2015). Trial is the forum for a court to decide which side’s expert “was more credible” on an issue that could “affect the outcome of the lawsuit.” *Rodgers v. Monumental Life Ins. Co.*, 289 F.3d 442, 449 (6th Cir. 2002).

3. A third failure in Plaintiffs’ first-precondition showing is that their illustrative districts cannot be deemed “reasonably configured,” *Wis. Legislature*, 142 S. Ct. at 1248, when they “segregate the races for purposes of voting,” *Shaw v. Reno*, 509 U.S. 630, 642 (1993) (*Shaw I*). Although Plaintiffs (wrongly) accuse the Commission of configuring districts with

racially predominant intent, MSJ 38–43, PageID.619-624, the record creates a triable fact question whether *Mr. Trende's plans* were the product of predominantly racial intent. Dr. Palmer and Dr. Rodden find that Mr. Trende's demonstrative plans fail the metrics he used to attempt to show predominant racial intent on the Commission's part. JA00142, Palmer Rep. 26, PageID.820; Rodden Rep. 27, 39–41, PageID.931, PageID.943-944. For his part, Mr. Trende admitted he made no effort to avoid racial predominance because he believes racial predominance is an acceptable feature of demonstrative districts. Ex.3, Trende Dep. 79:9–15, 159:2–12.

That cannot be correct. The alternative-map requirement exists because, without a viable alternative, a minority group “cannot claim to have been injured by [the challenged] structure or practice.” *Gingles*, 478 U.S. at 51. A Section 2 “hypothetical” alternative attempts to show “what the right to vote *ought to be*.” *Reno v. Bossier Par. Sch. Bd.*, 528 U.S. 320, 334 (2000). But districting maps that “sort voters on the basis of race ‘are by their very nature odious.’” *Wis. Legislature*, 142 S. Ct. at 1248 (citation omitted). The right to vote certainly ought *not* be something odious.

Should there be any doubt on this, Section 2 should be read to avoid constitutional doubts, *Bartlett v. Strickland*, 556 U.S. 1, 21 (2009) (plurality opinion), and thus not to demand presumptively unconstitutional redistricting. Section 2 enforces the Civil War Amendments. *See Shelby Cnty. v. Holder*, 570 U.S. 529, 542 n.1 (2013). Just as “Congress does not enforce a constitutional right by changing what the right is,” *City of Boerne v. Flores*, 521 U.S. 507, 508 (1997), Section 2 cannot enforce these Amendments by compelling states to violate them. “Racial classifications are antithetical to the Fourteenth Amendment, whose central purpose was to eliminate racial discrimination emanating from official sources in the States.” *Shaw v.*

Hunt, 517 U.S. 899, 907 (1996) (*Shaw II*) (quotation marks omitted). Congress may not enforce that principle by compelling states to employ racial classifications. Because there is a triable question on whether Mr. Trende’s plans are the product of racial predominance, summary judgment is improper on the first precondition.²

B. The Second and Third *Gingles* Preconditions

Plaintiffs do not show polarized voting as a matter of law and are not entitled to summary judgment on the second and third *Gingles* preconditions. The second precondition asks “whether minority group members constitute a politically cohesive unit,” and the third asks “whether whites vote sufficiently as a bloc usually to defeat the minority’s preferred candidates.” *Gingles*, 478 U.S. at 56. “As must be apparent, the degree of racial bloc voting that is cognizable as an element of a § 2 vote dilution claim will vary according to a variety of factual circumstances.” *Id.* at 57–58. That standard resists a finding of liability as a matter of law, and this case is no exception.

1. District-by-District Analysis

The Commission’s summary-judgment motion explained that Plaintiffs have no evidence of at least one of the two polarized-voting preconditions as to 12 of 17 challenged districts. Comm’n MSJ 22–24, PageID.659-661. Because each precondition “must be shown on a district-by-district basis,” *League of United Latin Am. Citizens v. Abbott*, 604 F. Supp. 3d 463, 496 (W.D. Tex. 2022) (three-judge court), Plaintiffs cannot prove a Section 2 claim as to

² The Supreme Court is currently considering various issues under Section 2, including the extent to which racial considerations in illustrative plans are permissible. *See Allen v. Milligan*, 12-1086 (oral argument conducted Oct. 4, 2022). A decision is likely to issue before the Court decides the competing summary-judgment motions, and the Commission will modify its position as appropriate depending on its guidance.

them as a matter of law. Plaintiffs' motion proves the Commission's point, as it fails to present evidence of polarization district-by-district.

Plaintiffs might plausibly cite some evidence of the second and third preconditions as to the five remaining districts, but that only gives rise to triable fact questions. Plaintiffs cite the 2022 Democratic primary elections, but a pattern is essential to prove the second and third preconditions. *Uno v. City of Holyoke*, 72 F.3d 973, 985 (1st Cir. 1995) (“to be legally significant, racially polarized voting in a specific community must be such that, over a period of years, whites vote sufficiently as a bloc to defeat minority candidates most of the time”). “Because loss of political power through vote dilution is distinct from the mere inability to win a particular election, a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences legally significant polarization than are the results of a single election.” *Gingles*, 478 U.S. at 57; *Johnson v. De Grandy*, 512 U.S. 997, 1014 n.11 (1994) (“[T]he ultimate right of § 2 is equality of opportunity, not a guarantee of electoral success for minority-preferred candidates of whatever race.”). Plaintiffs cannot show vote dilution as a matter of law by one election: “One swallow does not a summer make, and the results of a single election are unlikely, without more, to prove the existence or nonexistence of embedded racial cleavages.” *Uno*, 72 F.3d at 985; *see also Black Pol. Task Force v. Galvin*, 300 F. Supp. 2d 291, 304 (D. Mass. 2004) (“the Supreme Court has cautioned that a pattern of polarized voting extending over a period of time is customarily more probative than the results of any single election”).

As discussed below (§ II.B.2), the Commission's experts will demonstrate that the comparatively few Black-preferred-candidate losses are idiosyncratic and not probative of a

lack of equal opportunity, and their opinions must be weighed at any trial that might occur in this case.

2. Aggregate Approach

Even assuming Plaintiffs were correct to aggregate all Detroit-area elections and all challenged districts into one inquiry, *see* MSJ 10–26, PageID.591-607, they have no plausible entitlement to summary judgment.

Dr. Handley’s analysis of 51 contested elections in 2022 in 27 Detroit-area districts with BVAPs greater than 25% shows a combined success rate of Black-preferred candidates of 88.2% (27 of 27 general elections; 18 of 24 contested primaries). JA00010–11, 2023 Handley Rep. 10–11, PageID.688-689. Plaintiffs’ own chart disproves their case under the third precondition: of 24 contested primary elections, the Black-preferred candidate prevailed in 18, for a 75% win percentage. *See* JA00857, Handley Table 4, Reconfigured, PageID.1543. When three uncontested Democratic primaries are included in the calculus, the Black-preferred-candidate success rate increases to 21 of 27, or 77.7%. *See id.* The third precondition requires proof “that the white majority votes sufficiently as a bloc to enable it usually to defeat the minority’s preferred candidate.” *Grove v. Emison*, 507 U.S. 25, 40 (1993) (citation, quotation, and edit marks omitted). Section 2 is not “a floor on the success rates of [minority-preferred] candidates”; it guarantees “an equal *opportunity* to elect candidates of [the minority’s] choice.” *Clarke v. City of Cincinnati*, 40 F.3d 807, 812 (6th Cir. 1994). In *Clarke*, the Sixth Circuit found a 47% success rate of Black-preferred candidates precluded a Section 2 finding *after* trial. *Id.* at 813. Plaintiffs cannot obtain judgment *before* trial where the success rate of Black-preferred candidates is nearly twice as high—over 88%.

Plaintiffs ask the Court to “accord[] less weight” to most elections in this ensemble because of alleged “relative probative values.” MSJ 18, PageID.599; *see also id.* at 19–26, PageID.600-607. But “the weighing of the evidence” is for trial. *Bennett*, 410 F.3d at 817. The Court must consider “*all elections* in the relevant time frame,” *Uno*, 72 F.3d at 985, and the decisions Plaintiffs cite were issued after trial; none was decided on summary judgment. *See, e.g., Pope v. Cnty. of Albany*, 94 F. Supp. 3d 302, 309 (N.D.N.Y. 2015); *Baldus v. Members of Wisconsin Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 847 (E.D. Wis. 2012) (three-judge court); *Galvin*, 300 F. Supp. 2d at 301. Because the Commission is entitled to all reasonable inferences, the Court must accept that the relevant Black-preferred combined success rate in the Detroit area exceeds 88%, leaving Plaintiffs no colorable argument under at least the third precondition.

Seeking to avoid that result, Plaintiffs demand that this Court instead consider only “recent primary elections featuring either non-incumbent, Black candidates versus non-incumbent, white candidates, or incumbent, Black candidates versus incumbent, white candidates.” MSJ 21–22, PageID.602-603. That would appear in effect to exclude 40 elections from evidence and leave only 11.³ Even in that limited data set, Black-preferred candidates have a win percentage of 54.5%. *See* JA00857, Handley Table 4, Reconfigured, PageID.1543. The third precondition is not met even taking the evidence in the light most favorable to Plaintiffs. That is no basis to invalidate 17 legislative districts, with no trial.

Besides, Plaintiffs’ arguments are either legally erroneous or raise material fact disputes that preclude summary-judgment in their favor.

³ In fact, it is unclear precisely which elections Plaintiffs ask the Court to credit and what they believe the relevant Black-preferred-candidate success rate is.

Incumbency. Plaintiffs ask the Court to ignore all elections where a Black or Black-preferred incumbent prevailed. *See* MSJ 20–21, PageID.601-602. Sixth Circuit precedent rejects that rule:

[U]nlike other special circumstances, incumbency plays a significant role in the vast majority of American elections. To qualify as a special circumstance, then, incumbency must play an unusually important role in the election at issue; a contrary rule would confuse the ordinary with the special, and thus make practically every American election a special circumstance.

Clarke, 40 F.3d at 813–14 (quotation marks omitted). No evidence shows that incumbency in each contested primary election where the Black or Black-preferred incumbent candidate prevailed was “unusually important.” These contests cannot be discounted, not now and not at trial.

Black-Preferred Candidates Of Different Races. Plaintiffs also ask the Court to ignore contests where the Black-preferred candidate is not Black. MSJ 18–19, 21, PageID.599-600, 602. That is erroneous. *Ruiz v. City of Santa Maria*, 160 F.3d 543, 551 (9th Cir. 1998) (“We join our sister circuits in rejecting the position that the ‘minority’s preferred candidate’ must be a member of the racial minority. To hold otherwise would, in the words of Judge Cabranes, provide judicial approval to ‘electoral apartheid.’” (quoting *NAACP v. City of Niagara Falls*, *N.Y.*, 65 F.3d 1002, 1016 (2d Cir.1995))); *see also id.* (collecting cases); *Harvell v. Blytheville Sch. Dist. No. 5*, 71 F.3d 1382, 1386 (8th Cir. 1995) (“We do not categorically state that a candidate is the minority-preferred candidate simply because that candidate is a member of the minority.”); *Lewis v. Alamance Cnty., N.C.*, 99 F.3d 600, 607 (4th Cir. 1996) (“That is, a minority-preferred candidate may be a non-minority, just as a minority candidate may be the preferred candidate of the voters of the majority’s race.”); *Harris v. Arizona Indep. Redistricting Comm’n*, 993 F. Supp. 2d 1042, 1054 (D. Ariz. 2014), *aff’d*, 578 U.S. 253 (2016) (“A minority

group’s preferred candidate need not be a member of the racial minority.”). Plaintiffs’ expert, Mr. Trende, agrees that a candidate need not be Black to be the Black-preferred candidate. JA00488, Trende Dep. 33:7–16, PageID.1170.

Plaintiffs are incorrect in asserting that “the Sixth Circuit accords less weight to elections where the supposed black candidate of choice was white.” MSJ 18–19, PageID.599-600. First, the Court in the case they cite was discussing “white-white elections,” *Rural W. Tennessee Afr.-Am. Affs. Council v. Sundquist*, 209 F.3d 835, 840 (6th Cir. 2000), but the elections at issue here are (with a single exception) *white-Black* elections where the *Black* vote went to the *white* candidate. See JA00857, Handley Table 4, Reconfigured, PageID.1543.⁴ White-Black elections are probative because they present the electorate with a racial choice. The Black electorate’s choice to support white candidates is probative against Plaintiffs’ narrative of racial polarization. Second, the Sixth Circuit held the opposite of what Plaintiffs represent: “white-white elections are relevant in the analysis of a voting dilution claim.” *Id.* at 840. Although these elections may be “less probative than those involving black candidates,” they remain “relevant.” *Id.* Only at trial may the Court may properly determine just how probative these elections are.

General Elections. Plaintiffs ask the Court to consider only primary elections, but the authority they cite deems “*all elections*” relevant. *Uno*, 72 F.3d at 985. This includes general elections. *Lewis v. Alamance Cnty., N.C.*, 99 F.3d 600, 614–16 (4th Cir. 1996). If Plaintiffs believe primary elections “are far more probative,” they can argue that at trial. *Pope*, 94 F. Supp. 3d at 321, 324.

⁴ The exception is HD3, and it involved candidates of Middle Eastern descent.

For now, what matters is that the Commission has sponsored expert opinion demonstrating that general elections can be—and are in this case—more probative than primaries. Dr. Palmer explains that “[d]istrict primaries are idiosyncratic, with different numbers of candidates, varying degrees of group cohesion in support of candidates, and levels of racially polarized voting.” JA00125, Palmer Rep. 9, PageID.803; *see also id.* at 4–10, PageID.798-804. Some primaries may be uncontested, some may have two candidates, and some may be contested by multiple candidates so that no candidate receives a majority of the vote, which makes “the existence of a candidate of choice less obvious.” *Id.* at 4–5, PageID.798-799. In primaries with more than two candidates, Black-preferred candidates may lose “not due to an insufficient Black voting population but due to candidate entry and a lack of coordination in the primary”. *See id.* at Palmer Rep. 8, PageID.802. In contrast, “analyzing racially polarized voting is straightforward” in general elections because “there are usually two competitive candidates in the election.” *Id.* at 4, PageID.798. And voter turnout is lower in primary elections than general elections, including in 2022, where votes cast in primaries in every challenged district were less than half of those cast in the general election. Primary elections therefore reveal no information about the preferences of a large share of the electorate, Black and white. *Id.* at 9, PageID.803. General elections, by contrast, “can reveal the preferences of all of the voters in the general election, if different groups had different preferred candidates, and, if so, if the Black-preferred candidate is able to win the election.” *Id.* The Court must take these facts and the inferences in the Commission’s favor at this stage.

Recent Elections. Plaintiffs also insist that “the more recent an election, the higher its probative value,” MSJ 19, PageID.600, but the case law they cite considers elections “in the

past ten years” to be recent, *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1021 (8th Cir. 2006). All elections presented in this case qualify, and, as shown, Plaintiffs’ claims fail under the 2022 elections, standing alone. Plaintiffs’ expert reports discuss no “political evolution” in recent years that makes a material difference in this case, *Uno*, 72 F.3d at 990, and any question on that point would require trial.

Exogenous Races. Exogenous elections “hold some probative value.” *Bone Shirt*, 461 F.3d at 1021. Plaintiffs are wrong to ask this Court to ignore that value as a matter of law.

Majority-Minority Districts Elections. Plaintiffs also ask the Court to discount elections in majority-minority districts, MSJ 19, PageID.600, but this asks the Court to weigh evidence. In fact, Dr. Handley did not examine majority-minority districts in a vacuum but as part of a comprehensive analysis of all elections in Detroit-area districts with BVAPs above 25%. *See* JA00010, 2023 Handley Rep. 10, PageID.688. This is a fact question unripe to address at this time. Besides, Plaintiffs do not establish a Section 2 violation even when majority-minority district contests are ignored: the Black-preferred win percentage in the 18 contested primaries in non-majority Black districts is 72.2% (13 of 18). *See* JA00857, Handley Table 4, Reconfigured, PageID.1543.

Inferences Regarding Elections. Plaintiffs ask the Court to draw inferences about a few Black-preferred-candidate losses—affording them outsized weight—and about the many Black-preferred-candidate wins—affording them no weight. The summary-judgment standard directs the opposite approach.

First, Plaintiffs point to a Democratic primary in SD8 and ask the Court to infer that the Black-preferred candidate lost “because of the low BVAP.” MSJ 23, PageID.604. But, according to Dr. Palmer, “[t]his single election does not reflect a consistent pattern of racial

polarization” in SD8, and instead “demonstrates the idiosyncrasies of primary elections.” JA00134, Palmer Rep. 18, PageID.812. Plaintiffs describe this race as between “two well-funded Democratic incumbents,” MSJ 23, PageID.604, but ignore the national attention and unprecedented level of funding the prevailing incumbent received after a widely publicized speech on transgender rights. JA00134, Palmer Rep. 18, PageID.812.⁵ Senator McMorrow received support from 24% of Black voters, JA00013, 2023 Handley Rep. 13, PageID.691, and white voters “turned out at a very high rate relative to other districts.” *Id.* That election says little about ordinary electoral conditions in the Detroit region.

Second, Plaintiffs emphasize a Black-preferred-candidate loss in the 2022 Democratic primary in SD1. MSJ 23, PageID.604. But this race featured six candidates, four of whom were Black, and most Black voters voted against the candidate Plaintiffs allege was Black-preferred, who was supported by a small plurality of Black voters (34%). JA00013, 2023 Handley Rep. 13, PageID.691. The prevailing candidate, incumbent Senator Erika Geiss, was the second choice of Black voters (24.3%) and currently serves as Chair of the Michigan Legislative Black Caucus. *See Michigan Legislative Black Caucus Announces Officers for the 102nd Legislature*, Michigan Legislative Black Caucus (Jan. 13, 2023).⁶ It is difficult to see unequal electoral opportunity in that result.

⁵ McMorrow reportedly raised over \$1 million following her viral speech. *It's official: The attack on McMorrow backfired*, Politico (Jul. 28, 2022), <https://www.politico.com/news/2022/07/28/mcmorrow-theis-michigan-senate-00048330>. She reportedly raised \$602k for the primary versus Senator Bullock's \$127k. *Michigan State Senate District 8*, Transparency USA, <https://www.transparencysusa.org/mi/race/michigan-state-senate-district-8> (last visited Jun. 2, 2023).

⁶ *Michigan Legislative Black Caucus Announces Officers for the 102nd Legislature*, Michigan Legislative Black Caucus (Jan. 13, 2023), <https://michiganlbc.org/2023/01/13/michigan-legislative-black-caucus-announces-officers-for-the-102nd-legislature/> (last visited Jun. 6, 2023).

Third, Plaintiffs ask the Court to afford outsized weight to 2022 house contests where “[f]our Black candidates of choice were defeated.” MSJ 25, PageID.606. But Black voters were not cohesive in two of these races (in HD8 and HD11), and one loss occurred in a district Plaintiffs do not challenge (HD5).⁷ JA00012–13, 2023 Handley Rep. 12–13, PageID.690-691. Hence, only one of these four results counts towards Plaintiffs’ burden to prove polarized voting in the challenged districts.

Plaintiffs next ask the Court to discount elections where Black-preferred candidates prevailed. MSJ 21, 24–25, PageID.602, 605-606. But the inferences must be taken the other way, and these are highly probative of equal opportunity. In HD12 (42.6% BVAP), for example, the non-incumbent Black-preferred candidate defeated the white incumbent. JA00349, Trende Rep. 42, PageID.1029. Plaintiffs ask the Court to conclude, with no supporting evidence, that this victory and the one in HD14 occurred only because candidates had “English and Irish surnames,” MSJ 21, PageID.602, but they are not entitled to that inference. Plaintiffs also contend that the eight Black-preferred incumbents were successful “only because they lacked serious challengers.” MSJ 25, PageID.606. But no one knows what would have happened with “serious challengers,” and Plaintiffs’ expert acknowledged that “twelve Black candidates of choice won seats in this election.” JA00349, Trende Rep. 42, PageID.1029.

Remarkably, Plaintiffs assert about the 2022 elections that “there is no evidence suggesting that the Black candidate of choice can win a polarized primary in a district with a

⁷ Plaintiffs discuss HD5 at length, calling it “perhaps the most egregious district on the map,” MSJ 26, PageID.607, but do not explain why assertions about a majority-minority district they do not challenge justifies liability against crossover districts where Black-preferred candidates usually win.

BVAP below 47%,” MSJ 25, PageID.606, but that quotes an assertion Mr. Trende made about the 2018 House primaries. JA00342, Trende Rep.35, PageID.1022. Mr. Trende was wrong about the 2018 primaries (*see* § II.B.3, *infra*), and Plaintiffs are wrong about the 2022 primaries. In 2022, Black-preferred candidates prevailed in three polarized primaries below 47% BVAP—HD7 (45.9%), HD14 (42.7%), and HD12 (42.6%). JA00011, 2023 Handley Rep. 11, PageID.689.

Plaintiffs also attempt to minimize Black-preferred wins in the Senate because “only two senators were the Black candidate of choice *when first elected.*” MSJ 24, PageID.605 (emphasis added). Plaintiffs cite no authority for the proposition that the Court should disregard victories by Black-preferred candidates in the 2022 primaries based on the results of prior elections in prior years. Ultimately, Black-preferred candidates prevailed in four contested Senate primaries in the Detroit-area (SD2, SD3, SD6, SD7), JA00011, 2023 Handley Rep. 11, PageID.689; JA00396, Trende Rep. 89, PageID.1076.

3. Admissibility and Credibility Deficiencies

Plaintiffs rely on evidence that is inadmissible and lacking in credibility. There is no reason to believe it will prove their case at trial and cannot be adjudged so now.

First, Mr. Trende was exposed by the Commission’s expert, Dr. Palmer, as being less than candid in his report. Dr. Palmer identifies instances where Mr. Trende cherry-picked election results and reported them in misleading ways.

For example, as noted, Mr. Trende declared that “there is *no* evidence suggesting that the Black candidate of choice can win a polarized primary in a district with a BVAP below 47%” in the 2011 house districts. JA00342–43, Trende Rep. 35–36, PageID1022-1023. Plaintiffs misleadingly repeat this assertion in reference to the 2022 elections under the

challenged plans. MSJ 25, PageID.606. But that adds error upon error. Dr. Palmer showed not only that there *is* evidence in 2018 suggesting this, but also that Mr. Trende generated that evidence. JA00131, Palmer Rep. 15, PageID.809. According to Dr. Palmer, Mr. Trende’s analysis showed evidence of racially polarized voting in HD4 (45.6% BVAP) in the 2011 house districts, where the Black-preferred candidate won the 2018 primary. *Id.* Mr. Trende “wrote code to perform this analysis himself, including code to generate a table presenting the results,” *id.*, yet he omitted this information, the table, and any mention of this contest from his report.⁸ Then, Mr. Trende made an assertion directly contrary to that omitted evidence.

Mr. Trende also did not report his own analysis of the results of HD11 (25.5% BVAP) where the Black-preferred candidate won a polarized primary, even though he wrote code to perform the analysis and generate a table with the results. *Id.* While Mr. Trende acknowledged in passing that this contest *is* evidence of Black-preferred candidate success in Detroit area districts with BVAPs lower than 47%, JA00343, Trende Rep. 36, PageID.1023, he could not credibly explain the clear contradiction between this race and his ironclad declaration that there was “no evidence.” Ex. 3, Trende Dep. 153:1–156:24. What’s more, Dr. Palmer found that Mr. Trende wrote code to analyze 11 districts in the 2018 primaries in the 2011 plan, but only reported the results for two districts. *See* JA00343–46, Trende Rep. 36–39 (HD2 and HD5 only), PageID.1023-46; *see also* JA00131, Palmer Rep. 15, PageID.809.

⁸ At deposition, Mr. Trende attempted to attribute this omission to a difference in the definition of BVAP reported by him and Dr. Handley, Ex. 3, Trende Dep. 150:11–151:20, despite reporting HD4 at 45.5% BVAP in his report. JA00342, Trende Rep. 35. But Mr. Trende acknowledged that when using the “Black alone” definition of BVAP he uses throughout his report, there is evidence of Black-preferred candidate success in polarized primaries in HD4 and HD11. Ex. 3, Trende Dep. 156:13–24. Regardless, that does not explain why Plaintiffs repeated this exposed error in their summary-judgment brief.

Mr. Trende similarly omitted analyses of senate districts. Mr. Trende wrote code to analyze the 2022 primary election in current SD 11—one of the challenged districts—and to generate a table presenting those results, which showed that SD11 was not polarized in the 2022 primary. JA00131, Palmer Rep. 18, PageID.812. But Mr. Trende did not include those results in his report and did not mention that he analyzed SD11. *Id.*; see JA00396, Trende Rep. 89, PageID.1076. The Court cannot grant summary judgment based on an expert analysis of doubtful credibility.

Second, Plaintiffs rely on lay testimony by LaMar Lemmons III, but it consists of both improper expert testimony and assertions lacking in foundation and credibility. Plaintiffs cite Mr. Lemmons' affidavit as evidence of “racial polarization transl[ati]ng into participation in the electoral process and voting patterns in Democrat primary elections.” MSJ 16, PageID.597. Mr. Lemmons purports to offer opinions about the voting patterns by race. *See, e.g.*, JA00525, Lemmons Aff. ¶ 17, PageID.1027 (“White democrat primary voters from the predominately White areas will generally even more strongly prefer and vote for a White democrat primary candidate over a Black democrat primary candidate.”). Plaintiffs also rely on Mr. Lemmons' analysis of the 2022 Democratic primaries in SD5, SD8, and SD1, and his opinions that Black-preferred candidates lost in those districts. *See* MSJ 23, PageID.604.

But Plaintiffs did not disclose Mr. Lemmons as an expert witness, he did not prepare an expert report, and his opinions are not otherwise in compliance with the rules governing expert opinion. *See* Fed. R. Civ. P. 26(a)(2)(A) & (B). As a lay witness, Mr. Lemmons may not offer opinions that are “based on scientific, technical, or other specialized knowledge within the scope of Rule 702.” *See* Fed. R. Evid. 701. In deposition, Mr. Lemmons attested that his opinions are grounded in “statistical techniques” and analyses of census data, voter

turnout, canvass reports, and election results. *See, e.g.*, Exhibit 4, Lemmons Dep. 76:23–77:24, 70:19–71:19 (election results), 72:22–73:13 (canvass reports), 105:23–106:11 (relied on precinct data to determine candidate supported by Black community in SD11). Mr. Lemmons testified that his “training and experience in analyzing elections” enabled him to analyze primary elections. Ex. 4, Lemmons Dep. 92:19–93:16, 77:19–23. Mr. Lemmons’ opinions are inadmissible.

Mr. Lemmons’ opinions also lack any foundation or credibility, and some conflict with his own testimony and the opinions of Mr. Trende. Mr. Lemmons cites the 2022 primary in SD7 as evidence that “it would be exceedingly difficult for any Black candidate of choice to prevail in a Democrat primary election,” opining that “the incumbent Senator Jeremy Moss, a White man from Southfield, soundly defeated the newcomer Ryan Foster, a Black man from Detroit.” JA00532, Lemmons Aff. ¶¶ 39–40, PageID.1214. But Mr. Trende’s statistical analysis shows that the 2022 primary in SD7 was not polarized—Black and white voters overwhelming supported Senator Moss. JA00396, Trende Rep. 89, PageID.1076.

Mr. Lemmons also believes that “when there is a black candidate and a white candidate, it is clear that the general preference by the black community is to have a black candidate with similar experience in the primary.” Ex. 4, Lemmons Dep. 70:19–71:2. This assertion belied by the expert analysis, *see* JA00396, Trende Rep. 89, PageID.1076; JA00488, Trende Dep. 33:7–16, PageID.1170; JA00857, Handley Table 4, Reconfigured, PageID.1543, and Mr. Lemmons’ own experience of supporting a white candidate in SD11 over a Black candidate. Ex. 4, Lemmons Dep. 103:17–104:20. And while Mr. Lemmons claimed that other Black voters “overwhelmingly” supported the Black candidate, *id.* at 104:4–20, Mr.

Trende's analysis shows Black voters were not cohesive. JA00131, Palmer Rep. 18, PageID.812.

Mr. Lemmons' testimony on other issues is likewise flawed. For example, Plaintiffs rely on Mr. Lemmons' testimony regarding his experiences campaigning in Wayne, Oakland, and Macomb Counties and what he considers low engagement from white residents. MSJ 30, PageID.611. But Mr. Lemmons admitted he does not know why residents may not answer their doors during political canvassing, Ex. 4, Lemmons Dep. 65:21–66:14, which forecloses his opinion that racial animus is to blame. The Court should not credit this testimony at trial, and it cannot award summary judgment based on it now.

4. Plaintiffs' Miscellaneous Arguments Miss Their Mark

Plaintiffs offer various other arguments and narrative devices. None is persuasive; none justifies the exceptional step of summary judgment.

First, Plaintiffs emphasize a law review article authored by Jocelyn Benson before she became Michigan's Secretary of State, which "proposed a ban on reductions below 55%" minority VAP under Section 5 of the VRA. MSJ 5, PageID.586 (quoting Jocelyn Benson, *Turning Lemons into Lemonade: Making Georgia v. Ashcroft the Mobile v Bolden* of 2007, 39 Harv CR-CLL Rev 485, 495 (2004)). As an initial matter, Secretary Benson was discussing "areas covered by VRA Section 5," Benson, *supra*, at 494, and this is not a Section 5 case. Moreover, the article relies on national studies of voting patterns between 1972 and 1994, *id.* at 494–95, and the Supreme Court held 30 years ago that a "law review article on national voting patterns" lacks probative force in evaluating the second and third *Gingles* preconditions. *Grove*, 507 U.S. at 42. The Court found clear error in a district court's reliance on such a law review article, *id.*, and this is no time to repeat that error.

Besides, the article predates intervening Supreme Court precedent. Under Section 2, the Supreme Court directs “that the most effective way to maximize minority voting strength may be to create more influence or [crossover] districts,” and quotes *Georgia v. Ashcroft*—the case criticized in the law review article Plaintiffs cite—for that proposition. *See Bartlett*, 556 U.S. at 23 (quoting *Georgia v. Ashcroft*, 539 U.S. 461, 482 (2003)). As the Commission explained, Comm’n MSJ 18–20, PageID.655-657, *Bartlett* encourages states to defend Section 2 lawsuits by “pointing . . . to effective crossover districts,” *Bartlett*, 556 U.S. at 24, and *Cooper* unanimously held that Section 2 to can “be *satisfied* by crossover districts (for groups in fact meeting *Gingles*’ size condition).” 581 U.S. at 305. Likewise, under Section 5, a proposed rule barring BVAP reductions was rejected by the Supreme Court in *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 275–76 (2015).⁹ A three-judge court last decade invalidated 11 legislative districts as racial gerrymanders because the Virginia legislature “employed a mandatory 55% BVAP floor in constructing” them. *Bethune-Hill v. Virginia State Bd. of Elections*, 326 F. Supp. 3d 128, 145 (E.D. Va. 2018) (three-judge court).

Second, Plaintiffs attack a straw man by labeling the challenged districts “influence” districts and insisting that “‘influence districts’ like those here have no basis in VRA jurisprudence.” MSJ 31, PageID.612. But the challenged districts are actually (or may be found at trial to be) “crossover district[s],” in which “the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority’s preferred candidate.”

⁹ The dissenting opinion in *Georgia v. Ashcroft*, which Congress adopted by a 2006 amendment to Section 5 (but not Section 2) also rejects Plaintiffs’ position, explaining that, “in districts with low racial bloc voting or significant white crossover voting, a decrease in the black proportion may have no effect at all on the minority’s opportunity to elect their candidate of choice.” 539 U.S. at 499 (Souter, J., dissenting).

Bartlett, 556 U.S. at 13. Record evidence establishes that white crossover voting in and around Detroit is sufficient that Black-preferred candidates can prevail in districts below 50% BVAP. *See* 2023 Handley Rep. 8, JA00008, PageID.686 (“The . . . contests analyzed by Mr. Trende do not alter my conclusions regarding whether majority Black districts are necessary to provide Black voters with an opportunity to elect their candidates of choice to the state legislature – they are not.”). As discussed, crossover districts most certainly have a “basis in VRA jurisprudence” insofar as states may voluntarily use them to fulfill their Section 2 obligations. *See Bartlett*, 556 U.S. at 24; *Cooper*, 581 U.S. at 305.

Baldus v. Members of Wisconsin Government Accountability Bd., 849 F. Supp. 2d 840 (E.D. Wis. 2012), a decision issued after trial, *id.* at 847, offers Plaintiffs no support against that clear Supreme Court precedent. *Baldus* invalidated two “influence” districts because the “evidence” of polarized voting established “that Latino voters have a distinctly better prospect of electing a candidate of choice with one majority-minority district than with two influence districts.” *Id.* at 856. In this case, that evidence does not exist, the districts are crossover districts backed by evidence of reliable white crossover voting, and any doubt on those points only creates a triable fact dispute. To the extent Plaintiffs read *Baldus* to foreclose states’ use of crossover districts to satisfy Section 2, they read it as bad law in conflict with *Bartlett* and *Cooper*.

Third, Plaintiffs make unsupported assertions. For example, they contend “that Michigan’s Legislative Black Caucus was decimated in the 2022 elections, losing 20% of its members.” MSJ vii, PageID.580; *see also id.* at 1, 22, PageID.582, 603. But no evidence accompanies that charge, none was exchanged in discovery, and it is incorrect. Michigan’s Legislative Black Caucus remains robust, with at least 21 members in 2023—six more than

the combined 15 majority-minority districts in Mr. Trende’s demonstrative plans.¹⁰ An “Uber XL” cannot hold 21 passengers. *See* MSJ 22, PageID.603. Likewise, Plaintiffs’ assurance that “more losses [are] to come” is speculation. Any crystal-ball inference the Court might be inclined to entertain would have to await trial.

C. The Totality of the Circumstances

Plaintiffs are not entitled to summary judgment on the totality of the circumstances. While the Commission recognizes that some relevant factors are likely to favor Plaintiffs at trial, *see* Comm’n MSJ 29–30, PageID.666-667, the totality-of-the-circumstances is “fact-intensive,” requiring “a functional view of political life” in the relevant area. *N.A.A.C.P. v. Fordice*, 252 F.3d 361, 367 (5th Cir. 2001). There is no “particular number of factors” that must be satisfied, *id.*, and Plaintiffs improperly ask the Court to “weigh[]” factors in their favor at this stage, MSJ 31, 32, PageID.612-613. That is premature.

Plaintiffs cannot claim victory on critical factors. First, to the extent the question of alternative-district performance is a question under the totality-of-the-circumstances, it is dispositive, *see* Comm’n MSJ 16 n.8, PageID.653, and Plaintiffs cannot prevail under it, *id.* at 16–20, PageID.653-657. Second, many “members of the minority group have been elected to public office,” so this factor favors the Commission. *Gingles*, 478 U.S. at 37. Third, the “extent” of “racially polarized” voting, *id.*, though legally significant, is muted because of strong white crossover voting, JA00045, 2021 Handley Rep. 21, PageID.723, notwithstanding Plaintiffs’ perfunctory assertions to the contrary, MSJ 31, PageID.612. Fourth, the “lack of responsiveness” inquiry concerns “elected officials” generally, *Gingles*, 478 U.S. at 37, not just

¹⁰ *About Us*, Michigan Legislative Black Caucus, <https://michiganlbc.org/about/> (last visited Jun. 6, 2023).

“white representative[s],” MSJ 30, PageID.611. Because many Black representatives serve in the legislature, this factor cannot be shown to favor Plaintiffs as a matter of law. Fifth, the proportionality inquiry turns on the opportunity available to Black voters not the success of Black candidates, *see Johnson*, 512 U.S. at 1014–15 & n.11, and Plaintiffs’ discussion of proportionality is deficient and legally flawed, *see* MSJ 33–34, PageID.614-615.

Given these and other issues, the Court is not now positioned to weigh the totality-of-the-circumstances.

III. Plaintiffs Are Not Entitled To Summary Judgment on Their Racial-Gerrymandering Claims

Plaintiffs fall far short of the summary-judgment mark on their racial-gerrymandering claims. In *Cromartie I*, the Supreme Court unanimously reversed the entry of summary judgment for plaintiffs on a racial-gerrymandering claim, as Plaintiffs demand here. 526 U.S. at 546. The Court reiterated that a racial-gerrymandering plaintiff must show “that race was the ‘predominant factor’ motivating the legislature’s districting decision” and that “[t]he legislature’s motivation is itself a factual question.” *Id.* at 547, 549. The Court warned: “summary judgment is rarely granted in a plaintiff’s favor in cases where the issue is a defendant’s racial motivation,” and explained that “the same holds true for racial gerrymandering claims of the sort brought here.” *Id.* at 541 n. 9 (citing 10B Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure* §§ 2730, 2732.2 (1998)).

Plaintiffs do not cite this authority or explain why this is the rare case where subjective motive of 13 public officers can be resolved as a matter of law. Their brief does not identify a single line of a single challenged district drawn for predominantly racial reasons and does not

say which alleged racial targets were achieved in which districts and how. It does not even name a challenged district. If anything, this weak showing may require that summary judgment be entered against Plaintiffs. *See Lee v. City of Los Angeles*, 908 F.3d 1175, 1185–86 (9th Cir. 2018) (granting summary judgment to defendants where evidence of racial considerations could not cross the threshold of predominance).

A. Racial Predominance

It is the “plaintiff’s burden . . . to show . . . that race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Miller v. Johnson*, 515 U.S. 900, 916 (1995). “Race must not simply have been *a* motivation for the drawing of a majority-minority district, but the *predominant* factor motivating the legislature’s districting decision.” *Easley v. Cromartie*, 532 U.S. 234, 241 (2001) (*Cromartie II*) (internal citations and quotation marks omitted). This is a “demanding” standard, *id.*, that “applies district-by-district,” *Alabama Legislative Black Caucus*, 575 U.S. at 262.

1. Plaintiffs are wrong to contend that evidence of “a set racial target” satisfies this high burden. MSJ 38, PageID.619. To qualify as predominant, racial considerations must also have “had a direct and significant impact” on each challenged district’s configuration with enough force to “demonstrate[e] that the legislature ‘subordinated’ other factors—compactness, respect for political subdivisions, partisan advantage, what have you—to ‘racial considerations.’” *Cooper*, 581 U.S. at 300. “A court faced with a racial gerrymandering claim therefore must consider all of the lines of the district at issue.” *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178, 192 (2017). “A holistic analysis is necessary to give” the “evidence its proper weight.” *Id.*; *see also Alabama Legislative Black Caucus*, 575 U.S. at 273–74.

Decisions finding this standard met have been issued after trial and contained district-by-district findings of fact, even where there was a finding of an express racial target. *See, e.g., Bethune-Hill v. Virginia State Bd. of Elections*, 326 F. Supp. 3d 128, 154–172 (E.D. Va. 2018) (three-judge court); *Covington v. North Carolina*, 316 F.R.D. 117, 140–165 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017). That is because “[a] racial gerrymandering claim . . . applies to the boundaries of individual districts.” *Alabama Legislative Black Caucus*, 575 U.S. at 262. Although racial-gerrymandering challengers “can present statewide *evidence* in order to prove racial gerrymandering in a particular district,” *id.* at 263, that evidence cannot be *dispositive* as a matter of *law* where an “undifferentiated statewide analysis is insufficient,” *id.* at 264.

Plaintiffs in effect ask the Court to follow the concurring opinion of Justice Alito and the dissenting opinion of Justice Thomas in *Bethune-Hill*, which both advocated that strict scrutiny ought to apply whenever “a legislature intentionally creates a majority-minority district.” 580 U.S. at 197 (Alito, J., concurring) (citation omitted); *see also id.* at 198 (Thomas, J., concurring in the judgment in part and dissenting in part). Even assuming Justices Alito and Thomas would apply the same rule where the Commission did not create majority-minority districts, this Court is bound by the opinion garnering seven votes, which calls for “a holistic analysis of each district.” *Id.* at 191. Plaintiffs do not argue to that standard.

2. Plaintiffs’ showing falls short of the mark, even for trial. They do not address any “of the lines of the district[s] at issue,” much less “all” of them. *Bethune-Hill*, 580 U.S. at 192; *see MSJ 35–44, PageID.616-625*. They have no “in-depth explanation” of “where and how” “predetermined demographic percentages” impacted district boundaries and thus no way to show that race predominated over neutral redistricting criteria. *Backus v. South Carolina*, 857 F. Supp. 2d 553, 564–65 (D.S.C. 2012) (three-judge court) (rejecting racial-

gerrymandering claim after trial based on such deficiencies); *see also Harvell v. Blytheville School Dist. No. 5*, 126 F.3d 1038, 1040–42 (8th Cir. 1997) (upholding districts drawn at “BVAP of 57.3% or higher” because the “plan preserve[d] communities with actual shared interests” and did “not reject traditional, non-racial districting criteria”). They do not say which target—35% or 40%?—was used in which challenged district—there are 17 total—and they mistakenly believe quips—*e.g.*, “Chairwoman Szetela kept the receipts”—are a substitute for district-specific evidence. *See* MSJ 38, PageID.619.

Plaintiffs rely, first, on the partial dissenting report of Commissioner Szetela, but Commissioner Szetela voted for the Linden and Hickory plans.¹¹ Commissioner Szetela dissented as to the congressional plan, which is not challenged here, JA00604, PageID.1288, and the import of her dissent to the Linden and Hickory plans is at best unclear. Regardless, Commissioner Szetela’s report discusses not one line of one district, let alone all lines of all challenged districts. Plaintiffs’ discussion of her report makes no serious attempt at a holistic, district-specific analysis.

Plaintiffs also rely on a mapping-simulation analysis by Mr. Trende, which purports to show that a large ensemble of simulated plans does not produce districts with racial percentages like those of districts in the Linden and Hickory plans. MSJ 40–43, PageID.621-624. This method does not explain which district lines were fashioned to reach a racial target, the percentage of white versus Black voting-age persons added to or removed from districts (and at what point), the degree to which BVAP percentages were altered during drafting, or

¹¹ *See MICRC Proposed Meeting Minutes* (Dec. 28, 2021), https://www.michigan.gov/micrc/-/media/Project/Websites/MiCRC/Nov82021TOJan312022/MICRC_Proposed_Meeting_Minutes_2021_12_28.pdf?rev=ce551d9594804339a48bf1f6c5dd6af9&hash=A088673C2B018497A5B0F2B0C7D260FE.

anything else that could independently satisfy the requisite holistic analysis. *See Bethune-Hill*, 580 U.S. at 192. This does not “contain[] evidence satisfying the burden of persuasion.” *Arnett*, 281 F.3d at 561.

3. Even if this evidence could carry Plaintiffs’ burden, it is in genuine dispute. Not one but two expert witnesses contest Mr. Trende’s simulation analysis. Dr. Palmer concludes that “the simulations do not show that race was the predominant factor in drawing the maps.” JA00139, Palmer Rep. 23, PageID.817. Dr. Palmer explains that, “if the constraints” applied to the simulated maps “do not accurately reflect the map-drawing process, then differences between the enacted map and the simulations will not be informative.” *Id.* Dr. Palmer finds that Mr. Trende applied criteria the Commission did not apply and did not apply criteria the Commission did apply. JA00139–00141, Palmer Rep. 23–25, PageID.817-819. Likewise, Dr. Rodden concludes that Mr. Trende’s algorithm “pays no attention to the requirements of the Michigan constitution,” including “the partisan fairness requirement.” JA.00263, Rodden Rep. 37, PageID.942. “To serve as a useful benchmark, the ensemble must produce plans that abide by the *same rules* that had to be followed by those drawing the districts.” *Id.* Plaintiffs could hardly be further off course in directly asking the Court to find the “weight” of evidence in their favor in this battle of experts. MSJ 41, PageID.622.

4. There is more. The record discloses extensive neutral criteria, provided on a district-by-district basis, which “may well suffice to refute a claim of racial gerrymandering.” *Miller*, 515 U.S. at 919. The Court must weigh this evidence in the predominance matrix. *See Bethune-Hill*, 580 U.S. at 193 (remanding for district court “to determine in the first instance the extent to which . . . face directed the shape of these 11 districts”); *Alabama Legislative Black*

Caucus, 575 U.S. at 274–75 (remanding for the lower court to weigh traditional criteria against racial goals).

As noted, the Commission considered public input regarding communities of interest, as well as the neighborhood boundaries of more than 200 neighborhoods in and around Detroit. Eid. Decl. ¶¶ 5–7. The Linden and Hickory maps honor those communities of interest and neighborhoods as possible, *see* Eid. Decl. ¶¶ 7–74, and implement the Commission’s other criteria, including the partisan-fairness requirement. *See* Eid. Decl. ¶¶ 7, 75–77. Based on expert analysis showing the high concentration of Democratic voters in Detroit, the Commission worked to “create more balanced districts that accounted for heavily Republican areas in other areas of the State due to Michigan’s unique geographical layout.” *See id.* at ¶ 7. The attached declaration of Commissioner Eid—unlike Plaintiffs’ memorandum and evidentiary showing—explains these considerations district-by-district and amply creates material fact disputes as to whether “neutral considerations [were] cast aside.” *Bethune-Hill*, 580 U.S. at 190.

5. This case presents the dispute whether “race *rather than* politics *predominantly* explains” each challenged district’s “boundaries.” *Cromartie II*, 532 U.S. at 243. As the Commission’s summary-judgment motion explained, Plaintiffs have made a binding judicial admission that “increas[ing] the number of Democratic-majority districts” was the Commission’s “primary motivation,” JA00547–48, Pls.’ Objs. & Responses to RFA No. 8, PageID.1229-1230, which means race did not predominate, *see Cromartie II*, 532 U.S. at 243. That admission dictates summary-judgment against Plaintiffs, and if nothing else, it precludes summary judgment in their favor. In fact, Plaintiffs’ witness, Mr. Lemmons, attests that political motive predominated, JA00527, Lemmons Aff. ¶ 24, PageID.1209, Commissioner

Eid also attests that the concern of partisan fairness influenced the shapes of the challenged districts' boundaries, Ex. 1, Eid Decl. ¶ 75, and the Commission's expert witnesses both attest that this explanation is plausible from the circumstantial evidence. JA00242–59, JA00263–67, Rodden Rep. 16–33, 37–41, PageID.920-937, 941-945; JA000139–41, Palmer Rep. 23–25, PageID.817-819.

Once again, Plaintiffs say the “weight of the evidence” favors them. MSJ 41, PageID.622 (quoting Trende Rep. JA384). And, again, this does not even pretend to satisfy a standard forbidding the “weighing of the evidence.” *Cromartie I*, 526 U.S. at 552 (quoting *Anderson*, 477 U.S. at 255). The Commission's experts have criticized—indeed, debunked—each of the analysis of Mr. Trende that Plaintiffs cite. JA00136–141, Palmer Rep. 20–25, PageID.814-819; JA00242–59, JA00263–67, Rodden Rep. 16–33, 37–41, PageID.920-937, PageID.941-945; *see also* JA00259–61, Rodden Rep. 33–35, PageID.937-939 (compactness); *see also* JA00259–61, Rodden Rep. 35–37, PageID.939-941 (country splits).

B. Narrow Tailoring

Plaintiffs' discussion of the narrow-tailoring element, MSJ 43–44, PageID.624-625, confirms that the Commission is entitled to summary judgment. Plaintiffs argue that “the VRA cannot serve as a compelling interest,” MSJ 43, PageID.624, but cite no authority for that claim and ignore that the Supreme Court “long assumed that one compelling interest is complying with the operative provisions of the Voting Rights Act of 1965.” *Cooper*, 581 U.S. at 292. VRA compliance can be a compelling interest where the redistricting authority “has good reason to think that all the ‘Gingles preconditions’ are met.” *Id.* at 302. Plaintiffs do not, and could not, deny that the Handley report before the Commission established these elements. *See* Comm'n MSJ 29–30, PageID.666-667.

Plaintiffs argue that the alleged “BVAP reductions . . . deprive Black voters the opportunity to elect their preferred candidates” and refer the Court back to their Section 2 analysis. MSJ 43, PageID.624. Even on its own terms, that analysis does not avoid material fact disputes, for reasons already discussed (*see* § II, *supra*). But more importantly, Plaintiffs have the legal framework wrong. The narrow tailoring analysis looks to the “basis in evidence” available at redistricting and asks only whether the redistricting authority “had ‘good reasons’” for its redistricting choice. *Cooper*, 581 U.S. at 293; *accord Alabama Legislative Black Caucus*, 575 U.S. at 278. The question is therefore not whether the districts actually performed as predicted, but whether the Commission had good reasons based on its own record to make the choices it made. *See Alabama Legislative Black Caucus*, 575 U.S. at 278 (“This standard . . . does not demand that a State’s actions actually be necessary to achieve a compelling state interest in order to be constitutionally valid.” (quotation marks omitted)).

To argue to the correct standard, Plaintiffs would need to point to material errors in the analysis of Dr. Handley present before the Commission. *See Cooper*, 581 U.S. at 302–03; *Covington*, 316 F.R.D. at 166–67. That evidence showed that there was a sufficient pattern of white crossover voting to ensure equal Black electoral opportunity at BVAPs in each relevant county below 50%. JA00045, 2021 Handley Rep. 21, PageID.723. Plaintiffs do not contest Dr. Handley’s analysis in a material way, and they could not. Mr. Trende testified that he has located no inaccuracies or errors in it. JA00493–95, JA00498–99, Trende Dep. 60:6–15, 61:4–9, 61:16–62:1, 140:16–141:3, PageID.1175-1177, PageID.1180-1181. Meanwhile, Commissioner Szetela—whose report Plaintiffs rely on—praised “the excellent analysis Dr. Handley performed for the Commission.” JA00604, PageID.1288. Thus, while Plaintiffs are right that there is no room for a material fact dispute, they are on the wrong side of the law.

Indeed, while Plaintiffs cite *Cooper* as “MOST APPROPRIATE AUTHORITY,” MSJ. viii, PageID.581 (emphasis and underlying omitted), they misapprehend its meaning and application. *Cooper* invalidated a majority-minority district based on a “pattern of white crossover voting in the area.” 581 U.S. at 304. Plaintiffs do not explain how the Commission could have justified majority-minority districts under materially identical conditions. Moreover, central to Plaintiffs’ Section 2 analysis—which they restate as their narrow-tailoring analysis—is the assertion that only primary elections are relevant. But *Cooper* analyzed only “**general elections.**” 581 U.S. at 294 (emphasis added); *see also Covington*, 316 F.R.D. at 126 (“African-American candidates for the North Carolina House won thirty-nine **general elections** in districts without a BVAP majority . . . , and African-American candidates for the North Carolina Senate won twenty-four **such elections**” (emphasis added)). Besides, Dr. Handley analyzed the available primaries, the parties acknowledge that there were a limited number of primary elections available to analyze, and Plaintiffs cite no election that Dr. Handley failed to analyze and that would have changed the result. Thus, the Court has a clean record to decide that the Commission’s basis in evidence was strong—indeed, as strong as it gets.

CONCLUSION

The Court should deny Plaintiffs’ motion in full and grant the Commission’s motion.

Dated: June 6, 2023

Respectfully submitted,

/s/ David H. Fink

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.2(b)(ii), Counsel for the Commission certifies that this brief contains 10,497 words, as indicated by Microsoft Word 365, inclusive of any footnotes, citations, and quotations, and exclusive of the caption, signature block, tables, attachments and exhibits, and any certificates.

Dated: June 6, 2023

Respectfully submitted,

/s/ David H. Fink

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

DONALD AGEE, JR. et al.,

Plaintiffs,

v.

JOCELYN BENSON, et al.,

Defendants.

Case No. 1:22-CV-00272-PLM-RMK-JTN

INDEX OF EXHIBITS

- Ex. 1 Declaration of Anthony Eid
- Ex. 2 Declaration of Kimball Brace
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EXHIBIT 1

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DECLARATION OF ANTHONY EID

I, Anthony Eid, declare and state pursuant to 28 U.S.C. § 1746 as follows:

1. I am a Commissioner on the Michigan Independent Citizens Redistricting Commission.
2. I serve as a Commissioner unaffiliated with any major political party.
3. I have resided in Metro Detroit for 10+ years.
4. This declaration is given based on my personal knowledge concerning facts with which I am intimately familiar. I reviewed Exhibit A (the “MICRC State House Hickory Plan - with City of Detroit Neighborhoods”), a map showing the Detroit neighborhood boundaries overlaid on top of the enacted House plan, Exhibit B (the “Trende State House Plan - with City of Detroit Neighborhoods), a map showing the Detroit neighborhood boundaries overlaid on top of Plaintiffs’ expert Sean Trende’s House demonstrative map, Exhibit C (the “Linden State Senate Plan - with City of Detroit Neighborhoods”), a map showing the Detroit neighborhood boundaries overlaid on top of the enacted Senate plan, Exhibit D (the “Trende State Senate #1 Plan - with City of Detroit Neighborhoods”), a map showing the Detroit neighborhood boundaries overlaid on top

of Plaintiffs' expert Sean Trende's first Senate demonstrative map, and Exhibit E (the "Trende State Senate #2 - with City of Detroit Neighborhoods"), a map showing the Detroit neighborhood boundaries overlaid on top of Plaintiffs' expert Sean Trende's second Senate demonstrative map, as part of preparing this declaration. I also reviewed Exhibit F ("Excerpts of Hickory House Districts"), maps showing select districts in the enacted House plan, and Exhibit G ("Excerpts of Linden Senate Districts"), maps showing select districts in the enacted Senate plan, which are publicly available on the Commission's website: <https://www.michigan.gov/micrc/mapping-process/final-maps>, as well as Exhibit H ("Excerpts from Trende Report – Appendix C (Demonstration Plan Details)").

Role in Map-Drawing Process

5. I, along with the other commissioners, prepared the drafts and final version of the enacted plans—the Hickory and Linden maps—using several sources of data and information relating to communities of interest across Michigan, including data provided to the Commission by Election Data Services showing the neighborhood boundaries of 200+ neighborhoods in and around the city of Detroit, communities of interest that many members of the public asked the Commission to preserve. These boundaries appeared as an overlay and could be turned on and off as maps were drawn in the Detroit area.

6. In addition, the Commission considered the knowledge and input of Commissioners who resided in Detroit and were familiar with Detroit's many communities of interest, as well as the thousands of public comments and testimony made throughout the redistricting process.

7. I supported and voted for both the Hickory and Linden maps through the collaborative map-drawing process. The Commission drafted multiple versions of both the house and senate maps. The people of Michigan had the opportunity to, and did, give feedback on the

Hickory and Linden maps. Commissioners collaboratively edited the plans after the Commission's public hearings. I was present during Commission meetings when map-drawing decisions were made related to the Hickory and Linden maps. I supported the Hickory and Linden maps because the public response to the maps indicated that the public preferred these maps over others, and I believed they would be supported by the necessary votes among the Commissioners. Among other things, I believed the Hickory and Linden maps honored communities of interest including Detroit neighborhoods while also adhering to the other constitutional map-drawing criteria. This Declaration sets forth my understanding of some of the goals and considerations that went into the drawing of the Hickory and Linden maps and the communities of interests and neighborhoods preserved therein as compared to Plaintiffs' expert Sean Trende's demonstrative maps.

House District 1

8. Hickory District 1 of Exhibit A maintains the neighborhoods of Boynton, Oakwood Heights, Carbon Works, Delray, Springwells, Michigan Martin, Central Southwest, Hubbard Farms, West Side Industrial, Mexicantown, Hubbard Richard, Corktown, North Corktown, Claytown, Chadsey Condon, Core City, NW Goldberg, LaSalle Gardens, Wildemere Park, Jamison, and Petoskey-Otsego.

9. Hickory District 1 preserves the core area of downtown Detroit, east of Woodward and going down the Detroit River to keep neighborhoods in Detroit intact as much as possible.

10. In reviewing Exhibit B, I notice that this map splits the neighborhoods of Springwells, Central Southwest, and West Side Industrial between Trende Districts 5 and 11 and splits Claytown and Midwest between Trende Districts 5 and 6.

11. Trende's District 5 of Exhibit B stretches east and west of Woodward Avenue, merging areas of downtown and midtown Detroit with the neighborhoods of Airport Sub, LaSalle, and Gratiot, communities that do not have much in common with the core areas of Detroit.

House District 3

12. Hickory District 3 of Exhibit A maintains the neighborhoods of Far West Detroit, Warrendale, Garden View, and Warren Ave.

13. Hickory District 3 preserves the Arab-American community in and around Dearborn and Detroit, which I understand to be a cohesive community of interest.

14. Additionally, Hickory District 3 includes the city of Melvindale with Dearborn, a request made by members of the public through public comment. In reviewing Exhibit B, I notice that this map separates Melvindale and Dearborn into Trende Districts 11 and 15.

House District 4

15. Hickory District 4 of Exhibit A maintains the neighborhoods of Grand River-St Marys, Grandmont, Greenfield-Grand River, Southfield Plymouth, Plymouth-I96, Plymouth-Hubbell, We Care, Barton-McFarland, Fiskhorn, Joy-Schaefer, and Aviation Sub.

16. In reviewing Exhibit B, I notice that this map splits the neighborhoods of Schoolcraft Southfield, Barton-Mcfarland, and Aviation Sub.

House District 5

17. Hickory District 5 of Exhibit A maintains the neighborhoods of Greenfield, San Bernardo, Seven Mile Lodge, Schaefer 7/8 Lodge, College Park, Crary/St Marys, Hubbell-Puritan, Belmont, Hubbell-Lyndon, and Cadillac.

18. Hickory District 5 preserves the community of interest between Greenfield, San Bernardo, Seven Mile Lodge, and Schaefer 7/8 Lodge. The drawing of District 18 affected District 5, because District 18 preserves a community of interest between Southfield and Lathrup Village in response to public comment.

19. In reviewing Exhibit B, I notice that this map splits the neighborhoods of Greenfield, San Bernardo, and Schaefer 7/8 Lodge between Trende Districts 8 and 10.

House District 6

20. Hickory District 6 of Exhibit A maintains the neighborhoods of Blackstone Park, Pembroke, Greenwich, McDowell, Oak Grove District 2, Schulze, Bagley, Harmony Village, and Happy Homes.

21. In reviewing Exhibit B, I notice that this map splits the neighborhoods of Greenwich and McDowell between Trende Districts 8 and 10 and splits Bagley between Trende Districts 6 and 8.

House District 7

22. Hickory District 7 of Exhibit A maintains the neighborhoods of Garden Homes, Green Acres, Sherwood Forest, Palmer Woods, University District, Detroit Golf, Palmer Park, Martin Park, Pilgrim Village, Chalfonte, Dexter-Fenkell, Northwest, Davison-Schoolcraft, Paveway, Littlefield, and Russell Woods.

23. Hickory District 7 preserves the large LGBTQ+ community of interest between Royal Oak, Ferndale, Palmer Park, and Palmer Woods.

24. In reviewing Exhibit B, I notice that this map splits the neighborhood of Garden Homes between Trende Districts 8 and 10. I also notice that Exhibit B splits the LGBTQ+ community of interest, putting Palmer Park in Trende District 4 and Palmer Woods in Trende District 8.

House District 8

25. Hickory District 8 of Exhibit A maintains the neighborhoods of State Fair, Nolan, Penrose, Grixdale Farms, Greenfield Park, Hawthorne Park, Northeast Central, Cadillac Heights, Gateway, Boston Edison, Arden Park, Piety Hill, North End, Virginia Park, New Center Commons, New Center, Tech Town, Medbury Park, Wayne State, and Cultural Center.

26. Hickory District 8 preserves the core areas of midtown Detroit, the educational hub of the city, keeping together the community of interest between Wayne State, Tech Town, New Center, and New Center Commons.

27. In reviewing Exhibit B, I notice that this map splits the neighborhoods of Nolan, Hawthorne Park, and Cadillac Heights between Trende Districts 3 and 4 and splits Midtown between Trende Districts 4 and 5.

House District 9

28. Hickory District 9 of Exhibit A maintains the neighborhoods of North Campau, Campau/Banglatown, Buffalo Charles, Airport Sub, Russell Industrial, Poletown East, Gratiot Town/Kettering, Pingree Park, Gratiot Woods, West End, East Canfield, Ravendale, Chandler Park, Chandler Park-Chalmers, Fox Creek, Forest Park, Jeffries, Brush Park, Brewster Homes, Douglass, and Eastern Market.

29. Hickory District 9 preserves the majority of Midtown, Medical Center, and all of Eastern Market within the district, key communities of interest that share similar characteristics as core downtown Detroit communities. I notice that Exhibit B separates the community of interest between Eastern Market, Medical Center, and Midtown between Trende Districts 4 and 5.

30. Hickory District 9 also maintains Airport Sub and West End together, a community of interest that submitted public comment asking to remain together. I notice that Exhibit B splits this community of interest by placing Airport Sub in Trende District 4 and West End in Trende District 5, in addition to splitting the individual neighborhood of Airport Sub between Trende Districts 4 and 5, and splitting West End between Trende Districts 2 and 4.

31. Members of the Bengali community submitted public comment to the Commission outlining the community's neighborhood boundaries and asking that these neighborhoods be

maintained together. Hickory District 9 preserves the Bengali community around Hamtramck and North Campau, Campau/Banglatown, Buffalo Charles, and Airport Sub.

32. In reviewing Exhibit B, I notice that this map splits the neighborhoods of Buffalo Charles between Trende Districts 3 and 4, splits Airport Sub between Trende Districts 4 and 5, and separates Airport Sub from Hamtramck, North Campau, Campau/Banglatown, and Buffalo Charles in Trende District 3, fracturing the Bengali community into separate districts.

33. I also notice that Exhibit B splits the neighborhoods of Gratiot Town/Kettering and McDougall-Hunt between Trende Districts 4 and 5, splits East Canfield between Trende Districts 2 and 5, and splits Ravendale and Wade between Trende Districts 2 and 4.

House District 10

34. Hickory District 10 of Exhibit A maintains the neighborhoods of Greektown, Lafayette Park, Elmwood Park, Rivertown, Islandview, West Village, Indian Village, East Village, Gold Coast, Joseph Berry Sub, Waterworks Park, Marina District, Riverbend, and Jefferson Chalmers.

35. Hickory District 10 in Exhibit F maintains the lakeshore community of interest along the Detroit River. Additionally, the Commission received public comment from the Gross Pointe communities, asking that Gross Pointe Woods, Gross Pointe Park, Gross Pointe Farms, and Gross Pointe Shores be kept together.

36. In reviewing Exhibit B, I notice that this map splits the neighborhoods of East Village and Conner Creek Industrial between Trende Districts 2 and 5 and splits the lakeshore community of interest between Trende Districts 2 and 5 as shown by Exhibit H. I also notice that the Trende map splits the Gross Pointe community of interest, placing Gross Pointe Woods with Harper Woods, which was a configuration that was not requested from the public.

House District 11

37. Hickory District 11 of Exhibit A maintains the neighborhoods of Moross-Morang, Denby, Yorkshire Woods, and Cornerstone Village.

38. In reviewing Exhibit B, I notice that this map splits the neighborhoods of Moross-Morang, Denby, and Yorkshire Woods between Trende Districts 1 and 2.

House District 12

39. Hickory District 12 of Exhibit A maintains the neighborhoods of Regent Park and Mapleridge.

40. Hickory District 12 combines Eastpointe with the neighborhoods of Regent Park and Mapleridge. The Commission received public comment in favor of combining Eastpointe with portions of Detroit, as residents of Eastpointe share many common experiences with residents of Detroit. Hickory District 12, as shown in Exhibit F, also places Eastpointe and Roseville in the same district based on public comment.

41. In reviewing Exhibit B, I notice that this map splits the neighborhood of Mapleridge between Trende Districts 1 and 4.

House District 13

42. Hickory District 13 of Exhibit A maintains the neighborhoods of Mohican Regent, Pulaski, Franklin, Von Steuben, LaSalle College Park, and Gratiot-Findlay.

43. The drawing of Hickory Districts 57 and 58, which maintain the Chaldean community of interest around Troy and Sterling Heights as shown in Exhibit F, a community of interest that identified separately from other Arab-Americans in and around Detroit, affected the drawing of Hickory District 13.

44. In reviewing Exhibit B, I notice that this map splits the neighborhood of Eden Gardens between Trende Districts 2 and 4.

House District 14

45. Hickory District 14 of Exhibit A maintains the neighborhoods of Butler, Pershing, Farwell, Sherwood, Nortown, Conant Gardens, Krainz Woods, Grant, Mount Olivet, and Davison.

46. In reviewing Exhibit B, I notice that this map places northern Detroit neighborhoods with the Bengali community around Hamtramack, North Campau, Campau/Banglatown, and Buffalo Charles. These communities do not share much in common.

House District 16

47. Hickory District 16 of Exhibit A maintains the neighborhoods of Evergreen-Outer Drive, Miller Grove, McNichols Evergreen, North Rosedale Park, Minock Park, Rosedale Park, Westwood Park, Grandmont #1, Eliza Howell, Castle Rouge, and West Outer Drive.

48. Hickory District 15 preserves the city of Dearborn Heights, which impacted the drawing of Hickory Districts 3 and 16. The Commission received public comment asking that Dearborn Heights be maintained whole.

49. In reviewing Exhibit H, I notice that this map places Dearborn Heights with Inkster, communities which are separate and distinct from one another and do not share many common characteristics.

House District 17

50. Hickory District 17 of Exhibit A maintains the neighborhoods of Five Points, Seven Mile-Rouge, Berg-Lahser, Evergreen Lahser 7/8, O'Hair Park, The Eye, Oak Grove District 1, Melvern Hill, Old Redford, South of Six, and Riverdale.

51. In reviewing Exhibit B, I notice that this map splits the neighborhoods of Evergreen Lahser 7/8 and Holcomb between Trende Districts 7 and 8.

Senate District 1

52. Linden District 1 of Exhibit C maintains the neighborhoods of Northwest, Davison-Schoolcraft, Dexter-Fenkell, Paveway, Pride Area, Littlefield, Oakman Blvd, Russell Woods, Dexter-Linwood, Nardin Park, Barton-McFarland, Petoskey-Ostego, Jamison, Virginia Park, Wildemere Park, LaSalle Gardens, NW Goldberg, Elijah McCoy, Chadsey Condon, Core City, Michigan-Martin, Central Southwest, Hubbard Farms, Mexicantown, North Corktown, Corktown, Hubbard Richard, West Side Industrial, Delray, Carbon Works, Oakwood Heights, and Boynton.

53. Linden District 1 preserves the Downriver community of interest, a community of interest separate and distinct from the educational hub of Detroit around Wayne State, Tech Town, New Center, and New Center Commons. The Linden plan also provides Downtown Detroit with greater representation in the Senate by drawing two Downtown districts with Linden District 1 and District 3.

54. In contrast, Trende Exhibit D and Exhibit E combine Downriver communities, which are more industrial in nature and run along major highways such as I-75 and I-94, with the educational hub around Wayne State, Tech Town, New Center, and New Center Commons, and core downtown Detroit areas into just one district in Trende District 2, providing Downtown Detroit with just one senator.

55. In reviewing Exhibit D and Exhibit E, I notice that these maps split the neighborhoods of Dexter-Linwood between Trende Districts 2 and 3 and split Midwest between Trende Districts 2 and 4, and Exhibit D splits Nardin Park between Trende Districts 2 and 3.

Senate District 2

56. Linden District 2 of Exhibit C maintains the neighborhoods of West Outer Drive, Rouge Park, Far West Detroit, Weatherby, Southfield Plymouth, Plymouth-196, Franklin Park, Joy, We Care, Warrendale, Garden View, Warren Ave, Fiskhorn, Joy-Schaefer, and Aviation Sub.

57. Linden District 2 maintains Dearborn and Dearborn Heights together, which are made up of Arab-American communities that identify together.

58. In reviewing Exhibit H, I notice that this map places Dearborn Heights with Inkster in Trende District 4, communities which are separate and distinct from one another and do not share many common characteristics. As a result, Exhibit H separate Dearborn Heights from Dearborn and divide the Arab-American community of interest.

Senate District 3

59. Linden District 3 of Exhibit C maintains the neighborhoods of Nolan, Butler, Pershing, Greenfield Park, Hawthorne Park, Northeast Central, Conant Gardens, Cadillac Heights, Davison, North Campau, Campau/Banglatown, Buffalo Charles, Gateway, Arden Park, Piety Hill, Virginia Park, New Center Commons, New Center, North End, Russell Industrial, Airport Sub, Milwaukee Junction, Poletown East, Medbury Park, Tech Town, Wayne State, Cultural Center, Gratiot Town/Kettering, Jeffries, Midtown, Medical Center, Forest Park, McDougall-Hunt, Gratiot-Grand, Pingree Park, Gratiot Woods, West End, East Canfield, Brush Park, Brewster Homes, Douglass, Eastern Market, Greektown, Lafayette Park, Elmwood Park, Islandview, West Village, Indian Village, East Village, Conner Creek Industrial, Rivertown, Gold Coast, Joseph Berry Sub, Waterworks Park, Marina District, and Jefferson Chalmers.

60. In response to public comment, Linden District 3 preserves the Bengali community around Hamtramck and North Campau, Campau/Banglatown, Buffalo Charles, and Airport Sub.

61. In reviewing Exhibit D, I notice that this map splits the neighborhoods of Davison, and splits Campau/Banglatown between Trende Districts 1 and 3 and Airport Sub between Trende Districts 1 and 2. Exhibit D also fractures the Bengali community into separate districts by placing Hamtramck and portions of Airport Sub in Trende District 2, North Campau and

Campau/Banglatown in Trende District 3, and Buffalo Charles and portions of Airport Sub in Trende District 1.

62. In reviewing Exhibit E, I notice that this map splits the neighborhood of Davison between Trende Districts 2 and 3. Exhibit E also fractures the Bengali community into separate districts by placing North Campau and Campau/Banglatown in Trende District 3 and Hamtramck, Buffalo Charles, and Airport Sub in Trende District 3.

Senate District 6

63. Linden District 6 of Exhibit C maintains the neighborhoods of Five Points, Seven Mile-Rouge, Melvern Hill, Old Redford, Holcomb, Evergreen-Outer Drive, College Park, The Eye, Oak Grove District 1, South of Six, Riverdale, Miller Grove, McNichols Evergreen, North Rosedale Park, Crary/St Marys, Eliza Howell, Castle Rouge, Minock Park, Rosedale Park, Westwood Park, Grandmont #1, Grand River-St Marys, Grandmont, Greenfield-Grand River.

64. The drawing of Linden District 2, which maintains the Arab-American community of interest in Dearborn and Dearborn Heights, affected the drawing of Linden District 6.

65. In reviewing Exhibit D and Exhibit E, I notice that these maps split the neighborhoods of Grandmont and Greenfield-Grand River between Trende Districts 4 and 5. Members of the public asked that Grandmont and Greenfield-Grand River remain together as a community of interest.

Senate District 7

66. Linden District 7 of Exhibit C maintains the neighborhoods of Berg-Lahser, Evergreen 7/8, O'Hair Park, Greenfield, San Bernardo, and Seven Mile Lodge.

67. In reviewing Exhibit D and Exhibit E, I notice that these maps split the neighborhoods of San Bernardo and Schaefer 7/8 Lodge between Trende Districts 3 and 5.

Senate District 8

68. Linden Senate District 8 of Exhibit C maintains the neighborhoods of Blackstone Park, Pembroke, Garden Homes, Green Acres, State Fair, Greenwich, McDowell, Oak Grove District 2, Sherwood Forest, Palmer Woods, Penrose, Winship, Tri-Point, Schulze, Bagley, University District, Detroit Golf, Palmer Park, Grixdale Farms, Hubbell-Puritan, Harmony Village, Fitzgerald/Marygrove, Martin Park, Belmont, Bethune, Chalfonte, Hubbell-Lyndon, Cadillac, and Happy Homes.

69. Linden District 8 preserves the large LGBTQ+ community of interest between Royal Oak, Ferndale, Palmer Park, and Palmer Woods.

70. In reviewing Exhibit D and Exhibit E, I notice that these maps split the neighborhoods of Winship and Bethune between Trende Districts 3 and 5 and split Hubbell-Lyndon between Trende Districts 4 and 5.

Senate District 10

71. Linden District 10 of Exhibit C maintains the neighborhoods of Sherwood, Nortown, Conner Creek, Pulaski, Krainz Woods, Grant, Mount Olivet, Von Steuben, Franklin, LaSalle College Park, Gratiot-Findlay, Eden Gardens, Mapleridge, Wade, Ravendale, Outer Drive-Hayes, Denby, Moross-Morang, Yorkshire Woods, Chandler Park, Chandler Park-Chalmers, Morningside, East English Village, Cornerstone Village, Fox Creek, and Riverbend.

72. The drawing of Linden District 12, which maintains the lakeshore community of interest and the community of interest in Gross Pointe as shown in Exhibit G, affected the drawing of Linden District 10 and Linden District 11. Linden District 10 and Linden District 11 preserve inland, industrial communities of interest.

73. In reviewing Exhibit D and Exhibit E, I notice that these maps split the neighborhoods of Grant between Trende District 1 and 3 and split Morningside and Wade between

Trende Districts 1 and 2. Exhibit E also splits Chandler Park-Chalmers between Trende Districts 1 and 2.

Senate District 11

74. Linden District 11 of Exhibit C maintains the neighborhoods of Mohican Regent and Regent Park. As shown in Exhibit G, Linden District 7 also places Eastpointe and Roseville in the same district based on public comment.

* * * *

75. In general, I notice that many of the House districts in Exhibit B do not cross the county boundaries between Wayne and Oakland, or Wayne and Macomb counties. I would suspect that this choice would result in an overall district plan that would not meet the constitutional requirements of the commission to create district plans that do not create a disproportionate advantage to either political party, a requirement that was the 4th ranked criteria in the rank list the Commission was bound to follow. It is my understanding that one of the goals in drawing districts that extend outside of Wayne County, including but not limited to House District 8, House District 11, House District 12, House District 13, House District 14, Senate District 3, Senate District 7, Senate District 8, Senate District 10, and Senate District 11, were to create districts that complied with the constitutional criteria for partisan fairness. The Commission received information from our experts that the Democratic vote in Detroit was highly concentrated. We used this information to create more balanced districts that accounted for heavily Republican areas in other areas of the State due to Michigan's unique geographical layout.

76. The Commission had Voting Rights Act-compliance goals based on a thorough expert report of Dr. Handley. I reviewed Dr. Handley's work and found no flaws in it, and I was not informed of any flaws in her report by others. While VRA compliance was an important goal of the Commission, it was not the only goal, and configuring districts based on criteria like those

I have described at length above was as important in my mind as VRA compliance. Criteria like compactness, communities of interest, partisan-fairness, and other things had a direct and significant impact on district lines, and VRA-compliance goals were only part of that larger matrix of highly important factors.

77. I never saw a plan that achieved the communities-of-interest or partisan fairness goals of the Hickory and Linden plans, and that includes the plans proposed by Mr. Trende.

78. Plaintiffs' demonstrative plans do not convince me that the Commission could have achieved all the communities-of-interest and partisan fairness goals while complying with the ranked constitutional criteria.

79. Plaintiffs' demonstrative district configurations do not appear to try to achieve the Commission's goals concerning communities of interest or partisan fairness.

80. I would not have supported Plaintiffs' demonstrative maps of the Detroit-area districts.

I declare under penalty of perjury that to the best of my memory the foregoing is true and correct.

Dated this 6th day of June, 2023.

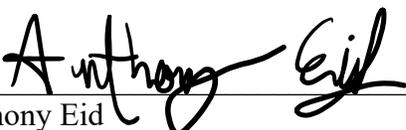
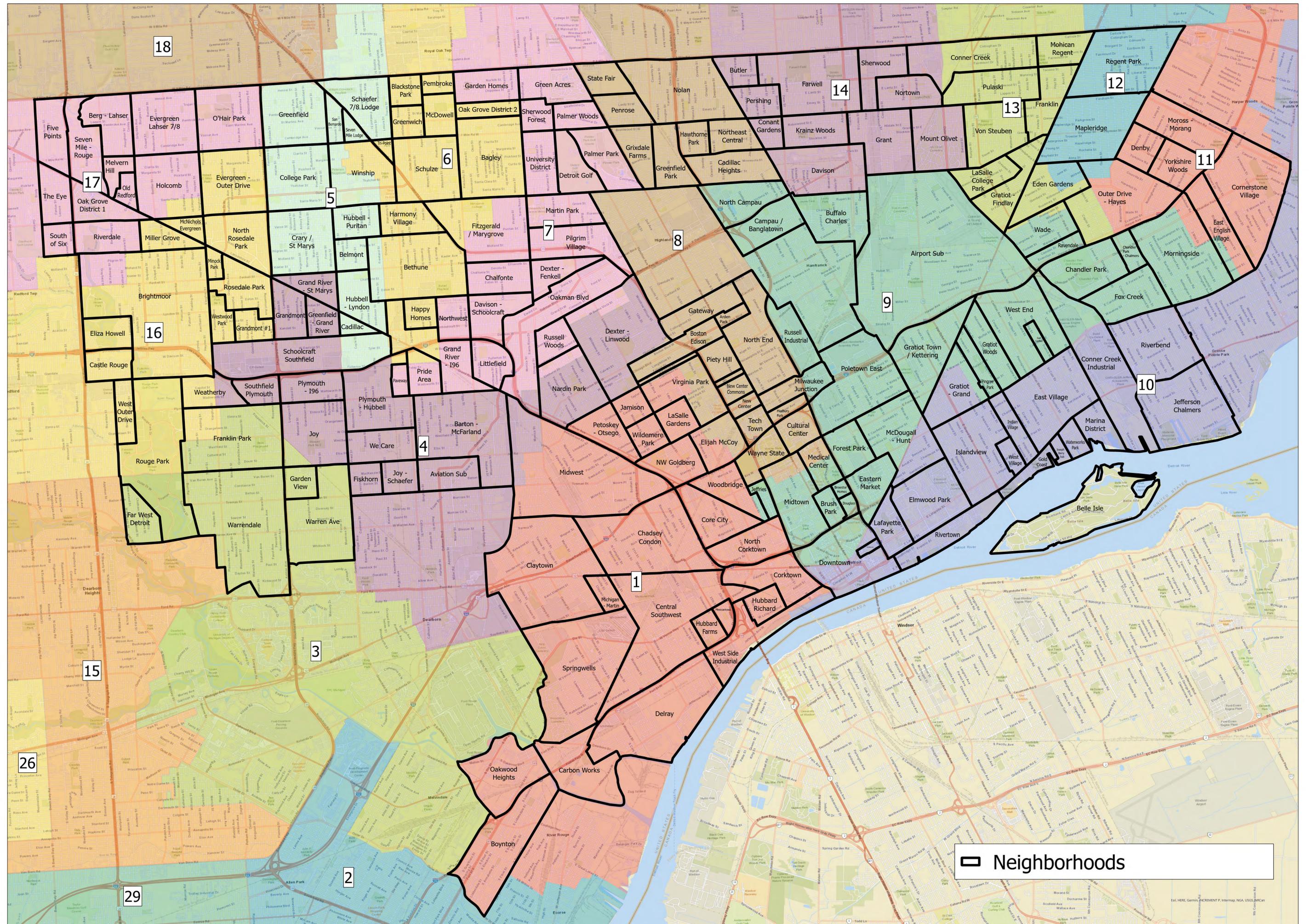
By: 
Anthony Eid

EXHIBIT A

EXHIBIT A

Michigan - MICRC State House Hickory Plan - with City of Detroit Neighborhoods



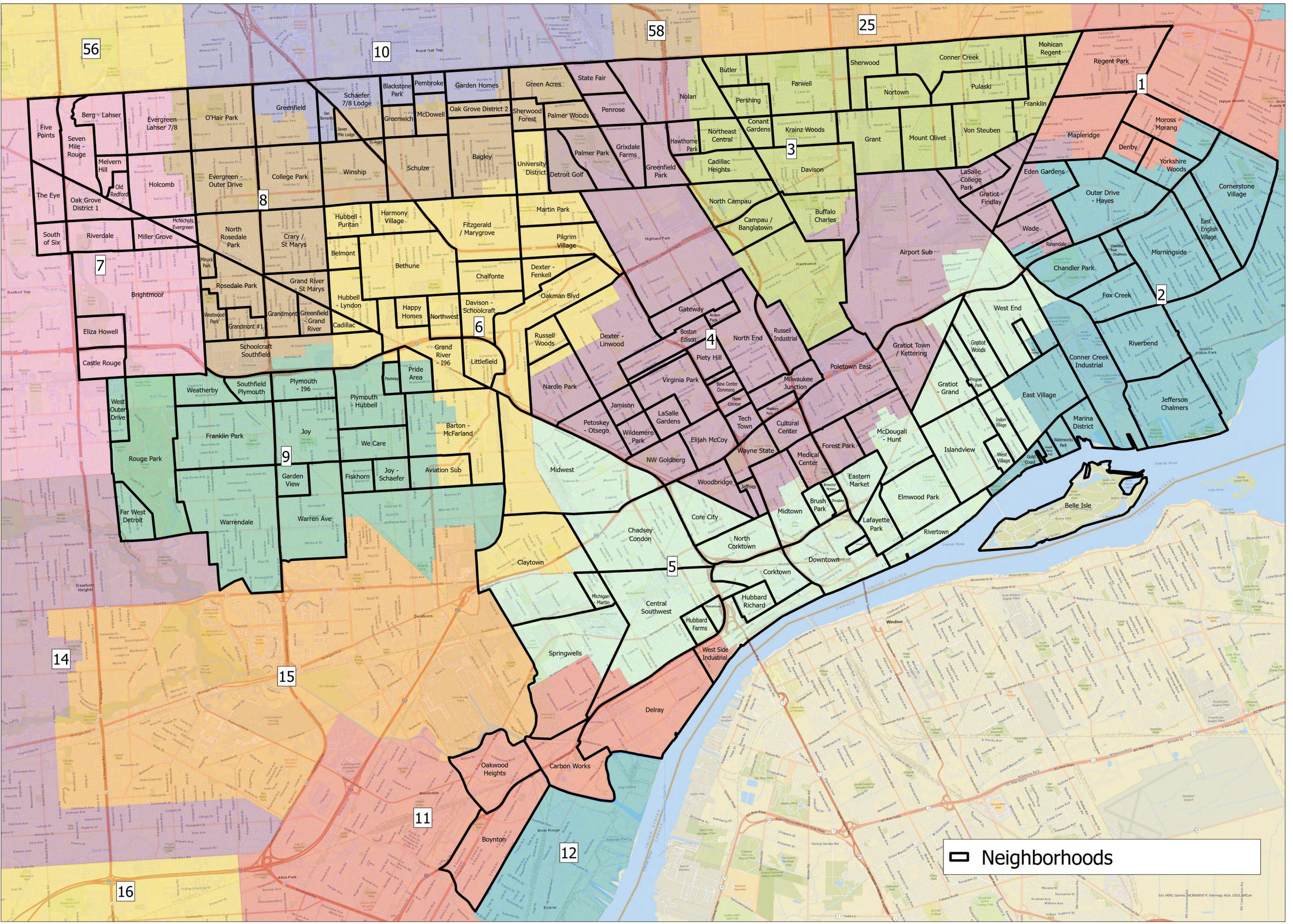
 Neighborhoods

Esri, HERE, Garmin, INCREMENT P, Intermap, NGA, USGS, IGN, CCGI, etc.

EXHIBIT B

EXHIBIT B

Michigan - Trends State House Plan - with City of Detroit Neighborhoods



**EXHIBIT 1
(CONTINUED)**

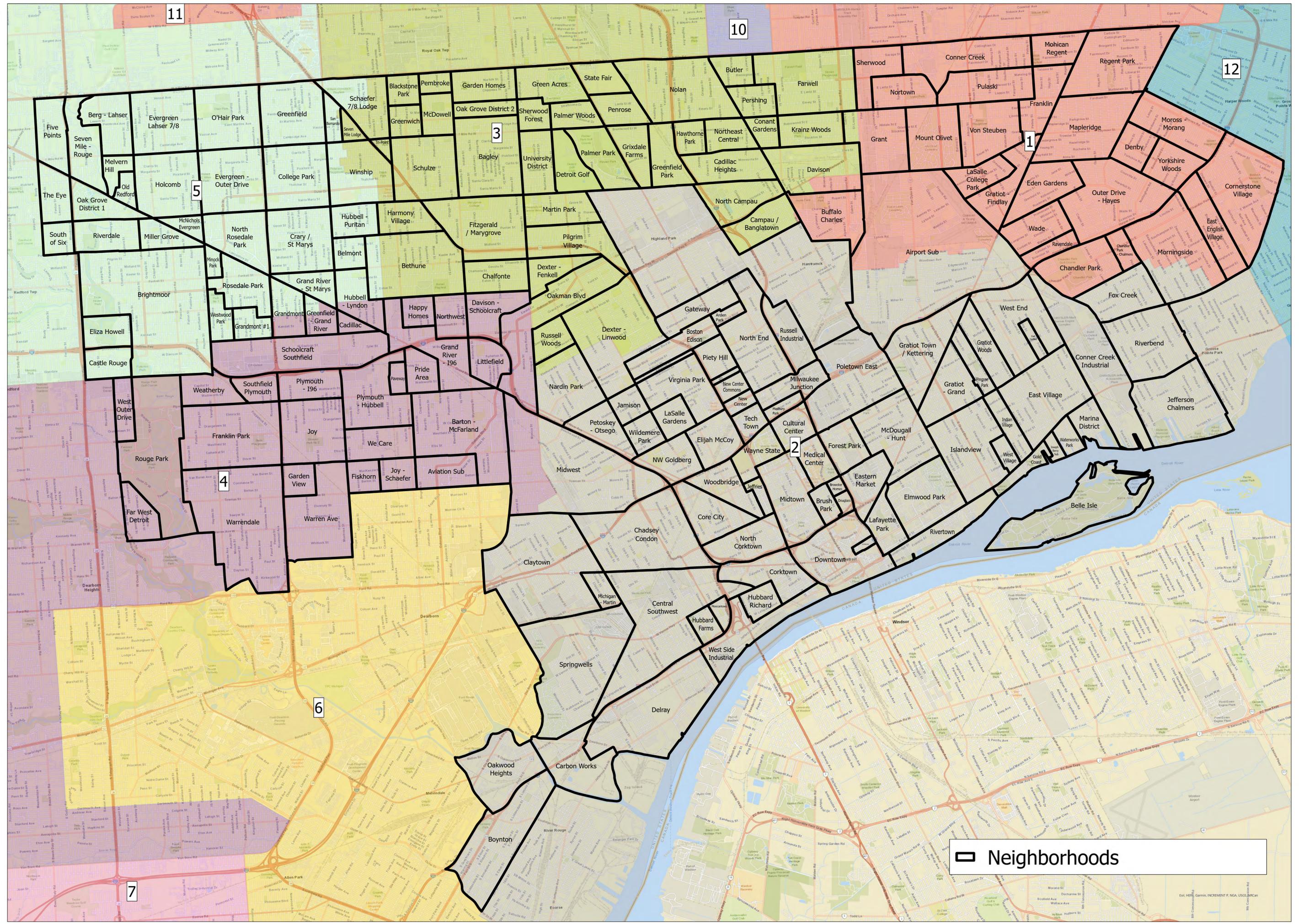
**EXHIBIT 1
(CONTINUED)**

EXHIBIT C

EXHIBIT C

EXHIBIT D

EXHIBIT D



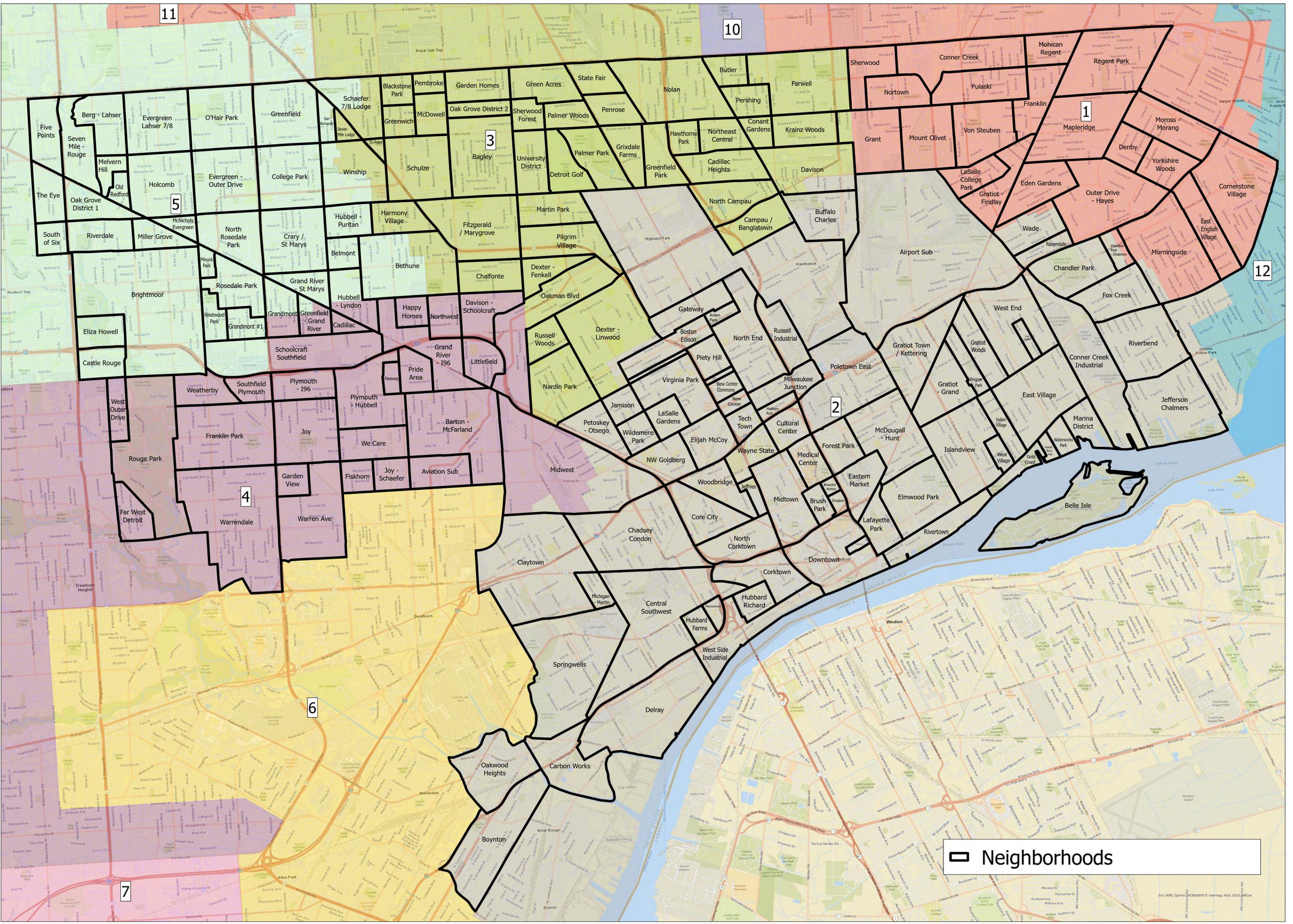
**EXHIBIT 1
(CONTINUED)**

**EXHIBIT 1
(CONTINUED)**

EXHIBIT E

EXHIBIT E

Michigan - Trende State Senate #2 Plan - with City of Detroit Neighborhoods

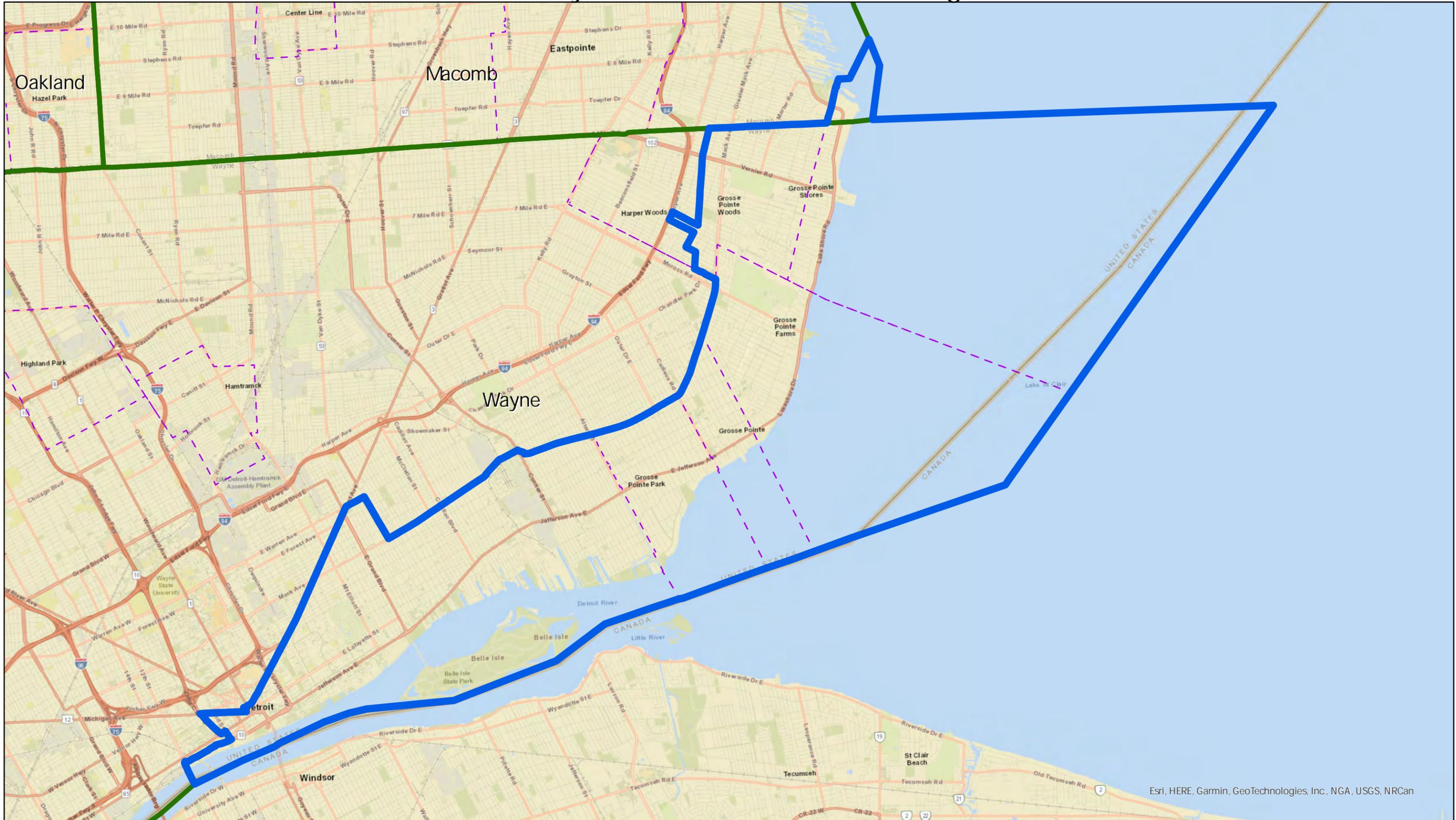


 Neighborhoods

EXHIBIT F

EXHIBIT F

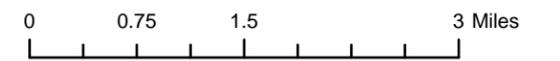
Hickory House District 10, Michigan



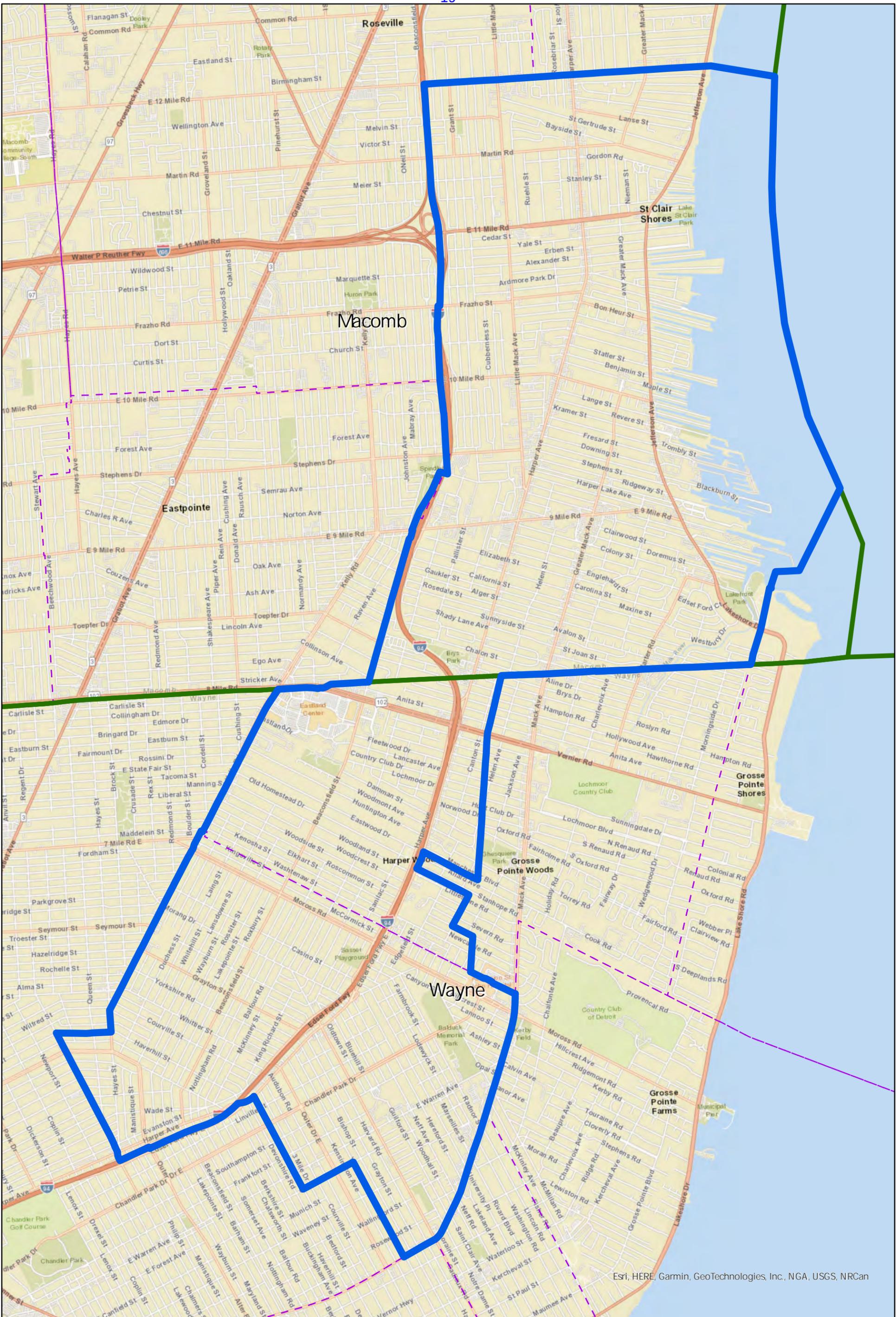
Esri, HERE, Garmin, GeoTechnologies, Inc., NGA, USGS, NRCAN



Counties
 Townships
 Hickory State House Districts



Hickory House District 11, Michigan



Esri, HERE, Garmin, GeoTechnologies, Inc., NGA, USGS, NRCAN



 Hickory House Districts
 Counties
 Townships



0 0.33 0.65 1.3 Miles

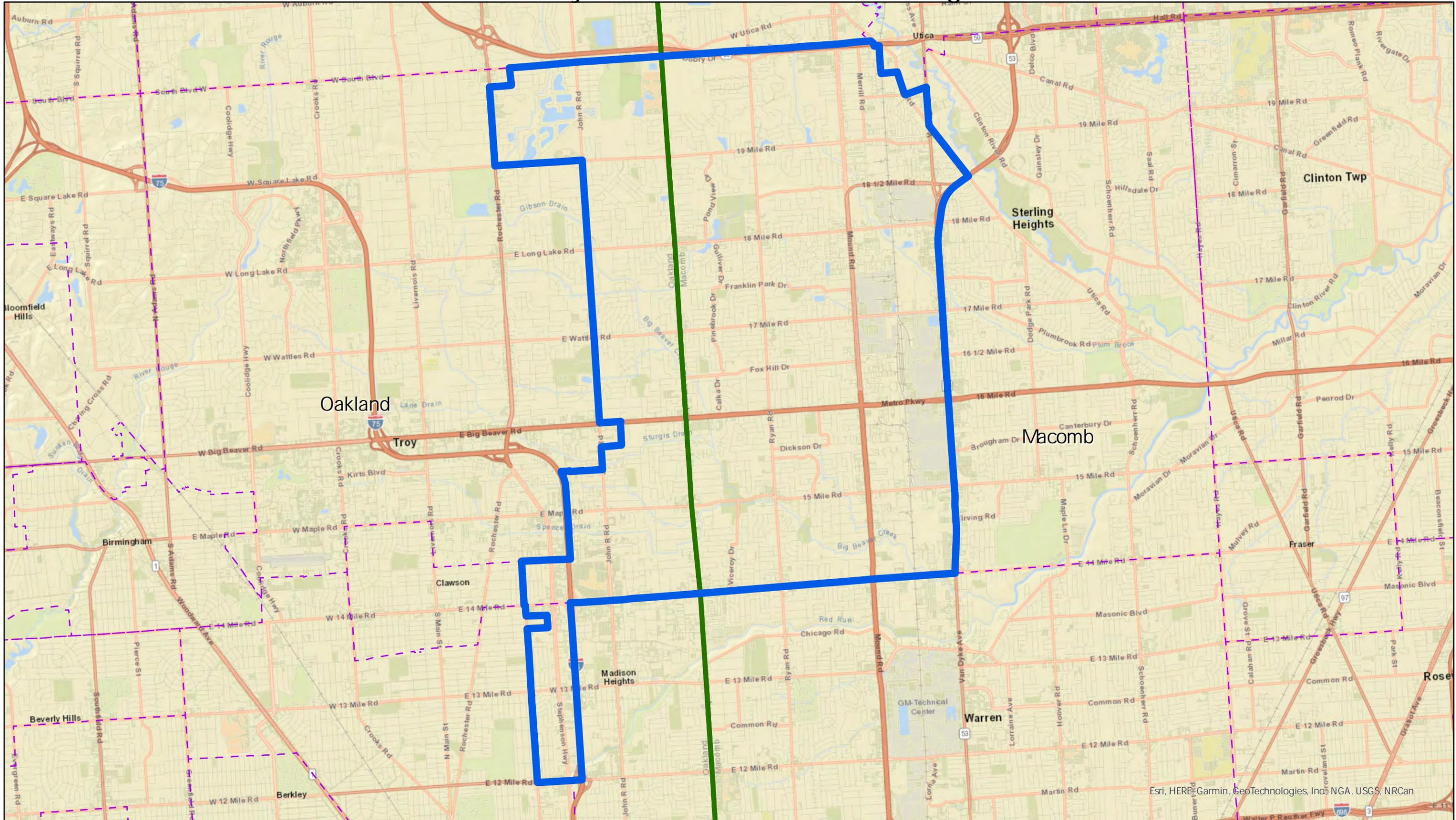
Hickory House District 12, Michigan



 Hickory House Districts
 Counties
 Townships

Election Data Services
 0 0.3 0.6 1.2 Miles

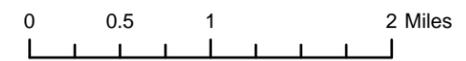
Hickory House District 57, Michigan



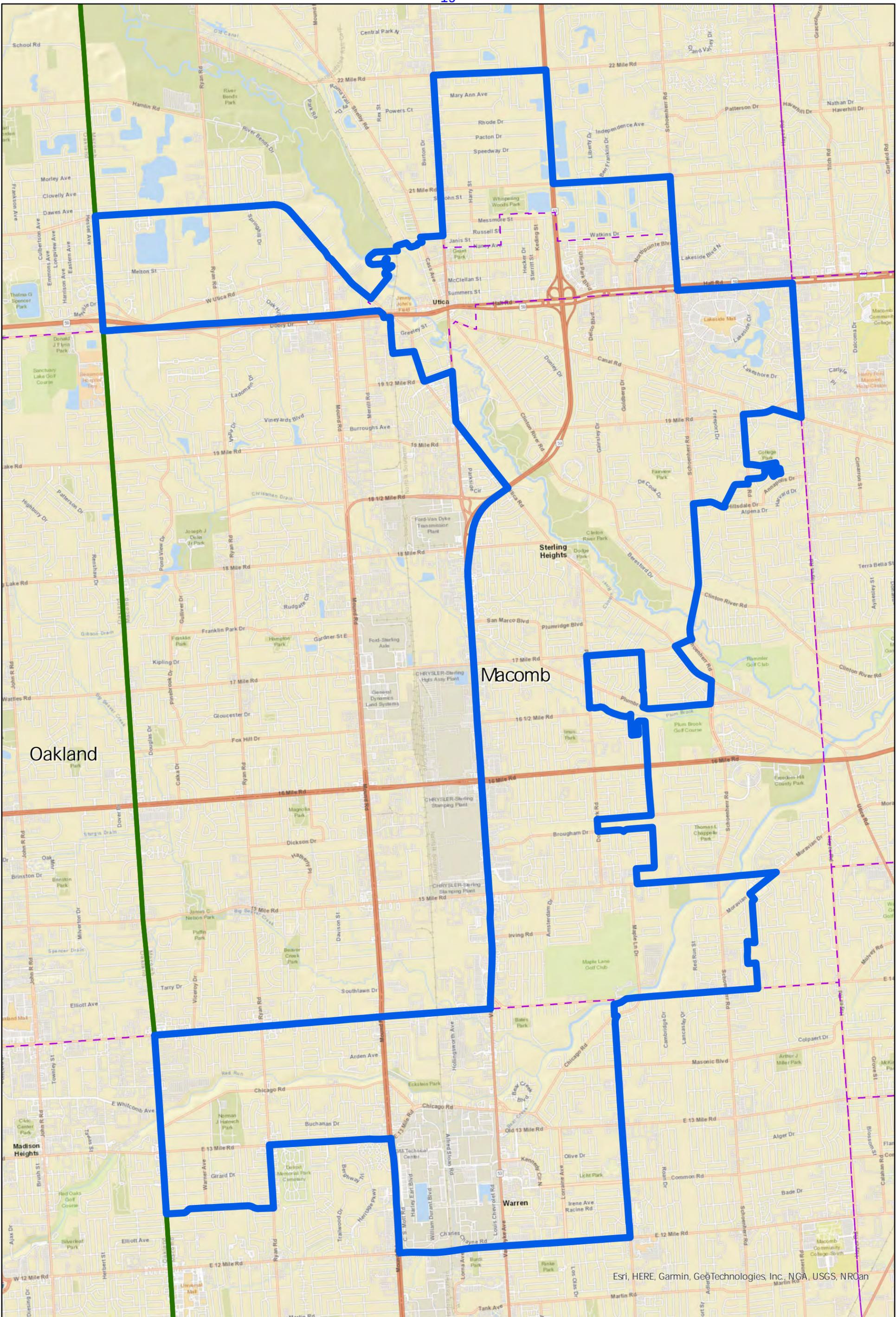
Esri, HERE, Garmin, GeoTechnologies, Inc., NGA, USGS, NRC, Can



 Counties  Townships  Hickory State House Districts



Hickory House District 58, Michigan



Esri, HERE, Garmin, GeoTechnologies, Inc., NGA, USGS, NROcan



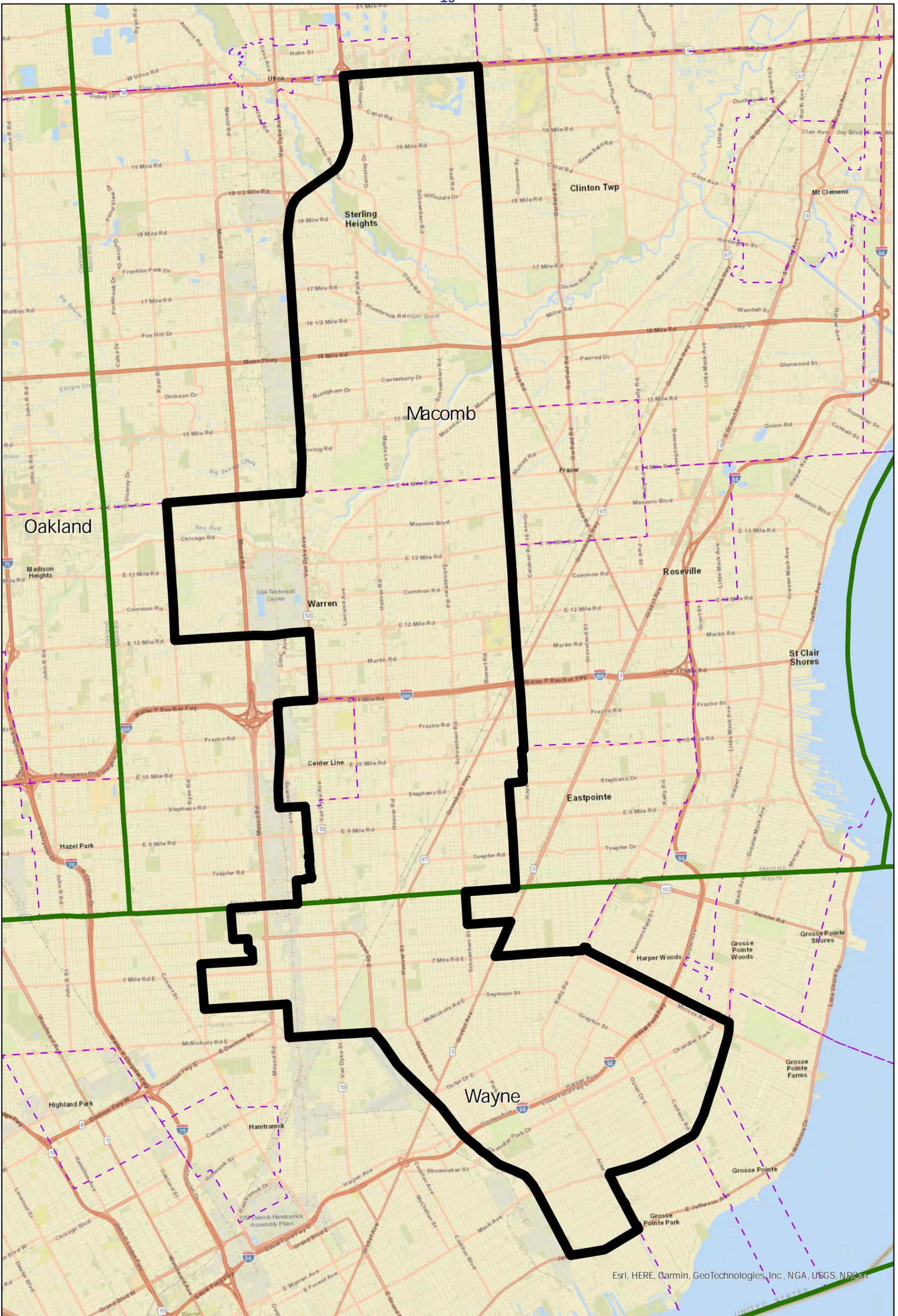
 Hickory House Districts
 Counties
 Townships



EXHIBIT G

EXHIBIT G

Linden Senate District 10, Michigan



Esri, HERE, Garmin, GeoTechnologies, Inc., NGA, USGS, NRC, Can

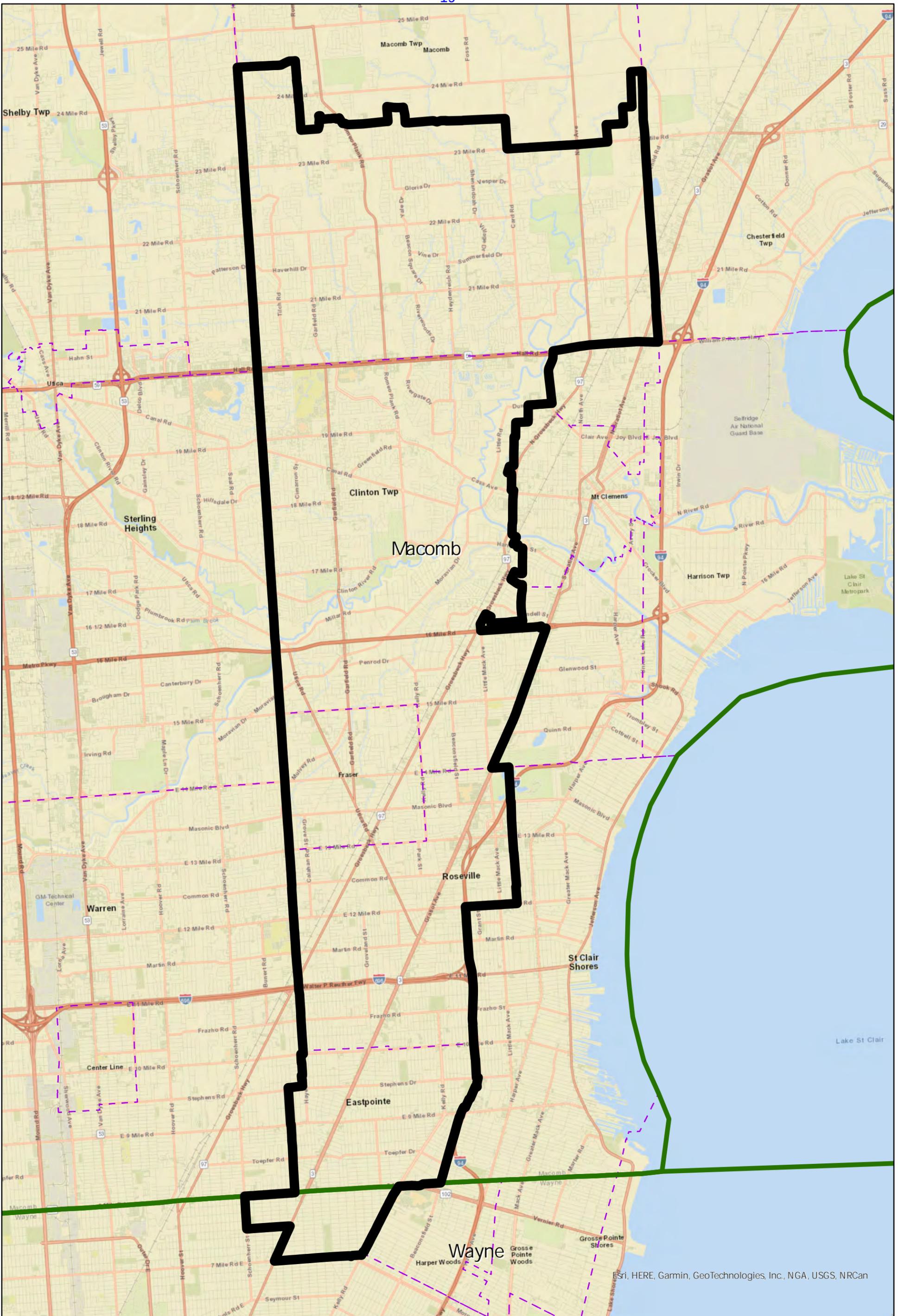


 Linden Senate Districts
 Counties
 Townships

Election Data Services

 0 0.75 1.5 3 Miles

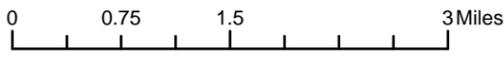
Linden Senate District 11, Michigan



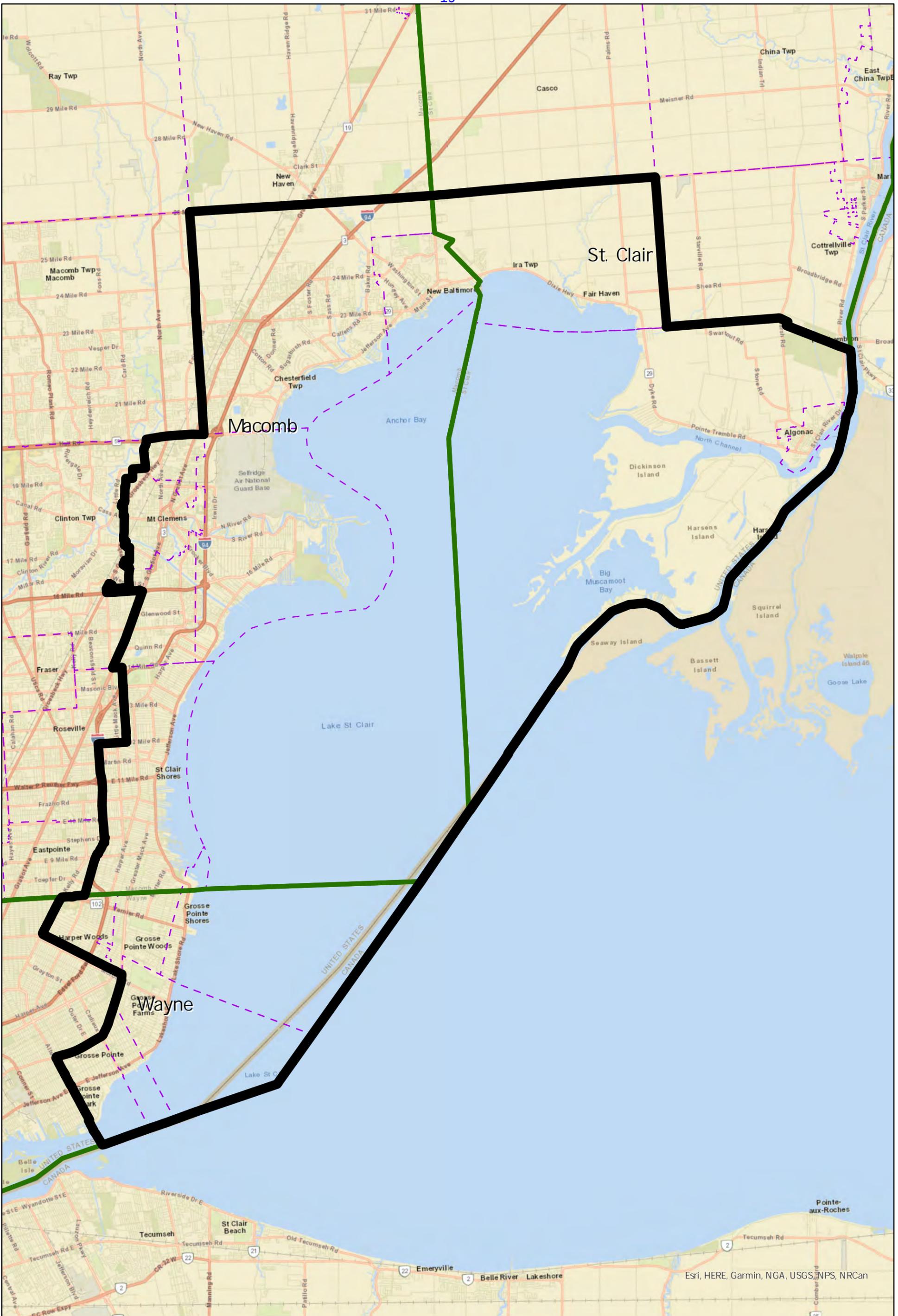
Esri, HERE, Garmin, GeoTechnologies, Inc., NGA, USGS, NRC



 Linden Senate Districts
 Counties
 Townships



Linden Senate District 12, Michigan



Esri, HERE, Garmin, NGA, USGS, NPS, NRCan



 Linden Senate Districts
 Counties
 Townships

Election Data Services

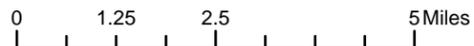


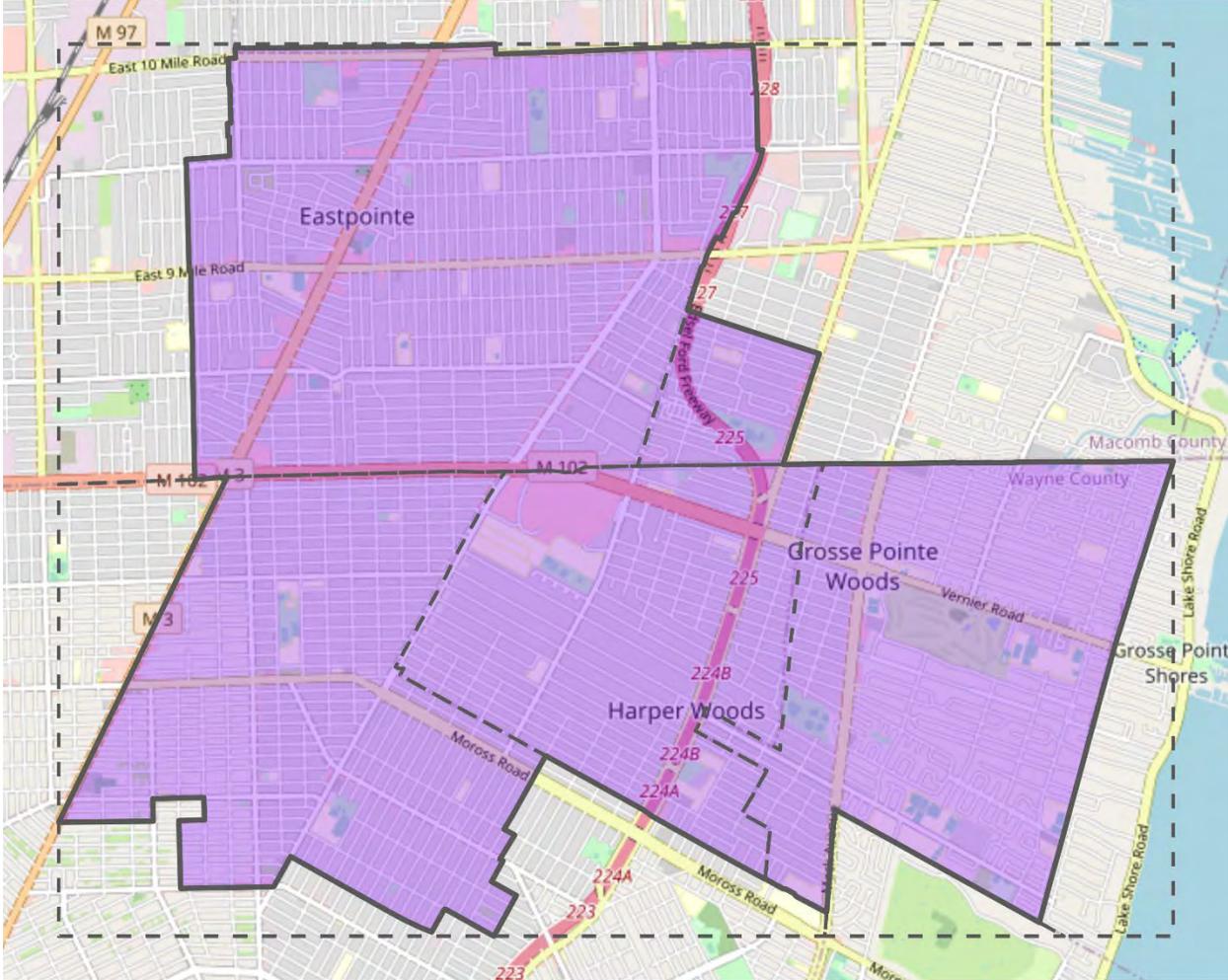
EXHIBIT H

EXHIBIT H

Appendix C
Demonstration Plan Details

Proposed Exemplar Map, District 1

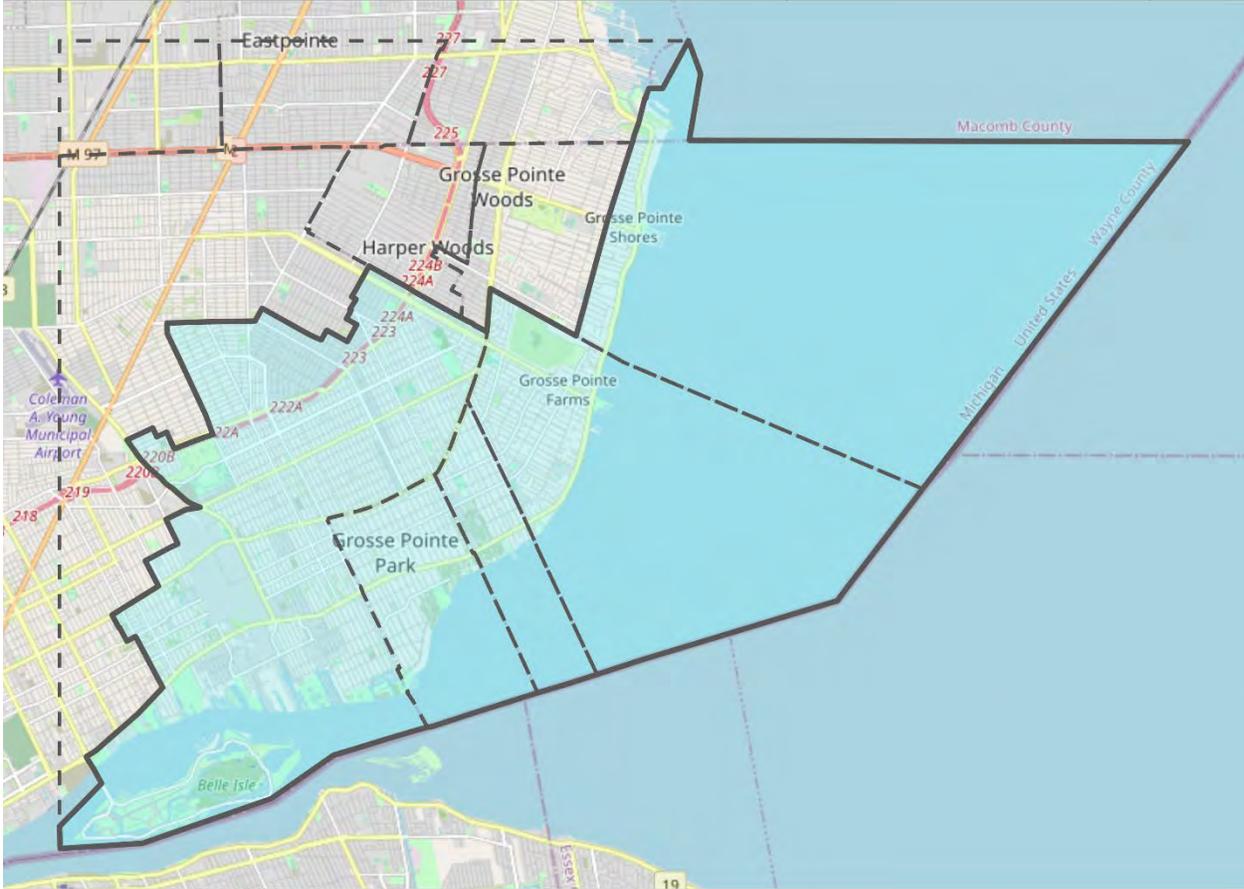
Black = 51.64%; Non-Hispanic White = 41.81%; Hispanic = 1.86%; Non-Hispanic /



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Proposed Exemplar Map, District 2

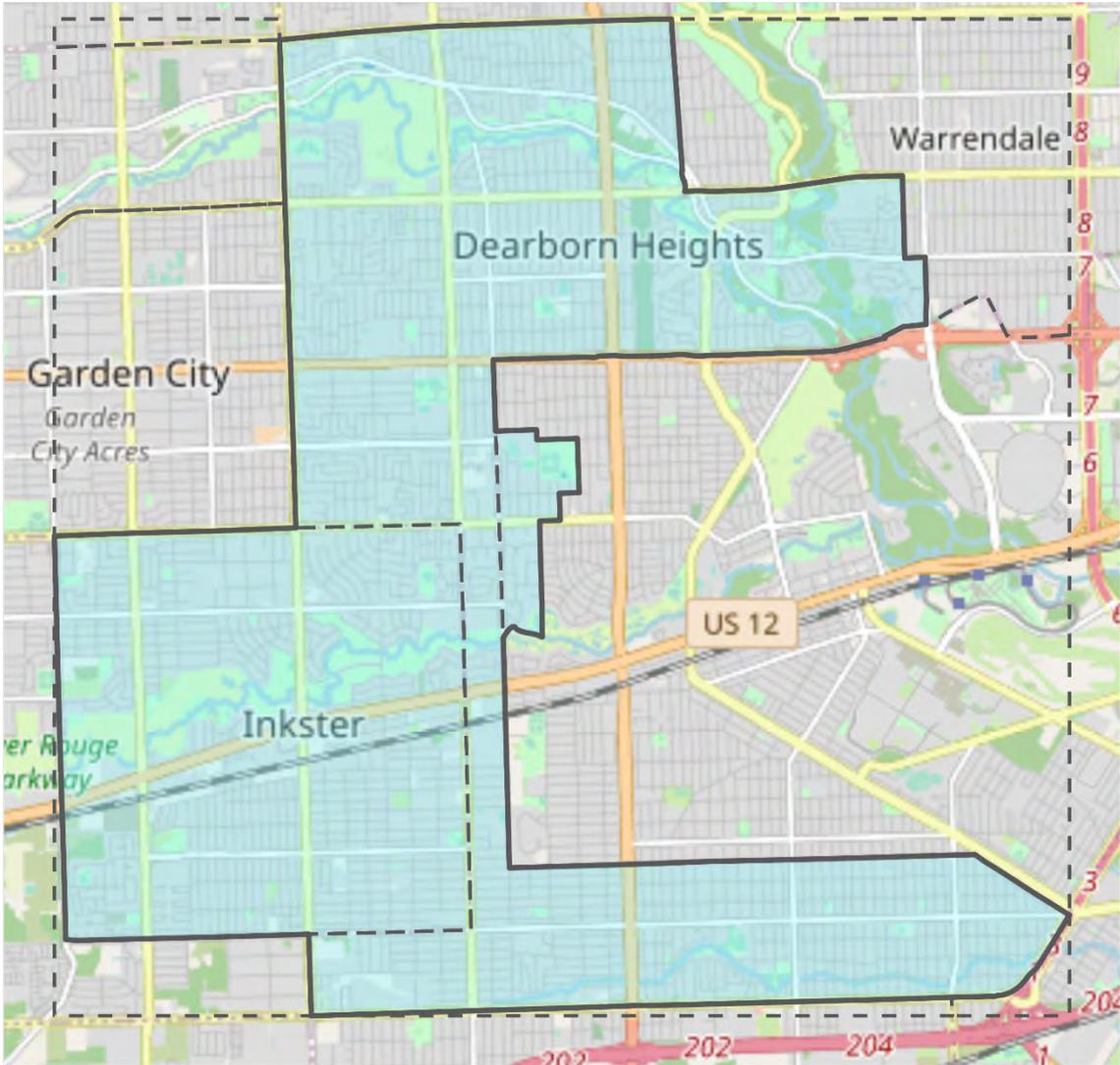
Black = 58.11%; Non-Hispanic White = 35.99%; Hispanic = 1.73%; Non-Hispanic /



© OpenStreetMap contributors

Proposed Exemplar Map, District 14

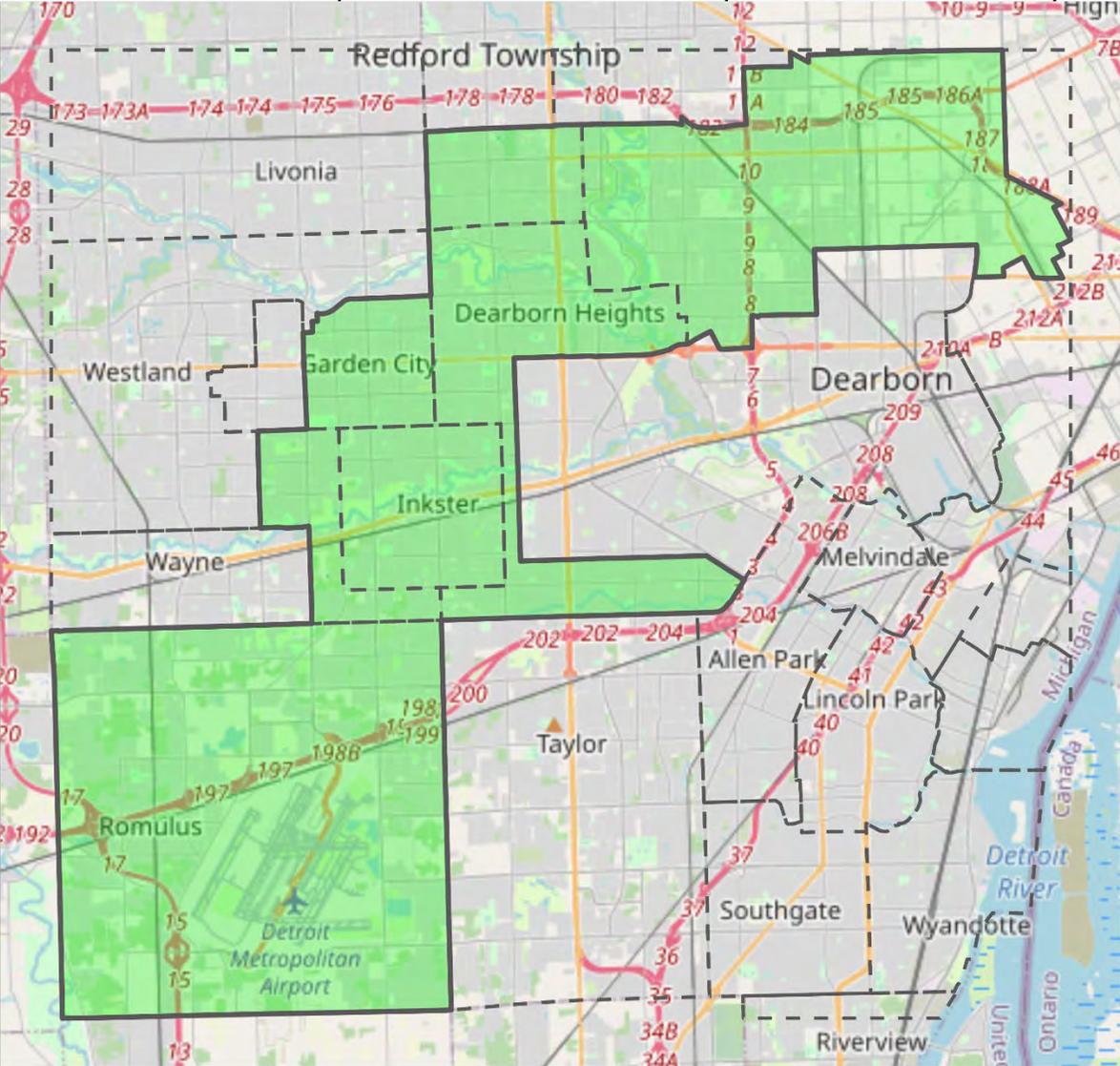
Black = 26.64%; Non-Hispanic White = 63.27%; Hispanic = 4.01%; Non-Hispanic /



© OpenStreetMap contributors

Proposed Exemplar Map, District 4

Black = 50.01%; Non-Hispanic White = 40.56%; Hispanic = 4.1%; Non-Hispanic A



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EXHIBIT 2

EXHIBIT 2

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

DONALD AGEE, JR. et al.,

Plaintiffs,

v.

JOCELYN BENSON, et al.,

Defendants.

Case No. 1:22-CV-00272-RMK-JTN-PLM

DECLARATION OF KIMBALL BRACE

I, Kim Brace, declare and state pursuant to 28 U.S.C. § 1746 as follows:

1. My name is Kimball William Brace. I am the president of Election Data Services, Inc. (“EDS, Inc.”), a Manassas, Virginia-based consulting firm whose specialty is reapportionment, redistricting matters, election administration issues, and the census.

Michigan Redistricting Experience in 2021 to current

2. In March 2021, Election Data Services, Inc. was selected through a competitive bid process to provide full support and Map Drawing services to the Michigan Independent Citizens Redistricting Commission (MICRC) during the redistricting process. These services included building a full redistricting database, providing a full suite of redistricting software for the Commissioners and staff to use to draw district configurations, providing map drawing staffers to perform the actual district creation in the software at the direction of Commissioners in open and fully transparent public meetings that were televised, along with creation of analytic software to help the Commissioners understand the racial and political data utilized in the map drawing

process, along with the merger of Communities of Interest information that was created by another vendor.

3. This work encompassed a multitude of different activities and tasks. Initially we were responsible for creating a massive database of 1) Census data (the results of the PL 94-171 program when it was released in August, 2021), 2) all Census geography (as provided by the Census Bureau's Topologically Integrated Geographic Encoding and Reference files (TIGER)), along with 3) political data (precinct level election results usually compiled by the Michigan Secretary of State back to 2012) and 4) political geography (the configuration of precincts to correspond to the election data, in many instances reflecting precinct changes that occurred during the decade). I have commonly termed these four elements of a redistricting database as the "redistricting data cube" when I make presentations to groups or the court. We also provided the redistricting software (in Michigan's instance it was the AutoBound Redistricting system for 2020 (called AutoBound EDGE)) and helped the state install it on every Commissioner's state-provided laptop. Support to the Commissioners for their individual needs was also provided.

4. Our contract also provided that we have staff that would operate the redistricting software and draw district possibilities at the direction of Commission members. I, or my subcontracting staff of Kent Stigall and John Morgan, were at every meeting of the Commission to perform the tasks of actually drawing the districts using Commissioner's thoughts and directions in the AutoBound EDGE software.

5. Even before the PL 94-171 Census data arrived in August 2021, we purchased commercially available population estimates from a demographic and GIS company called ESRI and incorporated them into the AutoBound EDGE system so that draft mapping could take place. At the same time, we incorporate the concepts of Community of Interests (COIs) and built linkages

to software and data files generated by MIT that allowed the public to recommend and draw their own concept of Community of Interests for submission to the MICRC.

6. We also incorporated a shapefile of the neighborhood boundaries of the City of Detroit into the AutoBound EDGE system that could appear as an overlay and be turned on and off as districts were drawn.

Current City of Detroit Neighborhood Overlay Maps

7. The City of Detroit currently maintains a shapefile of the “[c]urrent (non-historic) neighborhood boundaries as compiled by Department of Neighborhoods staff in concert with community groups.” *See* Current City of Detroit Neighborhoods, <https://data.detroitmi.gov/datasets/detroitmi::current-city-of-detroit-neighborhoods/explore?location=42.383246%2C-83.205018%2C11.97> (last visited Jun. 1, 2023).

8. Based on the “Current City of Detroit Neighborhoods” shapefile that is currently available on the City of Detroit’s website, I supervised the preparation of Exhibit A to the Affidavit of Anthony Eid (the “MICRC State House Hickory Plan - with City of Detroit Neighborhoods”), a map showing the Detroit neighborhood boundaries overlaid on top of the enacted house plan, Exhibit B to the Affidavit of Anthony Eid (the “Trende State House Plan - with City of Detroit Neighborhoods”), a map showing the Detroit neighborhood boundaries overlaid on top of Plaintiffs’ expert Sean Trende’s house demonstrative map, Exhibit C to the Affidavit of Anthony Eid (the “Linden State Senate Plan - with City of Detroit Neighborhoods”), a map showing the Detroit neighborhood boundaries overlaid on top of the enacted senate plan, Exhibit D to the Affidavit of Anthony Eid (the “Trende State Senate #1 Plan - with City of Detroit Neighborhoods”), a map showing the Detroit neighborhood boundaries overlaid on top of Plaintiffs’ expert Sean Trende’s first senate demonstrative map, and Exhibit E to the Affidavit of Anthony Eid (the “Trende State Senate #2 - with City of Detroit Neighborhoods”), a map showing

the Detroit neighborhood boundaries overlaid on top of Plaintiffs' expert Sean Trende's second senate demonstrative map.

I declare under penalty of perjury that to the best of my memory the foregoing is true and correct.

Dated this 1st day of June, 2023.

By: 
Kimball Brace

EXHIBIT 3

EXHIBIT 3

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

* * *

DONALD AGEE, JR., et al.,
Plaintiffs,

vs.

CASE NO. 1:22-CV-00272

JOCELYN BENSON, et al.,
Defendants.

* * *

Deposition of SEAN TRENDE, a witness herein,
called by the defendants for examination pursuant to the
Rules of Civil Procedure, taken before me, Emma Jane
Troyer, a Notary Public within and for the State of
Ohio, at the Offices of Baker Hostetler, LLP, 200 Civic
Center Drive, Suite 1200, Columbus, Ohio, 43215, on
April 20th, 2023, at 9:00 a.m.

* * *

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I N D E X

SEAN TRENDE	PAGE
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* * *

I N D E X
O F
E X H I B I T S

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Exhibit 2...	Appendix A Sean Trende C.V.....	7
Exhibit 3...	Appendix C Demonstration Plan Details..	40
Exhibit 4...	Constitution of MI 1963 Excerpt.....	45
Exhibit 5...	Dr. Handley's Report to the MI Independent Citizens Redistricting Commission....	63
Exhibit 6...	Expert Report of Jonathan Rodden, Ph.D.....	68
Exhibit 7...	Expert Report of Maxwell Palmer, Ph.D.....	146
Exhibit 8...	Code Excerpts.....	160

* * *

1 APPEARANCES:

2
3 On behalf of the Plaintiffs:

4 Clark Hill, LLP

5
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9 Mpattwell@clarkhill.com

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12 By: Katherine McKnight
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15 Kmcknight@bakerlaw.com

16 &

17 Erika Prouty
18 200 Civic Center Drive, Suite 1200
19 Columbus, Ohio 43215
20 Eprouty@bakerlaw.com

21 * * *
22
23
24
25

1 SEAN TRENDE,
2 a witness herein, having been first duly sworn as
3 hereinafter certified, was examined and deposed as
4 follows:

6 EXAMINATION

7 BY MS. McKNIGHT:

8 Q. Good morning.

9 A. Morning.

10 Q. I'm Kate McKnight, and I'm here today on behalf
11 of defendants in the Agee versus Benson case in the
12 Western District of Michigan. Would you state your full
13 name for the record?

14 A. Sean Patrick Trende, T-R-E-N-D-E.

15 Q. And I understand you've been deposed before; is
16 that correct?

17 A. Yes.

18 Q. Okay. So therefore I'll keep my introductory
19 statements brief. First, I'll endeavor to take a break
20 every hour or so. This is not an endurance contest. If
21 you need to take a break between them, just let me know.
22 All I ask is that you finish answering a question posed
23 before we do take any break.

24 Please ask for any clarification if my question
25 does not make sense. You're the expert here, and I'll

1 Q. And of the transcripts that you reviewed related
2 to the Handley power point, what did you draw from it
3 that supported your report?

4 A. Well, I think what I said was that I didn't rely
5 on them. You asked me if I reviewed them in writing the
6 report, and I did review them. I don't know that I
7 relied on them in any way.

8 Q. And other than relying on them, did you
9 incorporate them in your report in any way?

10 A. I don't believe so.

11 Q. Okay. And did you consider any public testimony
12 about which neighborhood should be with which
13 neighborhoods in Detroit?

14 A. No.

15 Q. I'd like to pull up an example from your Appendix
16 C, just so we have something to illustrate our
17 understanding. This will be Exhibit 3.

18

19 (Defendant's Exhibit 3 marked for identification.)

20

21 Q. Mr. Trende, would you describe what this is?

22 A. This is demonstration districts to show
23 compliance with Gingles Prong 1.

24 Q. And you prepared this as part of your report; is
25 that right?

1 a kind of proof of concept, which is how I understand
2 Gingles Prong 1. The focus was different.

3 Q. Okay. Do you know anything about the history of
4 this area and the relationship between Inkster and
5 Dearborn Heights?

6 A. I don't. I know that Inkster is more heavily
7 African-American than Dearborn Heights, but I don't know
8 the specifics of the history here.

9 Q. Okay. You can set that aside. In preparing your
10 report, did you review any neighborhood maps for the
11 City of Detroit?

12 A. I don't remember.

13 Q. Did you make any effort to respect neighborhood
14 boundaries in your demonstration maps?

15 A. No.

16 Q. And how about in your simulation exercise; did
17 you make any effort to respect neighborhood boundaries
18 there?

19 A. No.

20 Q. Okay. And when I asked you questions about
21 whether you reviewed any transcripts of commission
22 meetings or public hearings to prepare your report, is
23 your answer the same for what you reviewed to prepare
24 your simulation plans?

25 A. Yes. Those were part of the report. I'm not

1 candidate.

2 Q. Let's focus on that one, Mr. Trende -- the
3 partisan fairness criteria. What kind of an analysis
4 did you conduct in your report on the partisan fairness
5 of your demonstration plan?

6 A. Well, I didn't look at the partisan fairness of
7 the demonstration plan, because this isn't necessarily a
8 plan that would be recommended to the Commission to
9 enact. It's to illustrate under Gingles Prong 1 that
10 the African-American community or the black community is
11 numerous enough to constitute a majority in a reasonably
12 configured district, which is a Voting Rights Act
13 analysis under 13-A, which would trump the remainder of
14 the requirements.

15 Q. And what kind of partisan fairness analysis did
16 you run on your simulations?

17 A. So for the simulations I took all the results and
18 calculated the partisanship of the districts that were
19 drawn, and while there were some slight deviations from
20 what you would expect from a neutral politically drawn
21 map, which I suspect may be downstream of an attempt to
22 lower partisan fairness metric, it doesn't explain the
23 extent of the deviations when it came with respect to
24 race.

25 Q. So I asked a slightly different question. It

1 Representatives and the Senate; do you see that?

2 A. Yes, I see that.

3 Q. Okay. So how do you explain this apparent
4 discrepancy between what compactness means in the House
5 and what compactness means in the Senate in terms of
6 racial motive?

7 A. There's no tension between the two.

8 Q. Why not?

9 A. Because race can predominate, to my
10 understanding, at least for now, on the drawing of
11 districts, if you are complying with the Voting Rights
12 Act. The courts assume that compliance with the Voting
13 Rights Act is a defense to an equal protection claim.
14 So race might have predominated, but under current law,
15 would be justified.

16 Q. Okay. So is it your view that race could
17 predominate for the benchmark plan in drawing the Senate
18 plan, but race could not have predominated for the
19 Voting Rights Act for the House plan and the enacted
20 plans?

21 A. My entire report -- well, half of my report is
22 that the benchmark, or the enacted plans don't comply
23 with the Voting Rights Act.

24 Q. Do you believe the Voting Rights Act applies to
25 districts in Detroit?

1 Palmer is reporting results from prior House District 4,
2 the aspect of racially polarized voting; do you see
3 that?

4 A. Yes.

5 Q. Okay.

6 A. And again, I had mentioned on -- yes, there is
7 other analysis in my code, but as I say on Page 40, and
8 I think earlier in this section, I had replicated the
9 analyses of 2018 and 2020 from Dr. Handley, so it's not
10 some hidden secret that I had analyzed other races.

11 Q. Okay. And then you came to a conclusion in your
12 report that there's no evidence suggesting that the
13 black candidate of choice can win a polarized primary in
14 a district with a BVAP below 47 percent; remember
15 looking at that?

16 A. Yeah.

17 MR. PATTWELL: What page was that?

18 Q. Page 35 of his report.

19 A. Yes, I remember that.

20 Q. Okay. And so here you have a district, House
21 District 4, that is drawn at 45.6 percent BVAP, correct?

22 A. Correct.

23 Q. Okay. And the black preferred candidate won the
24 primary in that House district in 2018; isn't that
25 right?

1 A. I think that's right, yeah.

2 Q. And so when you --

3 A. Oh, I know what happened here. Dr. Handley
4 reports -- I'm using her stuff -- and she reports that
5 out at 47.27 on Page 25 of her report.

6 Q. And so I think we went over this on your -- you
7 had reported it out on your Page 35 at 45.5 percent?

8 A. Right, right. But when I was doing this, looking
9 to see what Dr. Handley's conclusions were, and where I
10 wasn't really disagreeing with her, I was probably going
11 off of her calculations. That's how I would have done
12 it, since I'm mostly using what she reports there.

13 Q. Okay. So would you revise your statement to say
14 there's no evidence of a polarized district electing a
15 candidate of choice in a primary at 45.5 percent BVAP?

16 A. I think I must be using black alone there, and
17 she is probably using any part black here, and that's
18 probably where the discrepancy comes from. So I guess I
19 would just say below 45.6 percent black alone, or 47.27
20 percent any part black.

21 Q. Okay. So you would consider this -- whether
22 you're using any part black or black alone, you would
23 consider that to be the floor of examples of BVAP levels
24 that allow a polarized district to perform at the
25 primary; is that right?

1 Let's look at another district that was in your
2 ecological inference analysis but was not reported in
3 your report. Let's turn to House District 11, and --
4 whatever you need to look at. I am referring now to the
5 analysis that Dr. Palmer did using your data at
6 Paragraph 35 of the Palmer report, Page 15.

7 A. Okay.

8 Q. This prior House District 11 is drawn at only
9 25.5 percent BVAP; do you see that?

10 A. Yes.

11 Q. Okay. And here there was evidence of racially
12 polarized voting; do you see that?

13 A. Yes.

14 Q. And here, in the 2018 primary the black preferred
15 candidate defeated the white preferred candidate; do you
16 see that?

17 A. Yes.

18 Q. Okay. So it looks like here is an example of a
19 House District in the 2018 primary that was polarized,
20 and the black preferred candidate won, and the BVAP was
21 lower than 47 percent; do you see agree with me?

22 A. Yeah. I can't remember if this one had some
23 quirk to it, but yeah. If you have a fractured enough
24 republican opposition -- or, republican -- if the white
25 vote fractures, I'm sure you could win a polarized

1 voting in that circumstance with a lower BVAP.

2 Q. Okay. And do you have any reason to disagree
3 with Dr. Palmer that your EI code ran the analysis for
4 prior House District 11 for the 2018 primary, but that
5 it's not report -- the results are not reported in your
6 report?

7 A. I don't think so, because he says that I note
8 that District 11 was polarized and that the black
9 preferred candidate won.

10 Q. But you did not report your own analysis; is that
11 right?

12 A. I think I did, if I said District 11 was
13 polarized and the black preferred candidate won.

14 Q. Okay. Let's see if we can take a look -- see if
15 we can find the reference for District 11 in your
16 district report. Go on Page 36 of your report. It's
17 the first full paragraph, the last sentence.

18 Here you state, the 2018 primary where the black
19 incumbents, who had initially been chosen by district
20 delegates in a special election, won in District 11; do
21 you see that?

22 A. Yeah.

23 Q. So this was an example of a black candidate of
24 choice being elected at a BVAP of 25.5 percent, but you
25 didn't report that as being evidence of a black

1 candidate winning a racially polarized primary at BVAP
2 below 47 percent, right?

3 A. I mean, you snipped off the first half of the
4 sentence, which says, in fact, there is just one example
5 of -- there's a typo there -- there is just one example
6 of a black candidate winning a racially polarized
7 primary in the Detroit area in districts with a BVAP
8 below 47 percent in districts the Handley report
9 examines. Then the 2018 primary, where the black
10 incumbent won in District 11.

11 So that literally says exactly that, that a black
12 candidate won a racially polarized primary in a district
13 below 47 percent BVAP. I also note that this is sort of
14 a quirky circumstance where she had been initially
15 chosen by district delegates in a special election, so
16 she was an incumbent. She never had to be the first
17 time candidate. She was always an incumbent. But yeah,
18 she won a district at 26 percent BVAP.

19 Q. Okay. So can you explain why the contradiction
20 in your report saying between on one page saying there's
21 no evidence of a candidate winning below 47 percent, and
22 on the next page saying there is evidence?

23 A. Well, in this example on Page 36, I say there is
24 an example of it occurring.

25 Q. Right. I'm just trying to get at the

1 contradiction in your report where you first say there
2 is no evidence?

3 A. Right. And so this is acknowledging that there
4 is one example of a black candidate who won in a
5 district, in a polarized primary district below 47
6 percent.

7 Q. I see. Okay. So there are at least two
8 districts, House District 4 and House District 11, where
9 a black candidate of choice won a racially polarized
10 primary in 2018 in Detroit; is that right?

11 MR. PATTWELL: Objection to form.

12 A. Wait, what? Can you repeat that question?

13 Q. Sure. Let's break it down. Can you answer the
14 question, are there any districts in the 2018 primary
15 where a black candidate won a racially polarized
16 election at a BVAP lower than 47 percent?

17 A. Black alone, or any part black?

18 Q. Either one?

19 A. Any part black is just District 26. Black alone
20 would be 4 and 26, and that's pursuant to -- not 26, 11.
21 I'm sorry. And that difference, again, is a caveat on
22 this 47 percent, because I was probably looking at Dr.
23 Handley's reporting of the data here, which is 47.27
24 percent, almost certainly any part black.

25 Q. Okay. And before you had a concern about the

1 of those districts.

2 Q. But the simulated plans don't always form 10
3 districts, do they?

4 A. No, they don't. That's why you would be --
5 because the voting compliance, in compliance with the
6 Voting Rights Act, is a defense to a Shaw claim, which
7 allows race, at least until the Milligan decision comes
8 down, to predominate in the drawing of the districts.

9 If you're trying to comply with the Voting Rights
10 Act and you succeed, you have a defense which would
11 allow you at least in ten of your districts to run afoul
12 of what these simulations would show. I don't know
13 about what would happen in the remainder of the
14 districts, but it's a completely different analysis.

15 Q. And switching gears a little bit, I wanted to ask
16 about Senate District 11 and your analysis of
17 polarization in Senate District 11. Can you take a
18 minute to go through your report and find where in your
19 report you analyze the polarization of Senate District
20 11?

21 A. Yeah. I read that in Dr. Palmer's report, and
22 what happened there was I ran the polarization analysis,
23 and then I realized that the district was only, I think,
24 20 percent BVAP, or something like that, which I can't
25 imagine is a VRA compliant district, so I think that's

1 STATE OF OHIO)

2 COUNTY OF MADISON) SS: CERTIFICATE

3

4 I, Emma Jane Troyer, a Notary Public within and
5 for the State of Ohio, duly commissioned and qualified,

6 DO HEREBY CERTIFY that the above-named SEAN
7 TRENDE was by me first duly sworn to testify the truth,
8 the whole truth, and nothing but the truth.

9 Said testimony was reduced to writing by me
10 stenographically in the presence of the witness and
11 thereafter reduced to typewriting.

12 I FURTHER CERTIFY that I am not a relative or
13 attorney of either party, in any manner interested in
14 the event of this action, nor am I, or the court
15 reporting firm with which I am affiliated, under a
16 contract as defined in Civil Rule 28(D).

17 IN WITNESS WHEREOF, I have hereunto set my hand
18 and seal of office at Plain City, Ohio, on this 25th day
19 of April, 2023.

20

21 

22
23 EMMA JANE TROYER

24 NOTARY PUBLIC, STATE OF OHIO

25 My commission expires 01-09-2027

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DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 5857187
CASE NAME: Agee, Donald, Jr., Et Al. v. Benson, Jocelyn, Et Al.
DATE OF DEPOSITION: 4/20/2023
WITNESS' NAME: Sean P. Trende

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

_____ Sean P. Trende

Date Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20_____.

Notary Public

Commission Expiration Date

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CASE NAME: Agee, Donald, Jr., Et Al. v. Benson, Jocelyn, Et Al.
DATE OF DEPOSITION: 4/20/2023
WITNESS' NAME: Sean P. Trende

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date Sean P. Trende

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

- They have read the transcript;
- They have listed all of their corrections in the appended Errata Sheet;
- They signed the foregoing Sworn Statement; and
- Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

EXHIBIT 4

EXHIBIT 4

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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DONALD AGEE, JR. et al.,

Plaintiffs,

vs.

Case No.

1:22-CV-00272-PLM-RMK-JTN

JOCELYN BENSON, et al.,

Defendants.

~~~~~

Zoom Videoconference Deposition of
LaMAR LEMMONS III

April 20, 2023

10:03 a.m.

Witness Location:

Clark Hill

500 Woodward Avenue, Suite 3500

Detroit, Michigan

Buster Beck, RPR

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APPEARANCES..... 2

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NUMBER	DESCRIPTION	MARKED
Exhibit 1	A document entitled; "NOTICE OF DEPOSITION OF LAMAR LEMMONS III"	9
Exhibit 2	A document entitled; "FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF"	24
Exhibit 3	A document entitled; "AFFIDAVIT OF LAMAR LEMMONS III"	26
Exhibit 4	A 72-page document beginning with a cover page entitled; "DOC 05"	28
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Exhibit 7	A ten-page document entitled; "Michigan Independent Citizens Redistricting Commission," dated October 11th, 2021	83
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1 LaMAR LEMMONS III, of lawful age,
2 called for examination, as provided by the
3 Federal Rules of Civil Procedure, being by me
4 first duly sworn, as hereinafter certified,
5 deposed and said as follows:

6 EXAMINATION OF LaMAR LEMMONS III
7 BY MR. LEWIS:

8 Q. Good morning, Mr. Lemmons. It is
9 nice to meet you remotely today. My name is
10 Patrick Lewis and I represent the Independent
11 Citizens Redistricting Commission and the
12 individual commissioners. With me on Zoom are
13 my colleagues Nate Fink from Fink Bressack, and
14 Dima Atiya, also from Baker Hostetler. I'll be
15 the one asking you questions this morning.

16 So Mr. Lemmons, just to get
17 started, are you -- can you identify your name
18 and your current address for the record?

19 A. Certainly. My name is LaMar, L-A,
20 capital M, A-R. Lemmons, L-E-M-M-O-N-S. My
21 address is 8523 Outer Drive, East, Detroit,
22 Michigan 48213.

23 Q. All right. Thank you very much.
24 And your name is pronounced
25 Lemmons?

1 Q. When you used that particular
2 strategy, what door open rates were you able to
3 achieve?

4 A. A higher rate. I don't remember
5 off the top of my head. Did I reference it
6 there? I do know it was higher.

7 And particularly, sometimes the
8 white canvasser's on one side of the street and
9 he's getting a higher rate than the black one
10 on the other side. But as a composite, when
11 they go to the door together, the white open
12 door rate is higher. So if you want a higher
13 rate, you can send a black and a white
14 together. If you send just across the street,
15 there's a difference in the response rate.

16 Q. But you don't know what that rate
17 is as you sit here today?

18 A. I don't know what that rate is, but
19 since you asked me for my experience, that is
20 the experience.

21 Q. Okay. Now, Mr. Lemmons, when
22 someone doesn't answer their door, you can't
23 know why the person chose not to, correct?

24 A. Absolutely.

25 Q. Okay. And different people might

1 have different reasons to decline to open a
2 door, right?

3 A. That is correct.

4 Q. So some people might not want to
5 speak with strangers, for example, right?

6 A. Correct.

7 Q. Some people might not want to be
8 canvassed by political candidates, right?

9 A. Correct.

10 Q. Some people might just be
11 preoccupied with something going in their
12 houses at the moment your worker knocks,
13 correct?

14 A. Correct.

15 Q. Are there other ways your campaigns
16 can message to voters besides knocking their
17 doors?

18 A. Yes.

19 Q. Okay. And can those other ways be
20 effective means of communicating with voters?

21 A. Yes.

22 Q. Okay. So I want to jump ahead now
23 to paragraphs 17, 18 appearing on page five. I
24 have them up on the screen, but let me know
25 when you get there.

1 Q. And candidate personalities can
2 differ, right?

3 A. Correct.

4 Q. Okay. And those factors can
5 sometimes cause black voters to perhaps not
6 prefer a black candidate; is that right?

7 A. That's correct.

8 Q. Okay. I'd like now to turn to
9 paragraph 18, right below 17 there on page
10 five. I had a few questions about it.

11 Sir, you mention the term "Black
12 democrat primary candidates of choice." What
13 does that term mean to you?

14 A. It means that there are -- when
15 there's a black candidate in the race, the
16 voters -- the black voter tends to want to
17 support that black candidate based on that in
18 most cases.

19 Q. Okay. And how do you determine who
20 the black primary candidate of choice is?

21 A. Well, I can't determine in most
22 cases if there are multiple candidates, but
23 when there is a black candidate and a white
24 candidate, it is clear that the general
25 preference by the black community is to have a

1 black candidate with similar experience in the
2 primary.

3 Q. Okay. And do you base that opinion
4 on the data that you've looked at over the
5 years?

6 A. I've based that on my experience.
7 It is my experience that I'm referring to. I
8 base it on my experience. That's correct. And
9 the corroborating data, as you know.

10 Q. And the data.

11 So you're -- and your experience is
12 looking at who won and lost in different
13 elections, right?

14 A. That's some of it, yes.

15 Q. Okay. All right. So you're
16 looking at -- so your experience is informed by
17 looking at election results, right?

18 A. Election results and election
19 campaigning.

20 Q. Okay. So as you're going out to
21 canvas, how voters are responding to your
22 candidate's messages; is that fair?

23 A. Repeat the question, please.

24 Q. So when you say you're looking at
25 other evidence or other data to support your

1 experience, what other things do you look at to
2 inform your experience?

3 A. We look at the response of the
4 voter, juxtaposed to the election results. We
5 look at things like the name. Sometimes the
6 black candidate by name is not distinguishable
7 from a white candidate. So if there's a total
8 unfamiliarity with both candidates, the person
9 who has the most black-sounding name is likely
10 to get a greater -- in the primary, referring
11 to the primaries -- is a lot likely to get the
12 vote.

13 So sometimes a white candidate with
14 a black-sounding name and a black candidate
15 with a white-sounding name, and not having the
16 resources or the knowledge as to how to reach
17 their voters and make that distinction
18 clarified, I've seen a white candidate win the
19 black area, not because they were the candidate
20 of choice, but because they were presumed to be
21 black. And vice versa, by the way.

22 Q. Okay. All right. And so, that
23 experience, you're looking at -- you're looking
24 at how those elections turned out, right?
25 You're looking at how people vote in those

1 races, right?

2 A. Looking at how people voted and why
3 they voted. So we also do an analysis
4 afterwards as to why and how. Because it's
5 always the next race.

6 Q. And so, as you're going through
7 that analysis, you're looking at what your
8 canvassers are reporting back to you, right?

9 A. Yes.

10 Q. Okay. And you're looking at those
11 sheets that they turn in, those statics that
12 they generate, correct?

13 A. I am looking at those, too, yes.

14 Q. Okay. So you're basing -- your
15 experience goes beyond just personally
16 individual voters that you're speaking to; is
17 that right?

18 A. Rephrase the question.

19 Q. Sure.

20 So when you talk about your
21 experience, you're talking about experience
22 that goes beyond just individual voters that
23 you personally speak to, correct?

24 A. Absolutely. Absolutely.

25 Q. Understood. All right.

1 period. Every campaign does.

2 Q. Okay. And VAN -- just to make sure
3 I understand this, is VAN a -- that's a file
4 that's created by the Michigan Democratic
5 party; is that correct?

6 A. That's correct.

7 Q. I see.

8 So it's not an official -- it's put
9 out by the political party, not by the State of
10 Michigan as a government, correct?

11 A. Correct.

12 Q. Okay. So that file has additional
13 information in it beyond what would be
14 maintained, like, for example, at the Board of
15 Elections, correct?

16 A. Correct.

17 Q. Okay.

18 A. Wait, wait. The Board of Elections
19 you can go -- if you pull the file, it will
20 have the race.

21 Q. Okay. All right.

22 A. It's that extensive.

23 Q. But I think you were also
24 describing -- so when you're measuring voter
25 turnout by race, are you relying on sort of

1 using that census data and sort of trying to
2 determine using that and the racial breakdowns
3 of different neighborhoods to help determine
4 voter turnout by race?

5 A. Absolutely, yes.

6 Q. And you understand there's
7 statistical techniques that are used to
8 estimate voter turnout by race?

9 A. Yes.

10 Q. Okay. And did you use any of those
11 statistical techniques in this case?

12 A. Yes.

13 Q. Which ones -- which techniques did
14 you use?

15 A. I used, again, the VAN and
16 experience and observations.

17 Q. Okay.

18 A. And the census.

19 Q. Okay. But you don't -- in your
20 affidavit anywhere, you don't report -- you
21 don't report what those turnout rates were for
22 a specific election, right?

23 A. No, I don't.

24 Q. I see. Okay.

25 So I'd like to now move on to

1 specific elections were good ones for you to
2 analyze for your affidavit?

3 A. Well, some of them, as I said, I
4 was directly involved.

5 Q. Okay.

6 A. And others, I saw the -- I observed
7 -- I had a keen interest in those races, to see
8 what the outcome would be.

9 Q. And all of these are in
10 metropolitan Detroit, correct?

11 A. All of them intersect with the City
12 of Detroit.

13 Q. Great. Okay.

14 So then, if we go back to paragraph
15 28 at the bottom of page seven, is that where
16 you begin to discuss your analysis of those
17 elections?

18 A. Yes.

19 Q. And I understand you've had
20 training and experience in analyzing elections,
21 correct?

22 A. Correct.

23 Q. And did that training and
24 experience help you conduct the analysis you
25 did of these 2022 primaries?

1 A. It did.

2 Q. And would you agree most people
3 wouldn't have the ability to analyze elections
4 in an accurate way without that training and
5 experience?

6 MR. FLEMING: I would object to the
7 form of the question as it calls for
8 speculation.

9 But you can answer.

10 A. I would say that most people would
11 not have the experience. Not necessarily the
12 training. There's training, as I referred to
13 earlier, some autodactical [sic] training that
14 one can do by learning, or empirical training.
15 I would say my empirical or my experience is
16 the guiding reference here.

17 Q. So I'd like to start with your
18 analysis here of Senate District 8 in
19 paragraphs 28 and 29. And specifically in
20 paragraph 28, you discuss how the northern and
21 southern portions of the district are, quote,
22 also characterized by starkly different
23 demographics, communities of interest and
24 legislative priorities. Sir, what are the
25 legislative priorities of the northern portions

1 will jump in the race.

2 Q. I see.

3 And many factors can influence when
4 there's a candidate of choice, correct?

5 A. Absolutely.

6 Q. Okay. And it's much more than just
7 looking at just the bare percentage of, you
8 know, that BVAP number, correct?

9 A. Restate the question.

10 Q. Sure.

11 So the things that can lead, for
12 example, to black community leaders determining
13 the candidate of choice for a district can go
14 well beyond just the percentage of black voting
15 age population in that district, correct?

16 A. Possibly, yes.

17 Q. Okay. All right. So I'd like to
18 move on now to Senate District 11. Bottom of
19 page nine, paragraph 33. And here you mention
20 -- you identify Veronica Klinefelt as the white
21 candidate of choice in this election. Do you
22 agree with that?

23 A. I agree 100 percent.

24 Q. Okay. Do you know how many black
25 voters voted for her?

1 A. I don't remember off the top of my
2 head. But you should know, I supported
3 Klinefelt.

4 Q. You supported her. Why did you
5 support her?

6 A. I supported Klinefelt because I had
7 more knowledge as to the other black candidate.
8 But despite my support and support of community
9 leaders, we didn't spend any money to really
10 let people know that the black candidate should
11 not be the candidate of choice. So she
12 prevailed overwhelmingly in the black
13 community.

14 Q. I see.

15 A. And that black candidate of
16 choice -- just a little add -- has currently --
17 and is innocent until proven guilty -- but has
18 currently been indicted. But she still
19 prevailed over Klinefelt in the black
20 community.

21 Q. In this -- in -- but in your -- in
22 paragraph 33, you don't identify a black
23 candidate of choice, correct?

24 A. That's correct.

25 Q. Okay.

1 A. She was the black candidate -- the
2 default black candidate of choice.

3 Q. I see.

4 But voters -- but black voters did
5 not choose her, correct?

6 A. Black voters did choose her. She
7 was already an elected official. She was the
8 mayor of Eastpointe.

9 Q. Okay. But I'm saying for this
10 particular race, Senate District 11, 2022
11 primary.

12 A. There were some black voters that
13 chose her. What we decided earlier on was to
14 keep other black candidates out as not to
15 dilute the black vote. And after interviewing
16 the leadership -- which I consider myself part
17 of -- of the black community in that area --
18 which had -- area that I had represented as a
19 state representative by the way -- the portion,
20 the Detroit portion anyway, we decided that
21 Klinefelt would have been a better choice than
22 Monique Owens.

23 But the black community decided
24 that Monique Owens was their candidate. And
25 despite our support, which didn't move the

1 numbers, Monique Owens, the black people voted
2 for Monique Owens, and the white people voted
3 for Klinefelt as a collective.

4 Q. Okay.

5 A. Overwhelmingly so in both cases.

6 Q. And what data do you rely on to
7 form the view that the black community in that
8 district voted for Ms. Owens?

9 A. The census data -- the precinct
10 data. I'm sorry. The precinct data where the
11 communities are overwhelmingly black.

12 Q. Okay. I'd like now to turn to
13 paragraph 34 on page ten. And here you talk
14 about Senate District 6. Do you see that?

15 A. I do.

16 Q. This was the primary between state
17 representative Mary Cavanaugh and Darryl Brown
18 and others; is that correct?

19 A. That's correct.

20 Q. Okay. And how did you -- and you
21 determined that Representative Cavanaugh was
22 the clear white candidate of choice, correct?

23 A. No. She was a white candidate of
24 choice.

25 Q. A white candidate of choice. Okay.

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REPORTER'S CERTIFICATE

The State of Ohio,)

SS:

County of Cuyahoga.)

I, Buster Beck, a Notary Public within and for the State of Ohio, duly commissioned and qualified, do hereby certify that the within named witness, LAMAR LEMMONS III, was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the cause aforesaid; that the testimony then given by the above-referenced witness was by me reduced to stenotypy in the presence of said witness; afterwards transcribed, and that the foregoing is a true and correct transcription of the testimony so given by the above-referenced witness.

I do further certify that this deposition was taken at the time and place in the foregoing caption specified and was completed without adjournment.

1 I do further certify that I am not
2 a relative, counsel or attorney for either
3 party, or otherwise interested in the event of
4 this action.

5 IN WITNESS WHEREOF, I have hereunto
6 set my hand and affixed my seal of office at
7 Cleveland, Ohio, on this 27th day of
8 April, 2023.

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Buster Beck, Notary Public
within and for the State of Ohio

My commission expires February 22, 2025.

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Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

April 27, 2023

To: JAMES J. FLEMING

Case Name: Agee, Jr., Donald, et al. v. Benson, Jocelyn, et al.

Veritext Reference Number: 5871024

Witness: LaMar Lemmons, III Deposition Date: 4/20/2023

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

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DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 5871024
CASE NAME: Agee, Jr., Donald, et al. v. Benson, Jocelyn, et al.
DATE OF DEPOSITION: 4/20/2023
WITNESS' NAME: LaMar Lemmons, III

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have made no changes to the testimony as transcribed by the court reporter.

Date LaMar Lemmons, III

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20_____.

Notary Public

Commission Expiration Date

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DEPOSITION REVIEW
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WITNESS' NAME: LaMar Lemmons, III

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date LaMar Lemmons, III

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;
They have listed all of their corrections in the appended Errata Sheet;
They signed the foregoing Sworn Statement; and
Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

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ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
ASSIGNMENT NO: 5871024

PAGE/LINE(S) / CHANGE /REASON

Date LaMar Lemmons, III
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 20_____ .

Notary Public

Commission Expiration Date