

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

MICHAEL BANERIAN; *et al.*,

Plaintiffs,

v.

Case No. 1:22-CV-00054-PLM-SJB

JOCELYN BENSON, in her official capacity
as the Secretary of State of Michigan; *et al.*,

Defendants,

and

JOAN SWARTZ MCKAY; GRACE
HUIZINGA; SAMANTHA NEUHAUS;
JORDAN NEUHAUS; CAYLEY WINTERS;
GLENNA DEJONG; MARSHA CASPAR;
HEDWIG KAUFMAN; COLLIN
CHRISTNER; MELANY MACK; ASHLEY
PREW; SYBIL BADE; SUSAN DILIBERTI;
LISA WIGNET; MATTHEW WIGNET;
PAMELA TESSIER; and SUSANNAH
GOODMAN,

**PROPOSED INTERVENOR-
DEFENDANTS' OPPOSED
MOTION TO INTERVENE**

Proposed Intervenor-Defendants.

Charles R. Spies
Dickinson Wright PLLC
123 Allegan Street
Lansing, MI 49833
(517) 371-1730
cspies@dickinsonwright.com
*Counsel for Plaintiffs Michael Banerian,
Michon Bommarito, Peter Colovos, William
Gordon, Joseph Graves, Beau LaFave, Sarah
Paciorek, Cameron Pickford, Harry Sawicki,
and Michelle Smith*

Sarah S. Prescott (P70510)
**Salvatore Prescott Porter &
Porter, PLLC**
105 E. Main Street
Northville, MI 48168
(248) 679-8711
sprescott@spplawyers.com
*Counsel for Proposed Intervenor-
Defendants*

Max Abram Aidenbaum
Dickinson Wright PLLC (Detroit)
500 Woodward Ave., Ste. 4000
Detroit, MI 48226-3425
(313) 223-3093
maidenbaum@dickinsonwright.com
*Counsel for Plaintiffs Michael Banerian,
Peter Colovos, William Gordon, Joseph
Graves, Beau LaFave, Cameron Pickford,
and Harry Sawicki*

Edward M. Wenger
**Holtzman Vogel Baran Tochinsky &
Josefiak PLLC** (Washington)
2300 N. St., NW, Ste. 643a
Washington DC 20037
(202) 737-8808
emwenger@holtzmanvogel.com
*Counsel for Plaintiffs Michael Banerian,
Peter Colovos, William Gordon, Joseph
Graves, Beau LaFave, Cameron Pickford,
and Harry Sawicki*

Jason Torchinsky
Shawn Sheehy
**Holtzman Vogel Baran Torchinsky &
Josefiak PLLC**
15405 John Marshall Hwy.
Haymarket, VA 20169
(540) 341-8808
jtorchinsky@HoltzmanVogel.com
ssheehy@hvjt.law
*Counsel for Plaintiffs Michael Banerian,
Peter Colovos, William Gordon, Joseph
Graves, Beau LaFave, Cameron Pickford,
and Harry Sawicki*

Marc E. Elias
Emma Olson Sharkey*
Melinda K. Johnson*
Aaron M. Mukerjee*
Raisa Cramer*
Elias Law Group LLP
10 G St NE, Ste 600
Washington, DC 20002
(202) 968-4490
melias@elias.law
eolsonsharkey@elias.law
mjohnson@elias.law
amukerjee@elias.law
rcramer@elias.law
*Counsel for Proposed Intervenor-
Defendants*

**Motions for Admission
Forthcoming*

PROPOSED INTERVENOR-DEFENDANTS' OPPOSED MOTION TO INTERVENE

Proposed Intervenor-Defendants ("Proposed Intervenor") seek to participate as intervening defendants in the above-captioned lawsuit to safeguard their substantial and distinct legal interests, which will otherwise be inadequately represented in this litigation. For the reasons discussed in the memorandum in support, filed concurrently herewith, Proposed Intervenor are

entitled to intervene in this case as a matter of right under Federal Rule of Civil Procedure 24(a)(2). In the alternative, Proposed Intervenor request permissive intervention pursuant to Rule 24(b). Proposed Intervenor contacted counsel for all parties. Plaintiffs oppose this motion, the Commission takes no position on this motion, and Secretary Benson takes no position on this motion.

WHEREFORE, Proposed Intervenor request that the Court grant them leave to intervene in the above-captioned matter and to file their proposed partial Motion to Dismiss (Ex. 1) and proposed partial Answer (Ex. 2). Respectfully submitted, this 2nd day of February, 2022.

Date: February 2, 2022

/s/ Sarah S. Prescott
Sarah S. Prescott, Bar No. 70510
SALVATORE PRESCOTT
PORTER & PORTER, PLLC
105 E. Main Street
Northville, MI 48168
sprescott@spplawyers.com

Marc E. Elias
Emma Olson Sharkey*
Melinda K. Johnson*
Aaron M. Mukerjee*
Raisa Cramer*
Elias Law Group LLP
10 G St NE, Ste 600
Washington, DC 20002
Tel.: (202) 968-4490
melias@elias.law
eolsonsharkey@elias.law
mjohnson@elias.law
amukerjee@elias.law
rcramer@elias.law

Counsel for Proposed Intervenor-Defendants

**Motions for Admission Forthcoming*

CERTIFICATE OF SERVICE

Sarah S. Prescott certifies that on the 2nd day of February 2022, she served a copy of the above document in this matter on all counsel of record and parties via the ECF system.

/s/ Sarah S. Prescott
Sarah S. Prescott

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

MICHAEL BANERIAN; *et al.*,

Plaintiffs,

v.

Case No. 1:22-CV-00054-PLM-SJB

JOCELYN BENSON, in her official capacity
as the Secretary of State of Michigan; *et al.*,

Defendants,

and

JOAN SWARTZ MCKAY; GRACE
HUIZINGA; SAMANTHA NEUHAUS;
JORDAN NEUHAUS; CAYLEY WINTERS;
GLENN DEJONG; MARSHA CASPAR;
HEDWIG KAUFMAN; COLLIN
CHRISTNER; MELANY MACK; ASHLEY
PREW; SYBIL BADE; SUSAN DILIBERTI;
LISA WIGNET; MATTHEW WIGNET;
PAMELA TESSIER; and SUSANNAH
GOODMAN,

Proposed Intervenor-Defendants.

Charles R. Spies
Dickinson Wright PLLC
123 Allegan Street
Lansing, MI 49833
(517) 371-1730
cspies@dickinsonwright.com
*Counsel for Plaintiffs Michael Banerian,
Michon Bommarito, Peter Colovos, William
Gordon, Joseph Graves, Beau LaFave, Sarah
Paciorek, Cameron Pickford, Harry Sawicki,
and Michelle Smith*

Sarah S. Prescott (P70510)
**Salvatore Prescott Porter &
Porter, PLLC**
105 E. Main Street
Northville, MI 48168
(248) 679-8711
sprescott@spplawyers.com
*Counsel for Proposed Intervenor-
Defendants*

Max Abram Aidenbaum
Dickinson Wright PLLC (Detroit)
500 Woodward Ave., Ste. 4000
Detroit, MI 48226-3425
(313) 223-3093
maidenbaum@dickinsonwright.com
*Counsel for Plaintiffs Michael Banerian,
Peter Colovos, William Gordon, Joseph
Graves, Beau LaFave, Cameron Pickford,
and Harry Sawicki*

Edward M. Wenger
**Holtzman Vogel Baran Tochinsky &
Josefiak PLLC** (Washington)
2300 N. St., NW, Ste. 643a
Washington DC 20037
(202) 737-8808
emwenger@holtmanvogel.com
*Counsel for Plaintiffs Michael Banerian,
Peter Colovos, William Gordon, Joseph
Graves, Beau LaFave, Cameron Pickford,
and Harry Sawicki*

Jason Torchinsky
Shawn Sheehy
**Holtzman Vogel Baran Torchinsky &
Josefiak PLLC**
15405 John Marshall Hwy.
Haymarket, VA 20169
(540) 341-8808
jtorchinsky@HoltzmanVogel.com
ssheehy@hvjt.law
*Counsel for Plaintiffs Michael Banerian,
Peter Colovos, William Gordon, Joseph
Graves, Beau LaFave, Cameron Pickford,
and Harry Sawicki*

Marc E. Elias
Emma Olson Sharkey*
Melinda K. Johnson*
Aaron M. Mukerjee*
Raisa Cramer*
Elias Law Group LLP
10 G St NE, Ste 600
Washington, DC 20002
(202) 968-4490
melias@elias.law
eolsonsharkey@elias.law
mjohnson@elias.law
amukerjee@elias.law
rcramer@elias.law
*Counsel for Proposed Intervenor-
Defendants*

**Motions for Admission
Forthcoming*

**PROPOSED INTERVENOR-DEFENDANTS' MEMORANDUM IN SUPPORT OF
MOTION TO INTERVENE**

TABLE OF CONTENTS

INDEX OF AUTHORITIES.....ii

BACKGROUND.....1

LEGAL STANDARD.....2

ARGUMENT.....3

 I. Proposed Intervenorors satisfy the requirements for intervention as of right.....3

 A. Proposed Intervenorors’ motion is timely.....3

 B. Proposed Intervenorors have substantial interests in this litigation, and
 their ability to protect those interests might be impaired by a
 favorable ruling for Plaintiffs.....5

 C. The existing parties will not adequately represent Proposed
 Intervenorors’ interest.....6

 II. Alternatively, the Court should grant Proposed Intervenorors permissive
 intervention under Rule 24(b)(1).....7

CONCLUSION.....7

CERTIFICATE OF SERVICE.....-1-

CERTIFICATE OF COMPLIANCE PURSUANT TO LOCAL RULE 7.3(b)(ii).....-2-

INDEX OF AUTHORITIES

Cases	Page(s)
<i>Blount-Hill v. Zelman</i> , 636 F.3d 278, 283-84 (6th Cir. 2011).....	2-3
<i>Bradley v. Milliken</i> , 828 F.2d 1186, 1192 (6th Cir. 1987).....	5
<i>Buck v. Gordon</i> , 959 F.3d 219, 223 (6th Cir. 2020).....	7
<i>Burrell v. State Farm Mut. Auto. Ins. Co.</i> , No. CV 16-10508, 2016 WL 9414103, at *1 (E.D. Mich. June 10, 2016).....	4
<i>Conservation Law Found. of New Eng., Inc. v. Mosbacher</i> , 966 F.2d 39, 44 (1st Cir. 1992).....	6
<i>Daunt v. Benson</i> , 999 F.3d 299, 321 (6th Cir. 2021).....	2
<i>Grubbs v. Norris</i> , 870 F.2d 343, 345 (6th Cir. 1989).....	3
<i>Grutter v. Bollinger</i> , 188 F.3d 394, 397–98 (6th Cir. 1999).....	2
<i>Hatton v. Cnty. Bd. of Educ. of Maury Cnty., Tenn.</i> , 422 F.2d 457, 461 (6th Cir. 1970).....	5
<i>Issa v. Newsom</i> , No. 2:20-cv-01044-MCE-CKD 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020).....	7
<i>Jansen v. City of Cincinnati</i> , 904 F.2d 336, 340 (6th Cir. 1990).....	3
<i>Kirsch v. Dean</i> , 733 F. App'x 268, 275 (6th Cir. 2018).	4
<i>Kleissler v. U.S. Forest Serv.</i> , 157 F.3d 964, 972 (3d Cir. 1998).	6
<i>League of Women Voters of Mich. v. Johnson</i> , 902 F.3d 572, 579 (6th Cir. 2018).	3
<i>Linton ex rel. Arnold v. Comm'r of Health & Env't</i> , 973 F.2d 1311, 1318-19 (6th Cir. 1992).	4, 6
<i>Mausolf v. Babbitt</i> , 85 F.3d 1295, 1303 (8th Cir. 1996).	6
<i>Mich. State v. Miller</i> , 103 F.3d 1240, 1245, 1247, 1248 (6th Cir. 1997).	5-7
<i>Priorities USA v. Benson</i> , 448 F. Supp. 3d 755, 759–60, 763 (E.D. Mich. 2020).	3-4
<i>Pub. Int. Legal Found., Inc. v. Winfrey</i> , 463 F. Supp. 3d 795, 799–800 (E.D. Mich. 2020).....	3
<i>Purnell v. City of Akron</i> , 925 F.2d 941, 948, 950 (6th Cir. 1991).	2, 5
<i>Reliastar Life Ins. Co. v. MKP Invs.</i> , 565 F. App'x 369, 372 (6th Cir. 2014).	5
<i>Rucho v. Common Cause</i> , 139 S. Ct. 2484, 2491 (2019).	2
<i>Stupak-Thrall v. Glickman</i> , 226 F.3d 467, 472-73 (6th Cir. 2000).	2-3

Rules	Page(s)
Fed. R. Civ. P. 24(a).....	1-2, 5, 7-8
Fed. R. Civ. P. 24(b).....	3, 7-8
Fed. R. Civ. P. 24(c)	1

**PROPOSED INTERVENOR-DEFENDANTS' MEMORANDUM IN SUPPORT OF
MOTION TO INTERVENE**

Pursuant to Federal Rule of Civil Procedure 24, Proposed Intervenor-Defendants (“Proposed Intervenor-Defendants”) move to intervene as defendants in this lawsuit. Proposed Intervenor-Defendants are Michigan voters who support fair and constitutional redistricting maps, and who believe in Michigan’s independent redistricting process.¹

Through this action, Plaintiffs seek to upend the congressional map adopted by the state’s independent citizens redistricting commission (the “Commission”). In so doing, Plaintiffs attempt to undermine the will of the voters by circumventing the redistricting process explicitly approved by Michigan voters and enshrined in the Michigan Constitution. Seventeen of those voters now seek to intervene in this litigation to defend their important and substantial interests.

In accordance with Rule 24(c) and this Court’s Information and Guidelines for Civil Practice § IV(A)(1), attached are a proposed partial motion to dismiss (Ex. 1), and a proposed answer (Ex. 2).

BACKGROUND

In November 2018, Michiganders voted overwhelmingly in favor of creating the Commission to draw Michigan’s congressional and legislative maps. The goal of the Commission is to allow ordinary citizens the opportunity to draw fair maps, thereby putting an end to the

¹ Under the Commission-drawn congressional map, Proposed Intervenor Joan Swartz McKay will vote in the 1st Congressional District; Grace Huizinga will vote in the 2nd Congressional District; Samantha Neuhaus and Jordan Neuhaus will vote in the 3rd Congressional District; Cayley Winters, Glenna DeJong, and Marsha Caspar will vote in the 4th Congressional District; Hedwig Kaufman will vote in the 5th Congressional District; Collin Christner will vote in the 6th Congressional District; Melany Mack will vote in the 7th Congressional District; Ashley Prew will vote in the 8th Congressional District; Sybil Bade will vote in the 9th Congressional District; Susan Diliberti will vote in the 10th Congressional District; Lisa Wigent and Matthew Wigent will vote in the 11th Congressional District; Pamela Tessier will vote in the 12th Congressional District; and Susannah Goodman will vote in the 13th Congressional District.

extreme partisan gerrymandering that plagued Michigan for over a decade. Indeed, in upholding the Commission’s constitutionality, the Sixth Circuit noted last year in *Daunt v. Benson* that “[a]lthough claims of unconstitutional partisan gerrymandering may be nonjusticiable . . . Michigan is free to employ its political process to address the issue head on. It did so, adopting the Amendment after Michiganders overwhelmingly voted in favor of Proposal 18-2, and its eligibility criteria for the Commission do not offend the First or Fourteenth Amendments.” 999 F.3d 299, 321 (6th Cir. 2021) (citing *Rucho v. Common Cause*, 139 S. Ct. 2484, 2491 (2019)).

But Plaintiffs in the present lawsuit would undo those gains. Moreover, they seek to undermine the Commission’s authority by asking this Court to invent a federal claim that does not exist and to draw Michigan’s congressional map itself. Proposed Intervenor now seek to intervene to defend the Commission’s congressional map and help ensure that any changes to the map as a result of this lawsuit do not upend it altogether—and with it, the will of the voters who approved the Commission.

LEGAL STANDARD

The requirements for intervention “should be ‘broadly construed in favor of potential intervenors.’” *Stupak-Thrall v. Glickman*, 226 F.3d 467, 472 (6th Cir. 2000) (quoting *Purnell v. City of Akron*, 925 F.2d 941, 950 (6th Cir. 1991)). To intervene as of right under Rule 24(a), the proposed intervenor must show that “1) the application was timely filed; 2) the applicant possesses a substantial legal interest in the case; 3) the applicant’s ability to protect its interest will be impaired without intervention; and 4) the existing parties will not adequately represent the applicant’s interest.” *Blount-Hill v. Zelman*, 636 F.3d 278, 283 (6th Cir. 2011) (citing *Grutter v. Bollinger*, 188 F.3d 394, 397–98 (6th Cir. 1999)).

“Permissive intervention has a less exacting standard than mandatory intervention and courts are given greater discretion to decide motions for permissive intervention.” *Priorities USA v. Benson*, 448 F. Supp. 3d 755, 759–60 (E.D. Mich. 2020) (citing *Grubbs v. Norris*, 870 F.2d 343, 345 (6th Cir. 1989)). “On timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1). “In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights.” Fed. R. Civ. P. 24(b)(3). Moreover, “[t]he interest of the intervenors, for the purposes of permissive intervention, only needs to be ‘distinct’ from the defendants, regardless of whether it is ‘substantial.’” *Pub. Int. Legal Found., Inc. v. Winfrey*, 463 F. Supp. 3d 795, 799–800 (E.D. Mich. 2020) (quoting *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018)).

ARGUMENT

I. Proposed Intervenors satisfy the requirements for intervention as of right.

A. Proposed Intervenors’ motion is timely.

Courts consider the following factors in deciding whether a motion to intervene is timely:

(1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case; (4) the prejudice to the original parties due to the proposed intervenors’ failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention.

Stupak-Thrall, 226 F.3d at 472–73 (quoting *Jansen v. City of Cincinnati*, 904 F.2d 336, 340 (6th Cir. 1990)). “No one factor is dispositive, but rather the ‘determination of whether a motion to intervene is timely should be evaluated in the context of all relevant circumstances.’” *Zelman*, 636 F.3d at 284 (quoting *Glickman*, 226 F.3d at 472-73).

This suit has just begun; no proceedings have yet occurred, and none of the named defendants have even appeared, let alone filed any responsive pleadings. In fact, Proposed Intervenor's motion was filed just 13 days after Plaintiffs' initial complaint and 4 business days after Plaintiffs' amended complaint. *See Priorities USA*, 448 F. Supp. 3d at 763 (concluding that it was "difficult to imagine a more timely intervention" where legislature moved to intervene just twenty days after lawsuit was filed without being formally noticed); *see also Burrell v. State Farm Mut. Auto. Ins. Co.*, No. CV 16-10508, 2016 WL 9414103, at *1 (E.D. Mich. June 10, 2016) ("The motion is timely, as it was filed less than three months after the suit was removed to federal court."). Proposed Intervenor's seek to intervene in order to defend their interests in voting under fair and constitutional congressional maps for the next decade. Proposed Intervenor's filed this motion at this early stage, before any proceedings have been held and before the existing Defendants have responded to Plaintiffs' allegations, in order to defend their interests at each possible stage of this litigation. This constitutes a "legitimate purpose for intervention" and "the motion to intervene [is] timely in light of the stated purpose for intervening." *Kirsch v. Dean*, 733 F. App'x 268, 275 (6th Cir. 2018) (citing *Linton ex rel. Arnold v. Comm'r of Health & Env't*, 973 F.2d 1311, 1318 (6th Cir. 1992)).

Moreover, there is no risk of prejudice to other parties if intervention is granted. Proposed Intervenor's are prepared to follow any briefing schedule the Court sets, including on Plaintiffs' motion for preliminary injunction. Far from delaying, Proposed Intervenor's have an interest in resolving this matter as quickly as possible in order to allow the Commission-drawn congressional map to go into effect prior to Michigan's April 19 candidate filing deadline.

B. Proposed Intervenorors have substantial interests in this litigation, and their ability to protect those interests might be impaired by a favorable ruling for Plaintiffs.

Proposed Intervenorors' interests in this action are weighty. The Federal Rules of Civil Procedure require that Intervenorors "must have a direct and substantial interest in the litigation . . . such that [they are] a 'real party in interest in the transaction which is the subject of the proceeding,'" *Reliastar Life Ins. Co. v. MKP Invs.*, 565 F. App'x 369, 372 (6th Cir. 2014). The Sixth Circuit, in particular, "has opted for a rather expansive notion of the interest sufficient to invoke intervention of right." *Mich. State v. Miller*, 103 F.3d 1240, 1245 (6th Cir. 1997); *see also Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987) (citing *Hatton v. Cnty. Bd. of Educ. of Maury Cnty., Tenn.*, 422 F.2d 457, 461 (6th Cir. 1970) (noting that "this court has acknowledged that 'interest' is to be construed liberally")). Indeed, an intervenor "need not have the same standing necessary to initiate a lawsuit," and the Sixth Circuit has "cited with approval decisions of other courts 'reject[ing] the notion that Rule 24(a)(2) requires a specific legal or equitable interest.'" *Miller*, 103 F.3d at 1245 (quoting *Purnell*, 925 F.2d at 948). The burden of establishing impairment of a substantial interest is "minimal," *id.* at 1247, and an intervenor need only demonstrate that impairment is possible, *see Purnell*, 925 F.2d at 948. The Sixth Circuit has specifically found that such impairment exists where a Proposed Intervenor "may lose the opportunity to ensure that one or more electoral campaigns in Michigan are conducted under legislatively approved terms that [the proposed intervenor] believes to be fair and constitutional," *Miller*, 103 F.3d at 1247.

Here, Proposed Intervenorors are registered Michigan voters who have voted previously and plan to vote again in federal congressional elections. Proposed Intervenorors support and have an interest in voting in congressional districts that they believe to be fair and constitutional. If this Court orders Plaintiffs' proposed remedy and enjoins the Commission's congressional plan on the

basis of Count II, Proposed Intervenor's congressional districts will be changed, possibly dramatically. As in *Miller*, without intervention, Proposed Intervenor "may lose the opportunity to ensure that one or more electoral campaigns in Michigan are conducted under . . . terms that [they] believe[] to be fair and constitutional." *Id.*

C. The existing parties will not adequately represent Proposed Intervenor's interest.

None of the Defendants in this case adequately represent Proposed Intervenor's interests in retaining the enacted district plan. "Although a would-be intervenor is said to shoulder the burden with respect to establishing that its interest is not adequately protected by the existing parties to the action, this burden 'is minimal because it is sufficient that the movant[] prove that representation *may* be inadequate.'" *Id.* (alteration in original) (emphasis added) (quoting *Linton*, 973 F.2d at 1319). Moreover, where one of the original parties to the suit is a government entity whose "views are necessarily colored by its view of the public welfare rather than the more parochial views of a proposed intervenor whose interest is personal to it," courts have found that "the burden [of establishing inadequacy of representation] is comparatively light." *Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 972 (3d Cir. 1998) (citing *Conservation Law Found. of New Eng., Inc. v. Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992); *Mausolf v. Babbitt*, 85 F.3d 1295, 1303 (8th Cir. 1996)).

Here, Defendants are the Michigan Secretary of State and the Commissioners of the Michigan Independent Citizens Redistricting Commission. While these government defendants have an undeniable interest in conducting elections under the duly enacted laws of Michigan, Proposed Intervenor has a different interest: voting in what they believe to be fair, constitutional congressional districts. Moreover, in the attached proposed filings, Proposed Intervenor moves to dismiss only as to only Count II of Plaintiffs' Complaint, and intend to file an Opposition to

Plaintiffs’ Motion for Preliminary Injunction only as to Count II. As a result, the parties’ interests are neither “identical” nor “the same.” *Issa v. Newsom*, No. 2:20-cv-01044-MCE-CKD, 2020 WL 3074351, at *3 (E.D. Cal. June 10, 2020) (citation omitted). Because Proposed Intervenor’s particular interests are not shared by the present parties in this litigation, they cannot rely on Defendants or anyone else to provide adequate representation. They have thus satisfied the four requirements for intervention as of right under Rule 24(a)(2).

II. Alternatively, the Court should grant Proposed Intervenor’s permissive intervention under Rule 24(b)(1).

In the alternative, Proposed Intervenor should be granted permissive intervention under Rule 24(b)(1). In deciding whether to grant permissive intervention, courts consider whether the “motion for intervention is timely and there is at least one common question of law or fact” and balance “undue delay, prejudice to the original parties, and any other relevant factors.” *Buck v. Gordon*, 959 F.3d 219, 223 (6th Cir. 2020) (emphasis omitted) (quoting *Mich. State AFL-CIO*, 103 F.3d at 1248).

As previously discussed, this motion was filed just 13 days after Plaintiffs’ complaint, and no proceedings have yet occurred. As demonstrated by the attached Proposed Answer and Proposed Partial Motion to Dismiss, Proposed Intervenor intend to raise defenses that are directly responsive to Plaintiffs’ claims, and therefore share common questions of law and fact with Plaintiffs’ claims. Moreover, as previously discussed, Proposed Intervenor are prepared to follow any briefing schedule the Court sets and to participate in any future hearings or oral arguments, without delay. Thus, there will be no prejudice to the original parties. Other relevant factors, including the fact that this case will likely determine the congressional redistricting map under which Proposed Intervenor will vote for the next decade, also favor granting permissive intervention.

CONCLUSION

For the reasons stated above, Proposed Intervenor respectfully request that the Court grant their motion to intervene as a matter of right under Rule 24(a)(2) or, in the alternative, permit them to intervene under Rule 24(b)(1).

Date: February 2, 2022

Respectfully submitted,

/s/ Sarah S. Prescott
Sarah S. Prescott, Bar No. 70510
SALVATORE PRESCOTT
PORTER & PORTER, PLLC
105 E. Main Street
Northville, MI 48168
(248) 679-8711
sprescott@spplawyers.com

Marc E. Elias
Emma Olson Sharkey*
Melinda K. Johnson*
Aaron M. Mukerjee*
Raisa Cramer*
Elias Law Group LLP
10 G St NE, Ste 600
Washington, DC 20002
Tel.: (202) 968-4490
melias@elias.law
eolsonsharkey@elias.law
mjohnson@elias.law
amukerjee@elias.law
rcramer@elias.law

Counsel for Proposed Intervenor-Defendants
**Motions for Admission Forthcoming*

CERTIFICATE OF SERVICE

Sarah S. Prescott certifies that on the 2nd of February, 2022, she served a copy of the above document in this matter on all counsel of record and parties via the ECF system.

Date: February 2, 2022

Respectfully submitted,

/s/ Sarah S. Prescott

Sarah S. Prescott

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.3(b)(ii), counsel for Proposed Intervenors certify that this brief contains 2,405 words, as indicated by Microsoft Word 2021, inclusive of any headings, footnotes, citations and quotations, and exclusive of the caption, cover sheets, table of contents, table of authorities, signature block, any certificate, and any accompanying documents.

Date: February 2, 2022

Respectfully submitted,

/s/ Sarah S. Prescott

Sarah S. Prescott

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

MICHAEL BANERIAN; *et al.*,

Plaintiffs,

v.

Case No. 1:22-CV-00054-PLM-SJB

JOCELYN BENSON, in her official capacity
as the Secretary of State of Michigan; *et al.*,

Defendants,

and

JOAN SWARTZ MCKAY; GRACE
HUIZINGA; SAMANTHA NEUHAUS;
JORDAN NEUHAUS; CAYLEY WINTERS;
GLENNA DEJONG; MARSHA CASPAR;
HEDWIG KAUFMAN; COLLIN
CHRISTNER; MELANY MACK; ASHLEY
PREW; SYBIL BADE; SUSAN DILIBERTI;
LISA WIGNET; MATTHEW WIGNET;
PAMELA TESSIER; and SUSANNAH
GOODMAN,

Proposed Intervenor-Defendants.

**INDEX OF EXHIBITS TO
PROPOSED INTERVENOR-DEFENDANTS'
MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE**

Exhibit	Description
1.	Intervenor-Defendants' Proposed Partial Motion to Dismiss
2.	Intervenor-Defendants' Proposed Partial Answer

EXHIBIT 1

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

MICHAEL BANERIAN; *et al.*,

Plaintiffs,

v.

Case No. 1:22-CV-00054-PLM-SJB

JOCELYN BENSON, in her official capacity
as the Secretary of State of Michigan; *et al.*,

Defendants,

and

JOAN SWARTZ MCKAY; GRACE
HUIZINGA; SAMANTHA NEUHAUS;
JORDAN NEUHAUS; CAYLEY WINTERS;
GLENNA DEJONG; MARSHA CASPAR;
HEDWIG KAUFMAN; COLLIN
CHRISTNER; MELANY MACK; ASHLEY
PREW; SYBIL BADE; SUSAN DILIBERTI;
LISA WIGNET; MATTHEW WIGNET;
PAMELA TESSIER; and SUSANNAH
GOODMAN,

**PROPOSED INTERVENOR-
DEFENDANTS' PARTIAL
MOTION TO DISMISS**

Proposed Intervenor-Defendants.

Charles R. Spies
Dickinson Wright PLLC
123 Allegan Street
Lansing, MI 49833
(517) 371-1730
cspies@dickinsonwright.com
*Counsel for Plaintiffs Michael Banerian,
Michon Bommarito, Peter Colovos, William
Gordon, Joseph Graves, Beau LaFave, Sarah
Paciorek, Cameron Pickford, Harry Sawicki,
and Michelle Smith*

Sarah S. Prescott (P70510)
**Salvatore Prescott Porter &
Porter, PLLC**
105 E. Main Street
Northville, MI 48168
(248) 679-8711
sprescott@spplawyers.com
*Counsel for Proposed Intervenor-
Defendants*

Max Abram Aidenbaum
Dickinson Wright PLLC (Detroit)
500 Woodward Ave., Ste. 4000
Detroit, MI 48226-3425
(313) 223-3093
maidenbaum@dickinsonwright.com
*Counsel for Plaintiffs Michael Banerian,
Peter Colovos, William Gordon, Joseph
Graves, Beau LaFave, Cameron Pickford,
and Harry Sawicki*

Edward M. Wenger
**Holtzman Vogel Baran Tochinsky &
Josefiak PLLC** (Washington)
2300 N. St., NW, Ste. 643a
Washington DC 20037
(202) 737-8808
emwenger@holtzmanvogel.com
*Counsel for Plaintiffs Michael Banerian,
Peter Colovos, William Gordon, Joseph
Graves, Beau LaFave, Cameron Pickford,
and Harry Sawicki*

Jason Torchinsky
Shawn Sheehy
**Holtzman Vogel Baran Torchinsky &
Josefiak PLLC**
15405 John Marshall Hwy.
Haymarket, VA 20169
(540) 341-8808
jtorchinsky@HoltzmanVogel.com
ssheehy@hvjt.law
*Counsel for Plaintiffs Michael Banerian,
Peter Colovos, William Gordon, Joseph
Graves, Beau LaFave, Cameron Pickford,
and Harry Sawicki*

Marc E. Elias
Emma Olson Sharkey*
Melinda K. Johnson*
Aaron M. Mukerjee*
Raisa Cramer*
Elias Law Group LLP
10 G St NE, Ste 600
Washington, DC 20002
(202) 968-4490
melias@elias.law
eolsonsharkey@elias.law
mjohnson@elias.law
amukerjee@elias.law
rcramer@elias.law
*Counsel for Proposed Intervenor-
Defendants*

**Motions for Admission
Forthcoming*

PROPOSED INTERVENOR-DEFENDANTS' PARTIAL MOTION TO DISMISS

Proposed Intervenor-Defendants ("Proposed Intervenor-Defendants"), by counsel, move this Court to dismiss Count II of Plaintiffs' First Amended Complaint under Fed. R. Civ. P. 12(b)(6). Dismissal is necessary under Rule 12(b)(6) because the factual allegations in the complaint, even if true, are

insufficient to state a federal claim under the Fourteenth Amendment to the United States Constitution.

Accordingly, for the reasons explained above and in greater detail in their supporting brief, Proposed Intervenor respectfully request that this Court dismiss Count II of Plaintiffs' Amended Complaint.

Date: February 2, 2022

/s/ Sarah S. Prescott
Sarah S. Prescott, Bar No. 70510
SALVATORE PRESCOTT
PORTER & PORTER, PLLC
105 E. Main Street
Northville, MI 48168
(248) 679-8711
sprescott@spplawyers.com

Marc E. Elias
Emma Olson Sharkey*
Melinda K. Johnson*
Aaron M. Mukerjee*
Raisa Cramer*
Elias Law Group LLP
10 G St NE, Ste 600
Washington, DC 20002
Tel.: (202) 968-4490
melias@elias.law
eolsonsharkey@elias.law
mjohnson@elias.law
amukerjee@elias.law
rcramer@elias.law

Counsel for Proposed Intervenor-Defendants

**Motions for Admission Forthcoming*

CERTIFICATE OF SERVICE

Sarah S. Prescott certifies that on the 2nd day of February 2022, she served a copy of the above document in this matter on all counsel of record and parties via the ECF system.

/s/ Sarah S. Prescott
Sarah S. Prescott

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

MICHAEL BANERIAN; *et al.*,

Plaintiffs,

v.

Case No. 1:22-CV-00054-PLM-SJB

JOCELYN BENSON, in her official capacity
as the Secretary of State of Michigan; *et al.*,

Defendants,

and

JOAN SWARTZ MCKAY; GRACE
HUIZINGA; SAMANTHA NEUHAUS;
JORDAN NEUHAUS; CAYLEY WINTERS;
GLENN DEJONG; MARSHA CASPAR;
HEDWIG KAUFMAN; COLLIN
CHRISTNER; MELANY MACK; ASHLEY
PREW; SYBIL BADE; SUSAN DILIBERTI;
LISA WIGNET; MATTHEW WIGNET;
PAMELA TESSIER; and SUSANNAH
GOODMAN,

Proposed Intervenor-Defendants.

Charles R. Spies
Dickinson Wright PLLC
123 Allegan Street
Lansing, MI 48333
(517) 371-1730
cspies@dickinsonwright.com
*Counsel for Plaintiffs Michael Banerian,
Michon Bommarito, Peter Colovos, William
Gordon, Joseph Graves, Beau LaFave, Sarah
Paciorek, Cameron Pickford, Harry Sawicki,
and Michelle Smith*

Sarah S. Prescott (P70510)
**Salvatore Prescott Porter &
Porter, PLLC**
105 E. Main Street
Northville, MI 48168
(248) 679-871
sprescott@spplawyers.com
*Counsel for Proposed Intervenor-
Defendants*

Max Abram Aidenbaum
Dickinson Wright PLLC (Detroit)
500 Woodward Ave., Ste. 4000
Detroit, MI 48226-3425
(313) 223-3093
maidenbaum@dickinsonwright.com
*Counsel for Plaintiffs Michael Banerian,
Peter Colovos, William Gordon, Joseph
Graves, Beau LaFave, Cameron Pickford,
and Harry Sawicki*

Edward M. Wenger
**Holtzman Vogel Baran Tochinsky &
Josefiak PLLC** (Washington)
2300 N. St., NW, Ste. 643a
Washington DC 20037
(202) 737-8808
emwenger@holtzmanvogel.com
*Counsel for Plaintiffs Michael Banerian,
Peter Colovos, William Gordon, Joseph
Graves, Beau LaFave, Cameron Pickford,
and Harry Sawicki*

Jason Torchinsky
Shawn Sheehy
**Holtzman Vogel Baran Torchinsky &
Josefiak PLLC**
15405 John Marshall Hwy.
Haymarket, VA 20169
(540) 341-8808
jtorchinsky@HoltzmanVogel.com
ssheehy@hvjt.law
*Counsel for Plaintiffs Michael Banerian,
Peter Colovos, William Gordon, Joseph
Graves, Beau LaFave, Cameron Pickford,
and Harry Sawicki*

Marc E. Elias
Emma Olson Sharkey*
Melinda K. Johnson*
Aaron M. Mukerjee*
Raisa Cramer*
Elias Law Group LLP
10 G St NE, Ste 600
Washington, DC 20002
(202) 968-4490
melias@elias.law
eolsonsharkey@elias.law
mjohnson@elias.law
amukerjee@elias.law
rcramer@elias.law
*Counsel for Proposed Intervenor-
Defendants*

**Motions for Admission
Forthcoming*

**PROPOSED INTERVENOR-DEFENDANTS' BRIEF IN SUPPORT OF PARTIAL
MOTION TO DISMISS**

TABLE OF CONTENTS

INDEX OF AUTHORITIES.....	ii
INTRODUCTION.....	1
STATEMENT OF FACTS.....	2
LEGAL STANDARD.....	4
ARGUMENT.....	4
A. Under Count II, Plaintiffs fail to allege a federal claim.	4
B. Even if Plaintiffs had stated a cognizable federal claim, Count II fails to state a claim that the Commission violated the Michigan Constitution.....	7
CONCLUSION.....	8
CERTIFICATE OF SERVICE.....	-1-
CERTIFICATE OF COMPLIANCE PURSUANT TO LOCAL RULE 7.3(b)(ii).....	-2-

INDEX OF AUTHORITIES

Cases	Page(s)
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544, 555 (2007).....	4
<i>Bush v. Vera</i> , 517 U.S. 952, 979 (1996).....	6
<i>Cooper v. Harris</i> , 137 S. Ct. 1455, 1464 (2017).....	6
<i>Detroit Caucus v. Mich. Indep. Citizens Redistricting Comm’n</i> , MSC 163926 (Mich. Jan. 5, 2022).....	3
<i>Ernst v. Rising</i> , 427 F.3d 351, 368 (6th Cir. 2005).....	5
<i>In re Ohio Execution Protocol Litig.</i> , 709 F. App’x 779, 782 (6th Cir. 2017).....	5
<i>Karcher v. Daggett</i> , 462 U.S. 725, 740 (1983).....	6
<i>Pennhurst State Sch. & Hosp. v. Halderman</i> , 465 U.S. 89, 106 (1984).....	1, 5
<i>Reynolds v. Sims</i> , 377 U.S. 533, 577 (1964).....	6
<i>Thornburg v. Gingles</i> , 478 U.S. 30, 50–51 (1986).....	6
<i>Total Benefits Plan. Agency, Inc. v. Anthem Blue Cross & Blue Shield</i> , 552 F.3d 430, 434 (6th Cir. 2008).....	4
Rules	Page(s)
Fed. R. Civ. P. 12(b).....	1, 4, 8
Mich. Const. Art. IV.....	<i>passim</i>
Mich. Const. Art. IV, § 6(13).....	2, 7
Mich. Const. Art. IV, § 6(19).....	1-3

PROPOSED INTERVENOR-DEFENDANTS’ BRIEF IN SUPPORT OF PARTIAL MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Proposed Intervenor-Defendants (“Proposed Intervenor-Defendants”) move this Court to dismiss Count II of Plaintiffs’ First Amended Complaint (“Amended Complaint”).

INTRODUCTION

In Count II of their Amended Complaint, Plaintiffs attempt to invent a federal claim where none exists. Dressed up in the language of the Fourteenth Amendment, Count II amounts to nothing more than a claim that the Michigan Independent Citizens Redistricting Commission (the “Commission”) violated the Michigan Constitution. The Michigan Constitution provides a forum for such claims—the Michigan Supreme Court. *See* Mich. Const. Art. IV, § 6(19) (“The supreme court, in the exercise of original jurisdiction . . . may review a challenge to any plan adopted by the commission”). If this Court were to entertain such a claim, based entirely on state law, it would upend decades of Supreme Court and Sixth Circuit precedent prohibiting a federal court from granting “relief against state officials on the basis of state law.” *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984).

Even if the Court were inclined to take this dramatic and unprecedented step, Plaintiffs’ allegations in Count II—which state that the Commission violated the Michigan Constitution by failing to include political boundaries as part of “communities of interest”—are without merit. The Michigan Constitution definitively forecloses Plaintiffs’ claim, and it therefore fails as a matter of law.

This Court should not entertain Plaintiffs’ invitation to upend our federal system, particularly in a case where the underlying state law claim is itself non-meritorious. This Court should dismiss Count II of Plaintiffs’ Amended Complaint.

STATEMENT OF FACTS

In November 2018, Michiganders voted overwhelmingly in favor of Proposal 2, which vested the power to draw redistricting maps in the Commission. Now codified as Article IV, § 6 of the Michigan Constitution, this constitutional amendment requires the Commission to enact congressional districts that comply with certain redistricting criteria. Specifically, Article IV, § 6(13) of the Michigan Constitution states:

The commission shall abide by the following criteria in proposing and adopting each plan, in order of priority:

- (a) Districts shall be of equal population as mandated by the United States constitution, and shall comply with the voting rights act and other federal laws.
- (b) Districts shall be geographically contiguous. Island areas are considered to be contiguous by land to the county of which they are a part.
- (c) Districts shall reflect the state's diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates.
- (d) Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political party shall be determined using accepted measures of partisan fairness.
- (e) Districts shall not favor or disfavor an incumbent elected official or a candidate.
- (f) Districts shall reflect consideration of county, city, and township boundaries.
- (g) Districts shall be reasonably compact.

Mich. Const. Article IV, § 6(13). The constitution confers upon the Michigan Supreme Court “original jurisdiction” to “review a challenge to any plan adopted by the commission,” requiring that the court “shall remand a plan to the commission for further action if the plan fails to comply with the requirements of this constitution, the constitution of the United States or superseding federal law.” *Id.* § 6(19). It further provides that “[i]n no event shall any body, except the independent citizens redistricting commission acting pursuant to this section, promulgate and adopt a redistricting plan or plans for this state.” *Id.* On December 28, 2021, after months of deliberation and 45 days of public comment pursuant to Article IV § 6, including a great deal of

comment regarding what constituted a “community of interest,”¹ the Commission voted to approve a congressional map—referred to by the Commission as the “Chestnut Plan.”² The Chestnut Plan was supported by commissioners who affiliate as Republicans and as Democrats, as well as those who do not affiliate with a major political party.³

On January 5, 2022, pursuant to Article IV, § 6(19), a group of plaintiffs filed a case in the Michigan Supreme Court alleging that the congressional, State Senate, and State House maps violate the federal Voting Rights Act. *See* Compl., *Detroit Caucus v. Mich. Indep. Citizens Redistricting Comm’n*, MSC 163926 (Mich. Jan. 5, 2022). More than two weeks later, Plaintiffs filed this lawsuit against the congressional map alleging (1) that it violates Article I, Section 2 of the United States Constitution for failing to minimize population deviations among the districts, and (2) that it violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by “fail[ing] to draw Michigan’s congressional maps in accordance with neutral, and traditionally accepted, redistricting criteria. . . .” Compl. ¶ 6, ECF No. 1. On January 27, Plaintiffs amended their complaint and moved for a preliminary injunction. As part of their Prayer for Relief, Plaintiffs request that this Court “[e]stablish a deadline by which the Commissioners must redraw maps, and if the Commissioners do not act by this deadline, assume jurisdiction, appoint a special master, and draw constitutionally compliant congressional districts.”

Am. Compl. Prayer for Relief at 19, ECF No. 7.

¹ *See* “MI Redistricting Public Comment Portal,” Michigan Independent Citizens Redistricting Commission (“MICRC”), <https://www.michigan-mapping.org/> (last visited Jan. 30, 2022).

² “Final Maps,” MICRC, https://www.michigan.gov/micrc/0,10083,7-418-107190_108607---.00.html (last visited Jan. 30, 2022).

³ *See* MICRC Proposed Meeting Minutes of December 28, 2021 at 5–6, available at https://www.michigan.gov/documents/micrc/MICRC_Proposed_Meeting_Minutes_2021_12_28_745307_7.pdf (noting that two Democratic commissioners, two Republican commissioners, and four independent commissioners voted to adopt the Chestnut map).

LEGAL STANDARD

Pursuant to Federal Rule of Civil Procedure 12(b)(6), a defendant may make a motion to dismiss for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Although a court considering a Rule 12(b)(6) motion presumes that all well-pleaded material allegations in the complaint are true, “it is still necessary that the complaint contain more than bare assertions or legal conclusions.” *Total Benefits Plan. Agency, Inc. v. Anthem Blue Cross & Blue Shield*, 552 F.3d 430, 434 (6th Cir. 2008); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (holding that “a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do”).

ARGUMENT

Count II of the Amended Complaint seeks to manufacture a federal claim out of a purported violation of state law, and therefore must be dismissed. In Count II, Plaintiffs allege that the Commission’s congressional map violates their Fourteenth Amendment rights under the Equal Protection Clause based on the Commission’s alleged “inconsistent and arbitrary” implementation of the redistricting criteria set forth in the Michigan Constitution. Am. Compl. ¶¶ 67, 103, 108, 112. The federal right upon which Plaintiffs purport to base their claim, however, simply does not exist.

A. Under Count II, Plaintiffs fail to allege a federal claim.

Plaintiffs allege that “[b]ecause the Commissioners arbitrarily applied Michigan’s constitutional requirements, the Commissioners imposed U.S. Constitutional injuries on Michigan’s voters.” *Id.* ¶ 106. But there is no legal basis for the proposition that an alleged

violation of a state constitutional provision is sufficient to allege a *de facto* violation of the federal Equal Protection Clause.

To the contrary, as the U.S. Supreme Court explained decades ago in *Pennhurst State School & Hospital v. Halderman*, “the principles of federalism that underlie the Eleventh Amendment” prohibit a federal court from granting “relief against state officials on the basis of state law, whether prospective or retroactive.” 465 U.S. 89, 106 (1984); *see also Ernst v. Rising*, 427 F.3d 351, 368 (6th Cir. 2005) (citing *Pennhurst*, 465 U.S. at 106) (holding that “the States’ constitutional immunity from suit prohibits all state-law claims filed against a State in federal court, whether those claims are monetary or injunctive in nature”); *In re Ohio Execution Protocol Litig.*, 709 F. App’x 779, 782 (6th Cir. 2017) (holding that “a federal court may issue prospective injunctive and declaratory relief compelling a state official to comply with federal law . . . [b]ut that exception does not extend to prospective injunctive or declaratory relief based on alleged violations of state law”).

Here, Plaintiffs ask this Court to enter relief based on alleged violations of state law, in violation of the *Pennhurst* doctrine. Plaintiffs’ claim under Count II rests entirely on the Commission’s alleged failure to comply with the redistricting criteria mandated under the state constitution. Plaintiffs complain that “the Commissioners ignored roughly half the criteria listed in the Michigan Constitution,” Am. Compl. ¶ 122, and that “[t]o the extent the Commissioners (im)properly applied any criteria, they did so out of the order of priority mandated by the Michigan Constitution,” *id.* ¶ 123. From this Plaintiffs conclude that “[t]hus, when the Commissioners arbitrarily and inconsistently *applied their state constitutional requirements* of keeping counties and townships whole and maintaining communities of interest, they violated the Equal Protection Clause.” *Id.* ¶ 121 (emphasis added). In other words, Plaintiffs allege that the Commission’s

alleged violation of the state constitution triggers—and is synonymous with—a violation of the U.S. Constitution.

Plaintiffs’ attempt to invent a new right under the Fourteenth Amendment is illustrated by their failure to cite a single precedent for such a claim. In the redistricting context, federal courts have recognized two types of claims under the Equal Protection Clause: claims that state legislative districts substantially deviate from equal population requirements, *Reynolds v. Sims*, 377 U.S. 533, 577 (1964) (holding “as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis”), and racial gerrymandering claims based on the unjustified predominance of racial considerations in drawing district lines, *Cooper v. Harris*, 137 S. Ct. 1455, 1464 (2017). Although Plaintiffs make no allegations to support either claim, they borrow from—and misconstrue—caselaw applicable to these claims to suggest they have a Fourteenth Amendment right to compliance with traditional districting criteria. For instance, in alleging that the federal Equal Protection Clause requires state actors to adhere to Plaintiffs’ proposed “traditional redistricting criteria,” Am. Compl. ¶¶ 101, 105–06, Plaintiffs cite *Karcher v. Daggett*, 462 U.S. 725, 740 (1983), which stands for the idea that minor population deviations can be *justified* by traditional redistricting criteria. *Id.* ¶ 49. Plaintiffs also cite *Bush v. Vera*, 517 U.S. 952, 979 (1996), which discussed non-compliance with traditional redistricting criteria as evidence of racial gerrymandering, not a standalone claim. *Id.* ¶ 80. Plaintiffs’ citation to *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986), is even more far afield; *Gingles* addresses claims under Section 2 of the Voting Rights Act, not the Equal Protection Clause. Under no reading do any of these cases

affirmatively *require* states to comply with “traditional redistricting criteria,” much less with Plaintiffs’ selective view of what such criteria include.

Because Plaintiffs’ claims rest entirely on their misconception that a federal court can order state officials to comply with state law, they cannot succeed on Count II.

B. Even if Plaintiffs had stated a cognizable federal claim, Count II fails to state a claim that the Commission violated the Michigan Constitution.

Even if Plaintiffs’ state law claim could trigger federal jurisdiction, it fails on its own terms. Under Count II, Plaintiffs allege that the Commission failed to preserve “communities of interest” by splitting political boundaries (*i.e.* counties, cities, and townships), and therefore “arbitrarily and inconsistently applied the phrase ‘communities of interest’” in violation of the Equal Protection Clause. *Id.* ¶¶ 117-121.

But the Michigan Constitution makes clear that, under Michigan law, “communities of interest” are distinct from political boundaries, and that the Commission must prioritize the former over the latter. *See* Mich. Const. Art. IV, § 6(13) (listing criteria “in order of priority,” with respect for “communities of interest” listed before “consideration of county, city, and township boundaries”).

Accepting Plaintiffs’ allegations as true, the Commission simply applied the criteria laid out by the Michigan Constitution in the correct order of priority. Plaintiffs’ contention that the Commission “appear[s] to have used a wholly novel definition” of “communities of interest” by not equating the term with “counties, cities, and townships,” Am. Compl. ¶¶ 116-17, takes issue not with the Commission or the congressional map, but with the Michigan Constitution itself. While Plaintiffs might prefer, as a policy matter, that the Michigan Constitution require the

Commission to consider geographic boundaries as “true communities of interest,” *id.* ¶ 116, it simply does not do so.⁴

Accordingly, there is nothing “inconsistent or arbitrary” about the Commission’s implementation of the criteria set forth in the state constitution; Plaintiffs allege nothing more than that the Commission followed the Michigan Constitution as it is written. Because Plaintiffs have failed to sufficiently allege a violation of the Michigan Constitution, their purported federal claim that hinges on such a violation also fails.

CONCLUSION

For the foregoing reasons, Proposed Intervenor-Defendants respectfully request that the Court dismiss Count II of Plaintiffs’ First Amended Complaint.

Date: February 2, 2022

Respectfully submitted,

/s/ Sarah S. Prescott
Sarah S. Prescott, Bar No. 70510
SALVATORE PRESCOTT
PORTER & PORTER, PLLC
105 E. Main Street
Northville, MI 48168
(248) 679-8711
sprescott@spplawyers.com

Marc E. Elias
Emma Olson Sharkey*
Melinda K. Johnson*
Aaron M. Mukerjee*
Raisa Cramer*
Elias Law Group LLP
10 G St NE, Ste 600
Washington, DC 20002
Tel.: (202) 968-4490

⁴ Plaintiffs also allege that “the Chestnut Plan cannot be described as ‘compact’ under any reasonable interpretation of that term.” Am. Compl. ¶ 73. While this appears to relate to Plaintiffs’ Count I, Am. Compl. ¶ 75 (“this lack of compactness is evidence that the Commissioners did not act in a good faith effort to achieve population equality”), to the extent that non-compactness forms a basis for Plaintiffs’ Equal Protection claim, it also must fail, as compactness is the lowest-order priority under the Michigan Constitution. *See* Mich. Const. Art. IV, §6(13).

melias@elias.law
eolsonsharkey@elias.law
mjohnson@elias.law
amukerjee@elias.law
rcramer@elias.law

Counsel for Proposed Intervenor-Defendants
**Motions for Admission Forthcoming*

CERTIFICATE OF SERVICE

Sarah S. Prescott certifies that on the 2nd of February, 2022, she served a copy of the above document in this matter on all counsel of record and parties via the ECF system.

Date: February 2, 2022

Respectfully submitted,

/s/ Sarah S. Prescott

Sarah S. Prescott

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.3(b)(ii), counsel for Proposed Intervenors certify that this brief contains 2,424 words, as indicated by Microsoft Word 2021, inclusive of any headings, footnotes, citations and quotations, and exclusive of the caption, cover sheets, table of contents, table of authorities, signature block, any certificate, and any accompanying documents.

Date: February 2, 2022

Respectfully submitted,

/s/ Sarah S. Prescott

Sarah S. Prescott

EXHIBIT 2

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

MICHAEL BANERIAN; *et al.*,

Plaintiffs,

v.

Case No. 1:22-CV-00054-PLM-SJB

JOCELYN BENSON, in her official capacity
as the Secretary of State of Michigan; *et al.*,

Defendants,

and

JOAN SWARTZ MCKAY; GRACE
HUIZINGA; SAMANTHA NEUHAUS;
JORDAN NEUHAUS; CAYLEY WINTERS;
GLENNA DEJONG; MARSHA CASPAR;
HEDWIG KAUFMAN; COLLIN
CHRISTNER; MELANY MACK; ASHLEY
PREW; SYBIL BADE; SUSAN DILIBERTI;
LISA WIGNET; MATTHEW WIGNET;
PAMELA TESSIER; and SUSANNAH
GOODMAN,

**INTERVENOR-DEFENDANTS’
ANSWER TO FIRST AMENDED
COMPLAINT**

Proposed Intervenor-Defendants.

Charles R. Spies
Dickinson Wright PLLC
123 Allegan Street
Lansing, MI 49833
(517) 371-1730
cspies@dickinsonwright.com
*Counsel for Plaintiffs Michael Banerian,
Michon Bommarito, Peter Colovos, William
Gordon, Joseph Graves, Beau LaFave, Sarah
Paciorek, Cameron Pickford, Harry Sawicki,
and Michelle Smith*

Sarah S. Prescott (P70510)
**Salvatore Prescott Porter &
Porter, PLLC**
105 E. Main Street
Northville, MI 48168
(248) 679-8711
sprescott@spplawyers.com
*Counsel for Proposed Intervenor-
Defendants*

Max Abram Aidenbaum
Dickinson Wright PLLC (Detroit)
500 Woodward Ave., Ste. 4000
Detroit, MI 48226-3425
(313) 223-3093
maidenbaum@dickinsonwright.com
*Counsel for Plaintiffs Michael Banerian,
Peter Colovos, William Gordon, Joseph
Graves, Beau LaFave, Cameron Pickford,
and Harry Sawicki*

Edward M. Wenger
**Holtzman Vogel Baran Tochinsky &
Josefiak PLLC** (Washington)
2300 N. St., NW, Ste. 643a
Washington DC 20037
(202) 737-8808
emwenger@holtzmanvogel.com
*Counsel for Plaintiffs Michael Banerian,
Peter Colovos, William Gordon, Joseph
Graves, Beau LaFave, Cameron Pickford,
and Harry Sawicki*

Jason Torchinsky
Shawn Sheehy
**Holtzman Vogel Baran Torchinsky &
Josefiak PLLC**
15405 John Marshall Hwy.
Haymarket, VA 20169
(540) 341-8808
jtorchinsky@HoltzmanVogel.com
ssheehy@hvjt.law
*Counsel for Plaintiffs Michael Banerian,
Peter Colovos, William Gordon, Joseph
Graves, Beau LaFave, Cameron Pickford,
and Harry Sawicki*

Marc E. Elias
Emma Olson Sharkey*
Melinda K. Johnson*
Aaron M. Mukerjee*
Raisa Cramer*
Elias Law Group LLP
10 G St NE, Ste 600
Washington, DC 20002
(202) 968-4490
melias@elias.law
eolsonsharkey@elias.law
mjohnson@elias.law
amukerjee@elias.law
rcramer@elias.law
*Counsel for Proposed Intervenor-
Defendants*

**Motions for Admission
Forthcoming*

INTERVENOR-DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT

Proposed Intervenor-Defendants Joan Swartz McKay, Grace Huizinga, Samantha Neuhaus, Jordan Neuhaus, Cayley Winters, Glenna DeJong, Marsha Caspar, Hedwig Kaufman, Collin Christner, Melany Mack, Ashley Prew, Sybil Bade, Susan Diliberti, Lisa Wigent, Matthew Wigent, Pamela Tessier, and Susannah Goodman, by and through their undersigned counsel of

record, answer Plaintiffs' First Amended Complaint as set forth below. Unless expressly admitted, each allegation in the First Amended Complaint is denied, and the Proposed Intervenor-Defendants demand strict proof thereof.

INTRODUCTION

1. Plaintiffs Michael Banerian (Counts I & II), Michon Bommarito (Count II), Peter Colovos (Counts I & II), William Gordon (Count I), Joseph Graves (Count I & II), Beau LaFave (Count I), Sarah Paciorek (Counts I & II), Cameron Pickford (Counts I & II), Harry Sawicki (Counts I & II), and Michelle Smith (Count I), bring this suit to challenge Michigan's recently enacted congressional districts as violative of the United States Constitution.

Answer: Paragraph 1 consists of argument and legal conclusions, to which no response is required.

2. As an initial matter, Michigan's adopted congressional districts violate the "one person, one vote" rule enshrined in Article I, Section 2 of the U.S. Constitution.

Answer: Paragraph 2 consists of argument and legal conclusions, to which no response is required.

3. This principle requires that "[r]epresentatives be chosen 'by the People of the several States'" in a way that ensures that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." *Wesberry v. Sanders*, 376 U.S. 1, 7–8 (1964) (quoting U.S. Const. art. I, § 2).

Answer: Paragraph 3 consists of argument and legal conclusions, to which no response is required.

4. Because Michigan's newly adopted congressional districts fall far below this standard, they are unconstitutional and cannot stand.

Answer: Paragraph 4 consists of argument and legal conclusions, to which no response is required.

5. Michigan's adopted congressional districts, moreover, violate the Fourteenth Amendment of the U.S. Constitution.

Answer: Paragraph 5 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 5.

6. The individuals serving on the Michigan Independent Citizens Redistricting Commission (the "Commissioners") failed to draw Michigan's congressional maps in accordance with neutral, and traditionally accepted, redistricting criteria (now codified at Article IV, Section 6(13) of the Michigan Constitution).

Answer: Paragraph 6 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 6.

7. The Commissioners' failure in this respect amounts to arbitrary boundary drawing, in violation of the Fourteenth Amendment's equal-protection guarantee.

Answer: Paragraph 7 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 7.

8. Among other pressing defects, the Commissioners' congressional map unnecessarily fragments counties, townships, and municipalities—*i.e.*, Michigan's true communities of interest—without any legitimate or rational State interest.

Answer: Paragraph 8 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 8.

9. To be certain, compliance with federal law (as informed by the Michigan Constitution) is neither impossible nor particularly onerous.

Answer: Paragraph 9 consists of argument and legal conclusions, to which no response is required.

10. Indeed, as demonstrated by the remedy map attached to this filing as Exhibit A, the Commissioners had ample ability to draw and adopt congressional districts without the aforementioned flaws.

Answer: Paragraph 10 consists of argument, opinions, and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 10.

11. The Commissioners' failure to do so warrants the declaratory and injunctive relief sought by Plaintiffs in this action.

Answer: Paragraph 11 consists of argument and legal conclusions, to which no response is required.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this action under 28 U.S.C. § 1331, and 28 U.S.C. § 1343 because Plaintiffs' claims all arise under—and seek redress pursuant to—the U.S. Constitution and 42 U.S.C. § 1983.

Answer: Paragraph 12 consists of argument and legal conclusions, to which no response is required.

13. Under 28 U.S.C. § 2284, a three-judge panel should hear and determine this case.

Answer: Paragraph 13 consists of argument and legal conclusions, to which no response is required.

14. Under 28 U.S.C. § 1391(b), venue is proper in this District because the Office of the Secretary of State, Defendant Jocelyn Benson, is located in this District.

Answer: Paragraph 14 consists of argument and legal conclusions, to which no response is required.

THREE-JUDGE COURT REQUESTED

15. In this action, Plaintiffs challenge the constitutionality of the Commissioners' reapportionment of Michigan's congressional districts.

Answer: Paragraph 15 consists of argument and legal conclusions, to which no response is required.

16. 28 U.S.C. § 2284(a) provides that "[a] district court of three judges shall be convened . . . when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body."

Answer: Paragraph 16 consists of argument and legal conclusions, to which no response is required.

17. For this reason, Plaintiffs respectfully request that the Court "immediately notify the chief judge of the circuit" so that the Chief Judge may "designate two other judges, at least one of whom shall be a circuit judge," to "serve as members of the court to hear and determine th[is] action." 28 U.S.C. § 2284(b)(1).

Answer: Paragraph 17 consists of argument and legal conclusions, to which no response is required.

PARTIES

18. Each Plaintiff is a natural person, a citizen of the United States, and is registered to vote in Michigan.

Answer: Intervenors are without sufficient information to respond to the allegations in Paragraph 18.

19. Plaintiff Michael Banerian lives in Royal Oak, Michigan, which is in Oakland County. Mr. Banerian regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. Banerian resides in the newly created 11th Congressional District.

Answer: Intervenors are without sufficient information to respond to the allegations in Paragraph 19.

20. Plaintiff Michon Bommarito lives in Albion, Michigan, which is in Calhoun County. Ms. Bommarito regularly votes in federal state, and local elections in Michigan. Under the enacted map, Ms. Bommarito resides in the newly created 5th Congressional District.

Answer: Intervenors are without sufficient information to respond to the allegations in Paragraph 20.

21. Plaintiff Peter Colovos lives in Hagar Township, Berrien County, Michigan. Mr. Colovos regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. Colovos resides in the newly created 4th Congressional District.

Answer: Intervenors are without sufficient information to respond to the allegations in Paragraph 21.

22. Plaintiff William Gordon lives in Scio Township, Michigan, which is in Washtenaw County. Mr. Gordon regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. Gordon resides in the newly created 6th Congressional District.

Answer: Intervenors are without sufficient information to respond to the allegations in Paragraph 22.

23. Plaintiff Joseph Graves lives in Linden, Michigan, which is in Genesee County. Mr. Graves regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. Graves resides in the newly created 8th Congressional District.

Answer: Intervenors are without sufficient information to respond to the allegations in Paragraph 23.

24. Plaintiff Beau LaFave lives in Iron Mountain, Michigan, which is in Dickinson County. Mr. LaFave regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. LaFave resides in the newly created 1st Congressional District.

Answer: Intervenors are without sufficient information to respond to the allegations in Paragraph 24.

25. Plaintiff Sarah Paciorek lives in Ada, Michigan, which is in Kent County. Ms. Paciorek regularly votes in federal, state, and local elections. She first registered to vote in Michigan when she was 18, and regularly voted in Michigan for several years thereafter. She then moved out of state for work, where she was a regular voter, and returned to Michigan in 2021, where she is once again registered and intends to vote in 2022. Under the enacted map, Ms. Paciorek resides in the newly created 3rd Congressional District.

Answer: Intervenors are without sufficient information to respond to the allegations in Paragraph 25.

26. Plaintiff Cameron Pickford lives in Charlotte, Michigan, which is in Eaton County. Mr. Pickford regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. Pickford resides in the newly created 7th Congressional District.

Answer: Intervenors are without sufficient information to respond to the allegations in Paragraph 26.

27. Plaintiff Harry Sawicki lives in Dearborn Heights, Michigan, which is in Wayne County. Mr. Sawicki regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Mr. Sawicki resides in the newly created 12th Congressional District.

Answer: Intervenors are without sufficient information to respond to the allegations in Paragraph 27.

28. Plaintiff Michelle Smith lives in Sterling Heights, Michigan, which is in Macomb County. Ms. Smith regularly votes in federal, state, and local elections in Michigan. Under the enacted map, Ms. Smith resides in the newly created 10th Congressional District.

Answer: Intervenors are without sufficient information to respond to the allegations in Paragraph 28.

29. Defendant Jocelyn Benson is the Michigan Secretary of State. In this capacity, Ms. Benson must enforce the district boundaries for congressional districts and accept the declarations of candidacy for congressional candidates. Plaintiffs sue Ms. Benson solely in her official capacity.

Answer: Intervenors admit that Jocelyn Benson is the Michigan Secretary of State. The remainder of Paragraph 29 consists of argument and legal conclusions, to which no response is required.

30. Non-party Michigan Independent Citizens Redistricting Commission (“the Commission”) is an entity created by the Michigan Constitution to, every ten years, “adopt a redistricting plan for each of the following types of districts: state senate districts, state house of representative districts, and congressional districts.” Mich. Const. art. IV, § 6(1).

Answer: Admit.

31. The Commission is composed of thirteen members: four affiliated with the Democratic Party, four affiliated with the Republican Party, and five unaffiliated with either major political party. *Id.*

Answer: Intervenor admit that the Michigan Independent Citizens Redistricting Commission must be composed of thirteen commissioners. However, the remainder of Paragraph 31 consists of argument and legal conclusions, to which no response is required.

32. Defendant Douglas Clark serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Mr. Clark is affiliated with the Republican Party. Plaintiffs sue Mr. Clark solely in his official capacity.

Answer: Admit.

33. Defendant Juanita Curry serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Ms. Curry is affiliated with the Democratic Party. Plaintiffs sue Ms. Curry solely in her official capacity.

Answer: Admit.

34. Defendant Anthony Eid serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Mr. Eid is not affiliated with either major political party. Plaintiffs sue Mr. Eid solely in his official capacity.

Answer: Admit.

35. Defendant Rhonda Lange serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Ms. Lange is affiliated with the Republican Party. Plaintiffs sue Ms. Lange solely in her official capacity.

Answer: Admit.

36. Defendant Steven Terry Lett serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Mr. Lett is not affiliated with either major political party. Plaintiffs sue Mr. Lett solely in his official capacity.

Answer: Admit.

37. Defendant Brittnei Kellom serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Ms. Kellom is affiliated with the Democratic Party. Plaintiffs sue Ms. Kellom solely in her official capacity.

Answer: Admit.

38. Defendant Cynthia Orton serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Ms. Orton is affiliated with the Republican Party. Plaintiffs sue Ms. Orton solely in her official capacity.

Answer: Admit.

39. Defendant M.C. Rothhorn serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Mr. Rothhorn is affiliated with the Democratic Party. Plaintiffs sue Mr. Rothhorn solely in his official capacity.

Answer: Admit.

40. Defendant Rebecca Szetela serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Ms. Szetela is not affiliated with either major political party. Plaintiffs sue Ms. Szetela solely in her official capacity.

Answer: Admit.

41. Defendant Janice Vallette serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Ms. Vallette is not affiliated with either major political party. Plaintiffs sue Ms. Vallette solely in her official capacity.

Answer: Admit.

42. Defendant Erin Wagner serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Ms. Wagner is affiliated with the Republican Party. Plaintiffs sue Ms. Wagner solely in her official capacity.

Answer: Admit.

43. Defendant Richard Weiss serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Mr. Weiss is not affiliated with either major political party. Plaintiffs sue Mr. Weiss solely in his official capacity.

Answer: Admit.

44. Defendant Dustin Witjes serves as a commissioner on the Michigan Independent Citizens Redistricting Commission. Mr. Witjes is affiliated with the Democratic Party. Plaintiffs sue Mr. Witjes solely in his official capacity.

Answer: Admit.

GENERAL ALLEGATIONS

45. In November 2018, Michigan amended its Constitution to establish the Michigan Independent Citizens Redistricting Commission (“the Commission”), a citizen-comprised entity vested with the exclusive authority to adopt district boundaries for State and congressional elections after each decennial census. *See* Mich. Const. art. IV, § 6(1).

Answer: Intervenors admit that Michigan amended its Constitution in 2018 to establish the Michigan Independent Citizens Redistricting Commission, which is vested with the exclusive authority to adopt district boundaries for state legislative and congressional districts after each decennial census; however, Intervenors deny that the citation referenced in Paragraph 45 fully supports the Plaintiffs’ statements in Paragraph 45.

46. The 2018 amendment also prescribed the criteria the Commissioners must apply when adopting each district plan.

Answer: Admit.

47. Specifically, Article IV, Section 6(13) of the Michigan Constitution provides that the Commissioners must abide “by the following criteria in proposing and adopting each plan, in order of priority”:

- a. Districts shall be of equal population as mandated by the United States Constitution, and shall be geographically contiguous. Island areas are considered to be contiguous by land to the county of which they are a part.
- b. Districts shall reflect the state’s diverse population and communities of interest. Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. Communities of interest do not include relationships with political parties, incumbents, or political candidates.
- c. Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political party shall be determined using accepted measures of partisan fairness.
- d. Districts shall not favor or disfavor an incumbent elected official or a candidate
- e. Districts shall reflect consideration of county, city, and township boundaries.
- f. Districts shall be reasonably compact.

Answer: Paragraph 47, including Subparagraphs (A), (B), (C), (D), (E), and (F), consists of argument and legal conclusions, to which no response is required. To the extent Paragraph 47 includes references to legal authorities, the legal authorities speak for themselves.

48. The criteria enumerated in the Michigan Constitution track the traditional (and traditionally accepted) redistricting criteria used in several jurisdictions across the Nation.

Answer: Paragraph 48 consists of argument and legal conclusions, to which no response is required.

49. The Supreme Court recognizes these traditional redistricting criteria. *See, e.g., Karcher v. Daggett*, 462 U.S. 725, 740 (1983).

Answer: Paragraph 49 consists of argument and legal conclusions, to which no response is required.

50. These traditional redistricting criteria serve as means to prevent unconstitutional gerrymandering and ensure compliance with federal law. *See, e.g., Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986) (imposing a compactness requirement to determine whether § 2 of the Voting Rights Act requires the drawing of a majority-minority district).¹

Answer: Paragraph 50 consists of argument and legal conclusions, to which no response is required.

51. In mid-September 2020, the Commissioners met for the first time to begin drawing Michigan’s voting districts.

Answer: Admit.

52. According to the 2020 Decennial Census, Michigan has a population of 10,077,331 persons.

¹ *See also Bush v. Vera*, 517 U.S. 952, 979 (1996) (“If, because of the dispersion of the minority population, a reasonably compact majority-minority district cannot be created, § 2 does not require a majority-minority district.”); *id.* at 962 (stating that in proving a racial gerrymandering claim under the Fourteenth Amendment’s Equal Protection Clause, “[t]he Constitution does not mandate regularity of district shape . . . and the neglect of traditional districting criteria is merely necessary, not sufficient. For strict scrutiny to apply, traditional districting criteria must be subordinated to race”)

Answer: Admit.

53. Based on these numbers, Michigan was apportioned thirteen congressional districts.

Answer: Admit.

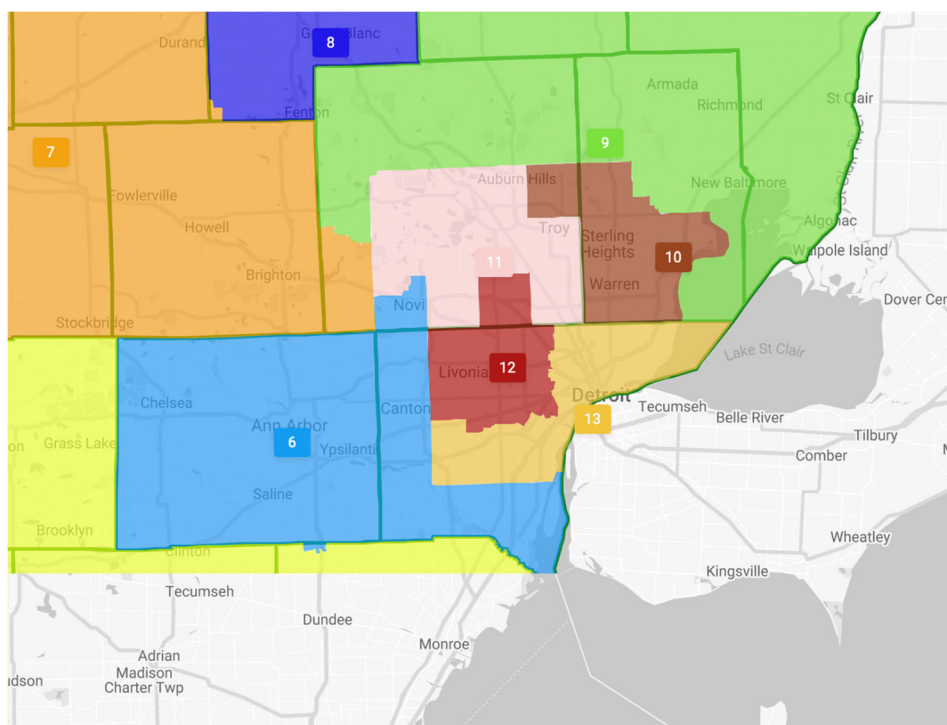
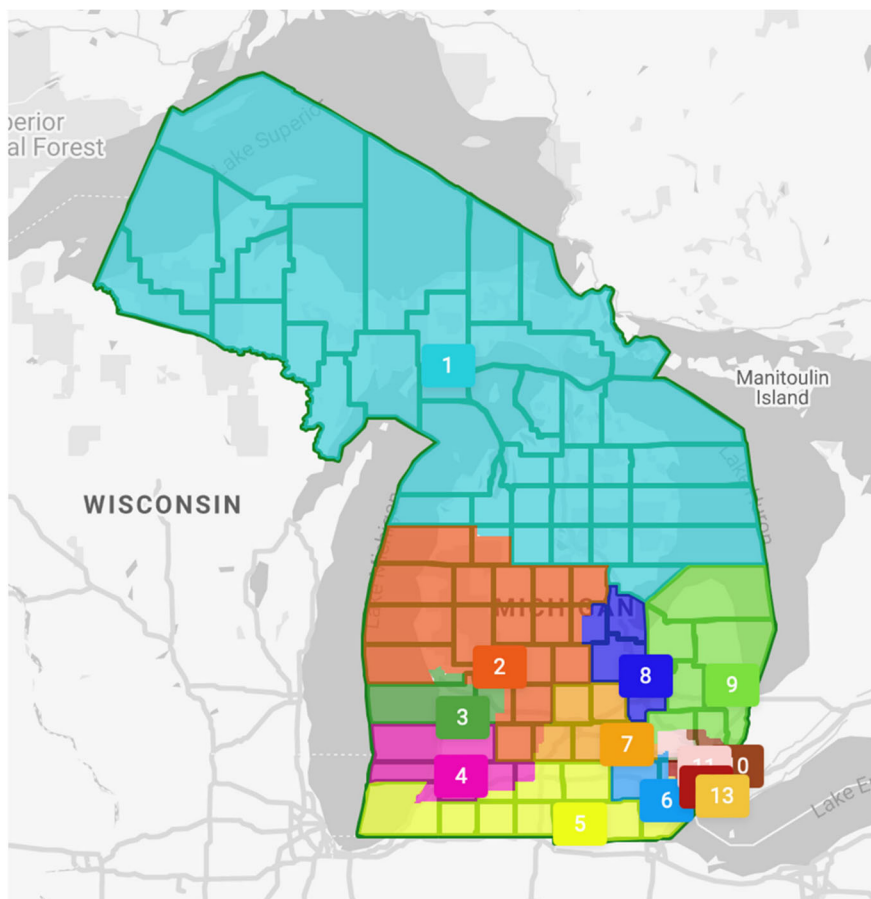
54. To ensure that no district suffers from vote dilution in contravention of the “one person, one vote” principle recognized by the U.S. Supreme Court, the Commissioners were obligated to adopt districts that each have a population as close to 775,179 persons as possible.

Answer: Paragraph 54 consists of argument and legal conclusions, to which no response is required.

55. According to publicly available information, the Commissioners considered five congressional plans, three of which were named after a species of tree (“Apple,” “Birch,” and “Chestnut”) and two of which were named, respectively, after a commissioner (“Lange” and “Szetela”).

Answer: Intervenor's admit that according to publicly available information, the Michigan Independent Citizens Redistricting Commission considered five congressional plans entitled Chestnut, Birch V2, Apple V2, Lange, and Szetela.

56. On December 28, 2021, the Michigan Independent Citizens Redistricting Commission adopted and enacted the “Chestnut Plan,” which appears as follows (and is available at <https://michigan.mydistricting.com/legdistricting/comments/plan/279/23> (visited Jan. 6, 2022)):



Answer: Intervenor's admit that the Michigan Independent Citizens Redistricting Commission adopted the Chestnut Plan on December 28, 2021 but are without sufficient information to respond to the figure depicted in Paragraph 56.

57. The Chestnut Plan's largest congressional district (District 13) has a population of 775,666 persons, which is 487 persons above the ideal population for congressional districts in Michigan.

Answer: Intervenor's are without sufficient information to respond to the allegations in Paragraph 57.

58. The Chestnut Plan's smallest congressional district (District 5) has a population of 774,544 persons, which is 635 persons below the ideal population for congressional districts in Michigan.

Answer: Intervenor's are without sufficient information to respond to the allegations in Paragraph 58.

59. The difference in population between the largest and smallest congressional districts in the Chestnut Plan is 1,122 persons.

Answer: Intervenor's are without sufficient information to respond to the allegations in Paragraph 59.

60. Only one congressional district (District 10) in the Chestnut Plan is less than 50 persons away from the ideal population (+39) for congressional districts in Michigan.

Answer: Intervenor's are without sufficient information to respond to the allegations in Paragraph 60.

61. The following chart lists the population deviations for each district.

DISTRICT	TOTAL PERSONS	DEVIATION
District One	775,375	+196
District Two	774,997	-182
District Three	775,414	+235
District Four	774,600	-579
District Five	774,544	-635
District Six	775,273	+94
District Seven	775,238	+59
District Eight	775,229	+50
District Nine	774,962	-217
District Ten	775,218	+39
District Eleven	775,568	+389
District Twelve	775,247	+68
District Thirteen	775,666	+487

Answer: Intervenors are without sufficient information to respond to the allegations in Paragraph 61.

62. The Commissioners' failure to create districts with equal population also suggests that they did not prioritize the criteria enumerated in the Michigan Constitution in the order mandated by the Michigan Constitution. *See Mich. Const. art. IV, § 6(13).*

Answer: Paragraph 62 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 62.

63. The remedy map attached to this Complaint (Exhibit A) reduces the difference in population to 1 person (nine districts have a population of 775,179 each and four districts have a population of 775,180 each).

Answer: Intervenors are without sufficient information to respond to the allegations in Paragraph 63.

64. Of Michigan’s eighty-three counties, the Chestnut Plan splits at least fifteen of them (approximately 18%).

Answer: Admit.

65. In fact, parts of Oakland County are located in *six* separate congressional districts.

Answer: Admit.

66. Not only does this contravene the Michigan constitutional requirement that the State’s congressional districts “reflect consideration of county, city, and township boundaries,” Mich. Const. art. IV, § 6(13)(f), it also carves up “communities of interest,” as that phrase has been construed by the Michigan Supreme Court and federal courts across the nation.

Answer: Paragraph 66 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 66.

67. This is evidence that the Commissioners did not apply its criteria in a neutral and consistent manner but rather in an inconsistent and arbitrary manner.

Answer: Paragraph 67 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 67.

68. As such, the boundaries established by the Commissioners are arbitrary, inconsistent, and non-neutral, in contravention of the Fourteenth Amendment’s Equal Protection Clause. *See also* Mich. Const. art. IV, § 6(13)(c) (congressional districts must “reflect the state’s diverse population and communities of interest”).

Answer: Paragraph 68 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny the allegations in Paragraph 68.

69. The remedy map attached to this Complaint (Exhibit A) reduces the number of split counties to ten.

Answer: Intervenor's are without sufficient information to respond to the allegations in Paragraph 69.

70. The remedy map attached to this Complaint also ensures that no Michigan county is part of more than four congressional districts.

Answer: Intervenor's are without sufficient information to respond to the allegations in Paragraph 70.

71. The remedy map attached to this Complaint has fewer city and township splits than the number of city and township splits in the Chestnut Plan.

Answer: Intervenor's are without sufficient information to respond to the allegations in Paragraph 71.

72. The attached remedial map more faithfully adheres to the Michigan's constitution's requirements to respect county, city, and township boundaries.

Answer: Paragraph 72 consists of argument and legal conclusions, to which no response is required.

73. Finally, the Chestnut Plan cannot be described as "compact" under any reasonable interpretation of that term.

Answer: Paragraph 73 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 73.

74. Indeed, the Chestnut Plan's District 5 (which splits four of the ten counties it covers) touches Michigan's Eastern *and* Western border.

Answer: Admit.

75. Although not dispositive, this lack of compactness is evidence that the Commissioners did not act in a good faith effort to achieve population equality.

Answer: Paragraph 75 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 75.

76. As reported by the Commissioners, the average compactness of the Chestnut Plan's districts is .41 on the Polsby-Popper measure, and .42 on the Reock Measure, with the least compact districts having scores of .27 and .19 respectively

Answer: Intervenor are without sufficient information to respond to the allegations in Paragraph 76.

77. On both measures, numbers closer to one are more compact, and numbers closer to zero are less compact.

Answer: Admit.

78. The remedy map attached to this Complaint (Exhibit A) greatly increases the compactness of several congressional districts, including District 5.²

² Compactness scores provided here are computed using map projections in ESRI Redistricting software. Some popular websites for drawing districts include compactness scores computed using other map projections. This may result in a minor variation between compactness scores computed

Answer: Intervenors are without sufficient information to respond to the allegations in Paragraph 78.

79. The proposed remedy map (Exhibit A) yields an average Polsby-Popper measure of .46 and an average Reock measure .45, with the least compact districts being at .3 and .21 respectively.

Answer: Intervenors are without sufficient information to respond to the allegations in Paragraph 79.

80. That the Commissioners failed to abide by the constitutionally imposed traditional redistricting criteria (as reflected by the Michigan constitution) is evidence that the map they adopted inflicts constitutional harms on Plaintiffs. *Bush v. Vera*, 517 U.S. 952, 962–63 (1996).

Answer: Paragraph 80 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 80.

81. In short, the remedy map attached to this Complaint (Exhibit A) demonstrates that it was well within the Commissioners’ capacity to adopt a congressional map that complied with the “one person, one vote” principle while leaving far more counties intact and greatly increasing the compactness of Michigan’s congressional districts (in compliance with the Fourteenth Amendment’s Equal Protection Clause).

by different GIS systems. *See* Viewing Compactness Tests, ESRI Redistricting Review, <https://doc.arcgis.com/en/redistricting/review/viewing-compactness-tests.htm>.

Answer: Paragraph 81 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 81.

COUNT I

82. Plaintiffs restate and incorporate by reference each and every allegation in Paragraphs 1 through 81.

Answer: Intervenor restate and incorporate by reference Paragraphs 1 through 81 of this Answer.

83. All Plaintiffs intend to vote in the 2022 Congressional Elections at the location where they currently reside within the state of Michigan.

Answer: Intervenor are without sufficient information to respond to the allegations in Paragraph 83.

84. Article I, Section 2 of the U.S. Constitution mandates that congressional districts must achieve population equality “as nearly as is practicable.” *Wesberry v. Sanders*, 376 U.S. 1, 7–8, 18 (1964).

Answer: Paragraph 84 consists of legal conclusions, opinion, and references to legal authorities, to which no response is required.

85. According to the 2020 Census, Michigan has a population of 10,077,331 persons.

Answer: Admit.

86. Based on these Census numbers, Michigan was apportioned thirteen Congressional Districts.

Answer: Admit.

87. Therefore, the ideal population in each congressional district is approximately 775,179 persons.

Answer: Admit.

88. The Chestnut Plan substantially deviates from Article I, Section 2's command.

Answer: Paragraph 88 consists of argument and legal conclusions, to which no response is required.

89. Congressional District 13 has the highest population of 775,666 persons (487 above the ideal population) while Congressional District 5 has a population of 774,544 persons (635 below the ideal population).

Answer: Intervenor is without sufficient information to respond to the allegations in Paragraph 89.

90. The Chestnut plan has an overall population deviation of 1,122 persons.

Answer: Intervenor is without sufficient information to respond to the allegations in Paragraph 90.

91. The total deviation is therefore 0.14%.

Answer: Intervenor is without sufficient information to respond to the allegations in Paragraph 91.

92. The existence of congressional district plans with lower population deviations shifts the burden from the plaintiff to the State to justify the need for the deviations.³

³ See, e.g., *Larios v. Cox*, 300 F. Supp. 2d 1320, 1354 (N.D. Ga. 2004) (three-judge court) (holding that Georgia did not make a good-faith effort to draw congressional districts of nearly equal population, shifting burden to state to justify its deviations, when Georgia's plan had a total population deviation of seventy-two people and testimony was given demonstrating that a near zero population deviation map was possible) *aff. mem.*, 542 U.S. 947 (2004). Sometimes a state cannot justify even minimal population deviations. See, e.g., *Vieth v. Pennsylvania*, 195 F. Supp. 2d 672, 674–78 (M.D. Pa. 2002) (three-judge court) (holding that Pennsylvania's congressional

Answer: Paragraph 92 consists of argument and legal conclusions, to which no response is required.

93. As demonstrated by the remedy map (Exhibit A) the Commissioners could have enacted a map with a population deviation of nearly zero.

Answer: Paragraph 93 consists of argument and legal conclusions, to which no response is required.

94. The Commissioners did not make a good-faith effort to draw a map with nearly as equal population as possible.

Answer: Paragraph 94 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor are without sufficient information to respond to the allegations in Paragraph 94.

95. Upon information and belief, the Chestnut Plan's population deviations were not intended to further any legitimate state objective.

Answer: Paragraph 95 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor are without sufficient information to respond to the allegations in Paragraph 95.

96. Accordingly, the Defendants were and are acting under the color of state law and violating Plaintiffs' constitutional rights, violating 42 U.S.C. § 1983.

Answer: Paragraph 96 consists of argument and legal conclusions, to which no response is required.

district maps violated the one person, one vote requirement where the total population deviation was 19 persons and Pennsylvania could not justify the deviation); *Karcher*, 462 U.S. at 728 (declaring unconstitutional New Jersey's congressional district plan with a maximum deviation of 0.6 percent or 3,674 persons and where plans with smaller population deviations were presented)

COUNT II

97. Plaintiffs restate and incorporate by reference each and every allegation in Paragraphs 1 through 96

Answer: Intervenor restate and incorporate by reference Paragraphs 1 through 96 of this Answer.

98. All Plaintiffs intend to vote in the 2022 Congressional Elections at the location where they currently reside within the state of Michigan.

Answer: Intervenor is without sufficient information to respond to the allegations in Paragraph 98.

99. The Fourteenth Amendment’s Equal Protection Clause provides that no State shall “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV.

Answer: Paragraph 99 consists of argument and legal conclusions, to which no response is required.

100. Article One, Section Four of the Constitution vests state legislatures with the authority to group voters together in congressional districts.

Answer: Paragraph 100 consists of argument and legal conclusions, to which no response is required.

101. When a legislature draws districts, traditional redistricting criteria serve as guardrails to ensure compliance with the U.S. Constitution, including the Equal Protection Clause.

Answer: Paragraph 101 consists of argument and legal conclusions, to which no response is required.

102. For example, making districts compact, respecting communities of interest,

ensuring that districts are contiguous, and preventing the pairing of incumbents all serve to limit various forms of gerrymandering and vote dilution.

Answer: Paragraph 102 consists of argument and legal conclusions, to which no response is required.

103. A Fourteenth Amendment Equal Protection violation arises when a legislature or commission implements traditional redistricting criteria in an inconsistent and arbitrary manner.

Answer: Paragraph 103 consists of argument and legal conclusions, to which no response is required.

104. Moreover, the Equal Protection Clause prohibits laws that treat people disparately or arbitrarily.

Answer: Paragraph 104 consists of argument and legal conclusions, to which no response is required.

105. The criteria enumerated in the Michigan Constitution track the traditional (and traditionally accepted) redistricting criteria used throughout the nation, all of which exist to ensure compliance with the U.S. Constitution and federal law.

Answer: Paragraph 105 consists of argument and legal conclusions, to which no response is required.

106. Because the Commissioners arbitrarily applied Michigan's constitutional requirements, the Commissioners imposed U.S. Constitutional injuries on Michigan's voters.

Answer: Paragraph 106 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny the allegations in Paragraph 106.

107. Specifically, Article IV, Section 6(13) of the Michigan Constitution requires the Commissioners to apply specific criteria “in proposing and adopting each plan, in order of priority.”

Answer: Paragraph 107 consists of argument and legal conclusions, to which no response is required.

108. The Commissioners applied the Michigan constitutional criteria in an inconsistent and arbitrary manner.

Answer: Paragraph 108 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 108.

109. The Chestnut Plan fails to comply with or properly apply the following criteria:

- A. Districts shall be of equal population as mandated by the United States Constitution, Mich. Const. art. IV, § 6(13)(a);
- B. Districts shall reflect the state’s diverse population and communities of interest, *id.* § 6(13)(c);
- C. Districts shall reflect consideration of county, city, and township boundaries, *id.* § 6(13)(f); and
- D. Districts shall be reasonably compact, *id.* § 6(13)(g).

Answer: Paragraph 109, including Subparagraphs (A), (B), (C), and (D), consists of argument, characterizations, and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 109, including Subparagraphs (A), (B), (C), and (D).

110. Communities of interest requirements, whole county requirements, and whole township requirements ensure that when casting a vote in a congressional district, the voter is

selecting a candidate that can represent both the individual's interests and the common interests of the community within the district.

Answer: Paragraph 110 consists of argument and legal conclusions, to which no response is required.

111. Because federal law, as well as the Michigan Supreme Court, have long construed the phrase "communities of interest" to include counties, cities, and townships, the Chestnut plan's arbitrary county, township, and municipality splits also violate the requirement that "[d]istricts shall reflect the state's diverse population and communities of interest." Mich. Const. art. IV, § 6(13)(c).

Answer: Paragraph 111 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny the allegations in Paragraph 111.

112. The Commissioners applied the communities of interest criterion in an inconsistent and arbitrary manner.

Answer: Paragraph 112 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny the allegations in Paragraph 112.

113. The communities of interest requirement and the requirement to keep counties and townships whole protects an individual's right to vote and their right to associate with their fellow citizens to advance the interests of the community, township, and county.

Answer: Paragraph 113 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor's deny the allegations in Paragraph 113.

114. The Commissioners arbitrarily assigned voters to various locations.

Answer: Paragraph 114 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 114.

115. The Commissioners did not draw a map with as few split counties as possible.

Answer: Paragraph 115 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenors are without sufficient information to respond to the allegations in Paragraph 115.

116. By unnecessarily fragmenting counties—*i.e.*, Michigan’s true communities of interest—the Commissioners’ adopted map is arbitrary, inconsistent, and non-neutral, violating the Equal Protection Clause.

Answer: Paragraph 116 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 116.

117. And by unnecessarily splitting so many counties, cities, and townships the Commissioners appear to have used a wholly novel definition and arbitrarily and inconsistently applied the phrase “communities of interest.” Mich. Const. art. IV, § 6(13)(c).

Answer: Paragraph 117 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 117.

118. For these reasons, the Commissioners violated the Fourteenth Amendment’s Equal Protection Clause because some voters will be able to elect candidates who can represent the interests of both the individual and the community.

Answer: Paragraph 118 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 118.

119. Voting is both an expression of an individual's preference for a congressional representative and it is an associational act in choosing a congressional representative to represent and advance the interests of fellow voters in a community.

Answer: Paragraph 119 consists of argument and legal conclusions, to which no response is required.

120. In these acts, the citizens of Michigan are required to be treated equally, which Defendants' have failed to do.

Answer: Paragraph 120 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 120.

121. Thus, when the Commissioners arbitrarily and inconsistently applied their state constitutional requirements of keeping counties and townships whole and maintaining communities of interest, they violated the Equal Protection Clause.

Answer: Paragraph 121 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 121.

122. In other words, the Commissioners ignored roughly half the criteria listed in the Michigan Constitution.

Answer: Paragraph 122 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 122.

123. To the extent the Commissioners (im)properly applied any criteria, they did so out of the order of priority mandated by the Michigan Constitution.

Answer: Paragraph 123 consists of argument and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 123.

124. As demonstrated by the remedial map (Exhibit A) the Commissioners were required to comply with each of the aforementioned traditional redistricting criteria.

Answer: Paragraph 124 consists of argument, characterizations, and legal conclusions, to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 124.

125. The Commissioners' failure to do so renders the congressional maps they adopted arbitrary, inconsistent, and non-neutral, in violation of the Fourteenth Amendment's Equal Protection Clause.

Answer: Intervenor deny the allegations contained in Paragraph 125.

126. At all times the Defendants were and are acting under the color of state law and violating Plaintiffs' constitutional rights, violating 42 U.S.C. § 1983.

Answer: Intervenor deny the allegations contained in Paragraph 126.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Convene a three-judge district court to hear and determine Plaintiffs' claims

- that the Commissioners' Congressional Plan violates the U.S. Constitution;
- B. Declare that the Commissioners' Congressional Plan violates the one person, one vote principle contained in Article I, Section 2 of the U. S. Constitution;
 - C. Declare that the Commissioners' Congressional Plan violates the Fourteenth Amendment's Equal Protection Clause;
 - D. Enjoin Defendants, their agents, and assigns, from holding any congressional elections using the enacted map, the Chestnut Plan;
 - E. Establish a deadline by which the Commissioners must redraw maps, and if the Commissioners do not act by this deadline, assume jurisdiction, appoint a special master, and draw constitutionally compliant congressional districts;
 - F. Enjoin Defendants from using any plan for congressional elections that does not comply with the U.S. Constitution;
 - G. Award Plaintiffs their costs, expenses, disbursements, and reasonable attorneys' fees incurred in bringing this action, in accordance with 52 U.S.C. § 10310(e) and 42 U.S.C. § 1988;
 - H. Retain jurisdiction over this matter until all Defendants have complied with all orders and mandates of this Court; and
 - I. Grant such other and further relief as the Court may deem just and proper.

Answer: Intervenor deny that Plaintiffs are entitled to any relief.

Date: February 2, 2022

Respectfully submitted,

/s/ Sarah S. Prescott

Sarah S. Prescott (P70510)

SALVATORE PRESCOTT PORTER & PORTER,
PLLC

105 E. Main Street

Northville, MI 48168

prescott@sppplaw.com

Marc E. Elias

Emma Olson Sharkey*

Melinda K. Johnson*

Aaron M. Mukerjee*

Raisa Cramer*

Elias Law Group LLP

10 G St NE, Ste 600

Washington, DC 20002

Tel.: (202) 968-4490

melias@elias.law

eolsonsharkey@elias.law

mjohnson@elias.law

amukerjee@elias.law

rcramer@elias.law

Counsel for Proposed Intervenor-Defendants

**Motions for Admission Forthcoming*

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

MICHAEL BANERIAN; *et al.*,

Plaintiffs,

v.

Case No. 1:22-CV-00054-PLM-SJB

JOCELYN BENSON, in her official capacity
as the Secretary of State of Michigan; *et al.*,

Defendants.

and

JOAN SWARTZ MCKAY; GRACE
HUIZINGA; SAMANTHA NEUHAUS;
JORDAN NEUHAUS; CAYLEY WINTERS;
GLENN DEJONG; MARSHA CASPAR;
HEDWIG KAUFMAN; COLLIN
CHRISTNER; MELANY MACK; ASHLEY
PREW; SYBIL BADE; SUSAN DILIBERTI;
LISA WIGNET; MATTHEW WIGNET;
PAMELA TESSIER; and SUSANNAH
GOODMAN,

Proposed Intervenor-Defendants.

INTERVENOR-DEFENDANTS' AFFIRMATIVE DEFENSES

Intervenors set forth their affirmative defenses to the allegations in Plaintiffs' First Amended Complaint below. By setting forth these defenses, Intervenors do not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiffs. Nothing stated here is intended to or shall be construed as an acknowledgement that any particular issue or subject matter is relevant to Plaintiffs' allegations. As separate and distinct defenses, Intervenors allege as follows:

FIRST AFFIRMATIVE DEFENSE
Failure to State a Claim

1. As to Count II, Plaintiffs fail to allege the violation of a federal legal right.

SECOND AFFIRMATIVE DEFENSE
Failure to State a Claim

2. As to Count II, Plaintiffs fail to allege a violation of the Michigan Constitution.

THIRD AFFIRMATIVE DEFENSE
Unlawful Remedy

3. Plaintiffs have requested that “if the Commissioners do not act by [a court-imposed] deadline,” this court “assume jurisdiction, appoint a special master, and draw constitutionally compliant congressional districts[.]” *See* Request for Relief ¶ (E). Such relief is both unlawful and inequitable. *See* Mich. Const. Art. IV, § 6(19) (“In no event shall any body, except the independent citizens redistricting commission acting pursuant to this section, promulgate and adopt a redistricting plan or plans for this state.”).

Date: February 2, 2022

Respectfully submitted,

/s/ Sarah S. Prescott
Sarah S. Prescott, Bar No. 70510
SALVATORE PRESCOTT & PORTER,
PLLC
105 E. Main Street
Northville, MI 48168
prescott@sppplaw.com

Marc E. Elias
Emma Olson Sharkey*
Aaron M. Mukerjee*
Raisa Cramer*
Elias Law Group LLP
10 G St NE, Ste 600
Washington, DC 20002
Tel.: (202) 968-4490
melias@elias.law

eolsonsharkey@elias.law
amukerjee@elias.law
rcramer@elias.law

Counsel for Proposed Intervenor-Defendants
**Motions for Admission Forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2022, I electronically filed the foregoing document with the Clerk of the Court using this Court's electronic filing system, which will send notice of such filing to all counsel of record.

Dated: February 2, 2022

/s/ Sarah Prescott

Sarah Prescott