UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD AGEE, JR. et al.,

Plaintiffs,

v.

JOCELYN BENSON, et al.,

Defendants.

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

BRIEF IN SUPPORT OF THE COMMISSION'S MOTION TO STRIKE "SUPPLEMENTAL AND REBUTTAL" REPORT OF SEAN TRENDE AND IN LIMINE PRECLUDING PLAINTIFFS FROM OFFERING THE REPORT AT TRIAL

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EXHIBIT B

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

DONALD AGEE, JR., an individual, *et al.,* Plaintiffs, v. JOCELYN BENSON, in her official capacity as the Secretary of State of Michigan, *et al.*; Defendants.	Case No. 1:22-cv-00272 **Three-Judge Panel Appointed Pursuant to 28 U.S.C. § 2284(a)**

Supplemental and Rebuttal Expert Report of Sean P. Trende

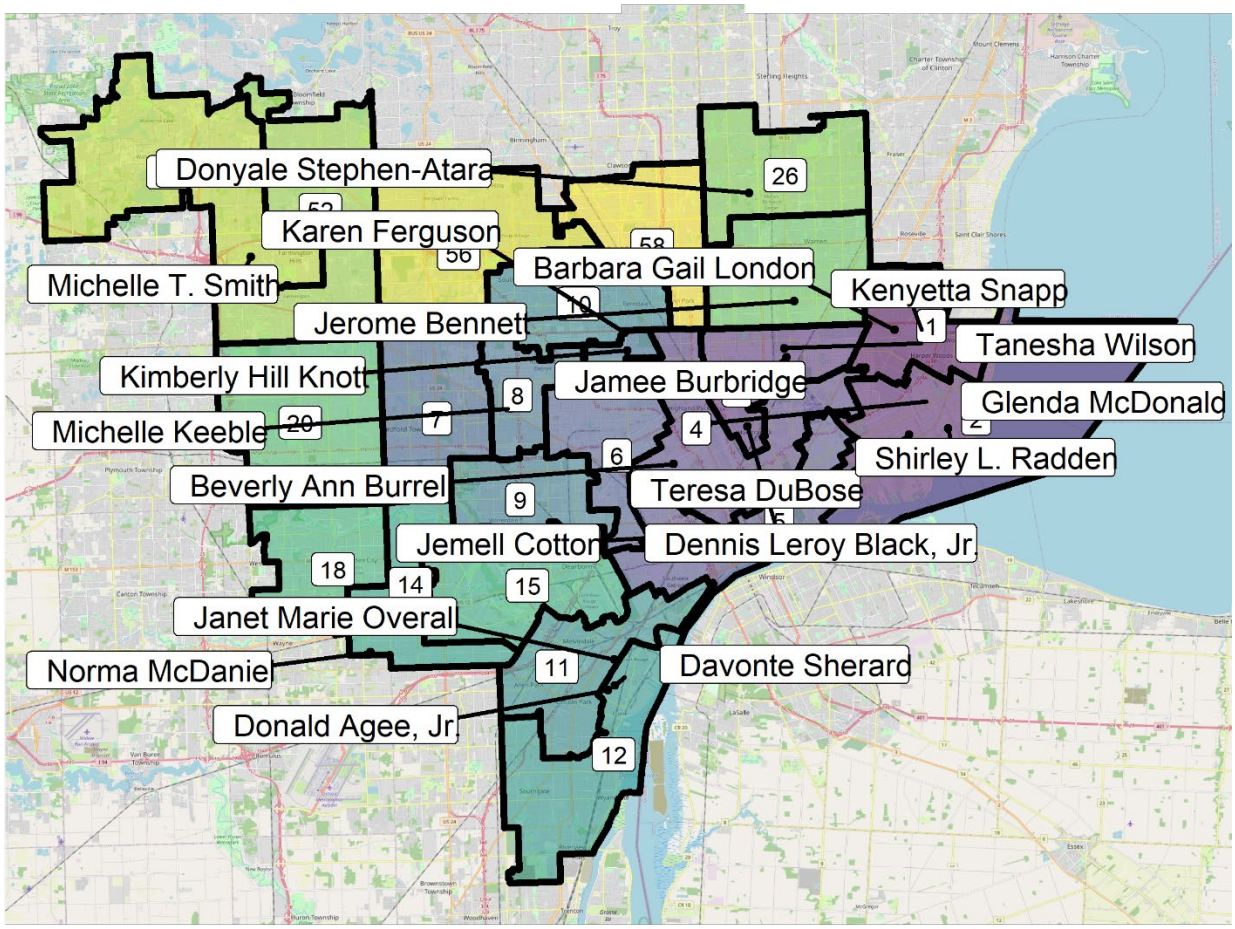
Sept. 26, 2023

This supplemental and rebuttal expert report clarifies various aspects of my initial report so as to simplify the issues the Court will be addressing at trial. For ease of readability, it follows the structure of this Court's analysis in its August 29, 2023 Order Denying Plaintiffs' Motion for Summary Judgment and Denying in Part the Defendants' Motion for Summary Judgment ("Order"). While I can and will provide testimony at trial that mirrors the substance of this report, I submit this report now so that Defendants' counsel and the Court have adequate time to digest it before the beginning of the November trial.

I. Gingles Prong 1

A. Plaintiff addresses.

The first issue identified by this Court is that the Expert Report of Sean P. Trende, dated Jan. 18, 2023 ("Trende Report"), fails to "explain whether his proposed map would place each plaintiff in a majority-minority district." Order at 7. This factual contention could be explored by individual plaintiffs at trial. But rather than wasting the Court's time by asking Plaintiffs to find their addresses (which have already been disclosed) on the Demonstration Plan that I previously provided, counsel have requested that I draw those addresses on the Demonstration Plan in the following two demonstrative exhibits and create a demonstrative table that summarizes the data. Individual maps are collected in Exhibit A.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Karen Ferguson
56
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Michelle T. Smith
Kenyetta Snapp
Jerome Bennett
Tanesha Wilson
Kimberly Hill Knott
Jamee Burbridge
8
Glenda McDonald
Michelle Keeble
20
7
4
6
Shirley L. Radden
Beverly Ann Burrel
9
Teresa DuBose
Jemell Cotton
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Janet Marie Overal
Norma McDanie
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Davonte Sherard
Donald Agee, Jr.
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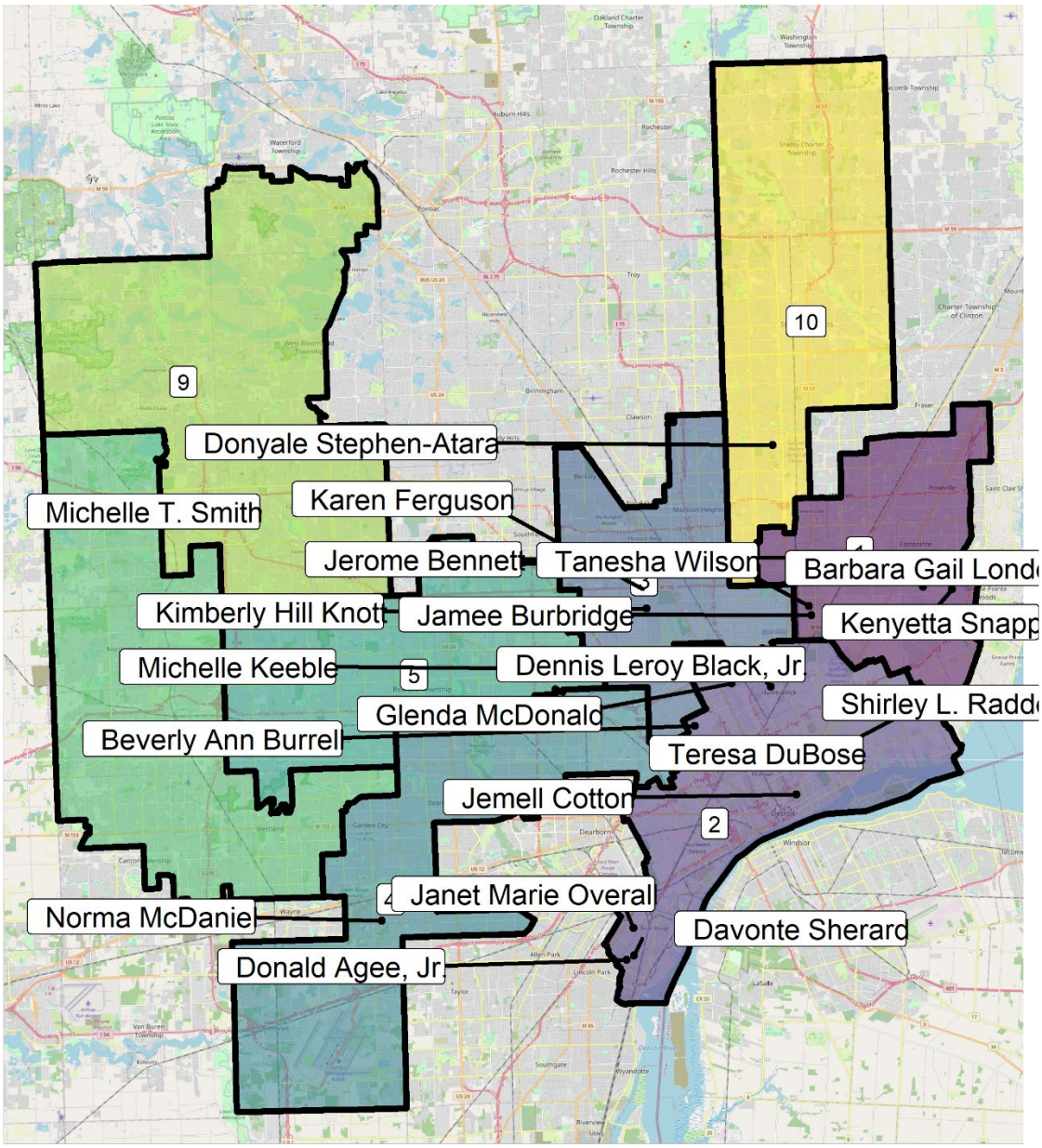
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9
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Kenyetta Snapp
Michelle Keeble
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Dennis Leroy Black, Jr
Glenda McDonald
Shirley L. Radd
Beverly Ann Burrel
Teresa DuBose
Jemell Cotton
2
Janet Marie Overal
Norma McDanie
Davonte Sherard
Donald Agee, Jr

Plaintiff Addresses and House/Senate District Assignments

Plaintiff	Address	House		Senate	
		District	% BVAP	District	% BVAP
Donald Agee, Jr.	474 Oliver Ct., Ecorse, MI 48229	12	11.63%	2	50.88%
Jerome Bennett	8318 Maxell, Warren, MI 48089	25	22.37%	1	50.60%
Dennis Leroy Black, Jr.	9491 McDougall St., Hamtramck, MI 48212	3	59.87%	1	50.60%
Jamee Burbridge	7558 East Robinwood, Detroit, MI 48234	3	59.87%	1	50.60%
Beverly Ann Burrell	2434 Edison St., Detroit, MI 48206	4	74.95%	2	50.88%
Jemell Cotton	1395 Antietam Ave., Detroit, MI 48207	5	50.35%	2	50.88%
Teresa DuBose	3700 Chatsworth St., Detroit, MI 48224	2	58.11%	1	50.60%
Karen Ferguson	20501 Livernois Ave.Detroit, MI 48221	8	92.15%	3	50.41%
Michelle Keeble	15667 Glastonbury Ave., Detroit, MI 48223	8	92.15%	5	50.16%
Kimberly Hill Knott	19391 Warrington Dr., Detroit, MI 48221	8	92.15%	3	50.41%
Barbara Gail London	16508 Bringard Dr., Detroit, MI 48205	1	51.64%	1	50.60%
Norma McDaniel	4411 Irene St., Inkster, MI 48141	14	26.64%	4	50.01%
Glenda McDonald	251 Connecticut St., Highland Park, MI 48203	4	74.95%	2	50.88%
Janet Marie Overall	1864 S. Deacon St., Detroit, MI 48217	11	13.20%	2	50.88%
Shirley L. Radden	639 Rivard Blvd., Grosse Pointe, MI 48230	2	58.11%	12	11.30%
Davonte Sherard	3844 12th St., Ecorse, MI 48229	12	11.63%	2	50.88%
Michelle T. Smith	36554 W. Lyman Rd., Farmington Hills, MI 48331	53	12.43%	9	11.10%
Kenyetta Snapp	19702 Fleetwood Dr., Harper Woods, MI 48225	1	51.64%	1	50.60%
Donyale Stephen-Atara	30403 Berghway Trail, Warren, MI 48092	26	11.02%	10	6.74%
Tanesha Wilson	19354 Cliff St., Detroit, MI 48234	3	59.87%	1	50.60%

B. Reasonable configuration.

The Court also concluded that Plaintiffs had not yet determined that the districts were "reasonably configured." In particular, the Court questioned whether the districts respected "communities of interest, partisan fairness, or the effect on incumbents." Order at 7. As an initial

matter, the Demonstration Plans here do outperform the Hickory and Linden maps in terms of reducing the number of county and municipal splits.

As to partisan fairness, reducing Black voters' opportunity to elect their candidate of choice to achieve some partisan outcome would seem to strike at the core of the Voting Rights Act. However, the actual partisan fairness scores of the maps are factual matters that can be easily calculated. They are reported in the Demonstrative Exhibits below.

It is difficult to assess whether any of these measures are too extreme, because there is no agreed upon threshold for how large a score can be before it becomes extreme. Regardless, the Demonstration Plans perform comparably to the enacted maps across a variety of metrics and datasets. Using the most recent, most predictive data, the maps would likely perform a bit better for Democrats than the Hickory or Linden maps. I also examine the scores using all statewide elections dating back to 2016 – that is, the races that occurred after Donald Trump became the Republican nominee for president and transformed the suburban party coalitions. I also include scores using all statewide races dating back to 2012, as preferred by Dr. Rodden. This is also discussed further under the 14th Amendment.

Partisan Fairness Metrics, Hickory vs. Demonstration, MI House

	Efficiency Gap		Mean Median		Democratic Wins		Lopside Margins	
Source	Hickory	Demon.	Hickory	Demon.	Hickory	Demon.	Hickory	Demon.
2020 Pres.	−0.0510	−0.0475	−0.0154	−0.0137	54	55	0.0507	0.0515
2016-2020	−0.0385	−0.0419	−0.0180	−0.0164	57	57	0.0513	0.0561
2012-2020	−0.0352	−0.0869	−0.0217	−0.0268	58	53	0.0495	0.0756

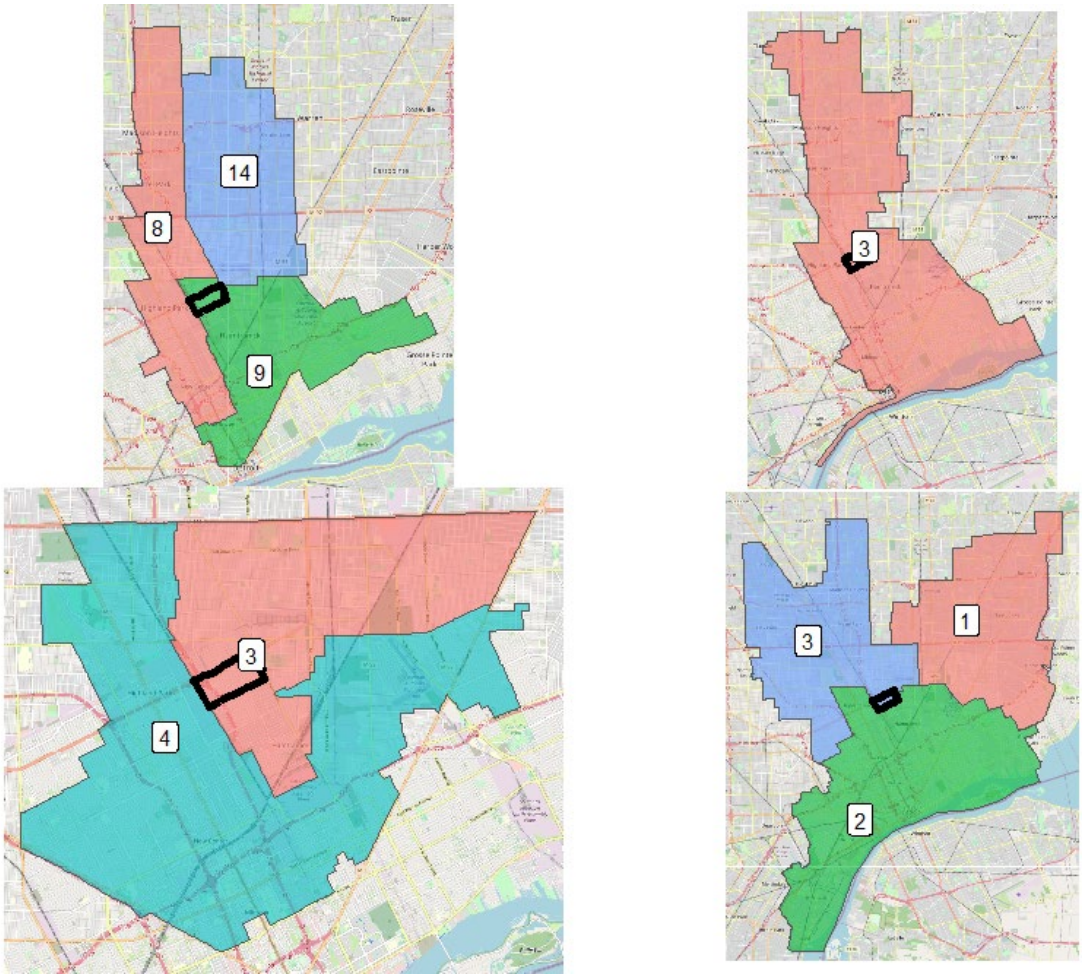
Partisan Fairness Metrics, Linden vs. Demonstration, MI Senate								
	Efficiency Gap		Mean Median		Democratic Wins		Lopside Margins	
Source	Linden	Demon.	Linden	Demon.	Linden	Demon.	Linden	Demon.
2020 Pres.	0.0061	−0.0194	0.0000	−0.0053	21	20	0.0168	0.0329
2016-2020	−0.0603	−0.0584	−0.0122	−0.0207	19	19	0.0560	0.0603
2012-2020	−0.0334	−0.0615	−0.0071	−0.0263	20	19	0.0463	0.0613

Communities of interest are likewise a difficult thing to measure, as they are amorphous will-o'-the-wisps that can serve as post-hoc rationalizations from map-drawers to hide what motivations actually moved a mapmaker. But we can make some base evaluations. First, it is unclear how seriously Detroit-area communities of interest were taken in the Hickory and Linden Plans, since the maps took the Black areas of Detroit and subsumed them within heavily White areas in adjacent counties, splitting badly county and municipal lines in the process. Second, the Demonstration Maps will maintain any community of interest outside of the Detroit area, since those districts are unchanged.

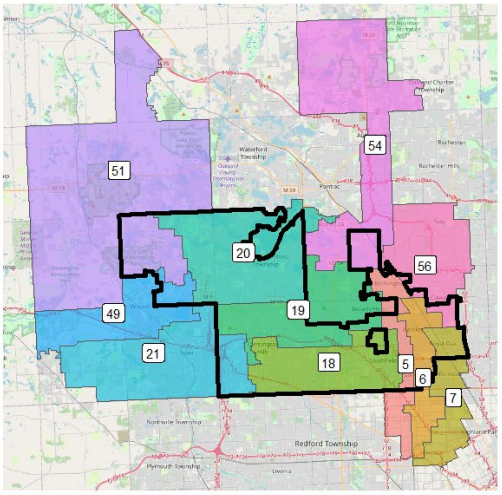
Perhaps most importantly, scholars have observed that by respecting county and municipal lines, a map maker will naturally respect communities of interest. *See* Gardner, James A., What Is 'Fair' Partisan Representation, and How Can It Be Constitutionalized? The Case for a Return to Fixed Election Districts, 90 Marq. L. Rev. 555 (2007) (observing that respect for county and municipal lines is an important part of respecting communities of interest). Thus, it is unsurprising that the Demonstration Map keeps many formally identified Communities of Interest together. To illustrate this, the following communities are taken from the Szetala Report. This is factual information that can be verified from the data produced in this matter:

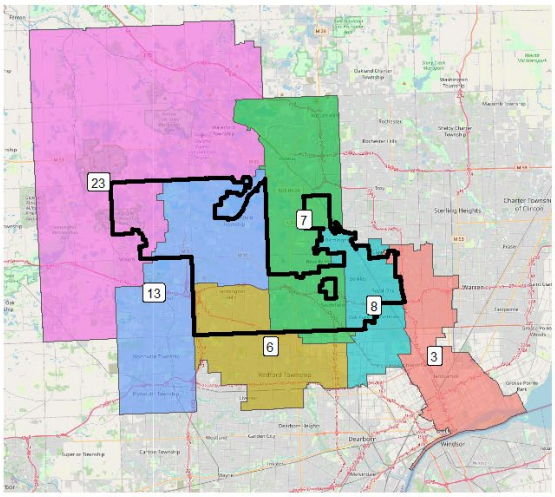
1. Bengali COI – The Bengali population is concentrated in "Banglatown," to the northwest of Hamtramck. It is kept intact in the Demonstration House Plan as well as the Hickory Plan. In is kept intact in the Linden Plan, as well as in the Demonstration Senate Plan.

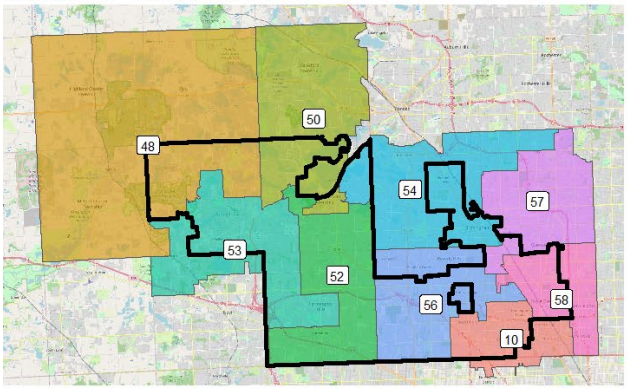
The following chart shows the location of the "Banglatown" precincts in the Hickory and Linden maps (top) and the two remedial maps (bottom)

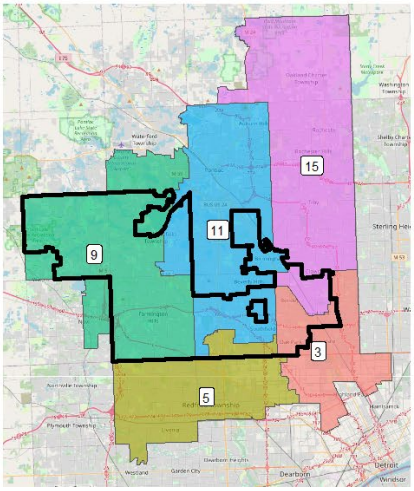


2. Jewish COI -- The "Jewish COI" is described as "Berkley, Commerce Township, West Bloomfield, Bloomfield Hills, Birmingham, Franklin, Farmington, Farmington Hills, Royal Oak, Oak Park, Huntington Woods, Walled Lake, and Southfield." Obviously these areas have too much population to fit into a single district. They are split among 9 districts in the Demonstration House Plan. The Hickory Plan splits them among 11 districts. The Linden Plan splits them among 7 districts while the Demonstration Senate Plan splits them among 5. This is show below:



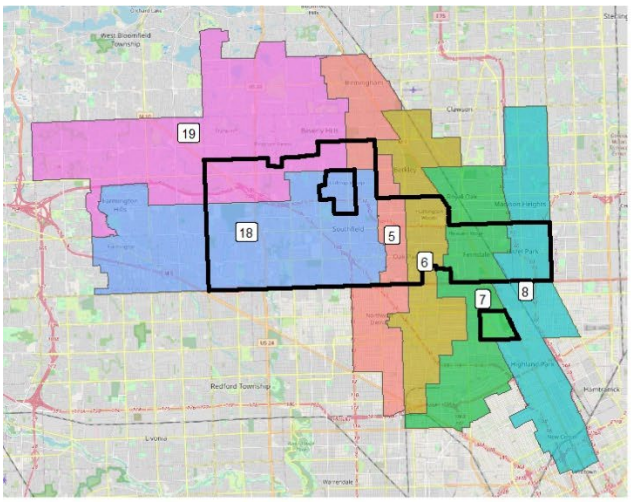


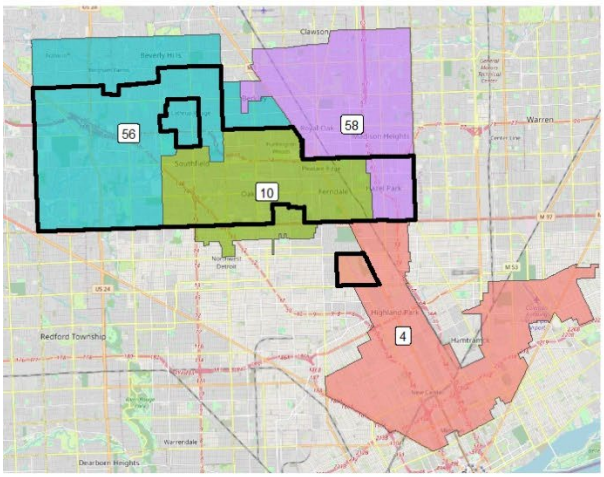


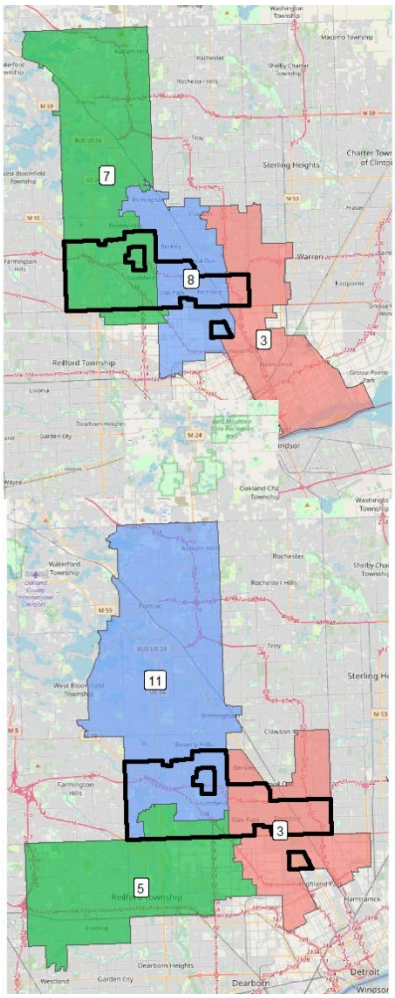


3. Indigenous COI – This is not at issue here.

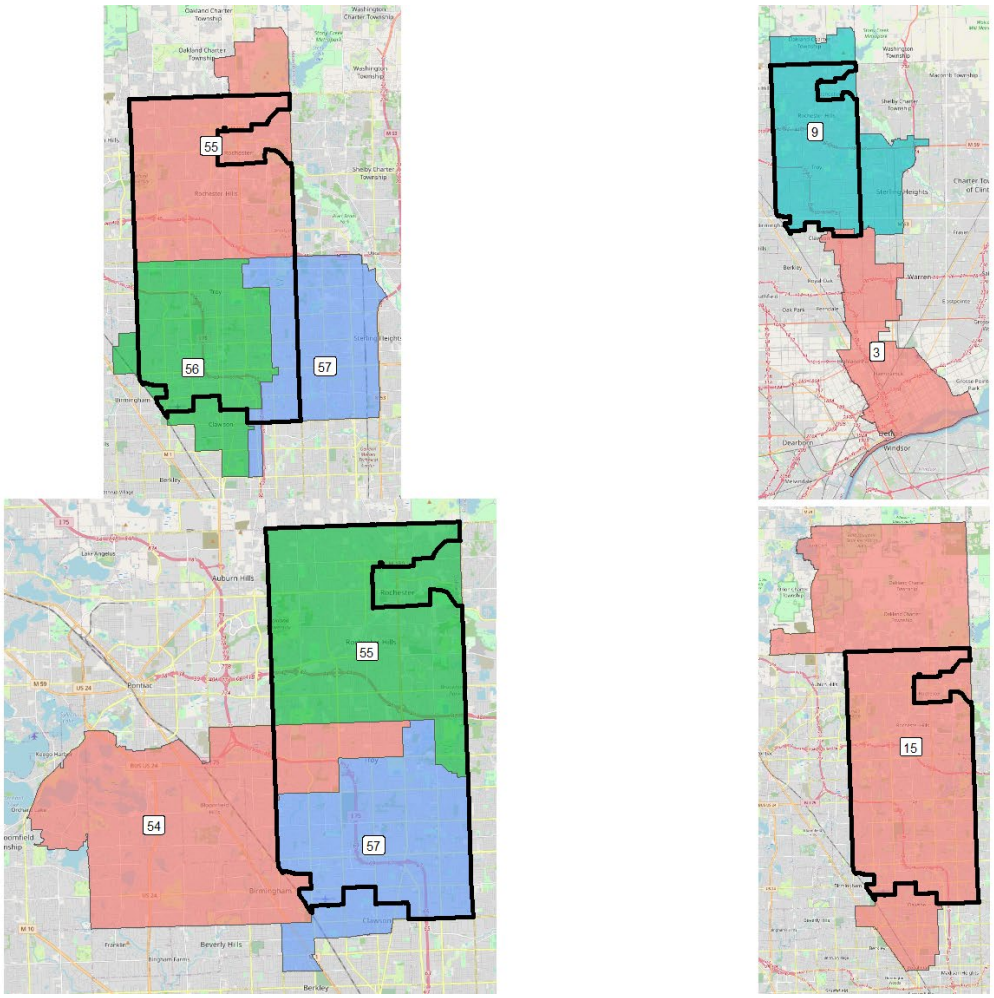
4. LGBTQ+ COI – This is described as "Southfield, Oak Park, Pleasant Ridge, Huntington Woods, Ferndale, Hazel Park, and the Detroit neighborhood of Palmer Park." These cities and neighborhoods are split between 3 districts in the Demonstration House Plan. They are split between 6 in the Hickory Plan. They are split between three districts in the Linden Plan, as well as in the demonstration plan.







5. Sikh COI – This is described as Troy and Rochester Hills, which are too large to fit into a single district. The Demonstration House Plan splits them among 3 districts. Notably, Rochester Hills, where the Gurudwara is located, is kept intact under this map. The Hickory plan splits them among three districts as well, and keeps Rochester Hills in a single district. The Linden Plan marginally splits them into two districts while the Demonstration Senate Plan keeps them intact.



6. East Oakland/West Macomb API and Chaldean COI – As reported above, the maps split Rochester Hills and Troy a similar number of times. The extra split in the Linden Map does not impact heavily API districts.

7. MENA COI – Dearborn is split as little as possible in the Demonstration House Plan. Dearborn Heights, Melvindale and Hamtramck are all kept intact. In the Hickory Plan, Dearborn is split in half, while a precinct of Dearborn Heights is split off from the district. Melvindale is kept intact. The Linden Plan keeps all four locations intact as does the Demonstration Senate Plan.

II. Gingles Prong 2 and Gingles Prong 3.

The Court also suggested that the evidence produced so far was insufficient to prove *Gingles* Prongs 2 and 3. This portion of the inquiry is complicated by two things. First, there are no statewide elections featuring a Black candidate against a White candidate in a Democratic primary, which would give the "cleanest" look at polarization. With statewide races the same candidates are running everywhere, so you can reconstitute the races under new lines and explore polarization in this way. You can't do that with legislative primary elections, especially since in addition to different candidates, you have different numbers of candidates in various districts.

Second, we are dealing with primary elections, unlike the typical VRA case that looks at general elections. This is a much more complicated endeavor, as you will frequently have incumbents who face only token opposition, or multi-candidate fields where 30% is enough to create a convincing victory. It is unclear what racial "coherence" looks like in a 15-candidate, low information race. Despite these complications, when the VRA was passed and amended, much of the focus was on the Democratic primaries, as Republicans had not yet become fully competitive in the South. There must be a way to engage in this analysis.

One thing in particular that I suggested in my initial report was that Black candidates of choice fared particularly poorly in open seats, and that as candidates retire or are forced out by term limits, the already-poor track record of Black candidates of choice will fall even further. To assist the Court in answering questions about Black cohesion and White bloc voting, as well as how things work in the Detroit area in open primary elections, I've prepared the following tables. These tables report the combined findings of Dr. Handley and myself regarding racially polarized voting in ***open*** Democratic primaries in districts with at least 20% BVAP.

The tables have a number of useful properties. First, the year, district number, and District BVAP are reported. The data are first reported sequentially. The next four columns show the

percentage of the Black vote won by the 1st- and 2nd- choice candidates of Black voters. The next four columns show the percentage of the White vote won by the 1st- and 2nd-choice candidates of White voters. The next column shows how much the Black candidate of choice won or lost the primary by.

Finally, the last column shows the percentage of the white vote the leading Black candidate won, in all races, and in races where the leading White and Black candidates were different.

Black candidates are shaded in grey.

Summary Table of EI Senate Analysis, Open Races Only, 2014-2022

			Black Voters				White Voters					White Vote Share	
Year	District	BVAP %	1st Choice	1st Choice %	2nd Choice	2nd Choice %	1st Choice	1st Choice %	2nd Choice	2nd Choice %	Margin, Black Cand. of Choice	Black Cand. of Choice	Black Cand. of Choice, Polarized Elections Only
2014	Senate 5	52.5%	Jackson	35.8%	Nathan	30.7%	Knezek	86.0%	Nathan	3.3%	−8.2%	3.0%	3.0%
2018	Senate 2	49.3%	Banks	27.3%	Hollier	27.5%	Aiyash	42.6%	Hollier	32.4%	−52.0%	5.9%	5.9%
2018	Senate 2 Special	49.3%	Banks	28.8%	Hollier	27.5%	Aiyash	42.2%	Hollier	32.5%	−38.0%	5.8%	5.8%
2018	Senate 1	43.1%	Talabi	47.0%	Chang	27.1%	Chang	76.7%	Roehm	8.7%	−23.4%	7.3%	7.3%
2018	Senate 3	46.7%	Santana	60.3%	Belle	25.4%	Woronchak	76.0%	Santana	18.7%	2.8%	18.7%	18.7%
2018	Senate 4	45.4%	Bullock	47.2%	Durhal	40.6%	Bullock	38.6%	Durhal	31.3%	—	31.3%	—
2018	Senate 11	34.0%	J. Moss	53.1%	Bailey	24.9%	J. Moss	51.0%	V. Moss	20.3%	—	51.0%	—
2022	Senate 6	39.1%	Cavanagh	48.8%	Brown	38.7%	Barnett	48.2%	Cavanagh	47.4%	8.1%	47.4%	47.4%
—		—		—		—		—		—	—	—	—

A few things should be apparent. First, the open seats tend to polarize by candidate skin color. Almost every leading candidate among Black voters is Black, while every leading candidate among White voters except one is White. Of course, White voters had little choice, as all the candidates running in Senate District 4 in 2018 were Black. Thus, in every open race where White voters had a choice, they preferred a White candidate.

In fact, White voters in the Detroit area gave the Black candidate of choice on average just 14.7% of the vote in polarized elections, and 21.3% of the vote in all elections. The first choice of Black voters is almost never the even the second choice of White voters.

We also see numerous instances of Black cohesiveness. In particular, the races where the second-choice candidate was White, Black voters typically cohere around a single Black candidate. Interestingly, Black voters did show cohesiveness around White candidates in Senate District 11 in 2018 and Senate District 6 in 2022. The cases where cohesiveness is less clear are instances where two Black candidates competed effectively for that vote. On average, the top choice of Black voters ran 16 percentage points ahead of White voters.

We can also organize the above chart by BVAP:

Summary Table of EI Senate Analysis, Open Races Only, 2014-2022, Sorted By BVAP

			Black Voters				White Voters					White Vote Share	
Year	District	BVAP %	1st Choice	1st Choice %	2nd Choice	2nd Choice %	1st Choice	1st Choice %	2nd Choice	2nd Choice %	Margin, Black Cand. of Choice	Black Cand. of Choice	Black Cand. of Choice, Polarized Elections Only
2014	Senate 5	52.5%	Jackson	35.8%	Nathan	30.7%	Knezek	86.0%	Nathan	3.3%	−8.2%	3.0%	3.0%
2018	Senate 2	49.3%	Banks	27.3%	Hollier	27.5%	Aiyash	42.6%	Hollier	32.4%	−52.0%	5.9%	5.9%
2018	Senate 2 Special	49.3%	Banks	28.8%	Hollier	27.5%	Aiyash	42.2%	Hollier	32.5%	−38.0%	5.8%	5.8%
2018	Senate 3	46.7%	Santana	60.3%	Belle	25.4%	Woronchak	76.0%	Santana	18.7%	2.8%	18.7%	18.7%
2018	Senate 4	45.4%	Bullock	47.2%	Durhal	40.6%	Bullock	38.6%	Durhal	31.3%	—	31.3%	—
2018	Senate 1	43.1%	Talabi	47.0%	Chang	27.1%	Chang	76.7%	Roehm	8.7%	−23.4%	7.3%	7.3%
2022	Senate 6	39.1%	Cavanagh	48.8%	Brown	38.7%	Barnett	48.2%	Cavanagh	47.4%	8.1%	47.4%	47.4%
2014	Senate 11	34.0%	Gregory	62.2%	Lipton	20.1%	Lipton	44.4%	Barnett	43.5%	0.4%	11.1%	11.1%
2018	Senate 11	34.0%	J. Moss	53.1%	Bailey	24.9%	J. Moss	51.0%	V. Moss	20.3%	—	51.0%	—

This helps us see the danger of the reduced BVAPs the MICRC imposed upon the current map. Black candidates of choice were already struggling to win, even in races where the BVAPs were reasonably high. This is because White voters overwhelmingly rejected the Black candidate of choice. The Black candidate of choice did have success in Senate District 11 with some regularity, although the 2014 win was by a very small margin. But taken as a whole, these data suggest that, in open races, there is a high degree of Black cohesiveness, White voters tend to vote

in a bloc to oppose the Black candidate of choice, White voters tend to reject Black candidates when given an option, and Black candidates of choice have struggled in sub-50% BVAP districts.

House districts are more of the same.

Summary Table of EI Analysis, Open Races Only, 2014-2022

			Black Voters				White Voters					White Vote Share	
Year	District	BVAP %	1st Choice	%	2nd Choice	%	1st Choice	%	2nd Choice	%	Overall Margin, Black Cand. of Choice	Black Cand. of Choice	Polarized Elections Only
2014	House 3	88.6%	Byrd	31.2%	Gayles	20.6%	Gayles	30.8%	Pinkins	18.7%	3.3%	15.6%	15.6%
2014	House 6	50.9%	Chang	50.7%	Carter	40.5%	Chang	54.0%	Carter	22.1%	—	54.0%	—
2014	House 7	92.0%	Garrett	41.5%	Stallworth	37.8%	Cole	21.4%	Stallworth	18.7%	19.4%	14.2%	14.2%
2014	House 8	90.1%	Gay Dagnogo	53.8%	Pugh	27.6%	Pugh	29.9%	Gay-Dagnogo	29.6%	17.3%	29.6%	29.6%
2014	House 10	65.4%	Love	45.6%	McCalister	34.7%	Johnson	67.9%	Love	13.4%	12.7%	13.4%	13.4%
2016	House 2	56.0%	Scott	42.2%	Tinsley-Smith	31.9%	Henner	59.1%	Tate	18.4%	6.3%	4.5%	4.5%
2016	House 9	72.2%	Santana	54.1%	Pollard	33.3%	Pollard	39.0%	Santana	15.2%	18.8%	15.2%	15.2%
2018	House 2	56.0%	Tinsley-Smith	23.4%	Banks	21.6%	Tate	63.0%	Johnson	11.4%	−7.0%	9.4%	9.4%
2018	House 4	45.7%	Robinson	35.7%	Razo	13.6%	Almasmari	37.6%	Oberholtzer	27.1%	5.5%	4.5%	4.5%
2018	House 5	52.3%	Johnson	40.9%	Ross	37.6%	Ross	34.4%	Johnson	25.8%	1.0%	25.8%	25.8%
2018	House 6	50.9%	Carter	33.1%	Wilson	20.4%	Carter	25.9%	Edevbie	16.8%	—	25.9%	—
2018	House 9	72.2%	Whitsett	47.2%	Pollard	26.9%	Whitsett	39.4%	Pollard	20.5%	—	39.4%	—
2018	House 12	25.4%	Lost	—		—	—			—	—	—	—
2018	House 16	21.8%	Lost	—		—	—			—	—	—	—
2018	House 29	34.3%	Lost	—		—	—			—	—	—	—
2018	House 35	60.5%	Won	—		—	—			—	—	—	—
2020	House 3	88.6%	Thanedar	39.1%	McKinney	19.7%	McKinney	26.6%	Thanedar	26.6%	14.5%	26.6%	26.6%
2020	House 4	45.6%	Simpson	20.4%	Myers	17.9%	Aiyash	69.0%	Oberholtzer	12.0%	−27.5%	2.3%	2.3%
2020	House 7	92.0%	Scott	39.1%	Thornton	19.0%	Thomas	19.0%	Scott	16.9%	18.2%	16.9%	16.9%
2020	House 8	90.0%	Young	47.0%	Davis	32.1%	Young	31.9%	Davis	26.0%	—	31.9%	—
2020	House 10	65.4%	Hill	27.8%	Harris	23.5%	Cavanagh	60.4%	Harris	11.9%	−6.3%	8.5%	8.5%
2020	House 27	23.0%	No Polarization	—		—	—			—	—	—	—
2020	House 37	17.0%	No Polarization	—		—	—			—	—	—	—
2022	House 5	55.3%	Davis	62.0%	Hughes	15.8%	Price	63.1%	Wooddell	22.1%	−8.7%	7.6%	7.6%
2022	House 8	43.7%	Little	35.0%	Douglas	33.6%	McFall	53.4%	Soltis	30.4%	−20.6%	4.6%	4.6%
2022	House 11	42.8%	Williams	25.0%	White	22.0%	Paiz	31.9%	Manwell	20.8%	−4.4%	5.0%	5.0%
2022	House 26	35.8%	Chisholm	54.0%	Wilson	29.8%	Wygela	79.2%	Wilson	8.6%	−15.0%	7.9%	7.9%

Because Dr. Handley did not always report her point estimates in her Report to the Commission, I do not have details for some of these races; if I had made point estimates available to counsel with my initial report, I provided them here. Otherwise, I simply note there whether she found "no polarization." If polarization was present, I report whether the Black candidate of choice won or lost.

Once again, Black candidates are rejected by White voters when a feasible alternative is present in open races. Indeed, these data suggest that there has never been a circumstance where a Black candidate ran ahead of a viable White candidate among White voters in an open seat. On average, the Black-preferred candidate ran 13 points ahead of the 2nd choice candidate among Black voters.

And, once again, the White electorate tended to reject those choices. On average, White voters gave just 12.4% of the vote to the Black candidate of choice in elections where polarization occurred, and just 17.2% overall. Of the 27 races listed, there are only six instances of White and Black voters rallying around the same candidate.

We can once again sort by BVAP:

Summary Table of EI Analysis, Open Races Only, 2014-2022, Sorted by BVAP

			Black Voters				White Voters					White Vote Share	
Year	District	BVAP %	1st Choice	%	2nd Choice	%	1st Choice	%	2nd Choice	%	Overall Margin, Black Cand. of Choice	Black Cand. of Choice	Polarized Elections Only
2014	House 7	92.0%	Garrett	41.5%	Stallworth	37.8%	Cole	21.4%	Stallworth	18.7%	19.4%	14.2%	14.2%
2020	House 7	92.0%	Scott	39.1%	Thornton	19.0%	Thomas	19.0%	Scott	16.9%	18.2%	16.9%	16.9%
2014	House 8	90.1%	Gay Dagnogo	53.8%	Pugh	27.6%	Pugh	29.9%	Gay-Dagnogo	29.6%	17.3%	29.6%	29.6%
2020	House 8	90.0%	Young	47.0%	Davis	32.1%	Young	31.9%	Davis	26.0%	—	31.9%	—
2014	House 3	88.6%	Byrd	31.2%	Gayles	20.6%	Gayles	30.8%	Pinkins	18.7%	3.3%	15.6%	15.6%
2020	House 3	88.6%	Thanedar	39.1%	McKinney	19.7%	McKinney	26.6%	Thanedar	26.6%	14.5%	26.6%	26.6%
2016	House 9	72.2%	Santana	54.1%	Pollard	33.3%	Pollard	39.0%	Santana	15.2%	18.8%	15.2%	15.2%
2018	House 9	72.2%	Whitsett	47.2%	Pollard	26.9%	Whitsett	39.4%	Pollard	20.5%	—	39.4%	—
2014	House 10	65.4%	Love	45.6%	McCalister	34.7%	Johnson	67.9%	Love	13.4%	12.7%	13.4%	13.4%
2020	House 10	65.4%	Hill	27.8%	Harris	23.5%	Cavanagh	60.4%	Harris	11.9%	−6.3%	8.5%	8.5%
2018	House 35	60.5%	Won	—		—		—		—	—	—	—
2016	House 2	56.0%	Scott	42.2%	Tinsley-Smith	31.9%	Henner	59.1%	Tate	18.4%	6.3%	4.5%	4.5%
2018	House 2	56.0%	Tinsley-Smith	23.4%	Banks	21.6%	Tate	63.0%	Johnson	11.4%	−7.0%	9.4%	9.4%
2022	House 5	55.3%	Davis	62.0%	Hughes	15.8%	Price	63.1%	Wooddell	22.1%	−8.7%	7.6%	7.6%
2018	House 5	52.3%	Johnson	40.9%	Ross	37.6%	Ross	34.4%	Johnson	25.8%	1.0%	25.8%	25.8%
2014	House 6	50.9%	Chang	50.7%	Carter	40.5%	Chang	54.0%	Carter	22.1%	—	54.0%	—
2018	House 6	50.9%	Carter	33.1%	Wilson	20.4%	Carter	25.9%	Edevbie	16.8%	—	25.9%	—
2018	House 4	45.7%	Robinson	35.7%	Razo	13.6%	Almasmari	37.6%	Oberholtzer	27.1%	5.5%	4.5%	4.5%
2020	House 4	45.6%	Simpson	20.4%	Myers	17.9%	Aiyash	69.0%	Oberholtzer	12.0%	−27.5%	2.3%	2.3%
2022	House 8	43.7%	Little	35.0%	Douglas	33.6%	McFall	53.4%	Soltis	30.4%	−20.6%	4.6%	4.6%
2022	House 11	42.8%	Williams	25.0%	White	22.0%	Paiz	31.9%	Manwell	20.8%	−4.4%	5.0%	5.0%
2022	House 26	35.8%	Chisholm	54.0%	Wilson	29.8%	Wygela	79.2%	Wilson	8.6%	−15.0%	7.9%	7.9%
2018	House 29	34.3%	Lost	—		—		—		—	—	—	—
2018	House 12	25.4%	Lost	—		—		—		—	—	—	—
2020	House 27	23.0%	No Polarization	—		—		—		—	—	—	—
2018	House 16	21.8%	Lost	—		—		—		—	—	—	—
2020	House 37	17.0%	No Polarization	—		—		—		—	—	—	—

Black candidates of choice won only one open race in sub-50% districts. In that race, Black voters preferred Isaac Robinson, a White candidate who narrowly won in a crowded field. Even in the higher BVAP districts, Black candidates of choice never win by the margins that the BVAP percentages would suggest.

It may also be useful to know which of the above races may be useful for understanding which districts. As a threshold matter, understanding the general tendencies in a region can be useful in understanding specifics, especially where there are relatively few datapoints.

The following two tables should be read in rows. The numbered rows look at the challenged districts remaining in the case. As you read across the rows, you can see what percentage of the district's population was taken from which district in the Benchmark Plan. Thus, you can see that

Linden 1 took 10.9% of its population from the 1st District, 12% of its population from the 2nd District, 13.5% of its population from the 3rd District, and so forth. Thus, we can see that all of the Senate districts explored above are relevant to at least one challenged district. There are also additional districts that, because of the sprawling nature of the Linden Plan, donated population to challenged districts. But because the BVAPs of these districts were typically so low, it was unclear whether analyses of these districts would result in useable data. This is once again a factual matter easily calculated from data already produced in this litigation.

Challenged District Components From Benchmark Plan

	Benchmark Map											
Linden	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**9**	**10**	**11**	**12**	**13**
Benchmark. BVAP:	43.1%	49.3%	46.7%	45.4%	52.5%	19.9%	7.1%	21.7%	7.5%	34.0%	13.9%	3.5%
1	10.9%	12.0%	13.5%	41.6%	—	22.1%	—	—	—	—	—	—
3	31.7%	24.8%	—	6.4%	—	—	—	17.4%	1.2%	16.2%	—	2.2%
6	—	—	8.3%	—	40.6%	—	27.8%	—	—	23.3%	—	—
8	—	1.0%	10.0%	19.1%	6.3%	—	—	—	—	23.2%	1.3%	39.1%

Likewise, all of the House races described above, with the exception of 8, 10, 11, 12, 16, 29, 35 and 37 donated at least some population to one of the challenged districts.

Challenged District Components From Benchmark Plan

	Benchmark Map											
Hickory	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**9**	**18**	**22**	**26**	**27**	**28**
Bench. BVAP	63.2%	56.0%	88.6%	45.6%	52.3%	50.9%	92.0%	72.2%	20.8%	19.8%	4.9%	23.0%	18.6%
1	—	—	—	6.4%	52.8%	40.8%	—	—	—	—	—	—	—
7	—	—	11.2%	—	7.4%	—	29.2%	1.7%	—	—	26.7%	23.8%	—
10	21.0%	46.2%	—	—	—	32.7%	—	—	0.1%	—	—	—	—
12	16.7%	—	—	—	—	—	—	—	37.9%	45.4%	—	—	—
14	—	—	29.5%	0.9%	—	—	—	—	—	—	—	—	69.6%

Finally, on the basis of the above tables, we can collect the EI analysis for the Benchmark districts that fed into the remaining Challenged Hickory and Linden districts. I have only reported the data for districts that fed at least 15% of the population of a given Hickory or Linden Districts.

Some districts did not have an EI analysis performed by either Dr. Handley or myself; those districts are marked with missing data.

Summary Table of EI Analysis, 2014-2022

			Black Voters				White Voters				White Vote Share	
Benchmark	BVAP	Year	BVAP %	1st Choice	%	2nd Choice	%	1st Choice	%	2nd Choice	%	Overall Margin, Black Cand. of Choice
Linden 1												
4	45.4%	2014	Virgil Smith*	65.3%	Rashida Tlaib	32.8%	Rashida Tlaib	55.9%	Virgil Smith	31.0%	31.0%	7.9%
4	45.4%	2018	Marshall Bullock	47.2%	Fred Durhal	40.6%	Marshall Bullock	38.6%	Fred Durhal	31.3%	38.6%	6.0%
6	19.9%	2014	—	—	—	—	—	—	—	—	—	—
6	19.9%	2018	—	—	—	—	—	—	—	—	—	—
Linden 3												
1	43.1%	2014	Unopposed	—	Unopposed	—	Unopposed	—	Unopposed	—	—	—
1	43.1%	2018	Alberta Tinsley Talabi	47.1%	Stephanie Chang	27.1%	Stephanie Chang	76.7%	Stephanie Roehm	8.7%	2.9%	−23.4%
2	49.3%	2014	Bert Johnson*	65.3%	John Olumba	24.2%	Bert Johnson*	74.6%	John Olumba	14.4%	74.6%	40.8%
2	49.3%	2018	Brian Banks	27.3%	Adam Hollier	25.7%	Abraham Aiyash	42.2%	Adam Hollier	32.5%	5.3%	−3.8%
2 (special)	49.3%	2018	Brian Banks	28.8%	Adam Hollier	27.5%	Abraham Aiyash	42.6%	Adam Hollier	32.4%	4.9%	−5.2%
9	21.7%	2014	—	—	—	—	—	—	—	—	—	—
9	21.7%	2018	—	—	—	—	—	—	—	—	—	—
11	34.0%	2014	Vincent Gregory*	62.2%	Ellen Lipton	20.1%	Ellen Lipton	44.4%	Vicki Barnett	43.5%	12.1%	0.4%
11	34.0%	2018	Jeremy Moss	53.1%	Crystal Bailey	24.9%	Jeremy Moss	51.0%	Vanessa Moss	20.3%	51.0%	30.5%
Linden 6												
5	52.5%	2014	Shanelle Jackson	35.8%	David Nathan	30.7%	David Knezek	86.0%	David Nathan	3.3%	2.7%	−8.2%
5	52.5%	2018	Betty Jean Alexander	68.1%	David Knezek*	31.9%	David Knezek*	72.6%	Betty Jean Alexander	27.5%	27.5%	−3.7%
7	7.1%	2014	—	—	—	—	—	—	—	—	—	—
7	7.1%	2018	—	—	—	—	—	—	—	—	—	—
11	34.0%	2014	Vincent Gregory*	62.2%	Ellen Lipton	20.1%	Ellen Lipton	44.4%	Vicki Barnett	43.5%	12.1%	0.4%
11	34.0%	2018	Jeremy Moss	53.1%	Crystal Bailey	24.9%	Jeremy Moss	51.0%	Vanessa Moss	20.3%	51.0%	30.5%
Linden 8												
4	45.4%	2014	Virgil Smith*	65.3%	Rashida Tlaib	32.8%	Rashida Tlaib	55.9%	Virgil Smith	31.0%	31.0%	7.9%
4	45.4%	2018	Marshall Bullock	47.2%	Fred Durhal	40.6%	Marshall Bullock	38.6%	Fred Durhal	31.3%	38.6%	6.0%
11	34.0%	2014	Vincent Gregory*	62.2%	Ellen Lipton	20.1%	Ellen Lipton	44.4%	Vicki Barnett	43.5%	12.1%	0.4%
11	34.0%	2018	Jeremy Moss	53.1%	Crystal Bailey	24.9%	Jeremy Moss	51.0%	Vanessa Moss	20.3%	51.0%	30.5%
13	34.0%	2014	—	—	—	—	—	—	—	—	—	—
13	3.5%	2018	—	—	—	—	—	—	—	—	—	—

We see the same organization of data for the House.

Summary Table of EI Analysis, 2014-2022

			Black Voters				White Voters			
Benchmark	BVAP	Year	1st Choice	%	2nd Choice	%	1st Choice	%	2nd Choice	%
Hickory 1										
5	52.8%	2014	Fred Durhal*	55.3%	Cynthia Johnson	34.9%	Fred Durhal*	30.8%	Cynthia Johnson	26.1%
5	52.8%	2016	Fred Durhal*	59.7%	Cynthia Johnson	40.3%	Cynthia Johnson	53.3%	Fred Durhal	46.7%
5	52.8%	2018	Johnson	40.9%	Ross	37.6%	Ross	34.4%	Johnson	25.8%
5	52.8%	2020	Davis	62.0%	Hughes	15.8%	Price	63.1%	Wooddell	22.1%
6	50.9%	2014	Stephanie Chang	50.7%	Tyrone Carter	40.5%	Stephanie Chang	54.0%	Tyrone Carter	22.1%
6	50.9%	2016	Stephanie Chang	80.4%	Dennis Black	6.5%	Stephanie Chang	53.8%	Dennis Black	11.3%
6	50.9%	2018	Carter	33.1%	Wilson	20.4%	Carter	25.9%	Edevbie	16.8%
6	50.9%	2020	Scott	39.1%	Thornton	19.0%	Thomas	19.0%	Scott	16.9%
Hickory 10										
1	63.2%	2014	Brian Banks*	70.7%	Rebecca Thompson	19.5%	Rebecca Thompson	52.9%	Michael Koester	24.8%
1	63.2%	2016	Brian R. Banks*	73.8%	Washington Youson	9.9%	Pamela Sossi	80.8%	Brian R. Banks*	9.7%
1	63.2%	2018	Tenisha Yancey	62.1%	Shaun Maloy	7.0%	Tenisha Yancey	78.3%	Shaun Maloy	21.7%
1	63.2%	2020	—	—	—	—	—	—	—	—
2	56.0%	2014	—	—	—	—	—	—	—	—
2	56.0%	2016	Bettie Cook Scott	42.2%	Carla Tinsley-Smith	31.9%	Jeremy Henner	59.1%	Joe Tate	18.4%
2	56.0%	2018	Tinsley-Smith	23.4%	Banks	21.6%	Tate	63.0%	Johnson	11.4%
2	56.0%	2020	Tate	66.0%	Harrell	34.0%	Tate	90.2%	Harrell	9.8%
6	50.9%	2014	Stephanie Chang	50.7%	Tyrone Carter	40.5%	Stephanie Chang	54.0%	Tyrone Carter	22.1%
6	50.9%	2016	Stephanie Chang	80.4%	Dennis Black	6.5%	Stephanie Chang	53.8%	Dennis Black	11.3%
6	50.9%	2018	Carter	33.1%	Wilson	20.4%	Carter	25.9%	Edevbie	16.8%
6	50.9%	2020	Scott	39.1%	Thornton	19.0%	Thomas	19.0%	Scott	16.9%
Hickory 12										
1	63.2%	2014	Brian Banks*	70.7%	Rebecca Thompson	19.5%	Rebecca Thompson	52.9%	Michael Koester	24.8%

Summary Table of EI Analysis, 2014-2022

			Black Voters				White Voters			
Benchmark	**BVAP**	**Year**	**1st Choice**	**%**	**2nd Choice**	**%**	**1st Choice**	**%**	**2nd Choice**	**%**
Hickory 12										
1	63.2%	2016	Brian R. Banks*	73.8%	Washington Youson	9.9%	Pamela Sossi	80.8%	Brian R. Banks*	9.7%
1	63.2%	2018	Tenisha Yancey	62.1%	Shaun Maloy	7.0%	Tenisha Yancey	78.3%	Shaun Maloy	21.7%
1	63.2%	2020	—	—	—	—	—	—	—	—
18	20.8%	2014	—	—	—	—	—	—	—	—
18	20.8%	2016	—	—	—	—	—	—	—	—
18	20.8%	2018	—	—	—	—	—	—	—	—
18	20.8%	2020	—	—	—	—	—	—	—	—
22	19.8%	2014	—	—	—	—	—	—	—	—
22	19.8%	2016	—	—	—	—	—	—	—	—
22	19.8%	2018	—	—	—	—	—	—	—	—
22	19.8%	2020	—	—	—	—	—	—	—	—
Hickory 14										
3	88.6%	2014	Wendell Byrd	31.2%	Clarence Gayles	20.6%	Clarence Gayles	30.8%	Carron Pinkins	18.7%
3	88.6%	2016	Wendell Byrd*	53.4%	Al Williams	18.0%	Wendell Byrd	34.0%	Al Williams	26.3%
3	88.6%	2018	Wendell Byrd	69.2%	China Cochran	13.7%	Wendell Byrd	38.0%	China Cochran	24.5%
3	88.6%	2020	Thanedar	39.1%	McKinney	19.7%	McKinney	26.6%	Thanedar	26.6%
28	18.6%	2014	—	—	—	—	—	—	—	—
28	18.6%	2016	—	—	—	—	—	—	—	—
28	18.6%	2018	—	—	—	—	—	—	—	—
28	18.6%	2020	—	—	—	—	—	—	—	—
Hickory 7										
7	52.3%	2014	LaTanya Garrett	41.5%	Nicole Stallworth	37.8%	James Cole	21.4%	Nicole Stallworth	18.7%
7	52.3%	2016	LaTanya Garrett*	93.2%	Bernard Thompson	6.8%	LaTanya Garrett*	61.0%	Bernard Thompson	39.0%
7	52.3%	2018	Whitsett	47.2%	Pollard	26.9%	Whitsett	39.4%	Pollard	20.5%
7	52.3%	2020	Young	47.0%	Davis	32.1%	Young	31.9%	Davis	26.0%
26	4.9%	2014	—	—	—	—	—	—	—	—
26	4.9%	2016	—	—	—	—	—	—	—	—
26	4.9%	2018	—	—	—	—	—	—	—	—
26	4.9%	2020	—	—	—	—	—	—	—	—
27	23.0%	2014	—	—	—	—	—	—	—	—
27	23.0%	2016	—	—	—	—	—	—	—	—
27	23.0%	2018	—	—	—	—	—	—	—	—
27	23.0%	2020	—	—	—	—	—	—	—	—

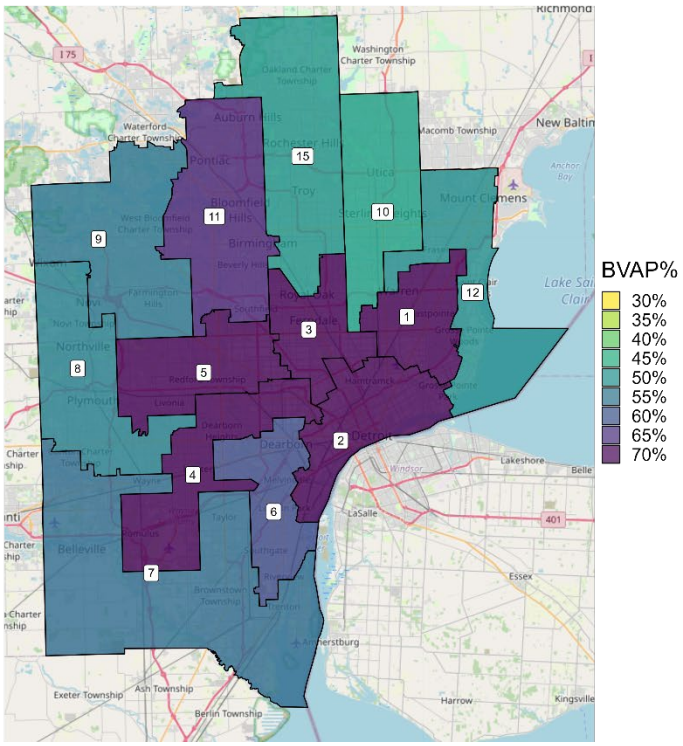
III. 14th Amendment

The Court also left open the possibility that plaintiffs could prevail on the 14th Amendment claim because their distended districts were needed to achieve partisan balance, and that it is politics, rather than race, that drove the line shapes. The problem with this is obvious: The maps already in this case demonstrate that the claim is flatly false. Even a cursory examination of the precincts and maps from the Detroit area makes this plain.

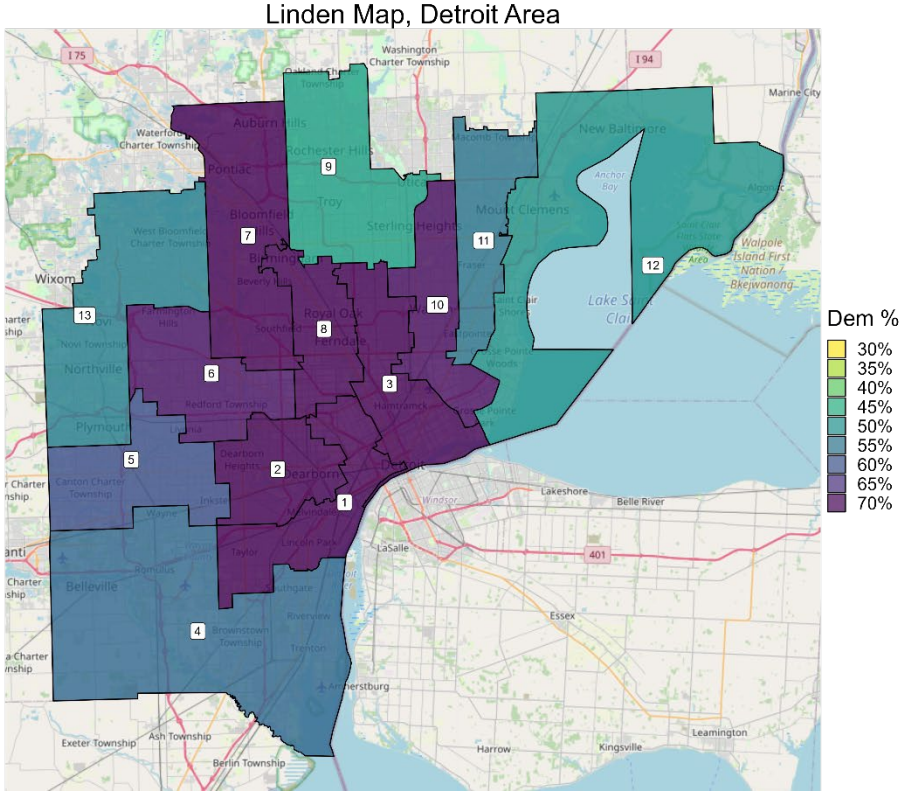
The Senate Demonstration Plan, for example, demonstrates that it is not necessary to draw districts from Troy and Sterling Heights to the Detroit River in order to achieve a fair partisan outcome. Its partisan fairness scores are substantially similar to those in the Linden Plan, yet it does not crack the Black community. The reason for this is simple. As I explained to counsel in my deposition, much of Oakland County is now either Democratic or swing territory. While pairing those voters with voters in downtown Detroit might have been necessary in 2012 to create Democratic districts, it is simply wrong as a factual matter to assert that is still the case.

Indeed, to the extent that there is *any* difference at all in partisan fairness between the two maps, it is not due to the way that the Detroit area districts are drawn. The following two demonstrative maps and tables, based on the commission's data, show that the partisanship of the districts in Wayne, Oakland and Macomb counties are nearly identical as between the Linden Plan and the Senate map. This is true even using all elections from 2012-2020 as the basis for partisanship, which will tend to overstate present Republican strength in this area.

Plaintiffs' Senate Demonstration Map



Linden Map, Detroit Area



Comparison of Partisanship, Linden & Demonstration Maps, Using 2012-2020 Data			
Demonstration Dist.	Dem %	Linden Dist.	Dem %
10	47.18%	9	47.06%
15	49.10%	12	49.28%
12	50.59%	13	52.93%
8	52.90%	11	54.38%
9	54.33%	4	56.61%
7	55.99%	5	60.30%
6	60.91%	6	68.17%
11	66.09%	10	68.68%
5	72.59%	7	72.35%
1	76.66%	2	73.92%
4	80.20%	1	74.77%
3	82.18%	8	75.27%
2	91.99%	3	80.84%

To the extent the Demonstration Senate Map exhibits different partisan fairness scores than the Linden Map, it is not because of anything in the Detroit area. Instead, it is because the Demonstration Map chose not to split Ann Arbor, and to keep a district tight around that city. This created a Republican and a Democratic district in Jackson and Washtenaw counties, where the Linden Plan has two Democratic districts. Regardless of the wisdom of this choice, it sheds no light on whether districts had to extend across the city of Detroit well into Oakland County.

Indeed, if we draw the two districts in the Ann Arbor area roughly the same way as does the Linden Plan (which does not impact any precinct in the Detroit area), the partisan fairness metrics between the Linden Plan and the Demonstration Plan are not just similar; they are virtually

indistinguishable. It is patently false that the districts had to be drawn the way that they were drawn in order to achieve a preferred partisan outcome.

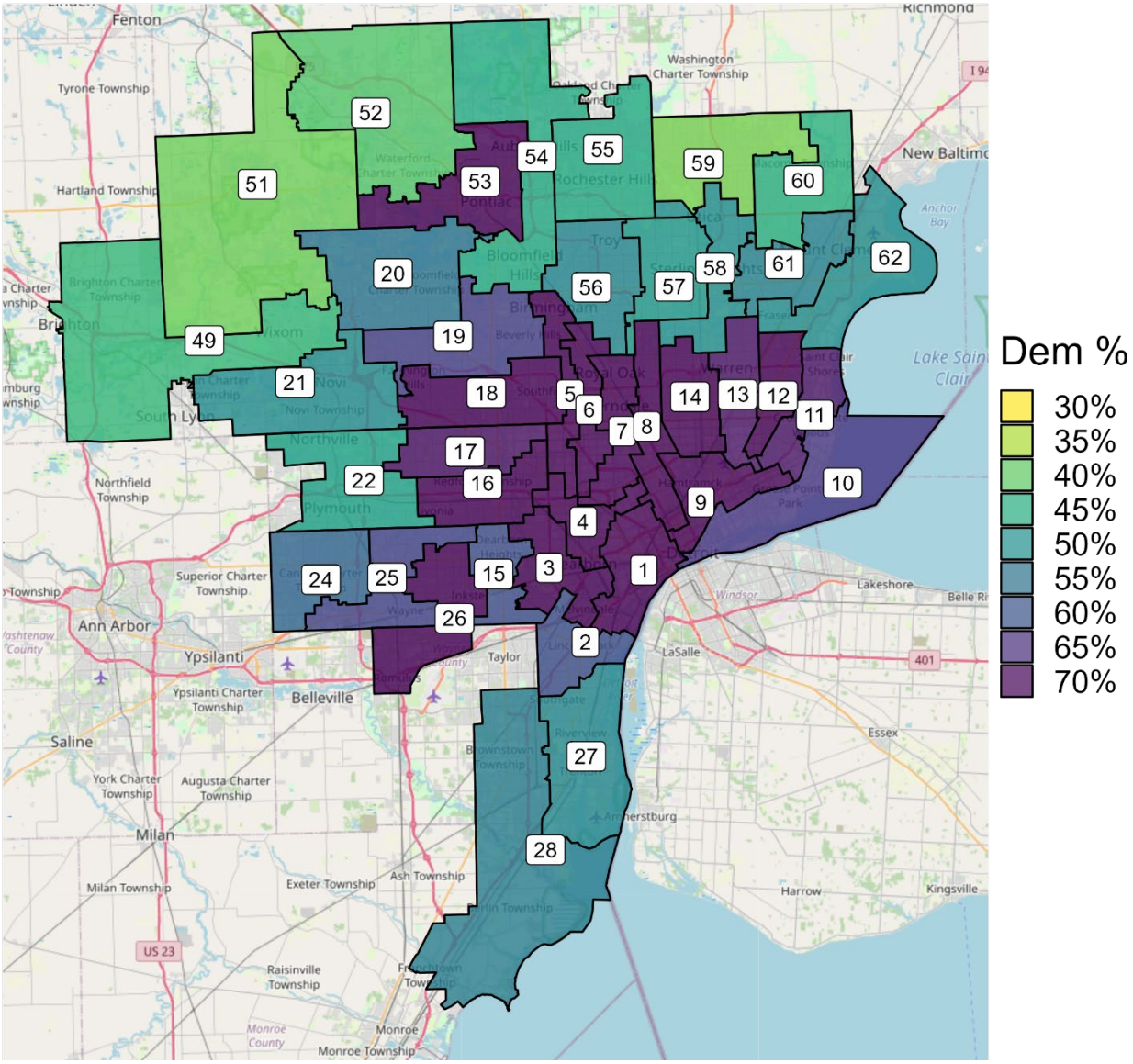
Partisan Fairness Metrics, Linden vs. Demonstration, MI Senate

	Efficiency Gap		Mean Median		Democratic Wins		Lopside Margins	
Source	Linden	Demon.	Linden	Demon.	Linden	Demon.	Linden	Demon.
2020 Pres.	0.0061	0.0083	0.0000	0.0036	21	21	0.0168	0.0198
2016-2020	−0.0603	−0.0304	−0.0122	−0.0050	19	20	0.0560	0.0476
2012-2020	−0.0334	−0.0335	−0.0071	−0.0188	20	20	0.0463	0.0494

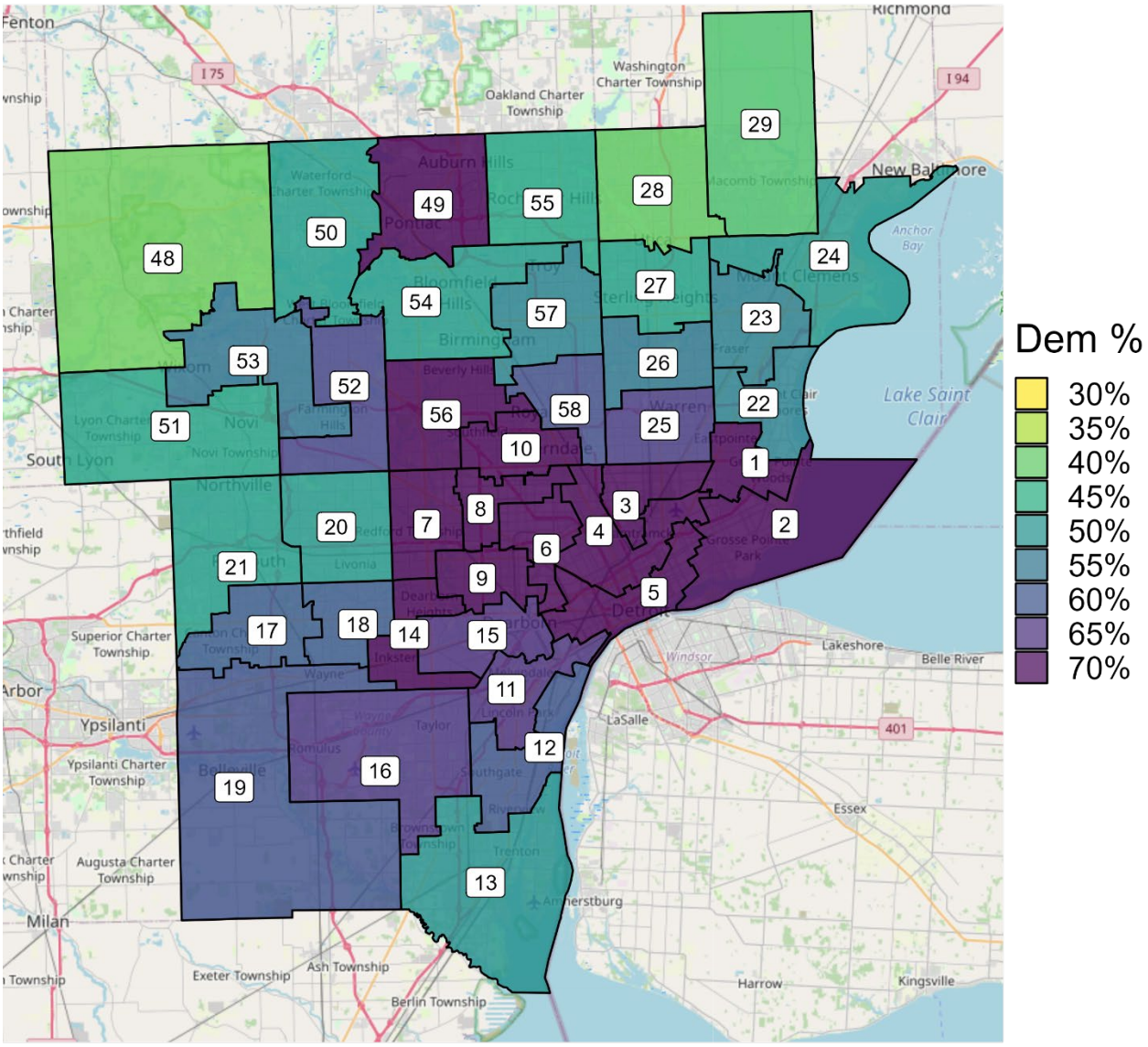
Note that this isn't intended as an additional demonstration map. It simply shows that the existing Demonstration Map proves that you do not need grotesquely shaped districts that intentionally crack Detroit's Black population in order to achieve partisan fairness, and that any claim that this is the case is merely pretextual.

It is true that the Hickory Plan does include two additional districts that are marginally Democratic, when compared to the Demonstration Plan (because the plan concepts are very different in this area, it is difficult to get a direct comparison of districts).

Hickory Map, Detroit Area



Demonstration Map, Detroit Area



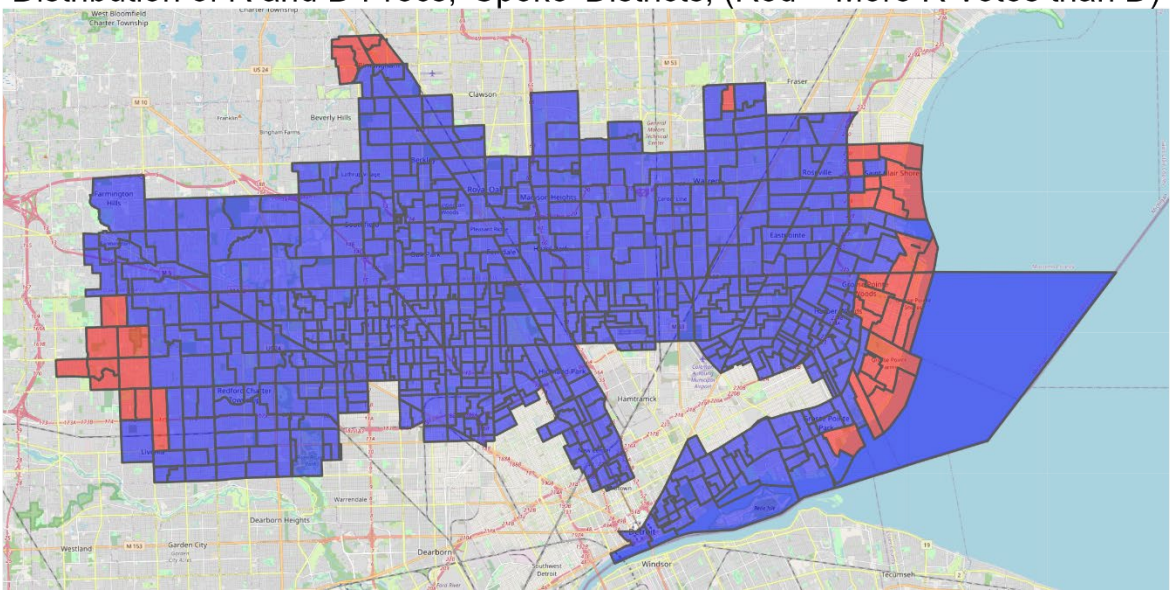
Comparison of Partisanship, Hickory & Demonstration Maps, Using 2012-2020 Data			
Hickory Dist.	**Dem %**	**Demonstration Dist.**	**Dem %**
4	93.99%	8	96.88%
9	93.93%	6	96.81%
1	92.00%	4	96.14%
7	81.53%	3	94.86%
6	81.17%	9	93.87%
8	79.82%	5	93.51%
18	79.18%	10	85.22%
3	78.16%	7	82.06%
5	76.99%	56	77.33%
16	76.75%	49	73.99%
14	74.66%	2	73.31%
12	71.68%	14	71.64%
26	71.15%	1	71.40%
53	70.22%	15	65.31%
17	68.36%	11	64.78%
13	68.03%	16	64.23%
11	67.89%	25	63.52%
10	63.86%	52	62.17%
19	62.74%	58	60.85%
25	62.21%	19	60.49%

Comparison of Partisanship, Hickory & Demonstration Maps, Using 2012-2020 Data			
Hickory Dist.	Dem %	Demonstration Dist.	Dem %
15	60.80%	12	59.94%
2	60.46%	18	58.99%
24	57.19%	17	58.79%
20	54.86%	53	54.94%
28	53.24%	26	54.29%
61	52.39%	23	53.11%
56	51.58%	22	52.72%
27	51.43%	57	52.31%
21	50.84%	13	50.00%
62	50.52%	24	48.88%
58	50.20%	20	48.69%
57	48.64%	50	47.99%
22	47.20%	54	47.98%
55	45.91%	21	47.73%
54	45.67%	27	47.16%
60	44.57%	51	46.85%
49	43.40%	55	46.33%
52	40.94%	29	41.45%
51	38.85%	28	39.89%
59	38.12%	48	39.05%

It is also clear, however, that this is ***not*** in any way related to the "spoke" concept that the MICRC implemented. This is because, as I noted in my opening report, there aren't many Republican precincts in the "spoke" districts. Of course, I utilized the 2020 presidential election data to measure partisanship in my report, since it is the most probative and does not include data from an Oakland County political scene that no longer exists.

But even using the 2012-2020 data relied upon by Dr. Rodden, this largely holds true. In the 12 "spoke" districts implemented in the Hickory Map (5, 6, 7, 8, 10, 11, 12, 13, 14, 16, 17, 18), there are a total of 630 precincts (using 2020 lines). Of these, there are only 37 precincts where Republican candidates totaled more votes than Democratic candidates. Moreover, these precincts are geographically dispersed:

Distribution of R and D Precs, 'Spoke' Districts, (Red = More R Votes than D)

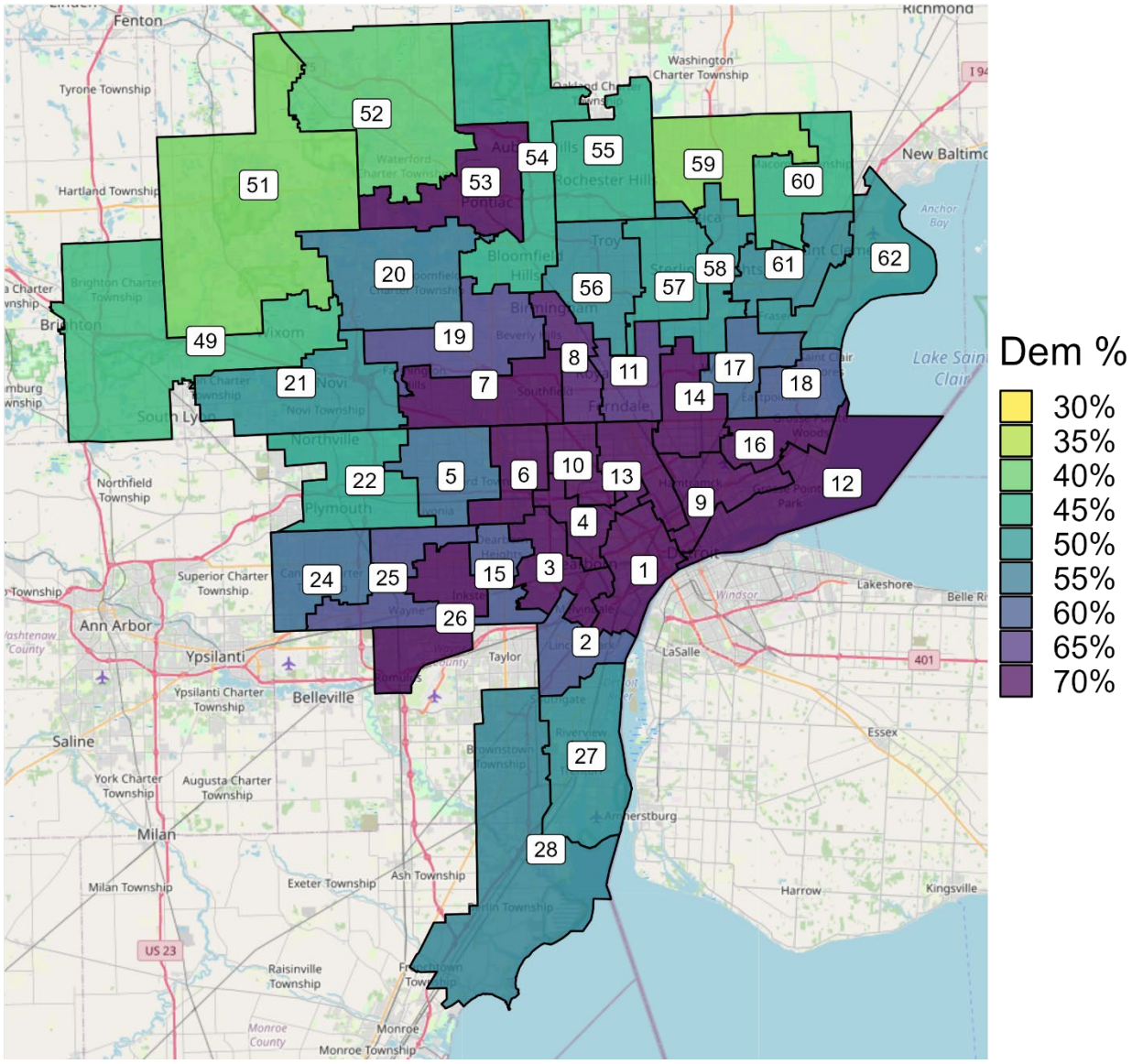


The population of all of these precincts combined is 80,167, which is not even enough population to constitute a single district; no cluster has a population of even half of a district.

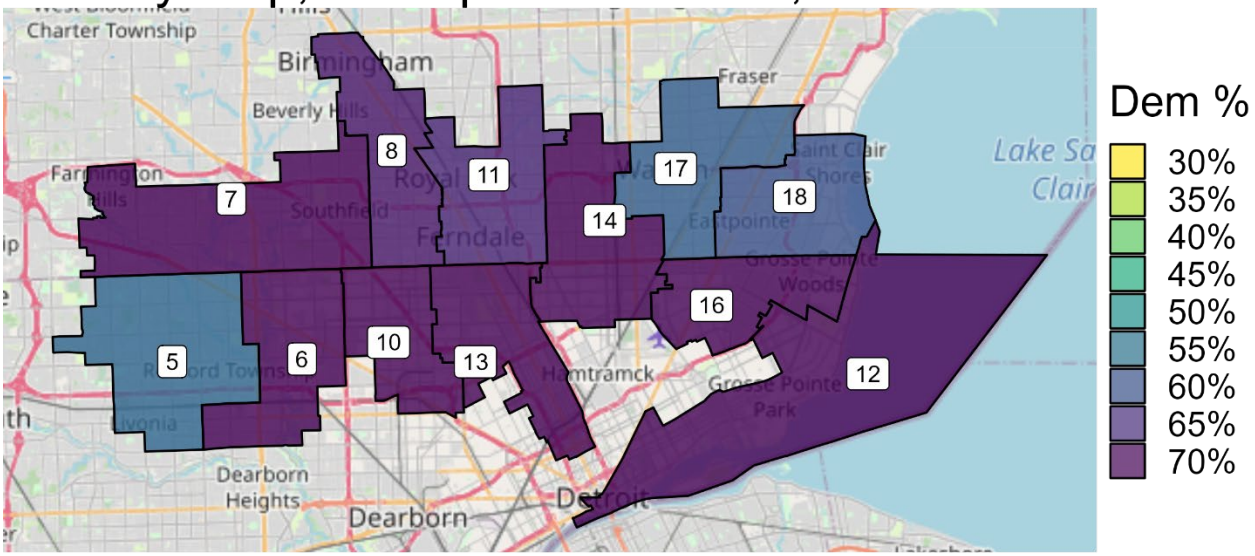
Moreover, as the following demonstrative illustrates, it is trivial to rearrange the precincts in the Hickory Map to create both districts that will protect minority voting rights and satisfy the desire for partisan fairness, thus rebutting the claims of defendants. This features 9 majority-Black Detroit-area districts (a tenth could easily be created by rearranging the non-spoke districts 1, 3 and 4) and only one district that crosses the border between Wayne and Oakland/Macomb counties. Most importantly, it ***only*** rearranges the precincts in the "spoke" districts; everything else in the Hickory Map remains intact. None of the re-arranged "spoke" districts has an index favoring

Republicans; the least Democratic is District 5, which is 56.8% Democratic. Moreover, with 9 black-majority districts and a 10th that could easily be drawn, this puts the lie to the claim of the Commissions and their experts that the "spoke" districts were needed to comply with the Voting Rights Act.

Hickory Map, No "Spoke" Districts, Detroit Area



Hickory Map, No "Spoke" Districts, Detroit Area



The partisan fairness metrics for such a map are almost identical to those found in the Enacted Plan. This is unsurprising, since you can draw the Enacted Plan exactly the same while merely rearranging the "spoke" districts. Again, since almost all of the precincts in the "spoke" districts are strongly Democratic, you still create strongly Democratic districts.

Partisan Fairness Metrics, Hickory vs. No Spoke Concept, MI House								
	Efficiency Gap		Mean Median		Democratic Wins		Lopside Margins	
Source	No Spoke	Demon.	No Spoke	Demon.	Hickory	No Spoke	Hickory	No Spoke
2020 Pres.	−0.0510	−0.0510	−0.0154	−0.0154	54	54	0.0507	0.0543
2016-2020	−0.0385	−0.0385	−0.0180	−0.0180	57	57	0.0513	0.0544
2012-2020	−0.0352	−0.0352	−0.0217	−0.0217	58	58	0.0495	0.0519

The suggestion that the Black population of Detroit had to be cracked to achieve a partisan fairness outcome is simply false. Likewise, the suggestion that the Black population of Detroit had to be cracked to create a sufficient number of seats where Black voters could elect their candidates of choice is also simply false.

Finally, if one examines Exhibit B to the Handley Report, she actually fails to find racially polarized voting in the general election for most of the legislative districts. This is because, as noted above, the White Republicans from the beginning of the decade are much less likely to vote Republican today. To the extent that the Commission and its experts deny the existence of Black cohesion or White bloc voting in the Democratic primaries, it is unclear how they could have good reason to believe districts had to be drawn in such a way as to comply with the Voting Rights Act.

_/s/ Sean P. Trende___

Sean P. Trende

9/26//2023

EXHIBIT C

EXHIBIT C

From:	Pattwell, Michael J.
To:	Lewis, Patrick T.; John Bursch; Meingast, Heather (AG); Grill, Erik (AG)
Cc:	McKnight, Katherine L.; Raile, Richard; Braden, E. Mark; Fleming, James J.; nfink@finkbressack.com; dfink@finkbressack.com; Mertins, Paula; Green, Jennifer K.; King, Ronald A.
Subject:	RE: 1:22cv272 Agee, Jr., et al v. Benson, et al
Date:	Tuesday, October 03, 2023 8:36:08 PM
Attachments:	image001.png image002.png image003.png image005.png

Dear Mr. Lewis:

We disagree with your characterization of Mr. Trende's supplemental and rebuttal report. It does not provide new expert opinions. Rather, Mr. Trende's report consists mostly of demonstrative and summary graphics that merely rearrange or summarize facts already published in his initial report and discussed during Defendant's deposition of him. E.g., FRE 1006. In this way, the report provides a helpful roadmap of Mr. Trende's testimony for the Court and for Defendants since this is a highly complex case.

Furthermore, all of the information contained therein is capable of being elicited via direct or cross examination as well as rebuttal testimony. For example, if the Commission is going to suggest in trial that that the bizarrely shaped districts that characterize the Hickory and Linden Plans (at least along the Wayne County border) are needed to achieve some partisan fairness metric, it should know the argument is false and easily rebutted before doing so. Consequently, the report streamlines the presentations saving valuable time.

Regardless, the purpose of Rule 26 is to avoid unfair prejudice. If the Commission believes that the report somehow prejudices it, Plaintiffs are willing to offer the Commission the opportunity to again depose Mr. Trende before trial. Moreover, while all of the information referenced in Mr. Trende's report is already in the Commission's possession, the Plaintiffs are willing to share Mr. Trende's files.

Please let us know whether these offers are sufficient to address the Commission's concerns.

Best Regards,

Michael J. Pattwell
Member
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mpattwell@clarkhill.com | www.clarkhill.com

From: Lewis, Patrick T. <plewis@bakerlaw.com>
Sent: Monday, October 2, 2023 8:46 PM
To: John Bursch <jbursch@burschlaw.com>; Meingast, Heather (AG) <MeingastH@michigan.gov>; Grill, Erik (AG) <GrillE@michigan.gov>
Cc: McKnight, Katherine L. <kmcknight@bakerlaw.com>; Raile, Richard <rraile@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; Pattwell, Michael J. <mpattwell@clarkhill.com>; Fleming, James J. <jfleming@clarkhill.com>; nfink@finkbressack.com; dfink@finkbressack.com; Mertins, Paula <pmertins@clarkhill.com>; Green, Jennifer K. <jgreen@clarkhill.com>; King, Ronald A. <rking@clarkhill.com>
Subject: RE: 1:22cv272 Agee, Jr., et al v. Benson, et al

[External Message]

Dear Counsel:

We write concerning the "Supplemental and Rebuttal Report" of Mr. Trende. We have reviewed the report. It is apparent to us that this report contains extensive new analysis—and new demonstrative plans—that goes far beyond the limited report supplementation permitted by Fed. R. Civ. P. 26(e). Moreover, to the extent the report contains arguments intended to rebut those of the Commission's experts, the report is untimely under Fed. R. Civ. P. 26(a)(2)(D)(ii), which requires rebuttal reports to be served not later than 30 days after the other party's expert disclosure. This untimely expert disclosure is highly prejudicial, as it is made five-and-a-half months after discovery closed, several months after Mr. Trende was deposed, after our expert deadlines passed, and on the eve of an expedited trial.

Ever since Plaintiffs first mentioned the possibility of serving a "supplemental" report from Mr. Trende back on September 12, 2023, we repeatedly requested Plaintiffs' position on their authority to serve this report consistent with the Federal Rules of Civil Procedure and the Court's scheduling orders. Plaintiffs declined to provide such a basis, and we are independently aware of none.

We therefore intend to file a motion to exclude Mr. Trende's "Supplemental and Rebuttal Report" in its entirety. Please let us know whether Plaintiffs will oppose this motion. Separately, to avoid the need for this motion, please let us know if Plaintiffs will be willing to withdraw that report from their exhibit list and agree not to offer it, or any testimony from Mr. Trende from that report, in evidence at trial.

Finally, for the second time in this case, Plaintiffs have failed to comply with their obligation to produce, along with Mr. Trende's new report, the facts, data, and other replication materials considered by Mr. Trende when preparing that report, in contravention of Fed. R. Civ. P. 26(a)(2)(B). Among other things, Mr. Trende created several new "demonstration maps" and purported to perform statistical and other analysis on those districts, along with additional racially polarized voting and partisan-fairness analysis. However, no shapefiles or block-equivalency files for any of these new "demonstration maps" were provided, and no R code, output data, and other calculation backup was supplied to support any of the tables or figures in the report. This non-disclosure severely limits Defendants' ability to analyze Mr. Trende's report, and is especially prejudicial given how close we are to trial. We demand that Plaintiffs produce all such facts, data, and other replication materials immediately, and we reserve all rights and remedies in connection with Plaintiffs' failure to produce this material.

Thank you,

pl

Patrick Lewis
Partner

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127 Public Square | Suite 2000
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plewis@bakerlaw.com
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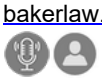

[Remainder of Email Chain Redacted]