

**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)**

PLAINTIFFS' SUPPLEMENTAL BRIEF ON PROPOSED REMEDY

INTRODUCTION

The Court’s December 21, 2023, opinion recognized that the Commission flagrantly disenfranchised Black voters by drawing legislative districts based predominantly on race in violation of the Equal Protection Clause. (ECF No. 131, the “Opinion”). Accordingly, the Court invalidated 13 Michigan Senate and House districts with extraordinarily low BVAPs and directed the parties to brief the appropriate remedy.

The Court should appoint a special master to draw revised maps for the beleaguered Commission. Just since the Opinion’s issuance, three Commissioners resigned as did the Commission’s VRA counsel. Two Commissioners lodged ethics complaints and initiated investigations against each other. This led Chair Szetela to request this Court’s protection from retaliation for her truthful trial testimony. When it came time to adopt a strategy for moving forward at a recent public meeting, the Commission could not cobble together a quorum to hold a vote because multiple Commissioners did not return after a closed session. The Commission and its members appear more intent on cannibalizing each other than functioning as a cohesive group to draw a set of acceptable maps.

Soon, three new Commission members will be drawn from a hat and thrown into an urgent map-drawing process with no VRA counsel and zero training, compared to the entire *year* of rigorous training the Commission received before drawing a single map—one that, notably, still got it wrong. It is unrealistic to ask the Commission to adopt compliant maps given its disarray and the need for expediency.

As established at trial, the Commissioners require professional guidance to draw legally compliant maps. Election deadlines are looming, and the Secretary of State admitted in her post-trial brief that she is already several weeks behind in election preparation. Worse, numerous Commissioners have shown no remorse for the harm they caused to the citizens of Detroit or for the \$5 million of taxpayer money they lavished on defense counsel to preserve their unconstitutional actions.

The only solution in these unique circumstances is the appointment of a special master to serve as an expert cartographer with input from both sides. The Secretary of State, metro-Detroit voters, and political candidates alike all need to know the district lines to prepare for the upcoming election, and a special master will ensure that everyone's interests are protected and propose a map within a matter of weeks.

The Court's remedial order should also mandate a special election for the State Senate—which would ordinarily not occur until 2026—alongside the House election set to take place in the fall of 2024. Plaintiffs and hundreds of thousands of similarly situated Black voters in Detroit have been disenfranchised since the faulty maps were first used in the 2022 election. Every day that passes further violates their constitutional rights. A special election will remedy that ongoing violation.

ARGUMENT

I. The Court Should Appoint a Special Master to Assist the Commission.

“Redistricting is primarily the duty and responsibility of the State[.]” *Abbott v. Perez*, 138 S. Ct. 2305, 2324 (2018) (quotations omitted). But “when those with [such] responsibilities do not respond” or when “the imminence of a state election makes it

impractical for them to do so,” it becomes the “unwelcome obligation” of the federal court to devise a reapportionment plan. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978); *Chapman v. Meier*, 420 U.S. 1, 27 (1975) (when a redistricting body fails in its task, “the responsibility falls on the District Court and it should proceed with dispatch to resolve this seemingly interminable problem”).

Appointment of a special master is a common remedy in redistricting cases.¹ *E.g.*, *Bethune-Hill et al. v. Virginia State Board of Elections*, 368 F. Supp. 3d 872, 877 (E.D. Va. 2019); *Singleton v. Allen*, ___ F. Supp. 3d ___, 2023 WL 5691156 (Dec. 5, 2023, N.D. Ala.) (“The Supreme Court has since held that a district court does not abuse its discretion by ordering a Special Master to draw a remedial map to ensure that a plan can be implemented as part of an orderly process in advance of election”) (citation omitted); *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 555–56 (E.D. Va. 2016) (appointing special master after district found to be a racial gerrymander in violation of the Equal Protection Clause).

The Court need not give the original redistricting body a second bite at the apple before appointing a special master. *North Carolina v. Covington*, 138 S. Ct.

¹ Federal Rule of Civil Procedure 53(a)(1) provides “[u]nless a statute provides otherwise, a court may appoint a master only to: (A) perform duties consented to by the parties; (B) hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by: (i) some exceptional condition; or (ii) the need to perform an accounting or resolve a difficult computation of damages; or (C) address pretrial and posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district.” “Preparing a timely and suitable plan of congressional districts thus presents an exceptional condition that requires the appointment of a Special Master to assist the Court.” *Rodriguez v. Pataki*, 207 F.Supp.2d 123 (S.D.N.Y., April 25, 2002).

2548, 2553–54 (2018) (rejecting defendant’s argument that the district court “abused its discretion by arranging for the special master to draw up an alternative remedial map instead of giving the General Assembly—which ‘stood ready and willing to promptly carry out its sovereign duty’—another chance at a remedial map,” because the court “had its own duty to cure illegally gerrymandered districts through an orderly process in advance of elections” and “providing the General Assembly with a second bite at the apple’ risked ‘further draw[ing] out these proceedings and potentially interfer[ing] with the 2018 election cycle”).

While the Court’s order inquired whether a special master should “assist” the Commission but not “necessarily draw the maps,” the circumstances here are unprecedented. Commission members are resigning in droves and engaged in infighting. Accordingly, Plaintiffs request the Court enlist a special master to work collaboratively with the parties to the extent possible but to also have veto power over the Commission (Ex. A, Proposed Appointment Order). As shown below, the record is replete with support for such a remedy.

(1) The Chaotic Commission Is In No Position to Draw New Maps.

As the last two weeks show, the Commission is cratering and in no position to draw new maps that would give the Secretary of State and candidates sufficient time to prepare for the April primary deadline. For example:

- a. Commissioners Dustin Witjes, Douglas Clark and M.C. Rothhorn have all resigned.²

² <https://www.detroitnews.com/story/news/local/michigan/2023/12/26/3-redistricting-commissioners-to-be-replaced-following-resignations/72033554007/>, last visited Dec. 31, 2023.

- b. Commissioner Anthony Eid is under investigation for allegedly tailoring maps to benefit two of his personal friends who were running for office. His future involvement in the Commission is uncertain.³
- c. Eid had previously been investigated by the Commission for taking a job with a non-profit who bragged on its website: “Our Democracy Workgroup partners *engaged with MICRC right up until they approved the final maps. On multiple occasions, the MICRC changed course and edited their maps in real-time, directly impacted by our partners’ public comments[.]*”⁴ After the maps were complete, the non-profit offered Eid a job, though he resigned from the position after accepting it in the wake of the Commission’s investigation.
- d. Commission Chair Szetela has publicly objected to Eid’s involvement in any future map-drawing because “there’s a pretty strong contingent of commissioners who frankly feel that (Eid) should never touch one of our maps again.” (Ex. C, Gongwer Article dated 12/18/23).
- e. In response, Eid “liked” a third-party post with a photo of Chair Szetela reading: “Michigan Redistricting Commission needs to draw the new maps, then self-destruct. I’m sick of these people. Time to get real jobs.” (Ex. D, Eid Post).
- f. On his way out the door, Commissioner Witjes served an official notice upon the Secretary of State seeking to have Chair Szetela’s seat deemed vacant for “undermining” the Commission with her truthful testimony to this Court. This retaliatory act prompted Szetela to seek this Court’s protection. (Ex. E, 12/27/23 Letter to Panel).
- g. Despite resigning, Commissioner Witjes showed up at the Commission meeting held the following week on December 28th to reiterate publicly that his letter seeking Chair Szetela’s removal for “sabotage” was proper despite his resignation. He also openly urged the Commission to “appeal and appeal hard” this Court’s ruling.⁵

³ “Redistricting Commissioners Claim Colleague Tailored Maps for Candidates” Detroit News, December 16, 2023, <https://www.detroitnews.com/story/news/politics/2023/12/16/redistricting-commissioners-claim-colleague-tailored-maps-for-candidates/71934006007>, last visited Dec. 29, 2023.

⁴ <https://www.wkar.org/wkar-news/2023-07-05/redistricting-commission-members-new-job-raises-ethics-questions> (emphasis added); see also Trial Tr.III.151, PageID.2942.

⁵ “Divided Michigan redistricting commission unable to act after three members leave early” Detroit Free Press, December 28, 2023, <https://www.freep.com/story/news/politics/elections/2023/12/28/redistricting-commission-divided-court-ruling-appeal/72049321007/>, last visited Jan. 1., 2024.

- h. On December 28, 2023—at the most recent public meeting—the Commission’s VRA legal counsel, Bruce Adelson, abruptly resigned, effective December 29.⁶ The Commission’s former General Counsel Julianne Pastula had already resigned in 2022 following the lawsuit in which the Michigan Supreme Court ordered the closed-door meeting audio be disclosed to the public.⁷ Neither position has been filled.
- i. The Commission held a special meeting to vote on whether to appeal the Court’s Opinion. But after returning from a lengthy closed-door session, it could not muster a quorum to hold the necessary vote because so many members left the meeting early.⁸

In short, the Commission is dysfunctional and incapable of quickly drawing legally compliant district maps. And even if the Commission could draw new maps quickly, the Michigan Constitution (though not this Court) requires the Commission to hold time-consuming public hearings across the State before voting to approve the maps. Mich. Const. Art. IV, § 6(8)-(10). A Court-ordered map is the only realistic solution.

(2) New Commissioners Are Entirely Unprepared to Participate and the Commission’s Experts Are Either Incompetent or Have Resigned, Necessitating Outside Professional Expertise.

In response to the resignations, Secretary Benson announced that three new Commissioners would be chosen on January 3, 2024, via random selection.⁹ That

⁶ *Id.*

⁷ “Michigan redistricting panel’s top attorney quits amid two court challenges” The Bridge-Michigan, January 26, 2022, <https://www.bridgemi.com/michigan-government/michigan-redistricting-panels-top-attorney-quits-amid-two-court-challenges>, last visited January 1, 2024.

⁸ “Divided Michigan redistricting commission unable to act after three members leave early” Detroit Free Press, December 28, 2023, <https://www.freep.com/story/news/politics/elections/2023/12/28/redistricting-commission-divided-court-ruling-appeal/72049321007/>, last visited Jan. 1., 2024

⁹ <https://www.michigan.gov/sos/resources/news/2023/12/26/michigan-department-of-state-to-host-random-selection-on-jan-3>, last visited December 27, 2023.

means a *quarter* of this Commission is brand new and uneducated in the map-making process. The training provided to the current Commissioners was extensive—as it should be, since none of them had any redistricting background.

The original Commissioners received more than 35 distinct educational sessions covering the Commission’s conflict of interest policies, how to comply with FOIA and the Open Meetings Act, what the governing criteria are under the Michigan constitution, Voting Rights Act compliance, Communities of Interest definitions, how to analyze census data, how to use the electronic mapping software, how to evaluate partisan fairness metrics, and the like. (Ex. F, Training Sessions). Presenters ranged from legal experts to statisticians to political scientists to representatives from the Attorney General’s office to more than a dozen academics. *Id.* This intense training spanned an entire year. *Id.* Only then did the Commissioners even start the map-drawing process, and they *still* got it wrong.

By January 3rd, nearly a quarter of the Commission will be brand new and lack the dozens (if not hundreds) of hours of training the rest of the Commissioners had. Yet they will be expected to complete an emergency map-drawing process. Plus, the Commission also now lacks both a General Counsel and VRA counsel, so it is unclear who is going to coordinate this training for the new members or guide the Commission’s map-drawing activities.

The need for a professional mapmaker in the form of an experienced special master is critical. As this Court observed, the nascent Redistricting Commission was comprised of Michigan citizens “who came to their task with no experience in redis-

tricting and no knowledge of election law.” Op., p. 1, PageID.4704. The Commissioners admitted at trial that they relied heavily on experts. Per Commissioner Erin Wagner: “we were 13 citizens that didn’t know what we were doing, and so we were looking to people . . . we were told were experts, so of course you’re going to lean on an expert’s opinion.” Op., p. 115, PageID.4818.

But at this point, no “experts” are left for the Commission to lean on. Adelson and Pastula resigned. And while Dr. Handley remains, it was her work that disenfranchised Plaintiffs as part of the trio who “expressly told the commissioners, scores if not hundreds of times, to sort Detroit-area voters into different districts by race[]” and to “limit the ‘black voting age population’—known as the ‘BVAP’ in redistricting jargon—to approximately 35–45%”—a proposition that is “without support in the Supreme Court’s VRA caselaw.” *Id.* at PageID.4704–05. The lack of a VRA attorney is especially problematic because VRA compliance does not disappear for the revised maps; it is still a constitutionally mandated criterion.¹⁰ Yet the Commission is not nimble regarding the hiring of experts. It must follow the public Request for Proposal (“RFP”) process applicable to all State contracts. Conversely, this Court can simply *order* this expert guidance in the form of a special master.

Another issue that militates strongly in favor of having a special master control the map-drawing process instead of inexperienced Commissioners is that the next

¹⁰ See Mich. Const. Art. IV, § 6(13)(a) (“The commission shall abide by the following criteria in proposing and adopting each plan . . . 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.”).

round of mapping will be even *more* complex than the last one. Certain districts are either wedged in between two that have been invalidated or are adjacent to one that was invalidated (for example, House Districts 13 and 25) and those districts may *also* need to be revised in order to achieve compliant maps.¹¹ For example, in *Bethune-Hill*, 368 F. Supp. 3d at 373, the Court invalidated 11 districts as racial gerrymanders in violation of the Equal Protection Clause and appointed a special master “to assist [the Court] in preparing a remedial plan.” But given the overlap between districts, the plan ultimately approved contained changes to more than *double* the amount of districts that were originally invalidated—25. *Id.* at 881 n. 12. Here, an expert cartographer can minimize the impact to surrounding districts and avoid wildly expanding the scope of the revisions. As an example only, a set of remedial maps developed by Plaintiffs’ expert, Sean Trende—an experienced mapmaker who has previously served as a special master in redistricting litigation—demonstrates it is feasible to draw compliant, race-blind maps (with minimal impact to the surrounding districts) in less than five hours. (Ex. B, Trende’s Declaration and Sample Maps).

Judge Neff sympathetically observed that the Commission had “no history to

¹¹ *Bethune-Hill*, 368 F. Supp. 3d at 877–78 (reasoning that “eleven invalidated districts are located in four distinct groupings, and some . . . are adjacent to one another. The invalidated districts themselves frequently span multiple municipalities, and many cities and counties have been split between invalidated districts and surrounding non-challenged districts. In choosing a remedial plan, we endeavor to minimize the number of districts affected by our revisions, recognizing that districts immediately adjacent to the districts may be subject to significant changes.”) (citing *Abrams v. Johnson*, 521 U.S. 74, 86 (1997) (affirming the propriety of remedial maps that change districts even if not directly invalidated by the court to the extent necessary to ensure compliance with legal requirements)).

follow or learn from and no role model to lead the way and to set a standard.” Opinion, Op., p. 116, PageID.4819. A special master would supply precisely that guidance and leadership now.

(3) The State Needed the Final Maps Ready In December—Four Months Before the Primary—Thus, the Parties Are Already Behind.

According to the Secretary of State, updates to the “qualified voter files” (or “QVF”) need to be completed “in time to accommodate candidates seeking to run in the relevant primary election cycle.” (ECF No. 113, PageID.3816–17). This process takes the Bureau of Elections “about four months” and the deadline for candidates seeking to run for the House this year is April 23, 2024. *Id.* Thus, working backward, the State should have started working with compliant maps on December 23—two weeks ago. Indeed, in the last election cycle, “[s]hortly after the Commission adopted the plans in December 2021, the Bureau began working to update the QVF.” *Id.* That means that in the last election, the State had already begun its election preparations at this point.

The Secretary of State acknowledged in her post-trial brief that “the window for granting any relief effective to the 2024 cycle is closing fast,” and “unless relief is ordered quickly, the Secretary does not believe it remains possible for the voter list to be updated to implement new plans in time for the 2024 election cycle.” *Id.*, PageID.3818. Otherwise, this Court may also have to move election deadlines, which could wreak further havoc.¹² The Court’s appointment of a special master now

¹² *E.g.*, *Sixty-Seventh Minnesota State Senate v. Beens*, 406 U.S. 187, 201 (1972) (discussing election deadlines and noting “[i]f time presses too seriously, the District Court has the power appropriately to extend the time limitations imposed by state

increases the likelihood that such disruption and voter confusion can be avoided. Accordingly, the Court should appoint a special master and largely bypass the Commission (with the exception of collaborative work processes) in the interest of time given the upcoming election. *E.g., Covington, supra; Rodriguez v. Pataki*, 207 F. Supp. 2d 123, 125 (S.D.N.Y. 2002) (appointing special master five months before a primary and observing that the “eleventh hour is upon us, if indeed has not already passed”).

(4) Despite Looming Election Deadlines, the Commission Has Not Committed to Re-Engage in Map-Drawing.

The Commission is moving at a glacial pace with zero urgency. For example, the Commission—knowing full well the Court’s decision would be handed down any day—adopted a meeting calendar in mid-December that set just *one* meeting in each of the months of January and February. (Ex. G, MICRC 12/14/23 Agenda and 2024 Calendar). The newly adopted 2024 Meeting Calendar currently has no special meetings set for possible map revisions. *Id.* At the meeting held December 28, 2023, no special meetings were discussed.¹³ When Chair Szetela and Commissioners Lange and Wagner advocated for “fixing” Detroit due to the Court’s decision, they were quickly sidelined, and the Commission instead went into closed session to discuss an appeal. When it re-entered the public meeting, the Commission had lost so many members that it lacked a quorum and could not vote on anything—not an appeal, not

law.”); *Larios v. Cox*, 305 F. Supp. 2d 1335, 1342-43 (N.D. Ga. 2004) (the “court has broad equitable power to delay certain aspects of the electoral process if necessary” in a racial gerrymandering suit).

¹³ A video of the Commission’s last meeting is available at: <https://www.youtube.com/watch?v=AywyjLrqJoI>, last visited December 30, 2023.

special meeting dates, and certainly not a strategy to deal with a re-mapping process. The Court should rely primarily on a special master as set forth in Plaintiffs' proposed Special Master Appointment Order, which contains all requirements under Fed. R. Civ. 53(b)(2).¹⁴ (See Ex. A, Proposed Appointment Order).

B. The Court Should Order Special Elections for the Re-drawn Senate Districts.

When constitutional voting rights are infringed, the Court “has not merely the power but *the duty* to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future.” *Louisiana v. U.S.*, 380 U.S. 145, 154 (1965) (emphasis added). “It is within the scope of [a court’s] equity powers to order a governmental body to hold special elections’ to redress constitutional violations.” *League of Women Voters of Michigan v. Benson*, 373 F. Supp. 3d 867, 961 (E.D. Mich.), vacated on other grounds, quoting *Arbor Hill Concerned Citizens v. Cty. of Albany*, 357 F.3d 260, 262 (2d Cir. 2004) (reversing district court’s order that refused to hold special election and requiring county to hold special election after district court invalidated electoral maps as violative of the VRA);

¹⁴ Plaintiffs submit that any of the following individuals would be qualified to serve in this role: (1) Matt Rexroad, Fabian Valdez, or Ryan Gardiner from the Redistricting Insights firm, (2) Paul Mitchel or Liz Stitt from the Redistricting Partners firm; or (3) Professor M.V. Trey Hood III from the School of Public and International Affairs at the University of Georgia. Plaintiffs have not reached out to these individuals to determine if they are interested to limit *ex parte* contact with the potential special masters. The Plaintiffs would also stipulate to the appointment of two special masters, as joint special masters have been utilized in other cases. See Ex. H, *In re Decennial Redistricting Pursuant to The Constitution of Virginia*, Redistricting Appointment Order dated Nov. 19, 2021 (order appointing Sean Trende and Bernard Grofman as co-special masters); *Singleton v. Merrill*, Case No. 21-cv-1291, Order Appointing Special Master and Appointing Expert Cartographer dated Feb. 7, 2022.

Marks v. Stinson, 19 F.3d 873, 889 (3d Cir. 1994) (holding that “[i]f the district court finds a constitutional violation, it will have authority to order a special election” regarding state senate district); *Griffin v. Burns*, 570 F.2d 1065, 1080 n.15 (1st Cir. 1978) (affirming district court’s power to “call a special election” to remedy constitutional violation to voting rights); *Ketchum v. City Council of City of Chicago, Ill.*, 630 F. Supp. 551, 565 (N.D. Ill. 1985) (“Federal courts have often ordered special elections to remedy violations of voting rights. Prospective relief alone is ‘of little consequence to the many voters who sought to vote... and could not do so effectively.’”)

Courts weigh three factors in considering whether to order a special election: (1) “the severity and nature of the particular constitutional violation”; (2) “the need to act with proper judicial restraint when intruding on state sovereignty”; and (3) “the extent of the likely disruption to the ordinary processes of governance if early elections are imposed.” *North Carolina v. Covington*, 581 U.S. 486, 488 (2017).

The first factor weighs strongly in favor of special Senate elections here. “[T]he right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights.” *League of Women Voters*, 373 F.Supp.3d at 958 (finding the nature of the constitutional violation “extremely grave” where the gerrymandering “subverts the fundamental purpose of legislative apportionment” which is to provide “fair and effective representation for all citizens”) (citing *Reynolds*, 377 U.S. at 562).

On the second factor, “in cases involving unconstitutional burdens on the right to vote . . . numerous courts . . . have concluded that shortening the terms of elected

officials and ordering a special election does not unduly intrude on state sovereignty, particularly when the constitutional violation is widespread or serious.” *Covington*, 270 F. Supp. 3d at 896. In *League of Women Voters*, 373 F. Supp. at 959, the Court specifically held that shortening a Michigan senator’s term of office was not unduly intrusive, reasoning “[w]e similarly find that the fact that a special Senate election would truncate the four-year terms of senators is not ‘unduly intrusive’ given the gravity and extent of the constitutional violations at issue in this case” because “[w]hile senators may be disappointed that their four-year terms will be reduced to two years, the sentiment of the legislators elected under an unconstitutional apportionment plan does not outweigh the constitutional rights of millions of Michiganders to elect their senators under constitutional maps.”

Lastly, where (as here) the normal election cycle already provides for an election of some kind, the “disruption” factor is nil. In *League of Women Voters*, just like this case, the request was merely to “order a special Senate election on the *same date* as the regularly scheduled general elections in November 2020” so “[n]o additional election would be scheduled; voters would simply cast their votes for one additional office on election day (both in the primary and in the general election).” *League of Women Voters*, 373 F. Supp. at 959. Because “the special Senate election would occur on a regular election day and at a regularly scheduled interval, it would not result in any additional election being held during the calendar year, and there would little risk of voter confusion or low turnout.” *Id.*

The next regularly schedule election for the Michigan House will occur on

August 6, 2024, but the Senate election is not scheduled until two years later (in 2026). If the Court leaves the current schedule in place, Plaintiffs (and other Black voters) will remain disenfranchised in the Senate for two additional years. It would be unconscionable to Plaintiffs and Black voters in Detroit to saddle them with candidates selected through a racially gerrymandered process. Accordingly, the Court should order the State to hold a special election in 2024 for the Senate.

Respectfully submitted,

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Dated: January 2, 2024

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ORAL ARGUMENT REQUESTED

**INDEX OF EXHIBITS – PLAINTIFFS’ SUPPLEMENTAL BRIEF ON
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C	Gongwer Article dated December 18, 2023
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E	Commissioner Letter to Three-Judge Panel dated December 27, 2023, including attachments
F	Non-Exhaustive List of Michigan Independent Redistricting Commission Training and Educational Sessions (pulled from public Commission record)
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21-cv-1291, Order Appointing Special Master and Appointing Expert Cartographer dated February 7, 2022.

EXHIBIT A

**UNITED STATES DISTRICT COURT
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ORDER APPOINTING SPECIAL MASTER

The Court, pursuant to Fed. R. Civ. P. 53, hereby appoints [insert name] as special master (hereinafter, the “Special Master”) for the purpose of developing, evaluating, and recommending remedial redistricting plans in this matter as set forth below:

1) The Special Master shall be empowered and charged with the duty to prepare, in a collaborative fashion and with input from the Commission and Plaintiffs, a remedial map for the 13 districts invalidated by the Court; however, if necessary to comply with the other provisions of this order or the Opinion and Order dated December 21, 2023 (ECF No. 131) (hereinafter, the “Opinion”), the Special Master is bestowed with veto power over the Commission if necessary to fulfill his/her duties as outlined herein;

2) All remedial maps proposed by the Special Master must remedy the

Equal Protection violations identified by the Court and the Court shall retain jurisdiction to ensure this is achieved;

3) Districts immediately adjacent to the 13 districts deemed unconstitutional may be subject to changes in the remedial maps, and the Special Master is authorized to make changes to those districts as reasonably necessary to accomplish the objective criteria set forth in the Michigan Constitution and to comply with the Opinion;

4) The Special Master shall comply with all constitutionally mandated transparency requirements pursuant to Michigan law with the exception of the requirement of holding statewide public hearings for input on proposed maps;

5) Plaintiffs may, but are not required to, submit proposed maps to the Special Master for consideration, and the Special Master must consider any proposals, plans, and comments provided by Plaintiffs. If the Special Master rejects Plaintiffs' proposals, maps, or comments, the Special Master must specify in a written report to the Court the reasons for doing so;

6) The Special Master's recommended remedial maps must be submitted to the Court with a written report in accordance with Fed. R. Civ. P. 53(e) within ten days of entry of this Order and once submitted to the Court, Plaintiffs will have a 7-day objection period;

7) If the Special Master and Plaintiffs cannot resolve the objections, the Court will hold a hearing to resolve those objections;

8) Plaintiffs and/or their representatives (including attorneys or experts)

may attend any Commission meetings to monitor status;

9) The Special Master shall document any communications made with the parties outside of any publicly held meeting and shall limit those *ex parte* communications; however, in his/her capacity as liaison to this Court, the Special Master(s) may engage in *ex parte* communications with the Court to the extent necessary to fulfill the duties and obligations set forth in the Court's order;

10) All of the Special Master's fees and costs, subject to approval by this Court, shall be borne by Defendants;

11) Defendants are directed to share any and all census data, demographic data, or other electronic information and shapefiles—including but not limited to (a) 2020 total population (as used by the commission), (b) 2020 voting age population (as used by the Commission), (c) 2020 Black voting age population (as used by the Commission), and 2012-2020 political information—with the Special Master within three business days after entry of this order, and the Secretary of State and Commission shall promptly provide any additional data requested by the Special Master necessary to fulfill his/her duties;

12) The Special Master must not have a relationship to the parties (including any individual current or former Commissioner), attorneys (including current or former attorneys, such as Bruce Adelson or Julianne Pastula) or to any retained expert (including Dr. Lisa Handley), action, or court that would require disqualification of a judge under 28 U.S.C. § 455, unless the parties, with the Court's approval, consent to the appointment after the Special Master discloses any potential

grounds for disqualification, in compliance with compliance with Fed. R. Civ. P. 53(2), and if any potential conflict of interest exists, the Special Master shall disclose the relationship in writing.

IT IS SO ORDERED.

Dated: _____

/s/ _____
Hon. Paul L. Maloney
United States District Judge
On behalf of the Three-Judge
Panel

EXHIBIT B

**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)

DECLARATION OF SEAN P. TRENDE

I, Sean P. Trende, being first duly sworn, do hereby state that I can testify truthfully and competently, with personal knowledge, to the following facts:

1. My name is Sean P. Trende. I am at least 18 years of age and reside at 1146 Elderberry Loop, Delaware, OH 43015. I am a retained expert in this matter and provided expert testimony at trial in this case.

2. I have been asked by counsel to perform two tasks. First, I was asked to attempt to draw remedial maps for the Michigan House of Representatives (“House”) and Michigan Senate (“Senate”) that complied with this Court’s Opinion and Order dated December 21, 2023 (“Order”).

3. These maps are not submitted as remedial maps, as this Court has not announced what process to use for remedying the constitutional violations it identified in its Order. Rather, they are offered as “proof of concept,” to help this Court understand the task before it, and the possible scope of a remedy.

4. To draw the maps, I limited myself to redrawing only those districts necessary to remedy the ills this Court identified. I first removed all precincts contained within districts that this Court identified as violating the 14th Amendment. In the House, these are districts 1, 7, 8, 10, 11, 12 and 14.

5. There were a handful of adjacent districts that needed to be redrawn as well, as they were inextricably linked with the overall design. That is to say, if they were not removed, it would be difficult to remedy the violation identified. For example, leaving District 9 in place forces any map to contain a district that runs through the narrow “corridor” between that district and the Detroit River, forcing a map drawer to recreate something very similar to unconstitutional District 10. Without redrawing districts 9 and 4, it is very difficult to avoid an almost exact redraw of District 1. Without redrawing District 13, it was virtually impossible to avoid drawing a close cousin to unconstitutional District 14. Thus, to avoid such an outcome, I also redrew districts 4, 6, 9 and 13. Collectively, I refer to these districts as the “Redrawn Districts.” I refer to the precincts contained within the Redrawn Districts as the “Reassigned Precincts.”

6. Because this Court did not rule on the Voting Rights Act claim, I did not attempt to draw a certain number of majority-Black districts or reach any particular racial target. Instead, I drew race-neutral maps that were equipopulous (within 2.5% in either direction of the ideal district population), were contiguous, reflected communities of interest, considered county, city and township lines, and were reasonably compact. As expected, however, a race-neutral draw that respects county, city and township lines will naturally produce multiple majority-Black districts in the Detroit area.

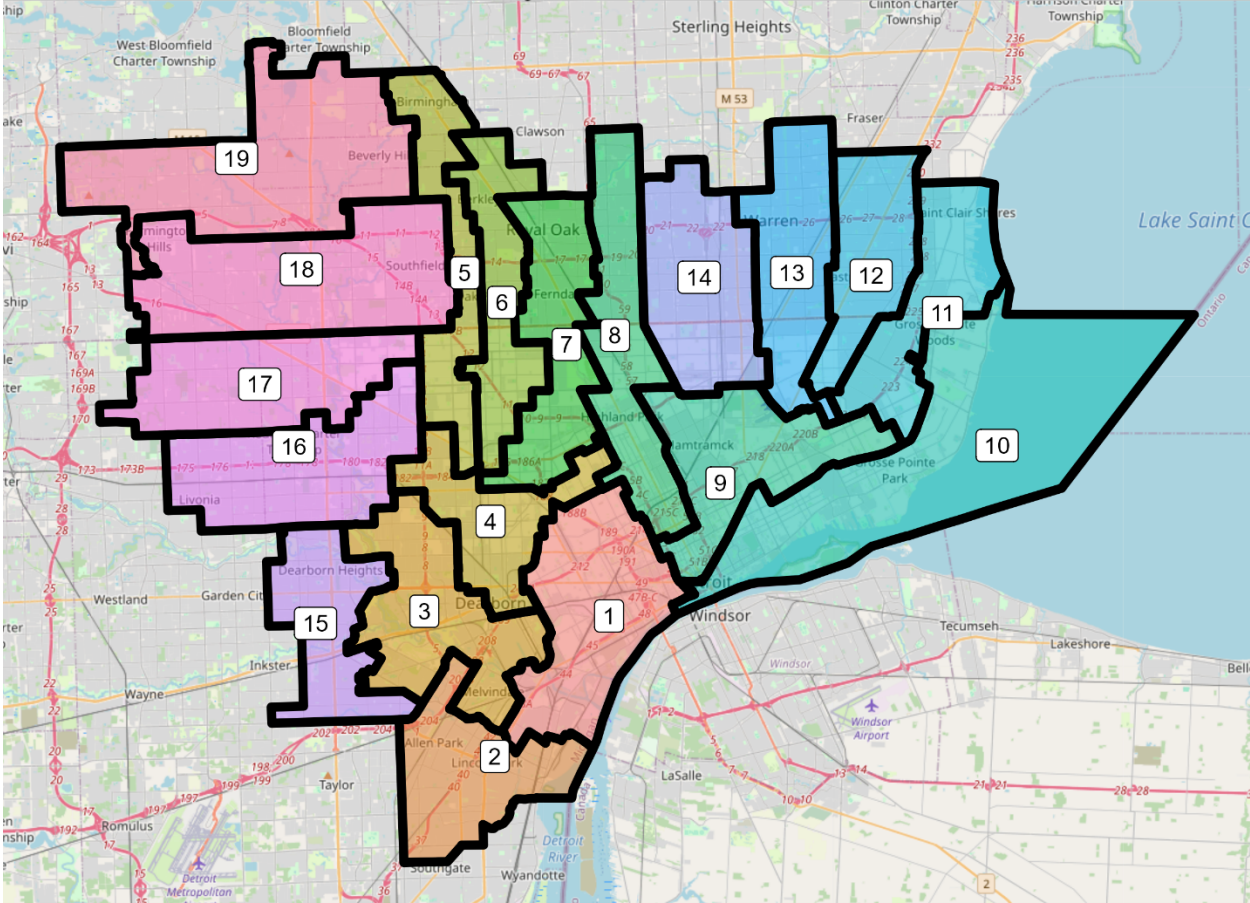
7. Because Detroit’s precincts split neighborhood lines regularly, it was not possible to avoid splitting neighborhood lines without splitting multiple precincts. The Commission chose

to avoid splitting precincts, and I followed suit. Nevertheless, I attempted to respect neighborhood lines to the extent possible, and to follow naturally occurring boundaries such as rivers, major road arteries, and where possible, neighborhood boundaries.

8. Finally, in the end I checked to see if I had substantially altered the partisan redistricting metrics selected by the Commission, and whether the map looked like maps drawn without respect to race.

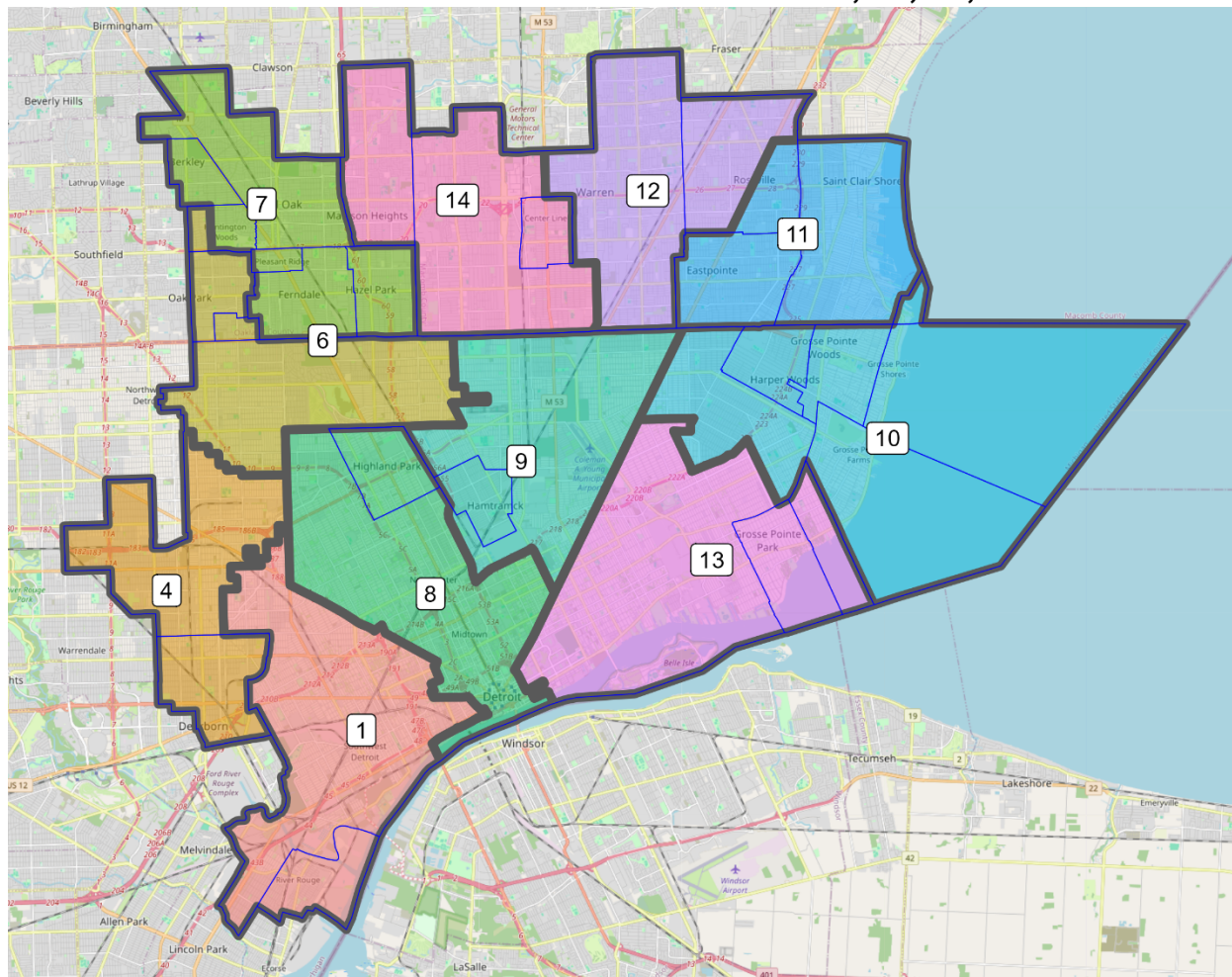
9. For a point of reference, these are the Detroit-area Hickory districts.

Hickory Districts, 1-19



10. For the House, I produced the following map. I did this over the course of the afternoon of December 29, 2023.

Demonstration House Districts, 1, 4, 6-14



11. The blue lines represent city boundaries. The map crosses the Macomb-Wayne County boundary once (in District 11, to keep the Village of Grosse Pointe Shores intact), the Oakland-Wayne County boundary once (in District 8) and the Macomb-Wayne County boundary once (in District 6).

12. The districts split just four municipalities within the Reassigned Precincts: Roseville, Warren, Huntington Woods, and Detroit.¹ Of these, Detroit and Warren must be split for one-person-one-vote purposes. One of the southern Oakland County municipalities must be split for one-person-one-vote-purposes. Finally, either Eastpointe or Roseville must be split for one-person-one-vote purposes.

13. In general, the Redrawn Districts are more compact than their counterparts in the Hickory Map.² The average Reock score for the Redrawn Districts is 0.393, while the average Reock score for the counterparts in the Hickory map is 0.32.³ The average Polsby-Popper score for the Redrawn Districts is 0.415, while the average Polsby-Popper score for the counterparts in the Hickory map is 0.331.⁴

¹ Additional municipalities are split in the map, such as Dearborn. But these splits involve splits between the Redrawn Districts and the districts that were not struck down by this Court. The portion of those municipalities within the Reassigned Precincts are not split. In other words, the portion of Dearborn contained within the Reassigned Precincts is kept intact, even though the city is split between Redrawn District 4 and District 3 and 15 from the Hickory Plan.

² Of course, these districts don't have a 1-to-1 correspondence, since boundaries are often changed almost completely. For example, the Demonstration Plan District 13 has a substantially different configuration than the Hickory Plan version of District 13.

³ Recall that the Reock score is the percentage of the bounding circle that the district fills. Thus, a higher score suggests a more compact district.

⁴ Recall that the Polsby-Popper score is the percentage of a circle with the same perimeter as the district that the district fills. Thus, a higher score suggests a more compact district.

Comparison of Compactness Scores, Hickory vs. Demonstration House											
District:	1	4	6	7	8	9	10	11	12	13	14
Reock											
Demonstration	0.435	0.436	0.283	0.317	0.376	0.454	0.279	0.469	0.451	0.413	0.413
Hickory	0.483	0.295	0.244	0.317	0.217	0.282	0.173	0.322	0.338	0.358	0.536
Polsby-Popper											
Demonstration	0.294	0.218	0.284	0.363	0.364	0.483	0.435	0.702	0.444	0.506	0.473
Hickory	0.417	0.226	0.186	0.228	0.213	0.330	0.327	0.336	0.456	0.333	0.594

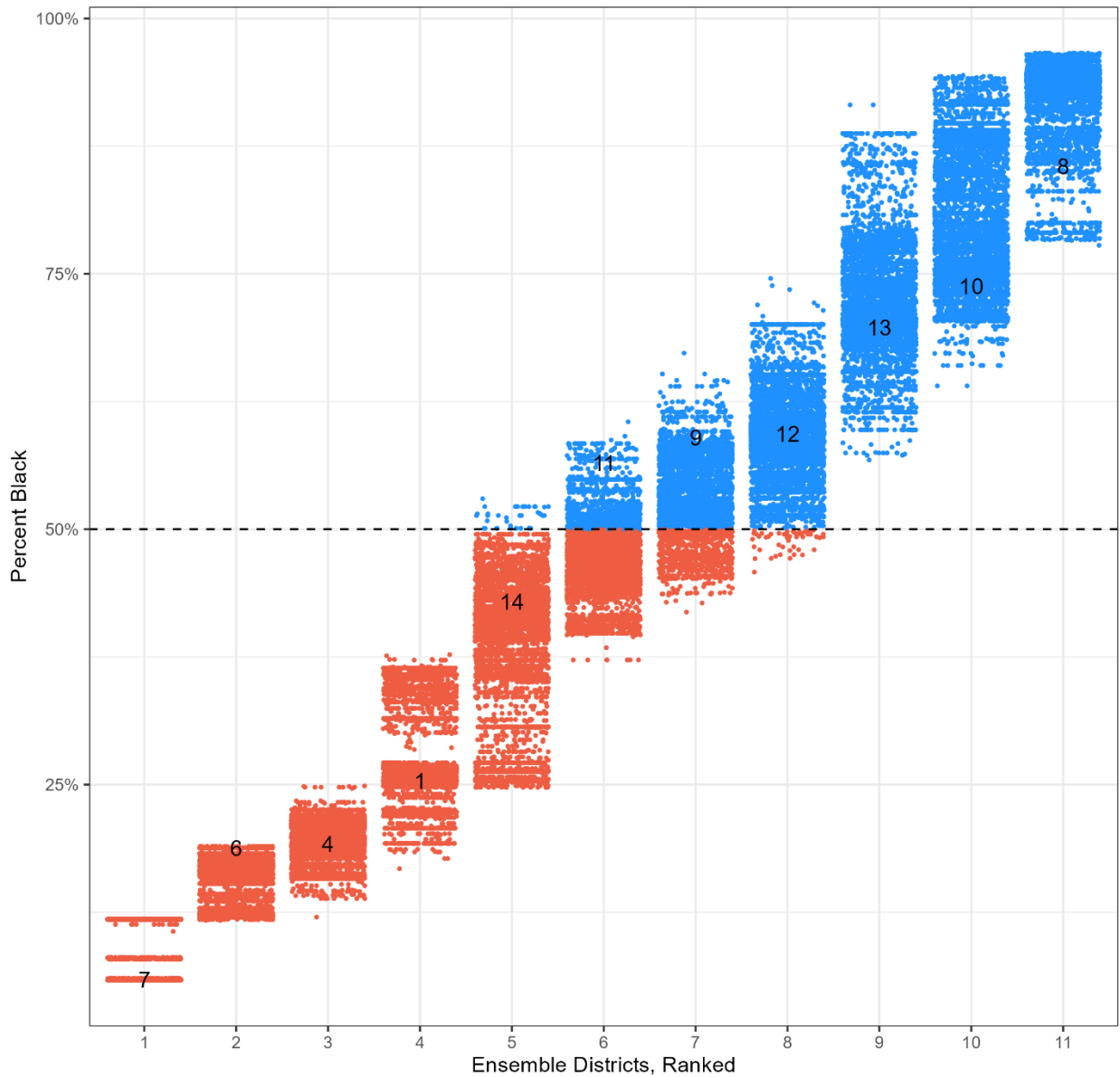
14. The various partisan fairness metrics are likewise substantially similar, regardless of what dataset is used (2020 Presidential, 2016-2020 statewide races, or 2012-2020 statewide races). This is unsurprising, since almost all the precincts being shuffled around are Democratic-leaning precincts. Note that these metrics are calculated on a statewide basis; the districts that are not changed are included in the calculations as they were drawn in the Hickory Plan.

Partisan Fairness Metrics, Hickory vs. Demonstration, MI House								
Source	Efficiency Gap		Mean Median		Democratic Wins		Lopside Margins	
	Hickory	Demon.	Hickory	Demon.	Hickory	Demon.	Hickory	Demon.
2020 Pres.	-0.0510	-0.0510	-0.0154	-0.0154	54	54	0.0507	0.0523
2016-2020	-0.0385	-0.0385	-0.0180	-0.0180	57	57	0.0513	0.0525
2012-2020	-0.0352	-0.0352	-0.0217	-0.0217	58	58	0.0495	0.0500

15. Finally, this map is not a racial gerrymander. First, as demonstrated above, this map doesn't sacrifice any traditional redistricting principle to racial considerations – county splits are minimized (as are municipal splits), communities of interest are respected, districts are compact, etc. It creates six majority Black districts by virtue of the way Black voters are distributed in the Detroit area (it also retains another three majority Black districts from the Hickory Plan).

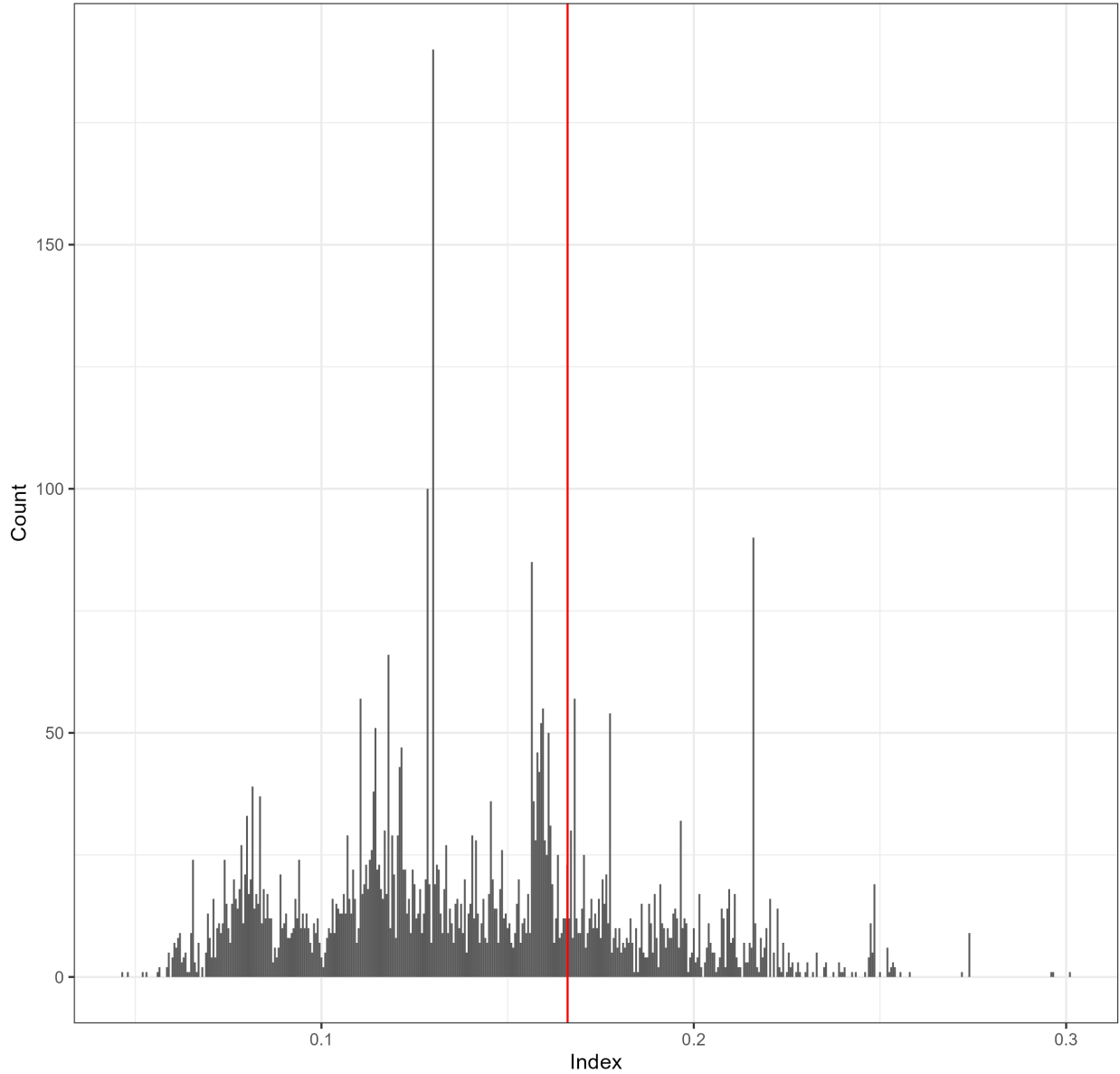
16. I've also re-run the simulations from my initial report in this case. For these simulations I set the same constraints that I had operated under drawing this map. First, Districts could only cross the Macomb/Oakland, Macomb/Wayne, and Oakland/Wayne boundaries one time each. Municipalities and townships were kept intact, with the exceptions of Detroit, Warren, Huntington Woods and Roseville. The dotplots look like this:

Black VAP Share by Simultated District (Black Dot = Demonstration Plan)



17. The districts all fall within the range of the dotplots, though not all districts are located at the center of the dotplot range. This reflects the natural variability that can occur for reasons unrelated to race. The “stripes” visible for District 7 illustrate the need to remove districts beyond the ones struck down by this Court; even with the removal of Hickory District 6, there are only a handful of ways to configure these precincts and cities. This “striping” occurs when the program draws only a handful of district configurations in an area.

18. As the Gerrymandering Index illustrates, these changes are not so substantial as to give rise to an inference that race actually predominated. Here, the red line reflects the Gerrymandering Index for the demonstration maps. It falls squarely within the range of the gerrymandering indices for the ensemble.

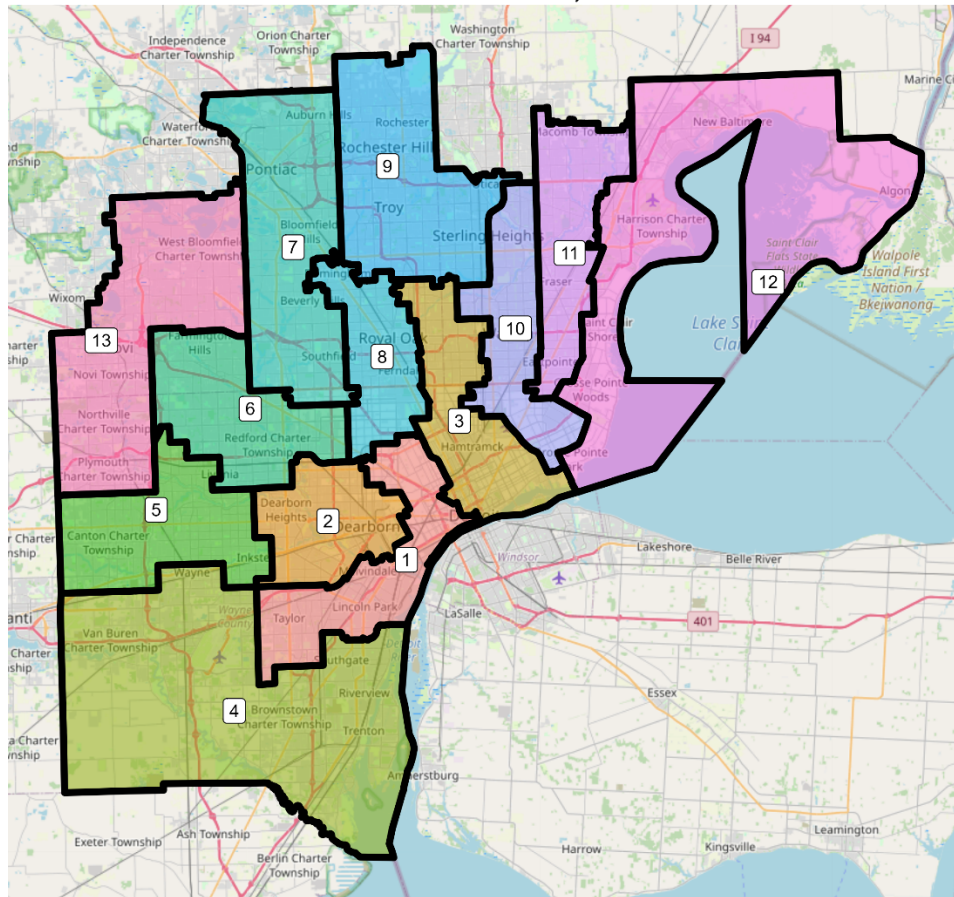


19. For the Senate, I redrew the districts declared unconstitutional by this Court: districts 1, 3, 6, 8, 10 and 11. I also allowed the boundaries of districts 2 and 12 to change for reasons similar to those described above. In particular, retaining District 12 in its present form results in either a District 11 that is almost identical to its current form (if it traverses the Macomb-Wayne border), or in a badly distorted District 8. These maps were drawn over the afternoons of the 30th and 31st of December.

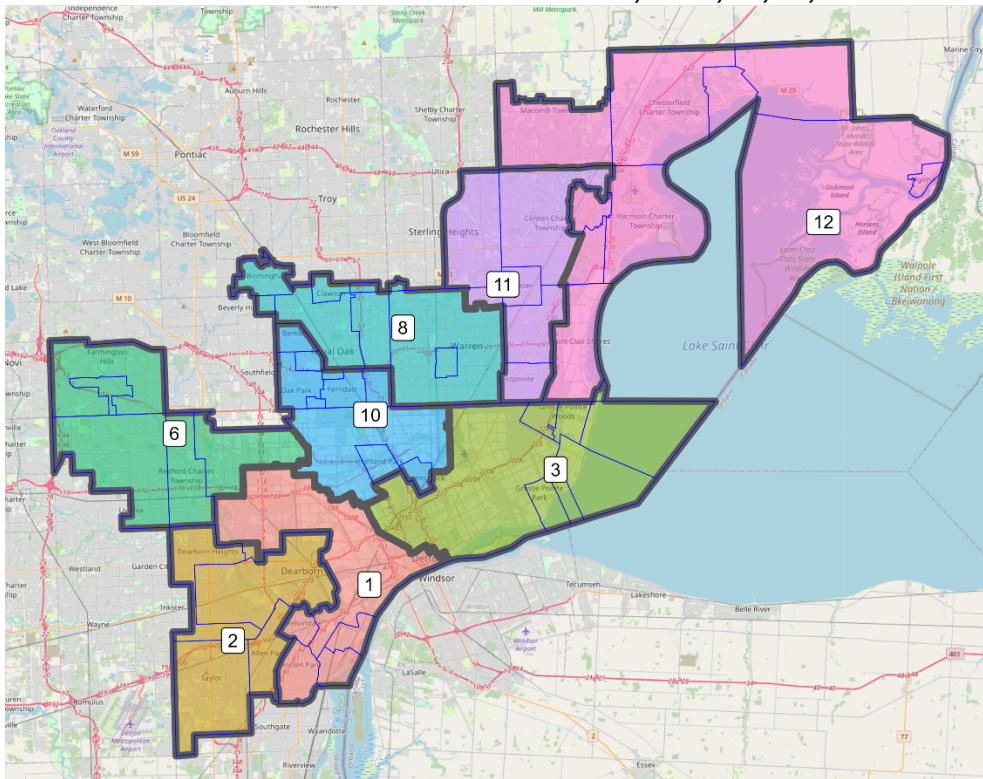
20. While I could justify redrawing District 7 for similar reasons (in particular, the shape of District 6 is constrained by the retention of District 7), I was able to conceive an adequate remedy without doing so. Therefore I did not change it.

21. As a reference point, the Detroit-area Linden districts are as follows. The changed districts are contained in the subsequent image.

Linden Districts, 1-13



Demonstration Senate Districts, 1-3, 6, 8, 10-12



22. Once again, these maps only traverse the Wayne-Macomb border once, the Wayne-Oakland border once, and the Oakland-Macomb border once. Detroit is split, as are the City of Warren and Clinton charter township.

23. In general, the redrawn districts are more compact than their counterpart original districts. The average Reock score for the Redrawn Districts is 0.3523, while the average Reock score for the counterparts in the Linden map is 0.3520. The average Polsby-Popper score for the Redrawn Districts is 0.321, while the average Polsby-Popper score for the counterparts in the Linden map is 0.284.

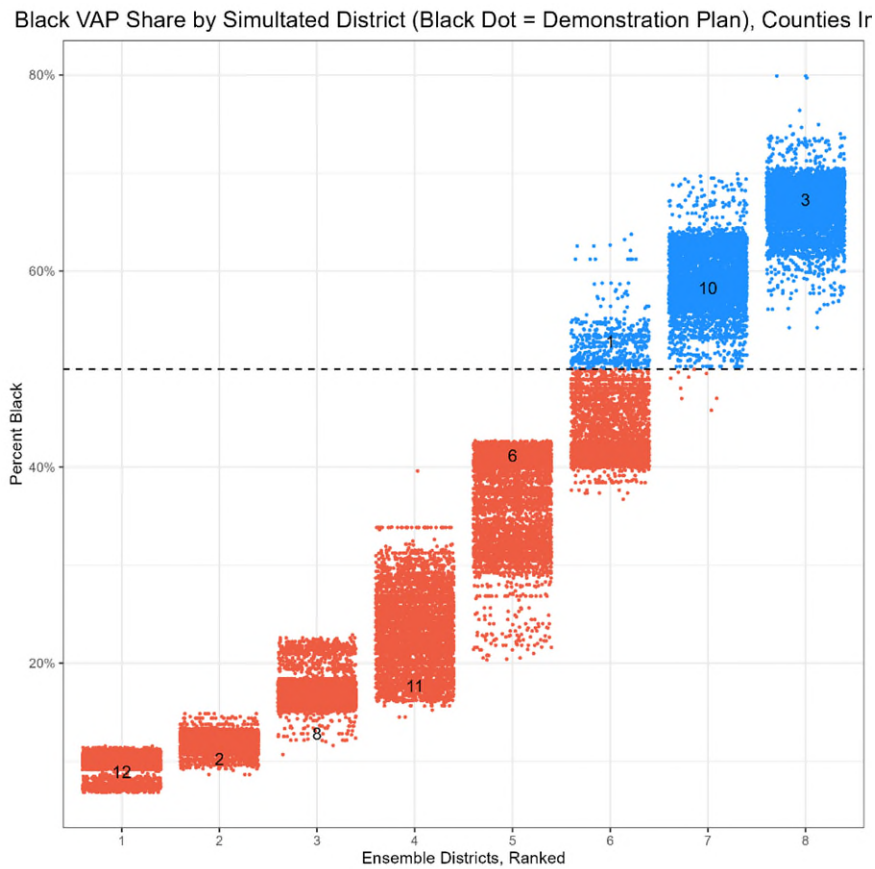
Comparison of Compactness Scores, Linden vs. Demonstration Senate								
District:	1	2	3	6	8	10	11	12
Reock								
Demonstration	0.343	0.428	0.247	0.335	0.262	0.410	0.464	0.328
Linden	0.275	0.495	0.298	0.379	0.437	0.317	0.290	0.325
Polsby-Popper								
Demonstration	0.217	0.340	0.418	0.375	0.301	0.366	0.366	0.181
Linden	0.225	0.477	0.202	0.414	0.257	0.252	0.270	0.176

24. The various partisan fairness metrics are likewise substantially similar, regardless of what dataset is used (2020 Presidential, 2016-2020 statewide races, or 2012-2020 statewide races). This is unsurprising, since almost all the precincts being shuffled around are Democratic-leaning precincts. Note that these metrics are calculated on a statewide basis; the districts that are not changed are included in the map as they were drawn in the Linden Plan.

Partisan Fairness Metrics, Linden vs. Demonstration, MI Senate								
Source	Efficiency Gap		Mean Median		Democratic Wins		Lopside Margins	
	Linden	Demon.	Linden	Demon.	Linden	Demon.	Linden	Demon.
2020 Pres.	0.0061	0.0059	0.0000	0.0036	21	21	0.0168	0.0190
2016-2020	-0.0603	-0.0598	-0.0122	-0.0122	19	19	0.0560	0.0584
2012-2020	-0.0334	-0.0324	-0.0071	-0.0071	20	20	0.0463	0.0472

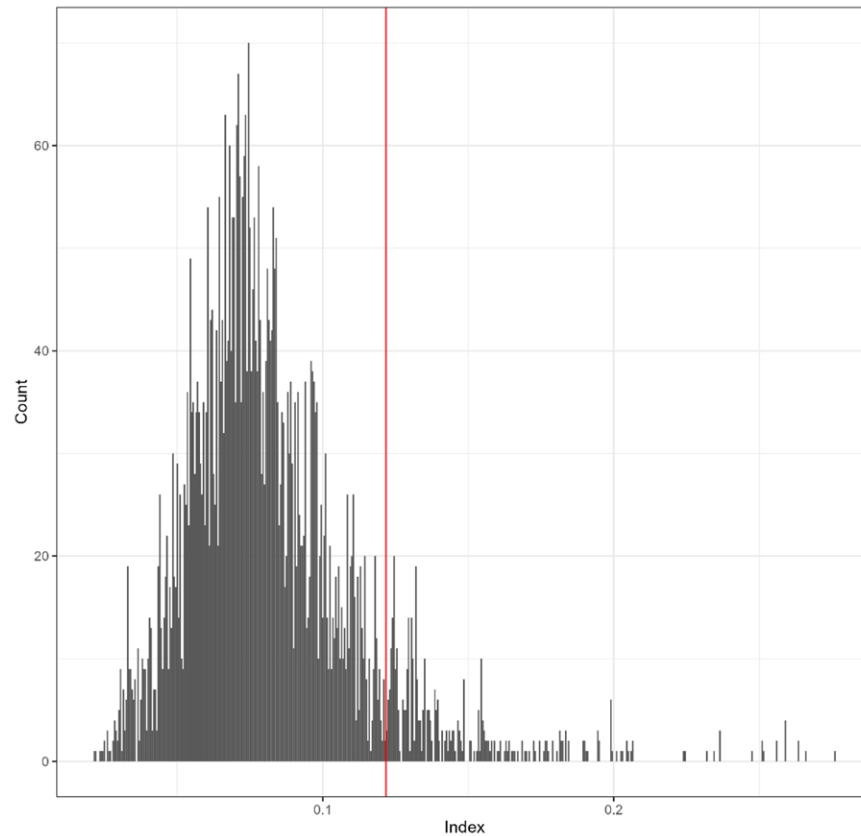
25. Finally, this map is not a racial gerrymander. First, as demonstrated above, this map does not sacrifice any traditional redistricting principle to racial considerations – county splits are minimized (as are municipal splits), communities of interest are respected, districts are compact, etc. It creates three majority-Black districts simply because of the way that Black voters are naturally distributed within the City of Detroit.

26. I have also re-run the simulations from my initial report in this case. For these simulations I set the same constraints up that I had operated under drawing this map. First, Districts could only cross the Macomb/Oakland, Macomb/Wayne, and Oakland/Wayne boundaries one time each. Municipalities and townships were kept intact, with the exceptions of Detroit, Warren, Huntington Woods, Roseville and Clinton Charter Township. The dotplots look like this:



27. The districts all fall within the range of the dotplots, although not all districts are located at the center of the dotplot range. This reflects the natural variability that can occur for choice made for reasons unrelated to race. As the Gerrymandering Index illustrates, however, these changes are not so substantial as to give rise to an inference that race actually predominated. Here, the red line reflects the Gerrymandering Index for the demonstration maps. It falls within the range of the gerrymandering indices for the ensemble.

Values of Racial Gerrymandering Index, Simulated Maps (Red Line = Demonstration F



28. There may be other problems with the maps that the Commission may wish to address. These are simply submitted to demonstrate that it is possible to remedy the defects that the Court identified in the Hickory and Linden plans without redrawing the entire map, and to do so relatively quickly.

29. I was also asked by counsel to describe my experience as a special master for the Commonwealth of Virginia. The Virginia Independent Redistricting Commission deadlocked and was unable to produce a plan. The Supreme Court of Virginia requested both of the major parties in the Commonwealth to submit lists of possible special masters.

30. The parties were then given an opportunity to object to the other party's slate. The court struck the initial slate of special masters for the Republicans after hearing the parties' objections. It then selected me from the second list of names proposed by Republicans, and Dr.

Bernard Grofman from the list of names proposed by Democrats. We were immediately instructed by that court to shed any partisan trappings we may have held and were informed that going forward we represented the Supreme Court of Virginia and the residents of the Commonwealth of Virginia only.

31. With those instructions, we found that we were able to come to agreement relatively quickly on a set of maps. In a month's time, we drew from scratch 11 Congressional districts, 40 Senate districts, and 100 House of Delegates districts. We then submitted those maps for public comment, read all those comments (which numbered in the thousands), and addressed those comments to the best of our ability with a second set of maps. In that timeframe we also produced two lengthy memos of greater than 50 pages in length.

32. Those are, to my knowledge, the only maps from a Southern state that have not been challenged in Court this cycle, including as either a partisan or racial gerrymander, or as violating the Voting Rights Act of 1965.

33. Given the time it took me to complete the proof-of-concept maps above, and given that only about 20 districts need to be redrawn to remedy the constitutional violations identified by this Court, if this Court were to follow the process proposed by the Supreme Court of Virginia, experienced special masters likely could finish the process of redrawing these districts in short order.

34. If sworn as a witness, I can competently testify, based on my personal knowledge, as to the facts stated above. I declare under the penalty of perjury that the foregoing is true and correct.

By: /s/ Sean P. Trende

Date: January 1, 2024

EXHIBIT C

Monday, December 18, 2023

Listen to the Report

Redistricting: Szetela Files Paperwork To Have Eid Removed

A member of the [Independent Citizens Redistricting Commission](#) on Friday accused a colleague of misconduct – alleging he drew districts to help his acquaintances gain elected office – an allegation the commissioner vehemently denied.

The matter is just another instance of drama between commissioners since their mapmaking work was completed in late 2021, with Commissioner Rebecca Szetela again accusing Commissioner Anthony Eid of using his position on the commission for either personal or political gain.

Szetela on Friday filed a [notice](#) to have Eid removed from his post and his seat declared vacant. Eid's removal would ultimately be a commission decision, requiring 10 commissioners to vote for his removal at an upcoming meeting.

At present, Szetela only has the support of Commissioner Rhoda Lange, a frequent critic of the commission's work and practices, and potentially Commissioner Erin Wagner, who has been Lange's ally when she's lodged complaints in the past.

Eid, in an interview with Gongwer News Service, denied the allegations and pointed to Szetela causing disruptions in the commissioners' work by going after her colleagues and ICRC administrative staff, including its attorneys, when they disagreed with her.

Szetela, in response, told Gongwer that it wasn't personal, and that as attorney by trade, she was "a rules follower" who wanted to ensure public trust in what was by all accounts a messy process.

Szetela's filing states that she believes Eid abused his position to draw House District 20 in favor of Democrats, knowing that a Bloomfield-area activist, current [Rep. Noah Arbit](#), would be running for office. Szetela

also stated she believed Eid made House District 15 favorable for a college acquaintance, Bilal Hammoud, who unsuccessfully ran in the 2022 Democratic primary but lost to current 15th District Rep. Erin Byrnes.

Like Eid, Arbit denied having known the commissioner prior to his work on the ICRC and first met Eid at a public hearing to gain input on potential mapping decisions.

A copy of the filing was provided to Gongwer News Service, but it will be made publicly available when the commission sets its next meeting date. A Department of State spokesperson said a copy of the notice will be attached in upcoming meeting materials.

The existence of the document was first reported by The Detroit News.

Szetela claims that Eid described himself as "friends" with Arbit. She claims to have observed Eid spending a significant amount of time talking to Arbit at a June 2021 meeting. Arbit submitted a community map on July 18, 2021, and later announced his House candidacy August 27, 2021.

The commissioner wrote Eid became "intently focused on redrawing the House and Senate districts that included West Bloomfield and Orchard Lake" and began "advocating for changes to the already-drawn House and Senate districts that contained West Bloomfield and Orchard Lake – the very areas identified by Arbit in his draft map."

Szetela further claimed Eid privately contacted commissioners and consultants outside of public meetings and suggested revisions affecting West Bloomfield, Orchard Lake, Sylvan Lake and Keego Harbor. Eid resides in Orchard Lake.

Various text messages between Szetela and Eid were highlighted in the notice filed with the Department of State.

Eid attended what Arbit called a fundraiser for his campaign in 2022, with the two posing for a picture posted to Arbit's Instagram account, but Eid said it was actually a townhall and he attended a similar one for a Republican candidate, who is Chaldean like Eid and a member of his church.

The 15th District allegations read along the same lines, accusing Eid of actively making the district safely Democratic to assist Hammoud, who

attended Wayne State University at the same time as Eid. The two were noted to be members of the Student Senate together.

Szetela wrote that, as with Arbit, Eid previously described Hammoud as his "friend" in discussions with MICRC commissioners, staff and consultants. She claims Eid was also witnessed speaking to Hammoud at length at MICRC events.

"In what can be charitably described as a curious twist of fate," Szetela wrote, "Hammoud also happened to work on the implementation of Proposal 2 as an employee of the Michigan Department of State, as is evident from the banner picture on his LinkedIn page (displaying him at a Department of State event discussing the MICRC)."

Szetela and Lange posited Eid used his position to benefit them, even though Hammoud handily lost the district. Still, they said the Arbit connection was cause to remove him from his post.

"When a member of the MICRC prioritizes personal relationships with friends who are politicians or candidates for office in making map-drawing decisions, it results in political power being taken from the people and placed into the hands of a select few – who can manipulate the maps to their benefit," Szetela wrote in the filing. "These types of back-room dealings were the very type of transactions that Michigan voters had sought to prevent by implementing Proposal 2. ... Eid has fallen well short of these standards."

A U.S district judge overseeing *Agee v. Benson*, a lawsuit alleging the commission made race a predominant factor in building districts in violation of the U.S. Voting Rights Act, could very well nullify key districts and soon call the group back to the drawing board. Szetela has all but sided with the plaintiffs in their belief the commission violated Section 2 of the VRA.

In an interview with Gongwer, Szetela said she was concerned Eid could influence the maps if they are called back, and she filed the complaint to limit his access to any new maps.

"Frankly, there's more than just these two cases. There's been multiple complaints that have come into the commission about side discussions and districts being drawn favorably to Democratic candidates. But we weren't aware of that until after the maps were approved," Szetela said. "Now, we're aware of that as commissioners, and there's a potential that we could have to draw maps again. And if that happens, there's a pretty

strong contingent of commissioners who frankly feel that (Eid) should never touch one of our maps again."

It would take 10 commissioners to vote in favor of removing Eid. Szetela said it was hard to tell if she had the votes.

"There's a general consensus that Commissioner Eid is not honest among commissioners, whether they're going to be willing to remove him or not remains to be seen. If they aren't willing to remove him, I think there's other things and steps that we can take to limit his ability to impact maps, such as not allowing him to draw on collaborative maps, or maybe just redrawing anything that he does if he has a turn," she said. "There are other things we can do. This is kind of the first step and if we don't achieve what Commissioner Lange and I are asking for, there are other ... things coming to kind of protect the public from this sort of malfeasance."

Eid called the allegations preposterous, and another example of Szetela sowing chaos as a commissioner. He was confident that Szetela didn't have the votes to remove him and that most commissioners would stand by him if a vote occurred.

"Rebecca has been throwing my name in the dirt for quite some time now," Eid said. "I'm not very concerned. I think that anyone who's been paying attention to the process can see through these veiled accusations. It's not only that she's come after me. It seems like she has come after every person that disagrees with her. She came after our old general counsel, that led to her resigning. She has come after other commissioners. It just seems like there's a pattern ... and I find it very interesting this happening now after she accused our lawyers of having a conflict of interest."

SZETELA AT THE FOREFRONT OF SEVERAL DISPUTES: In the past year, Szetela has questioned Eid's fitness for his post and was instrumental in raising conflict of interest concerns against him when he obtained a job with social justice nonprofit. Eid eventually resigned from his job with Michigan Voices, which was involved in public comment that had an impact on end-game map changes.

It was the second time Eid accepted employment, but then quickly resigned from a group involved in the making of district maps. In 2022, Eid took a job with Asian and Pacific Islander American Vote at the same time the group was involved in a lawsuit against the commission. The group, sometimes called APIA, also requested the commission to "keep

the Bengali community together” during the map-making process. Eid left the APIA after two weeks.

Szetela’s complaint led to an investigation, but commissioners in charge of the inquiry said no violations occurred.

During the final throes of the mapmaking process, former General Counsel Julianne Pastula abruptly resigned following a public dispute over legal advice that Szetela raised. While Pastula did not say why she was resigning, their dispute was front and center for the public to see. Pastula now works for the city of Detroit.

More recently, Szetela questioned the ability of commissioners Doug Clark and Dustin Witjes to serve since they are no longer residing in Michigan. Clark is seeking cancer treatment out of state but said he still has a residence in Michigan. Witjes moved to Illinois for work.

As the group was gearing up for the November bench trial in *Agee*, Szetela confronted the ICRC with a proposal to allow the body, which is funded by taxpayer resources, to pay for individual legal representation outside of the firms hired to defend the commission and its maps in court. She was concerned the body’s litigation attorneys were misrepresenting her in appearances in filings.

Testimony from Szetela and a dissent she filed after the maps were adopted would later become evidence used by the *Agee* plaintiffs at trial.

“She said it under oath that she went on her own volition and reached out to plaintiffs to ... provide them with information to help their case, essentially to undermine the commission,” Eid said.

Eid said he felt this was an act of sabotage on Szetela’s part.

Eid further argued that aside from not being friends with either Arbit or Hammoud, Orchard Lake and its adjacent West Bloomfield was his home, and that he had a deep interest in listening to public comment from that area.

“It’s a Middle Eastern community of interest. So, she’s right, I did take special interest in those two districts, but it wasn’t to help one person or another. It’s because I’m a part of those communities, and it’s because I wanted to listen to the public comments in those two communities,” Eid said. “From folks who, at least in West Bloomfield, have had a history of being systemically gerrymandered for political gain, and in Dearborn

and Dearborn Heights, the Middle Eastern community, who to this day, doesn't have a checkbox on the census. The population is a VRA protected group. I just wanted to make sure that the people in that community had their say, at having the chance to have representation. The public comments for both of those configurations were vast. They're some of the highest public comment that we had."

Szetela has long said the commission didn't do enough to listen to public commentary that would have maybe helped them draw better maps. Although Eid said he was doing that, Szetela said there was a key difference: the potential relationship he had with Arbit and Hammoud.

"I want to make it very clear, I am not saying Arbit or Hammoud told Eid to go draw districts for them. I don't know if that happened or not. However, Anthony has an obligation as a commissioner to make sure he's not drawing districts to favor a candidate running for office," she said. "It's perfectly fair for Arbit to submit a map. It's perfectly fair for Hammoud to submit a map. What's not OK is for Anthony to then take that map, knowing that they're running for office or knowing that they're planning on running for office, inserting into the commission maps and not make any mention of it to the commissioners."

In an interview, Arbit told Gongwer that Szetela's accusations were "patently absurd."

"It's the height of lunacy, frankly," referencing a tweet from a Gongwer reporter in 2021 showing that Eid was not the only one to help create the district in which he ran in and won. "I know that the commission is having a lot of inner turmoil, and it seems this is sort of another symptom of that – where they're kind of sniping at each other and going at each other's throats."

Arbit argued that greater West Bloomfield was an area where Republicans, who were in control of the 2010 mapmaking process, "took a butcher's knife to Lisa Brown's district to gerrymander her out of office, to divide her base of support, which was the Jewish community, to create a basically two red districts out of a blue leaning seat in West Bloomfield."

West Bloomfield is one of the only communities in the entire state of Michigan that we could find that was gerrymandered and divided in the 2010 map, Arbit said.

"That is also something that was recognized by the community, which is why I was far from the only person to speak before the redistricting

commission to talk about greater West Bloomfield being kept together," Arbit said. "There were literally probably 50 or so people, you can go on the portal, you can look, I mean, there are just so many comments about it."

Arbit denied knowing Eid personally, having only met him during the redistricting process, and that he had not decided to run for office well after he spoke to Eid and before the maps were finalized in late December 2021.

ICRC Executive Director Edward Woods III, in a statement, said the commission will review Szetela's and Lange's allegations "and render a finding in compliance with the Michigan Constitution and its Rules of Procedure."

Szetela said she didn't believe her recent allegations against commission members had worn their patience thin or made them unwilling to work with her.

"I think at the end of the day, they respect my opinion, and we might ultimately disagree and they might ultimately say, 'No, we're not going to vote to remove Mr. Eid,' but they respect the fact that I'm raising it," Szetela said. "There's no bias here. There's no politics. It's about we are stewards of the public; we have an obligation to follow the law. And to the extent I see it's not being followed, I'm going to raise that up and bring it to the attention of the public because I think it's my obligation to do that."

– By Ben Solis

[Back to top](#)



EXHIBIT D



Follow

Anthony Eid

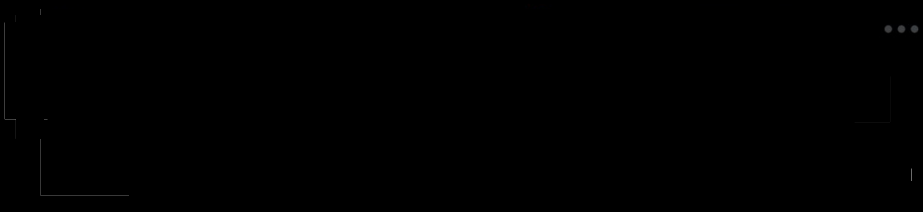
@AnthEid

Michigan Independent Citizens Redistricting Commission | Chaldean & Lebanese | Detroit & WB
Retweets & Likes \neq endorsements

📍 Detroit, MI michigan.gov/micrc 📅 Joined April 2010

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James David Dickson @downi75 · 23h ...

Michigan Redistricting Commission needs to draw the new maps, then self-destruct

I'm sick of these people. Time to get real jobs



EXHIBIT E

Rebecca Szetela
517-898-9366 • szetelar@michigan.gov

December 27, 2023

The Honorable Judge Raymond M. Kethledge
United States Court of Appeals for the Sixth Circuit
540 Potter Stewart US Courthouse
100 E. Fifth Street
Cincinnati, Ohio 45502-3988
Via First Class Mail and Email at: markus_hayes@ca6.uscourts.gov

The Honorable Judge Paul L. Maloney
United States District Court for the Western District of Michigan
137 Federal Building
410 W. Michigan Avenue
Kalamazoo, Michigan 49007
Via First Class Mail

The Honorable Judge Janet T. Neff
United States District Court for the Western District of Michigan
401 Federal Building
110 Michigan Street NW
Grand Rapids, Michigan 49503
Via First Class Mail and Email at: janet_neff@miwd.uscourts.gov

Re: Retaliation Against Select Commissioners in Agee v. Benson, Case No. 1:22-cv-272

Dear Honorable Judge Kethledge, Honorable Judge Maloney, and Honorable Judge Neff:

As you are aware, I am one of the members of the Michigan Independent Citizens Redistricting Commission (“MICRC”) who testified in the *Donald Agee v. Jocelyn Benson, et. al.* matter currently pending before this Court. I am writing on behalf of myself and other members of the MICRC who were subpoenaed by the Plaintiffs and testified in the *Agee* case (the “Testifying Members”). I request this Honorable Court accept this letter as a mechanism to raise serious concerns about the MICRC’s acts of retaliation and the risk of further retaliation against the Testifying Members.

These acts of retaliation include a pending attempt to remove me from my position as Commissioner. On or about December 19, 2023, MICRC Commissioner Dustin Witjes (“Witjes”) filed a “Request for Declaration of Vacancy – Commissioner Rebecca Szetela” (“Request”), in which Witjes seeks to remove me from my position as Commissioner because I allegedly “actively collaborated with opposing counsel, *undermining* the collective will of the commission” and thus “creat[ed] undue challenges for our legal team in defending our maps.” Witjes further stated that cooperation with the Plaintiffs was an “overt act of what can only be

Rebecca Szetela

517-898-9366 • szetelar@michigan.gov

described as **sabotage**” and is “unacceptable.” I have attached a copy of Witjes’s Request to this letter. With the blessing of the MICRC’s General Counsel, Nate Fink, the MICRC will be evaluating Witjes’s Request on January 11, 2024. Commissioner Anthony Eid has also made public statements revealing that he collaborated with Witjes on the Request and supports the attempts to remove me from the MICRC. On December 18, 2023, the day before the Release was filed with the Secretary of State, Commissioner Anthony Eid was quoted in a press interview mirroring the language of Witjes’s Request: “‘*She said it under oath that she went on her own volition and reached out to plaintiffs to ... provide them with information to help their case, essentially to **undermine** the commission,*’ Eid said. Eid said he felt this was an act of **sabotage on Szetela’s part.**” *Gongwer News*, December 18, 2023, p. 5-6, attached. While the removal action appears to be currently focused on me, the other Testifying Members are equally vulnerable to such acts of retaliation and have already been subjected to lesser forms of retaliation. Further, one Testifying Member, MC Rothhorn, has already resigned. His abrupt resignation raises questions as to whether acts of retaliation or threats of acts of retaliation by the MICRC may have motivated his decision to resign.

Retaliating against the Testifying Witnesses is an abuse of the judicial process, can disrupt and interfere with the administration of justice, and displays contempt for this Court. No Testifying Witness should be subject to removal, threats of removal, or other retaliatory acts as a result of cooperating with or being subpoenaed to testify by the Plaintiffs in this matter. Such actions by the MICRC or its Commissioners, staff, consultants, or counsel should not be countenanced by this Court.

Thus, I am requesting that, in any supplemental orders pertaining to the drafting of remedial maps, that the MICRC, its individual Commissioners, staff, consultants, and counsel be directed to refrain from or enjoined from taking any actions to retaliate against the Testifying Members from the *Agee* case. I also request such other orders as this Honorable Court deems equitable, just, and appropriate.

Thank you for consideration of this request.

Sincerely,

Rebecca Szetela

Rebecca Szetela

Commissioner

Michigan Independent Citizens Redistricting Commission

Rebecca Szetela

517-898-9366 • szetelar@michigan.gov

cc (Via Email):

John J. Bursch, *jbursch@burschlaw.com*
Michael J. Pattwell, *mpattwell@clarkhill.com*
James J. Fleming, *jffleming@clarkhill.com*
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Rhonda Lange, *LangeR2@michigan.gov*
Juanita Curry, *CurryJ5@michigan.gov*

Honorable Jocelyn Benson
Secretary of State of Michigan
Department of State
Lansing, MI 48918

Subject: Request for Declaration of Vacancy - Commissioner Rebecca Szetela

Dear Madam Secretary Benson,

I, Dustin J. Witjes, a commissioner in good standing of the Michigan Independent Citizens Redistricting Commission, am officially notifying the commission, in accordance with section 6(3)(e) Article 4 of the Michigan Constitution, to consider declaring the office held by Commissioner Rebecca Szetela vacant.

The commission, established by the voters of the State of Michigan in 2018, is designed to consist of 13 individuals, with 4 identifying as Democratic, 4 as Republican, and 5 as non-affiliated. Throughout our tenure as commissioners, we have consistently emphasized the importance of speaking with one unified voice, resolving disagreements through voting on crucial decisions, and standing united behind the outcomes of those votes.

Regrettably, it has come to my attention that Commissioner Szetela, through sworn testimony [Exhibit 1], actively collaborated with opposing counsel, undermining the collective will of the commission. Her engagement extended beyond mere communication, involving the provision of information in person, actions that should have been directed through our legal counsel rather than independently pursued. Commissioner Szetela, though an attorney, was not the commission's legal representative, and proper protocol would have dictated working directly through our counsel. Her actions would have been ill advised. It has also become apparent that Commissioner Szetela continues to work with plaintiffs through affidavits [Exhibit 2].

This overt act of what can only be described as sabotage is unacceptable. The commission had retained the services of Baker Hostetler and Fink Bressack, two law firms, to assist in defending our legally drawn district maps for the State of Michigan. At no point did the commission authorize or vote to permit any commissioner to work directly with opposing counsel. Commissioner Szetela's actions ran counter to the collective will of the commission, creating undue challenges for our legal team in defending our maps.

It is crucial to highlight that Commissioner Szetela was among those who dissented, either in part or in whole, with the final approved maps, suggesting that her actions may have been motivated by personal disagreement rather than a commitment to the commission's objectives.

It is unprecedented for a named defendant in a case to actively collaborate with plaintiffs in a civil action against the will of the public body to which the defendant belongs. This conduct constitutes "neglect of duty, gross misconduct in office, or inability to discharge the duties of office"; grounds for removal according to Article IV, Section 6, Sub-section 3 of the Michigan Constitution.

This commission is a commission of 13, not a commission of one. Such acts of defiance against the will of the commission contradict our core principles.

For the aforementioned reasons and in light of sworn statements made in open court, I, Dustin J. Witjes, formally propose that the office held by Commissioner Rebecca Szetela be declared vacant through a vote in accordance with the commission's rules of procedure. I recommend that the vacancy be promptly filled in accordance with state law.

Sincerely,



Dustin J. Witjes
Commissioner - Michigan Independent Citizens Redistricting Commission

EXHIBIT 1: Pages 170 - 173 First volume of transcripts.

Case 1:22-cv-00272-PLM-RMK-JTN ECF No. 112, PageID.3751 Filed 11/14/23 Page 170 of 231

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1 tender the witness.

2 JUDGE MALONEY: All right. Thank you. It's 2:45.
3 We'll take 15 minutes and resume at three o'clock for cross.

4 Thank you.

5 THE CLERK: All rise, please. Court is in recess.

6 *(Recess taken at 2:48 p.m.; reconvened at 3:03 p.m.)*

7 THE CLERK: All rise, please. Court is in session.

8 You may be seated.

9 JUDGE MALONEY: We're back on the record in Agee
10 versus Benson.

11 Ms. McKnight, you may inquire.

12 MS. MCKNIGHT: Thank you, Your Honor. We have an
13 agreement from plaintiff that they'll provide us with a list
14 of the audio time stamps and they'll do it by today so we're
15 able to review them.

16 JUDGE MALONEY: Terrific. Thank you.

17 *CROSS EXAMINATION*

18 BY MS. MCKNIGHT:

19 Q. Good afternoon, Ms. Szetela.

20 A. Good afternoon.

21 Q. Thank you for your time today and your work on the
22 Commission.

23 A. Thank you.

24 Q. Have you corresponded with plaintiffs' counsel prior to
25 today?

1 A. You mean writing them letters?

2 Q. Any type of correspondence.

3 A. I'm not sure what you mean by correspondence. You mean
4 e-mails, letters?

5 Q. Any of that and then we can break it down by type.

6 A. Yes.

7 Q. What types of correspondence have you had with them?

8 A. A few e-mails.

9 Q. Have you had any calls with them?

10 A. I honestly don't think so.

11 Q. And about what time did you -- what timeframe were those
12 e-mails sent and received?

13 A. I would say within the last month, maybe. I'm not a
14 hundred percent sure.

15 Q. And did you e-mail them first or did they e-mail you?

16 A. I reached out to them.

17 Q. Okay. And let's start with that first e-mail of you
18 reaching out to them. What did you say in that e-mail?

19 A. From memory, I told them that I had information that I
20 thought might be useful to their case and that I would like to
21 speak with them, is my recollection.

22 Q. Okay. And did you ever speak with them?

23 A. Yes.

24 Q. Okay. And so you did speak with them by phone?

25 A. No. I met with them in person.

1 Q. I see. Okay. How many meetings did you have with them?

2 A. Two.

3 Q. And about when were those meetings?

4 A. I would say within the last month or so.

5 Q. Okay. Within the last two weeks?

6 A. One was within the last two weeks. One was a little
7 longer ago than that, like maybe four weeks ago.

8 Q. And what caused you to reach out to plaintiffs' counsel?

9 A. Because I felt that there were facts that were not being
10 presented to the Court that I think are relevant to this case.

11 Q. And when you sent e-mails to them, did you include any
12 attachments on the e-mail?

13 A. No.

14 Q. Okay. And then the meeting that you had that was within
15 the last two weeks, what did you discuss at that meeting?

16 A. Exhibits and testimony.

17 Q. And then the meeting four weeks ago, what did you discuss
18 with plaintiffs' counsel?

19 A. Just generally I directed them towards transcripts that
20 had information that I thought might be useful to their case.

21 Q. You said that meeting was about four weeks ago. We stand
22 here at November 1. Does October 1 sound about right for that
23 meeting?

24 A. When did the strike against GM and Ford start?

25 Q. I'm not here to answer questions.

1 A. I don't know exactly. I can't tell you exactly without
2 looking at a calendar. I know that the strikers were striking
3 when I went to the first meeting so it was in that timeframe.

4 Q. And what did you share with them in that first meeting?

5 A. Just the transcripts I thought they should look at.

6 Q. And then at the second meeting that you had two weeks ago,
7 did you discuss your testimony with them?

8 A. Somewhat, yes.

9 Q. Okay. What did you discuss with them about your
10 testimony?

11 A. Just generally the flow of what they were going to ask
12 starting from the beginning of the Commission through December
13 of 2021.

14 Q. Commissioner Szetela, I'd like to ask you a question about
15 partisan fairness.

16 A. Sure.

17 Q. Isn't it true that partisan fairness measurements can only
18 be done on a full state-wide plan?

19 A. Yes.

20 MS. McKNIGHT: Let's pull up PX15-19.

21 BY MS. McKNIGHT:

22 Q. Commissioner Szetela, do you remember testifying about
23 this chart in your direct testimony?

24 A. Yes.

25 Q. Can you explain to the Court the difference between a

Exhibit 2: Affidavit from Commissioner Szetela via Plaintiffs post-trial brief (12/04/23):

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)

AFFIDAVIT OF REBECCA A. SZETELA

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

I, Rebecca A. Szetela, having been first duly sworn, deposes and states as follows:

1. I have personal knowledge concerning the statements contained in this Affidavit, and if called to testify, can testify competently to the facts stated in this Affidavit.

2. I have served as a Commissioner with the Michigan Independent Citizens Redistricting Commission ("MICRC") since November of 2020.

3. There are thirteen commissioners on the MICRC, including Commissioner Anthony Eid.



Monday, December 18, 2023

[Listen to the Article](#)

Redistricting: Szetela Files Paperwork To Have Eid Removed

A member of the [Independent Citizens Redistricting Commission](#) on Friday accused a colleague of misconduct – alleging he drew districts to help his acquaintances gain elected office – an allegation the commissioner vehemently denied.

The matter is just another instance of drama between commissioners since their mapmaking work was completed in late 2021, with Commissioner Rebecca Szetela again accusing Commissioner Anthony Eid of using his position on the commission for either personal or political gain.

Szetela on Friday filed a [notice](#) to have Eid removed from his post and his seat declared vacant. Eid's removal would ultimately be a commission decision, requiring 10 commissioners to vote for his removal at an upcoming meeting.

At present, Szetela only has the support of Commissioner Rhoda Lange, a frequent critic of the commission's work and practices, and potentially Commissioner Erin Wagner, who has been Lange's ally when she's lodged complaints in the past.

Eid, in an interview with Gongwer News Service, denied the allegations and pointed to Szetela causing disruptions in the commissioners' work by going after her colleagues and ICRC administrative staff, including its attorneys, when they disagreed with her.

Szetela, in response, told Gongwer that it wasn't personal, and that as attorney by trade, she was "a rules follower" who wanted to ensure public trust in what was by all accounts a messy process.

Szetela's filing states that she believes Eid abused his position to draw House District 20 in favor of Democrats, knowing that a Bloomfield-area activist, current Rep. Noah Arbit, would be running for office. Szetela also stated she believed Eid made House District 15 favorable for a college acquaintance, Bilal Hammoud, who unsuccessfully ran in the 2022 Democratic primary but lost to current 15th District Rep. Erin Byrnes.

Like Eid, Arbit denied having known the commissioner prior to his work on the ICRC and first met Eid at a public hearing to gain input on potential mapping decisions.

A copy of the filing was provided to Gongwer News Service, but it will be made publicly available when the commission sets its next meeting date. A Department of State spokesperson said a copy of the notice will be attached in upcoming meeting materials.

The existence of the document was first reported by The Detroit News.

Szetela claims that Eid described himself as "friends" with Arbit. She claims to have observed Eid spending a significant amount of time talking to Arbit at a June 2021 meeting. Arbit submitted a community map on July 18, 2021, and later announced his House candidacy August 27, 2021.

The commissioner wrote Eid became "intently focused on redrawing the House and Senate districts that included West Bloomfield and Orchard Lake" and began "advocating for changes to the already-drawn House and Senate districts that contained West Bloomfield and Orchard Lake — the very areas identified by Arbit in his draft map."

Szetela further claimed Eid privately contacted commissioners and consultants outside of public meetings and suggested revisions affecting West Bloomfield, Orchard Lake, Sylvan Lake and Keego Harbor. Eid resides in Orchard Lake.

Various text messages between Szetela and Eid were highlighted in the notice filed with the Department of State.

Eid attended what Arbit called a fundraiser for his campaign in 2022, with the two posing for a picture posted to Arbit's Instagram account,

but Eid said it was actually a townhall and he attended a similar one for a Republican candidate, who is Chaldean like Eid and a member of his church.

The 15th District allegations read along the same lines, accusing Eid of actively making the district safely Democratic to assist Hammoud, who attended Wayne State University at the same time as Eid. The two were noted to be members of the Student Senate together.

Szetela wrote that, as with Arbit, Eid previously described Hammoud as his "friend" in discussions with MICRC commissioners, staff and consultants. She claims Eid was also witnessed speaking to Hammoud at length at MICRC events.

"In what can be charitably described as a curious twist of fate," Szetela wrote, "Hammoud also happened to work on the implementation of Proposal 2 as an employee of the Michigan Department of State, as is evident from the banner picture on his LinkedIn page (displaying him at a Department of State event discussing the MICRC)."

Szetela and Lange posited Eid used his position to benefit them, even though Hammoud handily lost the district. Still, they said the Arbit connection was cause to remove him from his post.

"When a member of the MICRC prioritizes personal relationships with friends who are politicians or candidates for office in making map-drawing decisions, it results in political power being taken from the people and placed into the hands of a select few – who can manipulate the maps to their benefit," Szetela wrote in the filing. "These types of back-room dealings were the very type of transactions that Michigan voters had sought to prevent by implementing Proposal 2. ... Eid has fallen well short of these standards."

A U.S district judge overseeing *Agee v. Benson*, a lawsuit alleging the commission made race a predominant factor in building districts in violation of the U.S. Voting Rights Act, could very well nullify key districts and soon call the group back to the drawing board. Szetela has all but sided with the plaintiffs in their belief the commission violated Section 2 of the VRA.

In an interview with Gongwer, Szetela said she was concerned Eid could influence the maps if they are called back, and she filed the complaint to limit his access to any new maps.

"Frankly, there's more than just these two cases. There's been multiple complaints that have come into the commission about side discussions and districts being drawn favorably to Democratic candidates. But we weren't aware of that until after the maps were approved," Szetela said.

"Now, we're aware of that as commissioners, and there's a potential that we could have to draw maps again. And if that happens, there's a pretty strong contingent of commissioners who frankly feel that (Eid) should never touch one of our maps again."

It would take 10 commissioners to vote in favor of removing Eid. Szetela said it was hard to tell if she had the votes.

"There's a general consensus that Commissioner Eid is not honest among commissioners, whether they're going to be willing to remove him or not remains to be seen. If they aren't willing to remove him, I think there's other things and steps that we can take to limit his ability to impact maps, such as not allowing him to draw on collaborative maps, or maybe just redrawing anything that he does if he has a turn," she said. "There are other things we can do. This is kind of the first step and if we don't achieve what Commissioner Lange and I are asking for, there are other ... things coming to kind of protect the public from this sort of malfeasance."

Eid called the allegations preposterous, and another example of Szetela sowing chaos as a commissioner. He was confident that Szetela didn't have the votes to remove him and that most commissioners would stand by him if a vote occurred.

"Rebecca has been throwing my name in the dirt for quite some time now," Eid said. "I'm not very concerned. I think that anyone who's been paying attention to the process can see through these veiled accusations. It's not only that she's come after me. It seems like she has come after every person that disagrees with her. She came after our old general counsel, that led to her resigning. She has come after other commissioners. It just seems like there's a pattern ... and I find it very

interesting this happening now after she accused our lawyers of having a conflict of interest."

SZETELA AT THE FOREFRONT OF SEVERAL DISPUTES: In the past year, Szetela has questioned Eid's fitness for his post and was instrumental in raising conflict of interest concerns against him when he obtained a job with social justice nonprofit. Eid eventually resigned from his job with Michigan Voices, which was involved in public comment that had an impact on end-game map changes.

It was the second time Eid accepted employment, but then quickly resigned from a group involved in the making of district maps. In 2022, Eid took a job with Asian and Pacific Islander American Vote at the same time the group was involved in a lawsuit against the commission. The group, sometimes called APIA, also requested the commission to "keep the Bengali community together" during the map-making process. Eid left the APIA after two weeks.

Szetela's complaint led to an investigation, but commissioners in charge of the inquiry said no violations occurred.

During the final throes of the mapmaking process, former General Counsel Julianne Pastula abruptly resigned following a public dispute over legal advice that Szetela raised. While Pastula did not say why she was resigning, their dispute was front and center for the public to see. Pastula now works for the city of Detroit.

More recently, Szetela questioned the ability of commissioners Doug Clark and Dustin Witjes to serve since they are no longer residing in Michigan. Clark is seeking cancer treatment out of state but said he still has a residence in Michigan. Witjes moved to Illinois for work.

As the group was gearing up for the November bench trial in Agee, Szetela confronted the ICRC with a proposal to allow the body, which is funded by taxpayer resources, to pay for individual legal representation outside of the firms hired to defend the commission and its maps in court. She was concerned the body's litigation attorneys were misrepresenting her in appearances in filings.

Testimony from Szetela and a dissent she filed after the maps were adopted would later become evidence used by the Agee plaintiffs at

trial.

"She said it under oath that she went on her own volition and reached out to plaintiffs to ... provide them with information to help their case, essentially to undermine the commission," Eid said.

Eid said he felt this was an act of sabotage on Szetela's part.

Eid further argued that aside from not being friends with either Arbit or Hammoud, Orchard Lake and its adjacent West Bloomfield was his home, and that he had a deep interest in listening to public comment from that area.

"It's a Middle Eastern community of interest. So, she's right, I did take special interest in those two districts, but it wasn't to help one person or another. It's because I'm a part of those communities, and it's because I wanted to listen to the public comments in those two communities," Eid said. "From folks who, at least in West Bloomfield, have had a history of being systemically gerrymandered for political gain, and in Dearborn and Dearborn Heights, the Middle Eastern community, who to this day, doesn't have a checkbox on the census. The population is a VRA protected group. I just wanted to make sure that the people in that community had their say, at having the chance to have representation. The public comments for both of those configurations were vast. They're some of the highest public comment that we had."

Szetela has long said the commission didn't do enough to listen to public commentary that would have maybe helped them draw better maps. Although Eid said he was doing that, Szetela said there was a key difference: the potential relationship he had with Arbit and Hammoud.

"I want to make it very clear, I am not saying Arbit or Hammoud told Eid to go draw districts for them. I don't know if that happened or not. However, Anthony has an obligation as a commissioner to make sure he's not drawing districts to favor a candidate running for office," she said. "It's perfectly fair for Arbit to submit a map. It's perfectly fair for Hammoud to submit a map. What's not OK is for Anthony to then take that map, knowing that they're running for office or knowing that they're planning on running for office, inserting into the commission maps and not make any mention of it to the commissioners."

In an interview, Arbit told Gongwer that Szetela's accusations were "patently absurd."

"It's the height of lunacy, frankly," referencing a tweet from a Gongwer reporter in 2021 showing that Eid was not the only one to help create the district in which he ran in and won. "I know that the commission is having a lot of inner turmoil, and it seems this is sort of another symptom of that – where they're kind of sniping at each other and going at each other's throats."

Arbit argued that greater West Bloomfield was an area where Republicans, who were in control of the 2010 mapmaking process, "took a butcher's knife to Lisa Brown's district to gerrymander her out of office, to divide her base of support, which was the Jewish community, to create a basically two red districts out of a blue leaning seat in West Bloomfield."

West Bloomfield is one of the only communities in the entire state of Michigan that we could find that was gerrymandered and divided in the 2010 map, Arbit said.

"That is also something that was recognized by the community, which is why I was far from the only person to speak before the redistricting commission to talk about greater West Bloomfield being kept together," Arbit said. "There were literally probably 50 or so people, you can go on the portal, you can look, I mean, there are just so many comments about it."

Arbit denied knowing Eid personally, having only met him during the redistricting process, and that he had not decided to run for office well after he spoke to Eid and before the maps were finalized in late December 2021.

ICRC Executive Director Edward Woods III, in a statement, said the commission will review Szetela's and Lange's allegations "and render a finding in compliance with the Michigan Constitution and its Rules of Procedure."

Szetela said she didn't believe her recent allegations against commission members had worn their patience thin or made them unwilling to work with her.

"I think at the end of the day, they respect my opinion, and we might ultimately disagree and they might ultimately say, 'No, we're not going to vote to remove Mr. Eid,' but they respect the fact that I'm raising it," Szetela said. "There's no bias here. There's no politics. It's about we are stewards of the public; we have an obligation to follow the law. And to the extent I see it's not being followed, I'm going to raise that up and bring it to the attention of the public because I think it's my obligation to do that."

– By Ben Solis

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EXHIBIT F

Non-Exhaustive List of Michigan Independent Redistricting Commission Training and Educational Sessions (pulled from public Commission record)

- 1) For two days in September 2020, the Commissioners received presentations from various academic and elections experts.
- 2) On October 1, 2020, the Commission received a presentation on the Open Meetings Act and the Freedom of Information Act by the Attorney General's office.
- 3) On December 3, 2020, they received a presentation regarding "Michigan Demographics and the Census" by Tom Ivacko, executive director, Center for Local, State, and Urban Policy at the University of Michigan.
- 4) On December 4, 2020, the Commissioners received a presentation explaining "Michigan Redistricting Data" by Matt Grossmann, Professor of Political Science at Michigan State University.
- 5) On February 4, 2021, the Commissioners received a webinar presentation on "Communities of Interest "The Next Big Thing".
- 6) On February 11, 2021, the Commissioners received a FOIA presentation entitled "Presentation on Communications Policy and Goals" and another entitled "Open Meetings Act Guidance Memorandum" by General Counsel Pastula explaining no discussion, deliberations or decisions involving the business of the Commission between a quorum of the full commission or a quorum of a committee can occur outside of the public meeting.
- 7) On February 18, 2021, the Commissioners received an educational session on the "Key Provisions of the Constitutional Amendment and Census Timing" in which the General Counsel provided an overview of key provisions in Article IV, Section 6 of the MI constitution.
- 8) On February 18, 2021, the Commission received training led by Cynthia Dai from the 2010 California Redistricting Panel along with Co-Commissioner Vince Barabba, and Tamina Alon, on the ways they assessed the line drawing bids and how they worked with their mapping consultants.
- 9) On February 24, 2021, the Commission received training on the Voting Rights Act by a panel of experts, including Matt Grossman, Professor from Michigan State University; Leah Aden, Deputy Director of Litigation, NAACP Legal Defense & Educational Fund; David Becker, Executive Director & Founder of The Center for Innovation & Research; and Michael Li, Senior Counsel at Brennan Center for Justice.
- 10) On February 24, 2021, the Commission received training by the 2010 Arizona Redistricting Commission.

Non-Exhaustive List of Michigan Independent Redistricting Commission Training and Educational Sessions (pulled from public Commission record)

- 11) On March 5, 2021, the Commission received a presentation entitled “Turning Maps Into Ballots” by Jonathan Brater, the Director of Michigan Bureau of Elections.
- 12) On March 5, 2021, the Commission participated in interactive “Practice Mapping with Ohio Map” by Matt Grossman, Ph.D., Michigan State University, and Eric Guthrie, Demographer, State of Michigan.
- 13) On March 30, 2021, the Commission received additional mapping training using the Ohio maps and received continuing education by panelists including Matt Grossman, Ph.D., at Michigan State University; Moon Duchin, Associate Professor of Mathematics, Tufts University; Ashton Shortridge, Professor of Geography, Environment, and Spatial Sciences, Michigan State University; John Chamberlin, Ph.D., Professor Emeritus of Public Policy and Political Science, University of Michigan; Thomas Ivacko, Executive Director, University of Michigan Center for Local, State, and Urban Policy (CLOSUP); Jon Eguia, Ph.D., Professor of Economics, Michigan State University; and Corwin Smidt, Associate Professor and Interim Chair in the Department of Political Science, Michigan State University.
- 14) On April 22, 2021, Executive Director Hammersmith presented on Communities of Interest.
- 15) On May 6, 2021, the Director of Special Projects, Sally Marsh, provided the Commission training on how to use the public comment portal.
- 16) On June 10, 2021, Kim Brace from Election Data Services (EDS) presented on the data elements of redistricting and discussed the components of the “First Quadrant of the Data Cube” including the “Topologically Integrated Geographic Encoding and Reference System (TIGER) and block populations” in the EDS software.
- 17) On June 15, 2021, Bruce Adelson presented on redistricting and the VRA.
- 18) On June 17, 2021, Kim Brace from EDS presented again on the “The Data Cube, Part I” and “The Data Cube, Part II” which included the state’s total population, its voting age population, and the distribution of the population.
- 19) On June 22, 2021, Kim Brace from EDS continued to present on The Data Cube and the impact of disclosure avoidance on data and the racial composition of the state’s population. Executive Director Hammersmith also presented on “Fairness and Decision-Making”.

Non-Exhaustive List of Michigan Independent Redistricting Commission Training and Educational Sessions (pulled from public Commission record)

- 20) On June 24, 2021, Kim Brace from EDS, John Morgan, and Dr. Lisa Handley all presented. Mr. Morgan trained the Commissioners on demographic analytics and methods of drawing. Dr. Lisa Handley presented on “Determining if a Redistricting Plan Complies with the Voting Rights Act” and outlined the criteria of priority for redistricting, compliance with the Voting Rights Act, and racial bloc voting analysis. Lastly, Moon Duchin, Executive Director of the Metric Geometry and Gerrymandering Group (MGGG), reported on the input received in the public comment portal and presented “heat maps” to illustrate where the public comment submissions are coming from.
- 21) On June 29, 2021, Kim Brace continued to present on how to use the EDS system, including how to use racial and political data in the “Data Cube”.
- 22) On July 8, 2021, Kim Brace from EDS presented with Fred Hejazi on how to use the “AutoBound Edge” and “My Districting” software for drawing maps.
- 23) On July 8, 2021, additional education on “Communities of Interest” was provided by Moon Duchin, who outlined the trends in the public comment and presented COI coverage maps. Director Hammersmith presented on the importance of COI and its definition. General Counsel Pastula explained the limitations of defining COI.
- 24) On July 8, 2021, Kim Brace also presented a “Philosophical Discussion on Redistricting” and took questions from the Commission on the presentation.
- 25) On July 8, 2021, Adelson provided Implicit Bias training.
- 26) On July 9, 2021, Adelson and Handley presented on the “U.S. Constitution, Michigan Constitution, Legal Cases Regarding Partisan Fairness, & Piloting Rural or Minority District Compositions”. Adelson gave a presentation entitled “The Law of Redistricting, DOJ, and Cautionary Tales.” Dr. Handley also presented on “Measures of Partisan Fairness”.
- 27) On July 22, 2021, Dr. Matthew Petering from the University of Wisconsin presented on utilizing computer algorithms for mapping.
- 28) On July 23, 2021, Kim Brace from EDS trained the Commission on “Determining Geographic Regions With Which to Begin Mapping” with instructions on how to use the Mydistricting Software.
- 29) On July 30, 2021, Kim Brace from EDS trained on AutoBound Edge software, and the Commissioners practiced drawing fictitious districts to learn the software.

Non-Exhaustive List of Michigan Independent Redistricting Commission Training and Educational Sessions (pulled from public Commission record)

- 30) On August 6, 2023, Dr. Handley presented a second time on “Measuring Partisan Fairness”.
- 31) On August 19, 2021, “Mapping Process and Mapping Meetings” was presented by Executive Director Hammersmith, General Counsel Pastula, and EDS.
- 32) On August 20, 2021, EDS provided a demonstration on how to use the mapping software.

EXHIBIT G



**Michigan Independent Citizens Redistricting Commission
Agenda
Thursday, Dec. 14 @ 10 a.m.
Via Zoom**

1. Call to Order/Opening Comments 10:00 a.m.
2. Roll Call 10:02 a.m.
3. Adoption of the Agenda 10:05 a.m.
4. Public Comments 10:08 a.m.
5. Unfinished Business 10:15 a.m.
 - a. Agee Case Update
 - b. Review the Code of Conduct
 - c. Review the Conflict of Interest
 - d. National Redistricting Commissions Conference Legal Opinion
6. New Business 11:15 a.m.
 - a. FY 23 September Financial Report
 - b. FY 23 Annual Financial Report
 - c. FY 24 October Financial Report
 - d. Review Rules and Procedures
 - e. Vacation Transparency
 - f. 2024 Meeting Dates
7. Approval of the Minutes 11:25 a.m.
 - a. August 17
 - b. September 21
8. Executive Director Report 11:30 a.m.
9. Legal Liaison Report 11:40 a.m.
10. MDOS Updates 11:45 a.m.
11. Correspondence 11:50 a.m.
12. Future Agenda Items 11:52 a.m.
13. Announcements 11:55 a.m.
14. Adjournment 12:00 p.m.

**MICHIGAN
INDEPENDENT
CITIZENS
REDISTRICTING
COMMISSION**



2024 MICRC MEETING CALENDAR

January 18

February 15

March 21

April 18

May 16

June 20

July 18

August 15

September 19

October 17

November 21

December 19

All meetings will take place virtually at 10:00 a.m. and are available on the MICRC Facebook page and YouTube Channel. The dates above represent the third Thursday of every month. Please note dates are subject to change or cancellation.

EXHIBIT H

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 19th day of November, 2021.

Present: All the Justices

In Re: Decennial Redistricting Pursuant to
The Constitution of Virginia, art. II, §§ 6 to 6-A,
and Virginia Code § 30-399

REDISTRICTING APPOINTMENT ORDER

Pursuant to Article II, Sections 6 and 6-A of the Constitution of Virginia and Code § 30-399(F), the Court unanimously appoints Sean P. Trende and Bernard N. Grofman to serve as Special Masters for the preparation of proposed redistricting maps for the General Assembly of Virginia. Though each was nominated by legislative leaders of a particular political party, the nominees — upon being appointed by this Court as Special Masters — shall serve as officers of the Court in a quasi-judicial capacity. Consequently, the Special Masters shall be neutral and shall not act as advocates or representatives of any political party. By accepting their appointment, the Special Masters warrant that they have no “conflicts of interest,” Code § 30-399(F), that preclude them from prudently exercising independent judgment, dispassionately following the Court’s instructions, or objectively applying the governing decision-making criteria.

I.

Pursuant to Code § 30-399(F), the Special Masters “shall work together to develop any plan to be submitted to the Court for its consideration.” The Court directs the Special Masters to confer among themselves to propose a single redistricting map for the Virginia House of Delegates, a single redistricting map for the Senate of Virginia, and a single redistricting map for

Virginia's representatives to the United States House of Representatives. Any disputes between the Special Masters must be resolved by good-faith efforts to find a compromise consistent with governing legal requirements. The Court orders the Special Masters to present the proposed maps to the Court as soon as reasonably practicable but in no event later than 30 days from the date of this Redistricting Appointment Order.

The Special Masters must not consult with any political parties, partisan organizations, outside experts, or any other person or entity except for their personal support staff, the Justices of this Court and their designated staff, the Executive Secretary and designated employees of the Office of the Executive Secretary, the Clerk of Court, and three individuals employed by the Virginia Division of Legislative Services as permitted by Code § 30-399(D). The three employees of the Virginia Division of Legislative Services are Amigo R. Wade, Julie L. Smith, and Margaret E. Lamb, provided each of these employees first signs an Oath of Confidentiality and returns it to the Clerk of Court. The Special Masters, however, may review (and are encouraged to review) comments submitted by any entity or person to the Court's public comment email address, redistricting@vacourts.gov.

II.

In preparing the proposed redistricting maps, the Special Masters must fully comply with federal and state law in the following order of precedence:

- The United States Constitution, particularly Article I, Section 2, and the Equal Protection Clause of the Fourteenth Amendment;
- Applicable federal statutes, particularly the Voting Rights Act of 1965, 52 U.S.C. § 10301;
- The Constitution of Virginia, particularly Article II, Sections 6 to 6-A;
- Applicable Virginia statutes, particularly Code §§ 30-399(E), 24.2-304.04, and any other relevant provision in Chapter 3 of Title 24.2 of the Code of Virginia.

In short, the Court expects to receive from its Special Masters redistricting maps that have been drafted using factors that are fully compliant with constitutional and statutory law applied in an apolitical and nonpartisan manner.

III.

Each Special Master may accept his appointment by promptly executing an engagement agreement with this Court’s Office of the Executive Secretary. The failure to do so will constitute a declination of the appointment.

The Clerk of Court is directed to forward this Redistricting Appointment Order to the Reporter of Decisions for publication in the Virginia Reports.

It is so ORDERED.



(SEAL)

Chief Justice of the Supreme Court of Virginia

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

BOBBY SINGLETON, <i>et al.</i>,)	
)	
Plaintiffs,)	
)	
v.)	Case No.: 2:21-cv-1291-AMM
)	
JOHN H. MERRILL, <i>in his</i>)	
<i>official capacity as Alabama</i>)	THREE-JUDGE COURT
<i>Secretary of State, et al.</i>,)	
)	
Defendants.)	

EVAN MILLIGAN, <i>et al.</i>,)	
)	
Plaintiffs,)	
)	
v.)	Case No.: 2:21-cv-1530-AMM
)	
JOHN H. MERRILL, <i>in his</i>)	
<i>official capacity as Secretary of</i>)	THREE-JUDGE COURT
<i>State of Alabama, et al.</i>,)	
)	
Defendants.)	

Before MARCUS, Circuit Judge, MANASCO and MOORER, District Judges.

BY THE COURT:

**ORDER APPOINTING SPECIAL MASTER AND APPOINTING EXPERT
CARTOGRAPHER**

On January 24, 2022, this three-judge court issued a preliminary injunction barring one of the Defendants in these cases, Alabama Secretary of State John H. Merrill, from conducting congressional elections according to Alabama’s 2021 redistricting plan for its seven seats in the United States House of Representatives (“the Plan”). We concluded that the *Milligan* plaintiffs are substantially likely to establish that the Plan violates Section Two of the Voting Rights Act of 1965, 52 U.S.C. § 10301. We also stayed the January 28, 2022 qualification deadline for Alabama’s 2022 congressional elections for 14 days, through February 11, 2022, to allow the Alabama Legislature the opportunity to enact a remedial plan. And we ordered two other Defendants, Senator Jim McClendon and Representative Chris Pringle, who co-chair Alabama’s Permanent Legislative Committee on Reapportionment (“the Legislators”) to advise us if the Legislature was unable to pass a remedial plan within 14 days of the date of the preliminary injunction, so that we could appoint (at the expense of Defendants) an eminently qualified expert to draw on an expedited basis a map that complies with federal law for use in Alabama’s 2022 congressional elections.

Since we issued the preliminary injunction, we have held two status conferences and remain unaware of any effort by the Legislature to begin the legislative process of passing a new map. *See* Tr. of Jan. 26, 2022 Hrg. at 13–14; Tr. of Jan. 28, 2022 Hrg. at 13; *Singleton* Doc. 98 at 2. Accordingly, the court has

prepared to assume “the unwelcome obligation . . . to devise and impose a reapportionment plan” for use in Alabama’s next congressional elections. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (internal citation and quotation marks omitted).

After we issued the preliminary injunction, we asked the parties to identify potential Special Masters and map-drawing experts to assist the court in preparing a remedial map if it became necessary for the court to do so. Each set of plaintiffs in these cases and the related case, *Caster v. Merrill*, Case No. 2:21-cv-1536-AMM, as well as the Defendants, submitted names of persons for the court to consider. *See Singleton Docs. 94 & 95; Milligan Docs. 121 & 122; Caster Docs. 111 & 112.* After we reviewed those submissions and conducted our own research, at a status conference conducted on January 28, 2022, we asked the parties to comment specifically on two candidates: Mr. Richard Allen as a potential Special Master, and Dr. Nathaniel Persily as a potential expert cartographer.

Mr. Allen is an esteemed public servant with eminent knowledge of Alabama state government. After seven years of active-duty military service, he attended the University of Alabama School of Law, where he earned numerous accolades, including the selection by his classmates as the most outstanding graduate in his final year. After he graduated from law school, he clerked for Alabama Supreme Court Chief Justice Howell Heflin and then commenced his private practice at a well-regarded law firm in Montgomery. After Mr. Heflin was elected to the United States

Senate, Mr. Allen served as his Chief Legislative Assistant for a time. He then returned to Montgomery, where he spent fifteen years in private practice before Alabama Attorney General Jeff Sessions tapped him to serve as Chief Deputy Attorney General. Mr. Allen served in that role for ten years: first with Attorney General Sessions, then with Attorney General William H. Pryor Jr., and then with Attorney General Troy King. He then returned to private practice, but not for long before he was tapped again, this time by Governor Bob Riley to serve as Commissioner of the Alabama Department of Corrections. After five years of service in that role, Mr. Allen left to return to his previous work as Chief Deputy Attorney General, serving this time with Attorney General Luther Strange. Mr. Allen then returned to private practice, where he also served for four years as the parliamentary law advisor for then-Lieutenant Governor Kay Ivey. The foregoing narrative recites only one dimension of Mr. Allen's career of service: after he graduated from law school, Mr. Allen spent twenty years as an officer in the United States Army Reserve and retired from military service with the rank of Brigadier General.

Dr. Persily is a distinguished law professor with eminent knowledge of redistricting issues and electoral maps. He earned undergraduate and graduate degrees in political science from Yale University, an additional graduate degree and doctoral degree in political science from the University of California, Berkeley, and

a law degree from Stanford Law School, where he was President of the STANFORD LAW REVIEW. He served as a law clerk to Judge David S. Tatel on the United States Court of Appeals for the D.C. Circuit; then worked as a Professor of Law at Columbia Law School and a Professor of Law at the University of Pennsylvania Law School; and currently works as the James B. McClatchy Professor of Law at Stanford Law School. He has served as a special master or court-appointed expert to craft congressional or legislative districting plans in Georgia, Maryland, Connecticut, New York, North Carolina, and Pennsylvania. He has published numerous articles in leading peer-reviewed journals on issues surrounding the census and redistricting process; he is one of the authors of a leading election-law casebook; and he regularly comments for national television, radio, and newspaper media on election-law and redistricting issues.

The *Milligan* plaintiffs, *Caster* plaintiffs, and Defendants filed responses to the court's request for comments about Mr. Allen and Dr. Persily. *See Milligan* Docs. 126 & 127; *Caster* Docs. 116 & 117. No plaintiffs objected to the appointment of Mr. Allen or Dr. Persily. However, the *Milligan* and *Caster* plaintiffs did request that Mr. Allen and Dr. Persily be appointed as joint special masters. *Milligan* Doc. 127; *Caster* Doc. 116 at 2. Defendants also had no objection to the appointment of Mr. Allen. Moreover, they had no objection to the appointment of Dr. Persily, provided that he had not "discussed this case with counsel for any party or publicly

taken a position on the preliminary injunction.” *Milligan* Doc. 126. Defendants also “note[d] that the district court has provided the Legislature until February 7 to pass a remedial plan,” advised the court that their emergency application for a stay of the preliminary injunction remains pending in the Supreme Court, and “object[ed] to any Court-retained experts incurring costs until after February 7, 2022.” *Id.* at 2–3. The court has since inquired of Dr. Persily and is satisfied that he has neither communicated about this case with counsel for any party nor taken a public position on the preliminary injunction.

Accordingly, we advised the parties in an Order dated February 3, 2022 that if the Legislature was unable to enact a new map as of today’s date, the court would draw on its inherent authority and, pursuant to Federal Rule of Civil Procedure 53, issue a detailed order appointing Mr. Allen as Special Master and appointing Dr. Persily as an expert cartographer, with instructions (1) not to incur costs until February 8, 2022 and, thereafter (2) to consult all parties about the parties’ proposals for drawing a remedial map and to obtain the supporting data at the earliest opportunity after that date. This is that Order.

Pursuant to the court’s inherent authority and Federal Rule of Civil Procedure 53, Mr. Richard Allen is **APPOINTED** Special Master and Dr. Nathaniel Persily is **APPOINTED** as the court’s expert cartographer, with the following authority, responsibility, and instructions:

1. The Special Master and expert cartographer are empowered and charged with the duty to prepare and recommend to the court a remedial map or maps, or to recommend a remedial map or maps proposed by any of the parties, for the court to order Secretary Merrill to use in Alabama's upcoming congressional elections, consistent with the preliminary injunction.

2. In developing a remedial map or maps, or recommending a remedial map or maps proposed by any of the parties, the Special Master and expert cartographer must (a) use 2020 census data; (b) adhere to the requirements of the United States Constitution and the Voting Rights Act; and (c) consider and make all reasonable efforts where possible to defer to the redistricting guidelines promulgated by the Alabama Legislature, which are attached hereto as Appendix A.

3. The Special Master and expert cartographer are authorized to retain appropriate assistants and experts as may be reasonably necessary for them to accomplish their task within the time constraints imposed by this Order. The expert cartographer is authorized to buy any specialized software reasonably necessary to facilitate his work.

4. The Special Master and expert cartographer are authorized to issue appropriate orders as may be reasonably necessary for them to accomplish their task within the time constraints imposed by this Order.

5. The Special Master and expert cartographer may not engage in *ex parte* communications with the parties or their counsel, but may engage in *ex parte* communications with the court as the need may arise.

6. The Special Master and expert cartographer shall consider any proposals, plans, and comments submitted to them by any of the parties to these cases, and they are directed to invite submissions and comments, take testimony, and hold hearings as may be necessary to reasonably assist them to develop a remedial plan (or to recommend a remedial plan that any of the parties has proposed).

7. All reasonable costs and expense of the Special Master and expert cartographer, including reasonable compensation for those persons and any assistants they may retain, shall (subject to the approval of this court) be paid by the State of Alabama. The Special Master and expert cartographer are directed not to incur any costs before February 8, 2022.

8. We are fully aware of the need to have a remedial map in place as soon as is reasonably possible. Accordingly, we direct that the Special Master and expert

cartographer file a report that contains the recommended map(s) and explains the basis for the recommendation(s) not later than **February 22, 2022**.

To facilitate the work of the Special Master and expert cartographer:

1. Defendants are **ORDERED** to notify Dr. Persily in writing and not later than 12:00 pm Central Standard Time Tuesday, February 8, 2022 whether they have a Maptitude license to make available for him to use for his work on this case, or whether it will be necessary for Dr. Persily to acquire one for that purpose (the cost of which ultimately will be taxed to Defendants).

2. The *Milligan* and *Singleton* plaintiffs are **ORDERED** to provide to Dr. Persily not later than 12:00 pm Central Standard Time Tuesday, February 8, 2022:

a. The block equivalency files for the remedial maps offered by the *Milligan* plaintiffs in connection with their claims under the Voting Rights Act (the plans that are referred to in the preliminary injunction as the “Duchin plans” and the “Hatcher plan”).

b. The block equivalency files for the remedial maps offered by the *Singleton* plaintiffs in connection with their claim (the plans that are referred to in the preliminary injunction as the “Whole County Plans”).

3. Defendants are **ORDERED** to provide to Dr. Persily not later than 12:00 pm Central Standard Time Tuesday, February 8, 2022, (1) the block equivalency files for the Plan and its predecessor, the plan described in the preliminary injunction as “the 2011 congressional map,” (2) shapefiles for Alabama’s municipalities and current voting districts (precincts), and (3) a shapefile reflecting the location of the current residence of each of Alabama’s current members of the United States House of Representatives.

After the Special Master and expert cartographer file the report and recommendations, this court will hold a public hearing to receive comments and objections, if there are any, to the recommended plan(s).

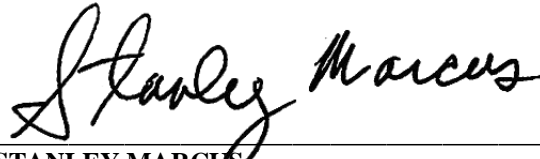
We are mindful that the Legislature has substantially more discretion than we do in drawing a remedial map: state legislatures may consider political

circumstances that courts may not. *See, e.g., Upham v. Seamon*, 456 U.S. 37, 39–43 (1982); *Connor v. Finch*, 431 U.S. 407, 414–15 (1977); *Wyche v. Madison Parish Police Jury*, 635 F.2d 1151, 1160 (5th Cir. 1981). Our instructions to the Special Master and expert cartographer are consistent with these limitations.

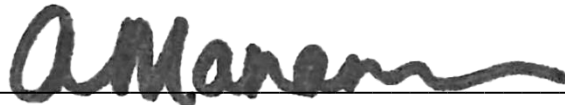
We remain hopeful that the Alabama Legislature will take up the task of passing an electoral map that complies with federal law. Nothing in this Order or any previous Order of this court prevents or should discourage the Legislature from taking up that task. “It is well settled that ‘reapportionment is primarily the duty and responsibility of the State,’” *Miller v. Johnson*, 515 U.S. 900, 915 (1995) (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975)); that “it is the domain of the States, and not the federal courts, to conduct apportionment in the first place,” *Voinovich v. Quilter*, 507 U.S. 146, 156 (1993); that each State has a “sovereign interest in implementing its redistricting plan,” *Bush v. Vera*, 517 U.S. 952, 978 (1996); that “drawing lines for congressional districts is one of the most significant acts a State can perform to ensure citizen participation in republican self-governance,” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 416 (2006) (citation omitted); and that because “the Constitution vests redistricting responsibilities foremost in the legislatures of the States and in Congress, a lawful, legislatively enacted plan should be preferable to one drawn by the courts,” *id.*

If any party anticipates or encounters any difficulty complying with any aspect of this Order, that party is **DIRECTED** to advise the court without delay.

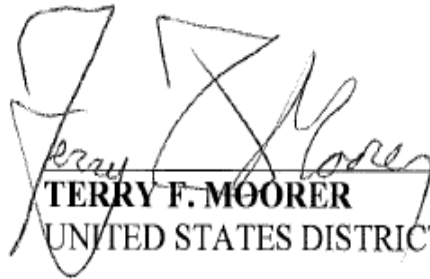
DONE and **ORDERED** this 7th day of February, 2022.



STANLEY MARCUS
UNITED STATES CIRCUIT JUDGE



ANNA M. MANASCO
UNITED STATES DISTRICT JUDGE



TERRY F. MOORER
UNITED STATES DISTRICT JUDGE

APPENDIX A

1 **REAPPORTIONMENT COMMITTEE REDISTRICTING GUIDELINES**

2 May 5, 2021

3 **I. POPULATION**

4 The total Alabama state population, and the population of defined subunits
5 thereof, as reported by the 2020 Census, shall be the permissible data base used
6 for the development, evaluation, and analysis of proposed redistricting plans. It is
7 the intention of this provision to exclude from use any census data, for the purpose
8 of determining compliance with the one person, one vote requirement, other than
9 that provided by the United States Census Bureau.

10 **II. CRITERIA FOR REDISTRICTING**

11 a. Districts shall comply with the United States Constitution, including the
12 requirement that they equalize total population.

13 b. Congressional districts shall have minimal population deviation.

14 c. Legislative and state board of education districts shall be drawn to achieve
15 substantial equality of population among the districts and shall not exceed an
16 overall population deviation range of $\pm 5\%$.

17 d. A redistricting plan considered by the Reapportionment Committee shall
18 comply with the one person, one vote principle of the Equal Protection Clause of
19 the 14th Amendment of the United States Constitution.

20 e. The Reapportionment Committee shall not approve a redistricting plan that
21 does not comply with these population requirements.

22 f. Districts shall be drawn in compliance with the Voting Rights Act of 1965, as
23 amended. A redistricting plan shall have neither the purpose nor the effect of
24 diluting minority voting strength, and shall comply with Section 2 of the Voting
25 Rights Act and the United States Constitution.

26 g. No district will be drawn in a manner that subordinates race-neutral
27 districting criteria to considerations of race, color, or membership in a language-
28 minority group, except that race, color, or membership in a language-minority
29 group may predominate over race-neutral districting criteria to comply with
30 Section 2 of the Voting Rights Act, provided there is a strong basis in evidence in
31 support of such a race-based choice. A strong basis in evidence exists when there
32 is good reason to believe that race must be used in order to satisfy the Voting Rights
33 Act.

1 h. Districts will be composed of contiguous and reasonably compact
2 geography.

3 i. The following requirements of the Alabama Constitution shall be complied
4 with:

5 (i) Sovereignty resides in the people of Alabama, and all districts should be
6 drawn to reflect the democratic will of all the people concerning how their
7 governments should be restructured.

8 (ii) Districts shall be drawn on the basis of total population, except that voting
9 age population may be considered, as necessary to comply with Section 2 of the
10 Voting Rights Act or other federal or state law.

11 (iii) The number of Alabama Senate districts is set by statute at 35 and, under
12 the Alabama Constitution, may not exceed 35.

13 (iv) The number of Alabama Senate districts shall be not less than one-fourth or
14 more than one-third of the number of House districts.

15 (v) The number of Alabama House districts is set by statute at 105 and, under
16 the Alabama Constitution, may not exceed 106.

17 (vi) The number of Alabama House districts shall not be less than 67.

18 (vii) All districts will be single-member districts.

19 (viii) Every part of every district shall be contiguous with every other part of the
20 district.

21 j. The following redistricting policies are embedded in the political values,
22 traditions, customs, and usages of the State of Alabama and shall be observed to
23 the extent that they do not violate or subordinate the foregoing policies prescribed
24 by the Constitution and laws of the United States and of the State of Alabama:

25 (i) Contests between incumbents will be avoided whenever possible.

26 (ii) Contiguity by water is allowed, but point-to-point contiguity and long-lasso
27 contiguity is not.

28 (iii) Districts shall respect communities of interest, neighborhoods, and political
29 subdivisions to the extent practicable and in compliance with paragraphs a
30 through i. A community of interest is defined as an area with recognized
31 similarities of interests, including but not limited to ethnic, racial, economic, tribal,
32 social, geographic, or historical identities. The term communities of interest may,
33 in certain circumstances, include political subdivisions such as counties, voting

1 precincts, municipalities, tribal lands and reservations, or school districts. The
2 discernment, weighing, and balancing of the varied factors that contribute to
3 communities of interest is an intensely political process best carried out by elected
4 representatives of the people.

5 (iv) The Legislature shall try to minimize the number of counties in each district.

6 (v) The Legislature shall try to preserve the cores of existing districts.

7 (vi) In establishing legislative districts, the Reapportionment Committee shall
8 give due consideration to all the criteria herein. However, priority is to be given to
9 the compelling State interests requiring equality of population among districts and
10 compliance with the Voting Rights Act of 1965, as amended, should the
11 requirements of those criteria conflict with any other criteria.

12 g. The criteria identified in paragraphs j(i)-(vi) are not listed in order of
13 precedence, and in each instance where they conflict, the Legislature shall at its
14 discretion determine which takes priority.

15 **III. PLANS PRODUCED BY LEGISLATORS**

16 1. The confidentiality of any Legislator developing plans or portions thereof
17 will be respected. The Reapportionment Office staff will not release any
18 information on any Legislator's work without written permission of the Legislator
19 developing the plan, subject to paragraph two below.

20 2. A proposed redistricting plan will become public information upon its
21 introduction as a bill in the legislative process, or upon presentation for
22 consideration by the Reapportionment Committee.

23 3. Access to the Legislative Reapportionment Office Computer System, census
24 population data, and redistricting work maps will be available to all members of
25 the Legislature upon request. Reapportionment Office staff will provide technical
26 assistance to all Legislators who wish to develop proposals.

27 4. In accordance with Rule 23 of the Joint Rules of the Alabama Legislature
28 “[a]ll amendments or revisions to redistricting plans, following introduction as a
29 bill, shall be drafted by the Reapportionment Office.” Amendments or revisions
30 must be part of a whole plan. Partial plans are not allowed.

31 5. In accordance with Rule 24 of the Joint Rules of the Alabama Legislature,
32 “[d]rafts of all redistricting plans which are for introduction at any session of the
33 Legislature, and which are not prepared by the Reapportionment Office, shall be
34 presented to the Reapportionment Office for review of proper form and for entry
35 into the Legislative Data System at least ten (10) days prior to introduction.”

1 **IV. REAPPORTIONMENT COMMITTEE MEETINGS AND PUBLIC**
2 **HEARINGS**

3 1. All meetings of the Reapportionment Committee and its sub-committees
4 will be open to the public and all plans presented at committee meetings will be
5 made available to the public.

6 2. Minutes of all Reapportionment Committee meetings shall be taken and
7 maintained as part of the public record. Copies of all minutes shall be made
8 available to the public.

9 3. Transcripts of any public hearings shall be made and maintained as part of
10 the public record, and shall be available to the public.

11 4. All interested persons are encouraged to appear before the
12 Reapportionment Committee and to give their comments and input regarding
13 legislative redistricting. Reasonable opportunity will be given to such persons,
14 consistent with the criteria herein established, to present plans or amendments
15 redistricting plans to the Reapportionment Committee, if desired, unless such
16 plans or amendments fail to meet the minimal criteria herein established.

17 5. Notice of all Reapportionment Committee meetings will be posted on
18 monitors throughout the Alabama State House, the Reapportionment Committee's
19 website, and on the Secretary of State's website. Individual notice of
20 Reapportionment Committee meetings will be sent by email to any citizen or
21 organization who requests individual notice and provides the necessary
22 information to the Reapportionment Committee staff. Persons or organizations
23 who want to receive this information should contact the Reapportionment Office.

24 **V. PUBLIC ACCESS**

25 1. The Reapportionment Committee seeks active and informed public
26 participation in all activities of the Committee and the widest range of public
27 information and citizen input into its deliberations. Public access to the
28 Reapportionment Office computer system is available every Friday from 8:30 a.m.
29 to 4:30 p.m. Please contact the Reapportionment Office to schedule an
30 appointment.

31 2. A redistricting plan may be presented to the Reapportionment Committee
32 by any individual citizen or organization by written presentation at a public
33 meeting or by submission in writing to the Committee. All plans submitted to the
34 Reapportionment Committee will be made part of the public record and made
35 available in the same manner as other public records of the Committee.

1 3. Any proposed redistricting plan drafted into legislation must be offered by a
2 member of the Legislature for introduction into the legislative process.

3 4. A redistricting plan developed outside the Legislature or a redistricting plan
4 developed without Reapportionment Office assistance which is to be presented for
5 consideration by the Reapportionment Committee must:

6 a. Be clearly depicted on maps which follow 2020 Census geographic
7 boundaries;

8 b. Be accompanied by a statistical sheet listing total population for each district
9 and listing the census geography making up each proposed district;

10 c. Stand as a complete statewide plan for redistricting.

11 d. Comply with the guidelines adopted by the Reapportionment Committee.

12 5. Electronic Submissions

13 a. Electronic submissions of redistricting plans will be accepted by the
14 Reapportionment Committee.

15 b. Plans submitted electronically must also be accompanied by the paper
16 materials referenced in this section.

17 c. See the Appendix for the technical documentation for the electronic
18 submission of redistricting plans.

19 6. Census Data and Redistricting Materials

20 a. Census population data and census maps will be made available through the
21 Reapportionment Office at a cost determined by the Permanent Legislative
22 Committee on Reapportionment.

23 b. Summary population data at the precinct level and a statewide work maps
24 will be made available to the public through the Reapportionment Office at a cost
25 determined by the Permanent Legislative Committee on Reapportionment.

26 c. All such fees shall be deposited in the state treasury to the credit of the
27 general fund and shall be used to cover the expenses of the Legislature.

28 **Appendix.**

29 **ELECTRONIC SUBMISSION OF REDISTRICTING PLANS**

30 **REAPPORTIONMENT COMMITTEE - STATE OF ALABAMA**

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The Legislative Reapportionment Computer System supports the electronic submission of redistricting plans. The electronic submission of these plans must be via email or a flash drive. The software used by the Reapportionment Office is Maptitude.

The electronic file should be in DOJ format (Block, district # or district #, Block). This should be a two column, comma delimited file containing the FIPS code for each block, and the district number. Maptitude has an automated plan import that creates a new plan from the block/district assignment list.

Web services that can be accessed directly with a URL and ArcView Shapefiles can be viewed as overlays. A new plan would have to be built using this overlay as a guide to assign units into a blank Maptitude plan. In order to analyze the plans with our attribute data, edit, and report on, a new plan will have to be built in Maptitude.

In order for plans to be analyzed with our attribute data, to be able to edit, report on, and produce maps in the most efficient, accurate and time saving procedure, electronic submissions are REQUIRED to be in DOJ format.

Example: (DOJ FORMAT BLOCK, DISTRICT #)

SSCCCTTTTTTBBBBDDDD

- SS is the 2 digit state FIPS code
- CCC is the 3 digit county FIPS code
- TTTTTT is the 6 digit census tract code
- BBBB is the 4 digit census block code
- DDDD is the district number, right adjusted

Contact Information:

Legislative Reapportionment Office
Room 317, State House
11 South Union Street
Montgomery, Alabama 36130
(334) 261-0706

1 For questions relating to reapportionment and redistricting, please contact:

2 Donna Overton Loftin, Supervisor

3 Legislative Reapportionment Office

4 donna.overton@alsenate.gov

5 Please Note: The above e-mail address is to be used only for the purposes of
6 obtaining information regarding redistricting. Political messages, including those
7 relative to specific legislation or other political matters, cannot be answered or
8 disseminated via this email to members of the Legislature. Members of the
9 Permanent Legislative Committee on Reapportionment may be contacted through
10 information contained on their Member pages of the Official Website of the
11 Alabama Legislature, legislature.state.al.us/aliswww/default.aspx.