

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

Michigan Republican Party, *et al.*,

Plaintiffs,

Case No.: 19-cv-00669-JTN-ESC

v

Hon. Janet T. Neff
Magistrate Judge Ellen S. Carmody

Jocelyn Benson, in her official capacity as
Michigan Secretary of State,

Defendant,

and

Count MI Vote, d/b/a Voters Not Politicians,

Intervenor-Defendant.

**INTERVENOR-DEFENDANT'S
ANSWER AND AFFIRMATIVE DEFENSES**

NOW COMES Intervenor-Defendant Count MI Vote, d/b/a Voters Not Politicians (“Voters Not Politicians”), a Michigan non-profit corporation, by and through its attorneys, Fraser Trebilcock Davis & Dunlap, P.C. and the Campaign Legal Center, and for its Answer to the Complaint and Affirmative Defenses states as follows:

1. This civil rights action is brought pursuant to 42 U.S.C. § 1983 to vindicate rights secured by the First and Fourteenth Amendments to the United States Constitution.

***ANSWER:* Voters Not Politicians acknowledges that Plaintiffs have filed this action seeking relief pursuant to 42 U.S.C. § 1983, alleging violation of rights secured by the First and Fourteenth Amendments to the United States Constitution. In further response, Voters Not Politicians states that Plaintiffs’ Complaint has failed to allege any facts establishing a basis for a finding that there has been, or will be, a violation of any of those rights.**

2. At the November 6, 2018 general election, Michigan voters approved a ballot proposal to amend the Michigan Constitution to establish an independent citizens redistricting commission to oversee redistricting of state legislative and congressional districts.

ANSWER: Voters Not Politicians acknowledges that Michigan’s voters approved Proposal 18-2 creating the constitutional provisions at issue in this matter in the general election of 2018. Although the new constitutional provisions speak for themselves, Voters Not Politicians notes that the newly created independent citizens redistricting commission does not merely “oversee” redistricting of state and congressional districts as alleged; it is given exclusive authority to make and approve redistricting plans, subject to limited review by the Michigan Supreme Court.

3. Although marketed to the public and voters as an “independent” commission to redress alleged partisan gerrymandering, the ballot proposal in fact established a partisan public body with commissioner eligibility and selection specifically tied to political affiliation, while also disqualifying countless individuals (and their relatives and associates) for current and past political activity and expression.

ANSWER: Voters Not Politicians acknowledges that Proposal 18-2 was advertised and endorsed as a proposal to create an independent commission to redress the problem of partisan gerrymandering but denies that the approved constitutional amendment established a partisan public body because that allegation is untrue. No response is required with respect to the remaining allegations contained in Paragraph 3, which inaccurately characterize the content of the new constitutional provisions, because those provisions speak for themselves.

4. The ballot proposal creates a system whereby members to a partisan public office are selected without any involvement of state political parties that historically have played a key role in selecting their respective standard bearers.

ANSWER: In response to Paragraph 4, Voters Not Politicians notes that the constitutional provisions at issue in this matter are no longer a ballot proposal but are instead provisions of the Michigan Constitution duly approved by the voters. Voters Not Politicians denies that the approved constitutional amendment established a partisan public office because that allegation is untrue. Voters Not Politicians neither admits nor denies Plaintiffs’ allegation concerning the historical role of state political parties, as the meaning of that allegation is unclear and thus, Plaintiffs do not have sufficient knowledge



or information to form a belief as to the truth of that allegation, but shall leave the Plaintiffs to their proofs. No response is required with respect to Plaintiffs' allegation concerning the selection of commissioners, as the provisions governing the selection process are specified in the new constitutional language, which speaks for itself.

5. The ballot proposal permits applicants for commissioner to self-designate their party affiliation without any involvement or consent of the applicable political party and without any specific consideration of the applicants' past or current political activity, expression, or involvement.

ANSWER: Voters Not Politicians acknowledges that the new constitutional provisions require applicants for service as members of the Commission to identify their affiliation with one of the two major political parties or to state that they do not affiliate with either of those parties, and do not require that their self-identification of party affiliation or lack thereof be made with any involvement or consent of any political party or specification of the applicant's past or current political activity, expression, or involvement. Voters Not Politicians again notes that the pertinent constitutional provisions speak for themselves.

6. The proposal usurps the role of political parties in selecting their nominees for partisan public office, and in the case of the Michigan Republican Party, places that responsibility instead in the hands of a highly partisan elected official of the opposite political party.

ANSWER: Paragraph 6 does not require a response to the extent that it consists of a statement of one or more legal conclusions. To the extent that Paragraph 6 requires a response, Voters Not Politicians denies the allegations set forth therein, as untrue. In further response, Voters Not Politician again notes that the new constitutional provisions at issue speak for themselves.

7. At the same time, the proposal penalizes applicants who affiliate with one of the two major political parties by allocating a minority of seats on the commission to each of those pools of applicants.

ANSWER: Paragraph 7 does not require a response to the extent that it consists of a statement of one or more legal conclusions. To the extent that Paragraph 7 requires a response, Voters Not Politicians denies the allegations set forth therein, as untrue. In

further response, Voters Not Politician again notes that the new constitutional provisions at issue speak for themselves.

8. The ballot proposal constitutes an unconstitutional burden on associational rights, infringes on freedoms of speech, and violates guarantees of equal protection of the laws.

ANSWER: Paragraph 8 does not require a response to the extent that it consists of a statement of one or more legal conclusions. To the extent that Paragraph 8 requires a response, Voters Not Politicians denies the allegations set forth therein, as untrue.

9. Plaintiffs are not necessarily opposed to the general concept of a redistricting commission, but they vehemently oppose any commission that is structured in a manner that violates their civil rights, as here.

ANSWER: In response to Paragraph 9, Voters Not Politicians denies that the structuring of the new Commission has violated or will violate any of Plaintiffs' civil rights. Voters Not Politicians neither admits nor denies the remaining allegations set forth in Paragraph 9, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

10. Other states have created redistricting commissions without the same constitutional infirmities and violations that exist as a result of the Michigan ballot proposal.

ANSWER: Paragraph 10 does not require a response to the extent that it consists of a statement of one or more legal conclusions. To the extent that Paragraph 10 requires a response, Voters Not Politicians denies that the new constitutional provisions at issue are subject to any constitutional infirmity or violate any of the Plaintiffs' rights. Voters Not Politicians neither admits nor denies the factual allegations regarding the law of other states set forth in Paragraph 10, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

11. In Idaho, members of the redistricting commission are appointed by the four state legislative leaders and by the state chairmen of the two largest political parties in the state. Idaho Const., art. 3, § 2.

ANSWER: Paragraph 11 does not require a response, as the cited provision of the Idaho Constitution may speak for itself. To the extent that Paragraph 11 requires a response, Voters Not Politicians neither admits nor denies the allegations set forth

therein, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

12. In Arizona, state legislative leaders appoint four commissioners to an independent redistricting commission, and those four commissioners then select a fifth member of the commission. Additionally, each member must be a registered Arizona voter “who has been continuously registered with the same political party or registered as unaffiliated with a political party for three or more years immediately preceding appointment.” Ariz. Const., art 4, pt. 2, § 1.

ANSWER: Paragraph 12 does not require a response, as the cited provision of the Arizona Constitution may speak for itself. To the extent that Paragraph 12 requires a response, Voters Not Politicians neither admits nor denies the allegations set forth therein, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

13. And in California, which utilizes a random draw process to select some of the redistricting commission members (like in Michigan), the state constitution provides: “Each commissioner shall be a voter who has been continuously registered in California with the same political party or unaffiliated with a political party and who has not changed political party affiliation for five or more years immediately preceding the date of his or her appointment. Each commission members shall have voted in two of the last three statewide general elections immediately preceding his or her application.” Cal. Const. art 21, § 2.

ANSWER: Paragraph 13 does not require a response, as the cited provision of the California Constitution may speak for itself. To the extent that Paragraph 13 requires a response, Voters Not Politicians neither admits nor denies the allegations set forth therein, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

14. No other state with an independent redistricting commission adopts a system like Michigan, where members to partisan public office are selected without any official party

registration or the involvement of state political parties or their elected standard bearers and where applicants who affiliate with a major political party are intentionally disfavored.

ANSWER: Paragraph 14 does not require a response to the extent that it consists of a statement of one or more legal conclusions. To the extent that Paragraph 14 requires a response, Voters Not Politicians neither admits nor denies Plaintiffs' allegation concerning the laws of other states, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs. Voters Not Politicians denies Plaintiffs' suggestion that the new Commission is a partisan political office and their allegation that applicants who affiliate with a major political party are disfavored, for the reason that they are untrue. In further response, Voters Not Politicians again states that the new constitutional provisions may speak for themselves.

15. Plaintiffs bring this action to remedy the constitutional violations arising from the adoption and implementation of the ballot proposal approved in November 2018.

ANSWER: In response to Paragraph 15, Voters Not Politicians acknowledges that Plaintiffs have brought this action seeking relief for alleged constitutional violations, as stated therein. In further response, Voters Not Politicians affirmatively states that Plaintiffs' Complaint has failed to allege any facts establishing a basis for a finding that there have been, or will be, any such violations.

JURISDICTION AND VENUE

16. This civil rights action arises under the First and Fourteenth Amendments to the United States Constitution and under federal law, 42 U.S.C. § 1983.

ANSWER: Voters Not Politicians acknowledges that Plaintiffs' action seeks relief under the First and Fourteenth Amendments to the United States Constitution and under federal law, 42 U.S.C. § 1983.

17. This Court is vested with original jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1343.

ANSWER: Voters Not Politicians acknowledges that this Court has original jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331 and 1343 if the Court determines that the Plaintiffs have Article III standing.

18. Venue in this Court is proper under 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claim occurred within the district and because Defendant has an office located in Ingham County, which is in the United States District Court, Western District for the State of Michigan.

ANSWER: Voters Not Politicians acknowledges that venue in this Court is proper if the Court determines that the Plaintiffs have Article III standing.

19. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

ANSWER: Voters Not Politicians acknowledges that Plaintiffs' claims are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court, if the Court determines that the Plaintiffs have Article III standing.

IDENTIFICATION OF PARTIES

20. Plaintiff Michigan Republican Party ("MRP") is a "major political party" as that term is defined in Section 16 of the Michigan Election Law. Mich. Comp. Laws § 168.16. MRP maintains headquarters at 520 Seymour Street, Lansing, Michigan 48912. MRP is formed for the general purpose of promoting Republican values and for assisting candidates who share those values with election or appointment to partisan federal, state, and local office. MRP brings this action on behalf of itself and its members.

ANSWER: In response to Paragraph 20, Voters Not Politicians admits that the Michigan Republican Party is a state affiliate of a Major Political Party. Voters Not Politicians neither admits nor denies the remaining allegations set forth therein, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

21. Plaintiff Laura Cox is a resident of Wayne County, Michigan, and is registered and eligible to vote in the State. Cox currently serves as chair of MRP, a position she has held

since 2019. Within the past six years, Cox was a declared candidate for the offices of State Representative and State Senator, each a partisan state office. Cox served as Wayne County Commissioner, a partisan local office, from 2005 through 2014, and as a State Representative, a partisan state office, from 2015 through 2018. Cox wishes to serve on the commission but is ineligible under the VNP Proposal because of her past and current political activity.

ANSWER: Voters Not Politicians neither admits nor denies the allegations set forth in Paragraph 21, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

22. Plaintiff Terri Lynn Land is a resident of Kent County, Michigan, and is registered and eligible to vote in the State. Land currently serves as chair of the 3rd Congressional District of MRP, a position she has held since February 2019; as a member of the MRP State Committee, the governing body of MRP; and as precinct delegate, a partisan local office. Within the past six years, Land was a declared candidate for the office of United States Senator, a partisan federal office, and for the office of precinct delegate, a partisan local office. Within the past six years, Land also served as the National Committeewoman for MRP, a position she held from approximately May 2012 to January 2014. Land wishes to serve on the commission but is ineligible under the VNP Proposal because of her past and current political activity.

ANSWER: Voters Not Politicians neither admits nor denies the allegations set forth in Paragraph 22, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

23. Plaintiff Savina Alexandra Zoe Mucci is a resident of Van Buren County, Michigan, and is registered and eligible to vote in the State. Mucci is the daughter of Tonya Schuitmaker, a former elected official who served in the office of State Senate, a partisan state office, from 2011 through 2018, and a declared candidate in 2018 for the office of Attorney

General, a partisan state office. Mucci wishes to serve on the commission but is ineligible because of her relationship to her mother, Tonya Schuitmaker. But for Mucci's relationship to her mother, she would be an eligible applicant for the commission.

ANSWER: Voters Not Politicians neither admits nor denies the allegations set forth in Paragraph 23, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

24. Plaintiff Dorian Thompson is a resident of Wayne County, Michigan, and is registered and eligible to vote in the State. Within the past six years, Thompson was a declared candidate for the office of precinct delegate, a partisan local office, a position he was elected to and now holds. Thompson wishes to serve on the commission but is ineligible under the VNP Proposal because of his past and current political activity.

ANSWER: Voters Not Politicians neither admits nor denies the allegations set forth in Paragraph 24, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

25. Hank Vaupel is a resident of Livingston County, Michigan, and is registered and eligible to vote in the State. Within the past six years, Vaupel was a declared candidate for the office of State Representative, a partisan state office, a position he was first elected to in the November 2014 general election and still holds. Vaupel currently serves as a member of the Livingston County Republican Party Executive Committee, a position he has held since approximately 2015. Vaupel wishes to serve on the commission but is ineligible under the VNP Proposal because of his past and current political activity.

ANSWER: Voters Not Politicians neither admits nor denies the allegations set forth in Paragraph 25, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

26. Each of the individual Plaintiffs identified in the preceding paragraphs affiliates with MRP.

ANSWER: Voters Not Politicians neither admits nor denies the allegations set forth in Paragraph 26, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

27. Defendant Jocelyn Benson (“Secretary Benson”) is the Secretary of State of Michigan and is named in her official capacity. Secretary Benson is the public official primarily responsible for implementing and administering the state constitutional law that is the subject of this action.

ANSWER: In response to Paragraph 27, Voters Not Politicians acknowledges that Defendant Jocelyn Benson is the Michigan Secretary of State, that she has been named as a defendant in this action in her official capacity, and that she has constitutionally-prescribed duties in relation to the implementation and administration of the new Independent Citizens Redistricting Commission, as specified in the constitutional provisions at issue.

GENERAL ALLEGATIONS

A. Adoption of the VNP Proposal

28. Beginning in 2017, Voters Not Politicians (“VNP”), a ballot-question committee, launched a petition drive to propose amendments to the Michigan Constitution that would establish a commission to oversee redistricting of state legislative and congressional districts (the “VNP Proposal”).¹

ANSWER: Voters Not Politicians admits the allegations set forth in Paragraph 28, except to again note that the newly created independent citizens redistricting commission does not merely “oversee” redistricting of state and congressional districts as alleged; it is given exclusive authority to make and approve redistricting plans, subject to limited review by the Michigan Supreme Court.

29. In December 2017, VNP submitted an adequate number of signatures to place the proposal on the November 2018 general election ballot.

ANSWER: Voters Not Politicians admits the allegations set forth in Paragraph 29.

¹ A copy of the full VNP Proposal is attached as Exhibit A.

30. Prior to the Board of State Canvassers' (the "Board") certification of the petition for the ballot, several plaintiffs filed a complaint in the Michigan Court of Appeals seeking a writ of mandamus directing the Secretary of State and the Board to reject the proposal, arguing the VNP Proposal could be enacted only through a constitutional convention under Mich. Const. 1963, art. 12, § 3 because it constituted a general revision of the Constitution.

ANSWER: Voters Not Politicians admits the allegations set forth in Paragraph 30.

31. VNP and others were permitted to intervene as defendants and sought a writ of mandamus requiring the proposal to be placed on the ballot.

ANSWER: Voters Not Politicians admits the allegations set forth in Paragraph 31.

32. The Michigan Court of Appeals ordered the Secretary and the Board to place the proposal on the November 2018 general election ballot. *Citizens Protecting Michigan's Constitution v Secretary of State*, 324 Mich. App. 561, 922 N.W.2d 404 (2018).

ANSWER: Voters Not Politicians admits the allegations set forth in Paragraph 32.

33. The Michigan Supreme Court affirmed the Court of Appeals, *Citizens Protecting Michigan's Constitution v Secretary of State*, 503 Mich. 42, 921 N.W.2d 247 (2018), and the proposal was placed on the November 2018 general election ballot.

ANSWER: Voters Not Politicians admits the allegations set forth in Paragraph 33.

34. On November 6, 2018, Michigan voters approved the VNP Proposal, thereby amending the Michigan Constitution.

ANSWER: Voters Not Politicians admits the allegations set forth in Paragraph 34.

35. The state court proceedings involved a challenge to the *procedure* for considering the VNP Proposal to create the redistricting commission, i.e., whether the proposal

was eligible for placement on the November 2018 general election ballot only by the convention process of Mich. Const. 1963, art. 12, § 3 or, alternatively, whether it was eligible for placement on the ballot by the initiative process of Mich. Const. 1963, art. 12, § 2.

ANSWER: In response to Paragraph 35, Voters Not Politicians acknowledges that the state court challenges adjudicated in Michigan were limited to state constitutional and statutory claims concerning the propriety of submitting Proposal 18-2 to the voters in the general election.

36. The prior proceedings in state court did *not* directly involve a constitutional challenge to the substance of the VNP Proposal—that is the subject of this present action.

ANSWER: In response to Paragraph 36, Voters Not Politicians acknowledges that the prior state court challenges did not address the federal constitutional claims now presented in this action.

B. Content of the VNP Proposal

37. The VNP Proposal, as approved, amended 11 different sections of the Michigan Constitution, including changes to sections regarding the respective powers of the legislative, executive, and judicial branches of state government.

ANSWER: Paragraph 37 requires no response, as the approved constitutional amendment speaks for itself.

38. Most significantly, the proposal amended Mich. Const. 1963, art. 4, § 6 to establish a new 13-member independent citizens redistricting commission to oversee redistricting of state legislative and congressional districts.

ANSWER: Paragraph 38 requires no response, as the approved constitutional amendment speaks for itself.

39. In general, amended article 4, section 6 establishes the eligibility criteria and the manner of selection for commissioners, provides for the operation and funding of the commission, and outlines the process for the commission's redistricting process.

ANSWER: Paragraph 39 requires no response, as the approved constitutional amendment speaks for itself.

40. Mich. Const. 1963, art. 4, § 6, subsection (1) establishes the eligibility criteria for commissioners as follows:

- (1) An independent citizens redistricting commission for state legislative and congressional districts (hereinafter, the “commission”) is hereby established as a permanent commission in the legislative branch. The commission shall consist of 13 commissioners. The commission shall adopt a redistricting plan for each of the following types of districts: state senate districts, state house of representative districts, and congressional districts. Each commissioner shall:
 - (a) Be registered and eligible to vote in the State of Michigan;
 - (b) Not currently be or in the past 6 years have been any of the following:
 - (i) A declared candidate for partisan federal, state, or local office;
 - (ii) An elected official to partisan federal, state, or local office;
 - (iii) An officer or member of the governing body of a national, state, or local political party;
 - (iv) A paid consultant or employee of a federal, state, or local elected official or political candidate, of a federal, state, or local political candidate’s campaign, or of a political action committee;
 - (v) An employee of the legislature;
 - (vi) Any person who is registered as a lobbyist agent with the Michigan bureau of elections, or any employee of such person; or
 - (vii) An unclassified state employee who is exempt from classification in state civil service pursuant to article XI, section 5, except for employees of courts of record, employees of the state institutions of higher education, and persons in the armed forces of the state;
 - (c) Not be a parent, stepparent, child, stepchild, or spouse of any individual disqualified under part (1)(b) of this section; or
 - (d) Not be otherwise disqualified for appointed or elected office by this constitution.
 - (e) For five years after the date of appointment, a commissioner is ineligible to hold a partisan elective office at the state, county, city, village, or township level in Michigan.

ANSWER: Paragraph 40 requires no response, as the approved constitutional amendment speaks for itself.

41. Mich. Const. 1963, art. 4, § 6, part (1)(b) describes disqualifying criteria that exclude from the commission any individual who is, or in the past six years has been, any of the following: a declared candidate for partisan federal, state, or local office; an elected official to partisan federal, state, or local office; an officer or member of the governing body of a national, state, or local political party; or a paid consultant or employee of a federal, state, or local elected official or political candidate, of a federal, state, or local political candidate's campaign, or of a political action committee. These disqualifying criteria largely focus on the political association and expression of the individual and operate as a complete bar to service on the commission.

ANSWER: Paragraph 41 requires no response, as the approved constitutional amendment speaks for itself.

42. Mich. Const. 1963, art. 4, § 6, part (1)(c) imputes those same disqualifying criteria to family members of an individual disqualified under part (1)(b), including any parent, stepparent, child, stepchild, and spouse of the disqualified individual—regardless whether those individuals have the same political associations, different associations, or none whatsoever, and regardless whether those individuals have engaged in any of the same expressive activities described in part (1)(b).

ANSWER: Paragraph 42 requires no response, as the approved constitutional amendment speaks for itself.

43. Mich. Const. 1963, art. 4, § 6, subsection (2) establishes a process for selecting commissioners as follows:

(2) Commissioners shall be selected through the following process:

(a) The secretary of state shall do all of the following:

(i) Make applications for commissioner available to the general public not later than January 1 of the year of the federal decennial census. The secretary of state shall circulate the applications in a manner that invites wide public participation from different regions of the state. The secretary of state shall also mail applications for commissioner to ten thousand Michigan registered voters, selected at random, by January 1 of the year of the federal decennial census.

(ii) Require applicants to provide a completed application.

(iii) Require applicants to attest under oath that they meet the qualifications set forth in this section; and either that they affiliate with one of the two political parties with the largest representation in the legislature (hereinafter, "major parties"), and if so, identify the party with which they affiliate, or that they do not affiliate with either of the major parties.

(b) Subject to part (2)(c) of this section, the secretary of state shall mail additional applications for commissioner to Michigan registered voters selected at random until 30 qualifying applicants that affiliate with one of the two major parties have submitted applications, 30 qualifying applicants that identify that they affiliate with the other of the two major parties have submitted applications, and 40 qualifying applicants that identify that they do not affiliate with either of the two major parties have submitted applications, each in response to the mailings.

(c) The secretary of state shall accept applications for commissioner until June 1 of the year of the federal decennial census.

(d) By July 1 of the year of the federal decennial census, from all of the applications submitted, the secretary of state shall:

(i) Eliminate incomplete applications and applications of applicants who do not meet the qualifications in parts (1)(a) through (1)(d) of this section based solely on the information contained in the applications;

(ii) Randomly select 60 applicants from each pool of affiliating applicants and 80 applicants from the pool of non-affiliating applicants. 50% of each pool shall be populated from the qualifying applicants to such pool who returned an application mailed pursuant to part 2(a) or 2(b) of this section, provided, that if fewer than 30 qualifying applicants affiliated with a major party or fewer than 40 qualifying non-affiliating applicants have applied to serve on the commission in response to the random mailing, the balance of the pool shall be populated from the balance of qualifying applicants to that pool. The random selection process used by the secretary of state to fill the selection pools shall

use accepted statistical weighting methods to ensure that the pools, as closely as possible, mirror the geographic and demographic makeup of the state; and

(iii) Submit the randomly-selected applications to the majority leader and the minority leader of the senate, and the speaker of the house of representatives and the minority leader of the house of representatives.

(e) By August 1 of the year of the federal decennial census, the majority leader of the senate, the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives may each strike five applicants from any pool or pools, up to a maximum of 20 total strikes by the four legislative leaders.

(f) By September 1 of the year of the federal decennial census, the secretary of state shall randomly draw the names of four commissioners from each of the two pools of remaining applicants affiliating with a major party, and five commissioners from the pool of remaining non-affiliating applicants.

ANSWER: Paragraph 43 requires no response, as the approved constitutional amendment speaks for itself.

44. Mich. Const. 1963, art. 4, § 6, part (2)(a) requires applicants to attest under oath either that they affiliate with one of the two major political parties and, if so, to identify the party with which they affiliate, or that they do not affiliate with either of the major parties.

ANSWER: Paragraph 44 requires no response, as the approved constitutional amendment speaks for itself.

45. The VNP Proposal does not define “affiliation” for purposes of the oath requirement.

ANSWER: Voters Not Politicians admits the allegation set forth in Paragraph 45, but again notes that the constitutional provisions at issue in this matter are no longer a ballot proposal but are instead provisions of the Michigan Constitution duly approved by the voters.

46. The self-designated party affiliation is made without any involvement whatsoever of either of the major parties and without any specific consideration of the applicants’ past or current political activity, expression, or involvement.

ANSWER: Voters Not Politicians acknowledges that the new constitutional provisions require applicants for service as members of the Commission to identify their

affiliation with one of the two major political parties or to state that they do not affiliate with either of those parties, and do not require that their self-identification of party affiliation or lack thereof be made with any involvement or consent of any political party or specification of the applicant's past or current political activity, expression, or involvement. Voters Not Politicians again notes that the pertinent constitutional provisions speak for themselves.

47. Mich. Const. 1963, art. 4, § 6, part (2)(e) allows each of the four state legislative leaders to strike up to five applicants from any pool or pools of applicants, regardless of the political affiliation of the legislative leader or that of the applicants. In other words, it is very possible—even likely—that a Democratic legislative leader could strike from consideration a commissioner applicant who affiliates with the Republican party, or vice-versa.

ANSWER: In response to Paragraph 47, Voters Not Politicians acknowledges that Article IV, § 6 (2)(e) allows each of the four legislative leaders – two from each of the two major political parties – to strike up to five candidates from any one or more of the pools of applicants, and again notes that the constitutional language speaks for itself. The remaining allegations set forth in that Paragraph consist solely of speculation, and therefore do not constitute allegations of fact requiring a response.

48. Mich. Const. 1963, art. 4, § 6, part (2)(f) reserves four commissioner positions to each of the pools of candidates who affiliate with one of the two major political parties, while reserving five commissioner positions to the pool of candidates who do not affiliate with either major party.

ANSWER: Voters Not Politicians admits the allegations set forth in Paragraph 48.

49. Mich. Const. 1963, art. 4, § 6, subsection (11) governs the conduct of the commission and its members, staff, attorneys, and consultants by restricting their speech as follows:

(11) The commission, its members, staff, attorneys, and consultants shall not discuss redistricting matters with members of the public outside of an open meeting of the commission, except that a commissioner may communicate about redistricting matters with members of the public to gain information relevant to the performance of his or her duties if such

communication occurs (a) in writing or (b) at a previously publicly noticed forum or town hall open to the general public.

ANSWER: Paragraph 49 requires no response, as the approved constitutional amendment speaks for itself.

50. The VNP Proposal provides that it is self-executing and expressly limits the ability of the Michigan legislature to enact state laws to implement its provisions and address ambiguity and uncertainty in the language of the proposal.

ANSWER: Paragraph 50 does not require a response, as the approved constitutional amendment speaks for itself. Voters Not Politicians acknowledges, however, that the new constitutional language does provide, in subsection 6 (20), that the provisions of § 6 are self-executing; that subsection 6 (20) also includes a severability clause directing that § 6 shall be implemented to the maximum extent allowable under the United States Constitution and federal law in the event that any of its provisions are found to be in conflict with the United States Constitution or federal law; and that the new constitutional language provides that the Commission is not subject to control by the Legislature.

C. Implementation of the VNP Proposal

51. Under the VNP Proposal, the Secretary of State is primarily responsible for the administration and implementation of the new constitutional provisions concerning the selection of commissioners and creation of a commission.

ANSWER: In response to Paragraph 51, Voters Not Politicians acknowledges that the Secretary of State is responsible for the performance of her constitutionally-prescribed duties in relation to the implementation and administration of the new Independent Citizens Redistricting Commission, as specified in the constitutional provisions at issue.

52. Secretary Benson is beginning to implement the VNP Proposal.

ANSWER: In response to Paragraph 52, Voters Not Politicians acknowledges that the Secretary of State has begun the process of preparing for the performance of her constitutionally-prescribed duties in relation to the implementation and administration of the new Independent Citizens Redistricting Commission.

53. Secretary Benson has posted informational materials and resources regarding the independent citizens redistricting commission on the official Department of State website and on RedistrictingMichigan.org, including a “citizen’s guide” and “timeline,” as well as a form for interested individuals to complete in order to receive a commissioner application when it becomes available. See generally https://www.michigan.gov/sos/0,4670,7-127-1633_91141---,00.html (last accessed August 14, 2019).

ANSWER: Voters Not Politicians admits the allegations set forth in Paragraph 53.

54. Referencing the constitutional amendment, the citizen’s guide on the Department of State website states that the following individuals cannot serve on the commission: partisan elected officials, candidates, registered lobbyists and their employees and close relatives.

ANSWER: Paragraph 54 requires no response, as the content of the Secretary of State’s citizens guide referenced therein speaks for itself.

55. The citizens guide also provides, “The commission must include four people who self-identify with the Democratic Party, four people who self-identify with the Republican Party and five people who self-identify as unaffiliated with either of those political parties.”

ANSWER: Paragraph 55 requires no response, as the content of the Secretary of State’s citizens guide referenced therein speaks for itself.

56. Secretary Benson has also posted for public comment a draft application and eligibility guidelines. See generally https://www.michigan.gov/sos/0,4670,7-127-1633_91141---,00.html (last accessed August 14, 2019).

ANSWER: Voters Not Politicians admits the allegations set forth in Paragraph 56.

57. The draft eligibility guidelines restate the disqualifying criteria and interpret those criteria to extend, for example, to individuals who have declared candidacy for or been elected to the position of precinct delegate.

ANSWER: Paragraph 57 requires no response, as the content of the Secretary of State’s draft eligibility guidelines referenced therein speaks for itself.

58. The draft application asks individuals to “describe why—or how—[they] affiliate with either the Democratic Party, Republican Party, or neither.” According to the draft, this information is requested to aid the four state legislative leaders in striking applicants from further consideration.

ANSWER: Paragraph 58 requires no response, as the content of the Secretary of State’s draft application referenced therein speaks for itself. Voters Not Politicians notes, however, that the Secretary of State’s draft application states that providing this information is optional.

59. According to various reports, beginning this year Secretary Benson will begin taking additional formal steps to establish the first independent citizens redistricting commission, including the establishment of a project team and making available commissioner applications to the general public and to randomly selected Michigan voters.

ANSWER: Voters Not Politicians neither admits nor denies the allegations set forth in Paragraph 59, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

60. As part of the Governor’s budget proposal, Secretary Benson requested that the Michigan Legislature appropriate approximately \$4.6 million in the next budget to implement the VNP Proposal. On information and belief, a portion of that amount was later requested as a supplemental appropriation in the current budget cycle.

ANSWER: Voters Not Politicians neither admits nor denies the allegations set forth in Paragraph 60, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

61. Each of the individual Plaintiffs wish to apply to serve on the commission when applications are made available but are ineligible to hold such public office under the terms of the VNP Proposal.

ANSWER: Voters Not Politicians neither admits nor denies the allegations set forth in Paragraph 61, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

62. The VNP Proposal is overbroad in its regulation and infringes on Plaintiffs' rights under the First and Fourteenth Amendments to the United States Constitution and under federal law, 42 U.S.C. § 1983.

ANSWER: Voters Not Politicians denies, as untrue, the allegations set forth in Paragraph 62, and again notes that the constitutional provisions at issue in this matter are no longer a ballot proposal but are instead provisions of the Michigan Constitution duly approved by the voters.

63. The VNP Proposal is unconstitutional on its face or, alternatively, as applied to Plaintiffs.

ANSWER: Voters Not Politicians denies, as untrue, the allegations set forth in Paragraph 63, and again notes that the constitutional provisions at issue in this matter are no longer a ballot proposal but are instead provisions of the Michigan Constitution duly approved by the voters.

64. Plaintiffs will be harmed if Secretary Benson continues to implement the VNP Proposal.

ANSWER: Voters Not Politicians denies, as untrue, the allegations set forth in Paragraph 64, and again notes that the constitutional provisions at issue in this matter are no longer a ballot proposal but are instead provisions of the Michigan Constitution duly approved by the voters.

COUNT I

VIOLATION OF FREEDOM OF ASSOCIATION

65. Plaintiffs incorporate by reference the above paragraphs of this Complaint.

ANSWER: Voters Not Politicians incorporates by reference its responses to Paragraphs 1 through 64 of the Plaintiffs' Complaint as if fully set forth herein.

66. The First and Fourteenth Amendments to the United States Constitution guarantee the freedom to join together in furtherance of common political beliefs, commonly referred to as freedom of association.

ANSWER: Voters Not Politicians admits the allegation set forth in Paragraph 66.

67. The freedom of association extends to political parties, including MRP.

ANSWER: Voters Not Politicians admits the allegation set forth in Paragraph 67.

68. MRP's associational rights include the freedom to identify those individuals who do—and those who do not—constitute the association.

ANSWER: Voters Not Politicians acknowledges that MRP's associational rights include the right to determine who may or may not participate in party activities and who may be nominated as its candidates for partisan political office in accordance with applicable law and party rules. However, to the extent that Plaintiffs are alleging that MRP's associational rights include a right to determine whether an individual may identify himself or herself as a member of, or affiliated with the party, or to approve or withhold approval of a self-identification of party affiliation, Voters Not Politicians denies that allegation as untrue.

69. MRP has regularly and systematically exercised its freedom to identify the individuals who do (and those who do not) constitute the political association, including for example, the selection of nominees for public office through the primary election process and through local and state party conventions.

ANSWER: Voters Not Politicians acknowledges that MRP has exercised its right to determine who may, or may not participate in party activities and who may be nominated as its candidates for partisan political office, but neither admits nor denies that MRP has in some way acted to identify individuals who do, or do not otherwise "constitute the political association," having insufficient knowledge or information to form a belief as to the truth of that allegation, but shall leave the Plaintiffs to their proofs.

70. Prior to the November general election every four years, MRP's nominees for secretary of state, attorney general, and various other statewide offices are selected by party delegates at a state convention.

ANSWER: Voters Not Politicians admits the allegation set forth in Paragraph 70.

71. For other partisan public offices, MRP plays a substantial and meaningful role in the selection of a party nominee through promotion, endorsements, and campaigning for (or against) candidates, as well as through the traditional vetting process of primary elections.

ANSWER: Voters Not Politicians neither admits nor denies the allegations set forth in Paragraph 71, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

72. The VNP Proposal severely burdens MRP's associational rights as follows:

a. The VNP Proposal permits applicants for commissioner to self-designate their affiliation with MRP without any involvement or consent of the political party and without any specific consideration of the applicants' past or current political activity, expression, or involvement.

b. Under the VNP Proposal, applicants who are selected to serve as a commissioner based on their individual and unendorsed affiliation with MRP become a public standard bearer of the political party for their term of office as a commissioner.

c. The VNP Proposal forecloses MRP from promoting and designating its standard bearer for the public office of commissioner—MRP may not play a meaningful role in the selection process by promoting, endorsing, or otherwise campaigning for (or against) any applicant even though the selected applicants who self-designate their affiliation with MRP will become a standard bearer of the party for their term of office.

d. The VNP Proposal usurps MRP's role in selecting its nominees for the public office of commissioner.

e. The VNP Proposal permits a member of the opposite major party to play a role in selecting MRP's public standard bearer because state legislative leaders, regardless of their political affiliation, may strike individuals from pools of applicants who affiliate with either major party. In other words, MRP is not permitted to play a role in selecting its standard bearer, yet the proposal allows a Democratic legislative leader to narrow the pool of applicants who affiliate with MRP.

f. The VNP Proposal allows for abuse of the traditional political selection process through "party raiding" whereby members of the opposite political party may self-designate a political affiliation with MRP in an effort to alter the party's selection process and weaken its representation on the commission by individuals who genuinely affiliate with MRP.

g. The VNP Proposal adulterates MRP's process to select nominees for public office—one of the basic functions of a political party—by opening it up to persons whose only act of party affiliation may be checking a box on an application form.

h. The VNP Proposal forces MRP to have its nominees for the commission—and hence its political and policy positions—determined by those who, at best, may have little to no affiliation with the party and, at worst, are actually adherents of the opposing party.

i. The VNP Proposal permits Secretary Benson—an elected partisan official—to implement and administer its provisions regarding the party affiliation of applicants and, presumably, to make any determinations necessary to resolve disputes

regarding party affiliation; in other words, a *highly partisan* official of the *opposite party* will be in a position to resolve disputes regarding the political association of applicants who claim an affiliation with MRP.

j. The VNP Proposal disqualifies from the commission countless leaders of MRP, effectively purging from eligibility the party's most engaged affiliates who likely are also the most knowledgeable about redistricting and qualified to serve on the commission.

k. The VNP Proposal disqualifies from the commission those individuals who are most easily identified as bona fide affiliates of MRP (including declared candidates, elected officeholders, and party leaders, whether federal, state, or local), leaving MRP (and its affiliated legislative leaders) with almost no reliable means to determine an individual's true political affiliation. This is exacerbated by the fact that Michigan does not have an official system of party registration.

ANSWER: No response is required to the allegations of Paragraph 72 concerning the content of the challenged constitutional provisions, as the constitutional provisions speak for themselves. In further response to Paragraph 72, Voters Not Politicians denies that the new constitutional provisions at issue impose, or will impose any burden upon MRP's associational rights, and therefore deny that Plaintiffs' associational rights are, or will be burdened by virtue of any of the circumstances discussed, or facts alleged in Paragraph 72. In further response, Voters Not Politicians affirmatively states the following:

- a. That as the substance of the new constitutional provisions clearly suggests, the purpose of Proposal 18-2 was to establish a politically-balanced Commission with exclusive authority for establishment of state legislative and congressional districts by application of specified politically-neutral criteria – a Commission which will not be subject to domination or control by any political party or other partisan political interests.
- b. That it is therefore clear that the new Independent Citizens Redistricting Commission was not intended or established to be a partisan political entity, and thus, service on the Commission is not a partisan political office. Nor was service on the Commission or performance of its duties designed or intended to serve a representative function for advancement of the political interests of

any political party. The Commission membership and the performance of its duties were instead designed and intended to be politically neutral.

- c. The new constitutional requirement that persons applying for selection as members of the Commission identify their party affiliation or non-affiliation was included for the sole purpose of ensuring that there would be the desired diversity of political viewpoints among the persons ultimately selected for service as Commissioners.
- d. Service on the Commission was not designed or intended to be political. To the contrary, the qualifications for selection complained of in this action were designed and intended to avoid conflicts of interest arising from party or other political affiliations.
- e. Plaintiff Republican Party therefore has no cognizable interest in selecting, approving or campaigning for candidates applying for selection as Commissioners who have identified themselves as affiliated with the Republican Party as its representatives or “standard bearers.”
- f. The new constitutional provisions require that the Commissioners be chosen by random selection from the separate pools of candidates who have identified themselves as affiliated with one of the two major political parties and those who are not affiliated with either of those parties, and the Secretary of State has not been given or allowed any role in determining whether an applicant is, or is not legitimately affiliated with any political party. Thus, there is no danger that the Secretary of State’s random selection of Commissioners will be influenced by any partisan political preferences.
- g. The new constitutional provisions allow an equal opportunity to the legislative leaders of each of the two major political parties to strike a limited number of potential candidates in a way that is similar to the exercise of peremptory challenges in jury trials. That equally shared opportunity does not infringe upon any cognizable right of any of the Plaintiffs.
- h. The qualifications for selection to serve as Commissioners specified in the new constitutional provisions have been properly included and carefully tailored to serve the state’s compelling interest in ensuring that the persons selected for service will not be unduly influenced by conflicts of interest arising from influence or control by partisan elected officials, political parties, or special interests or relationships presenting a heightened potential for undue partisan political influence.

73. Plaintiffs’ associational rights will be severely burdened if Secretary Benson continues to implement the VNP Proposal.



ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 73 as untrue, for the reasons stated in response to Paragraph 72.

74. No compelling governmental interest justifies the severe burden imposed on Plaintiffs by the VNP Proposal.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 74 as untrue, for the reasons stated in response to Paragraph 72.

75. The VNP Proposal is not narrowly tailored to achieve any purported compelling governmental interest.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 75 as untrue, for the reasons stated in response to Paragraph 72.

76. The VNP Proposal unconstitutionally infringes on Plaintiffs' freedom of association, and Plaintiffs will be harmed if Secretary Benson continues to implement the VNP Proposal.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 76 as untrue, for the reasons stated in response to Paragraph 72.

COUNT II

VIOLATION OF FREEDOM OF ASSOCIATION

77. Plaintiffs incorporate by reference the above paragraphs of this Complaint.

ANSWER: Voters Not Politicians incorporates by reference its responses to Paragraphs 1 through 76 of the Plaintiffs' Complaint as if fully set forth herein.

78. The First and Fourteenth Amendments to the United States Constitution guarantee the freedom to join together in furtherance of common political beliefs, commonly referred to as freedom of association, and also protect the expression of that association.

ANSWER: Voters Not Politicians admits the allegations set forth in Paragraph 78.

79. The freedom of association extends to political parties, including MRP and its members and leadership.

ANSWER: Voters Not Politicians admits the allegations set forth in Paragraph 79.

80. Mich. Const. 1963, art. 4, § 6(1)(b) disqualifies from service on the commission individuals who currently express—or in the past six years have expressed—their political affiliation in any of the following ways:

- a. Declaring candidacy for partisan federal, state, or local office.
- b. Serving in partisan federal, state, or local office.
- c. Serving as an officer or member of the governing body of a national, state, or local political party, including but not limited to MRP.
- d. Acting as a paid consultant or employee of a federal, state, or local elected official or political candidate, of a federal, state, or local political candidate's campaign, or of a political action committee, including but not limited to those affiliated with MRP.

ANSWER: No response to Paragraph 80 is required, as the cited constitutional provision speaks for itself.

81. Individuals, including the individual Plaintiffs, regularly express their political affiliation with MRP through one or more of the methods described in the preceding paragraph.

ANSWER: Voters Not Politicians neither admits nor denies the allegations set forth in Paragraph 81, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

82. Plaintiffs face the untenable decision to either limit their political association and expression or be subject to automatic and absolute exclusion from service on the commission.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 82 as untrue, as the constitutionally prescribed qualifications for selection to serve on the Commission do not limit Plaintiffs' rights of free association or expression.

83. The VNP Proposal deters or discourages Plaintiffs from free exercise of their First Amendment rights.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 83 as untrue, as the constitutionally prescribed qualifications for selection to serve on the Commission do not deter or discourage the free exercise of Plaintiffs' First Amendment rights.

84. The VNP Proposal severely burdens Plaintiffs' associational rights by excluding individuals from eligibility for public office based on their political expression.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 84 as untrue, as the constitutionally prescribed qualifications for selection to serve on the Commission do not exclude individuals from eligibility for public service based upon political expression.

85. No compelling governmental interest justifies the severe burden imposed on Plaintiffs by the VNP Proposal.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 85 as untrue, as the constitutionally prescribed qualifications for selection to serve on the Commission are justified by a compelling government interest and do not burden the Plaintiffs.

86. The VNP Proposal is not narrowly tailored to achieve any purported compelling governmental interest.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 86 as untrue, for the reasons stated in response to Paragraph 72.

87. The VNP Proposal unconstitutionally infringes on Plaintiffs' freedom of association, and Plaintiffs will be harmed if Secretary Benson continues to implement the VNP Proposal.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 87 as untrue, for the reasons previously stated.

COUNT III

VIOLATION OF FREEDOM OF SPEECH—VIEWPOINT DISCRIMINATION

88. Plaintiffs incorporate by reference the above paragraphs of this Complaint.

ANSWER: Voters Not Politicians incorporates by reference its responses to Paragraphs 1 through 87 of the Plaintiffs' Complaint as if fully set forth herein.

89. The First Amendment to the United States Constitution prohibits government from discriminating against speech based on viewpoint.

ANSWER: In response to Paragraph 89, Voters Not Politicians acknowledges that, in general, the First Amendment prohibits governmental discrimination against speech based on viewpoint.

90. The VNP Proposal requires applicants to attest under oath either that they affiliate with one of the two major political parties and, if so, to identify the party with which they affiliate, or that they do not affiliate with either of the major parties.

ANSWER: In response to Paragraph 90, Voters Not Politicians acknowledges that the new constitutional provisions require the attestation described therein.

91. The VNP Proposal reserves only four positions to each of the pools of applicants who affiliate with one of the two major political parties, while reserving a greater number of positions (five) to the pool of candidates who claim that they do not affiliate with either major party.

ANSWER: In response to Paragraph 91, Voters Not Politicians acknowledges that under the new constitutional provisions at issue, the Commission is to be composed of four members who are affiliated with each of the two major political parties and five members who are not affiliated with either of those parties.

92. The VNP Proposal explicitly accounts for the political affiliation of applicants in the selection process.

ANSWER: In response to Paragraph 92, Voters Not Politicians acknowledges that under the new constitutional provisions at issue, applicants for selection to serve on the Commission are required to identify their affiliation with either of the two major political parties or their non-affiliation with either of those parties. This information is required and collected for the sole purpose of assigning applicants to the appropriate pool of candidates to ensure that the Commission will have the desired diversity of political viewpoints and cannot be controlled or dominated by any single political party.

93. Applicants who affiliate with one of the two major parties, including MRP, are treated differently than applicants who do not affiliate with either major party.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 93 as untrue, for the reasons previously stated.

94. Applicants who affiliate with one of the two major parties, including MRP, are disfavored because only four positions are reserved to each of the pools of affiliating applicants, while five positions are reserved to the pool of unaffiliating applicants.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 94 as untrue, for the reasons previously stated.

95. MRP adopts particular viewpoints on a number of policy and other issues, views that are advanced through its members and standard bearers elected or appointed to public office.

ANSWER: Voters Not Politicians neither admits nor denies the allegations set forth in Paragraph 95, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

96. The VNP Proposal discriminates against applicants based on viewpoint, specifically the viewpoints associated with their respective political affiliation.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 96 as untrue, for the reasons previously stated.

97. The commission's composition under the VNP Proposal intentionally disfavors the viewpoints of MRP by allotting a minority of seats on the commission to applicants who affiliate with MRP.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 97 as untrue, for the reasons previously stated. In further response, Voters Not Politicians affirmatively states that the new constitutional provisions at issue do not disfavor the viewpoints of the Plaintiff Republican Party or its members by providing for selection of four Commissioners affiliated with the Republican Party, four members affiliated with the Democratic Party, and five members who are unaffiliated with any political party or affiliated with any one or more of all of the remaining political parties.

98. No compelling governmental interest justifies the viewpoint discrimination.

ANSWER: In response to Paragraph 98, Voters Not Politicians denies that there is, or will be any discrimination based upon viewpoint. Voters Not Politicians also denies that the restrictions at issue are not justified by a compelling governmental interest.

99. The VNP Proposal is not narrowly tailored to achieve any purported compelling governmental interest.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 99 as untrue, for the reasons previously stated.

100. The VNP Proposal unconstitutionally infringes on Plaintiffs' freedom of speech, and Plaintiffs will be harmed if Secretary Benson continues to implement the VNP Proposal.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 100 as untrue, for the reasons previously stated.

COUNT IV

VIOLATION OF FREEDOM OF SPEECH—RESTRICTED SPEECH

101. Plaintiffs incorporate by reference the above paragraphs of this Complaint.

ANSWER: Voters Not Politicians incorporates by reference its responses to Paragraphs 1 through 100 of the Plaintiffs' Complaint as if fully set forth herein.

102. Mich. Const. 1963, art. 4, § 6, subsection (11) imposes restrictions on the speech of the commission and its members, staff, attorneys, and consultants.

ANSWER: No response to paragraph 102 is required, as the quoted constitutional provision speaks for itself.

103. Plaintiffs wish to apply for the position of commissioner but are deterred in part because of the conditions of public employment described in the preceding paragraphs.

ANSWER: Voters Not Politicians neither admits nor denies the allegations set forth in Paragraph 103, having insufficient knowledge or information to form a belief as to the truth of those allegations, but shall leave the Plaintiffs to their proofs.

104. The VNP Proposal subjects commissioners (and staff, attorneys, and consultants for the commission) to unreasonable conditions of employment, including the relinquishment of constitutional rights.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 104 as untrue. In further response, Voters Not Politicians affirmatively states that the restrictions upon communication by Commissioners, staff, attorneys and consultants under Article IV, § 6 (11) have been properly included to promote the desired transparency by ensuring that all discussions of matters relating to redistricting are conducted in open meetings or written communications available to the public. These narrowly tailored restrictions do not infringe upon any protected constitutional rights.

105. Public officers and employees may not constitutionally be compelled to relinquish First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest.

ANSWER: In response to Paragraph 105, Voters Not Politicians acknowledges that the general principle stated therein is generally correct but denies that the new constitutional provisions at issue require or will require any public officers or employees to relinquish their First Amendment rights to comment on matters of public interest.

106. Redistricting state legislative and congressional districts involves a matter of public concern. Indeed, the First Amendment was fashioned in part to assure the interchange of ideas for bringing about political and social changes—matters unquestionably related to political redistricting.

ANSWER: In response to Paragraph 106, Voters Not Politicians acknowledges that redistricting involves matters of public concern, and that the First Amendment was fashioned, in part, to protect the free exchange of ideas relating to political and social concerns.

107. The VNP Proposal's speech restriction is overbroad and covers subjects not necessarily involving confidential or privileged matters, or matters involving the individual's scope of duties for the commission. For example, under the VNP Proposal, any staff member for the commission would be prohibited from commenting to his or her spouse outside of work on a redistricting issue involving a completely different state, a past redistricting issue, or any other redistricting matter wholly unrelated to that staff member's duties for the commission.

ANSWER: In response to Paragraph 107, Voters Not Politicians denies that any of the challenged provisions alleged to restrict speech are overbroad. In further response, Voters Not Politicians affirmatively states that Plaintiffs have failed to allege any basis for finding any of the provisions in question constitutionally overbroad.

108. No adequate justification exists for treating the commissioners, members, staff, attorneys, and consultants differently from any other member of the general public with respect to any and all redistricting matters.

ANSWER: Voters Not Politicians denies the allegation set forth in Paragraph 108 as untrue, for the reasons previously stated in response to Paragraph 104.

109. No compelling governmental interest justifies the restriction on speech.

ANSWER: Voters Not Politicians denies the allegation set forth in Paragraph 109 as untrue, for the reasons previously stated in response to Paragraph 104.

110. The VNP Proposal is not narrowly tailored to achieve any purported compelling governmental interest.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 110 as untrue, for the reasons previously stated.

111. The VNP Proposal unconstitutionally infringes on Plaintiffs' freedom of speech, and Plaintiffs will be harmed if Secretary Benson continues to implement the VNP Proposal.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 111 as untrue, for the reasons previously stated.

COUNT V

VIOLATION OF EQUAL PROTECTION

112. Plaintiffs incorporate by reference the above paragraphs of this Complaint.

ANSWER: Voters Not Politicians incorporates by reference its responses to Paragraphs 1 through 111 of the Plaintiffs' Complaint as if fully set forth herein.

113. The Equal Protection Clause of the Fourteenth Amendment guarantees to all persons equal protection of the laws.

ANSWER: Voters Not Politicians admits the allegation set forth in Paragraph 113.

114. Government may not draw distinctions between groups of individuals on differences that are irrelevant to a legitimate government purpose.

ANSWER: In response to Paragraph 114, Voters Not Politicians acknowledges that the general principle stated therein is generally correct but denies that any distinctions have been drawn between groups of individuals based upon differences that are irrelevant to a legitimate government purpose.

115. The VNP Proposal requires applicants to attest under oath either that they affiliate with one of the two major political parties and, if so, to identify the party with which they affiliate, or that they do not affiliate with either of the major parties.

ANSWER: In response to Paragraph 115, Voters Not Politicians acknowledges that the new constitutional provisions contain the attestation requirement described therein.

116. The VNP Proposal reserves only four positions to each of the pools of applicants who affiliate with one of the two major political parties, while reserving a greater number of positions (five) to the pool of candidates who do not affiliate with either major party.

ANSWER: In response to Paragraph 116, Voters Not Politicians acknowledges that under the new constitutional provisions at issue, the Commission is to be composed of four members who are affiliated with each of the two major political parties and five members who are not affiliated with either of those parties.

117. The VNP Proposal distinguishes between applicants who affiliate with one of the two major political parties and those who do not affiliate with either major party.

ANSWER: In response to Paragraph 117, Voters Not Politicians acknowledges that the new constitutional provisions distinguish between applicants as previously stated in the responses to Paragraphs 91, 92 and 116.

118. The classifications concern fundamental rights related to political speech and association.

ANSWER: Voters Not Politicians denies the allegation set forth in Paragraph 118 as untrue, for the reasons previously stated in response to Paragraph 92.

119. Applicants who affiliate with one of the two major parties, including MRP, are treated differently than applicants who do not affiliate with either major party.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 119 as untrue, for the reasons previously stated in the responses to Paragraphs 92 and 97.

120. Applicants who affiliate with one of the two major parties, including MRP, are disfavored because only four positions are reserved to each of the pools of affiliating applicants, while five positions are reserved to the pool of unaffiliating applicants. In other words, a greater number of seats on the commission are made available to applicants who are unaffiliated with either major political party.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 120 as untrue, for the reasons previously stated in Paragraph 97.

121. The commission's composition under the VNP Proposal intentionally disfavors MRP, as one of the two major political parties, by allotting a minority of seats to applicants who affiliate with MRP.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 121 as untrue, for the reasons previously stated.

122. The VNP Proposal creates a system in which applicants are excluded because of who they are (i.e., affiliates of a major party) and not necessarily because of their past or current activity.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 122 as untrue, for the reasons previously stated.

123. Applicants face the untenable decision to either forego their affiliation with MRP or compete for fewer seats on the commission.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 123 as untrue, for the reasons previously stated. In further response, Voters Not Politicians affirmatively states that the constitutional provisions at issue do not require or encourage applicants to forego their affiliation with the party of their choosing in any way.

124. It is plausible that a minor political party could be represented on the commission by a greater number of commissioners than either of the two major political parties.

ANSWER: In response to Paragraph 124, Voters Not Politicians acknowledges that the occurrence of the scenario described therein would be possible, but notes that the votes of five independent Commissioners would not be sufficient for adoption of a redistricting plan by a majority vote of politically diverse members, as required by Article IV, § 6 (14)(c).

125. No compelling governmental interest justifies the disparate, unequal treatment of applicants affiliated with one of the two major political parties, including MRP.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 125 as untrue, for the reasons previously stated.

126. The VNP Proposal is not narrowly tailored to achieve any purported compelling governmental interest.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 126 as untrue, for the reasons previously stated.

127. No governmental interest justifies the disparate, unequal treatment of applicants affiliated with one of the two major political parties.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 127 as untrue, for the reasons previously stated.

128. The unequal treatment of applicants is not rationally related to any governmental interest.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 128 as untrue, for the reasons previously stated.

129. The VNP Proposal denies Plaintiffs equal protection of the laws, and Plaintiffs will be harmed if Secretary Benson continues to implement the VNP Proposal.

ANSWER: Voters Not Politicians denies the allegations set forth in Paragraph 129 as untrue, for the reasons previously stated.

PRAYER FOR RELIEF

WHEREFORE, Voters Not Politicians, having fully answered the allegations in the Complaint, requests that the Complaint be dismissed with prejudice.

Respectfully submitted,

Fraser Trebilcock Davis & Dunlap, P.C.
Attorneys for Proposed Intervenor-Defendant
Count MI Vote, d/b/a Voters Not Politicians

Dated: September 10, 2019

By: /s/ Graham K. Crabtree

Peter D. Houk (P15155)
Graham K. Crabtree (P31590)
Jonathan E. Raven (P25390)
Ryan K. Kauffman (P65357)
124 W. Allegan, Suite 1000
Lansing, Michigan 48933
(517) 482-5800

And

Paul M. Smith
Mark Gaber
Campaign Legal Center
1101 14th Street N.W., Suite 400
Washington D.C. 20005

Annabelle Harless
73 W. Monroe Street, Suite 302
Chicago, Illinois 60603



NOTICE OF AFFIRMATIVE DEFENSES

NOW COMES Intervenor-Defendant Count MI Vote, d/b/a Voters Not Politicians, a Michigan non-profit corporation, by and through its attorneys, Fraser Trebilcock Davis & Dunlap, P.C. and The Campaign Legal Center, and for its Affirmative Defenses states as follows:

1. Plaintiffs lack Article III standing to assert the claims raised in this matter.
2. Plaintiffs have not suffered an invasion or deprivation of any legally protected interest that is concrete and particularized.
3. The individual Plaintiffs have not alleged an injury which would be remedied by the relief requested.
4. Plaintiffs have failed to state a claim upon which relief can be granted.
5. Plaintiffs are guilty of delay and laches and come to this Court with unclean hands; as such, they are not entitled to equitable relief.
6. Plaintiffs' exercise of their First Amendment rights has not been prohibited, proscribed or burdened.
7. The classifications, if any, created by Mich. Const., Article IV, § 6, are not based on a suspect class, do not implicate a fundamental right, and are supported by a rational basis.
8. A substantial governmental interest supports the creation of an Independent Citizen Redistricting Commission, and Mich. Const., Article IV §6, is narrowly tailored to achieve that interest.
9. In the event that any provision of Mich. Const., Article IV, §6 is found to be in conflict with the United States Constitution or federal law, the provision held invalid becomes severable, and the amendment must be implemented to the maximum extent permitted under the United States Constitution and federal law. *See*, Mich. Const., Article IV, §6 (20).
10. Voters Not Politicians reserves its right to add to, or modify, these affirmative defenses as permitted by the Federal Rules of Civil Procedure.



Respectfully submitted,

Fraser Trebilcock Davis & Dunlap, P.C.
Attorneys for Intervenor-Defendant Count
MI Vote, d/b/a Voters Not Politicians

By: /s/ Graham K. Crabtree

Peter D. Houk (P15155)
Graham K. Crabtree (P31590)
Jonathan E. Raven (P25390)
Ryan K. Kauffman (P65357)
124 W. Allegan, Suite 1000
Lansing, Michigan 48933
(517) 482-5800

Dated: September 10, 2019

And

Paul M. Smith
Mark Gaber
Campaign Legal Center
1101 14th Street N.W., Suite 400
Washington D.C. 20005

Annabelle Harless
73 W. Monroe Street, Suite 302
Chicago, Illinois 60603

CERTIFICATE OF SERVICE

I hereby certify that on September 10, 2019, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the attorneys of record.

Respectfully submitted,

FRASER TREBILCOCK DAVIS & DUNLAP, P.C.
Attorneys for Intervenor-Defendant
Count MI Vote d/b/a Voters Not Politicians

Dated: September 10, 2019

By: /s/ Graham K. Crabtree

Graham K. Crabtree (P31590)
124 W. Allegan, Suite 1000
Lansing, Michigan 48933
(517) 482-5800

