

**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)**

ORAL ARGUMENT REQUESTED

**PLAINTIFFS' BREIF OPPOSING DEFENDANTS' MOTION TO STRIKE
CERTAIN EVIDENCE**

INTRODUCTION

The Court should accept and consider the single exhibit attached to Plaintiffs' post-trial brief (Tab 1, PageID.4447-68) and the several exhibits attached to Plaintiffs' Proposed Findings of Fact and Conclusions of Law (Exs. A – G, PageID.3950-90). Those exhibits (1) include records from Commission proceedings that Defendants have already stipulated are part of the trial record, (2) also include documents that are publicly available and judicially noticeable such that Plaintiffs could have referenced them with a hyperlink, (3) were already previously identified by Plaintiffs to Defendants, (4) have been in Defendants' possession, or (5) some combination of these. There is nothing improper about the Court's consideration of any of the documents.

Although Defendants did not ask for any relief with respect to the length of Plaintiffs' post-trial brief and Proposed Findings of Fact and Conclusions of Law, Plaintiffs reject Defendants' suggestion that these documents were somehow improper. The Court specifically ordered a post-trial brief of no more than 10,000 words ("10,000 words"; Trial.Tr.V.258, PageID.3508), and Plaintiffs complied with that limit (Certificate of Compliance, PageID.4473). The Court separately asked for Proposed Findings of Fact and Conclusions of Law and did not set a word limit. Minutes of Final Conference, PageID.2176, ("trial briefs and proposed findings of fact and conclusions of law to be submitted post-trial"); Order Amending Case Management Order, PageID.2300, ("Proposed Findings of Fact and Conclusions of Law after trial shall be submitted to the Panel no later than December 4, 2023."). Plaintiffs requested that the parties submit pre-trial briefing that would have allowed Plaintiffs to highlight critical evidence regarding the Commission's map-drawing proceedings, which has been in the Commission's possession this entire time. But Defendants objected, and the Court acquiesced. Those transcripts make up 90%+ of Plaintiffs' Proposed Findings of Fact and should obviously be considered. Notably, Defendants' trial testimony and post-trial brief are wholly devoid of references to the Commission hearing transcripts.

Finally, the Commission violated the spirit of this Court's requirement that parties seek concurrence before filing a motion, and the motion should be denied for that reason alone. Defendants sought concurrence in their motion from Plaintiffs via email on Friday, December 8, 2023, at 4:34 PM, less than half-an-hour before the

close of business before the weekend. Concurrence Request, p. 2, **Exhibit A**. Plaintiffs responded in just over an hour, at 5:41 PM, requesting that Defendants notify the Court that “Plaintiffs do not concur in Defendants’ motion because (1) some of the exhibits are public documents available to anyone with an Internet connection, (2) some are part of the Commission’s record (all of which was stipulated into admission), and (3) some are Commission documents that contradict testimony given under oath by Defendants’ primary lay witnesses.” *Id.* But Defendants had already filed their motion at 5:39 PM. *Id.* at 1. And though Defendants filed an amended certificate, they failed to include Plaintiffs’ requested language.

Had Defendants followed the spirit of the Court’s concurrence-request rule, perhaps the parties could have worked out some of their differences over some of the attachments, such as the propriety of citing publicly available and judicially noticeable election results referred to in Dr. Handley’s cross-exam, of the publicly available and judicially noticeable MIRS article in which Mr. Eid (again) violated his promise not to discuss Commission work in his individual capacity and frankly conceded that the Commission predominately used race to draw district lines, and of the numerous documents that were part of the Commission’s public record that Defendants had stipulated were part of these proceedings.

Regardless, Defendants’ motion should be denied because Plaintiffs have not submitted any improper documents as part of the post-trial briefing.

ARGUMENT

I. The Court can take judicial notice of relevant election results.

Defendants seek to strike a simple printout of Michigan’s general election results for Wayne and Oakland counties. Dr. Handley answered numerous questions about the election results on cross-examination. Trial.Tr.V.38-45, PageID.3288-3295. Plaintiffs had to provide this public information because—despite having purportedly analyzed the data—Dr. Handley could not herself testify as to the winning candidates in the 13 general elections highlighted in her own September 2021 report. Trial.Tr.V.41-45, PageID.3291-3295.

After Dr. Handley admitted that she did not know the results, Plaintiffs’ counsel stated “[a]nd because you’re not aware of who prevailed in any of these elections in Wayne County, I will represent to you now *and prove in our supplemental briefing at the conclusion of this trial* that in all 13 of these races the black candidate of choice prevailed in Wayne County.” Trial.Tr.V.45, PageID.3295 (emphasis added). Plaintiffs did precisely that in Tab 1 of their Post-Trial Brief in accordance with the judicial notice rule. PageID.4447-4468. And those results show that based on the general elections Dr. Handley studied, the Black candidate of choice always prevailed in Wayne County (13 out of 13 times) and nearly always prevailed in Oakland County (10 out of 13 times, excepting three statewide elections involving popular incumbents). That means the Commission had no evidentiary basis to believe that *Gingles* factors two and three were satisfied, and therefore no basis to use race in drawing maps.

A court “may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known....; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(1)-(2). A court can “take judicial notice on its own” and it “*must* take judicial notice if a party requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(c)(1)-(2) (emphasis added). “[E]lection results are an appropriate subject of judicial notice” because a “vote tally is a public record.” *Krupa v. Quinn*, 596 F.Supp.3d 1127, 1134 n.2 (N.D.Ill., 2022). *Accord Badillo v. City of Stockton*, 956 F.2d 884, 887 n.1 (9th Cir. 1992) (same).

“The court may take judicial notice at any stage in the proceeding”—whether before trial, during trial, or after—even as late as on appeal. Fed. R. Civ. P. 201(d); *Loftus v. F.D.I.C.*, 989 F.Supp.2d 483, 490 (D.S.C., 2013) (“Under Rule 201(d), a court may take judicial notice of a fact at any stage in the proceeding, even for the first time on appeal.”); *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1279 (11th Cir. 1999) (court can take judicial notice during motion to dismiss under Rule 12(b)(6)); *In re Indian Palms Associates, Ltd.*, 61 F.3d 197, 205 (3rd Cir. 1995) (“Judicial notice may be taken at any stage of the proceeding ... including on appeal... as long as it is not unfair to a party to do so and does not undermine the trial court’s factfinding authority”).

Plaintiffs should not be penalized for trying to make it more convenient for the Court to review this public information rather than simply providing a hyperlink to the Wayne County and Oakland County clerks’ election records. Accordingly, there is no basis to strike Tab 1 of Plaintiffs’ post-trial brief.

II. All exhibits attached to Plaintiffs' Proposed Findings of Facts and Conclusions of Law are part of the Commission's public record or otherwise proper.

A. Exhibits A, B, C, E, F, and G are all part of the stipulated record.

Defendants ask the Court to strike exhibits A through G, which are all part of the Commission's proceedings. Defendants have repeatedly stipulated to the admission of those proceedings for purposes of trial.

First, in the October 17, 2022, Joint Status Report. "The parties have agreed to make available the following documents without the need of a formal request for production: Bates-labeled version of the transcripts of the meetings of the Defendant Michigan Independent Citizens Redistricting Commission from September 2020 to December 2021 . . . [t]o the extent that any public record associated with Defendant[s] [] redistricting is not accessible to Plaintiffs via the Commission's website at <https://www.michigan.gov/micrc> or other websites[.]" PageID.498.

Throughout Plaintiffs' Exhibit List contained in the Final Pretrial Order, Defendants repeatedly stipulate to its record. ("Commission will stipulate to admission of entire Commission record of proceedings."). PageID.2191-2197. And Plaintiffs designated numerous Exhibits in that list that accurately describe Exhibits A through G: "All Written Public Comment, Meeting Materials, and Affiliated Documents in All Referenced MICRC Meetings". PageID.2201.

Notably, Defendants objected to Plaintiffs' request to submit a pre-trial briefing that detailed and examined the Commission's public record. The reasoning? Because the Commission agreed to stipulate to the entire record of its proceedings as

admissible in these trial proceedings. Indeed, after Plaintiffs initially objected to certain manipulable Excel files Defendants presented at trial, Defendants opposed that objection because the Excel files were a public record, “available on the Commission’s website.” Trial.Tr.V.228, PageID.3478.

At the close of trial, the Court itself inquired to confirm that the panel would be able “to get access to the entirety of the Commission record,” and that while the Court “appreciate[s] the status of the [Commission’s] website, you can’t get to everything on the website and we’re interested in making sure we have the entire record.” Trial.Tr.VI.7., PageID.3009 (emphasis added). Mr. Eid summarized the Commission’s position previous to this motion. “I would say to check the record. I mean, the record is clear.” Trial.Tr.Vol.III.285, PageID.2876.

Exhibits A¹ B², C³, E⁴, F⁵, G⁶ are all part of the stipulated public record and remain publicly available on the Commission's website. Accordingly, there was nothing improper about Plaintiffs appending them to its post-trial brief.

B. Exhibit D and the NDAs are part of the public record and impeachment evidence.

The Commission objects to the submission of Exhibit D, which contains Non-Disclosure Agreements (NDAs) executed by Mr. Adelson and Mr. Eid. But as described, the Commission has stipulated repeatedly to "admission of entire

¹ See March 30, 2021, Meeting Materials. https://www.michigan.gov/micrc/-/media/Project/Websites/MiCRC/MISC3/Ranking_and_Rationale_for_VRA_Legal_Counsel_2021_03_26.pdf?rev=7d0cf52e7f0d49b8a1cef9290948c0dc&hash=94B5EE57C85733BE5D03DD881FD88E08

² See April 22, 2021 Meeting Materials. https://www.michigan.gov/micrc/-/media/Project/Websites/MiCRC/MISC4/MiCRC_Communities_of_Interest_Process.pdf?rev=0bb04d0437204cae9cd7b781d58acf8d&hash=39D414B0FFE9E013503E6E0C840E0C25

³ <https://www.michigan.gov/micrc/-/media/Project/Websites/MiCRC/MISC6/Public-Records-List-FINAL.pdf?rev=4c298c588aed475487bad72bda7c81e2&hash=B7BD8564AD2F457687C21F230EEAE9F1>

⁴ <https://www.michigan.gov/micrc/-/media/Project/Websites/MiCRC/MISC6/Public-Records-List-FINAL.pdf?rev=4c298c588aed475487bad72bda7c81e2&hash=B7BD8564AD2F457687C21F230EEAE9F1>

⁵ <https://www.michigan.gov/micrc/-/media/Project/Websites/MiCRC/MISC6/Public-Records-List-FINAL.pdf?rev=4c298c588aed475487bad72bda7c81e2&hash=B7BD8564AD2F457687C21F230EEAE9F1>

⁶ <https://www.michigan.gov/micrc/-/media/Project/Websites/MiCRC/MISC6/Public-Records-List-FINAL.pdf?rev=4c298c588aed475487bad72bda7c81e2&hash=B7BD8564AD2F457687C21F230EEAE9F1>

Commission record of proceedings.” PageID.2191-2197. And that includes these documents.

The Commission wrongly withheld the NDAs from the public record (and the Plaintiffs) and cannot benefit from its own wrongdoing. While the Commission faults the Plaintiffs for not identifying these documents on its initial disclosures or its Exhibit List, Plaintiffs had no way of knowing these documents existed because they were not in their possession and were never posted on the Commission’s website. And they should have been, as they part of the Commission’s “entire” proceedings. Defendants’ failure to disclose was contrary to (i) the Opinion of the Michigan Attorney General,⁷ (ii) Rule 13.1(C) of the Commission’s own Policies and Procedures⁸; (iii) a constitutional mandate to make all materials public and post them on the Commission website,⁹ and (iv) a Michigan Supreme Court opinion finding that

⁷ 1 OAG, 2021, No. 7317 (November 22, 2021).

<https://www.ag.state.mi.us/opinion/datafiles/2020s/op10396.htm>

⁸ Rules of Procedure of the State of Michigan

Independent Citizens Redistricting Commission, <https://www.michigan.gov/micrc/-/media/Project/Websites/MiCRC/MISC6/MICRC-Rules-of-Procedure-ADOPTED-2022-04-28-as-amended.pdf?rev=fbbf2345656d440b80fb4b9aaab365a9&hash=771EB2027E9716ED12D37E91C206E2B8>

⁹ Transparency is not just a goal, it is a constitutional mandate. The Commission is required to (i) “hold at least at least ten *public hearings* throughout the state” before any redistricting plans are drafted “for the purpose of *informing the public* about the redistricting process,” (ii) “*publish* the proposed redistricting plans *and any data and supporting materials* used to develop the plans” and “[t]he commission shall *conduct all of its business at open meetings.*” Mich. Const. 1963 Art. IV, §6(8)-(10) (emphasis added).

the materials discussed during the closed door session were not privileged and had to be disclosed to the public.¹⁰

Plaintiffs produced Mr. Adelson's signed NDA. Yet he testified during trial he *did not sign* and had no knowledge of this document:

Case 1:22-cv-00272-PLM-RMK-JTN ECF No. 106, PageID.3009 Filed 11/07/23 Page 7 of 247 7

1 Q. I'd like to go to -- were you present for the testimony of
2 Commissioner Szetela?
3 A. Last week, yes.
4 Q. Yeah. So you were present for all of her testimony?
5 A. Yes.
6 Q. Okay. Do you remember hearing testimony from the
7 commissioner about being asked to sign a nondisclosure
8 agreement?
9 A. Oh, yes, I do.
10 Q. Did you draft any nondisclosure agreement?
11 A. No.
12 Q. Did you sign any nondisclosure agreement?
13 A. No. I don't remember signing any agreements during the
14 time I was with the Commission in person.
15 Q. And did you have anything to do with the
16 commissioners signing any -- assuming any that did sign them,
17 did you -- were you encouraging them to sign some type of
18 document like that?
19 A. No. I don't recall encouraging anyone to sign anything
20 during my in-person time with the Commission.

Trial.Tr.Vol.IV.7, PageID.3009.

¹⁰ See e.g., *Detroit News, Inc. v. Independent Citizens Redistricting Commission*, 976 N.W.2d 612, 629–30, 508 Mich. 399, 430–31 (Mich., 2021).

1 session meeting during this trial, haven't we?
2 A. Yes, we have heard excerpts of that.
3 Q. Okay. We'll come back to those in a moment. You
4 testified earlier today that you didn't sign any
5 non-disclosure agreements?
6 A. I don't recall doing that.
7 Q. Were you listed as a party to the non-disclosure
8 agreements?
9 A. I have no idea.
10 Q. So, if I asked the Commission to produce those NDAs -- I
11 just learned about them during Chair Szetela's testimony --
12 you don't know whether your name would appear on them?
13 A. I have no idea.
14 Q. You also testified you didn't encourage the commissioners
15 to sign the NDAs; is that correct?
16 A. I don't remember doing that at all.

Trial.Tr.Vol.IV.57, PageID.3059.

Prior to trial, it was unknown that the NDAs documents existed. During the public meeting on the date of the closed session, the Commission stated that “[n]o actions will be taken in the closed session and only the contents of the cited attorney/client privilege legal memoranda will be discussed.” See DTX049, MICRC_00874. At the Closed Meeting, the NDAs were discussed as shown in the transcript. PageID.4570-4572.

24 MS. PASTULA: So I will start. Thank you,
25 Madam Chair. So I will start. Again, stating for the
scheduling@fortzlegal.com fortzlegal.com Toll Free: 844.730.4066

Case 1:22-cv-00272-PLM-RMK-JTN ECF No. 126-1, PageID.4571 Filed 12/11/23 Page 5 of 73

MICHIGAN INDEPENDENT CITIZENS REDISTRICTING COMMISSION Job 27452
TRANSCRIPTION, AUDIO 10/27/2021 4

1 record and the closed session minutes that the closed
2 session is called in accordance with Section 8H of the
3 Open Meetings Act being MCL 15.268H. The session was
4 called to occur on Wednesday, October 27th, upon adoption
5 of the resolution and the closed session was called to
6 order at 4:05 p.m. to discuss the privilege and
7 confidential memos being Voting Rights Act of October
8 14th, 2021 and the history of discrimination in the state
9 of Michigan and its influence on voting of October 26th,

10 '21. These memos are both attorney-client privileged
11 communications that provide legal advice to the client,
12 prepared by counsel in regard to the Voting Rights Act and
13 are therefore exempt from disclosure under Section 13G of
14 the Michigan Freedom of Information Act being MCL 15.243,
15 subpart 1, subsection G.

16 The rules for closed sessions are that the
17 confidentiality of the closed session, none of the
18 discussion topics or documents may be shared outside of
19 this room. Everyone received the confidentiality
20 agreement, that if you have not returned to either Sue Ann
21 or myself, please do so. The rules, additionally, that
22 the topic of the closed session can only be the Voting
23 Rights Act based on the two memoranda that are the basis
24 for this closed session. If the topic veers off of this
25 course, I will provide a warning. If the conversation

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1 does not cease immediately, the closed session will be
2 halted and we will return to open session at that time.
3 If you have any questions about either of these two
4 things, I know this is our first closed session. So
5 again, we're here to talk about the VRA. We're here to
6 have an open conversation between the MICRC and its
7 attorneys about the VRA, and with all that being said,
8 I'll turn it over to Bruce.

9 MR. ADELSON: Thank you. And thank you for the
10 opportunity to have this meeting. Julieann and I thought
11 that it was important with the -- as a result of the
12 memos, the information that's being discussed in the
13 conventional media, on social media and everywhere to
14 answer questions, provide some advice about a path forward
15 and discuss what the Voting Rights Act actually requires.
16 And let's start with that.

Defendants do not get to benefit from its own constitutional violation and unclean hands in not producing the NDAs.

C. Plaintiffs were not obligated to disclose the disputed documents as part of their Initial Disclosures or otherwise.

Defendants fault Plaintiffs for not conducting discovery or otherwise producing the attached exhibits in their supplement to their Initial Disclosures. But there should not have been a need to conduct discovery because all the Commission's records were already stipulated to be part of the trial record and supposed to already be publicly available on the Commission's website.

Initial disclosures must be supplemented “in a timely manner . . . if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing[.]” Fed. R. Civ. P. 26 (e)(1)(A). Rule 26(e) does not provide a precise date or set a specific time frame for when supplementation must occur. See *Fair Isaac Corporation v. Federal Insurance Company*, 337 F.R.D. 413, 419, 108 Fed. R. Serv. 3d 1170 (D. Minn. 2021) (“timeliness is not measured by a particular date or event; rather, timeliness means without undue delay upon discovering the information that is to be provided”); see also 1 Steven S. Gensler & Lumen N. Mulligan, *Federal Rules of Civil Procedure, Rules and Commentary Rule 26* (Feb. 2022 Update).

Defendants failed to disclose or make public the NDAs as required, and Defendants cannot benefit from that wrongful withholding. What's more, Plaintiffs did identify the NDAs and other exhibits in their Initial Disclosures by identifying the “Commission's complete administrative file compiled in connection with

Constitutional redistricting mandate” as additional documents not in their possession and in the possession of the Commission. Plaintiffs’ Initial Disclosures, **Exhibit B**, p. 25. Defendants also identified “other materials from the Commission’s public records relating to the 2021 redistricting process” in their possession. Defendants’ Initial Disclosures, **Exhibit C**, p.6. This includes all the exhibits at-issue, including the NDAs that were never disclosed.

The NDAs and the MIRS article (Exhibit G) are also impeachment evidence. The signed NDAs directly contradict Mr. Adelson’s testimony and at minimum call Mr. Eid’s testimony into question. (Mr. Eid testified that he could not recall being asked to an NDA. Trial.Tr.Vol.III.157-158, PageID.2948-2949.) The MIRS article is a public document the Commission produced on its website and likewise directly contradicts Mr. Eid’s testimony about racial targets.

Such impeachment did not need to be disclosed or identified prior to trial. The Case Management Order stated that “exhibits expected solely for impeachment purposes need not be numbered or listed until identified at trial.” Order, PageID.2045. And again, the NDAs only came into Plaintiffs’ possession after trial because Defendants failed to disclose them ahead of time. Any objections to non-impeachment exhibits are since waived, per the Case Management Order. “Objections not contained in the Pretrial Order. . . shall be deemed waived except for good cause shown.” PageID.2045-46. Defendants’ unclean hands cannot be to their benefit.

CONCLUSION

Plaintiffs respectfully request that the Court deny Defendants' motion in its entirety. This Court, Detroit Black voters, and the People of Michigan deserve transparency.

Respectfully submitted,

/s/ John J. Bursch

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Dated: December 14, 2023

EXHIBIT A

From: John Bursch <jbursch@burschlaw.com>
Sent: Friday, December 8, 2023 5:45 PM
To: Nate Fink
Cc: Pattwell, Michael J.; Fleming, James J.; Meingast, Heather (AG); Grille@michigan.gov; Green, Jennifer K.; McKnight, Katherine L.; plewis_bakerlaw.com; Banks, Amia; Raile, Richard; Atiya, Dima; Braden, E. Mark; David Fink
Subject: RE: Agee, et al v. Benson, et al - Concurrence Request
Importance: High

[External Message]

Hi Nate. We would appreciate it if your amended concurrence certificate would include the time you made the request, the time we responded, and the time you efiled, as well as the substance of our objection. Otherwise, we will have no choice but to burden the court with those details in our brief.

Many thanks,

John

From: Nate Fink <nfink@finkbressack.com>
Sent: Friday, December 8, 2023 5:43 PM
To: John Bursch <jbursch@burschlaw.com>
Cc: Pattwell, Michael J. <mpattwell@clarkhill.com>; Fleming, James J. <jfleming@clarkhill.com>; Meingast, Heather (AG) <MeingastH@michigan.gov>; Grille@michigan.gov; Green, Jennifer K. <jgreen@clarkhill.com>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; plewis_bakerlaw.com <plewis@bakerlaw.com>; Banks, Amia <abanks@clarkhill.com>; Raile, Richard <rRaile@bakerlaw.com>; Atiya, Dima <datiya@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; David Fink <dfink@finkbressack.com>
Subject: RE: Agee, et al v. Benson, et al - Concurrence Request

John,

I had already filed the Motion and Concurrence Certificate when I received your email. I will file an amended concurrence certificate advising the Court that Plaintiffs do not concur.

Nate



Nathan J. Fink

T: [248-971-2500](tel:248-971-2500)

E: nfink@finkbressack.com | W: <http://www.finkbressack.com>

A: 38500 Woodward Ave., Suite 350, Bloomfield Hills, MI 48304

A: 645 Griswold St., Suite 1717, Detroit, MI 48226

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From: John Bursch <jbursch@burschlaw.com>
Sent: Friday, December 8, 2023 5:41 PM
To: Nate Fink <nfink@finkbressack.com>
Cc: Pattwell, Michael J. <mpattwell@clarkhill.com>; Fleming, James J. <jfleming@clarkhill.com>; Meingast, Heather (AG) <MeingastH@michigan.gov>; GrillE@michigan.gov; Green, Jennifer K. <jgreen@clarkhill.com>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; plewis_bakerlaw.com <plewis@bakerlaw.com>; Banks, Amia <abanks@clarkhill.com>; Raile, Richard <rRaile@bakerlaw.com>; Atiya, Dima <datiya@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; David Fink <dfink@finkbressack.com>
Subject: RE: Agee, et al v. Benson, et al - Concurrence Request
Importance: High

Hi Nate, and thank you for your email. In your filing, please represent Plaintiffs' position in response to your request for concurrence as follows: "Plaintiffs do not concur in Defendants' motion because (1) some of the exhibits are public documents available to anyone with an Internet connection, (2) some are part of the Commission's record (all of which was stipulated into admission), and (3) some are Commission documents that contradict testimony given under oath by Defendants' primary lay witnesses."

Best regards,

John

From: Nate Fink <nfink@finkbressack.com>
Sent: Friday, December 8, 2023 4:34 PM
To: John Bursch <jbursch@burschlaw.com>
Cc: Pattwell, Michael J. <mpattwell@clarkhill.com>; Fleming, James J. <jfleming@clarkhill.com>; Meingast, Heather (AG) <MeingastH@michigan.gov>; GrillE@michigan.gov; Green, Jennifer K. <jgreen@clarkhill.com>; McKnight, Katherine L. <kmcknight@bakerlaw.com>; plewis_bakerlaw.com <plewis@bakerlaw.com>; Banks, Amia <abanks@clarkhill.com>; Raile, Richard <rRaile@bakerlaw.com>; Atiya, Dima <datiya@bakerlaw.com>; Braden, E. Mark <MBraden@bakerlaw.com>; David Fink <dfink@finkbressack.com>
Subject: Agee, et al v. Benson, et al - Concurrence Request

John,

The Commission will be filing a motion today asking the Court for an order striking the ten exhibits attached to Plaintiffs' post-trial briefing that were not proffered for admission into evidence at trial, were not admitted into evidence, and were not on Plaintiff's exhibit list. Please let us know if you will concur.

Nate



Nathan J. Fink

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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)**

PLAINTIFFS' RULE 26(a)(1) INITIAL DISCLOSURES

Plaintiffs, by and through their counsel, hereby submit their Initial Disclosures pursuant to Fed. R. Civ. P. 26(a)(1). These disclosures are based on the information reasonably available and currently known to Plaintiffs. To the best of Plaintiffs' knowledge, information, and belief, these disclosures are complete and correct as of the date they are made. Plaintiffs reserve the right to supplement these disclosures during discovery and as their investigation continues, as permitted or required by Fed. R. Civ. P. 26(e).

Plaintiffs do not provide any information or documents protected from disclosure by the attorney-client privilege, the attorney work product doctrine, applicable regulatory privileges, or any other privilege or immunity. Any information or documents provided by Plaintiffs in connection with these disclosures is subject to all objections as to competence, relevance, materiality and admissibility, and to any other objections on any grounds that would require the exclusion thereof if such information were offered into evidence. Plaintiffs expressly reserve all such objections.

I. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION

Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i), listed below are the names of individuals (other than litigation counsel) that are likely to have discoverable information relating to the claims or advanced by Plaintiffs in the above-captioned matter. The individuals’ addresses and telephone numbers, where known, are indicated; however, Plaintiffs and their trustees, officers, employees, and agents may only be contacted through counsel.

Name	Contact Information	Information
Plaintiff Donald Agee, Jr.	c/o Plaintiffs’ Counsel	Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 1 and Michigan House of Representatives District 2. Plaintiff has knowledge that includes, but is not limited to, how these Districts were created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.
Plaintiff Jerome Bennett	c/o Plaintiffs’ Counsel	Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 10 and Michigan House of Representatives District 13. Plaintiff has knowledge that includes, but is not limited to, how these Districts were created with race as the predominate

Name	Contact Information	Information
		<p>consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.</p>
<p>Plaintiff Dennis Leroy Black, Jr.</p>	<p>c/o Plaintiffs' Counsel</p>	<p>Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 10 and Michigan House of Representatives District 13. Plaintiff has knowledge that includes, but is not limited to, how these Districts were created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.</p>
<p>Plaintiff Jamee Burbridge</p>	<p>c/o Plaintiffs' Counsel</p>	<p>Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 10 and Michigan House of Representatives District 14. Plaintiff has knowledge that includes, but is not limited to, how these Districts were created with race as the predominate consideration and deprived Black</p>

Name	Contact Information	Information
		<p>voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.</p>
<p>Plaintiff Beverly Ann Burrell</p>	<p>c/o Plaintiffs' Counsel</p>	<p>Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 1 and Michigan House of Representatives District 8. Plaintiff has knowledge that includes, but is not limited to, how these Districts were created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.</p>
<p>Plaintiff Jemell Cotton</p>	<p>c/o Plaintiffs' Counsel</p>	<p>Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 3 and Michigan House of Representatives District 10. Plaintiff has knowledge that includes, but is not limited to, how these Districts were created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of</p>

Name	Contact Information	Information
		<p>the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.</p>
<p>Plaintiff Teresa DuBose</p>	<p>c/o Plaintiffs' Counsel</p>	<p>Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 10. Plaintiff has knowledge that includes, but is not limited to, how this District was created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.</p>
<p>Plaintiff Karen Ferguson</p>	<p>c/o Plaintiffs' Counsel</p>	<p>Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 8 and Michigan House of Representatives District 7. Plaintiff has knowledge that includes, but is not limited to, how these Districts were created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the</p>

Name	Contact Information	Information
		United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.
Plaintiff Michelle Keeble	c/o Plaintiffs' Counsel	Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 6. Plaintiff has knowledge that includes, but is not limited to, how this District was created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.
Plaintiff Kimberly Hill Knott	c/o Plaintiffs' Counsel	Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 8 and Michigan House of Representatives District 7. Plaintiff has knowledge that includes, but is not limited to, how these Districts were created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting

Name	Contact Information	Information
		Rights Act, 52 U.S.C. § 10301, respectively.
Plaintiff Barbara Gail London	c/o Plaintiffs' Counsel	Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 11 and Michigan House of Representatives District 12. Plaintiff has knowledge that includes, but is not limited to, how these Districts were created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.
Plaintiff Norma McDaniel	c/o Plaintiffs' Counsel	Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 5 and Michigan House of Representatives District 26. Plaintiff has knowledge that includes, but is not limited to, how these Districts were created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.

Name	Contact Information	Information
Plaintiff Glenda McDonald	c/o Plaintiffs' Counsel	Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 3 and Michigan House of Representatives District 8. Plaintiff has knowledge that includes, but is not limited to, how these Districts were created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.
Plaintiff Janet Marie Overall	c/o Plaintiffs' Counsel	Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 1 and Michigan House of Representatives District 1. Plaintiff has knowledge that includes, but is not limited to, how these Districts were created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.
Plaintiff Shirley L. Radden	c/o Plaintiffs' Counsel	Possess knowledge of the allegations raised in the Complaint

Name	Contact Information	Information
		<p>and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan House of Representatives District 10. Plaintiff has knowledge that includes, but is not limited to, how this District was created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.</p>
Plaintiff Davonte Sherard	c/o Plaintiffs' Counsel	<p>Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 1 and Michigan House of Representatives District 2. Plaintiff has knowledge that includes, but is not limited to, how these Districts were created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.</p>
Plaintiff Michelle T. Smith	c/o Plaintiffs' Counsel	<p>Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a</p>

Name	Contact Information	Information
		<p>Black voter residing in Michigan Senate District 6. Plaintiff has knowledge that includes, but is not limited to, how this District was created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.</p>
<p>Plaintiff Kenyetta Snapp</p>	<p>c/o Plaintiffs' Counsel</p>	<p>Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan House of Representatives District 11. Plaintiff has knowledge that includes, but is not limited to, how this District was created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.</p>
<p>Plaintiff Donyale Stephen-Atara</p>	<p>c/o Plaintiffs' Counsel</p>	<p>Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 10 Michigan House</p>

Name	Contact Information	Information
		<p>of Representatives District 14. Plaintiff has knowledge that includes, but is not limited to, how these Districts were created with race as the predominate in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.</p>
<p>Plaintiff Tanesha Wilson</p>	<p>c/o Plaintiffs' Counsel</p>	<p>Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Plaintiff is a Black voter residing in Michigan Senate District 10 and Michigan House of Representatives District 14. Plaintiff has knowledge that includes, but is not limited to, how these Districts were created with race as the predominate consideration and deprived Black voters the opportunity to elect their candidate of choice, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, respectively.</p>
<p>Defendant Jocelyn Benson ("Defendant Benson")</p>	<p>c/o Assistant Attorneys General Heather S. Meingast and Erik A. Grill</p>	<p>Possess knowledge of the allegations raised in the Complaint and pleadings and motions filed in response thereto. Such knowledge may include but is not limited to: (i) Defendant Benson's constitutional mandate to oversee, assist with, and enforce the unlawful District maps; and (ii) Defendant Benson's authority and willingness to redress Plaintiffs' injuries by enforcing lawfully redrawn District maps. Defendant Benson has also knowledge of her</p>

Name	Contact Information	Information
		<p>own scholarship in the field of redistricting and minority-majority districts, including her agreement that empirical evidence shows it is “nearly impossible for minority candidates to elect the candidate of their choice outside of districts where more than 50% of the voting age population is a combination of minority groups,” and her proposal to ban “reductions below 55% of covered minority populations in any currently majority-minority district.” Defendant Benson also has knowledge of the first election to take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political consultant put it, “Democrats, in large part, can thank the redistricting commission for their legislative majorities, but the way they accomplished that was diminishing Black representation.”</p>
<p>All individual commissioners, agents, employees, representatives, and experts utilized by Defendant Michigan Independent Citizens Redistricting Commission (the “Commission”) in creating the challenged Districts.</p>	<p>c/o FINK BRESSACK and BAKER & HOSTETLER LLP</p>	<p>The Commission’s commissioners, agents, employees, representatives, and experts have knowledge of the allegations raised in the Complaint, the pleadings and motions filed in response thereto, and information related to the unlawful creation of the District maps. Such knowledge may include but is not limited to: (i) the reasoning, rationale, and basis for lowering the Black voting age</p>

Name	Contact Information	Information
		<p>population in the House and Senate Districts; (ii) the diluted ability of the Black voter candidate of choice to prevail in a future House and/or Senate Democratic Primary Election; (iii) the Commission’s subordination of traditional, race-neutral principles, such as compactness, contiguity, and respect for political subdivision or communities to race as the predominant consideration for drawing the House and Senate District lines; (iv) the Commission’s stacking of Black voters into Districts that traditionally have a majority white voting age population with the intent to have the lowest Black voting age population as could be rationalized; and (v) alternative less restrictive means that could have been used to draw the House and Senate Districts. These individuals also have knowledge of the first election to take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political consultant put it, “Democrats, in large part, can thank the redistricting commission for their legislative majorities, but the way they accomplished that was diminishing Black representation.”</p>
Defendant Douglas Clark	c/o FINK BRESSACK and BAKER & HOSTETLER LLP	As a commissioner on the Commission, this Defendant possess knowledge of the

Name	Contact Information	Information
		<p>Commissions’ unlawful actions in drawing the District maps, in addition to, but not limited to, all information the Commission possess knowledge of as described above. This Defendant also has knowledge of the first election to take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political consultant put it, “Democrats, in large part, can thank the redistricting commission for their legislative majorities, but the way they accomplished that was diminishing Black representation.”</p>
Defendant Juanita Curry	c/o FINK BRESSACK and BAKER & HOSTETLER LLP	<p>As a commissioner on the Commission, this Defendant possesses knowledge of the Commissions’ unlawful actions in drawing the District maps, in addition to, but not limited to, all information the Commission possess knowledge of as described above. This Defendant also has knowledge of the first election to take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political consultant put it, “Democrats, in large part, can thank the redistricting commission for their legislative majorities, but the way</p>

Name	Contact Information	Information
		they accomplished that was diminishing Black representation.”
Defendant Anthony Eid	c/o FINK BRESSACK and BAKER & HOSTETLER LLP	As a commissioner on the Commission, this Defendant possess knowledge of the Commissions’ unlawful actions in drawing the District maps, in addition to, but not limited to, all information the Commission possess knowledge of as described above. This Defendant also has knowledge of the first election to take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political consultant put it, “Democrats, in large part, can thank the redistricting commission for their legislative majorities, but the way they accomplished that was diminishing Black representation.”
Defendant Rhonda Lange	c/o FINK BRESSACK and BAKER & HOSTETLER LLP	As a commissioner on the Commission, this Defendant possesses knowledge of the Commissions’ unlawful actions in drawing the District maps, in addition to, but not limited to, all information the Commission possess knowledge of as described above. This Defendant also has knowledge of the first election to take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political

Name	Contact Information	Information
		consultant put it, “Democrats, in large part, can thank the redistricting commission for their legislative majorities, but the way they accomplished that was diminishing Black representation.”
Defendant Steven Terry Lett	c/o FINK BRESSACK and BAKER & HOSTETLER LLP	As a commissioner on the Commission, this Defendant possesses knowledge of the Commissions’ unlawful actions in drawing the District maps, in addition to, but not limited to, all information the Commission possess knowledge of as described above. This Defendant also has knowledge of the first election to take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political consultant put it, “Democrats, in large part, can thank the redistricting commission for their legislative majorities, but the way they accomplished that was diminishing Black representation.”
Defendant Brittnei Kellom	c/o FINK BRESSACK and BAKER & HOSTETLER LLP	As a commissioner on the Commission, this Defendant possesses knowledge of the Commissions’ unlawful actions in drawing the District maps, in addition to, but not limited to, all information the Commission possess knowledge of as described above. This Defendant also has knowledge of the first election to take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year

Name	Contact Information	Information
		stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political consultant put it, “Democrats, in large part, can thank the redistricting commission for their legislative majorities, but the way they accomplished that was diminishing Black representation.”
Defendant M.C. Rothhorn	c/o FINK BRESSACK and BAKER & HOSTETLER LLP	As a commissioner on the Commission, this Defendant possesses knowledge of the Commissions’ unlawful actions in drawing the District maps, in addition to, but not limited to, all information the Commission possess knowledge of as described above. This Defendant also has knowledge of the first election to take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political consultant put it, “Democrats, in large part, can thank the redistricting commission for their legislative majorities, but the way they accomplished that was diminishing Black representation.”
Defendant Cynthia Orton	c/o FINK BRESSACK and BAKER & HOSTETLER LLP	As a commissioner on the Commission, this Defendant possesses knowledge of the Commissions’ unlawful actions in drawing the District maps, in addition to, but not limited to, all information the Commission possess knowledge of as described above. This Defendant also has knowledge of the first election to

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		<p>take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political consultant put it, “Democrats, in large part, can thank the redistricting commission for their legislative majorities, but the way they accomplished that was diminishing Black representation.”</p>
Defendant Rebecca Szetela	c/o FINK BRESSACK and BAKER & HOSTETLER LLP	<p>As a commissioner on the Commission, this Defendant possesses knowledge of the Commissions’ unlawful actions in drawing the District maps, in addition to, but not limited to, all information the Commission possess knowledge of as described above. This Defendant also has knowledge of the first election to take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political consultant put it, “Democrats, in large part, can thank the redistricting commission for their legislative majorities, but the way they accomplished that was diminishing Black representation.”</p>
Defendant Janice Vallette	c/o FINK BRESSACK and BAKER & HOSTETLER LLP	<p>As a commissioner on the Commission, this Defendant possesses knowledge of the Commissions’ unlawful actions in drawing the District maps, in addition to, but not limited to, all</p>

Name	Contact Information	Information
		<p>information the Commission possess knowledge of as described above. This Defendant also has knowledge of the first election to take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political consultant put it, “Democrats, in large part, can thank the redistricting commission for their legislative majorities, but the way they accomplished that was diminishing Black representation.”</p>
<p>Defendant Erin Wagner</p>	<p>c/o FINK BRESSACK and BAKER & HOSTETLER LLP</p>	<p>As a commissioner on the Commission, this Defendant possesses knowledge of the Commissions’ unlawful actions in drawing the District maps, in addition to, but not limited to, all information the Commission possess knowledge of as described above. This Defendant also has knowledge of the first election to take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political consultant put it, “Democrats, in large part, can thank the redistricting commission for their legislative majorities, but the way they accomplished that was diminishing Black representation.”</p>

Name	Contact Information	Information
Defendant Richard Weiss	c/o FINK BRESSACK and BAKER & HOSTETLER LLP	As a commissioner on the Commission, this Defendant possesses knowledge of the Commissions’ unlawful actions in drawing the District maps, in addition to, but not limited to, all information the Commission possess knowledge of as described above. This Defendant also has knowledge of the first election to take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political consultant put it, “Democrats, in large part, can thank the redistricting commission for their legislative majorities, but the way they accomplished that was diminishing Black representation.”
Defendant Dustin Witjes	c/o FINK BRESSACK and BAKER & HOSTETLER LLP	As a commissioner on the Commission, this Defendant possesses knowledge of the Commissions’ unlawful actions in drawing the District maps, in addition to, but not limited to, all information the Commission possess knowledge of as described above. This Defendant also has knowledge of the first election to take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political consultant put it, “Democrats, in

Name	Contact Information	Information
		<p>large part, can thank the redistricting commission for their legislative majorities, but the way they accomplished that was diminishing Black representation.”</p>
Sean P. Trende	c/o Plaintiffs’ counsel	<p>Retained by Plaintiffs to prepare expert report that will be submitted by Plaintiffs in accordance with the Case Management Order. This expert report uses a statistical technique known as ecological regression to examine how varying levels of BVAP may predict the success rate of the Black voter candidate of choice in a Democratic Primary Election. This expert report will show that the Commission drew the House and Senate District maps with race as the predominant consideration over others and could have created additional Districts with a Black voter age population majority.</p>
Dr. Lisa Handley	Known by Defendants	<p>As this individual was retained by the Commission to determine if the District maps comply with Section 2 of the federal Voting Rights Act, 52 U.S.C. § 10301, Dr. Handley possesses knowledge that includes but is not limited to: (i) the Commission’s decision-making process in lowering the Black voting age population in the challenged Districts; (ii) the Commission’s decision-making process in replacing and deleting Black voter majority-minority House and Senate Districts with so-called Minority Opportunity Districts; (iii) the Commission’s decision-making process in “cracking” or “unpacking” Black voters into what Dr. Handley’s</p>

Name	Contact Information	Information
		<p>report to the Commission describes as “white crossover voting” districts; and (iv) all of the conclusion and information contained in Dr. Handley’s Report to the Commission. This Defendant also has knowledge of the first election to take place in Michigan following the Redistricting Commission’s handiwork, an election that ended the City of Detroit’s 70-year stretch of Black representation in Congress and reduced the size of the Michigan Legislative Black Caucus by 20%. As one political consultant put it, “Democrats, in large part, can thank the redistricting commission for their legislative majorities, but the way they accomplished that was diminishing Black representation.”</p>
<p>Qualified Black voters and residents from the impacted areas of the challenged Senate and House Districts and Metropolitan Detroit</p>	<p>To be provided once available to Plaintiffs, c/o Plaintiffs’ Counsel.</p>	<p>These individuals are voters residing in and/or negatively impacted by the challenged Senate and House Districts, and surrounding area, that were created with race as the predominate consideration and/or deprived Black voters the opportunity to elect their candidate of choice.</p> <p>Plaintiffs will disclose the names of these individuals as they become known.</p>
<p>Elected officials from the impacted areas of the challenged Senate and House Districts and Metropolitan Detroit</p>	<p>To be provided once available to Plaintiffs, c/o Plaintiffs’ Counsel.</p>	<p>These individuals are elected officials representing and/or negatively impacted by the challenged Senate and House Districts, and surrounding area, that were created with race as the predominate consideration and/or</p>

Name	Contact Information	Information
		<p>deprived Black voters the opportunity to elect their candidate of choice.</p> <p>Plaintiffs will disclose the names of these elected officials as they become known.</p>
<p>All employees, officers, agents, representatives, consultants, and experts utilized by the Michigan Secretary of State's office in assisting with, enforcing, overseeing, and implementing the unlawful District maps or any future redrawn maps.</p>	<p>c/o Assistant Attorneys General Heather S. Meingast and Erik A. Grill</p>	<p>These individuals possess the same knowledge and information as Defendant Benson.</p>
<p>Jonathan Brater - Director of the Bureau of Elections</p>	<p>c/o Assistant Attorneys General Heather S. Meingast and Erik A. Grill</p>	<p>As the Bureau of Elections is responsible for administering elections at the direction of Defendant Benson, this individual possesses the same knowledge and information as Defendant Benson.</p>
<p>Bruce Adelson</p>	<p>Known by Defendants</p>	<p>As Mr. Adelson was former counsel to the Commission, he possesses the same information and knowledge of the individual commissioner Defendants in addition to non-privileged information related to the history of discrimination in Michigan and its influence on voting.</p>
<p>Jon X. Eguia</p>	<p>Address: 486 W Circle Dr, #220A, East Lansing, MI 48824</p> <p>Telephone: (517) 353-6621</p>	<p>Professor Eguia is a Professor of Economics and (by courtesy) of Political Science at Michigan State University. Professor Eguia has extensively researched redistricting and his research is published in the peer-reviewed Election Law Journal. In addition, he was the lead author of the Report on the 2021 Michigan Redistricting Map Analysis published by the Institute of Public</p>

Name	Contact Information	Information
		Policy and Social Research at Michigan State University.

II. DOCUMENTS, ELECTRONICALLY-STORED INFORMATION, AND TANGIBLE THINGS THAT MAY BE USED TO SUPPORT PLAINTIFFS’ CLAIMS AND DEFENSES

The following documents, electronically-stored information, and tangible things are in Plaintiffs’ possession and may be used to support Plaintiffs’ claims and defenses. Unless already in the possession of Defendants, these documents will be available for review and copying at a mutually agreeable time and location, pursuant to the Case Management Order. ECF No. 38. Alternatively, at Defendants request and expense, these documents may be copied and mailed to counsel for Defendants. Any expert report listed or otherwise referenced below will be produced to Defendants by January 18, 2023 pursuant to the Case Management Order. ECF No. 38, PageID.507

1. The administrative and redistricting records of Defendant Michigan Independent Citizens Redistricting Commission’s including but not limited to those records accessible to Plaintiffs via the Commission’s website at <https://www.michigan.gov/micrc> or other websites.
2. The written expert witness report of Sean P. Trende, which shall be produced to Defendants by January 18, 2023 pursuant to the Case Management Order. ECF No. 38, PageID.507.
3. Any other future expert witness reports that may be utilized by Plaintiffs shall be produced to Defendants by January 18, 2023 pursuant to the Case Management Order. ECF No. 38, PageID.507. At this time it is anticipated that any such expert report will contain information that includes, but is not limited to, (i) the inability of minority candidates of choice to prevail in future House and/or Senate Democratic Primary Elections; (ii) the Commission’s subordination of traditional, race-neutral principles, such as compactness, contiguity, and respect for political subdivision or communities to race as the predominant consideration for drawing the House and Senate District lines; (iii) the Commission’s stacking of Black voters into Districts that traditionally have a majority white voting age population with the intent to dilute the Black voting age population; (iv) alternative less restrictive means that could have been used to draw the House and Senate Districts; and (v)

any and all other information that could be discovered by Plaintiffs to support their claims.

4. All documents, illustrative maps, reports, or other material included or otherwise referenced in any of Plaintiffs' filings, which would be in the possession of Defendants.

Plaintiffs have put forth a good-faith effort to identify and categorize all documents required under Rule 26(a)(1)(ii). It is, however, possible that additional documents which support Plaintiffs' claims and refute Defendants' defenses may be discovered through the course of this litigation. Such additional documents would be in the possession of Defendants and/or third-parties, including, but not limited to, the following:

1. Michigan's past redistricting maps and associated records as well as the corresponding primary and general election results for the previous House and Senate Districts within and surrounding Michigan's majority minority areas.
2. Any and all election results of the challenged House and Senate Districts and surrounding area from 2022, including both the primary and general elections showing that Black voters were unable to elect their candidates of choice in several of the Commission's redrawn districts.
3. Defendant Michigan Independent Citizens Redistricting Commission's complete administrative file compiled in connection with Constitutional redistricting mandate.
4. Any and all campaign finance reports filed with Defendant Benson and her office, located in the Secretary of State's campaign financial database.

III. COMPUTATION OF DAMAGES

Except for fees under 52 U.S.C. § 10310(e), Plaintiffs do not seek damages as described under Rule 26(a)(1)(iii). Instead, Plaintiffs seek declaratory relief in the form of the following:

- A. Declare that the House and Senate District maps violate Section 2 of the Voting Rights Act (Counts I – II) and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution (Counts III – VI);

- B. Establish a reasonable deadline by which Defendants must adopt Plaintiffs' proposed Remedy Map, or, alternatively, should Defendants fail to meet the Court's deadline, that the Court assume jurisdiction, appoint a special master, and draw constitutionally compliant House and Senate District maps;
- C. Award Plaintiffs their costs, expenses, disbursements, and reasonable attorney fees incurred because of filing this action to defend their constitutionally and statutorily protected voting rights, in accordance with 52 U.S.C. § 10310(e);
- D. Retain jurisdiction until such time that all Defendants have complied with all the Court's orders and mandates stemming from this action; and
- E. Grant such other and further relief as the Court may deem just and proper.

IV. INSURANCE AGREEMENT

This disclosure required by Rule 26(a)(1)(A)(iv) does not apply to Plaintiffs and Plaintiffs are not aware of any insurance coverage relevant to their claims against Defendants.

V. IDENTIFICATION OF EXPERT WITNESSES

Pursuant to Fed. R. Civ. P. 26(a)(2), Plaintiffs will make these disclosures by December 28, 2022, in accordance with the Case Management Order.

Respectfully submitted,

Dated: November 23, 2022

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EXHIBIT C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DONALD AGEE, JR. et al.,

Plaintiffs,

v.

JOCELYN BENSON, et al.,

Defendants.

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

**THE COMMISSION'S
INITIAL DISCLOSURES**

Defendants Michigan Independent Citizens Redistricting Commission, Douglas Clark, Juanita Curry, Anthony Eid, Rhonda Lange, Steven Terry Lett, Brittnei Kellom, Cynthia Orton, M.C. Rothhorn, Rebecca Szetela, Janice Vallette, Erin Wagner, Richard Weiss, and Dustin Witjes, each in his or her official capacity as a Commissioner of the Commission (collectively, the “**Commission**”), hereby provide their Initial Disclosures under Federal Rule of Civil Procedure 26(a)(1).

The Commission makes these initial disclosures based upon information reasonably known to or obtained by the Commission as of the date below. The Commission’s investigation is ongoing and, accordingly, the Commission reserves the right to modify, amend, or otherwise supplement these disclosures, either through express supplements to these disclosures or through responses to formal discovery, as additional information becomes available during the course of this lawsuit or in the event that one or more witnesses becomes unavailable and others must be substituted.

The Commission’s initial disclosures are made without in any way waiving: (1) the right to object on the grounds of competency, privilege, relevancy and materiality, hearsay, or any other proper ground, to the use of any such information, for any purpose, in whole or

in part, in any subsequent proceeding in this action or any other action; and (2) the right to object on any and all grounds, at any time, to any discovery request or proceeding involving or relating to the subject matter of these initial disclosures. These disclosures do not constitute an admission by the Commission regarding any matter. All disclosures set forth below are subject to these qualifications.

Each of the following initial disclosures is made subject to any and all objections, including but not limited to competency, materiality, relevancy, admissibility, or any other grounds that would require their exclusion in any proceeding. Any and all such objections and grounds therefore are expressly reserved and may be interposed at any time. The Commission generally asserts the attorney-client privilege and the work product doctrine as to any and all relevant documents that are subject to such privilege and doctrine. To the extent any initial disclosure contains or refers to matters otherwise protected from discovery by the attorney-client privilege, the work product doctrine, or any other relevant privilege, no waiver is intended, nor is any waiver intended as to any other matters which are or may be subject to such protection or otherwise privileged, nor is the relevancy of any such matter conceded.

Except for the explicit facts stated herein, no incidental or implied admissions are intended. The Commission submits these initial disclosures solely in compliance with Federal Rule of Civil Procedure 26(a)(1), and these initial disclosures are solely for the purpose of this action.

I. Individuals Likely to Have Discoverable Information

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(i), the names and, if known, addresses and telephone numbers, of each individual likely to have discoverable information

the Commission may use in support of its claims or defenses are as follows, excluding impeachment and expert witnesses:

- A. Commissioner Douglas Clark. Commissioner Clark may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. He may be contacted through undersigned counsel.
- B. Commissioner Juanita Curry. Commissioner Curry may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. She may be contacted through undersigned counsel.
- C. Commissioner Anthony Eid. Commissioner Eid may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. He may be contacted through undersigned counsel.
- D. Commissioner Rhonda Lange. Commissioner Lange may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. She may be contacted through undersigned counsel.
- E. Commissioner Steven Terry Lett. Commissioner Lett may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. He may be contacted through undersigned counsel.
- F. Commissioner Brittni Kellom. Commissioner Kellom may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. She may be contacted through undersigned counsel.
- G. Commissioner Cynthia Orton. Commissioner Orton may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. She may be contacted through undersigned counsel.
- H. Commissioner M.C. Rothhorn. Commissioner Rothhorn may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. He may be contacted through undersigned counsel.
- I. Commissioner Rebecca Szetela. Commissioner Szetela may have discoverable information relating to the 2021 redistricting process for the Michigan House

of Representatives and Michigan Senate. She may be contacted through undersigned counsel.

- J. Commissioner Janice Vallette. Commissioner Vallette may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. She may be contacted through undersigned counsel.
- K. Commissioner Erin Wagner. Commissioner Wagner may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. She may be contacted through undersigned counsel.
- L. Commissioner Richard Weiss. Commissioner Weiss may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. He may be contacted through undersigned counsel.
- M. Commissioner Dustin Witjes. Commissioner Witjes may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. He may be contacted through undersigned counsel.
- N. Kimball Brace, President of Election Data Services, Inc. Mr. Brace and Election Data Services, Inc. were retained by the Commission for line drawing and redistricting technical services, and may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. He may be contacted through undersigned counsel.
- O. John Morgan, President of Applied Research Coordinates. Mr. Morgan was a subcontractor of Election Data Services, Inc., which was retained by the Commission for line drawing and redistricting technical services, and may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. He may be contacted through undersigned counsel.
- P. Kent Stigall. Mr. Stigall was a subcontractor of Election Data Services, Inc., which was retained by the Commission for line drawing and redistricting technical services, and may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. He may be contacted through undersigned counsel.
- Q. Dr. Lisa Handley. Dr. Handley was retained by the Commission to provide expert services relating to the 2021 redistricting process, and may have discoverable information relating to the 2021 redistricting process for the

Michigan House of Representatives and Michigan Senate. She may be contacted through undersigned counsel.

- R. Bruce L. Adelson, Esq. Mr. Adelson was retained by the Commission to provide expert services relating to the 2021 redistricting process, and may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. He may be contacted through undersigned counsel.
- S. Julianne V. Pastula, former General Counsel to the Commission. Ms. Pastula was employed by the Commission during the 2021 redistricting process, and may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. She may be contacted through undersigned counsel.
- T. Suann Hammersmith, former Executive Director of the Commission. Ms. Hammersmith was employed by the Commission during the 2021 redistricting process, and may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. She may be contacted through undersigned counsel.
- U. Edward Woods III, Executive Director for the Commission. Mr. Woods was employed by the Commission during the 2021 redistricting process, and may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. He may be contacted through undersigned counsel.
- V. Dr. Moon Duchin, MGGG Redistricting Lab. Dr. Duchin prepared reports summarizing community of interests extracted from public comment submitted to the Commission during the 2021 redistricting process, and may have discoverable information relating to the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate. Phone: 617.627.5970. Address: Tufts University, Tisch College, Barnum Hall, 163 Packard Ave, Medford, MA 02155.
- W. Custodian of record for the Commission. This individual may have discoverable information relating to the official public records for the 2021 redistricting process for the Michigan House of Representatives and Michigan Senate, including authentication of those records.
- X. Plaintiffs Donald Agee, Jr., Jerome Bennett, Dennis Leory Black, Jr., Jamee Burbridge, Beverly Ann Burrell, Jemell Cotton, Teresa Dubose, Karen Ferguson, Michelle Keeble, Kimberly Hill Knott, Barbara Gail London, Norma McDaniel, Glenda McDonald, Janet Marie Overall, Shirley L. Radden, Davonte Sherard, Michelle T. Smith, Kenyetta Snapp, Donyale Stephen-Atara, and Tanesha Wilson. Plaintiffs will have discoverable information relating to the claims in the Amended Complaint and the 2021

redistricting process for the Michigan House of Representatives and Michigan Senate.

- Y. All individuals identified by Plaintiffs and Defendant Benson in their initial disclosures.

The Commission reserves the right to modify or supplement these disclosures, and to use or introduce any supplemental information or any subsequently identified or produced witnesses or documents at the trial of this action.

II. Documents

Pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(ii), the Commission believes that it may use the following categories of documents, electronically stored information, and tangible things, excluding items used solely for impeachment, in its possession, custody, or control to support its claims or defenses:

- A. The final Linden Plan and the accompanying data, statistics, and maps for the Plan.
- B. The final Hickory Plan and the accompanying data, statistics, and maps for the Plan.
- C. Transcripts of the hearings and meetings of the Commission related to the 2021 redistricting process.
- D. Public comments and testimony submitted to the Commission relating to the 2021 redistricting process.
- E. Final reports and analyses prepared by Dr. Lisa Handley related to the 2021 redistricting process.
- F. Final reports and analyses prepared by Mr. Bruce Adelson related to the 2021 redistricting process.
- G. Reports and analyses prepared by Dr. Moon Duchin and the MGGG Redistricting Lab related to the 2021 redistricting process.
- H. Other materials from the Commission's public records relating to the 2021 redistricting process.

The above are those documents, electronically stored information, and/or tangible things that the Commission can identify at this time. The Commission reserves the right to supplement this list.

III. Computation of Any Category of Damages

The Commission has not asserted a claim for damages in this action, and therefore makes no disclosure pursuant to Federal Rule of Civil Procedure 26(a)(1)(A)(iii).

IV. Applicable Insurance Agreements

None.

The Commission, in accordance with Federal Rule of Civil Procedure 26(a)(1), is making these initial disclosures based on the information now reasonably available. As discovery and investigation of the case continues, the Commission may become aware of additional damages or of facts, witnesses, and/or documents relevant to these proceedings of which it is not presently aware. Accordingly, the Commission reserves the right to modify, amend and/or supplement these disclosures as set forth herein.

Dated: November 23, 2022

Respectfully submitted,

/s/ Nathan J. Fink

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CERTIFICATE OF SERVICE

I certify that on November 23, 2022, this document served via electronic mail on all counsel of record.

/s/ Nathan J. Fink

Nathan J. Fink