

**STATE OF MICHIGAN  
IN THE MICHIGAN SUPREME COURT**

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**LEAGUE OF WOMEN VOTERS OF MICHIGAN,  
AMERICAN CITIZENS FOR JUSTICE, APIA VOTE -  
MICHIGAN, DETROIT ACTION, LGBT DETROIT,  
NORTH FLINT NEIGHBORHOOD ACTION  
COUNCIL, RISING VOICES, KENT BLOHM,  
CATHY BROCKINGTON, DENISE HARTSOUGH,  
DONNA HORNBERGER, GILDA JACOBS, JUDY  
KARANDJEFF, MARGARET LEARY, ATHENA  
MCKAY, CHRISTINE PAWLAK, KATHERINE  
PRIMEAU, RONALD PRIMEAU, SUSAN  
ROBERTSON, SUE SMITH,**

S. Ct. No. \_\_\_\_\_

Plaintiffs,

v.

**INDEPENDENT CITIZENS  
REDISTRICTING COMMISSION,**

**ORAL ARGUMENT REQUESTED**

Defendant.

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**COMPLAINT**

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**An unrelated civil action between different plaintiffs and the same defendant arising out of the transaction or occurrence alleged in the complaint but raising different legal issues has been previously filed in this Court, in *Detroit Caucus et al. v. ICRC*, where it was given case No. 163926. The action remains pending.**

Plaintiffs, by and through their attorneys, Goodman Acker, PC, and Pinsky, Smith, Fayette & Kennedy, LLP, state as follows:

## JURISDICTION, VENUE, AND PARTIES

1. This is an original action challenging the legality of Defendant Independent Citizens Redistricting Commission's December 28, 2021, adoption of a new district map for the State House of Representatives ("the Adopted Map"). This Court has original jurisdiction under Mich Const 1963 Art 4, § 6(19) and Art 6, § 4.

2. Plaintiff League of Women Voters of Michigan ("the League") is a nonpartisan community-based statewide organization with headquarters in Lansing, Michigan. The League was formed in April 1919, after Michigan voters granted women suffrage in November 1918. The League is affiliated with the League of Women Voters of the United States, which was founded in 1920. The League is dedicated to encouraging its members and the people of Michigan to exercise their rights to vote and to participate in all aspects of the democratic process, as protected by the federal Constitution, the Michigan Constitution, and federal and state laws. The mission of the League is to promote political responsibility through informed and active participation in government and to act on selected governmental issues. The League impacts public policies, promotes citizen education, and makes democracy work by, among other things, removing unnecessary barriers to full participation in the electoral process, for example by supporting ballot proposals such as 2018 Proposal 2 and 3, the former address state and Congressional level partisan gerrymandering. Currently, the League has over 2,420 members, each of whom, upon information and belief, is a registered voter in Michigan. The League has members in almost every county in the State. They include Republicans, Democrats, and independents. League members dedicate substantial time and effort to voter training and civic engagement activities, including voter registration and nonpartisan voter guides. The League has been monitoring the Independent Citizens Redistricting Commission.

3. Plaintiff American Citizens for Justice is a nonprofit civil rights advocacy organization that is focused on race, equity and discrimination affecting the Asian Pacific Islander American community. ACJ was founded in 1983 to seek justice in the Vincent Chin baseball bat beating death case and the subsequent civil rights case.

4. Plaintiff APIAVote - Michigan is a nonpartisan organization committed to justice and equity for the Asian American community through grassroots mobilization, civic engagement, leadership development, and coalition building. APIAVote – Michigan upholds and pursues a vision of justice and equity that asserts people power and community connectedness as the framework for democracy, decision-making, community engagement, and service. This vision is realized through an informed, socially conscious Asian American community unified behind the urgency for greater representation and greater power to uphold the values of the community.

5. Plaintiff Detroit Action, a project of Tides Advocacy, is a grassroots, member-led, community organization fighting for political power and racial and economic justice for working-class Detroiters, relaunched with the support of Center for Popular Democracy and Alliance for Youth Action in 2019. Detroit Action seeks to be a union for Black and Brown Michiganders to build their power to challenge the root cause of poverty, advance justice, and promote human development. Further, Detroit Action seeks to expand the ability of working-class Black and Brown Michiganders’ ability to improve their communities through leadership development, community organizing, and civic engagement.

6. Plaintiff LGBT Detroit is a nonprofit organization and North America’s largest African-American-founded and -led LGBT+ association. LGBT Detroit’s mission is to activate, amplify, and sustain LGBT+ culture, education, advocacy, and human rights. For over two decades, LGBT Detroit has enjoyed the unwavering support of neighboring communities to foster

an environment conducive to lesbian, gay, bisexual, and transgender individuals regardless of race, culture, or socioeconomic status. LGBT Detroit’s work has included advocacy efforts, partnership, testifying before local and state legislators, and providing safe gathering spaces where members of the LGBT community can interact without fear of persecution or bigotry.

7. Plaintiff North Flint Neighborhood Action Council is an organization which exists to address issues related to safety, education, communication, housing and beautification by bringing together residents, block clubs, neighborhood associations and organizations to develop resources for North Flint to enhance the quality of life for all.

8. Plaintiff Rising Voices is a nonprofit organization, and a project of the Center for Empowered Politics, which seeks to develop the leadership of and organize Asian American women, nonbinary, and young Michigan citizens. Its civic engagement work includes relational organizing, voter registration, and a multi-lingual, culturally competent program to educate and mobilize voters.

9. Plaintiff Kent Blohm is an individual and a registered voter who resides in Grand Haven, Michigan.

10. Plaintiff Cathy Brockington is an individual and a registered voter who resides in Saugatuck, Michigan.

11. Plaintiff Denise Hartsough is an individual and a registered voter who resides in Kalamazoo, Michigan.

12. Plaintiff Donna Hornberger is an individual and a registered voter who resides in Traverse City, Michigan.

13. Plaintiff Gilda Jacobs is an individual and a registered voter who resides in Huntington Woods, Michigan.

14. Plaintiff Judy Karandjeff is an individual and a registered voter who resides in East Lansing, Michigan.

15. Plaintiff Margaret Leary is an individual and a registered voter who resides in Ann Arbor, Michigan.

16. Plaintiff Athena McKay is an individual and a registered voter who resides in Flint, Michigan.

17. Plaintiff Christine Pawlak is an individual and a registered voter who resides in Holland Township, Michigan.

18. Plaintiff Katherine Primeau is an individual and a registered voter who resides in Mt. Pleasant, Michigan.

19. Plaintiff Ronald Primeau is an individual and a registered voter who resides in Mt. Pleasant, Michigan.

20. Plaintiff Susan Robertson is an individual and a registered voter who resides in Grand Haven, Michigan.

21. Plaintiff Sue Smith is an individual and a registered voter who resides in Ypsilanti, Michigan.

22. Defendant Independent Citizens Redistricting Commission (“ICRC”) is an entity organized under Michigan law, comprised of 13 Commissioners who are registered voters in Michigan. It operates throughout the State of Michigan. The Secretary of State selects Commissioners from a random draw of applicants for the position who meet certain criteria.

23. The acts that are the subject of this action occurred throughout the State of Michigan.

## FACTUAL ALLEGATIONS

24. Plaintiffs bring this action to challenge Defendant’s December 28, 2021 enactment of a state House of Representatives legislative map known as the Hickory Map (“the Adopted Plan”) which includes a disproportionate partisan advantage to the Republican Party in violation of various provisions of the Michigan Constitution. This challenge to the Adopted Plan on partisan fairness grounds is supported by a brief and a report by Plaintiffs’ expert on partisan fairness, Dr. Christopher Warshaw, Ph.D., J.D., filed herewith. Defendant failed in its primary mission to ensure a district map for the State House which is free of disproportionate partisan advantage.

### **Historic Levels of Partisan Gerrymandering in Michigan, 2012-2020**

25. Following their successful 2001 gerrymander, in 2011 the Republican Legislature’s gerrymander of Michigan’s Congressional, State Senate, and State House districts was of historic proportions, not just in Michigan but compared to all redistricting plans adopted in every state since 1970.

26. The scheme was described in the factual findings of the federal court three-judge panel in Michigan’s 2019 partisan gerrymandering decision:

As the release of the 2010 census data approached the Republican State Leadership Committee (“RSLC”) engaged in a national effort to ensure that states redrew their congressional lines during the 2011 redistricting cycle to favor Republican candidates and disadvantage Democrats. The RSLC appropriately named their initiative the “REDistricting MAjority Project,” or “Project REDMAP.” According to a 2013 report from the RSLC, they raised \$30 million towards Project REDMAP from 2009 to 2010. The goal of Project REDMAP was simple: “[d]rawing new district lines in states with the most redistricting activity . . . to solidify conservative policymaking at the state level and maintain a Republican stronghold in the U.S. House of Representatives for the next decade.” The report explained that drawing district lines favorable to Republicans was at the core of this strategy. According to the report, “all components of a successful congressional race . . . rest in the congressional district lines, and this was an area where Republicans had an unquestioned advantage [in the 2012 elections].”

*League of Women Voters of Michigan v Benson*, 373 F Supp 3d 867, 882 (ED Mich, 2019) (3-

judge panel), *judgment vacated sub nom Chatfield v League of Women Voters of Mich*, \_\_\_ US \_\_\_, 140 S Ct 429; 205 L Ed 2d 250 (2019) (*mem*) (citations omitted).

27. As the federal court three-judge panel found, the REDMAP effort worked well nationally and especially in Michigan:

Project REDMAP proved wildly successful both nationally and in Michigan. As the RSLC said in its 2013 report, in the 113th Congress, elected in November 2012 during the first elections after the 2011 redistricting cycle, “Republicans enjoy[ed] a 33-seat margin” nationally despite the fact that “voters pulled the lever for Republicans only 49 percent of the time in congressional races, suggesting that 2012 could have been a repeat of 2008” when Democrats won the United States House of Representatives. Further, the report found that “[t]he effectiveness of REDMAP is perhaps most clear in the state of Michigan.” The REDMAP report explained that while “[t]he 2012 election was a huge success for Democrats at the statewide level in Michigan[,]” with voters “elect[ing] a Democratic U.S. Senator by more than 20 points and reelect[ing] President Obama by almost 10 points . . . Republicans at the state level maintained majorities in both chambers of the legislature and voters elected a 9-5 Republican majority to represent them in Congress.”

Republicans enjoyed great success in Michigan’s 2012 elections due in large part to the efforts of Republican legislators and map-drawers in the redistricting process in 2011. The passage of the Enacted Plan represented the culmination of a calculated initiative by Michigan’s Republican legislators and mapmakers, in the 2011 redistricting cycle, to deliberately draw Michigan’s legislative districts to maximize Republican advantage and, consequently, disadvantage Democratic voters, Democratic candidates, and the Democratic Party. The partisan advantage that Michigan lawmakers achieved through the Enacted Plan persists to this day.

*Id.* at 883 (emphasis added) (citations omitted).

28. The electoral consequences of that partisan gerrymander endured for a decade:

[The gerrymandered plans] proved tremendously successful in advantaging Republicans and disadvantaging Democrats throughout several election cycles. In each of the three statewide elections held under the Enacted Plan between 2012 and 2016, Republicans won 64% of Michigan’s congressional seats (i.e., 9 of 14) even though they never earned more than 50.5% of the total statewide vote. In Michigan’s 2014 Senate election, Republicans earned only 50.4% of the vote but won 71.1% of the seats.

The partisan bias in Michigan’s legislative maps continued in the 2018 midterm elections. Democrats earned approximately 55.8% of the vote in congressional elections but gained only 50% of the Congressional seats; 52.6% of the vote in the

House but only 47% of the House seats, and over 50% of the vote in the Senate but only 42% of the Senate seats. In other words, despite earning a sizable majority of aggregate votes for congressional candidates, Democrats merely pulled even with Republicans in terms of seats won. And despite earning a majority of the votes cast in the House and Senate elections, Democrats remained decidedly in the minority in both chambers of the state legislature.

*Id.* at 892-93 (citations omitted).

29. The Court’s determination of partisan gerrymandering on a massive scale flowed from all the evidence:

We have found that 27 of the 34 Challenged Districts violate Plaintiffs’ First and Fourteenth Amendment rights by diluting the weight of their votes. We have also found that [all 34] Challenged District[s] violate Plaintiffs’ First Amendment right to association.

*Id.* at 960.

**The 2017-18 Grassroots Revolt Against Partisan Gerrymandering:  
Voters Not Politicians and Proposal 2**

30. In reaction to this abusive gerrymandering, the sole purpose of 2018 Proposal 2, which became Mich Const 1963 Article 4, § 6, was to end partisan gerrymandering. From founder and President Katie Fahey’s first Facebook message – “I’d like to take on gerrymandering in Michigan, if you’re interested in doing this as well, please let me know” – to its name – “Voters Not Politicians” – to its campaign message – “politicians should not be choosing voters, voters should choose politicians” – the only goal was to end partisan gerrymandering.

31. Voters overwhelmingly endorsed the purpose of Proposal 2 to end partisan gerrymandering. Proposal 2 passed 61.1% to 38.9% in November, 2018.

32. Proposal 2 sought to end gerrymandering using both procedural and substantive reforms. It changed the procedure to a transparent bipartisan commission leavened with non-affiliated members. Substantively, it directed ICRC to adopt plans that did “not provide a disproportionate advantage to any political party . . . determined using accepted measures of



partisan fairness:”

Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political party shall be determined using accepted measures of partisan fairness.

Mich Const 1963 art 4, § 6(13)(d).

33. Unfortunately, the ICRC bungled fulfilling Proposal 2’s sole purpose – plans which achieved partisan fairness.

### **The ICRC Bungles the Handling of Partisan Fairness**

34. Despite the clear mandate of Proposal 2 to create fair plans, ICRC did not address that obligation until very late in its map-drawing process, scrambling to fix the unfair draft plans it had already drawn when it learned how unfair they were. It failed to fix them, leaving its State House plan (“the Adopted Plan”) unfair with significant partisan bias.

35. Upon information and belief, prior to beginning the work of ICRC, none of the Commissioners had any experience in legislative map-drawing.

36. Five months after the ICRC convened, it first received a short “partial overview” of the redistricting criteria from its newly hired General Counsel, Julianne Pastula (“Pastula”). See February 18, 2021 Minutes at 5.

37. Further discussion of the criteria was repeatedly pushed back, see, e g, March 11, 2021 Minutes at 4, until Pastula finished it in a brief presentation on March 18th. See March 18, 2021 Minutes at 4. At that same meeting the ICRC authorized the hiring of a racially polarized voting analyst for Voting Rights Act purposes, Dr. Lisa Handley (“Handley”), but hired no one to assist it on partisan fairness analysis. See *id.*

38. Nine months after the ICRC convened, at its June 10, 2021 meeting, the ICRC authorized a Redistricting Process Committee (“RPC”) to make recommendations to the ICRC on

the procedures to use to draw maps. See June 10, 2021 Meeting Minutes at 6-7.

39. At a June 28, 2021 RPC meeting to which Handley was invited to discuss VRA matters, out of curiosity she asked the ICRC members of the RPC what the ICRC was doing regarding partisan fairness. Based on that almost casual discussion, she was asked to make a partisan fairness presentation, even though she told the RPC that “I don’t specialize in this” and recommended that a political scientist be found to do it. See June 28, 2021 Minutes of the RPC at 3; June 28, 2021 RPC Meeting Video, 1:03:38; June 28, 2021 Transcript at 17-22.

40. At its June 30, 2021 meeting – more than nine months after it had convened and on the cusp of map-drawing – the ICRC authorized a one-hour presentation by Handley on partisan fairness. See June 30, 2021 Minutes at 5. This was done despite the facts that Handley: (a) had never been vetted by the ICRC for that work; (b) had been hired based solely on her VRA expertise, and (c) **had specifically disclaimed expertise on partisan fairness.**

41. Handley’s presentation on partisan fairness occurred at the July 9, 2021 meeting to only 10 of the 13 commissioners. See July 9, 2021 Minutes at 4; Meeting Video beginning at 2:38:30. She began the presentation by asking commissioners if “they had a way forward” to measure partisan fairness, and Commissioner Szetela conceded that the ICRC did not. Meeting Video at 2:40:51. Handley then discussed only three of the measures of partisan fairness, acknowledging that she only described a small set of available measures – those that are simple to understand and easy to calculate using a spreadsheet. See July 9, 2021 Minutes, Handley PowerPoint at 16; e.g., Meeting Video at 2:43:06. Neither Handley nor any of its other hired advisers provided information on other measures of partisan fairness nor gave Commissioners opportunity to consider alternative measures. The ICRC also did not vote to adopt any specific measures of partisan fairness.

42. On August 6, 2021, the ICRC again heard the same Handley presentation on partisan fairness. See August 6, 2021 Minutes at 3. This time her PowerPoint slides were supplemented by a memo which once again justified the use of only those three measures based on ease of calculation and incorporation into redistricting software. See *id.*; see also Handley, “Some Mathematical Measures for Determining if a Redistricting Plan Disproportionately Advantages a Political Party.”

43. Experts on partisan fairness employ a variety of methods to measure the degree to which a map favors one political party over another.

44. One way of measuring partisan fairness recognized by experts in the field is the Efficiency Gap, which measures the degree to which a party “wastes” votes, i.e., receives votes which do not result in winning a district. Wasted votes consist of all the votes won by the losing party in a district, and all of the votes over 50% + 1 received by the winning party. Of course, all parties waste some votes. But where one party wastes far more votes than another, it indicates partisan bias against that party.

45. Other recognized methods for measuring partisan fairness include: (a) the Lopsided Margin Test, which measures partisan bias by comparing margins of victory; (b) the Mean-Median Test, a metric looking at the difference between a party’s vote share in the median district and its average vote share across all districts; (c) the Seats/Votes calculation, a measure of whether two opposing parties are equally likely to command the same number of seats in a legislative chamber given a certain share of total votes; and (d) Declination, a measure looking at asymmetry in vote distribution as an indicator of the level of partisan bias.

46. As at the July 9 meeting, Handley never advised the ICRC on August 6, 2021 of the other measures of partisan fairness nor analyzed them. The ICRC took no action at its August

6, 2021 meeting to adopt any – let alone Handley’s – measures of partisan fairness for use in drafting maps. The drifting on partisan fairness continued.

47. Lacking knowledge of the full range of partisan fairness measures available to them and without having approved the use of any partisan fairness measures at all (or having obtained any VRA analysis), the ICRC nevertheless plunged into drawing draft Senate, House, and Congressional maps on August 20, 2021. See August 20, 2021 Minutes; Meeting Video beginning at 5:19:00. It drafted maps over dozens of meetings during the next six weeks.

48. While the ICRC proceeded to draft maps without partisan fairness guidance, ICRC officially hired Handley to perform partisan fairness analysis as a verbal addendum to the existing contract for her VRA services. See September 20, 2021 Minutes at 6-7. No Request for Proposal was approved or issued, no competitive bids were received, and no vetting of Handley’s credentials, or lack thereof, occurred. Cf. *id.*

49. Meanwhile, Pastula repeatedly resisted allowing the ICRC to consider partisan fairness data while drawing draft maps. See, e g, August 30, 2021 Meeting Video; September 8, 2021 Meeting Video; September 30, 2021 Meeting Video.

50. At virtually every meeting the public objected to the ICRC drawing draft maps blindly without considering partisan fairness, expressing concerns that it would surely lead to unfair maps. See, e g, August 26, 2021 Afternoon Meeting Video (comments of Chris Andrews); August 30, 2021 Meeting Video; August 31, 2021 Meeting Video (3 comments urging partisan fairness); September 2, 2021 Meeting Video (several comments urging partisan fairness); September 8, 2021 Meetings Video (partisan fairness sought); September 9, 2021 Afternoon Meeting Video (same); September 13, 2021 Meeting Video (same); September 14, 2021 Meeting Video (same); September 20, 2021 Meeting Video (same); September 21, 2021 Meeting Video

(same); September 23, 2021 Morning Meeting Video (same); September 28, 2021 Meeting Video (same); September 29, 2021 Meeting Video (same – at least a dozen comments); September 30, 2021 Meeting Video (same – several comments).

51. Several commissioners expressed concern about the failure to consider partisan fairness as draft maps were drawn. See, e.g., August 30, 2021 Meeting Video (comments of Commissioners Eid and Witjes); September 8, 2021 Meeting Video (comments of Commissioner Wagner); September 15, 2021 Meeting Video (Commissioner Rothhorn); September 29, 2021 Meeting Video (Commissioner Rothhorn says lack of partisan fairness data hinders ability to adjust maps).

52. Faced with a lack of data and Pastula’s opposition, some commissioners resorted to using national evaluation tools such as PlanScore, a nonpartisan national website for analyzing redistricting plans, to assess the partisan fairness of the draft maps. See September 20, 2021 Meeting Video beginning at 1:20:43; beginning at Transcript at 26-27 (Commissioner Eid assesses partisan fairness with PlanScore).

53. The ICRC completed its first draft Senate map on September 15, 2021 without any consideration of partisan fairness. See September 15, 2021 Meeting Video. On September 16, 2021, some partisan data became available to the ICRC, see Meeting Video, but it was not used in any systematic way to prevent the drafting of unfair maps.

54. When the ICRC was finally briefed on October 1, 2021, about the partisan fairness of their six weeks’ worth of maps, Handley told them that their legislative maps were badly flawed. Every measure of partisan fairness favored the Republicans. See October 1, 2021 Meeting Video.

55. In the first draft reviewed Senate map, the Lopsided Margin test favored Republicans by 6.9%, demonstrating that Democratic voters were packed. The Efficiency Gap

favored Republicans by 8.4%. The Mean-Median advantaged the Republican Party by 3.6%. Finally, the Seats/Votes calculation favored Republicans by 4.9%. See October 1, 2021 Meeting Video beginning at 1:46.

56. Based on these Senate analyses, Pastula changed her tune and told the ICRC that the partisan fairness measures were too high and had to be reduced. See October 1, 2021 Video at 2:20:28. Pastula told the ICRC that a zero percent Efficiency Gap was its goal. See *id.* at 2:22:17. Handley agreed that a 0% Efficiency Gap was possible. See *id.* at 2:22:46, 2:22:54.

57. The partisan fairness analysis of draft State House plans showed even more partisan bias in favor of Republicans than draft Senate plans. The first draft House plan examined had a 9.2% Lopsided Margin, Mean-Median of 4.8%, 11.8% Efficiency Gap, and Seats/Votes of 7.8%, all favoring the Republicans. See October 1, 2021 Meeting Video at 4:44.

58. And so the ICRC began a belated, hasty effort – a year after it first convened – to correct its unfair draft legislative plans in time to meet its self-imposed deadline of issuing proposed plans by November 12, 2021 for the 45-day public comment period. After all of these unforced errors in its year-long mishandled partisan fairness process, ICRC had barely five weeks to do that and make all the other adjustments to the draft plans required to be in compliance with, *inter alia*, the VRA. While the ICRC put the partisan fairness measures Handley used into its software, the ICRC once again never voted to adopt the partisan fairness measures Handley used or any others.

59. The ICRC's minutes indicate that it never officially adopted any redistricting criteria, whether as to partisan fairness or any other, for its own guidance or for public transparency about what it was doing. It ad hoc'ed its way through the entire map-drawing process. Commissions in other states chose a better, more transparent path by formally adopting policies

on redistricting criteria to guide their work. See, e g, Colorado Independent Redistricting Commissions, “Commission Policies and Guidelines,” [redistricting.colorado.gov](http://redistricting.colorado.gov).

60. The public demand for fair maps continued. See, e g, October 5, 2021 Meeting Video ; October 6, 2021 Meeting Video; October 7, 2021 Meeting Video; October 8, 2021 Meeting Video; October 11, 2021 Meeting Video; October 20, 2021 Meeting Video; October 21, 2021 Meeting Video; October 22, 2021 Meeting Video; October 25, 2021 Meeting Video; October 26, 2021 Meeting Video; October 28, 2021 Meeting Video; October 29, 2021 Meeting Video; November 1, 2021 Meeting Video.

61. At the October 5th meeting, Handley made a final 10-minute presentation on “Possible Unacceptable Scores” of partisan fairness. See October 5, 2021 Meeting Minutes, Handley Handout. It was based on her “quickly” going “through the court cases and literature” but she said it was a “little spotty” because she lacked access to the expert reports in the four cases she discussed. *Id.* at Transcript at 114. This provided no value whatsoever to the ICRC as it sought to *lower* the partisan fairness measures, and Commissioner Eid pointed out that the “disproportionate advantage” language of the Michigan Constitution was not at issue in any of these cases. See *id.* at 118-19.

62. The ICRC’s rushed effort to correct the partisan fairness of its draft maps fell well short. So it was no surprise on December 28, 2021 when the ICRC met to approve final maps that several commissioners sought more time to fix the still biased House map. See December 28, 2021 Meeting Video. Those requests fell on deaf ears.

63. Staff with the Secretary of State also unnecessarily pushed Commissioners to select maps in December without considering the need for any further corrections to the maps by stating that the Bureau of Elections could not complete its work adjusting databases to the new boundaries

in time for scheduled primaries. December 28, 2021 Meeting Transcript at 34-35. However, even in the pre-computerized era, the Bureau of Elections has historically completed this work much more quickly than in the four months that SOS Staff urged BOE be given. See, e.g., *In re Apportionment of State Legislature – 1982*, 413 Mich 96, 212-14; 321 NW2d 565 (1982) (per curiam) (legislative plans adopted by the Court on May 21; primary held on time). Moreover, the Legislature, this Court, or even the Attorney General can and have adjusted filing requirements during redistricting when necessary. See, e.g., *id.*; OAG No. 6081 (1982).

64. The so-called Hickory plan option for the State House was adopted by ICRC on December 28, 2021 (“the Adopted Plan”). By Handley’s analysis it still has a 5.3% Lopsided Margin, a 2.7% Mean-Median, a 4.3% Efficiency Gap, and a Vote/Seat share .5%, all in favor of Republicans. In Michigan, a highly competitive two-party state in which legislative elections can be decided by a few hundred votes, the Adopted Plan effectively tilts State House elections toward Republican control of the Legislature for the next decade.

65. The ICRC failed to meet the stated goal of its own lawyer, a 0% Efficiency Gap. It simply gave up, condemning the voters of Michigan to another 10 years under a biased, unfair State House map unless this Court intervenes to protect those voters.

66. Multiple individuals and organizations submitted their own maps to ICRC for the State House which complied with all of the criteria as well as came significantly closer to 0% Efficiency Gap on partisan fairness, thus cutting off any “Disproportionate Advantage” to any political party.

67. For example, Promote the Vote (“PTV”) submitted one such State House plan, which has one-third the Efficiency Gap and better scores on all of the measures of partisan fairness than the Adopted Plan, while complying as well or better with all of the other constitutional criteria.



PTV's plan, and the plans of other contributors, demonstrates that the ICRC's Adopted Plan could have been much better on partisan fairness had the ICRC not given up.

**COUNT I – Mich Const Art 4, § 6(13)(d)**  
**The House Map violates the Michigan Constitution because it “provide[s] a disproportionate advantage” to the Republican Party.**

68. Plaintiffs rely on the allegations of all prior paragraphs, as if they were restated herein.

69. Article 4, § 6(13) of the Michigan Constitution requires that various criteria be met in a State House district map, including but not limited to partisan fairness. Specifically, the Michigan Constitution provides that: “Districts shall not provide a disproportionate advantage to any political party. A disproportionate advantage to a political party shall be determined using accepted measures of partisan fairness.” *Id.* 6(13)(d).

70. Based on accepted measures of partisan fairness, ICRC's Adopted Plan will provide a disproportionate advantage to the Republican Party in State House elections for the next decade.

71. Because ICRC's Adopted Plan provides a disproportionate advantage to one political party, it violates Article 4, Section 6(13)(d) the Michigan Constitution.

**COUNT II – Mich Const Art 2, § 4(1)(a)**  
**The House Map violates the fundamental right to vote by diluting Democratic votes.**

72. Plaintiffs rely on the allegations of all prior paragraphs, as if they were restated herein.

73. The Michigan Constitution guarantees citizens the fundamental right to vote.

74. The right to vote is unconstitutionally abridged when State action dilutes the votes of some voters as compared to the votes cast by others.

75. By creating a State House district map which provides a disproportionate advantage

to the Republican Party, ICRC diluted the votes of Plaintiffs and other similarly situated voters.

76. The vote dilution under the ICRC's Adopted Plan is reviewed under strict scrutiny analysis.

77. The vote dilution under ICRC's Adopted Plan does not serve a compelling government interest.

78. ICRC's Adopted Plan is not narrowly tailored to achieve a government interest because it is possible to create a State House plan which complies with all other required criteria and results in much lower or a zero measure of partisan unfairness.

79. Accordingly, the ICRC's Adopted Plan fails strict scrutiny analysis and unconstitutionally violates the fundamental right to vote of Plaintiffs and others.

**COUNT III – Mich Const Art 1, §§ 3 and 5**  
**The House Map violates the fundamental rights of free speech, association, and to petition the Government by discriminating based on political affiliation.**

80. Plaintiffs rely on the allegations of all prior paragraphs, as if they were restated herein.

81. Article 1, §§ 3 and 5 of the Michigan Constitution guarantees citizens the fundamental rights of free speech, association, and to petition the Government. Those rights are abridged by State discrimination based on political affiliation.

82. By creating a State House map which provides a disproportionate advantage to the Republican Party, ICRC denied Plaintiffs and other similarly situated voters their fundamental rights of free speech, association, and to petition the Government because the Adopted Plan discriminates based on political affiliation, invoking a strict scrutiny analysis of the Adopted Plan.

83. The ICRC Adopted Plan fails strict scrutiny analysis, and as such, is

unconstitutional under Michigan Const, art 1, Sections 3 and 5.

**COUNT IV – Mich Const Art 2, § 4(2)**

**The House Map violates the Michigan Constitution’s purity of elections clause.**

84. Plaintiffs rely on the allegations of all prior paragraphs, as if they were restated herein.

85. The purity of elections clause in art 2, § 4(2) of the Michigan Constitution demands “fairness and evenhandedness in the election laws of this state.” *Socialist Workers Party v Secretary of State*, 412 Mich 571, 598; 317 NW2d 1 (1982). It requires that “every elector’s franchise [be] of equal value to every other elector,” such that “every elector has an equal voice in the choice of those who shall represent the people.” *Maynard v Bd of Dist Canvassers*, 84 Mich 228, 240-242; 47 NW 756 (1890).

86. By creating a State House map which provides a disproportionate advantage to the Republican Party, ICRC denied Plaintiffs and other similarly situated voters an equal voice in the choice of the legislators elected to the State House of Representatives.

87. The ICRC Adopted Plan is unconstitutional under Michigan Const art 2, §4(2).

**RELIEF SOUGHT**

WHEREFORE, Plaintiffs request that the Court grant the following relief:

- A. Vacate the Adopted Plan and stay any implementation efforts pending final order of this Court;
- B. Remand the matter of a State House plan to ICRC;
- C. Require the ICRC to promptly adopt a State House plan whose partisan fairness metrics match or improve on the metrics of the PTV State House Plan;
- D. Authorize the ICRC to adopt the PTV State House Plan as its plan;
- E. Award Plaintiffs costs and reasonable attorney fees;

F. Award Plaintiffs such other relief as may be just and equitable.

Respectfully submitted,

/s/ Sarah R. Howard

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