

IN THE STATE OF MICHIGAN  
IN THE SUPREME COURT

DETROIT CAUCUS; ROMULUS CITY COUNCIL; INKSTER CITY COUNCIL; TENISHA YANCY, as a State Representative and individually; SHERRY GAY-DAGNOGO, as a Former State Representative and individually; TYRONE CARTER, as a State Representative and individually; BETTY JEAN ALEXANDER, as a State Senator and individually, Hon. STEPHEN CHISHOLM, as member of Inkster City Council and individually, TEOLA P. HUNTER, as a Former State Representative and individually; Hon. KEITH WILLIAMS, as Chair MDP Black Caucus and individually; DR. CAROL WEAVER, as 14<sup>th</sup> Congressional District Executive Board Member and individually; WENDELL BYRD, as a Former State Representative and individually; SHANELLE JACKSON, as a Former State Representative and individually; LAMAR LEMMONS, as a Former State Representative and individually; IRMA CLARK COLEMAN, as a Former Senator & Wayne County Commissioner and individually; LAVONIA PERRYMAN, as representative of the Shirley Chisholm Metro Congress of Black Women and individually; ALISHA BELL, as Wayne County Commissioner and individually; NATALIE BIENAIME, as a Citizen of the 13th District; OLIVER COLE, as a resident of Wayne County; ANDREA THOMPSON, as a resident of Detroit; DARRYL WOODS, as a resident of Wayne County, NORMA D. MCDANIEL, as a Resident of Inkster; MELISSA D. MCDANIEL, as a resident of Canton, as a CHITARA WARREN, as a resident of Romulus; JAMES RICHARDSON, as a resident of Inkster, ELENA HERRADA, as a resident of Detroit

Supreme Court Case No. 163926

Jurisdiction: Original Pursuant to Mich. Const. Art. 4, §6(19).

AYAD LAW, P.L.L.C.  
645 Griswold St., Ste. 2202  
DETROIT, MICHIGAN 48226  
P: (313) 983-4600 | F: (313) 983-4665

*Plaintiffs,*

v.

MICHIGAN INDEPENDENT CITIZENS  
REDISTRICTING COMMISSION,

*Defendant.*

AYAD LAW, PLLC  
Nabih H. Ayad (P59518)  
William D. Savage (P82146)  
Attorney for Plaintiff  
645 Griswold St., Ste 2202  
Detroit, MI 48226  
P: 313.983.4600  
F: 313.983.4665  
nabihayad@ayadlawpllc.com  
williamsavage@ayadlawpllc.com

MICHIGAN INDEPENDENT  
REDISTRICTING COMMISSION  
Julianne Pastula (P74739)  
*Attorney for Defendant*  
PO Box 30318, Lansing MI 48909  
PastulaJ1@michigan.gov

FINK BRESSACK  
David H. Fink (P28235)  
*Attorney for Defendant*  
645 Griswold Street, Suite 1717  
Detroit, MI 48226  
P: (248) 971-2500  
F: (248) 971-2600

YANCEY LAW, PLLC  
Tenisha Yancey (P78319)  
*Co-counsel for Plaintiffs*  
18640 Mack Ave.  
Grosse Pointe, MI 482336  
tenisha.yancey@gmail.com

**REPLY BRIEF IN SUPPORT OF  
FIRST AMENDED VERIFIED COMPLAINT**

The above-named Plaintiffs (hereinafter "Plaintiffs"), by and through their attorneys at Ayad Law, PLLC, submit the following reply in support of their complaint:

AYAD LAW, P.L.L.C.  
645 Griswold St., Ste. 2202  
DETROIT, MICHIGAN 48226  
P: (313) 983-4600 | F: (313) 983-4665

## TABLE OF CONTENTS

|   |    |
|---|----|
| INDEX OF AUTHORITIES  | vi |
| ARGUMENT  | 1  |
| I. Defendants put the cart before the horse in claiming that they were not required to give consideration to the racial makeup of the districts which they drew.  | 1  |
| II. Plaintiffs present counter-proposals that only modify the necessary districts, that took only a matter of hours to produce, and that take into consideration the concerns of the Black community that were shared at the Commissions public comments meetings, and ignored by the Commission.                           | 2  |
| a. A proposed US Congressional Plan.  | 3  |
| b. A proposed Michigan Senate Plan.   | 3  |
| c. A proposed Michigan House of Representatives Plan.   | 4  |
| III. Defendants' contention that the Black community of Michigan is not a community of interest insults the intelligence of this Court and the public, is absurd in its 'reasoning,' and tells volumes about Defendants' lack of consideration of the Black community's interest, which they were required to consider.     | 5  |
| IV. Defendants voting pattern analysis is flawed, as Black Michiganders do consistently vote for their preferred candidates, White Michiganders do consistently vote as a bloc, and districts with 35% BVAP's will never afford the Black communities of Michigan an equal opportunity to elect their preferred candidates. | 6  |
| i. Betty Jean Alexander versus David Knezek.  | 8  |
| ii. Sylvia Santana versus Gary Woronchak.   | 8  |
| iii. Abraham Aiyash versus Adam Hollier.  | 9  |
| iv. The election of Mary Cavanagh.  | 9  |
| RELIEF REQUESTED  | 10 |

**INDEX OF AUTHORITIES**

**Caselaw:**

*Johnson v De Grandy*, 512 US 997, 1000; 114 S Ct 2647, 2651; 129 L Ed 2d 775 (1994) 1

*League of United Latin Am Citizens v Perry*, 548 US 399, 436; 126 S Ct 2594, 2620; 165 L Ed 2d 609 (2006) 1

*McConchie v Scholz*, No. 21-CV-3091, 2021 WL 6197318, at \*5 (ND Ill, December 30, 2021) 1

**Statutory:**

Mich Const 1963, art 4, §6(13)(a) and (c) 5

**AYAD LAW, P.L.L.C.**  
645 Griswold St., Ste. 2202  
DETROIT, MICHIGAN 48226  
P: (313) 983-4600 | F: (313) 983-4665

RECEIVED by MSC 1/22/2022 1:44:33 AM

## ARGUMENT

### I. Defendants put the cart before the horse in claiming that they were not required to give consideration to the racial makeup of the districts which they drew.

Despite Defendants' contention that they had no obligation to the Black community of Michigan, and no obligation under the Michigan Constitution or the Voting Rights Act of 1965, to not dilute Black voting opportunity in Michigan, their own expert counseled otherwise. "The Voting Rights Act requires a state or local jurisdiction to create districts that provide minority voters with an opportunity to elect their candidates of choice... **If districts that provide minority voters with the opportunity to elect their preferred candidates already exist, these must be maintained.**" Handley report, p. 2; Def. App. 042a. Not only Defendants' own expert tell them in no uncertain terms, in January of 2021 when her final report was completed, that they were not allowed to dilute (or retrogress) the Plaintiffs' vote, but it is simply common sense that the law would not permit such a thing, because it is common sense that the law should require proportionality.

"As explained in *De Grandy*, proportionality is 'a relevant fact in the totality of circumstances.' 512 U.S., at 1000, 114 S.Ct. 2647." *League of United Latin Am Citizens v Perry*, 548 US 399, 436; 126 S Ct 2594, 2620; 165 L Ed 2d 609 (2006); See also *McConchie v Scholz*, No. 21-CV-3091, 2021 WL 6197318, at \*5 (ND Ill, December 30, 2021). Proportionality, at its simplest, means that if half of a state's population is Black, and half it is White, then roughly half of all voting districts should be Black, and the other half White. In Michigan, for the last four decades, a partisan legislature has managed to accomplish approximate racial proportionality in Michigan, while Defendants astonishingly and wrongly concluded, that they were not required to consider it.

Although Plaintiffs have run through the appropriate legal factors (the *Gingles* factors), it really is unnecessary at this point as Defendants plans are so blatantly racially biased, as shown by their disproportionality alone.

In 2011, Michigan's legislature drew up plans that had 2 majority-Black US Congressional districts, 4 majority-Black Michigan Senate districts, and 12 majority-Black Michigan House districts. That resulted in an approximately proportionate amount of majority-Black voting districts to Michigan's then approximately 14% Black population. Between the 2010 and 2020 census, Michigan's White population percentage has decreased by 3.62% yet Blacks still make up approximately 14% of Michigan's population. However, the proportion of majority-Black US Congressional districts has decreased 100% (to zero), the proportion of majority-Black Michigan Senate districts has decreased 100% (to zero), and the proportion of majority-Black Michigan House of Representatives districts has decreased 50% (to six).

The voting districts in Michigan, based on Defendants proposed plans, will be grossly disproportional to the actual racial proportions of Michigan's population. And all because Defendants stubbornly maintain the clear error that a 35% BVAP district suffices under Voting Rights Act jurisprudence to allow equal opportunity for Black-preferred candidates. For the reasons explained below, and more, this is simply untrue.

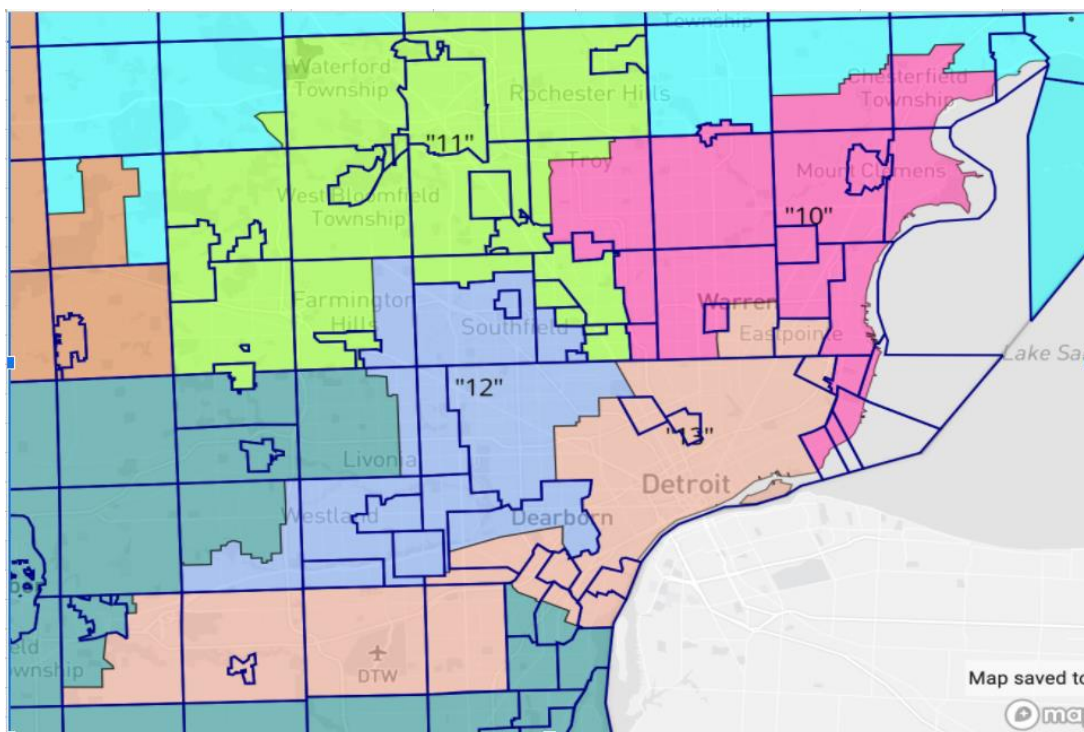
**II. Plaintiffs present counter-proposals that only modify the necessary districts, that took only a matter of hours to produce, and that take into consideration the concerns of the Black community that were shared at the Commissions public comments meetings, and ignored by the Commission.**

Defendants spend a good portion of their response arguing that satisfactory plans could not be produced in any timely fashion, and that Plaintiffs having not provided alternative plans with their Complaint is somehow proof of that fact. Defendants are wrong. Below are three redistricting

plans which Plaintiffs' expert has drawn up in a matter of hours and which correct for Defendants unconstitutional and racially biased plans.

**a. A proposed US Congressional Plan.**

The below proposed US Congressional plan's district 12 has a 50.4% Black voting age population ("BVAP"), based on current census data, while Defendant's has only a 45.7% BVAP. District 13 has a 51.9% BVAP, while Defendants proposed map has only a 46.9% BVAP.

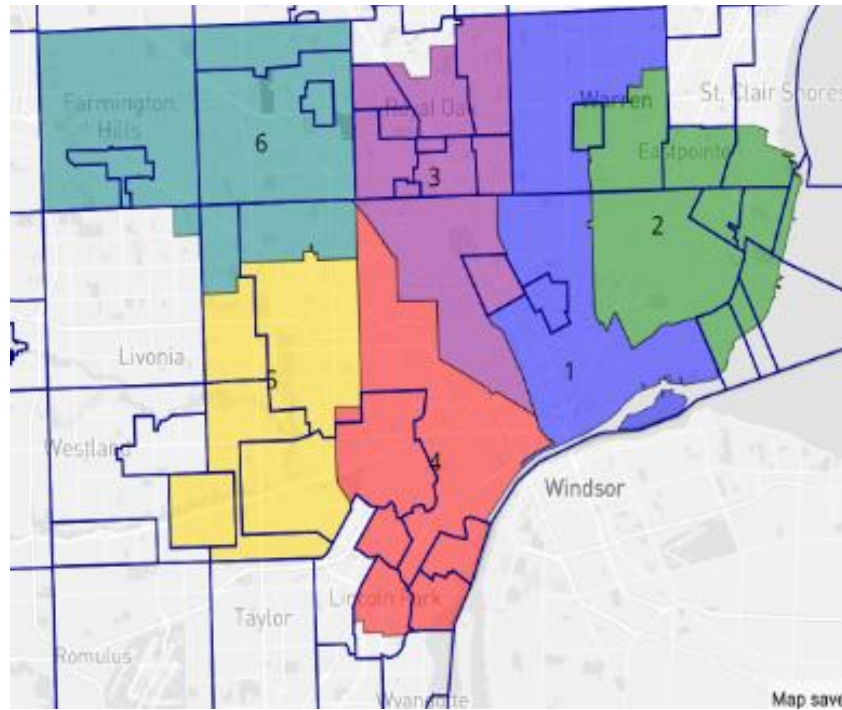


**b. A proposed Michigan Senate Plan.**

It is possible to make a Michigan Senate map that nearly guarantees six Black Senate districts, instead of the Defendants' map which makes seven districts with little to no chance of electing a Black senator. Unlike the Defendants' Michigan Senate map, all of the districts in Plaintiffs' proposed map have a majority-minority population, and a high enough median Black voting age population to guarantee equal opportunity or representation; the median being 46.67%. Additionally, Plaintiffs' map keeps Black communities together and is far more compact, leading to a far higher chance of a Black senator getting elected.

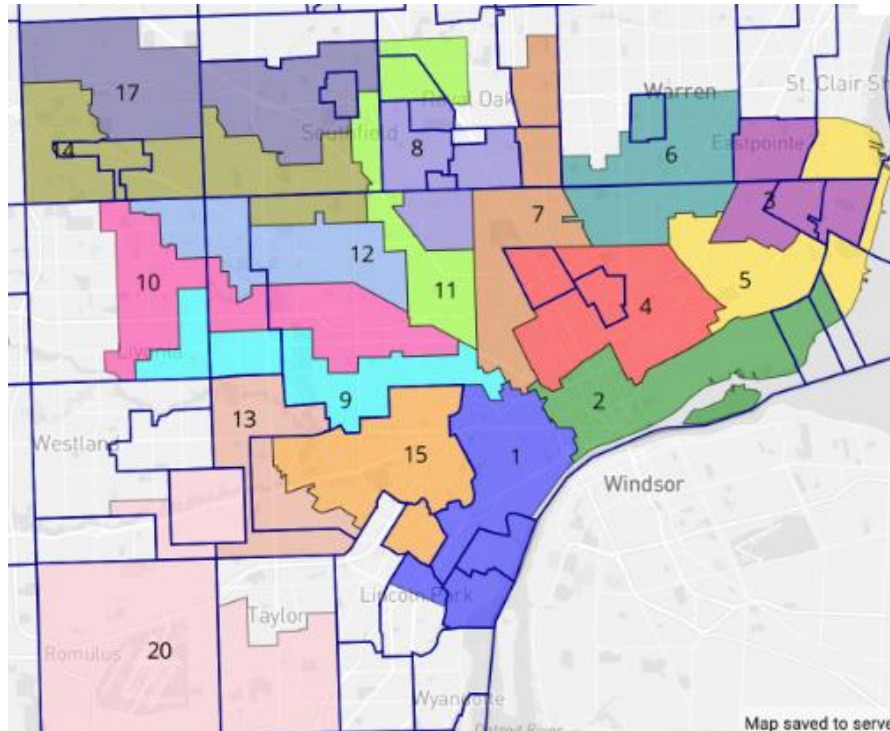


AYAD LAW, P.L.L.C.  
645 Griswold St., Ste. 2202  
DETROIT, MICHIGAN 48226  
P: (313) 983-4600 | F: (313) 983-4665



**c. A proposed Michigan House of Representatives Plan.**

Plaintiffs' below Michigan House map leads to 15 clear Voting Rights Act house seats with adequate Black voting age populations. Most seats have a BVAP in the mid 50% 's. Something the Defendants could have easily done, and should have done.





**III. Defendants' contention that the Black community of Michigan is not a community of interest insults the intelligence of this Court and the public, is absurd in its 'reasoning,' and tells volumes about Defendants' lack of consideration of the Black community's interest, which they were required to consider.**

Defendants' contention that the Black community of Michigan is not a community of interest is insulting and absurd. The rich and unified culture of the Black community of Michigan is world-famous and words cannot do it justice in this short brief. If Defendants are ignorant of the history of Michigan's Black community, practical observations also lead to the conclusion that the Black community of Michigan is a community of interest for purposes of the Michigan Constitution (where it has been defined), and, therefore, for purposes of Voting Rights Act jurisprudence.

For purposes of this matter, communities of interest are defined only as explicitly laid out in the Michigan Constitution. "Communities of interest may include, but shall not be limited to, populations that share cultural or historical characteristics or economic interests. **Communities of interest do not include relationships with political parties, incumbents, or political candidates.**" Mich Const 1963, art 4, §6(13)(a) and (c) (emphasis added). It is undeniable that the Michigan legislature, in passing the amendment which created the above-quoted law, intended the Black community of Michigan to meet that low standard of being a "community of interest."

As Plaintiffs laid out in their Complaint and Complaint Brief, the Black community of Michigan has a shared history, they generally reside together in a few major cities in Michigan (Detroit, Lansing, Flint, Saginaw, etc.), and they share in economic hardships and the hardship of racially discriminatory public policy. Therefore, they share common interests, which they are entitled to have addressed by representatives who also, understand those interests. Their preferred candidates.

The Black community of Michigan is Michigan's largest community of interest. And not even a partisan legislature would have dared say otherwise, and exclude the Black community from the political table when redistricting during the last four decades. Yet, here, Defendants are attempting to do just that.

**IV. Defendants voting pattern analysis is flawed, as Black Michiganders do consistently vote for their preferred candidates, White Michiganders do consistently vote as a bloc, and districts with 35% BVAP's will never afford the Black communities of Michigan an equal opportunity to elect their preferred candidates.**

Defendants wish have their cake and eat it too. Defendants claim that the Black population of Michigan is not a community of interest because they historically do not have preferred candidates, while at the same time arguing that the Black community can consistently elect their "preferred candidates" with a 35% BVAP in any given district. This logical inconsistency is the product of a flaw in Defendants' experts reasoning.

Defendants' election expert has made obvious mistakes, plainly readable in her report, that the Defendants rely on now and which they relied on in ignoring the Black community's concerns at their public comments meetings and drawing up their flawed, unconstitutional, unjust, and unlawful voting district maps. Defendants' expert erroneously concludes, in her 'expert' report that even in highly polarized elections, in majority-Black districts, Blacks cannot be said to prefer candidates where no individual Black received 51% or more of the total Black vote. "...the candidate preferred by even the plurality of Black voters was not the same in the four counties examined. Drawing a district that Black-preferred candidate could win [] is not possible when there is no Black-preferred candidate." Handley report, p. 24; Def. App. 064a.

**The obvious fallacy in that reasoning is that it ignores the fact that the Black community very clearly has a preference for candidates which represent them (with Black candidates receiving over 90% of the Black vote) with the arbitrary, Dr. Handley-invented,**

requirement that a single Black candidate receive 51% or more of the Black vote. In fact, the Voting Rights Act or § 2 jurisprudence speaks of preferred candidates, plural, not preferred candidate, singular. "Minority voters who contend that the multimember form of districting violates § 2 must prove that the [new plan] operates to minimize or cancel out their ability to elect their preferred candidates." *Thornburg v Gingles*, 478 US 30, 31; 106 S Ct 2752, 2756; 92 L Ed 2d 25 (1986). "It is the *difference* between the choices made by blacks and whites—not the reasons for that difference—that results in blacks having less opportunity than whites to elect their preferred representatives." *Id.*, 63; 2773 (italics in original).

And although Defendants' expert claimed that there simply was not enough primary election data to determine if Blacks and Whites in Michigan were preferring different candidates to a "legally significant" degree (as Defendants put it). "As the percentage Black VAP of proposed districts decreases, it may become more challenging for Black-preferred candidates to win not only the general election but the Democratic primary – [] if voting in Democratic primaries is racially polarized. Unfortunately, it is not possible to ascertain exactly how much more difficult it would be – or even if it would be more difficult – given the lack of Democratic primary election data." Handley report, p. 24; Def. App. 064a. However, that data was easily accessible and proves that Defendants' expert, and therefore Defendants, got it wrong when they concluded that Blacks need only make up 35% of a district to elect their preferred candidates.<sup>1,2</sup>

Michigan does not use a runoff election system. That means, that a primary election candidate will win a nomination to participate in the general election with a plurality of the vote (any amount more than their fellow party members) rather than a 51% majority. At no point did

<sup>1</sup> Publicly available Michigan Primary Election Data for 2018: <https://www.waynecounty.com/elected/clerk/august-7-2018-primary-election-results.aspx>

<sup>2</sup> Publicly available Michigan Primary Election Data for 2020: <https://www.waynecounty.com/elected/clerk/august-4-2020-primary-election-results.aspx>

**Defendants give proper consideration to the cultural trend of fewer White candidates running for any given seat and more Black candidates running, which is a historic pattern that has and will repeat itself over and over again throughout Michigan.**

Because the Michigan White population tends to prefer White candidates, while the Black community strongly prefers Black candidates, time and again, Black voters vote overwhelmingly for Black candidates in primaries, but a White candidate ends up winning specifically because they take the unified White vote, while the Black vote is split among two or more Black preferred candidates.

**i. Betty Jean Alexander versus David Knezek.**

In the 2014 primary election, in Michigan's Senate district 5,<sup>3</sup> three Black state representatives ran for the senate along with one White candidate (David Knezek). Knezek received 98% of the White vote and only 2% of the Black vote, yet he received 34% of the total vote. As 34% was a plurality, Knezek won the nomination. So, although Knezek was obviously not a Black-preferred candidate, he won in a Black district that was drawn to allow Blacks to elect their preferred candidate, by design. Flash forward to the 2018 primary, and Knezek, now the incumbent faced only a single Black mother (Betty Jean Alexander) who was, at the time, making little more than minimum wage. Knezek lost by an astonishing 10 points, receiving only 45% of the vote to Alexander's 55%. Knezek received 20% of the Black vote, and 95% of the White vote. Alexander, with virtually no money (less than a thousand dollars) won by a significant amount. This election showcases the fact that without a Black-majority district, the Black-preferred Democratic candidates will lose to the White-preferred Democratic candidates consistently. In

---

<sup>3</sup> Michigan's Senate district 5 is based in central Wayne County, covering parts of western Detroit as well as the surrounding communities of Dearborn Heights, Garden City, Inkster, and Redford. In 2018, it had a population of 258,011, of which 54% were Black and 40% were White. <https://censusreporter.org/profiles/61000US26005-state-senate-district-5-mi/>

other words, the Black minority will have no opportunity, equal or otherwise, to elect their preferred candidates.

**ii. Sylvia Santana versus Gary Woronchak.**

In the 2018 primary, we saw Sylvia Santana (a Black woman) carry the Detroit section of Senate district 3<sup>4</sup> by a huge margin, with nearly 57% of the vote in a four-way race. The three Black candidates in this race earned a combined 88% of the vote in Detroit. The Dearborn section of the district saw Gary Woronchak (a White man) winning with 68% of the vote. It is important to note there was one other Dearborn candidate, Terry Burrell (a Black man), who only received 3% of the votes in Dearborn despite Dearborn being his hometown along with Woronchak. A conclusion can be drawn that, yet again, non-Black voters in the district voted very heavily for Woronchak. Santana won by less than a thousand votes, in a district where Woronchak only got 11% of the vote in Detroit. This was a heavily racially polarized primary and because the White vote was not being split and the Detroit vote was being split by three candidates, it almost led to a Voting Rights Act district (majority-Black) electing a White candidate despite the White candidate performing horribly in amongst the Black voters. Currently, Senate district 3 is a 48% Black district. If it were only 35% Black, as Defendants argue for, then it would likely never elect a Black candidate again and certainly would have elected Woronchak over Santana.

**iii. Abraham Aiyash versus Adam Hollier.**

The Senate district 2<sup>5</sup> primary in 2018 was another example of a crowded primary, where multiple Black-preferred candidates running in a district nearly prohibited a Black-preferred

---

<sup>4</sup> Michigan's Senate district 3 is based in the city of Dearborn and parts of western Detroit in Wayne County, also covering the smaller community of Melvindale. In 2018, it had a population of 250,092, of which 51% were Black and 41% were White. <https://censusreporter.org/profiles/61000US26003-state-senate-district-3-mi/>

<sup>5</sup> Michigan's Senate district 2 is based in northern Detroit in Wayne County, also covering the nearby communities of Highland Park, Hamtramck, Harper Woods, Grosse Pointe Woods, Grosse Pointe Shores, Grosse Pointe Farms, Grosse Pointe, and Grosse Pointe Park. In 2018, it had a population of 231,616, of which 52% were Black and 30% were White. <https://censusreporter.org/profiles/61000US26002-state-senate-district-2-mi/>

candidate from being elected at all. Seven Black candidates ran in a 51% Black district, with four White candidates. Black candidates performed well, however, there still were clear indicators that White areas were not likely to vote for a non-White candidate. Black candidates received 85% of the vote in the majority-Black section of Senate district 2, however Adam Hollier (a Black man), who narrowly won the race, only received 22.76% of the Black vote. Had the White vote not been split to an unusually high degree, the Black community likely could not have elected a Black-preferred candidate.

**iv. The election of Mary Cavanagh.**

Michigan House of Representatives district 10<sup>6</sup> is another great example of a district where the Black community does not have an **equal opportunity** to elect their preferred candidates. The 2020 primary election in House district 10 was heavily crowded with eight primary candidates, only one of whom was white, Mary Cavanagh. Cavanagh received 95% of the White vote and 5% of the Black vote, but a winning 30% of the total vote because 95% of the Black community voted for its preferred candidates, the seven other Black candidates. Despite Cavanagh coming in third in Detroit, she won with in (predominantly White) Redford by a large margin.

**RELIEF REQUESTED**

Plaintiffs request this Honorable Court grant the relief requested in Plaintiffs' Complaint.

Respectfully submitted;

AYAD LAW, PLLC

*/s/Nabih H. Ayad*(P59518)

645 Griswold St., Ste 2202

Detroit, MI 48226

nabihayad@ayadlawpllc.com

Dated: January 21, 2022

<sup>6</sup> Michigan's House of Representatives district 10 is located in part of Detroit and all of Redford Township in Wayne County. In 2018, it had a population of 91,699, of which 60.4% were Black and 35.2% were White. <https://statisticalatlas.com/state-lower-legislative-district/Michigan/State-House-District-10/Population/>.



## CERTIFICATE OF SERVICE

I hereby certify that on this date I filed the foregoing paper and any attachments with the Clerk of Courts for the Michigan Supreme Court using the MiFile electronic filing system, as well as the following parties at the following addresses:

### MICHIGAN INDEPENDENT REDISTRICTING COMMISSION

Julianne Pastula (P74739)  
*Attorney for Defendant*  
PO Box 30318, Lansing MI 48909  
PastulaJ1@michigan.gov

### FINK BRESSACK

David H. Fink (P28235)  
*Attorney for Defendant*  
645 Griswold Street, Suite 1717  
Detroit, MI 48226  
P: (248) 971-2500  
F: (248) 971-2600

Respectfully submitted;

AYAD LAW, PLLC

/s/Nabih H. Ayad  
Nabih H. Ayad (P59518)  
William D. Savage (P82146)  
*Attorneys for Plaintiff*  
645 Griswold St., Ste 2202  
Detroit, MI 48226  
P: 313.983.4600  
F: 313.983.4665  
nabihayad@ayadlawpllc.com

Dated: January 21, 2022

AYAD LAW, P.L.L.C.  
645 Griswold St., Ste. 2202  
DETROIT, MICHIGAN 48226  
P: (313) 983-4600 | F: (313) 983-4665