

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

LEAGUE OF WOMEN VOTERS
OF MICHIGAN, KATHI HARRIS,
KAREN JOSEPH, and COURTNEY
WINELL,

Case No.

Petitioners,

v

KENT COUNTY APPORTIONMENT
COMMISSION,

Respondent.

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**PETITION FOR REVIEW OF KENT COUNTY
APPORTIONMENT PLAN**

ORAL ARGUMENT REQUESTED

Petitioners League of Women Voters of Michigan, Kathi Harris, Karen Joseph, and Courtney Winell (“Petitioners”), by and through counsel, for their timely filed Petition for Review of the Kent County Apportionment Plan (“Plan”) against the Kent County Apportionment Commission (“Commission”) state as follows:

INTRODUCTION

1. As United States Supreme Court Chief Justice Roberts has stated, “gerrymandering is ‘incompatible with democratic principles,’”¹ but unfortunately its scourge is not only found at the Congressional and legislative levels in Michigan,² but at the county commission level as well. As set forth below the Plan is a partisan gerrymander which violates MCL 46.406(h) as well as several other provisions of the law governing county apportionment including contiguity and maximum preservation of municipal lines.

JURISDICTION

2. This Court has jurisdiction over Petitioners’ claims under MCL 46.406 and MCR 7.203(D).

PARTIES

3. Petitioner 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

¹ *Rucho v Common Cause*, ___ US ___; 139 S Ct 2484, 2506; 204 LEd 2d 931 (2019) (quoting *Arizona State Legislature v Independent Redistricting Commission*, 576 US 787, ___; 135 S Ct 2652; 192 LEd 2d 704 (2015)).

² See *League of Women Voters of Michigan v Benson*, 373 F Supp 3d 867 (ED Mich 2019) (3-judge court) (holding 34 congressional and legislative districts were unconstitutional partisan gerrymanders), *vacated on juris grounds*, 589 US ___; 140 S Ct 429 (2019).

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 Proposals 2 and 3, the former addressing 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 including Kent County. They include Republicans, Democrats, and independents. League members dedicate substantial time and effort to voter training and civic engagement activities, including voter registration and non-partisan voter guides. The League has been monitoring the county reapportionment process, including in Kent County. Partisan gerrymandering impacts the League's mission causing it to spend time and resources it could devote to other matters. The League has organizational and associational standing to file this petition under MCL 46.406 on behalf of its registered voter members in Kent County who believe that the Plan violates state law.

4. Petitioner Kathi Harris is a registered voter in Kent County who has standing to file this petition under MCL 46.406.

5. Petitioner Karen Joseph is a registered voter and member of the League in Kent County. She has standing to file this petition under MCL 46.406.

6. Petitioner Courtney Winell is a registered voter and member of the League in Kent County. She has standing to file this petition under MCL 46.406.

7. Respondent Commission is the public body with the responsibility for apportioning county commission districts in Kent County. It adopted the Plan at issue.

FACTUAL ALLEGATIONS

8. “A couple decades ago, Kent County [was] a formidable red wall for the Michigan GOP. . . . Fast forward a few presidential elections, and that political wall in the state’s fourth most populous county appears to be crumbling. . . [as] Joe Biden [won] 52% to 46%.” Roelofs, *Biden win in Kent County latest evidence of region’s demographic shifts*, Bridge Magazine (Nov. 12, 2020).

9. Against this backdrop of a county dramatically changing, demographically and politically, the Commission met on September 8, 2021 to begin crafting county commission districts for 2022-2030. *See* September 8, 2021 Commission Minutes (Exhibit 1).

10. The five (5) statutory members of the Commission were County Prosecutor Becker (“Becker”), a Republican; County Clerk Posthumus Lyons (“Lyons”), a Republican; County Treasurer MacGregor (“MacGregor”), a Republican; Kent County Democratic Chair Saxton (“Saxton”); and Kent County Republican Chair VerHeulen (“VerHeulen”). *See id* at 1.

11. The Commission set a September 29, 2021 deadline for maps submissions by Commissioners. *See id* at 4.

12. At the Commission’s next meeting on September 29, 2021 both VerHeulen and Saxton submitted proposed maps. *See* September 29, 2021 Commission Minutes (Exhibit 2). Both explained their proposals with Saxton indicating that “the people of Michigan have spoken in opposition to gerrymandering, they want fair maps and his proposal does not take partisanship into consideration, . . .” *See id* at 2. The VerHeulen and Saxton proposed maps are attached as Exhibits 3 and 4, respectively.

13. The Commission met on October 4, 2021 to receive public comment on the proposed plans. *See* October 4, 2021 Commission Minutes (Exhibit 5).

14. The Commission's next meeting was on October 6, 2021. After discussion of both plans the Commission decided to ask the Court of Appeals to extend the deadline for plan adoption and agreed to allow changes to the proposed plans. *See* October 6, 2021 Commission Minutes (Exhibit 6).

15. Before the next meeting Saxton submitted amendments to his plan, the amended plan being labeled Saxton B. *See* October 20, 2021 Commission Minutes at 1-2 (Exhibit 7). Saxton B is attached as Exhibit 8.

16. At the October 20th meeting both VerHeulen and Saxton discussed their plans with Saxton expressing his concern over the excessive number of breaks and the partisanship of the VerHeulen plan:

There are huge differences in how each proposed map adheres to the list of criteria in statute; stated criteria (e) that townships, village, and cities only be divided if necessary to meet the population standard, and that the VerHeulen plan makes ten such breaks and the Saxton Plan B has five – the minimum number possible. The VerHeulen Plan makes unnecessary breaks in violation of statute. Criteria (h) states that districts shall not be drawn to reflect partisan political advantage, and his analysis using the Campaign Legal Center website tool shows Saxton Plan B has a partisan leaning of 1.6% towards Republicans and the VerHeulen Plan has a partisan leaning of 5.5% towards Republicans – three times that of the Saxton Plan B, which also has an efficiency gap of just 1.1% to the Verheulen Plan's 4.4%. He stated that the commission cannot adopt a plan like the VerHeulen Plan, which has unnecessary breaks and extreme partisan bias; encouraged adoption of Saxton Plan B.

Exhibit 7 at 2. There was no response by VerHeulen on the issue of partisanship. *See id.*

17. Following the presentations and discussion at the October 20th meeting Saxton moved the adoption of Saxton B. There was no second. *See id* at 3.

18. VerHeulen then moved the adoption of the VerHeulen plan which was adopted on a party line 4-1 vote. *See id.*

19. The adopted Plan was filed with the County Clerk's office on October 20, 2021.

**COUNT I
DISCONTIGUOUS DISTRICTS IN VIOLATION
OF MCL 46.404(B)**

20. Petitioners adopt the foregoing paragraphs as if fully set forth herein.

21. The Plan contains at least two (2) discontinuous districts in violation of MCL 46.404(b)'s requirement that "districts shall be contiguous."

22. In the Plan District 1 contains all of Algoma Township. However, there is a parcel of Algoma Township, a township island, wholly surrounded by the City of Rockford. Rockford is in District 4 so District 1 is a discontinuous district.

23. The Plan puts all of Grand Rapids Township into District 11 together with precincts 6, 7, 10, and 11 of Plainfield Township. However Grand Rapids Township has 2 pieces which are contiguous only at a point in the middle of Cascade Road. To the north of this point is precinct 2-47 of Grand Rapids City and the south of this point is precinct 1 of East Grand Rapids City. Because District 11 includes all of Grand Rapids Township but neither part of Grand Rapids City to the north or East Grand Rapids City to the south, and Grand Rapids Township is point contiguous, District 11 is only contiguous at a point.

24. Discontinuous districts of any type are grounds to strike down a plan. *See In re Clinton County*, 193 Mich App 231, 233 & n 1; 483 NW2d 448 (1992) (*per curiam*) (after remand), *ly denied*, 439 Mich 975 (1992) (striking down a plan for point contiguity).

25. The Plan violates MCL 46.404(b) and can and should be struck down on this basis alone.

**COUNT II
PARTISAN GERRYMANDERING IN
VIOLATION OF MCL 46.404(H)**

26. Petitioners adopt the foregoing paragraphs as if fully set forth herein.

27. MCL 46.404(h) forbids districts being “drawn to effect partisan political advantage.”

28. As set forth in the Expert Report of Dr. Christopher Warshaw, attached hereto and made a part hereof, An Evaluation of Partisan Bias in Kent County, Michigan’s Enacted County Commission Districting Plan (Nov. 17, 2021) (Exhibit 9 at 17):

Kent County’s enacted Board of Commissioners districting plan has a meaningful partisan bias in favor of the Republican Party. This plan makes it likely that Republicans will control the Kent County Board of Commissioners even if Democrats win a nearly 10 percentage point majority of the countywide vote. The partisan bias in the map will likely skew policy outcomes in Kent County in a conservative direction over the next decade (Caughey, Tausanovitch, and Warshaw 2017; de Benedictis-Kessner and Warshaw 2020). Moreover, this map is not the inevitable result of political geography. It is possible to draw a politically neutral plan in Kent County, such as the two alternative plans proposed by Democrats that I evaluated.

29. The Plan violates MCL 46.404(h).

**COUNT III
EXCESSIVE BREAKS OF CITY
AND TOWNSHIP BOUNDARIES**

30. Petitioners adopt the foregoing paragraphs as if fully set forth herein.

31. The Michigan Supreme Court in *In re Appeal of Apportionment of Wayne County*, 413 Mich 224; 321 NW2d 615 (1982) (*per curiam*), held that in county reapportionment the “maximum preservation” of city, township, village, and precinct lines was required:

We thus conclude that Acts 261 and 293 require that *commissioner district lines be drawn to preserve township, village, city and precinct lines* to the extent this can be done without exceeding the range of allowable divergence under the federal constitution (11.9% [94.05% to

105.95%] until the United States Supreme Court declares otherwise) at the least cost to the federal principle of equal population between election districts *consistent with the maximum preservation of such lines*. Between two or more alternative plans, which comply with that standard, compactness and squareness in shape to the extent practicable shall govern.

Id at 263-64 (emphasis added); *see also id* at 256 (“maximum preservation of city and township lines” required). *Wayne County* requires that the plan with the “maximum preservation” of lines be adopted by the Commission.

32. The Plan fails to meet the “maximum preservation” requirement as illustrated by the Saxton Plan and Saxton Plan B. The Plan has more than twice the number of broken municipal lines as both Saxton Plans.

33. The adopted Plan has these 11 municipal breaks:

Break #	Municipalities Broken	Description of Break
1	Nelson Township	Nelson Precinct 1 is in District 3, Nelson Precinct 2 is in District 4.
2	Plainfield Township	Plainfield Precinct #9 is added to the rest of District 2.
3	Plainfield Township	District 1 adds Plainfield Township Precincts 1, 2, 3, 4, 5, and 8 with all of Algoma Township. District 11 adds Plainfield Township Precincts 6, 7, 10, and 11 to all Grand Rapids Township.
4	City of Grand Rapids	Adding Grand Rapids City Precincts 11, 21 and 23 to the entire city of Walker for District 6.
5	City of Grand Rapids & City of Wyoming	Combining Grand Rapids City Precincts 15, 16, 22, and 24 with Wyoming Precincts 10, 11, 12, 13, 14, and 15 for District 20.
6	City of Grand Rapids	Adding Grand Rapids City Precincts 25, 30, 33, 40, 52, 55, 59, 61, 68, and 77 to all of East Grand Rapids for District 19.
7	City of Wyoming	Adding Wyoming Precincts 16, 17, 20, 21, 22, and 23 to all of Grandville for District 7.

8	City of Wyoming	Adding Wyoming Precincts 6 and 8 to all of Byron Township for District 9.
9	City of Wyoming & City of Kentwood	Adding Wyoming Precincts 1, 2, 3, and 9 to Kentwood Precincts 1, 2, 3, 4, 5, 7, and 9 for District 12.
10	City of Kentwood	District 10 adds Kentwood Precinct 6 to all of Gaines Township.
11	Cascade Township	Placing Cascade Precincts 4, 5, and 9 in District 5 and Precincts 1, 2, 3, 6, 7, 8, 10 in District 21.

34. Saxton Plan has these 5 municipal breaks:

Break #	Municipalities Broken	Description of Break
1	Courtland Township	Adding Courtland Precincts 1 and 2 to District 3 and Precinct 3 to District 5.
2	City of Walker	Walker Precincts 1, 2, and 3 are added to District 2. Walker Precincts 4, 5, 6, 7, 8, and 9 are added to District 6.
3	Gaines Township	Adding Gaines Township Precincts 2, 5, 8, and 9 to District 10 and Precincts 1, 3, 6, and 7 to District 8.
4	Gaines Township	District 9 adds Gaines Township Precinct 4 to all of Byron Township.
5	City of Grand Rapids & City of Wyoming	District 15 adds Wyoming Precincts 9, 10, 11, 12, 13, and 15 to Grand Rapids City Precincts 15, 16, and 24.

35. Saxton Plan B has these 5 municipal breaks:

Break #	Municipalities Broken	Description of Break
1	Courtland Township	Adding Courtland Precincts 1 and 2 to District 3 and Precinct 3 to District 5.
2	City of Walker	Walker Precincts 1, 2, and 3 are added to District 2. Walker Precincts 4, 5, 6, 7, 8, and 9 are added to District 6.

3	Gaines Township	District 8 adds Gaines Township Precincts 1, 2, 7, 8, and 9 to all of Caledonia Township. District 9 adds Precincts 3 and 6 to all of Byron Township.
4	Gaines Township	District 11 adds Gaines Township Precincts 4 and 5 to Kentwood Precincts 1-8.
5	City of Grand Rapids & City of Wyoming	District 15 adds Wyoming Precincts 9, 10, 11, 12, 13, and 15 to Grand Rapids City Precincts 15, 16, and 24.

36. The Commission violated the “maximum preservation” requirement when it adopted the Plan instead of an available plan with fewer breaks. The Plan can and should be struck down on this basis alone.

RELIEF SHOULD ISSUE AS SOON AS POSSIBLE

37. Petitioners adopt the foregoing paragraphs as if fully set forth herein.

38. Due to the late release by several months of the census data necessary to accomplish county reapportionment, the county reapportionment process is running very late.

39. The filing deadline for county commission candidates is only a few months away on April 19, 2022 and election administrators need time to adjust district boundaries so the public and candidates are aware of the new districts and their boundaries before the filing deadline.

40. After the Court makes its decision a party may appeal to the Michigan Supreme Court under MCL 46.406 which will take additional time.

41. Without expedited consideration and decision on this Petition by this Court the smooth and efficient administration of elections will suffer.

42. In order to address these problems, simultaneously with filing this Petition, Petitioners have filed a Motion to Shorten Time for Response and to Expedite Disposition of the Case.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that the Court:

- A. Expedite the consideration of and decision in this case;
- B. Vacate the Plan;
- C. Order the Commission to adopt the Saxton Plan;
- D. Award Plaintiffs their costs and attorneys' fees; and
- E. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Mark Brewer

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