No. 131480

IN THE
SUPREME COURT OF ILLINOIS

TONY MCCOMBIE, in her official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter; THOMAS J. BROWN, individually as a registered voter; and SERGIO CASILLAS VAZQUEZ, individually as a registered voter; JOHN COUNTRYMAN, individually as a registered voter; and ASHLEY HUNSAKER, individually as a registered voter, *Plaintiffs*, v. ILLINOIS STATE BOARD OF ELECTIONS and JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, RICK S. TERVEN, SR., CASANDRA B. WATSON, and JACK VRETT, all named in their official capacities as members of the State Board of Elections, *Defendants*,	Original Action under Article IV, Section 3 of the Illinois Constitution and Supreme Court Rule 382

INTERVENING DEFENDANTS SPEAKER EMANUEL "CHRIS" WELCH AND PRESIDENT DON HARMON'S BRIEF ON THE TIMELINESS OF PLAINTIFF'S MOTION FOR LEAVE TO FILE AN ORIGINAL ACTION

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NATURE OF THE CASE

On September 24, 2021, Governor Pritzker signed the current General Assembly redistricting map into law. That map was upheld by a three-judge federal court panel a couple of months later. *McConchie v. Scholz*, 577 F. Supp. 3d 842 (N.D. Ill. 2021).

On January 28, 2025, however—three years, four months, four days, one federal lawsuit, and two general elections after the map became law—plaintiffs, the minority leader of the Illinois House of Representatives and five voters, filed a motion for leave to file an original action in this Court to challenge the map. This Court entered an order directing the parties to "file briefs on the issue of whether the motion for leave to file a complaint for declaratory and injunctive relief as an original action pursuant to Supreme Court Rule 382 is timely."

Plaintiffs' brief argues the motion is timely filed because (1) the five-year catchall statute of limitations has not expired; (2) the statute of limitations does not run against the House Minority Leader under the doctrine of *nullum tempus occurrit regi*; and (3) the motion is timely because plaintiffs needed data from two election cycles to determine the effect of the map.

Unmentioned by plaintiffs, however, is that this is not the first time this Court has ordered briefing on the timeliness of a challenge to a legislative map. On February 8, 2012, after losing a map challenge in federal court, the Minority Leader of the House, the Minority Leader of the Senate, and two voters, filed a motion for leave to file an original action in this Court to

challenge the redistricting map that was signed into law on June 3, 2011. This Court ordered briefing on timeliness. After briefing, on June 7, 2012, this Court denied the plaintiffs leave to file their complaint. The order did not state the reason for the denial, but Justice Thomas, joined by Justices Garman and Karmeier, dissented and provided an explanation. The dissent stated as follows:

> The sole issue before the court today is whether plaintiffs' attempted redistricting challenge is untimely and therefore barred by the equitable doctrine of *laches* because it comes too close to this year's elections. I am convinced that the action is timely, and that *laches* is not a bar. Indeed, article IV, section 3, of the Illinois Constitution of 1970, which provides for "actions concerning the redistricting of the House and Senate," contains no limitations provision whatsoever with respect to such actions. See, Ill. Const. 1970, art. IV, § 3. Neither does Supreme Rule 382, which governs the institution of and procedure for such actions. (This Court's 6/7/2012 order, Thomas, J., dissenting, A2-3)

As it did in 2012, this Court should apply *laches* to find plaintiffs' complaint was untimely filed.

ISSUE PRESENTED FOR REVIEW

Whether plaintiffs' motion for leave to file an original action pursuant to Supreme Court Rule 383—filed on January 28, 2025—to challenge the state legislative map enacted on September 24, 2021, was timely filed.

STATEMENT OF FACTS

Plaintiffs have filed a motion for leave to file a complaint for declaratory and injunctive relief pursuant to Supreme Court Rule 382 to challenge the current district map for the Illinois General Assembly. The motion asks this Court to invoke its original and exclusive jurisdiction over actions concerning redistricting. Ill. Const. 1970, art. IV, § 3(b). This Court has ordered briefing on whether plaintiffs' motion for leave to file a complaint is timely.

Plaintiffs' statement of fact section discusses their view of the merits of the proposed complaint. P. Br. at 7-11. Plaintiffs' presentation is incomplete. However, plaintiffs' discussion of the merits is also premature as the only issue before the Court is the timeliness of plaintiffs' motion.

The relevant facts related to timeliness are:

- The current district map for the General Assembly was enacted on September 24, 2021.
- On December 30, 2021, a three-judge federal court panel rejected challenges to the map brought in three consolidated lawsuits filed by then minority leaders of the Illinois House and Senate, the Mexican American Legal Defense Fund on behalf of individual voters, and the East. St. Louis NAACP, holding the map complies with the Voting Rights Act and does not racially gerrymander. *McConchie v. Scholz*, 577 F. Supp. 3d 842 (N.D. Ill. 2021).[1]

[1] A copy of the court's is provided in the Appendix starting at A4.

- The plaintiffs in the consolidated lawsuits did not appeal the three-judge panel's decision.
- On January 25, 2025—three years, four months, and three days after the map was enacted—plaintiffs filed their motion for leave to file an original action to challenge the map.
- Plaintiffs' filing of the motion for leave to file a complaint is the first time anyone has attempted to challenge the current map in this Court.

ARGUMENT

Plaintiffs' brief argues their motion for leave to file an original action is timely because (1) the five-year catchall statute of limitations has not expired; (2) the statute of limitations does not run against House Minority Leader under the doctrine of *nullum tempus occurrit regi*; and (3) plaintiffs needed two election cycles to determine the effect of the map. P. Br. at 12-23.

Plaintiffs, however, are simply incorrect that the timeliness issue before the Court rests on a statute of limitations. In 2012, Justice Thomas, joined by Justices Garman and Karmeier, dissented from this Court's order denying the then Minority Leaders' motion for leave to file an original action to challenge the 2011 redistricting plan. In his dissent, Justice Thomas stated that, "article IV, section 3, of the Illinois Constitution of 1970, which provides for 'actions concerning the redistricting of the House and Senate,' contains no limitations provision whatsoever with respect to such actions. See, Ill. Const. 1970, art. IV, § 3. Neither does Supreme Court Rule 382, which governs the institution of and procedure for such actions." (A2-3)

Justice Thomas was correct. Plaintiffs argue the five-year catchall statute of limitations applies because redistricting challenges "have no statutory or constitutional time limit[.]" P. Br. at 13. But challenges to a legislative redistricting plan are not civil causes of action possessed by individuals. The Constitution provides, "[t]he Supreme Court shall have original and exclusive jurisdiction over actions concerning redistricting the House and Senate, which shall be initiated in the name of the People of the

State by the Attorney General."[2] Ill. Const. 1970, art. IV, § 3(b). Plaintiffs' argument that the five-year catchall statute of limitations applies assumes that the General Assembly can limit this Court's original and exclusive jurisdiction under art. IV, § 3(b). But that would violate the separation of powers and put in the hands of the General Assembly the power to limit this Court's review of a redistricting plan.

This Court has rejected such a view since the 1970 Constitution was adopted. The Committee Comments to Supreme Court Rule 382, adopted July 1, 1971, state, "[t]he object [of the Rule] is to *give the court complete flexibility as to the procedure to be followed*, depending upon the circumstances of the particular case. The procedures most likely to be employed, which have been employed by the United States Supreme Court, are specifically described because of the unfamiliarity of some of such procedures in prior Illinois practice." Ill. S. Ct. R. 382 (eff. July 1, 1971) (emphasis added). As a result, plaintiffs would have been on stronger constitutional footing if they had argued there is no statute of limitations that bars their original action.

The lack of an applicable statute of limitations does not, however, mean plaintiffs' motion for leave to file an original action is timely. On the contrary, courts often invoke the equitable doctrine of *laches* to bar late-filed election and redistricting claims. Justice Thomas dissented in 2012 from this Court

[2] Plaintiffs have not brought their original action in the name of the People of the State by the Attorney General.

invocation of the doctrine, stating, "I am convinced that the action is timely, and that *laches* is not a bar." (A2), see also, *e.g.*, *Tully v. State*, 143 Ill. 2d 425, 432 (1991); *Martin v. Soucie*, 109 Ill. App. 3d 731, 732 (3d Dist. 1982); *Arizona Minority Coal. for Fair Redistricting v. Arizona Indep. Redistricting Comm'n*, 366 F. Supp. 2d 887 (D. Ariz. 2005); *Sanders v. Dooly Cnty., GA*, 245 F.3d 1289, 1291 (11th Cir. 2001); *Mac Govern v. Conn*olly, 637 F. Supp. 111, 116 (D. Mass. 1986).

This Court correctly applied *laches* in 2012 to bar an untimely original action. The current motion for leave to file is even more untimely than the 2012 challenge. Well over three years and two elections have passed under the current map. Now, plaintiffs seek to cause political chaos by asking this Court to invalidate the current map and draw a new one with all the complexities that would involve.

Thus, what was proper in 2012 is even more proper today. This Court should find plaintiffs' motion for leave to file is untimely under the doctrine of *laches* for the following reasons.

I. Plaintiffs' complaint is untimely under the equitable doctrine of *laches.*

Laches is an equitable defense asserted against a party "who has knowingly slept upon his rights and acquiesced for a great length of time, and its existence depends on whether, under all circumstances of a particular case, a plaintiff is chargeable with want of due diligence in failing to institute proceedings before he did." *Tillman v. Pritzker*, 2021 IL 126387, ¶ 25. Unlike

a statute of limitations that bars a claim after a specified amount of time, *laches* turns on "the inequity of permitting the claim to be enforced, an inequity founded upon some change in the condition or relation of the property and parties." *Id.*

"The doctrine is grounded in the equitable notion that courts are reluctant to come to the aid of a party who has knowingly slept on his rights to the detriment of the opposing party." *Id.* quoting, *Tully v. State*, 143 Ill. 2d 425, 432 (1991). Whether *laches* is applicable depends on the facts and circumstances of each case. *Id*. There are two fundamental elements of laches: (1) "lack of due diligence by the party asserting the claim" and (2) "prejudice to the opposing party." *Id*. Plaintiffs fail on both elements.

A. Plaintiffs lacked due diligence.

Plaintiffs' motion for leave to file states they seek to "ask this Court to declare unconstitutional the revised legislative redistricting plan for the election of members of the Illinois General Assembly, signed into law on September 24, 2021," because they allege the map was "gerrymandered for strictly partisan purposes" and "violates the Illinois Constitution's requirement that legislative and representative districts are compact." Motion at 1-2 (A68-69) Regarding the gerrymandering allegation, plaintiffs argue "[t]he mapmaker for the Illinois Democratic Party has admitted it, and a federal court has acknowledged it." Mot. at 2. As for the compactness allegation, plaintiffs argue their expert, "Dr. Chen[,] determined that nearly half of Illinois's 118 House Districts are insufficiently compact." Mot. at 3 (A70)

These arguments could have, and should have, been raised years ago. Plaintiffs cannot claim they did not know about the map. In fact, Leader McCombie *voted* against the map as a member of the House of Representatives.[3] Plaintiffs' argument (P. Br. at 20-22) that they needed to wait two election cycles for an outcome to determine if there was a partisan problem is disingenuous. For example, on the day of the House vote on the map, Leader McCombie's Republican colleague, Representative Mazzochi, went to the House Floor and made the following accusations.

> Your [Democratic] Leadership acknowledged, in [federal] court, that the original map from May was indefensible because it facially violated one-person, one-vote standards. And now, you're going to lie for yet another erroneous false map. And you're going to lie to your district again. You just had a panel of federal court judges specifically instruct your side of the aisle to make this map making process a real, bipartisan, substantive give and take process. Did you? Well, I'll confirm for the judicial panel. No, you did not. You released another map just before 10 a.m. this morning to fain compliance with one-person, one-vote. You passed it, again, apparently aware that you were going to be issuing yet another map. So, the vote that came out of committee this morning, that map isn't this map that we're now voting on. In committee this morning, it was map #1. ***Now, here we are in map #2 that was released just a few minutes ago.*** No notice. No public input. No notice to the other side. No input from us or the many citizens' organizations who have begged you for time and input. You ignored them. That is not in good faith. ***Be honest that you're going to be doing this to protect your own political power, your personal perks, and your privilege.***[4] (House Transcript from 8/31/2021, pg. 38-39) (emphasis added)

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[3] See, www.ilga.gov/legislation/votehistory/102/house/10200SB0927_08312021_005000T.pdf (last visited March 14, 2025).

[4] Transcript available, www.ilga.gov/house/transcripts/htrans102/10201001.pdf

By her own account, it took Representative Mazzochi no more than a "few minutes" to determine the map was drawn to "protect [the Democrats'] own political power." *Id*. Thus, plaintiffs' argument that "[t]he timing of this Motion is actually optimal. It allowed for multiple years' worth of election data" rings hollows. See, P. Br. at 22. If Leader McCombie's colleague could find a purported partisan problem with the map minutes after it was released to the public, then surely plaintiffs could have been much more diligent in seeking to bring this lawsuit.[5]

Plaintiffs likewise could have brought their compactness argument long ago. On the same day the map was debated in the House, Leader McCombie's Republican colleague, Rep. Spain[6], referenced his own compactness analysis when questioning the bill sponsor about compactness.

> Leader Hernandez, according to my analysis, the map filed today is actually less compact than the 2011 map, which you held up as a virtue this morning, which was abysmally compact. On the very bottom range of the score. We assign maps a compactness score of 0 to 1, l being good. ***Your map clocks in at .26***. Were you aware of that compactness calculation? (House Transcript from 8/31/2021, pg.47) (emphasis added).[7]

Rep. Spain thus apparently could analyze the map for compactness the same day it was issued. But plaintiffs offer no explanation why they needed

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[5] Although it does not bear on the timeliness question, but Princeton University's Gerrymandering Project gave the House map an "A" grade for partisan fairness, finding no partisan advantage. See, https://gerrymander.princeton.edu/redistricting-report-card?planId=reciUSTYXwc3SQ11B (last visited March 14, 2025).
[6] Rep. Spain is now Deputy Minority Leader. See, https://ilga.gov/house/rep.asp?MemberID=3111 (last visited March 14, 2025).
[7] See, transcript link at footnote 3 above.

over three years and two elections to undertake their own compactness analysis. Plaintiffs' silence is particularly telling given that their expert, Dr. Jowei Chen, was also used as an expert by the House and Senate Minority Leaders in the 2021 federal litigation. *McConchie*, 577 F. Supp. 3d at 868-70. As with plaintiffs' partisan gerrymandering claim, the only explanation for plaintiffs' delay in bringing their compactness claim is a lack of diligence.

II. Plaintiffs' delay in bringing this lawsuit prejudices defendants, the public, and this Court.

In addition to lacking diligence in bringing this lawsuit, plaintiffs' delay prejudiced the opposing parties, the public, and this Court. Plaintiffs' proposed complaint seeks the following relief: (1) "Declare the Enacted Plan unconstitutional as violative of Article III, Section 3, and Article IV, Section 3(a) of the Illinois Constitution"; (2) "Issue a permanent injunction enjoining Defendants, their agents, employees, and those persons acting in concert with them, from enforcing or giving any effect to the Plan, including enjoining the Board Members from conducting any elections based on the Plan"; and (3) "Appoint a Special Master to draft a valid and constitutionally acceptable redistricting plan or grant such other appropriate relief that allows for the drafting and implementation of a valid and constitutionally acceptable redistricting plan." Pltf. Cmplt. 35 (A114).

In other words, plaintiffs want this Court to throw out the current map and appoint a Special Master[8] to draw a new one. This presents numerous obstacles, but most prejudicial are that plaintiffs ask this Court: (1) to correct purported partisan gerrymandering and compactness issues by using stale Census data to draw a new map, and thus run the risk of creating districts that are not substantially equal in population; (2) disrupt the Senate as one-third of the Senators will not be up for election in 2026 due to the Constitution's staggering of Senate terms; (3) force some members of the General Assembly to move and voters to lose representatives they have become familiar with; and (4) create uncertainty over whether any redistricting map is ever settled.

A. Plaintiffs delay in seeking leave to challenge the map would leave this Court without accurate Census data to draw a new map.

Plaintiffs seek leave to ask this Court to invalidate the current map and redraw a new one. A major problem, however, is the 2021 Census data is stale. The Fourteenth Amendment and the Illinois Constitution require legislative districts to be substantially equal in population. *Brown v. Thomson*, 462 U.S. 835, 842 (1983); Ill. Const. 1970, art. IV, § 3(a). Though the Illinois Constitution does not specifically require the use of US Census data, the Constitution

[8] Although irrelevant to the timeliness issue, the Illinois Constitution prohibits special masters. See Ill. Const. 1970, art. VI, § 14; Ill. S. Ct. R. 383, committee comments (This Court "may request the defendant to file either an answer to the complaint or a brief, in part depending on whether factual issues are presented. Because of the constitutional prohibition against 'fee officers in the judicial system' (art. VI, §14), the evidence must be taken by an active or retired judge, who will be already receiving a State salary, rather than by a master.").

envisions that this data will be used in redrawing the district maps every decade. Ill. Const. 1970, art. IV, § 3(b) (stating, "[i]n the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts and the Representative Districts.").

Release of the 2020 Census data was delayed due to the global pandemic. *McConchie*, 577 F. Supp. 3d at 852. The data was not released until August 2021. *Id*. That data, however, is now nearly five years old. In fact, in 2022, the U.S. Census Bureau announced that the 2020 Census had undercounted Illinois' population by 1.97%.[9] As a result, Illinois is currently operating under the "legal fiction" that the current map is constitutionally apportioned. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 421 (2006) ("States operate under the legal fiction that their plans are constitutionally apportioned throughout the decade, a presumption that is necessary to avoid constant redistricting, with accompanying costs and instability."); *Georgia v. Ashcroft*, 539 U.S. 461, 488, nt 2. (2003) ("When the decennial census numbers are released, States must redistrict to account for any changes or shifts in population. But before the new census, states operated under the legal fiction that even 10 years later, the plans were constitutionally apportioned. After the new enumeration, no districting plan is likely to be

[9]See, www2.census.gov/programs-surveys/decennial/coverage-measurement/pes/census-coverage-estimates-for-people-in-the-united-states-by-state-and-census-operations.pdf at pg. 16 (appendix table 3) (last visited March 14, 2025).

legally enforceable if challenged, given the shifts and changes in a population over 10 years."); *Reynolds v. Sims*, 377 U.S. 533, 583–84 (1964) ("Limitations on the frequency of reapportionment are justified by the need for stability and continuity in the organization of the legislative system[.]").

By waiting until January 2025 to seek action from this Court, however, plaintiffs want a special master to use the outdated Census data to redraw the legislative map. But while "the one-person, one-vote rule is relatively easy to administer as a matter of math," *Rucho v. Common Cause*, 588 U.S. 684, 708 (2019), it is much more challenging to do so as time passes and the data becomes increasingly stale, *White v. Daniel*, 909 F.2d 99, 104 (4th Cir. 1990) ("any reapportionment done now would use 1980 census figures, and such reapportionment might not provide fair and accurate representation for the citizens of the County").

Plaintiffs also argue the map contains districts that are not compact. But compactness is only one of several factors that must be considered when drawing district maps. This Court has held the following on the issue of compactness.

> The fact that more compact formulations can be devised is not, however, a sufficient basis for invalidating a map duly approved and filed according to law… [A]s indicated earlier in this opinion, compactness is only one of several factors that must be taken into consideration in setting the boundaries for legislative and representative districts. No matter how compact proposed districts may be geographically, those districts will not suffice under the law unless they comply with each of the additional factors we have enumerated. *Cole-Randazzo v. Ryan*, 198 Ill. 2d 233, 238 (2001).

Those additional factors are: (1) the districts formed must be substantially equal in population; (2) the districts must be configured in such a way as to provide adequate representation to minorities and other special interests protected by state and federal law; (3) the districts must be contiguous; and (4) the maps must meet all legal requirements regarding political fairness. *Id.* at 236. Making districts more compact with stale Census data risks violating the one person, one vote rule. And the three-judge federal panel held the current map complies with the Voting Rights Act. Plaintiffs are therefore asking this Court to put factors (1) and (2) to one side to remedy a purported violation of (3) that could have been challenged when the Census data was newly released—rather than waiting until mid-decade to bring this claim. See, *Mac Govern v. Conn*olly, 637 F. Supp. 111, 116 (D. Mass. 1986) ("Equity demands that a federal court stay its hand when judicial relief makes no sense. This action, in which the remedy sought would come at great cost and yield results that are at best uncertain and, at worst, perverse, is plainly such a case. When the massive disruption to the political process of the Commonwealth is weighed against the harm to plaintiffs of suffering through one more election based on an allegedly invalid districting scheme, equity requires that we deny relief.").

Plaintiffs' partisan gerrymandering claim fares no better. Plaintiffs ask this Court to hold, for the first time, that the "free and equal clause" prohibits partisan gerrymandering. Cmplt. ¶ 110 (A136). They thus ask the Court to

impose new constitutional requirements on the map after it has been in effect for two election cycles, and then redraw the map with outdated Census data.

This Court should decline this invitation. The reason courts permit the "legal fiction" that the Census data remains accurate throughout the decade is "to avoid constant redistricting, with accompanying costs and instability." *Perry*, 548 U.S. at 421. But just as the legal fiction is accepted for stability, stability should likewise require the use of *laches* to bar late filed challenges.

To allow plaintiffs to proceed now, mid-decade, with their proposed redistricting challenge would invite political parties to wait until they have a wave election and use their best election results to justify a partisan challenge to the legislative map. That would invite constant uncertainty about legislative maps, which would prejudice the public, the legislature, and this Court. It would thrust the Court into an endless series of politically based challenges to the existing legislative map throughout the decade based on whatever new ideas and arguments opponents can dream up. The better course is to require opponents to bring challenges as soon as possible, which plaintiffs did not do here. Otherwise, this Court risks having to endlessly trudge through the political thicket.[10]

[10] See, *e.g.*, https://redoremap.com/ (last visited March 14, 2025).

B. Allowing plaintiffs the relief the complaint requests would unseat a third of the Senate.

Plaintiffs seek leave to file their complaint to ask this Court to invalidate the current map in time for the 2026 General Election. But that would require unseating a third of the Senate not up for election in 2026.

The Constitution provides for 59 Senate seats. Ill. Const. 1970, art. IV, § 1. It further requires the Senate to be redistricted after each decennial census. *Id.* § 3(b). To ensure all 59 seats are open after the census, the Constitution staggers terms for Senators. Section 2(a) provides, "[i]mmediately following each decennial redistricting, the General Assembly by law shall divide the Legislative Districts as equally as possible into three groups. Senators from one group shall be elected for terms of four years, four years and two years; Senators from the second group, for terms of four years, two years and four years; and Senators from the third group, for terms of two years, four years and four years." *Id.* § 2.

The third group consists of twenty senate districts that elected a Senator to a two-year term in 2022. 10 ILCS 5/29C-10; (A145) Those seats were up for election for a four-year term in 2024. *Id.* As a result, Senators elected in 2024 in the third group will not be up for reelection until 2028. *Id.*

But the relief plaintiffs seek would invalidate the current map for the 2026 General Election, requiring twenty Senators elected to a four-year term in 2024 to have to run in a new district in 2026. Redrawing the Senate at this point would nullify the vote of voters who elected their Senators to a four-year

term in 2024.[11] See, *Tully v. Edgar*, 171 Ill. 2d 297, 308 (1996) ("When the people have chosen their representatives in a valid election, legislation that nullifies the people's choice by eliminating the right of the elected official to serve implicates the fundamental right to vote.")

Plaintiffs' years-long delay in filing this challenge would thus prejudice not only the group three Senators but the voters in their districts that elected those Senators to a term that expires in 2028.

C. Plaintiffs delay will prejudice some members as well voters.

Plaintiffs' delay will also prejudice some members of the General Assembly whose terms are up for reelection in 2026 as well their constituents. The Constitution envisions that a redistricting plan may force some sitting members to move if their homes are drawn out of their district. Ill. Const. 1970, art. IV, § 2(c) ("In the general election following a redistricting, a candidate for the General Assembly may be elected from any district which contains a part of the district in which he resided at the time of the redistricting and reelected if a resident of the new district he represents for 18 months prior to reelection.") Forcing some members to move or run in new districts mid-decade with the possibility of facing the same problem in 2031 would be unduly prejudicial to them.

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[11] Plaintiffs will likely respond that the group three Senators can just keep their seats and run for election in the new district in 2028. But a senator could be drawn out of their district, thereby violating the Constitution's residency requirement. See, Ill. Const. 1970, art. IV, § 2(c).

Additionally, over two elections under the current map, voters have come to know their elected representatives. *Fouts v. Harris*, 88 F. Supp. 2d 1351, 1354 (S.D. Fla. 1999) (applying *laches* to a redistricting challenge because "(1) over the six years and three election cycles voters have come to know their districts and candidates, and will be confused by change; and (2) requiring redistricting now, before the 2000 census will result in two redistrictings within a two year period, with resulting voter confusion, instability, dislocation, and financial and logistical burden on the state.") Forcing a redistricting mid-decade would mean voters will go through three redistrictings within 10 years (2021, 2026, 2031). The prejudice to voters also weighs heavily in applying *laches* to plaintiffs' motion for leave to file an original action.

D. Allowing plaintiffs to file their complaint would open the door to challenges to other electoral maps.

This Court should also consider the precedential effect of allowing plaintiffs to proceed. Although this Court has original and exclusive jurisdiction over challenges to the General Assembly's map, Ill. Const. 1970, art. IV, § 3(b), numerous other governmental units in Illinois have electoral maps that are subject to challenge in the lower courts. There are maps for municipal wards, county boards, school boards, the Cook County Board of Review, judicial subcircuits and districts, to name a few. All are subject to challenges in the trial courts. See, *e.g., Martin v. Soucie*, 109 Ill. App. 3d 731, 732 (3d Dist. 1982) (applying *laches* to a challenge to a county board

redistricting plan). Allowing plaintiffs to proceed with their challenge mid-decade would signal to the lower courts that they should be open to challenges to any map at any time. This has the potential to create instability in our system of government.

CONCLUSION

In 2012, this Court denied plaintiffs leave to file an original action because plaintiffs waited eight months and six days after the 2011 redistricting plan was signed into law to seek leave to challenge it. That was the correct ruling then, and it is the proper ruling now. Plaintiffs waited well over three years to bring this challenge after the 2021 map was enacted. Allowing them to do so now would cause great prejudice to the parties, the General Assembly, and the public at large. This Court should therefore apply the equitable doctrine of *laches* to deny plaintiffs leave to file their original action as untimely.

Respectfully submitted,

/s/ Adam R. Vaught

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of the brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 5,194 words.

/s/ Adam R. Vaught
Adam R. Vaught

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On November 21, 2024, the Intervening Defendants Speaker Emmanuel "Chris" Welch and President Don Harmon's Brief on the Timeliness of Plaintiff's Motion for leave to File an Original Action with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided service of such filing to the email addresses of the persons named below:

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Under penalties as provided by law pursuant to § 1-109 of the Code of Civil Procedure (735 ILCS 5/1-109), the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/

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SUPREME COURT OF ILLINOIS
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June 7, 2012

Mr. Peter G. Baroni
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Chicago, IL 60601

In re: Thomas Cross, etc., et al., plaintiffs, v. Illinois State Board of Elections et al., etc., defendants. No. 113840

Dear Mr. Baroni:

Enclosed is a copy of an order entered June 7, 2012, by the Supreme Court of Illinois in the above-captioned cause.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

CTG:lgr
Enclosure
cc: All Attorneys of Record

No. 113840

IN THE

SUPREME COURT OF ILLINOIS

THOMAS CROSS, etc., et al., Plaintiffs, vs. ILLINOIS STATE BOARD OF ELECTIONS, et al.,etc., Defendants.	)	Declaratory Relief

ORDER

This cause coming to be heard on the motion of the plaintiffs, Thomas Cross et al., an objection having been filed by the defendants, the Illinois State Board of Elections, et al., the parties having filed briefs as directed by the Court on the issue of whether the motion to file a petition for declaratory and injunctive relief as an original action pursuant to Supreme Court Rule 382 is timely, and the Court being fully advised in the premises;

IT IS ORDERED that the motion for leave to file a complaint for declaratory judgment and injunctive relief pursuant to Supreme Court Rule 382 is denied.

Order entered by the Court.

JUSTICE THOMAS, dissenting:

I respectfully dissent from today's decision denying plaintiffs' request for leave to file an original action under Supreme Court Rule 382 (Ill. S. Ct. R. 382 (eff. Feb 1, 1994)).

The sole issue before the court today is whether plaintiffs' attempted redistricting challenge is untimely and therefore barred by the equitable doctrine of *laches* because it comes too close to this year's elections. I am convinced that the action is timely, and that *laches* is not a bar. Indeed, article IV, section 3, of the Illinois Constitution of 1970, which provides for "actions concerning the redistricting of the House and Senate," contains no limitations provision whatsoever with respect to such actions. See Ill. Const. 1970, art. IV, § 3. Neither does Supreme

Court Rule 382, which governs the institution of and procedure for such actions. And finally, there is ample precedent for the principle that, while *laches* may bar the granting of redistricting relief in relation to an imminent election, it does not bar the granting of relief in relation to *subsequent* elections, which is what plaintiffs here are seeking. See, *e.g.*, *Martin v. Soucie*, 109 Ill. App. 3d 731, 732-34 (1982); *Wilson v. Kasich*, 963 N.E.2d 1282 (Ohio 2012).

In light of these considerations, I would grant plaintiffs' request for leave to file their original action, give them their day in court, and then decide this important matter of public policy on the merits rather than on the equitable and purely discretionary doctrine of *laches*.

JUSTICES GARMAN and KARMEIER join in this dissent.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DAN MCCONCHIE, *et al.*,	)	
	)	
Plaintiffs,	)	Case No. 21-cv-3091
	)	
v.	)	Circuit Judge Michael B. Brennan
	)	Chief District Judge Jon E. DeGuilio
CHARLES W. SCHOLZ, *et al.*,	)	District Judge Robert M. Dow, Jr.
	)	
Defendants.	)	Three-Judge Court – 28 U.S.C. § 2284(a)

JULIE CONTRERAS, *et al.*,	)	
	)	
Plaintiffs,	)	Case No. 21-cv-3139
	)	
v.	)	Circuit Judge Michael B. Brennan
	)	Chief District Judge Jon E. DeGuilio
ILLINOIS STATE BOARD OF ELECTIONS, *et al.*,	)	District Judge Robert M. Dow, Jr.
	)	
	)	Three-Judge Court – 28 U.S.C. § 2284(a)
Defendants.	)	

EAST ST. LOUIS BRANCH NAACP, *et al.*,	)	
	)	
	)	Case No. 21-cv-5512
Plaintiffs,	)	
	)	Circuit Judge Michael B. Brennan
v.	)	Chief District Judge Jon E. DeGuilio
	)	District Judge Robert M. Dow, Jr.
ILLINOIS STATE BOARD OF ELECTIONS, *et al.*,	)	
	)	Three-Judge Court – 28 U.S.C. § 2284(a)
	)	
Defendants.	)	

ARGUED DECEMBER 7, 2021 – DECIDED DECEMBER 30, 2021

Per Curiam. Plaintiffs in these three consolidated cases, *McConchie*, *Contreras*, and *East St. Louis NAACP*, challenge Illinois' legislative redistricting map[1] and ask this Court to order alterations that would create additional districts featuring majorities of either Latino or Black voters. All Plaintiffs bring statutory claims, arguing that the redistricting map impermissibly dilutes minority votes in violation of § 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301, *et seq.* *Contreras* and *East St. Louis NAACP* Plaintiffs also present constitutional claims, contending that several legislative districts were racially gerrymandered in violation of the Fourteenth Amendment's Equal Protection Clause.

On § 2 Voting Rights Act claims, the Supreme Court has admonished that "[f]ailure to maximize cannot be the measure of § 2" because "reading § 2 to define dilution as any failure to maximize tends to obscure the very object of the statute and to run counter to its textually stated purpose." *Johnson v. De Grandy*, 512 U.S. 997, 1016–17 (1994). Nearly three decades later, those principles animate this Court's analysis of these three challenges to Illinois' legislative redistricting map. Many of Plaintiffs' proposed districts barely surpass the 50% mark. For all but one of the districts in SB 927, Latino voters maintain a census voting age population of 42.7% or higher, which Legislative Defendants insist allow for additional opportunities to form coalitions with voters of other races to elect their candidate of choice, enhancing the overall political power of Latinos in Illinois.

In light of these figures, these three cases are *not* about "the chance for some electoral success in place of none." *Johnson*, 512 U.S. at 1012–13. Rather, for many of the challenged

[1] Illinois' most recent legislative redistricting map, SB 927, was passed by the General Assembly on August 31, 2021, and approved by the Governor on September 24, 2021. See Public Act 102-0663 ("SB 927" or "September Redistricting Plan").

districts, these cases are about "the chance for more success in place of some." *Id.* at 1013. This disagreement also reflects competing views about how to guarantee Latino and Black voters, in their respective districts, equal opportunity to elect their candidate of choice when minority voters could form different permutations of majority-minority, coalition, and opportunity districts.[2]

Although there is debate about how to achieve the guarantees of the Voting Rights Act, one thing is clear: A federal court is not the arbiter of that dispute unless Plaintiffs carry their burden to prove that an elected legislature's approach violates the law. See *Voinovich v. Quilter*, 507 U.S. 146, 156 (1993) ("[T]he federal courts may not order the creation of majority-minority districts unless necessary to remedy a violation of federal law"). Cognizant that "judgments about inequality * * * become closer calls" in cases such as these, we conclude that Plaintiffs have not established any statutory defects in SB 927. *Johnson*, 512 U.S. at 1013. Our analysis in support of that conclusion forms the first part of this opinion.

As to the constitutional claims, *Contreras* Plaintiffs allege that House District ("HD" or "House District") 21 and Senate District ("SD" or "Senate District") 11 constitute racial gerrymanders, and *East St. Louis NAACP* Plaintiffs allege the same for HD 114. But neither set of Plaintiffs has proved that race predominated in the configuration of any of the challenged districts. Indeed, the record could not be more clear that partisan politics—a legally acceptable

[2] At the outset, we define several key terms. "In majority-minority districts, a minority group composes a numerical, working majority of the voting-age population." *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009). An influence district is one "in which a minority group can influence the outcome of an election even if its preferred candidate cannot be elected." *Id.* "[A] crossover district is one in which minority voters make up less than a majority of the voting-age population. But in a crossover district, the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority's preferred candidate." *Id.*

criterion—controlled that decision. The second part of this opinion lays out our evaluation of those constitutional claims.

For the reasons that follow, we uphold the General Assembly's redistricting map under SB 927 and reject in full all three Plaintiffs' remedial proposals, denying Plaintiffs any further injunctive or declaratory relief.

I. Background

A. 2021 Legislative Redistricting Process

As explained in the Court's October 19, 2021 decision in this case, the Illinois Constitution instructs the General Assembly to reconfigure the boundaries of the 59 Senate districts and 118 House of Representatives districts every 10 years to account for population changes ascertained through the decennial census. In 2021, Illinois' legislative redistricting process took place in two phases. In the first phase, the U.S. Census Bureau did not release data in the Spring of 2021, so the Illinois General Assembly reconfigured the legislative districts based on data from the American Community Survey's 5-year estimates. District maps were proposed, and in May 2021, the General Assembly passed House Bill 2777 and Senate Floor Amendment 1, which established the new map of House and Senate districts. The Governor signed the plans into law on June 4, 2021. See Public Act 102-0010 ("P.L. 102-0010" or "June Redistricting Plan").

But the Census Bureau's belated release of the latest, official census data revealed malapportionment in the enacted map. The state returned to the drawing board in August 2021 to account for the population changes revealed in the newly-available census numbers and equally

apportion the districts. Following several joint supplemental hearings, the General Assembly passed a second map, SB 927, or the September Redistricting Plan.[3]

B. Procedural Posture

Both of those legislative redistricting plans prompted legal action. In late May and early June 2021, two sets of plaintiffs filed suit against members of the General Assembly's Democratic leadership (the "Legislative Defendants") and the State Board of Elections. Various members of the General Assembly's Republican leadership filed the first case, *McConchie v. Scholz*, Case No. 21-cv-3091 (N.D. Ill. 2021). Individual Latino voters represented by the Mexican American Legal Defense and Educational Fund ("MALDEF"), filed the second suit, *Contreras v. Illinois State Board of Elections*, Case No. 21-cv-3139 (N.D. Ill. 2021). Although they requested different forms of relief, both sets of Plaintiffs alleged that the apportionment of the House and Senate districts in the June Redistricting Plan, P.L. 102-0010, violated the Equal Protection Clause's guarantee of one-person, one vote. The cases were consolidated, and this three-judge panel was convened pursuant to 28 U.S.C. § 2284(a).

The August 2021 release of the federal census data revealed significant malapportionment in the enacted map, prompting reactions from both sides of the "v." *McConchie* and *Contreras* Plaintiffs moved for summary judgment on the June Redistricting Plan. They sought to enjoin State Board of Elections Defendants from using the map in any future elections and a declaration that the plan was unconstitutional. *McConchie* Plaintiffs also sought to compel the handoff of the

[3] The parties, the witnesses including experts, and this Court use the acronyms "VAP" (voting age population), and "CVAP" (citizen voting age population), in these cases. The parties, the witnesses including experts, and this Court also use the terms "endogenous" to refer to legislative elections and "exogenous" to refer to other, non-legislative elections, such as municipal elections or elections for non-legislative offices.

mapmaking process from the General Assembly to a bi-partisan Commission under a provision of the Illinois Constitution.

As noted above, the General Assembly proposed and passed a new redistricting map, SB 927, the September Redistricting Plan, during this litigation. SB 927 did not allay Plaintiffs' constitutional and statutory concerns, however. Both *McConchie* and *Contreras* Plaintiffs filed amended complaints to add challenges to SB 927. Their complaints reincorporated their allegations that the June Redistricting Plan violated the one-person, one-vote principles, and they added new claims that SB 927 violated § 2 of the Voting Rights Act and constituted racial gerrymanders in violation of the Fourteenth Amendment's Equal Protection guarantee.

After finding that the June Redistricting Plan still presented a live case or controversy, this Court granted summary judgment on the one-person, one-vote challenge to the June Map. The Court declared the June Redistricting Plan unconstitutional and enjoined the Illinois State Board of Elections from using the map in future elections. The Court, however, declined *McConchie* Plaintiffs' request to turn the redistricting process over to a bi-partisan commission. Instead, the Court declared SB 927 to be the General Assembly's "second bite at the apple" and our starting point for selecting a replacement map. We thus invited *McConchie* and *Contreras* Plaintiffs to prove their allegations that SB 927 violated the Voting Rights Act and Fourteenth Amendment and to submit proposed remedial maps to cure any violations they could establish.

Days before the summary judgment opinion in *Contreras* and *McConchie*, a third redistricting case was filed. East St. Louis Branch NAACP and the United Congress of Community and Religious Organizations filed suit in federal court, *East St. Louis NAACP v. Illinois State Bd. of Elections*, Case No. 21-cv-5512 (N.D. Ill. 2021). Like *McConchie* and *Contreras* Plaintiffs, *East St. Louis NAACP* Plaintiffs alleged that the General Assembly violated

the Voting Rights Act and Fourteenth Amendment in configuring HD 114, located in an area in and around East St. Louis known as "the Metro East" region. After consolidation of the three cases, this Court instructed *East St. Louis NAACP* Plaintiffs to also brief their constitutional and statutory claims and to submit a proposed remedial map.

After extensive fact and expert discovery, Plaintiffs submitted briefs detailing the alleged § 2 and Fourteenth Amendment violations in SB 927, supported by fact and expert evidence, and proposing cures thereto with remedial plans of their own. See [*McConchie v. Scholz*, Case No. 21-cv-3091 ("*McConchie*"), dkt. 151 (*McConchie* Pls.' Br.) (N.D. Ill. 2021)]; [*Contreras v. Ill. State Bd. of Elections*, Case No. 21-cv-3139 ("*Contreras*"), dkt. 139 (*Contreras* Pls.' Br.) (N.D. Ill. 2021)]; [*East St. Louis NAACP v. Ill. State Bd. of Elections*, Case No. 21-cv-5512 ("*East St. Louis NAACP*"), dkt. 44 (*East St. Louis NAACP* Pls.' Br.) (N.D. Ill. 2021)]. Together, their claims center on three regions of Illinois: Cook County, Aurora, and Metro East. Legislative Defendants filed a brief in opposition to all three Plaintiffs' remedial maps and defending SB 927 in full. See [*McConchie*, 160 (Leg. Defs.' Br.)].[4]

Although this Court set aside time for oral argument or an evidentiary hearing, all three sets of Plaintiffs disclaimed the need for witness testimony and only *East St. Louis NAACP* Plaintiffs requested oral argument. Legislative Defendants, too, requested oral argument. The Court convened a one-day hearing on December 7, allotting each set of Plaintiffs an equal amount

[4] We note several housekeeping matters to avoid any confusion. First, we will refer to filings on *McConchie v. Scholz*, Case No. 21-cv-3091 (N.D. Ill. 2021) as "*McConchie*" (*e.g.*, [*McConchie*, 151 (Pls.' Br.) at 14]), on *Contreras v. Ill. State Bd. of Elections*, Case No. 21-cv-3139 (N.D. Ill. 2021) as "*Contreras*" and so forth. All page references are to the pagination listed on the docket and located at the top of the page (*e.g.*, "Case: 1:21-cv-03091 Document #: 175-1 Filed: 12/08/21 Page **34** of 53"), not the pagination assigned by the parties and located at the bottom of the page.

of time for opening and rebuttals, and Legislative Defendants an equal amount of time in aggregate to respond to each Plaintiffs' claims. The Court also set a schedule for post-hearing supplemental written submissions, but the parties all agreed subsequently, see [*McConchie*, 180], that no further submissions were necessary as the hearing had given counsel ample opportunity to make their points.

II. Legal Standard

First, we describe the legal framework for considering the three sets of Plaintiffs' statutory claims that SB 927 impermissibly dilutes Latino and Black votes spanning various regions of the state and different permutations of the districts within those regions. Later, we describe the legal standard for racial gerrymandering in that portion of this opinion which addresses those claims.

Section 2, subsection (a) of the Voting Rights Act provides that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State * * * in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or * * * as provided in subsection (b)." 52 U.S.C. § 10301(a). Subsection (b) elaborates that "[a] violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State * * * are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* § (b).

In *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986), the Supreme Court announced three "necessary preconditions" that apply to a § 2 claim: (1) The minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district;" (2) the

minority group must be "politically cohesive;" and (3) the majority must vote "sufficiently as a bloc to enable it * * * usually to defeat the minority's preferred candidate." These preconditions, also referred to as the "*Gingles* factors," apply with equal force to single-member district claims. *Growe v. Emison*, 507 U.S. 25, 40–41 (1993). "The burden of 'show[ing]' the prohibited effect, of course, is on the plaintiff * * * ." *Voinovich v. Quilter*, 507 U.S. 146, 156 (1993) (alteration in original). And failure to satisfy any one of these factors is fatal to a § 2 VRA claim. See, *e.g.*, *Bartlett v. Strickland*, 556 U.S. 1, 11 (2009) ("Majority-minority districts are only required if all three *Gingles* factors are met and if § 2 applies based on a totality of the circumstances").

"When applied to a claim that single-member districts dilute minority votes, the first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *Johnson v. De Grandy*, 512 U.S. 997, 1008 (1994). "[A] party asserting § 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." *Strickland*, 556 U.S. at 19–20. The *Strickland* Court rejected the argument that a plaintiff can fulfill this precondition with a district below 50 percent minority voting age population. See *id.* at 23. That is true even if there is good reason to think that minority voters could surpass the 50-percent threshold by forming a so-called "coalition district" that combines minority voters with voters of other races to elect their candidate of choice.

The third *Gingles* precondition is designed "to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidate." *Gingles*, 478 U.S. at 56. "[T]he usual predictability of the majority's success distinguishes structural dilution from the mere loss of an occasional election." *Id*. at 51. "[I]n general, a white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes rises to the level of legally

significant white bloc voting." *Id*. at 56. However, relevant here, "[i]n areas with substantial crossover voting it is unlikely that the plaintiffs would be able to establish the third *Gingles* precondition—bloc voting by majority voters." *Strickland*, 556 U.S. at 24. "[I]n the absence of significant white bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters." *Voinovich*, 507 U.S. at 157–58 (quoting *Gingles*, 478 U.S. at 49, n.15) (reversing district court's finding that district violated § 2 without this showing).

Two cases, *Abrams v. Johnson*, 521 U.S. 74, 90–92 (1997), and *Cooper v. Harris*, 137 S. Ct. 1455 (2017), offer particularly germane guidance on *Gingles*' third precondition. In *Abrams*, the district court concluded that the state's redistricting plan did not violate § 2 in part because the record was insufficient to satisfy the third *Gingles* precondition. Plaintiffs had "fail[ed] to demonstrate * * * chronic bloc voting" because of the "significant degree of crossover voting," such as white crossover voting for Black candidates, which ranged from twenty-two to thirty-eight percent, "black and black-preferred candidates[']* * * many electoral victories in local and statewide election" and "significant—occasionally overwhelming—support from both black and white voters." 521 U.S. at 91–92 (some alterations in original). The Supreme Court upheld the lower court's findings, despite some evidence of racial polarization in voting, because of the electoral victories by Black incumbent candidates and the "general willingness of white voters to vote for black candidates in the challenged districts." *Id.* at 92–93.

Although *Cooper v. Harris* addressed a constitutional challenge, it too sheds additional light on the third *Gingles* precondition. There, state defendants sought to defend districts designed to meet race-based targets by claiming that they drew the challenged majority-minority districts to comply with § 2 of the Voting Rights Act, see 137 S. Ct. at 1469, but Black-preferred candidates

had won five successive general elections in the challenged districts under their prior configuration over the past decade with forty-eight and forty-two percent Black voting age population, *id.* at 1465–66. The Court upheld the district court's conclusion that the state's plan did not demonstrate effective White-bloc voting, *id.* at 1470. In fact, legislators had misinterpreted *Strickland* to require that "whenever a legislature *can* draw a majority-minority district, it *must* do so—even if a crossover district would also allow the minority group to elect its favored candidates." *Cooper*, 137 S. Ct. at 1472. As the Court explained, superimposing such a requirement onto § 2 "is at war with [the Court's] § 2 jurisprudence—*Strickland* included" because that view would render,

> the third *Gingles* condition * * * no condition at all, because even in the absence of effective white bloc-voting, a § 2 claim could succeed in a district (like the old District 1) with an under–50% BVAP. But this Court has made clear that unless *each* of the three *Gingles* prerequisites is established, "there neither has been a wrong nor can be a remedy."

Id. The plan, therefore, could not withstand strict scrutiny. *Id.* ("[N]either will we approve a racial gerrymander whose necessity is supported by no evidence and whose *raison d'être* is a legal mistake").

The three *Gingles* preconditions are not the end of the inquiry, however. "If a plaintiff makes [the threshold] showing, it must then go on to prove that, under the totality of the circumstances, the district lines dilute the votes of the members of the minority group." *Abbott v. Perez*, 138 S. Ct. 2305, 2331 (2018). Among other factors, proportionality statewide is "a relevant fact in the totality of circumstances," but not a "safe harbor." *League of United Latin Am. Citizens* (*LULAC*) *v. Perry*, 548 U.S. 399, 436 (2006) (quoting *Johnson*, 512 U.S. at 1000, 1017–18). Rather, "the degree of probative value assigned to proportionality may vary with other facts." *Id.* at 438 (quoting *Johnson*, 512 U.S. at 1020). Our task, however, is not to assess a "failure to maximize the number of reasonably compact majority-minority districts." See *Johnson*, 512 U.S.

at 1022. Thus, the Court has found no § 2 violation where, for example, "in spite of continuing discrimination and racial bloc voting, minority voters form effective voting majorities in a number of districts roughly proportional to the minority voters' respective shares in the voting-age population." *Id.* at 1000, 1014. Compare *LULAC*, 548 U.S. at 442, 447 (in holding the drawing of District 23 violated § 2, the "totality of the circumstances demonstrate[d] a § 2 violation").

We also note that our remedial authority is limited. Time and again the Supreme Court has warned that "[t]he federal courts may not order the creation of majority-minority districts unless necessary to remedy a violation of federal law." See *Voinovich*, 507 U.S. at 156. That is because "it is the domain of the States, and not the federal courts, to conduct apportionment in the first place." *Id.* These principles apply even "[w]hen faced with the necessity of drawing district lines by judicial order" because "a court, as a general rule, should be guided by the legislative policies underlying the existing plan, to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act." *Abrams*, 521 U.S. at 79.

III. Analysis

Part A below addresses *McConchie*, *Contreras*, and *East St. Louis NAACP* Plaintiffs' statutory claims and demonstrates why the absence of majority bloc voting in each of the challenged districts dooms their § 2 allegations. Part B explains why *Contreras* and *East St. Louis NAACP* Plaintiffs have not shown that race predominated in the configuration of any district in SB 927.

Preliminarily, we address *McConchie* and *Contreras* Plaintiffs' joint motion to exclude Dr. Allan Lichtman's expert testimony regarding the third *Gingles* precondition for the alleged failure to produce data in violation of Federal Rule of Civil Procedure 26(a)(2)(B)(ii). See [*Contreras*, 180 (*Contreras & McConchie* Pls.' Joint Mot. to Exclude Dr. Lichtman's *Gingles*

Prong III Testimony)]; [*McConchie*, 173 (Pls.' Notice of Filing & Adoption of Mot. to Exclude)]. Plaintiffs argue that Dr. Lichtman's report refers to but omits the results of his regression analysis.

We took these motions [180] and [173] with the case and now deny them as moot. Dr. Lichtman's racial polarization study is not necessary to resolve any of Plaintiffs' claims. Our evaluation relies exclusively on Plaintiffs' experts' findings. To the extent Dr. Lichtman's report is considered, we rely on only data that is accessible to Plaintiffs' experts without particular formatting or coding and which therefore raise no reliability questions. For example, we consider Dr. Lichtman's commentary regarding methodology (Plaintiffs' experts' sample selection), publicly available data he has used to supplement Plaintiffs' tables (*e.g.*, win-loss rates), or where he has confirmed Plaintiffs' own findings (*e.g.*, confirming Dr. Grumbach's assessment of Latino-preferred candidates) because Plaintiffs presumably had access to the data underlying their own findings.

A. Vote Dilution

All three sets of Plaintiffs allege that SB 927 impermissibly dilutes minority votes in violation of § 2 of the Voting Rights Act. *Contreras* Plaintiffs argue that SB 927 denies Latino voters the opportunity to elect their candidate of choice in seven districts in the northwest and southwest portions of Cook County, which encompasses the City of Chicago. See [*Contreras*, 139 (Pls.' Br.)]. Meanwhile, *East St. Louis NAACP* Plaintiffs assert that the plan dilutes the strength of Black voting in one district in Metro East, a region in southern Illinois. See [*East St. Louis NAACP*, 44 (Pls.' Br.)]. *McConchie* Plaintiffs' claims overlap with many of the other Plaintiffs' claims, and then some, so we address their claims last. They challenge twelve Cook County districts on the north and south west sides of Chicago, together with one district in Aurora as

denying the rights of Latino voters, while also claiming impermissible vote dilution in Metro East. See [*McConchie*, 151 (Pls.' Br.)].

We conclude that Plaintiffs have not proved that the September Redistricting Plan violates § 2 of the Voting Rights Act. Plaintiffs have failed to show by a preponderance of the evidence that White or majority-bloc voting defeats minority candidates of choice, the third precondition for § 2 liability under *Thornburg v. Gingles*. Plaintiffs cannot show § 2 liability without meeting all three preconditions, so their § 2 challenges fail.

1. CONTRERAS Plaintiffs

Despite an increase in the total citizen voting age population of Latinos in Illinois, under SB 927 the number of Latino-majority citizen voting age districts decreases from five to four in the Illinois House, and three to two in the Senate. See [*Contreras*, 139 (Pls.' Br.) at 8]. Under this new configuration, *Contreras* Plaintiffs contend that seven districts in northwest and southwest Cook County violate § 2 of the Voting Rights Act. On the north side of the county, they argue that House Districts 3, 4 and 39, together with Senate District 2, impermissibly dilute Latino votes. On the south side of Cook County, they launch similar challenges to House Districts 21, 24, and Senate District 11.

a. Northwest Cook County (HD 3, 4, 39, SD 2)

As to the challenged districts in northwest Cook County—HD 3, 4, 39 and SD 2—Legislative Defendants stipulate that the second *Gingles* precondition is satisfied, but they insist that *Contreras* Plaintiffs cannot prove either the first or third *Gingles* preconditions.

i. First *Gingles* Precondition

Plaintiffs submitted a remedial map drawn by expert David Ely that included reasonably compact districts with greater than 50% Latino CVAP for each of the proposed remedial districts,

reproduced in part below. The Latino CVAP is (1) 51.8% in HD 3, (2) 50.6% in HD 4; (3) 50.9% in HD 39, and (4) 51.2% in SD 2. See [*Contreras*, 135-21 (Ely Expert Report), Ely Ex. 6, at 54 tbl.3 (Alternative Proposal)]. The potential districts included in *Contreras* Plaintiffs' remedial plans easily "show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." *Strickland*, 556 U.S. at 19–20.

SB 927 Plan*			***Contreras Plaintiffs' Remedial Plan****		
District	**Latino VAP**	**Latino CVAP**	**District**	**Latino VAP**	**Latino CVAP**
HD 3	54.13	47.4	**HD 3**	58.5	**51.8**[5]
HD 4	52.65	45.2	**HD 4**	55.6	**50.6**
HD 21	51.74	42.7	**HD 21**	64.3	**53.3**
HD 24	48.5	43.7	**HD 24**	58.5	**51.4**
HD 39	51.61	45.6	**HD 39**	55.0	**50.9**
SD 2	53.39	46.3	**SD 2**	57.1	**51.2**
SD 11	57.26	47.70	**SD 11**	66.1	**54.6**
See [*McConchie*, 160-2 (Maxson Decl.) Ex. A (House Matrix) at 14; 160-6 (Sodowski Decl.) Ex. A (Senate Matrix) at 10].			See [*Contreras*, 135-21 (Ely Expert Report), Ely Ex. 6, at 54 tbl.3 (Alternative Proposal)].		

It is no answer to say that *Gingles*' first precondition fails because "*all* of the House Districts Plaintiffs challenge are 'majority-minority' Latino districts." See [*McConchie*, 160 (Defs.' Br.) at 34]. Legislative Defendants rely on voting age population for this proposition. See *LULAC*, 548 U.S. at 429. Here, as in *LULAC*, "Latinos, to be sure, are a bare majority of the voting-age population" in the challenged districts, "but only in a hollow sense" because "the relevant numbers must include citizenship" given that "only eligible voters affect a group's opportunity to elect candidates." See *id*. See *Baldus v. Members of Wis. Gov't Accountability Bd.*,

[5] Legislative Defendants' CVAP estimates for all districts in *Contreras* Plaintiffs' remedial plan differ nominally. See [*McConchie*, 160-2 (Maxson Decl.) Ex. A (House Matrix) at 14; 160-6 (Sodowski Decl.) Ex. A (Senate Matrix) at 10]. These minor factual disputes do not alter our conclusion that *Gingles*' first precondition is satisfied because none of the differences between the Plaintiffs' and Defendants' estimates reduce the CVAP in the proposed districts below the majority-minority requirement under *Gingles*' first precondition.

849 F. Supp. 2d 840, 854 (E.D. Wis. 2012) ("For the obvious reason that non-citizens are not entitled to vote, we cannot ignore citizenship status, particularly given the Supreme Court's express endorsement of the centrality of this point"). None of the challenged districts feature majorities of Latinos of the citizen voting age population.

In any event, Defendants' reliance on *Strickland* for the proposition that "Plaintiffs have no viable VRA [Voting Rights Act] claim where the existing district is majority-minority" is misplaced. Unlike *Strickland*, Plaintiffs in this case do not "argue that § 2 requires a crossover district" to cross the fifty percent threshold to satisfy *Gingles*' first precondition. Rather, *Contreras* Plaintiffs have produced reasonably compact "majority-minority districts * * * compos[ing] a numerical, working majority of the voting-age population" as required by § 2. See 556 U.S. at 13. See, *e.g.*, *Dickinson v. Ind. State Election Bd.*, 933 F.2d 497, 503 (7th Cir. 1991) ("[T]he Supreme Court [at this stage] requires only a simple majority of eligible voters in the single-member district.")

ii. Third *Gingles* Precondition

Nevertheless, *Contreras* Plaintiffs cannot fulfill *Gingles*' third precondition for HD 3, 4, 39, and SD 2. Legislative Defendants are correct that "Plaintiffs' chief stumbling block is that their submissions fail to demonstrate that white bloc voting exists in any of the challenged areas sufficient to usually defeat minority-preferred candidates." [*McConchie*, 160 (Defs.' Br.) at 33]. Even findings by Plaintiffs' own expert, Dr. Jacob Grumbach, reveal that the Latino candidate of choice won in seven of ten endogenous[6] elections[7] on the north side in the past decade. [*Contreras*,

[6] As noted above, an endogenous election concerns a state House or Senate district. An exogenous election concerns other partisan and non-partisan offices.

[7] Dr. Grumbach selected nineteen endogenous elections to reach these findings. To assess the level of majority bloc voting, Dr. Grumbach received precinct-level data covering "recent Illinois state legislative

135-19 (Grumbach Expert Report) at 13]. Dr. Grumbach's analysis also estimates significant crossover voting by non-Latino voters in those same elections, ranging from more than twenty-five to seventy percent non-Latino voter support for the Latino candidate of choice in at least eight of those elections. See [*id.* at 12 fig.1, 27 tbl.A1].[8]

Accordingly, much like *Abrams*, *Contreras* Plaintiffs have "fail[ed] to demonstrate * * * chronic bloc voting" in HD 3, 4, and 39 because of the strong electoral record and prevalence of crossover voting. See *Abrams*, 521 U.S. at 93–94 (alterations in original). Latino-preferred candidates' electoral victories are powerful evidence that there is an absence of majority bloc voting (either by a White-bloc or by a non-Latino-bloc). *Id.* So is their "significant—occasionally overwhelming—support from" non-Latino voters, who voted at rates of twenty-five to seventy percent for Latino-preferred candidates in those elections. See *id.* at 92–93 (internal quotation marks omitted) (characterizing White crossover voting ranging from twenty-two to thirty-eight percent as significant); *Strickland*, 556 U.S. at 24 ("In areas with substantial crossover voting it is unlikely that the plaintiffs would be able to establish the third *Gingles* precondition—bloc voting by majority voters").

The parallels here to *Cooper v. Harris* underscore our view. Similar to *Cooper*, "[h]ere, electoral history provided no evidence that a § 2 plaintiff could demonstrate the third *Gingles*

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elections with a Latino candidate," [*Contreras*, 135-19 (Grumbach Expert Report) at 8], and identified nineteen endogenous state legislative candidates, selecting "districts that geographically overlap challenged districts in which at least one Latino candidate ran against at least one non-Latino candidate," [*id.*; 162-1 (Grumbach Expert Rebuttal) at 6], and also excluded elections in which a candidate ran unopposed, [135-19 at 8]. In his report, he further drills down to produce findings in the north and south side districts, respectively. See [*id.* at 11–15]. Nowhere does he, nor do the *Contreras* Plaintiffs, produce results at any higher level of specificity to show findings at the individual district level.

[8] To estimate voter preferences, by race, Dr. Grumbach uses a methodology called "ecological inference" (EI). See [*Contreras*, 135-19 (Grumbach Expert Report) at 9].

prerequisite—effective white bloc voting." See 137 S. Ct. at 1470. Although the Latino citizen voting age population in several of these districts was "less than a majority" in the past decade, the districts were still "extraordinarily safe * * * for [Latino] preferred candidates" in part because a "meaningful number of white voters" and other minority voters "did *not* 'vote [] sufficiently as a bloc' to thwart [Latino] voters' preference." See *id.* "When voters act in [this] way"—forming a coalition district—"[i]t is difficult to see how the majority-bloc-voting requirement could be met." *Id.* (internal quotation marks omitted).

Even if we were to consider the broader sample of Cook County elections analyzed by Dr. Grumbach, our conclusion that Plaintiffs have not shown the existence of majority bloc voting would not change. Overall, Dr. Grumbach finds that for all Cook County elections analyzed, a Latino candidate of choice lost in 4 of 19 endogenous elections—or, in other words, the candidate of choice prevailed 78.9% of the time. See [*Contreras*, 162 (Pls.' Reply Br.) at 18]. Latino-preferred candidates lost in 8 of 17 exogenous elections, yielding a still respectable 52.9% win rate in exogenous elections. See [*id.* at 20]. Findings from Dr. Grumbach's meta-analysis of 19 endogenous elections across north and south west Cook County underscores crossover voting as well. In those challenged districts, on average, 37.5% of non-Latino voters supported Latino candidates of choice. See [135-19 (Grumbach Expert Report) at 15 fig.3, 16] (specifically, the results suggest that 68.7% of Latino voters supported Latino candidates of choice in these elections, whereas 37.5% of non-Latino voters supported Latino candidates of choice).[9]

[9] For his meta-analysis, Dr. Grumbach also used ecological inference (EI) to estimate how many people of each race/ethnic group voted for a candidate. See [135-19 (Grumbach Expert Report) at 10]. He conducted a meta-analysis, which is designed to provide an "overall estimate" of electoral support for Latino candidates of choice and their non-Latino electoral opponents because variations in geography, voter turnout, and political context render any average of racial polarization difficult. [*Id.*] (emphasis omitted).

Contreras Plaintiffs' contention that once we discount elections with special circumstances, majority bloc voting usually defeats Latino-preferred candidates is not persuasive. Specifically, they argue that we should winnow out any election involving an (1) incumbent, (2) appointments, and (3) majority Latino districts. [*Contreras*, 162 (Pls.' Reply Br.) at 18]. Under this analysis, we would disregard fourteen of the nineteen endogenous elections. In this narrower pool of only five races, the win rate for Latino-preferred candidates plummets to only twenty percent. See [*id.* at 19–20; 162-1 (Grumbach Expert Rebuttal) at 7] (reporting Latino-preferred candidate prevailed in one of five endogenous elections without special circumstances). Likewise, they insist we should ignore five of the original seventeen exogenous elections from Grumbach's sample, which would reduce the win percentage of Latino-preferred candidates to thirty-three percent. See [162 at 19–20; 162-1 at 7] (reporting Latino-preferred candidate prevailed in four of twelve exogenous elections).

As to the first argument, for two reasons we are not persuaded that we can simply toss out election results in which an incumbent ran. See, *e.g.*, *Abrams*, 521 U.S. at 92–93 (upholding district court's conclusion that rested on the "general willingness of white voters to vote for" all three Black incumbents who won elections under the court plan). It is true that "special circumstances, such as the absence of an opponent, incumbency, or the utilization of bullet voting, may explain minority electoral success in a polarized contest." *Gingles*, 478 U.S. at 57. But incumbency is not "special" in the Illinois General Assembly, in which 109 of 118 of House races in 2020 included an incumbent candidate. See, *e.g.*, *Illinois House of Representatives Elections, 2020*, Ballotpedia, https://perma.cc/5H9B-YQH6 (last visited Dec. 27, 2021). In other words, incumbency does not "play an unusually important role" in these elections. See *Clarke v. City of Cincinnati*, 40 F.3d 807, 813–14 (6th Cir. 1994) ("The Supreme Court has not yet had occasion to

describe the conditions under which incumbency may be a 'special circumstance.' But unlike other 'special circumstances,' incumbency plays a significant role in the vast majority of American elections"). Rather, to systematically eliminate from our analysis all races with incumbent candidates "would confuse the ordinary with the special, and thus 'make practically every American election a special circumstance.'" *Id*. (quoting *Collins v. City of Norfolk*, 883 F.2d 1232, 1250 (4th Cir. 1999)). Relatedly, *Contreras* Plaintiffs have not given any reason *why* incumbency diminishes the probative value of the elections here. They have not, for example, pointed to any circumstance in which the General Assembly designed districts to "exclud[e] some voters from the district simply because they are likely to vote against the officeholder," or otherwise undermine "the interests of the constituents." See *LULAC*, 548 U.S. at 440–41 ("Incumbency protection can take various forms * * * . If the justification for incumbency protection is to keep the constituency intact so the officeholder is accountable for promises made or broken, then the protection seems to accord with concern for the voters").

Contreras Plaintiffs' second special circumstance—appointment—likewise misses the mark. Plaintiffs have not pointed to any reason that appointments diminish the probative value of the elections in Dr. Grumbach's sample. It might be another situation if, for example, there were *any* evidence in the record that the General Assembly has a history of doling out appointments only to White candidates or that Latino voters voted against appointees in subsequent elections, which *might* be evidence that the appointment process dilutes or denies Latino voters the opportunity to elect their candidate of choice. Yet *Contreras* Plaintiffs have not furnished any evidence that the General Assembly has done so. Rather, the only evidence in the record suggests that twenty-five percent of appointees in the Senate and twenty-four percent of appointees in the

House were Latino,[10] and that those Latino appointees garnered significant votes. See [*McConchie*, 179-1 (Leg. Defs.' Hr'g Exs. Pt. 1) at 6] (Latino members constituted three of twelve Senate appointments and seven of twenty-nine House appointments). If anything, the evidence suggests that the General Assembly has *favored* Latino-preferred candidates in its appointments.[11]

Contreras Plaintiffs also point to the sections of Dr. Grumbach's report in which he claims to have found evidence of widespread racially polarized voting. Specifically, Dr. Grumbach found that thirty-one of thirty-six elections featured racially polarized voting. [*Contreras*, 162 (Pls.' Reply Br.) at 24]. He also finds in a sample of eighteen elections that Latino voters are significantly more likely to vote for the Latino candidate of choice than are non-Latinos. See [*Contreras*, 135-19 (Grumbach Expert Report) at 15–16].

Contreras Plaintiffs' evidence of racial polarization is insufficient to overcome the pattern of electoral victories and crossover voting. In his report, Dr. Grumbach uses an over-inclusive definition of racially polarized voting, so his findings are not particularly helpful. He defines racially polarized voting as occurring when Latino and non-Latino voters differ in their voting choices. Thus, his results include elections in which Latino and non-Latino voters "voted overwhelmingly for the same candidate of choice." See [*McConchie*, 171-1 (Lichtman Expert

[10] Although Latino candidates are not synonymous with the Latino candidate of choice, there is evidence that Latino voters reelected those candidates in subsequent elections. See [*Contreras*, 162 (Pls.' Reply) at 17–18] (showing appointee Representative Andrade garnered 56 to 73% of Latino voters in three subsequent elections and appointee Senator Villanueva won 97% of Latino voters). In other words, this is not a situation in which evidence suggests the appointees are *not* the Latino-preferred candidate.

[11] At the December 7 hearing, counsel pointed out that appointments are made by local party officials, not by the General Assembly as a whole or by its leaders. But it would ignore reality, especially in Illinois, to suppose that local party officials do not consult closely with others in the party hierarchy before making appointments in most, if not all, instances in which a seat in the State House or Senate has been or soon will be vacated.

Report) at 40, 41 tbl.2] (Dr. Grumbach finds racially polarized voting, for example, even where 84.6% of non-Latino voters and 92.7% of Latino voters vote for the Latino-preferred candidate).

Other experts have rejected the definition employed by Dr. Grumbach. Dr. Lichtman, Legislative Defendants' expert, states in his report that racial polarization occurs when minority and non-minority groups vote for different candidates. See [*McConchie*, 171-1 (Lichtman Expert Report) at 40]. *East St. Louis NAACP* Plaintiffs' expert, Dr. Loren Collingwood, embraces the view that we should exclude elections in which minority and non-minority groups favor the same candidates. See [*East St. Louis NAACP*, 44-2 (Collingwood Expert Report) at 3] ("[I]f a majority of voters of one racial group back a particular candidate and so do a majority of voters from another racial group, then RPV is not present"). MALDEF appears to agree as well. See [*McConchie*, 171-1] (quoting MALDEF, NAACP Legal Def. & Educ. Fund (LDF) & Asian Am. Just. Ctr., *The Impact of Redistricting in Your Community: A Guide to Redistricting* 75, https://perma.cc/49LE-BZJH) ("Racially polarized voting is a pattern of voting along racial lines where voters of the same race support the same candidate who is different from the candidate supported by voters of a different race").

Dr. Grumbach's skewed data therefore shows "insufficient racial polarization in voting to meet the *Gingles* requirements." See *Abrams*, 521 U.S. at 93. Instead, the record as a whole confirms that Latino candidates have an equal opportunity to elect their candidate of choice given the relative success of Latino-preferred candidates and the general willingness of non-Latino voters to crossover and vote for these candidates.

In sum, *Contreras* Plaintiffs have not satisfied *Gingles*' third precondition, so they are not entitled to relief. "[U]nless *each* of the three *Gingles* prerequisites is established, 'there neither has been a wrong nor can be a remedy.'" See *Cooper*, 137 S. Ct. at 1472.

iii. Totality of the Circumstances

Even if *Contreras* Plaintiffs had satisfied *Gingles*' third precondition, the totality of the circumstances does not persuade us that SB 927 will dilute the strength of Latino votes in the north side districts for several reasons. As already discussed, *Contreras* Plaintiffs have not produced sufficient evidence of racial polarization in voting, and the data for Cook County districts indicates persistent crossover voting.

Illinois is a leader in promoting ballot access. The General Assembly has enacted a string of laws designed to increase voting access over the past two decades, and those measures apply across the state.[12] Studies by *Contreras* Plaintiffs' expert as well as other publications conclude that Illinois is a leader in such access across the country. See [*McConchie*, 171-1 (Lichtman Expert Report) at 105] (citing Jacob Grumbach, *Laboratories of Democratic Backsliding*, working paper (2021))[13] ("Illinois *** move[s] from the middle of the pack in 2000 to among the top democratic performers in 2018," *id.* at 12 fig.2, when measured for "democratic health * * * [u]sing 61 indicators of electoral and liberal democratic qualities, such as average polling place wait times, same-day and automatic voter registration policies, and felon disenfranchisement," *id.* at 3).

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[12] As early as 2005, for example, Illinois authorized early voting in the state, established paid two-hour leave for voting by employees, and provided voter registration forms in English and Spanish. See [*McConchie*, 171-1 (Lichtman Expert Report) at 108]. These voter-access measures have picked up speed in the past few years, with Illinois' authorization of election-day voter registration and automatic voter registration at state agencies, extension of early voting times, and establishment of high-traffic locations and elimination of voting identification requirements for doing so, to name a few. See [*id.*] (citing Public Acts 94-0645, 98-0691, 100-0464). Illinois has continued this trend during 2021, creating a state and school holiday on Election Day and authorizing a process to apply for permanent vote-by-mail status and curbside voting. See [*id.* at 109] (citing SB 825).

[13] To access Dr. Grumbach's working paper, see Jake Grumbach, *Working Papers*, https://perma.cc/S8CW-MKVR (last visited Dec. 27, 2021).

Other factors, such as proportionality and evidence of present and historic discrimination, are insufficient in light of the evidence above. Latino representation in the state legislature dips below the state average, but Latino candidates occupy 10 of 118 (8.5%) of Illinois State House seats, and 6 of 59 (10%) of Illinois State Senate seats, which is just shy of Latinos' approximate 11.2% of citizen voting age population in Illinois. See [*McConchie*, 171-1 (Lichtman Expert Report) at 145, 150)]; *LULAC*, 548 U.S. at 438 ("There is, of course, no 'magic parameter,' and 'rough proportionality,' must allow for some deviations" (citation omitted) (quoting *Johnson*, 512 U.S. at 1017, n.14)). To be sure, *Contreras* Plaintiffs cite evidence of enduring economic and socioeconomic differences between Latinos and others. Regarding the former, it is not difficult to imagine ways those differences could impact elections. Nevertheless, Plaintiffs do not provide expert testimony nor themselves connect the dots as to how those disadvantages undermine Latino residents' ability to elect their candidates of choice. It was their burden to do so. We cannot assume, on this record, how or if those differences dilute the strength of Latino votes.

This is the type of case the Supreme Court envisioned when it explained in *Strickland* that "States can—and in proper cases should—defend against alleged § 2 violations by pointing to crossover voting patterns and to effective crossover districts." 556 U.S. at 23–24. Although more bare majority-minority districts *could* have been drawn as a matter of legislative prerogative in Illinois, § 2 does not require them unless "all three *Gingles* factors are met and if § 2 applies based on a totality of the circumstances." See *id.* at 24. Plaintiffs' challenge proves neither. We therefore conclude that none of the challenged districts in SB 927, HD 3, 4, 39 nor SD 2, violates § 2 of the Voting Rights Act.

b. Southwest Cook County (HD 21, 24, SD 11)

Next up are *Contreras* Plaintiffs' challenges to HD 21, 24, and SD 11 on the southwest side of Cook County. Again, *Gingles*' first and second preconditions are straightforward. As for *Gingles*' first precondition, expert Ely's map shows the potential to create three additional majority-minority districts in the proposed remedial map. HD 21 features a Latino CVAP of 53.3%, HD 24 contains a Latino CVAP of 51.4%, and SD 11's LCVAP is 54.6%. [*Contreras*, 135-21 (Ely Expert Report), Ely Ex. 6, at 54 tbl.3 (Alternative Proposal)]. See *Strickland*, 556 U.S. at 19–20. On *Gingles*' second precondition, Defendants again stipulate that Latinos vote cohesively.

By their own metrics, though, *Contreras* Plaintiffs again have not satisfied *Gingles*' third precondition. In these southwest Cook County districts, Dr. Grumbach finds that Latino candidates of choice won in 4 of 7 endogenous elections in the past decade. See [*Contreras*, 135-19 (Grumbach Expert Report) at 15]. Put differently, Latino candidates of choice were defeated in roughly 42% of elections. For the reasons stated above, we will not disregard the incumbent elections in this sample. Even considering the election results for endogenous and exogenous districts, *Contreras* Plaintiffs' expert's own findings suggest an absence of non-Latino bloc voting. The only remaining evidence, then, to support *Contreras*' challenges to the southwest districts are (1) Dr. Grumbach's less-granular findings (that Latino candidates of choice won in 78.9% of 19 combined north and south side endogenous elections and 52.9% of north and south side exogenous elections), and (2) his evidence of racial polarization in voting. As explained above in Part III.A(1)(a)(ii), that evidence does not undermine our conclusion as to the third *Gingles* precondition.

We have already discussed several reasons why the totality of the circumstances do not favor *Contreras* Plaintiffs. In the southwest districts, *Contreras* Plaintiffs also contend that the town of Cicero attempted to pass voter residency requirements in 1981 and point to witness testimony that in 2016, community members attempted to intimidate and dissuade members of the Latino community from voting. Any evidence that any community has tried to dissuade their neighbors from exercising this fundamental tenant of democracy is troubling. Even so, this isolated evidence in a single town of approximately 80,000 people within a county of more than 5 million is insufficient to upend the force of the other factors, which show an enduring pattern, over the past two decades, of Illinois' leadership in facilitating voting access, as well as a recent history of significant crossover voting.

Contreras Plaintiffs have not proved by a preponderance of the evidence that *any* of the challenged districts in SB 927 satisfy the third precondition articulated in *Gingles.* Even by *Contreras* Plaintiffs' own metrics, Latino-preferred candidates have prevailed in 52.9% of elections in the north side districts in the past decade, and 57% of the south side districts. That record, together with a substantial amount of White crossover voting, indicate an absence of majority bloc voting. With this "absence of significant white bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters." See *Voinovich*, 507 U.S. at 157–58 (quoting *Gingles*, 478 U.S. at 49, n.15) (reversing district court because plaintiffs had "failed to demonstrate *Gingles*' third precondition—sufficient white majority bloc voting to frustrate the election of the minority group's candidate of choice"). Even if they could, however, the totality of the circumstances does not indicate Latinos are being denied the opportunity to elect their candidate of choice.

Accordingly, we find that *Contreras* Plaintiffs have not shown that any of the challenged districts—HD 3, 4, 21, 24, and 39 and SD 2 and 11—violates § 2 of the Voting Rights Act. We therefore also decline to adopt any aspect of *Contreras* Plaintiffs' remedial plan. In the absence of a § 2 violation, "[t]he task of redistricting is best left to state legislatures, elected by the people and as capable as the courts, if not more so, in balancing the myriad factors and traditions in legitimate districting policies." *Abrams*, 521 U.S. at 101.

2. EAST ST. LOUIS NAACP Plaintiffs

East St. Louis NAACP Plaintiffs' challenge is limited to HD 114, located in and around East St. Louis in southern Illinois. They allege that as configured in SB 927, HD 114 denies Black voters the opportunity to elect their candidate of choice.

East St. Louis NAACP Plaintiffs submitted an "alternate liability plan" devised by expert Ryan D. Weichelt in which 50.80% of the voting age population is Black. See [*East St. Louis NAACP*, 60-2 (Weichelt Rebuttal Report) at 10 tbl.2].[14] This "potential election district" exceeds 50% and therefore satisfies the first *Gingles* precondition. See *Strickland*, 556 U.S. at 19–20. Because Legislative Defendants have stipulated that the minority population of HD 114 votes cohesively as a bloc to fulfill *Gingles*' second precondition, we can move directly to the third precondition.

[14] Although CVAP is the appropriate metric for evaluating the alleged Latino vote dilution in the challenged districts, *East St. Louis NAACP* Plaintiffs assert that VAP, not CVAP, is the correct metric for evaluating HD 114 and have only submitted VAP numbers to this Court. They maintain (1) that there are very few non-citizens in the Black population of Metro East, so there are not significant differences between the CVAP and VAP, and (2) VAP is a more precise metric. That notion seems sensible to this Court, and Legislative Defendants do not appear to dispute that there is not a significant difference between VAP and CVAP in HD 114. Even so, we may leave that issue for another day because Plaintiffs' claim falters on *Gingles*' third precondition.

Legislative Defendants again argue that *East St. Louis NAACP* Plaintiffs' case fails the third precondition and the totality of the circumstances do not suggest the dilution of Black voters in HD 114. Although the changing demographics of the area make this claim a closer call, *East St. Louis NAACP* Plaintiffs have not carried the burden to show HD 114's configuration denies Black voters the opportunity to elect their candidate of choice.

The record shows that Black-preferred candidates have not been defeated by White (or majority) bloc voting in actual elections in HD 114, nor has there been any evidentiary showing that Black-preferred candidates are likely to be defeated now or within the next decade. As for actual election results, *East St. Louis NAACP* Plaintiffs' own expert, Dr. Collingwood, selected seven elections probative for assessing electoral success of Black-preferred candidates. He found that Black-preferred candidates won six of seven elections. See [*East St. Louis NAACP*, 44-2 (Collingwood Expert Report) at 6 tbl.1]. As for present and future elections, Dr. Collingwood projects that Black-preferred candidates would win in three of three, or one-hundred percent, of elections if HD 114 were to go into effect.[15] [*Id.* at 17–18, 19 fig.9].

East St. Louis NAACP Plaintiffs raise three arguments against this evidence of Black-preferred candidates' electoral success, but none of them undermine our analysis. First, relying on Dr. Collingwood, they assert that under SB 927, Black voters' ability to elect their candidate of choice is actually on a razor's edge. He opines that even though Black candidates of choice will win in future elections, "the over-time patterns suggest this district has trended from favoring

[15] Dr. Collingwood performed a reconstructed election analysis to project how Black-preferred candidates would perform in HD 114 under these new parameters. He found that Black-preferred candidates would win in three of three elections in the newly configured HD 114. [*East St. Louis NAACP*, 44-2 (Collingwood Expert Report) at 17–18, 19 fig.9].

Black Democratic candidates towards a toss-up." See [*East St. Louis NAACP*, 44-2 (Collingwood Expert Report) at 18]. That is because the elections were too close to show the district is safe, as he projects the Black-preferred candidates would only garner wins by margins of 50.4–49.6% and 51–49%, respectively, in two of the elections analyzed. [*Id.* at 17–18]. Moreover, Black voters have declined as a share of the population, and those trends will undermine the performance of Black-preferred candidates. [*Id.*].

Second, *East St. Louis NAACP* Plaintiffs point to evidence of racially polarized voting, both retrospectively and prospectively. Dr. Collingwood concludes there is strong historic evidence of racial polarization in voting. See [*East St. Louis NAACP*, 44-2 (Collingwood Expert Report) at 6, 8 fig.1]. Through ecological inference analysis, Dr. Collingwood estimates that Black voters favor Black-preferred candidates between 85–99% of the time, whereas White voters favor White candidates 61–73% of the time in the 2011 HD 114, 2011 SD 57, and the county at large.[16] [*Id.* at 6]. He finds racially polarized voting in seven of seven contests analyzed. [*Id.* at tbl.1]. Prospectively, he opines that if SB 927 were to go into effect, there would be "strong and consistent evidence of" racially polarized voting. [*Id.* at 14]. Specifically, "Black voters back the Black candidate at rates between 90–99%, whereas white voters support the white candidate between 72%–74% of the time." [*Id.*].

Third, *East St. Louis NAACP* Plaintiffs contend that Black voters historically turn out at lower rates as compared to White voters. From a review of past election cycles, Collingwood finds

[16] The results of his homogenous precincts analysis reinforce this finding. Dr Collingwood finds that Black voters consistently voted for Black candidates at a rate above eighty percent and more often, greater than ninety percent, and White voters consistently support the White candidate at a rate of sixty-three to seventy-three percent while never giving majority support to a Black candidate. See [*East St. Louis NAACP*, 44-2 (Collingwood Expert) at 8–9 & fig.2].

a consistent pattern of turnout differential by race that holds across election year and office. [*East St. Louis NAACP*, 44-2 (Collingwood Expert Report) at 9–11 & fig.3] (enumerating for example, Black turnout even in 2016 election year difference of 8.14% (2016 IL 114) and 18.22% (2016 Circuit) between Black and White voters, ranging from maximum difference of 24.08% in 2020 Board of Review election).

After considering these arguments, we are not persuaded that *East St. Louis NAACP* Plaintiffs have demonstrated majority bloc voting in the Metro East region. Dr. Collingwood's forward-looking analysis shows that, even in the newly-configured HD 114, Black-preferred candidates face at worst a "toss up" in elections. In other words, Black opportunity to elect their candidate of choice appears roughly equal to majority-preferred candidates, even by Plaintiffs' own expert's projected worst-case analyses.

In arguing that *Gingles*' third precondition is satisfied, *East St. Louis NAACP* Plaintiffs either have to (a) show legally that a "toss up" district does not satisfy the Voting Rights Act, or (b) produce more facts and/or expert analysis supporting the proposition that HD 114 is not in fact a "toss up" for Black-preferred candidates. But *East St. Louis NAACP* Plaintiffs have not marshalled any law to suggest that the Voting Rights Act guarantees them anything beyond a "toss-up." Without that authority, we consider what evidence, if any, suggests that HD 114 under SB 927 offers less than an equal chance for electoral success. As noted above, *East St. Louis NAACP* Plaintiffs submit that Black-preferred candidates' performance is precarious because Black voters are leaving the district in droves and have a lower turnout rate. But *East St. Louis NAACP* Plaintiffs refer only to historical analyses. They have not provided any prospective estimates to show that the Black population within HD 114 will continue to drop or that the lower rate of voter turnout differentials will continue and by how much. There are no such facts before

us, and those facts cannot be assumed into the record. And this omission is especially stark in light of the enactment into law this year of SB 825, which according to Governor Pritzker, has the effect of "further expanding access to the ballot box for Illinoisans by increasing access to curbside voting, establishing permanent vote by mail registries, establishing a central polling location in counties across the state, strengthening cybersecurity standards for election authorities in Illinois, and providing viable voting opportunities for justice-impacted individuals."[17] Mindful of the difficulty of accurately predicting electoral outcomes, we will not "risk[] basing constitutional holdings on unstable ground outside judicial expertise." See *Rucho v. Common Cause*, 139 S. Ct. 2484, 2503–04 (2019) ("[A]ccurately predicting electoral outcomes is not so simple, either because the plans are based on flawed assumptions about voter preferences and behavior or because demographics and priorities change over time").

Dr. Collingwood's findings on racial polarization bolster our view that there is an absence of White (or majority) bloc voting that would need to be shown to satisfy *Gingles*' third precondition. Despite the levels of polarization noted above, Dr. Collingwood also produced substantial evidence of White crossover voting. Historically, he finds that White voters are voting for Black candidates at rates of 26.78 to 38.87%. [*East St. Louis NAACP*, 44-2 (Collingwood Expert Report) at 8 fig.1]. His homogenous precincts analysis produces similar results. See [*id.* at 9 fig.2] (White voters voting for Black candidates at rates of 27.2 to 37.46%). Prospectively, Dr. Collingwood estimates that White voters are crossing over for Black-preferred candidates at rates of 26.56–28.68%. See [*id.* at 15 fig.6]. In the end, therefore, we find that Plaintiffs "too far

[17] Press Release, *Governor Pritzker Signs Legislation Further Expanding Voting Protections for Illinois Residents* (June 17, 2021), https://perma.cc/4CHP-XPT6.

downplay[] the significance of a longtime pattern of white crossover voting in the area that would form the core of the redrawn District [114]." See *Cooper*, 137 S. Ct. at 1471.

In sum, Black-preferred candidates have successfully won at the polls in HD 114 over the past two decades even though the Black community has not constituted a majority of the voting age population there. Those trends reflect the general willingness of more than one quarter of White voters to cross over for Black-preferred candidates. Even with substantial shifts to the district under SB 927, experts project those victories and crossover voting will continue. And the record is devoid of evidence that the district will fall short of being at least a "toss-up" over the next decade. Accordingly, this Court concludes that *East St. Louis NAACP* Plaintiffs have not shown White (or majority) bloc voting. So, their § 2 claim under the Voting Rights Act falters on the third *Gingles* precondition.

3. MCCONCHIE Plaintiffs

We wrap up the vote dilution claims with *McConchie* Plaintiffs, who argue that districts in Cook County, Metro East, and Aurora, Illinois dilute Latino or Black votes. Although their challenge overlaps with most of the districts challenged by *Contreras* Plaintiffs, their claims center on a different combination of districts.

a. Cook County (HD 1, 2, 3, 4, 21, 22, 23, 24, 32, 39, 77)

Like *Contreras* Plaintiffs, *McConchie* Plaintiffs challenge the configuration of districts in Cook County, although they challenge a broader array. We turn first to the northwest side districts

and then to the southwest side districts to explain why *McConchie* Plaintiffs' claims fail on *Gingles*' third precondition.

i. Northwest Cook County (HD 3, 4, 32, 39, 77)

McConchie Plaintiffs challenge HD 3, 4, 32, 39, and 77 in northwest Cook County. Their submission easily satisfies the first *Gingles* precondition for each district. Plaintiffs submitted a remedial map drawn by expert Dr. Jowei Chen that included reasonably compact districts with greater than 50% CVAP for each of the challenged districts. See [*McConchie*, 151-2 (Chen Expert Report), at 7 tbl.1]. The Latino CVAP in each of the challenged Cook County districts is as follows: HD 3 with 50.8%, HD 4 with 51.6%, HD 32 with 51.1%, HD 39 with 50.3%, and HD 77 with 51.4%. [*Id.*]. Legislative Defendants concede that Latino voters in these districts vote cohesively to satisfy *Gingles*' second precondition, so we move to *Gingles*' third precondition.

McConchie Plaintiffs cannot satisfy the third *Gingles* precondition, however, because they have furnished no reliable evidence to show the majority votes cohesively as a bloc to defeat Latino candidates of choice. To support their view that the majority votes cohesively as a bloc, *McConchie* Plaintiffs point to expert findings by Dr. Chen that Latino-preferred candidates lost three of five elections in Cook County. See [*McConchie*, 151-2 (Chen Expert Report) at ¶ 37].

But *McConchie* Plaintiffs do not meet their burden to fulfill *Gingles*' third precondition because they provide no granular evidence of majority bloc voting for *any* of the districts in Cook County. Rather, they treat electoral patterns in Cook County as a monolith, referring to three Latino candidate losses to argue that Latino candidates of choice would be defeated in twelve Cook County elections. Yet, the Supreme Court tells us to conduct the analysis district-by-district. See *Gingles*, 478 U.S. at 59 ("[V]oters' ability to elect representatives of their choice, however, will vary from district to district according to a number of factors"); *Bethune-Hill v. Va. State Bd. of*

Elections, 137 S. Ct. 788, 800 (2017) ("We have consistently described a claim of racial gerrymandering as a claim that race was improperly used in the drawing of the boundaries of one or more *specific electoral districts*" (quoting *Ala. Leg. Black Caucus v. Alabama*, 575 U.S. 254, 262–63 (2015)).

Even if *McConchie* Plaintiffs had provided evidence, for example, of majority bloc voting on the northwest side of Cook County (as *Contreras* Plaintiffs have attempted), Dr. Chen's report and its results suffer from methodological flaws. First, as his starting point, Dr. Chen selects a sample of twenty-six total elections without any justification for how he selected those elections or explanation as to why they are probative for his analysis. See [*McConchie*, 151-2 (Chen Expert Report) at ¶ 31, p. 35 tbl.5]. As Dr. Lichtman points out, despite the fact that *McConchie* Plaintiffs' challenge includes all districts that *Contreras* Plaintiffs take issue with, Dr. Chen's sample of twenty-six elections mysteriously excludes five probative elections (Latino v. non-Latino candidate) that were studied by *Contrera*s Plaintiffs' expert, Dr. Grumbach, and includes seven elections that were not probative because they did not feature a Latino candidate at all. [*McConchie*, 171-1 (Lichtman Expert Report) at 63, 65].

Second, Dr. Chen winnows down the pool of elections from twenty-six to five elections to report Latino-preferred candidates' electoral victories, but without regard to a reliable rationale. According to Dr. Chen, he selected five of the twenty-six elections that fit four criteria identified by Plaintiffs' counsel: (1) primary or non-partisan municipal; (2) district substantially within region proposed by remedial plan; (3) more than fifty percent of Latino voters favored single candidate; (4) more than fifty percent of White voters favored candidate other than Latino-preferred candidate. [*McConchie*, 151-2 (Chen Expert Report) at ¶ 32]. The five elections yielded under these criteria include the 2015 Chicago Mayoral, 2018 Cook County Assessor Primary, 2012

HD 39 Primary, 2014 HD 39 Primary, and 2018 HD 1 Primary. See [*Id.* at ¶¶ 32, 37]. We agree with the view that Dr. Chen's analysis examines elections "chosen according to the [P]laintiffs' counsel's arbitrary and biased criteria provided to him." [*McConchie*, 171-1 (Lichtman Expert Report) at 37]. For example, his method does not distinguish between probative and endogenous state legislative elections and exogenous elections, as well as eliminates any election featuring coalition voting. See [*id.* at 83]. By repeating Dr. Chen's findings without addressing any of these shortcomings, *McConchie* Plaintiffs have not offered a persuasive rationale for why their sample helps our analysis.

To take one example, *McConchie* Plaintiffs focus on Dr. Chen's conclusion that if the September Redistricting Plan were to go in effect, only four of eleven districts would be expected to support the Latino-preferred candidate (HD 1, 2, 22, and 23) in a hypothetical election. [*McConchie*, 151-2 (Chen Expert Report) at ¶ 47, p. 47 tbl.10]. But Dr. Chen's findings draw on a largely unrepresentative and flawed sample because his projections flow from the results of the 2018 primary election for Cook County Assessor.[18] This single example is an unrepresentative and biased exogenous election for numerous reasons. First, major Chicago news outlets repeatedly ran stories about alleged corruption surrounding the Latino-preferred candidate, then-incumbent Assessor Joseph Berrios, prior to the election. See [*McConchie*, 171-1 (Lichtman Expert Report) at 160–61]. Second, Berrios garnered a less-than-usual degree of support from Latino voters, and an influential leader and Latino-preferred candidate, now-U.S. Representative Jesus "Chuy"

[18] To generate these findings, Dr. Chen estimates the hypothetical performance of Latino-preferred candidates. His projections are based on ecological inference (voting preferences, by race); he produced Census block-level estimates of each racial and ethnic group's support for the Latino-preferred candidate, Joseph Berrios, in the 2018 primary election for Cook County Assessor. See [*McConchie*, 151-2 (Chen Expert Report) at ¶¶ 44–45, p. 47 tbl.10]. He analyzed the following Cook County districts in the September Redistricting Plan (SB 927) (HD 1, 2, 3, 4, 19, 21, 22, 23, 24, 39, and 40). See [*id.*].

Garcia, did not endorse Berrios. [*Id.* at 159]. Third, the election involved a three-candidate race. [*Id.*]. Fourth, Dr. Chen used VAP, not CVAP for estimating his results. [*Id.* at 162]. Fifth, his results do not add up to one-hundred percent. [*Id.* at 163]. Even if the election had been representative, we are reassured this hypothetical evidence is insufficient to find majority bloc voting in the face of "uncontroverted evidence that Latino victories in fact outnumbered white victories" in the districts. See, *e.g.*, *Radogno v. Ill. State Bd. of Elections*, 836 F. Supp. 2d 759, 773 (N.D. Ill.), *aff'd sub nom.*, *Radogno v. Ill. State Bd. of Elections*, 568 U.S. 801 (2012) (concluding no § 2 liability where *Gingles*' third precondition not satisfied in spite of Plaintiffs' efforts to "circumvent the actual election results * * * and to premise their claim instead on" experts' projections that "white candidates, as a group, *would have won* the elections").

As a backstop, *McConchie* Plaintiffs point to findings from another expert, Dr. Anthony Fowler, to show that majority-Latino districts are important for producing Latino election winners. Specifically, in districts that are forty to fifty percent Latino, Dr. Fowler opines that a Latino candidate won in fourteen out of thirty-one elections (approximately forty-five percent), and in districts that are fifty to sixty percent Latino, a Latino candidate won in seventeen out of twenty elections (eighty-five percent). [*McConchie*, 166-2 (Fowler Corrected Rebuttal) at ¶ 24, p. 14 fig.1]. But Dr. Fowler's analysis, too, is flawed and ultimately unpersuasive because he identifies racially polarized voting for Latino candidates, not Latino candidates of choice.

In sum, *McConchie* Plaintiffs offer almost no evidence to support their view that majority voters in any of the districts on the northwest side of Cook County vote sufficiently as a bloc to defeat the Latino candidate of choice. (Nor does it appear they could, given *Contreras* Plaintiffs' analysis that Latinos prevail in overlapping districts more often than not). Accordingly,

McConchie Plaintiffs' challenges to HD 3, 4, 32, 39, and 77 fail to satisfy *Gingles*' third precondition and therefore do not amount to a § 2 violation.

ii. Southwest Cook County (HD 1, 2, 21, 22, 23, 24, 32)

We similarly reject *McConchie* Plaintiffs' challenge to HD 1, 2, 21, 22, 23, 24, and 32 on *Gingles*' third precondition. Although *McConchie* Plaintiffs have submitted a proposed remedial plan demonstrating that the Latino CVAP in the proposed districts exceeds fifty percent, and Legislative Defendants have stipulated to *Gingles*' second precondition, *McConchie* Plaintiffs cannot fulfill *Gingles*' third precondition. We have explained above why we are unpersuaded that their blanket and methodologically flawed effort to demonstrate majority bloc voting fulfills *Gingles* precondition three, and *McConchie* Plaintiffs offer no supplemental or different evidence to show that Latino-preferred candidates are defeated by majority bloc voting in any of the southwest side districts. We thus conclude that *McConchie* Plaintiffs fail to show HD 1, 2, 21, 22, 23, 24, or 32 violates § 2 of the Voting Rights Act.

b. Aurora (HD 50)

McConchie Plaintiffs' challenge to HD 50 can be disposed of quickly, as *McConchie* Plaintiffs cannot satisfy *Gingles*' first precondition. We begin and end that inquiry by finding that HD 50 does not dilute Latino voting strength in violation of § 2 of the Voting Rights Act. *McConchie* Plaintiffs have not shown that Latinos could form a majority of the citizen voting age population. *McConchie* Plaintiffs proposed a potential replacement HD 50 shy of the 50% mark, with a Latino CVAP of only 46.8%. See [*McConchie*, 151-2 (Chen Expert Report), at 7 tbl.1]. As in *Strickland*, "because [Latinos] form only [46.8%]" of the district we cannot "recognize[] a § 2 claim in this circumstance" and insulate them "from the obligation to pull, haul, and trade to find common political ground" with other voters to elect their preferred candidate. 556 U.S. at 14–15

(quoting *Johnson*, 512 U.S. at 1020). "Without such a showing [the first *Gingles* requirement], 'there neither has been a wrong nor can be a remedy.'" See *id.* at 15 (quoting *Growe*, 507 U.S. at 40). The majority-minority standard honors "the need for workable standards and sound judicial and legislative administration." See *id.* at 17.

c. Metro East (HD 114)

We wrap up with *McConchie* Plaintiffs' claim that HD 114 violates § 2 of the Voting Rights Act. Here again, *Gingles*' first and second preconditions are satisfied. *McConchie* Plaintiffs submitted a remedial map with a 52.2% Black citizen voting age population in the proposed district HD 114, and Legislative Defendants concede *Gingles*' second precondition. [*McConchie*, 151-2 (Chen Expert Report), at 7 tbl.1].

Nevertheless, *McConchie* Plaintiffs marshal almost no evidence for the third *Gingles* precondition. Paradoxically, they conclude that "white bloc voting could usually defeat the combined strength of minority support" while glossing over the fact that Black-preferred candidates won in HD 114 in 3 elections cycles. [*McConchie*, 151 (Pls.' Br.) at 15]. Those elections show that Black candidates of choice are not defeated by the majority in Metro East. Rather, in 100% of those elections, the Black-preferred candidate won and garnered anywhere from an estimated 25.8 to 31.3% of White voters. [*Id.*] ("The Black-preferred candidate eked out wins in the elections"); [*McConchie*, 151-2 (Chen Expert Report) at 44 tbl.9].

McConchie Plaintiffs' remaining evidence does not otherwise overcome the absence of White or majority bloc voting. They suggest that Black-preferred candidates only "eked out wins in the elections with 57.2% and 57.1%" of the vote without explaining how, if at all, those rather comfortable margins of victory suggest that Black voters lack an equal opportunity to elect their candidate of choice. [*McConchie*, 151 (Pls.' Br.) at 15].

Nor is it an answer to point to Dr. Fowler's research to satisfy *Gingles*' third precondition because it is not necessarily probative for HD 114 or Black voters' preferences. Specifically, *McConchie* Plaintiffs focus on his finding that "the likelihood that a district will elect a minority representative depends in large part on the proportion of minority citizens in that district." [*McConchie*, 151 (Pls.' Br.) at 15]. That argument is not persuasive because Dr. Fowler's results do not indicate whether the increase in support relative to percentage share of Black CVAP refers to Black candidates of choice, rather than Black candidates. See [*McConchie*, 175-1 (Pls.' Hr'g Exs.) at 34 fig.1] (entitled "minority winners and district demographics[,]" "[t]he curves *** show[] how the probability that the general election winner is from a minority group"). Further, his sample is not specific to HD 114 nor does it purport to be limited to districts with overlap with HD 114. [*Id.*] ("[T]he sample includes all state legislative general elections (from both chambers) between 2012 and 2020 in districts where at least 15 percent of the * * * CVAP * * * is Black, * * * Latino, *** or Asian * * * ").

McConchie Plaintiffs had the burden to show all three of *Gingles* preconditions, yet they rely on selected evidence that is both over and under-inclusive for assessing Latino and Black voters' ability to elect their candidates of choice for every claim. Even so, and even though we do not rely on *Contreras* and *East St. Louis NAACP*'s record to assess whether *McConchie* Plaintiffs have established § 2 liability, our analyses as to the overlapping districts in those cases reinforce our view that even if *McConchie* Plaintiffs had presented more evidence to assess majority bloc voting for any of the overlapping districts, they could not have fulfilled *Gingles*' third precondition. Nor could they have shown, under the totality of the circumstances, that Latino and Black voters are being denied the equal opportunity to elect their candidate of choice in their

respective districts. For these reasons, we reject *McConchie* Plaintiffs' Voting Rights Act challenges in their entirety and decline to adopt their remedial map.

B. Racial Gerrymandering

The second category of claims before us are *East St. Louis NAACP* and *Contreras* Plaintiffs' allegations that SB 927 runs afoul of the Fourteenth Amendment to the United States Constitution by racially gerrymandering certain districts. We elaborate briefly on the map-drawing process and results with respect to those districts, discuss the legal framework for analyzing these claims, and then evaluate each set of Plaintiffs' claims.

1. Redistricting Process

In the lead up to enactment of the June and September Redistricting Plans, the General Assembly held scores of public hearings and meetings, which featured not only private citizens, but also interest groups and testimony by redistricting expert Dr. Lichtman. A frequent expert in Illinois redistricting challenges, Dr. Lichtman assisted in the redistricting process and testified during redistricting committee hearings. To draw the boundaries of the June Redistricting Plan, the drafters originally used data from the American Community Survey ("ACS"), which they uploaded to a computer program called autoBound.

The current Democratic incumbents for several of the districts in or affected by the alleged racial gerrymanders occupied leadership roles in the Illinois House of Representatives and Senate during the 2021 redistricting process. Among others in the House of Representatives, Elizabeth Hernandez, State Representative for HD 24, was the Chair of the House Redistricting Committee. [*McConchie*, 171-1 (Lichtman Expert Report) at 202]. LaToya Greenwood, State Representative for HD 114, was the Majority Conference Chair. [*Id.*]. Likewise, Antonio Munoz, Senator for SD 1, was the Assistant Majority Leader of the Senate. [*Id.*].

Two staff persons ran point on the redistricting process. Those individuals, Jonathon Maxson and Joseph Sodowski, fielded requests, directly and indirectly, from state legislators regarding their preferences and priorities for Metro East and Cook County. Regarding the former, state legislators unabashedly put politics front and center. Maxson described the primary goals for the configurations of HD 112, 113, and 114 as shoring up Democratic seats. For example, Maxson testified that Representative Jay Hoffman, the current Democratic incumbent in HD 113, wanted to "maintain [] Belleville" "and as much as possible to be politically in a position where he and Representative Stuart – and Representative Greenwood's districts would be at about an equal Democratic performance, which is where they started at." [*McConchie*, 160-3 (Yandell Decl.), Ex. D (Maxson Dep.) at 53:22–54:3].

Maxson testified that other goals included "keeping the Edwardsville base of that district together" which "was important politically for Representative Stuart. And then beyond that what could be done within reason to enhance the Democratic performance of the 112th district." [*McConchie*, 160-3 (Yandell Decl.), Ex. D (Maxson Dep.) at 53:6–11]. Maxson went on to explain that to strategize to protect the Democratic incumbents, he looked at "some countywide election results and the individual results from Representatives Greenwood, Hoffman, and Stuart in their previous races" to help achieve those ends. [*Id.* at 54:18–22].

Conversations also centered on keeping communities of interest together. As for Representative Katie Stuart, Democratic incumbent of HD 112, Maxson explained in a declaration that in adjusting the configuration to achieve population equality, there was also an opportunity to consolidate Washington Park in one district, which had previously been split across two districts

for two decades.[19] HD 114 Representative, LaToya Greenwood, also testified that she recommended keeping East St. Louis together. See, *e.g.*, [*McConchie*, 160-7 (Greenwood Decl.) at ¶ 16] ("I recommended that the General Assembly prioritize keeping East St. Louis within one district *** while avoiding pairing the community with significant portions of larger cities *** and maintaining the Metro East region's influence as a Democratic stronghold"). Maxson also testified that the state elected officials did not "ever mention any concern about the racial demographics of HD 114." [*McConchie*, 160-3 (Yandell Decl.), Ex. D (Maxson Dep.) at 57:12–19].

Similarly, according to the parties' fact witnesses, map drawers received requests to keep certain communities of interest together in and around southwest Cook County. For example, Senator Landek, Senator for SD 11 (formerly SD 12) under SB 927, testified that Senator Villanueva requested taking certain areas of Little Village from Landek's district. Senator Landek believed Little Village comprised a progressive flank of the Democratic party that aligned with Senator Villanueva's legislative agenda.[20] Representative Hernandez, meanwhile, asked Representative Zalewski, State Representative for HD 23 (renumbered under SB 927 as HD 21)

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[19] Maxson described in his declaration that, "[w]ith respect to the community of Washington Park, that community has been split between RD 113 and RD 114 for at least twenty years. When equalizing population, there was an opportunity to achieve population by consolidating the majority of Washington Park in one district, rather than having it split evenly between two districts. Thus, the changes to the boundaries of RD 113 and RD 114 relevant to Washington Park were made to equalize population and further consolidate the community in one district." [*McConchie*, 160-2 (Maxson Decl.) at ¶ 14].

[20] Senator Landek testified that Senator Villanueva "asked to take the Little Village area from [his] current district." [*McConchie*, 160-3 (Yandell Decl.), Ex. B (Landek Dep.) at 16:16–22; 17:1–11]. He explained he agreed "to help Senator Villanueva, that's her home base, she had grown up there, that's her community. It was a progressive area, and she perhaps felt more comfortable in that section. * * * * I didn't ask her all the details." [*Id.*]. He "th[ought] it's based on the legislative agenda of some of the representatives in that area" because "she wanted to join that common thought in her legislative district, Senate district." [*Id.* at 18:4–23].

under SB 927, to include more of the town of Cicero, where her husband was the Township Democratic committeemen, in her district.[21] But that was not all. Maxson also testified during his deposition that Representative Guerrero-Cuellar, State Representative for HD 22, requested to include Midway Airport and several surrounding neighborhoods in HD 22.[22]

Meanwhile, Maxson also testified that the racial composition of the potential new districts was not part of the decision-making for Cook County. He testified both that he did not consider racial composition in drawing district lines and that representatives did not raise racial demographics. In his declaration, for example, Maxson stated:

> Review[ing] the proposed districts to ensure all House Districts achieved equal population throughout the map **** [he] did not consider the racial or ethnic composition of the population. However [he] did consider the Democratic index and adjust to account for political composition of a district or neighboring districts

[*McConchie*, 160-2 (Maxson Decl.) at ¶ 13].

In addition to testifying that he did not consider race in drawing the map as a whole, Maxson also testified about the role race played in certain districts. Regarding HD 21, when asked "whose decision was it * * * to put the Latino CVAP of that district at 42.2 percent," he responded "I think your question implies that there was a decision made to draw the district to that specific citizen voting age population, and that is not a conversation that I ever had." [*McConchie*, 160-3

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[21] Zalewski testified that he and Representative Elizabeth Hernandez discussed the proposed district boundaries. [*McConchie*, 160-3 (Yandell Decl.), Ex. C (Zalewski Dep.) at 39:6–23 (discussions with Representative Hernandez included two components "her husband was the Cicero Township Democratic committeeman. As [he] recall[ed], there was a desire on her part to sort of get more turf *** in Cicero" and "in the 2018 primary she had an opponent who lived in Berwyn. We had a specific conversation of where that person lived, and we talked about the political nature of the district boundaries with relation to where that gentleman lives").

[22] "Representative Guerrero Cuellar wanted to include the Midway Airport and a number of the surrounding neighborhoods. That, obviously, had an impact on what the 21st district looked like." [*McConchie*, 160-3 (Yandell Decl.), Ex. D (Maxson Dep.) at 47:1–4].

(Yandell Decl.), Ex. D (Maxson Dep.) at 46:11–20]. He also testified that he did not discuss with state representatives the Latino CVAP of the proposed district. Specifically, he testified that "[n]o member of the Democratic caucus mentioned the Latino or Hispanic voting age population of the 21st district to me" and he did not "ever have a discussion with Representative Zalewski about the Hispanic citizen voting age population of his district." [*Id.* at 50:6–12].[23]

Notwithstanding this testimony from state legislators and legislative staff, several documents produced in or around that same timeline relevant to both regions raised questions in hindsight. First, those documents included files and emails produced for or by staff of the General Assembly analyzing demographic information and highlighting the role of minority representation in the process. Several documents turned over in discovery by Legislative Defendants aggregate the Latino, Black, and Asian CVAP for every House and Senate District. See, *e.g.*, [*East St. Louis NAACP*, 44-23 (Ex. 17)]. One of those documents, dated April 2021 and connected to Mr. Maxson, is color-coded such that any district featuring a CVAP greater than fifty percent is highlighted in pink and any district featuring a CVAP between forty and fifty percent is yellow. See [*Contreras*, 135-8 (Existing District Demographics); 135-11 (District Demographics Excel File Properties)].

Second, email exchanges between Dr. Lichtman and members of the Illinois House of Representatives show that Lichtman requested and received "demographic data for each district in each plan, broken down according * * * to race" and election results in which minority candidates

[23] Although he testified that because only ACS, not census data, was available in May, that version changed sufficiently from May to August that the Latino citizen voting age population information that had been available "would not have been the final version of the district or a district that you could rightly characterize as being of a certain makeup because it's not the final * * * version of district equal population." [*McConchie*, 160-3 (Yandell Decl.), Ex. D (Maxson Dep.) at 49:3–17].

ran against White candidates. See, *e.g.*, [*East St. Louis NAACP*, 44-17 (Ex. 11, Lichtman Email) at 2; 44-18 (Ex.12, Randazzo Email); 44-19 (Ex. 13, Cox Email)].

Third, the Chief of Staff for the Office of the Speaker circulated a memo summarizing findings from the 2011 redistricting hearings, which included public concerns about keeping communities together "so that minorities can have adequate representation" and "giv[ing] minorities a fair chance to participate." [*NAACP*, 44-16 (Ex. 10, Basham Email) at 12–14]. Similar concerns surfaced during public hearings for the 2021 redistricting cycle as well.

Ultimately, SB 927 resulted in changes to both regions. In Metro East, legislators changed the composition of three districts, HD 112, HD 113, and HD 114. The legislature added Black population into HD 112 from HD 113 and from HD 114 into HD 113, then moved White population into HD 114. [*East St. Louis NAACP*, 44 (Pls.' Br.) at 15]. As a result, under SB 927, HD 114 maintained East St. Louis and Centerville, but the newly drawn district expanded into far south and eastern fringes of comparatively more White, rural St. Clair County. [*Id.* at 14–15] (citing Weichelt Expert Report at 17). The district also lost footing to the east, including Belleville, which is more urban and has a larger Black population, to HD 113. [*Id.*]. Those shifts resulted in a net gain of 7,681 White voters and 254 Black voters in HD 114 as compared to the 2011 plan. [*Id.* at 15].

As a result of this shuffling of Black population into HD 112, the Black Voting Age Population of the three districts changed as well under SB 927. The Black Voting Age Population in HD 112, again held by Representative Stuart, increased by 4.15% as compared to the 2011 plan. [*East St. Louis NAACP*, 44 (Pls.' Br.) at 7]. The Black Voting Age Population in HD 113, held by Representative Hoffman, increased to 30.6%. [*Id*. at 18]. Finally, the Black Voting Age

Population of HD 114 under SB 927 is 33.55%, representing a 3.67% loss as compared to the 2011 plan. [*Id.* at 19–20].

As for Cook County, those processes produced several changes to HD 21 and SD 11, as well as the surrounding districts. Two districts in Cook County, HD 21 and SD 11, were renumbered from the 2011 iteration of the legislative redistricting map. Both districts incurred a drop in the Latino CVAP. The Latino CVAP of HD 21 decreased from 44.45% Latino CVAP in the 2011 plan to 42.7% under SB 927. See [*Contreras*, 139 (Pls.' Br.) at 56]. The Latino CVAP of SD 11 dropped from 54.52% Latino CVAP (numbered SD 12) in the prior plan to 47.7% under SB 927. See [*id.*]. Finally, the House districts nested within SD 11 changed such that SD 11 encompasses HD 21 and HD 22. See [*id.*]. Under SB 927, in other words, Representative Zalewski resides in HD 21, Senator Landek in SD 11, and Representative Zalewski's district is nested in Senator Landek's district. [*Id.* at 51]. These changes are summarized in *Contreras* Plaintiffs' table, reproduced below.

Incumbent House Rep.	House District in 2011 Plan	House District in SB 927 Plan
Guerrero-Cuellar	22 (60.4%)	**22 (52.7%)**
Zalewski	**23 (44.4%)**	**21 (42.7%)**
Hernandez	**24 (66.1%)**	2 (55.1%)
Landek's Senate District	SD 12 (**54.5%**)	SD 11 (**47.7%**)

See [*Contreras*, 182-1 (Pls.' Hr'g Exs.) at 20] (with highlighting representing paired districts that comprise SD 11 under SB 927).

Both iterations of the redistricting plan received overwhelming support from state legislators. The General Assembly passed HB 2777 (the General Assembly Redistricting Act of

2021) with supermajority votes in each chamber, including votes from every Black and Latino member. See [*McConchie*, 160 (Defs.' Br.) at 16]. The Democratic members of the General Assembly voted in favor of SB 927 as well, including the changes discussed above. SB 927 garnered support from, for example, the representatives of the districts challenged as racial gerrymanders in this case and adjacent districts. See [*McConchie*, 160-7 (Greenwood Decl.) ¶ 21]; See Illinois General Assembly, *Voting History for SB 0927*, https://perma.cc/3X7R-STKX (house), https://perma.cc/YM68-C5X2 (senate) (last visited Dec. 21, 2021) (enumerating votes in favor of SB 927 by Senators Landek (SD 12) and Villanueva (SD 11), and Representatives Mah (HD 2), Guerrero-Cuellar (HD 22), Zalewski (HD 23), Hernandez (HD 24), Stuart (HD 112), Hoffman (HD 113), and Greenwood (HD 114)).

2. Legal Standard

"The Equal Protection Clause of the Fourteenth Amendment limits racial gerrymanders in legislative districting plans. It prevents a State, in the absence of 'sufficient justification,' from 'separating its citizens into different voting districts on the basis of race.'" *Cooper v. Harris*, 137 S. Ct. 1455, 1463 (2017) (quoting *Bethune–Hill*, 580 U.S. at 797). To prevail, the plaintiff must make a two-part showing: (1) "the plaintiff must prove that 'race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district[,]'" and (2) "if racial considerations predominated over others, the design of the district must withstand strict scrutiny." *Id.* at 1463–64 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). We perform that analysis on a "district-by-district" basis. *Bethune-Hill*, 137 S. Ct. at 800 ("[T]he basic unit of analysis for racial gerrymandering claims in general, and for the racial predominance inquiry in particular, is the district"). However, we have leeway to consider "statewide evidence," for example, to weigh evidence regarding "common redistricting policy

toward multiple districts" in neighboring districts. *Id.* See, *e.g.*, *Ala. Leg. Black Caucus*, 575 U.S. at 263.

Satisfying the first step—that race was the predominant factor—"entails demonstrating that the legislature 'subordinated' other factors—compactness, respect for political subdivisions, partisan advantage, what have you—to 'racial considerations.'" *Cooper*, 137 S. Ct. at 1463–64 (quoting *Miller*, 515 U.S. at 916). "Race must not simply have been '*a* motivation for the drawing of a majority-minority district,' but 'the *predominant* factor motivating the legislature's districting decision." *Easley v. Cromartie* (*Cromartie II*), 532 U.S. 234, 241 (2001) (internal quotation marks and citation omitted) (quoting *Bush v. Vera*, 517 U.S. 952, 959 (1996)). "The plaintiff may make the required showing through 'direct evidence' of legislative intent, 'circumstantial evidence of a district's shape and demographics,' or a mix of both." *Cooper*, 137 S. Ct. at 1464 (quoting *Miller*, 515 U.S. at 916). "The ultimate object of the inquiry * * * is the legislature's predominant motive for the design of the district as a whole." *Bethune-Hill*, 137 S. Ct. at 800.

Legislative Defendants maintain that politics, not race, drove the configuration of all of the challenged districts, which muddies the predominance inquiry. While in the "more usual" racial gerrymandering case, "the court can make real headway by exploring the challenged district's conformity to traditional districting principles, such as compactness and respect for county lines," a court entertaining a partisanship defense such as this faces a more "formidable task." *Cooper*, 137 S. Ct. at 1473. Even a highly irregular shape "loses much of its value when the State asserts partisanship as a defense, because a bizarre shape * * * can arise from a 'political motivation' as well as a racial one." *Id.*

To ascertain whether "race (not politics) was the 'predominant consideration in deciding to place a significant number of voters within or without a particular district,'" *Cooper*, 137 S. Ct.

at 1479, we "make 'a sensitive inquiry' into all 'circumstantial and direct evidence of intent' to assess whether the plaintiffs have managed to disentangle race from politics and prove that the former drove a district's lines." *Id.* at 1473. The plaintiff's "burden of proof * * * is 'demanding'" in such cases. *Id.* (quoting *Cromartie II*, 532 U.S. at 241). "[T]he party attacking the legislature's decision bears the burden of proving that racial considerations are 'dominant and controlling' * * * ." *Cromartie II*, 532 U.S. at 257 (quoting *Miller*, 515 U.S. at 913). "Caution is especially appropriate * * * where the State has articulated a legitimate political explanation for its districting decision, and the voting population is one in which race and political affiliation are highly correlated." *Cromartie II*, 532 U.S. at 242.

As the foregoing discussion suggests, *Cromartie II* and *Cooper* are particularly instructive for assessing whether race predominated over partisanship in drawing district lines. In *Cromartie II*, the Supreme Court overturned a district court's determination that race had predominated the configuration of North Carolina's congressional map. 532 U.S. at 237. The Supreme Court reiterated its earlier holding that "the district's shape, its splitting of towns and counties, and its high African–American voting population" were insufficient, alone, for summary judgment that race predominated because there was "undisputed evidence that racial identification is highly correlated with political affiliation in North Carolina." *Id.* at 243 (citing *Cromartie v. Easley* (*Cromartie I*), 526 U.S. 541, 547–49 (1999)).

Nor could circumstantial and direct evidence adduced at trial rescue the constitutional claim in *Cromartie II*. Circumstantial evidence included that legislators had added more Democrats to the district than arguably necessary to create a safe seat, *Cromartie II*, 532 U.S. at 246, and included precincts with high percentages of Black Democratic voters while passing up those with White Democrats, *id.* at 246–47. The trouble was that such evidence could easily show

that politics were at play: as for the excess, "incumbents might have urged legislators * * * to make their seats, not 60% safe, but as safe as possible." *Id.* As for the exclusion of White Democrats, "none of the excluded white precincts were as reliably Democratic as the African–American precincts that were included in the district" and a legislature might have preferred "precincts that were reliably Democratic, not precincts that were *40%* reliably Democratic for obvious political reasons." *Id.* at 247. Nor had experts shown the legislature could have included those precincts "without sacrificing other important political goals" such as "to protect incumbents—a legitimate political goal." *Id.* at 247–48. As for direct evidence, statements and emails referencing "racial and partisan balance" and the movement of Black voters, certainly referred to race, but "as so read" merely "show[ed] that the legislature considered race, along with other partisan and geographic considerations; and as so read" said "little or nothing about whether race played a *predominant* role comparatively speaking." *Id.* at 253–54. Together, then, circumstantial and direct evidence relied on by the Court had provided a "modicum" of evidence that race predominated, but it was not enough to satisfy the plaintiff's demanding burden. *Id.* at 257.

In contrast, in *Cooper v. Harris*, the Supreme Court affirmed a district court's ruling that race, not politics, predominated the legislature's drawing of congressional districts. 137 S. Ct. 1455 (2017). There, the legislature had added tens of thousands of new voters and pushed others out, increasing the Black voting age population from 43.8% to 50.7% despite that the district was approximately the correct size under *Reynolds*' one-person, one-vote standards. *Id.* at 1474–75. Even more, the drafters had announced publicly and in preclearance material to the Department of Justice that they had set racial targets to comply with § 5 of the Voting Rights Act. *Id.* at 1475. The district court found that the only evidence to the contrary, expert testimony that legislators had instructed him to make the map as a whole "more favorable to Republican candidates," *id.* at

1476, was incredible given that the remainder of his testimony confirmed that legislators had "'decided' to shift African–American voters into [the challenged district] 'in order to' ensure preclearance under § 5," *id*. at 1476–77. The Supreme Court therefore upheld the district court's conclusions that race predominated in the district's design. *Id.* at 1481–82.

Finally, "[w]here a challenger succeeds in establishing racial predominance, the burden shifts to the State to 'demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest.'" *Bethune-Hill*, 137 S. Ct. at 800–01.

3. Analysis

Under this framework, we consider *East St. Louis NAACP* Plaintiffs' challenge to the constitutionality of HD 114 in Metro East, and *Contreras* Plaintiffs' challenge to the constitutionality of HD 21 and SD 11 in Cook County.

a. EAST ST. LOUIS NAACP Plaintiffs

East St. Louis NAACP Plaintiffs contend that HD 114 as drawn by SB 927 denies the right guaranteed under the Equal Protection Clause of the Fourteenth Amendment. They allege the General Assembly racially gerrymandered HD 114 in violation of the principles articulated in *Shaw v. Reno*, 509 U.S. 630 (1993), and its progeny. Legislative Defendants maintain that the General Assembly drew HD 114 to protect Democratic incumbents in the adjacent districts and, to a lesser extent, to fix malapportionment and combine certain communities of interest.

Our evaluation begins and ends with step one because we agree with Legislative Defendants that *East St. Louis NAACP* Plaintiffs' evidence fails to show that race dominated the General Assembly's reconfiguration of HD 114. Rather, overwhelming evidence demonstrates that HD 114 was drawn to protect Democrats from Republican challenges in HD 114 and adjacent districts HD 112 and 113.

General Assembly staff and state legislators admit that they divided up HD 112, 113, and 114 to shore up the Democratic vote and to protect HD 112, which is particularly vulnerable to a viable Republican challenge. In their brief, *East St. Louis NAACP* Plaintiffs concede that a legislator explicitly told Senate staffer Sodowski to make the district more Democratic. [*East St. Louis NAACP*, 44 (Pls.' Br.) at 15]. The record confirms this fact. When asked about his meetings with Senator Crowe about redistricting for the 2021 cycle, Sodowski testified:

> **Q:** And did Senator Crowe give you any instructions regarding moving Senate district lines ***?
>
> **Sodowski**: Yes.
>
> **Q**: And what instructions did Senator Crowe give you?
>
> **Sodowski**: To have a more Democrat district.
>
> **Q**: Anything else?
>
> **Sodowksi**: No.

[*East St. Louis NAACP*, 44-10 (Ex. 4, Sodowski Dep.) at 3:11–20]. Maxson, Sodowksi's House counterpart, testified similarly that he redrew the lines to enhance Democratic performance and that all three Democratic incumbents for HD 112, 113, and 114 were preoccupied with protecting Democratic control of the districts:

> **Q**: What goals did you have? Did you or Mr. Reinhart identify any goals for district 112?
>
> **Maxson**: First and foremost, *** equal population. I think second of all keeping the Edwardsville base of that district together was important politically for Representative Stuart. And then beyond that what could be done within reason to enhance the Democratic performance of the 112th district.
>
> ****
>
> **Q**: How about Representative Hoffman, did he identify goals that he had with respect to district 113?
>
> **Maxson**: Representative Hoffman's goals were to maintain * * * Belleville * * * and as much as possible to be politically in a position where he and Representative Stuart – and Representative Greenwood's districts would be at about an equal Democratic performance, which is where they started at.

[McConchie, 160-3 (Yandell Decl.), Ex. D (Maxson Dep.) at 53:2–54:3]. The declaration of HD 114 Representative, LaToya Greenwood, also aligns with those explanations. She declared that "[t]o achieve maximization of Democratic performance in the Metro East region, I worked with fellow Democratic members from the region to increase the Democratic Index of House District 112 while maintaining an equal Democratic index for House Districts 113 and 114." [*McConchie*, 160-7 (Greenwood Decl.) at ¶ 18].

Testimony from elected representatives and staffers supports the conclusion that the General Assembly principally designed HD 114 and adjacent districts to accomplish political ends. HD 112 was "a highly competitive district in which candidates from both the Democratic and Republican Parties won between 2012 and 2020." [*East St. Louis NAACP*, 44 (Pls.' Br.) at 18]. Legislative Defendants were conceivably nervous about HD 112 in Metro East, an area which was graphically illustrated at the December 7 hearing as a blue dot in a sea of red that downstate Illinois has become in recent years. See [*McConchie*, 160-7 (Greenwood Decl.) at ¶ 14] (HD 114 Representative Greenwood testified that "[t]he Metro East region, a longtime Democratic stronghold, has become more Republican as the remainder of southern Illinois has lost Democratic voters and officials"). Although in *Cromartie II* the Supreme Court opined that "incumbents *might* have urged legislators * * * to make their seats * * * as safe as possible," *id.* at 246–47 (emphasis added), here testimony from representatives and map-drawers leave no doubt that Legislative Defendants drew districts "to protect incumbents—a legitimate political goal," see *id.* at 248.

Evidence was also presented that "traditional districting" criteria—keeping communities of interest together—figured prominently in the configuration of HD 114. Incumbents from adjacent HD 112, 113, and 114 and map drawers aimed to keep certain communities of interest together, either as an independent goal or by way of protecting Democratic votes. For example,

Representative Greenwood testified that she recommended keeping East St. Louis together. See, *e.g.*, [*McConchie*, 160-7 (Greenwood Decl.) at ¶ 16]. As for HD 112 and HD 113, Maxson testified that "it was important" to Representative Stuart that he "keep[] the Edwardsville base of that district together." [*East St. Louis NAACP*, 44-9 (Maxson Dep.) at 4:6–11]. HD 113 incumbent, Representative Hoffman, requested that Maxson "maintain * * * Belleville" and to be "politically in a position where he and Representative Stuart—and Representative Greenwood's districts would be at about an equal Democratic performance." [*McConchie*, 160-3 (Yandell Decl.), Ex. D (Maxson Dep.) at 204:22–205:3].

That those traditional districting goals were realized reinforces this point. As Legislative Defendants point out, "HD 112 contains all of Edwardsville, HD 113 contains nearly all of Belleville, and HD 114 contain[s] nearly all of East St. Louis." [*McConchie*, 160 (Defs.' Br.) at 58]. The House Resolution, adopted with the passage of SB 927, reaffirms that the General Assembly was preoccupied with keeping these communities of interest together. See [*Contreras*, 135-7 (H.R. 443) at 105– 06] (explaining that HD 114 "makes whole" several townships that were "previously split with another representative district"; its southern border now aligns with several townships lines; makes whole two previously split school districts; and keeps Scott Air Force Base entirely in the district).

Despite this evidence of political and traditional redistricting criteria, *East St. Louis NAACP* Plaintiffs maintain that four types of circumstantial and direct evidence indicate that race, rather than politics, actually controlled the General Assembly's approach to HD 114. First, they argue that race-based population movements speak for themselves. Specifically, the General Assembly moved Black voters from HD 113 to HD 112, and then moved Black voters from HD 114 to HD 113. To compensate for the population loss in HD 114, which was already

underpopulated, the map-drawers then added White voters from adjacent areas to the south of HD 114. Second, map drawers were aware that HD 114 was the only district in the region to elect a Black state representative and that the Black population had struggled to secure representation. Specifically, during the 2021 redistricting cycle a staff person circulated summaries of 2011 redistricting testimony to that effect, and during public hearings for the 2021 redistricting cycle, witnesses echoed those sentiments. Third, in anticipation of Legislative Defendants' partisanship defense, *East St. Louis NAACP* Plaintiffs insist that we should not infer that race was "anything but a top priority" to the General Assembly from the following evidence. [*East St. Louis NAACP*, 44 (Pls.' Br.) at 33]. Democrats issued a statement that refers to "racial and geographic diversity" as a "guiding principle" for the 2021 redistricting process and another that boasts that they had combined two historically Black populations in Evanston, a district located in a different part of the state from HD 114. [*Id.*]. Documents surfaced in discovery also provide racial demographic data for Black, Asian, and Latino populations and compare the percentage of minority populations of the 2011 and 2021 plans. [*Id.*]. Further, Dr. Lichtman, Legislative Defendants' expert, requested and received data to assess racially polarized voting during the 2021 redistricting process. [*Id.*].

None of these counterpoints change our reasoning or conclusion. *East St. Louis NAACP* Plaintiffs' concern about moving voters by race falls short because there is a high correlation between race and politics. When asked if "[t]here is no dispute among experts that minorities are overwhelmingly democratic in Illinois," Dr. Lichtman affirmed, "absolutely" and he agreed "that's true for Black voters as well." [*East St. Louis NAACP*, 65-3 (Excerpts from Lichtman Dep.) at 5:10–16]. In fact, Dr. Lichtman agreed that this "has *** always been the case, since [he had] been analyzing elections in Illinois, that black voters vote overwhelmingly democrat." [*Id.* at

5:20–6:4]. Accordingly, the inference *East St. Louis NAACP* Plaintiffs ask us to draw from the movement of Black voters "loses much of [its] value when the State asserts partisanship as a defense, because [the decision] * * * can arise from a 'political motivation' as well as a racial one." See *Cooper*, 137 S. Ct. at 1473.

Put another way, it is just as likely that there was *no* other way to protect the HD 112, 113, and 114 Democratic incumbents from Republican challengers without this configuration.[24] One could infer the legislature had "dr[awn] its plan to protect incumbents—a legitimate political goal." *Cooper*, 137 S. Ct. at 1473; see also *Radogno*, 836 F. Supp. 2d at 769 (rejecting plaintiffs' racial gerrymandering challenge to Illinois congressional map where African-American voters' "strong[] tend[ency] to prefer the Democratic party * * * * ma[de] plaintiffs' already substantial burden of proving that 'race *rather than* politics *predominantly* explains' [the district's] boundaries even more difficult to meet").

Even more, although an alternative map is not necessary to show that race predominated, it does not appear there was any other viable way to protect the Metro East Democrats. See *Cooper*, 137 S. Ct. at 1479–81 (observing that a "highly persuasive way to disprove a State's contention that politics drove a district's lines is to show that the legislature had the capacity to accomplish all its partisan goals without moving so many members of a minority group into the district" while rejecting state's argument that a challenger *must* do so). Plaintiffs have not offered

[24] Testimony that legislators and experts knew about the high correlation between politics and race in Illinois bolsters, not undermines, our view that race did not predominate. We read *Cromartie II* to acknowledge that so long as there is a high correlation between voting behavior and race, partisanship is an acceptable motivation in redistricting. See, *e.g.*, *Cromartie II*, 532 U.S. at 247 ("[*N*]*one* of the excluded white precincts were *as* reliably Democratic as the African–American precincts that were included in the district. Yet the legislature sought precincts that were reliably Democratic, not precincts that were *40%* reliably Democratic, * * * for obvious political reasons").

any alternative way that Legislative Defendants could have drawn the district "without sacrificing" their legitimate goals. See *Cromartie II*, 532 U.S. at 248. To the contrary, even after submitting four different remedial maps (two alternate "liability" plans and two alternate "remedial plans"), *East St. Louis NAACP* Plaintiffs have not found a way to increase the BVAP of HD 114 "without sacrificing," or at least jeopardizing, all three seats. See *id.* at 247–48.

East St. Louis NAACP Plaintiffs' insistence that legislators did not maintain East St. Louis together as a community of interest fares no better. Their argument does not tend to show that the legislature could have accomplished that while still achieving other political ends. Just as in *Cromartie II*, the fact that a certain configuration was used suggests that it was not possible to maintain the East St. Louis core "without sacrificing other important political goals" such as incumbency protection or keeping other municipalities, like Edwardsville and Belleville, together. 532 U.S. at 248.

East St. Louis NAACP Plaintiffs' other arguments—that Dr. Lichtman assessed racial polarization, that the General Assembly announced that race was a "guiding principle" and lauded its own attempts to do so, and that staff, at some juncture, viewed the minority composition of the districts—also do not show that race predominated. To begin, Dr. Lichtman testified that he did not "think [he] presented any district-specific analyses * * * to the state legislature. Just generic results." [*East St. Louis NAACP*, 65-3 (Excerpts of Lichtman Dep.) at 9:8–12; 10:1–18]. Plaintiffs try to piece together evidence that, at some juncture, someone was aware of the composition of the districts and considered minority opportunity to elect their candidates of choice. Even in the most generous light, this evidence shows that race was *a*, not *the* decisive factor.

Further, *East St. Louis NAACP* Plaintiffs effectively invite us to rule that any time legislators acknowledge the importance of racial diversity or pay attention to racial diversity, they

have shown race predominated in the decision-making process. This does not follow. To ignore race altogether in light of the Voting Rights Act and the relevant constitutional principles raised in this case would be unacceptable. And to punish a legislature for trying to comply with the Voting Rights Act would undermine that statute's purpose to ensure minority populations' opportunities to elect their candidate of choice. We decline those invitations.

Plaintiffs' reliance on *Cooper v. Harris* and *Bush v. Vera*, 517 U.S. 952 (1996), among other cases, is misplaced. This is not the type of case where legislators, on multiple occasions, set and implemented race targets. See *Cooper*, 137 S. Ct. at 1476 (staffer testified that "his leadership had told him that he had to ramp the minority percentage in [District 12] up to over 50 percent to comply with the Voting Rights Law"); *Bush*, 517 U.S. at 961 (upholding finding that race predominated where "testimony of individual state officials confirmed that the decision to create the districts now challenged as majority-minority districts was made at the outset of the process and never seriously questioned"). To the contrary, the map drawers testified that they did not discuss race, let alone set CVAP targets.

In the end, *East St. Louis NAACP* Plaintiffs' evidence amounts to a claim that "the district's shape, its splitting of towns and counties, and its high [White] voting population" together with various public statements that legislators were aware of race shows that race predominated the 2021 legislative redistricting cycle. See *Cromartie II*, 532 U.S. at 243. The Supreme Court's decisions since *Cromartie II* tell us that this direct and circumstantial evidence is not enough to support a finding that race predominated over politics where, as here, the record is replete with political and other traditional justifications for the districts that the legislature drew. Accordingly, we reject *East St. Louis NAACP* Plaintiffs' racial gerrymandering challenge to HD 114.

b. CONTRERAS Plaintiffs

We turn last to *Contreras* Plaintiffs' claim that HD 21 and SD 11 are impermissible racial gerrymanders. *Contreras* Plaintiffs contend that "[t]he SB 927 Plan uses race as [the] predominant factor in the creation of House District 21 and Senate District 11 to protect those districts' two non-Latino white incumbents." [*Contreras*, 139 (Pls.' Br.) at 50]. Under SB 927, in both districts, the Latino CVAP was reduced from the 2011 figures: SD 11 dropped to 47.7% Latino CVAP, and HD 21 dropped to 42.2% Latino CVAP. See [*id.* at 56].

Again, we conclude that *Contreras* Plaintiffs have not shown that race predominated in the drawing of these districts. There is even less evidence to support their view that race predominated in drawing HD 21 or SD 11[25] than was the case for HD 114. Ample record evidence shows that interests in keeping communities of interest together and protecting Democratic incumbents drove the configuration of HD 21 and SD 11. State representatives for the two challenged districts and the surrounding ones as well discussed and accommodated their goals of keeping together the Little Village neighborhood, areas in and around Midway airport, and "turf" in Cicero.

Senator Landek and State Representative Zalewski testified to the importance of keeping these various communities together during the 2021 redistricting cycle. Senator Landek added that Senator Villanueva wanted to keep more progressives in her district, explaining that changes to the districts were designed to accommodate Senator Villanueva, who had "asked to take the

[25] We analyzed HD 21 and SD 11 as discrete districts, and we reach the same conclusion for each district. *Bethune-Hill*, 137 S. Ct. at 800 (instructing courts to proceed district-by-district). Given that the two districts overlap, the evidence regarding Legislative Defendants' motives as to the configuration of HD 21, SD 11, and adjacent House and Senate Districts is relevant to both claims. Plaintiffs presented their claims for both districts together, so we follow suit, discussing our findings for both districts together in the interest of efficiency.

Little Village area from [his] current district." [*McConchie*, 160-3 (Yandell Decl.), Ex. B (Landek Dep.) at 16:16–22, 17:1–11].

Representatives Hernandez and Guerrero-Cuellar voiced preferences of their own, too. Representative Hernandez asked Senator Zalewski to include more of the town of Cicero. See [*McConchie*, 160-3 (Yandell Decl.), Ex. C (Zalewski Dep.) at 39:6–23]. Similarly, Maxson testified that "Representative Guerrero Cuellar wanted to include the Midway Airport and a number of the surrounding neighborhoods. That, obviously, had an impact on what the 21st district looked like." [*Id.*, Ex. D (Maxson Dep.) at 47:1–4].

Contreras Plaintiffs try to cast doubt on whether these requests were really in play. But the reasons given by *Contreras* Plaintiffs for dismissing the testimony of the legislators and mapmakers are not persuasive. Primarily, they argue that the interests in keeping communities together surfaced during litigation, and that there is no evidence on the record that state legislators actually made these requests. They also submit that some of these requests are difficult to quantify. As for the record, *Contreras* Plaintiffs themselves concede that "the House Resolution[] * * * state[s] that Rep. Lisa Hernandez requested more of the town of Cicero." [*Contreras*, 139 (Pls.' Br.) at 58]. Any inference we could draw from other omissions in the legislative record does not outweigh the testimony of staffers and state legislators. These are all public officials; their statements certainly now are part of the public record and in fact have been reported in news articles as well as in this opinion. They can be held accountable for what they have said, and none of the statements seems outlandish or even inconsistent with the plausible, legitimate political objectives of the individuals to whom they are attributed.

As for the metrics, *Contreras* Plaintiffs insist, for example, that "Maxson could not give a limiting rationale for how much of Cicero Rep. Hernandez would get" and "Sodowski *** could

not say how progressive Democrats were identified or measured." [*Contreras*, 139 (Pls.' Br.) at 58; 162 (Pls.' Reply Br.) at 31]. The attempt to impeach the map drawers by arguing that it might be difficult to assess their responsiveness to Senator Villanueva's or Representative Hernandez's requests goes to the efficacy of the ultimate outcome, not to whether the map drawers were asked and attempted to accommodate those requests. We also note that *Contreras* Plaintiffs had the opportunity to cross-examine these witnesses, but they, not Legislative Defendants, moved to decide these matters on the papers.

The bigger problem with *Contreras* Plaintiffs' racial gerrymandering claim is that none of the circumstantial evidence they rely on is particularly persuasive to infer that race predominated. That evidence includes their alleged "smoking gun," an Excel file connected to Maxson, which highlights the Latino CVAP above and below fifty percent. See [*Contreras*, 135-8 (Existing District Demographics); 135-11 (District Demographics Excel File Properties)]. They also focus on the movement of Latino voters and the subsequent reduction in the Latino CVAP for non-Latino candidate Senator Landek's district. They explain that "swapping of larger areas of HD 21 and resulting changes in SD 11" and "[t]he switching of house districts paired in the renamed SD 11 in SB 927 * * * indicate[] movement of Latino population * * * on the basis of race." [*Contreras*, 139 (Pls.' Br.) at 54, 55]. They also point to the bizarre shape of the district.

None of this evidence persuades us that legislators subordinated other redistricting principles to race. Maxson testified that he never discussed CVAP with the HD 21 incumbent. See [*McConchie*, 160-3 (Yandell Decl.), Ex. D (Maxson Dep.) at 46:4–13; 50:6–8]. We have already explained, in Part III.B.2, why showing that race was *a* factor is insufficient to show that race predominated in the design of a certain district. See, *e.g.*, *Shaw v. Hunt*, 517 U.S. 899, 905 (1996) (plaintiff's burden requires more than a showing that the "legislature [was] conscious of

the voters' races"). *Contreras* Plaintiffs ask us to find that because a staff person, at some point in time, prepared CVAP data for Dr. Lichtman's analysis, race supposedly predominated. Yet, as we have already stated, we could equally infer from such an act that the General Assembly was attempting to comply with the Voting Rights Act. Without more, *Contreras* Plaintiffs have not shown that "race was the predominant factor" such that "the legislature 'subordinated' other factors—compactness, respect for political subdivisions, partisan advantage, what have you—to 'racial considerations.'" *Cooper*, 137 S. Ct. at 1464 (quoting *Miller*, 515 U.S. at 916).

In sum, there is ample evidence that the various General Assembly members in and around HD 21 and SD 11 sought to keep certain communities together. Those goals predominated when the map drawers, working in tandem with the House and Senate Democratic caucuses, designed HD 21, SD 11, and surrounding districts to achieve political objectives. With little in hand to meet *Contreras* Plaintiffs' demanding burden to show race was a factor—much less predominated—in the decisions to place Latino voters in certain districts, we find neither district amounts to an unconstitutional racial gerrymander.

IV. CONCLUSION

In the end, we find that the boundaries for Illinois House and Senate Districts set out in SB 927 neither violate the Voting Rights Act nor the Constitution. The record shows ample evidence of crossover voting to defeat any claim of racially polarized voting sufficient to deny Latino and Black voters of the opportunity to elect candidates of their choice in the challenged districts. And the record also shows that even if race was *a* factor in the drawing of at least some of these districts, it was not the *predominant* factor as to any single district, and thus the resulting maps do not violate the Equal Protection Clause. Instead, the voluminous evidence submitted by

the parties overwhelmingly establishes that the Illinois mapmakers were motivated principally by partisan political considerations.

We recognize that partisan gerrymanders are controversial. See, *e.g.*, Julia Kirschenbaum & Michael Li, *Gerrymandering Explained*, Brennan Center for Justice (Aug. 12, 2021), https://perma.cc/8AGN-SKUX; see also *Redistricting Report Card*, Princeton Gerrymandering Project, https://perma.cc/6789-UW3B (last visited Dec. 27, 2021). Critics maintain that they distort our democracy, noting that at its most extreme, "the practice amounts to 'rigging elections.'" *Rucho*, 139 S. Ct. at 2512 (Kagan, J, dissenting) (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 317 (2004) (Kennedy, J., concurring in the judgment)). Many states engage in the practice, though some do not.[26] See *Baldus*, 849 F. Supp. 2d at 860. An effort to create an independent redistricting commission in Illinois gained more than half a million signatures in support of a ballot initiative but was struck down by the Illinois Supreme Court as outside the scope of the citizen initiative power under Article IV of the Illinois Constitution. *Hooker v. Ill. State Bd. of Elections*, 63 N.E.3d 824, 838–39 (Ill. 2016).

These are matters for the people of Illinois to continue debating. Levers other than federal courts are available to them, whether they are state statutes, state constitutions, and even entreaties to Congress, if they wish to change the current process. See *Rucho*, 139 S. Ct. at 2507–08. Our role as federal judges is limited and does not extend to complaints about excessive partisanship in the drawing of legislative districts. In *Rucho*, the Supreme Court identified two areas – "one-

[26] Both major parties have engaged in the practice. In *Rucho*, for example, the Supreme Court considered two separate partisan gerrymandering claims, one challenging maps drawn by a Republican-controlled legislature in North Carolina and the other contesting maps adopted by a Democrat-controlled legislature in Maryland. In the current election cycle, one can point to, for instance, Texas as a counterweight to Illinois among state legislatures using redistricting to achieve partisan political objectives. See Zachary Wolf, *Gerrymandering: How it's Being Exposed and How it Affects Your State*, CNN Politics (Nov. 20, 2021, 8:00 AM), https://perma.cc/QYR2-8DW5 (interview with Sam Wang, Director of the Princeton Gerrymandering Project).

person, one-vote and racial gerrymandering"—in which there is a role for the federal courts with respect to at least some issues that could arise from a State's redistricting efforts. *Id.* at 2495–96. We addressed the former in our October 19 ruling [*McConchie*, 131] and the latter in today's decision. But the Supreme Court has declared partisan gerrymandering claims to present political questions beyond the reach of the federal courts. *Id*. at 2507. Having found no statutory or constitutional infirmities in the map adopted in SB 927, our involvement in the current disputes over Illinois redistricting must come to an end with the entry of a final judgment as follows: (1) against all Defendants and in favor of *McConchie* Plaintiffs on Counts I and II of their second amended complaint [dkt. 116 in Case No. 21-cv-3091], both of which relate to the June Redistricting Map, (2) against all Defendants and in favor of *Contreras* Plaintiffs on Count I of their second amended complaint [dkt. 98 in Case No. 21-cv-3139], which also relates to the June Redistricting Map, and (3) in favor of all Defendants and against all Plaintiffs on all other claims asserted in *McConchie* Plaintiffs' second amended complaint [dkt. 116 in Case No. 21-cv-3091], *Contreras* Plaintiffs' second amended complaint [dkt. 98 in Case No. 21-cv-3139], and *East St. Louis NAACP* Plaintiffs' complaint [dkt. 1 in Case No. 21-cv-5512]. To the extent that any Plaintiffs wish to seek attorneys' fees and costs in this matter, they may do so by filing a motion consistent with any applicable statutes.

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1/28/2025 4:28 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

No. _____

IN THE SUPREME COURT OF ILLINOIS

TONY MCCOMBIE, in her official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter; ROBERT BERNAS, individually as a registered voter; THOMAS J. BROWN, individually as a registered voter; and SERGIO CASILLAS VAZQUEZ, individually as a registered voter; JOHN COUNTRYMAN, individually as a registered voter; and ASHLEY HUNSAKER, individually as a registered voter, Plaintiffs, v. ILLINOIS STATE BOARD OF ELECTIONS and JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, RICK S. TERVEN, SR., CASANDRA B. WATSON, and JACK VRETT, all named in their official capacities as members of the State Board of Elections, Defendants.	Original Action under Article IV, Section 3 of the Illinois Constitution

MOTION FOR LEAVE TO FILE COMPLAINT

Now come the Plaintiffs, TONY MCCOMBIE, in her official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter; and ROBERT BERNAS, THOMAS J. BROWN, SERGIO

CASILLAS VAZQUEZ, JOHN COUNTRYMAN, and ASHLEY HUNSAKER, as individual voters ("Movants"), by and through their attorneys, Mayer Brown LLP and the Law Office of John Fogarty, Jr., and pursuant to Supreme Court Rule 382, move this Court for leave to file the attached Complaint for declaratory judgment and injunctive relief as an original action in the Supreme Court as authorized by Article IV, Section 3 of the Illinois Constitution. In support thereof, Movants state as follows:

1. Movants seek leave to file a Complaint for declaratory judgment and injunctive relief invoking the original and exclusive jurisdiction of this Court pursuant to Article IV, Section 3 of the Illinois Constitution. Movants will ask this Court to declare unconstitutional the revised legislative redistricting plan for election of members of the Illinois General Assembly, signed into law on September 24, 2021 (Public Act 102-0663 or the "Enacted Plan").

2. There is ample evidence that the Enacted Plan contains numerous districts that were gerrymandered for strictly partisan purposes. The mapmaker for the Illinois Democratic Party has admitted it, and a federal court has acknowledged it.

3. The effects of this partisan gerrymander are stark. Movants' expert, Dr. Jowei Chen, ran computer simulations and determined that "the Enacted Plan creates a significant pro-Democratic electoral bias," resulting in

as many as 11 fewer Republican-favoring districts when compared to the median outcome among the non-partisan computer-simulated plans.

4. This intentional partisan gerrymandering, and its related effects, violate the Illinois Constitution's requirement that "[a]ll elections shall be free and equal." ILL. CONST. art III, § 3. It also runs afoul of this Court's mandate that legislative redistricting maps "meet all legal requirements regarding political fairness." *People ex rel. Burris v. Ryan*, 147 Ill. 2d 270, 296 (1992).

5. The U.S. Supreme Court has put the burden of stopping partisan gerrymandering with the states and their courts. *See Rucho v. Common Cause*, 588 U.S. 684, 719–20 (2019). This Court should pick up the torch and declare that partisan gerrymandering necessarily results in elections that are neither "free" nor "equal."

6. This Court would not be the first to so declare. Courts in Pennsylvania and North Carolina—interpreting identical or substantively similar constitutional provisions as Illinois's Free and Equal Elections clause—have determined that partisan gerrymanders are unconstitutional.

7. Additionally, the Enacted Plan violates the Illinois Constitution's requirement that legislative and representative districts are compact. *See* ILL. CONST. art IV, § 3(a). Using this Court's decision in *Schrage v. State Board of Elections*, 88 Ill. 2d 87 (1981), as a benchmark, Dr. Chen determined that nearly half of Illinois's 118 House Districts are insufficiently compact. And a visual examination of these House Districts reveals that they are thin and

gangly, and not compact in any sense. With this many noncompact House Districts, the Enacted Plan must be redrawn in full.

8. This is also the right moment for this Court to act. Timing is no concern: With nearly two years left until the next House election, there is ample opportunity to redraw House Districts. Additionally, the time since the Enacted Plan was established has allowed Movants to gather data from multiple elections. This data makes clear the pernicious effect of partisan gerrymandering in Illinois.

9. The proposed Complaint raises constitutional issues that can only be resolved by this Court. Resolution of the issues raised in the Complaint is needed to ensure that all Illinois citizens enjoy the right to elect their state representatives in elections that are free and equal, as guaranteed by the Illinois Constitution.

10. This Court has entertained challenges to past legislative redistricting plans, including in *Schrage*, 88 Ill. 2d 87, and *Cole-Randazzo v. Ryan*, 198 Ill. 2d 233 (2001).

11. Pursuant to Rule 382, Movants attach herewith (a) a Brief in Support of this Motion; (b) their Complaint; and (c) supporting exhibits, including an expert report from Dr. Chen.

Wherefore, Movants request that this Court grant them leave to proceed as plaintiffs in this original action, and that this Court establish a schedule for the submission of evidence and the presentation of briefs.

Date: January 28, 2025

Respectfully submitted,

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No. _____

IN THE SUPREME COURT OF ILLINOIS

TONY MCCOMBIE, in her official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter; ROBERT BERNAS, individually as a registered voter; THOMAS J. BROWN, individually as a registered voter; and SERGIO CASILLAS VAZQUEZ, individually as a registered voter; JOHN COUNTRYMAN, individually as a registered voter; and ASHLEY HUNSAKER, individually as a registered voter, Plaintiffs, v. ILLINOIS STATE BOARD OF ELECTIONS and JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, RICK S. TERVEN, SR., CASANDRA B. WATSON, and JACK VRETT, all named in their official capacities as members of the State Board of Elections, Defendants.	Original Action under Article IV, Section 3 of the Illinois Constitution

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NOTICE OF FILING OF MOTION FOR LEAVE TO FILE COMPLAINT

PLEASE TAKE NOTICE that on January 28, 2025, the undersigned electronically filed the Motion for Leave to File Complaint in the above-captioned case with the Clerk of the Supreme Court of Illinois using Odyssey eFileIL. A copy is hereby served upon you.

Dated: January 28, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Charles E. Harris, II, an attorney, hereby certify that on January 28, 2025, I caused a Notice of Filing and the Motion for Leave to File Complaint to be electronically filed with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system. I further certify that I will cause one copy of the above-named filings to be served upon counsel listed below via electronic mail on January 28, 2025.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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No. _____

IN THE SUPREME COURT OF ILLINOIS

TONY MCCOMBIE, in her official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter; THOMAS J. BROWN, individually as a registered voter; and SERGIO CASILLAS VAZQUEZ, individually as a registered voter; JOHN COUNTRYMAN, individually as a registered voter; and ASHLEY HUNSAKER, individually as a registered voter, Plaintiffs, v. ILLINOIS STATE BOARD OF ELECTIONS and JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, RICK S. TERVEN, SR., CASANDRA B. WATSON, and JACK VRETT, all named in their official capacities as members of the State Board of Elections, Defendants.	Original Action under Article IV, Section 3 of the Illinois Constitution

BRIEF OF PLAINTIFFS IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

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NATURE OF THE CASE

Democracy thrives when all voters can participate. But under Illinois's current legislative map (Public Act 102-0663 or the "Enacted Plan"), certain voters cannot effectively participate. This is because of two pernicious practices: partisan gerrymandering and non-compact legislative districts. Both practices are antidemocratic. And both are prohibited by the Illinois Constitution.

This lawsuit seeks to put an end to both practices in Illinois. Invoking this Court's original jurisdiction, *see* ILL. CONST. art. IV, § 3, Plaintiffs[1] request a declaration that the Enacted Plan is unconstitutional and an order leading to the drawing of a new map. Two grounds support Plaintiffs' requests.

First, Democratic lawmakers, as well as their mapmakers, have made clear that they drew the Enacted Plan with a singular objective: to improve the electoral chances of Democrats. This fact has been recognized by a federal court, *McConchie v. Scholz*, 577 F. Supp. 3d 842, 885 (N.D. Ill. 2021), and by the mapmakers themselves. It is now also confirmed by Dr. Jowei Chen, an expert in the use of computer simulations of legislative redistricting maps.

The General Assembly's purpose—to enact extreme partisan gerrymanders—runs headlong into the Illinois Constitution's guarantee that "[a]ll elections shall be free and equal." ILL. CONST. art. III, § 3. Other state

[1] Plaintiffs are the Minority Leader of the Illinois House of Representatives, Tony McCombie, and several individual voters, Robert Bernas, Thomas J. Brown, Sergio Casillas Vazquez, John Countryman, and Ashley Hunsaker.

courts, analyzing substantively similar constitutional provisions, have come to the same conclusion. *See League of Women Voters v. Commonwealth*, 645 Pa. 1, 128 (2018) ("An election corrupted by extensive, sophisticated gerrymandering and partisan dilution of votes is not 'free and equal.'"); *Harper v. Hall*, 868 S.E.2d 499, 542 (N.C. 2022) ("[P]artisan gerrymandering . . . is cognizable under the free elections clause because it can prevent elections from reflecting the will of the people impartially and by diminishing or diluting voting power on the basis of partisan affiliation."). This Court should join them.

Second, a significant number of Illinois's legislative districts have "tortured, extremely elongated form[s]." *Schrage v. State Bd. of Elections*, 88 Ill. 2d 87, 98 (1981). In other words, they are "not compact in any sense," *id.*, and thus run afoul of the Illinois Constitution. *See* ILL. CONST. art. IV, § 3(a) (requiring districts to "be compact, contiguous and substantially equal in population"). In *Schrage*, this Court ordered legislative districts to be redrawn for lack of compactness (88 Ill. 2d at 108) and should do so again here. After all, the "compactness standard . . . cannot be ignored in redistricting the State. It cannot be written out or replaced by another requirement short of redrafting or amending our present constitution." *Id.* at 96.

This is the right moment for the Court to decide these issues. Timing is no concern: With nearly two years left until the next House election, there is ample opportunity to redraw House Districts. And the time since the Enacted Plan was established has allowed Plaintiffs to gather critical data from

multiple elections, all of which makes clear the pernicious effect of partisan gerrymandering in Illinois.

Plaintiffs should be granted leave to file their Complaint to litigate these important issues.

ISSUE PRESENTED

1. Whether this Court should grant Plaintiffs leave to file their Complaint pursuant to Article IV, Section 3 of the Illinois Constitution, where the Complaint presents genuine issues of law as to the validity of the Enacted Plan, as the Enacted Plan features admitted partisan gerrymandering and numerous districts fail the basic compactness requirement set forth in Article IV, Section 3 of the Illinois Constitution.

STATEMENT OF JURISDICTION

This Court has original and exclusive jurisdiction over this matter under Article IV, Section 3 of the Illinois Constitution. *See, e.g.*, *Schrage v. State Bd. of Elections*, 88 Ill. 2d 87, 91 (1981).

CONSTITUTIONAL PROVISIONS INVOLVED

ILL. CONST. art. III, § 3:

> All elections shall be free and equal.

ILL. CONST. art. IV, § 3:

> (a) Legislative Districts shall be compact, contiguous and substantially equal in population. Representative Districts shall be compact, contiguous, and substantially equal in population.
>
> (b) In the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts and the Representative Districts.
>
> If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall be constituted not later than July 10. The Commission shall consist of eight members, no more than four of whom shall be members of the same political party.
>
> The Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly.
>
> The members shall be certified to the Secretary of State by the appointing authorities. A vacancy on the Commission shall be filled within five days by the authority that made the original appointment. A Chairman and Vice Chairman shall be chosen by a majority of all members of the Commission.
>
> Not later than August 10, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.
>
> If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1.
>
> Not later than September 5, the Secretary of State publicly shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission.
>
> Not later than October 5, the Commission shall file with the Secretary

of State a redistricting plan approved by at least five members.

An approved redistricting plan filed with the Secretary of State shall be presumed valid, shall have the force and effect of law and shall be published promptly by the Secretary of State.

The Supreme Court shall have original and exclusive jurisdiction over actions concerning redistricting the House and Senate, which shall be initiated in the name of the People of the State by the Attorney General.

STATEMENT OF FACTS

Plaintiffs challenge the constitutionality of Illinois's current legislative map (Public Act 102-0663 or the "Enacted Plan"). Plaintiffs' allegations center on the fact that the Enacted Plan is the byproduct of extreme partisan gerrymandering and also features a significant number of Representative Districts that flunk the Illinois Constitution's requirement of "compactness." Some background is needed to understand how we got here.

I. The First Try: the June Redistricting Plan

The Illinois Constitution requires the General Assembly to enact a new plan for Representative (House) Districts and Legislative (Senate) Districts after each decennial census. Compl. ¶ 25 (citing ILL. CONST. art. IV, § 3(b)). If a plan is not effective by June 30 of the year after the census, then control over redistricting shifts from the General Assembly to a bipartisan commission. *Id.*

To avoid ceding political control over the redistricting process to the bipartisan commission, the Illinois General Assembly approved a state legislative redistricting plan (Public Act 102-0010 or the "June Redistricting Plan") before that deadline. *Id.* ¶¶ 26–27. It did so despite not having received data of official population totals from the 2020 U.S. decennial census. *Id.* ¶ 26.

The June Redistricting Plan was challenged in federal court as violating the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. *See McConchie v. Scholz*, 567 F. Supp. 3d 861 (N.D. Ill. 2021) ("*McConchie I*"). Plaintiffs there claimed that, in the General Assembly's rush

to avoid a bipartisan process, it relied on an unreliable source of data that "should not be used for redistricting." *Id.* at 869, 887.

The federal court agreed that the June Redistricting Plan was unconstitutional. *Id.* at 869. It held that the June Redistricting Plan violated the U.S. Constitution's promise of "one-person, one-vote," as it featured districts with population deviations of up to nearly 30%. *Id.* at 885–89 (citing *Reynolds v. Sims*, 377 U.S. 533, 568 (1964)). In coming to this conclusion, the court determined that the General Assembly's desire to "secur[e] partisan advantage" was not "a proper rationale for violating constitutionally-required mandates," such as the "one-person, one-vote" principle. *Id.* at 888–89.

II. The Second Try: the Enacted Plan

In response, the Illinois General Assembly approved a revised state legislative redistricting plan (the Enacted Plan). Compl. ¶¶ 28, 33. It was again challenged, but this time on the grounds that legislative districts were racially gerrymandered in violation of Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301, and the Fourteenth Amendment's Equal Protection Clause. *McConchie v. Scholz*, 577 F. Supp. 3d 842, 851 (N.D. Ill. 2021) ("*McConchie II*").

This time, the federal court rejected the plaintiffs' challenge. *Id.* at 885. In so doing, the court made clear its view that, while racial discrimination was not the General Assembly's goal, something else was: *partisan discrimination*. *Id.* It held that "the voluminous evidence submitted by the parties

overwhelmingly establishes that *the Illinois mapmakers were motivated principally by partisan political considerations*." *Id.* (emphasis added).

This conclusion was well-supported. The General Assembly's Democratic leadership itself argued in *McConchie II* that "politics . . . drove the configuration of all of the challenged districts." *Id.* at 877. This aligned with the deposition testimony submitted to the court in that case of Jonathan Maxson, the Director of Redistricting for the House Democratic Caucus who oversaw the 2021 redistricting process. 577 F. Supp. 3d at 872; *see* Dep. Tr. of Jonathan Maxson ("Maxson Dep."), Ex. A. When asked about the configuration of certain House Districts (HDs), Maxson repeatedly testified about securing partisan advantage. He said that he tried to "enhance the Democratic performance" of HD 112. Ex. A, Maxson Dep. at 204:9–12. And for HD 113, Maxson testified that the goal was to keep the district "at about an equal Democratic performance, which is where [it] started at." *Id.* at 204:22–205:3.

That the Enacted Plan was drawn with extreme partisan goals in mind is buttressed by official statements made by Democrats in relevant legislative history. *See* Compl. ¶ 44 (citing H.R. 0443 (the "House Resolution")). For example, the House Resolution states that HD 26 was altered "for political purposes." *Id.* ¶ 45. So too does it state that "the ability to increase the partisan advantage" were factors driving the drawing of HDs 3 and 4. *Id.* ¶ 46. And for multiple other House Districts yet, the House Resolution explains that "partisan advantage" was explicitly considered for those that "traditionally

elect members of the Democratic party," and still more were "drawn for political purposes to assist with increasing the political advantage" and "to impact the political composition of neighboring districts." *Id.* ¶ 47.

It is no surprise, then, that the court in *McConchie II* saw that enshrining political advantage was the main driver of the Enacted Plan. *E.g.*, 577 F. Supp. 3d at 872 ("[S]tate legislators unabashedly put politics front and center . . . ."); *id.* at 879 ("General Assembly staff and state legislators admit that they divided up HD 112" and HD 113 to "shore up the Democratic vote . . . ."); *id.* at 883 ("[T]he record is replete with political . . . justifications for the districts that the legislature drew.").

So, the Enacted Plan was drawn with the stated goal of establishing extreme partisan advantages for Democrats. This much is no secret. But with the aid of computer simulations run by Dr. Jowei Chen, it is now clear just how effective this partisan gerrymander was. *See* Compl. ¶¶ 50–54; Expert Report of Jowei Chen, Ph.D. ("Chen Rep."), Ex. B.

Dr. Chen concluded that "the Enacted Plan creates a significant pro-Democratic electoral bias," resulting in as many as 11 fewer Republican-favoring districts when compared to the median outcome among the non-partisan computer-simulated plans. Compl. ¶ 53; Chen Rep. at 31–52. He also determined that the gerrymandering worked best in competitive elections—meaning that the better Republican candidates did in an election, the more effective the gerrymander was. Compl. ¶ 53.

III. The Enacted Plan is Unconstitutional

The Enacted Plan flouts two key provisions in the Illinois Constitution. *First*, its partisan gerrymanders make it impossible that "[a]ll elections shall be free and equal." ILL. CONST. art. III, § 3. *Second*, the Enacted Plan features a significant number of Representative Districts that come nowhere close to the requirement that these districts be "compact." *Id.* art. IV, § 3(a).

A. The Enacted Plan Violates the Free and Equal Elections Clause

The "Free and Equal Elections" clause, ILL CONST. art III, § 3, prohibits extreme partisan gerrymandering. The Enacted Plan—which is rife with such partisan gerrymandering—is therefore unconstitutional.

The Enacted Plan has both the stated intent and real-world effect of substantially diluting the power of Republican voters in Illinois. Compl. ¶¶ 29–54. This reality runs headlong into the Free and Equal Elections clause's mandate that "each voter . . . has the same influence as the vote of any other voter." *Goree v. LaVelle*, 169 Ill. App. 3d 696, 699 (1988) (citing *People v. Deatherage*, 401 Ill. 25, 37 (1948)). This partisan discrimination also violates this Court's requirement that legislative redistricting maps must "meet all legal requirements regarding political fairness." *People ex rel. Burris v. Ryan*, 147 Ill. 2d 270, 296 (1992); *accord Cole-Randazzo v. Ryan*, 198 Ill. 2d 233, 236 (2001); *see* Compl. ¶¶ 74–78.

State courts across the country have interpreted identical or substantially similar constitutional provisions to the Free and Equal Elections

clause and struck down maps that feature extreme partisan gerrymandering. Pennsylvania's Supreme Court, for example, had no difficulty concluding that a map that was "gerrymander[ed] for unfair partisan political advantage" violated a constitutional provision that "[e]lections shall be free and equal." *League of Women Voters v. Commonwealth*, 178 A.3d 737, 766, 816–17 (Pa. 2018) ("*LWV*"); *see* Compl. ¶¶ 56–62. So too did several North Carolina courts strike down maps that were the byproduct of partisan gerrymandering because of, among other things, a state constitutional provision that required free elections. *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584, at *2 (N.C. Super. Ct. Sept. 3, 2019); *Harper v. Hall*, 868 S.E.2d 499, 556 (N.C. 2022) ("*Harper I*"); *Harper v. Hall*, 881 S.E.2d 156, 181 (N.C. 2022) ("*Harper II*"); *see* Compl. ¶¶ 63–73 (explaining how these opinions were later overruled when the political control of the North Carolina Supreme Court was flipped). In the views of these courts, "a districting plan that systematically makes it harder for certain voters to elect a governing majority based on partisan affiliation is . . . unconstitutional[,] unless the General Assembly can demonstrate that the plan is narrowly tailored to advance a compelling governmental interest." *Harper II*, 881 S.E.2d at 181 (cleaned up).

This Court has ample grounds to follow suit and declare that the Enacted Plan violates the Free and Equal Elections clause.

B. The Enacted Plan Violates the Compactness Requirement.

Legislative districts in Illinois must be "compact," in addition to being "contiguous" and "substantially equal in population." ILL. CONST. art. IV, § 3(a).

Both from a statistical and visual standpoint, the Enacted Plan features a significant number of House Districts that flunk this requirement of compactness. For this reason too, the Enacted Plan is unconstitutional.

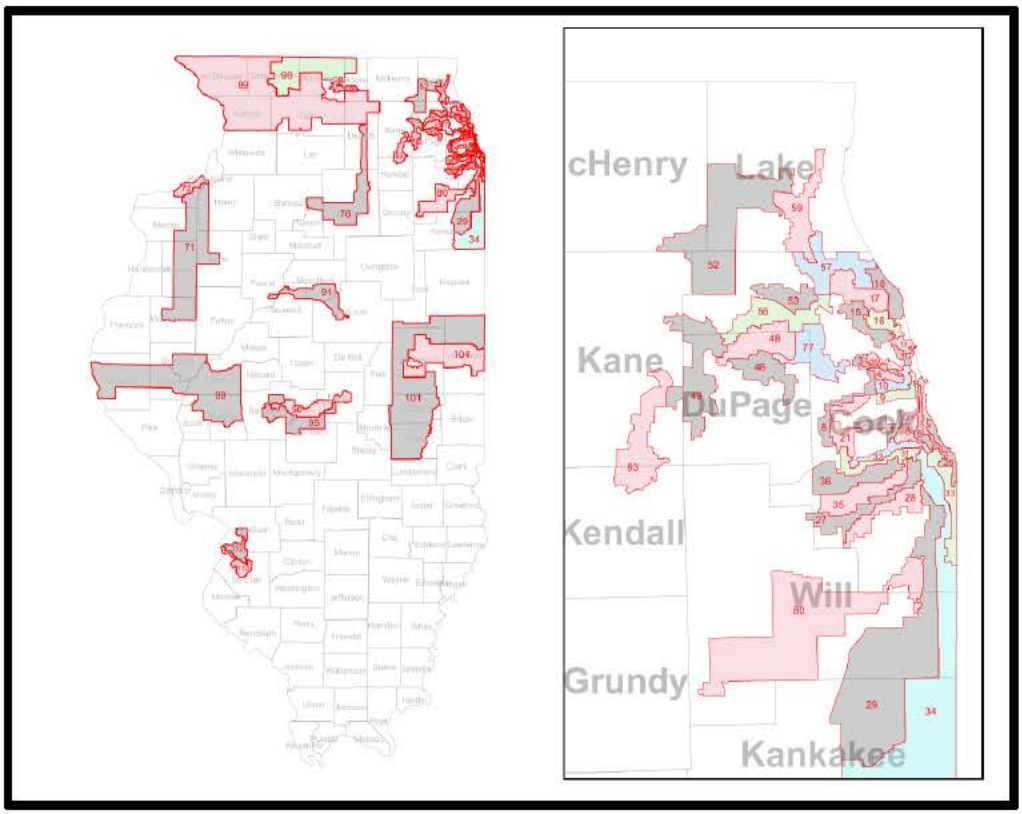
This Court has long recognized that the requirement of compactness is "'almost universally recognized' as an appropriate anti-gerrymandering standard." *Schrage v. State Bd. of Elections*, 88 Ill. 2d 87, 96 (1981) (determining that a district violated compactness requirement). The framers of the Illinois Constitution clearly thought so. They noted that the compactness standard "reflect[s] the objective of improving legislative representation through seeking to insure that districts are not gerrymandered." 6 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 1352–53. They highlighted that, "[w]here no standards of this nature exist, there exists an open invitation to gerrymander." *Id.* at 1353.

In *Schrage*, this Court instructed that there are two ways to determine whether a district is sufficiently "compact." 88 Ill. 2d at 98. One way is to compare the district to a "mathematically precise standard of compactness." *Id.* The other was to "rely on a visual examination of the questioned district." *Id.* The Enacted Plan has a significant number of districts that do not comply with one or both of those standards. Compl. ¶¶ 84–92.

First, mathematical standards show the number of Representative Districts in the Enacted Plan that are not "compact." Compl. ¶¶ 85–87. Dr. Chen took the district that was found to not be "compact" in *Schrage* and

assigned it a score under both the widely accepted Polsby-Popper and Reock methods of evaluating compactness. *Id.* ¶¶ 85–86. He found that as many as 52 of the 118 Representative Districts in the Enacted Plan were less compact than the district in *Schrage* by at least one of these two measures. *Id.* ¶ 86. In other words, under *Schrage*, nearly half of the districts in the Enacted Plan are not "compact." *Id.*

Second, a visual examination allows one to reach to the same conclusion. Several districts are twisted and contorted; they are, in this Court's words, not "compact in any sense." *Schrage*, Ill. 2d at 98.



Chen Rep., fig. 2.

In creating the Enacted Plan, the General Assembly's goals were simple: to "draw skinny Democratic districts that snake into Republican areas and

absorb as many Republican votes as possible without jeopardizing Democrats' ability to win those districts, thereby making the adjacent areas easier for Democrats to win." Compl. ¶ 96. And specifically for the gangly districts in Chicago and its suburbs, Dr. Chen concludes that, by "drawing long, narrow districts," the General Assembly could "'waste' suburban Republican votes in otherwise safe" Democratic districts. *Id.* ¶ 95.

In sum, the pervasive lack of compactness—which is evident both statistically and visually—means that the Enacted Plan is not constitutional.

IV. Plaintiffs' Complaint

Given these constitutional infirmities, Plaintiffs seek to invoke this Court's "original and exclusive jurisdiction over actions concerning redistricting the House and Senate." ILL. CONST. art. IV, § 3(b).

Plaintiffs have all been negatively affected by the Enacted Plan and its partisan gerrymanders. Tony McCombie is the Minority Leader of the Illinois House of Representatives, and has the obligation to express the views, ideas, and principles of the House Republican caucus in the 104th General Assembly and of Republicans state-wide. *See* Compl. ¶ 9. The individual voters—Robert Bernas, Thomas J. Brown, Sergio Casillas Vazquez, John Countryman, and Ashley Hunsaker—all have had their voting power diluted by the Enacted Plan. *See id.* ¶¶ 10–14, 106, 122.

In their Complaint, Plaintiffs seek a declaration that the Enacted Plan is unconstitutional and an injunction prohibiting Defendants from enforcing

the Enacted Plan. Plaintiffs also request the appointment of a Special Master to draft a valid and constitutionally acceptable redistricting plan.

ARGUMENT

I. Plaintiffs Should be Granted Leave to File Their Complaint.

This Court has original and exclusive jurisdiction over Plaintiffs' case. ILL. CONST. art. IV, § 3(b). Proceedings such as this are initiated by the filing of the instant "motion for leave to file a complaint." SUP. CT. R. 382(a). This motion should be granted because the Complaint features important and novel issues of state law that are filed at an opportune time.

"At its most extreme," the practice of partisan gerrymandering "amounts to 'rigging elections.'" *Rucho v. Common Cause*, 588 U.S. 684, 727 (2019) (Kagan, J., dissenting) (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 317 (2004) (Kennedy, J., concurring in the judgment)). But, since 2019, claims of partisan gerrymandering cannot be litigated in federal court. *Id.* at 718 (majority opinion). The fix to this antidemocratic practice, therefore, must come from states and, as relevant here, state courts. *Id.* at 719; *see also* Aroosa Khokher*, Free and Equal Elections: A New State Constitutionalism for Partisan Gerrymandering,* 52 COLUM. HUM. RTS. L. REV. 1, 34 (2020) ("If state courts recognize state protections against partisan gerrymanders, they may be able to transform the national landscape of redistricting reform.").

The Enacted Plan at issue is a byproduct of extreme partisan gerrymandering. This is no secret: the mapmakers admitted it, a federal court has acknowledged it, and statistics confirm it. But these facts are meaningless unless this Court steps in and acknowledges what other courts have already determined—that legislative maps that are the result of extreme partisan

gerrymandering prohibit elections that are "free" or "equal." *See* ILL CONST. art III, § 3; *see also LWV*, 178 A.3d at 816–17; *Lewis*, 2019 WL 4569584, at *2 *Harper I*, 868 S.E.2d at 556; *Harper II*, 881 S.E.2d at 181.

Illinois's Free and Equal Election Clause requires that "each voter have the right and opportunity to cast his or her vote without any restraint and that his or her vote has the same influence as the vote of any other voter." *Goree v. LaVelle*, 169 Ill. App. 3d 696, 699 (1988) (citing *People v. Deatherage*, 401 Ill. 25, 37 (1948)). But Plaintiffs—and Republican voters statewide—do not have the same influence as other voters. This is the direct result of the legislative map enacted by the General Assembly, which features admitted, extreme politically gerrymandered districts.

Additionally, the Enacted Plan includes a significant number of districts that do not comply with the constitutional requirement of "compactness." ILL. CONST. art IV, § 3(a). This requirement is no mere technicality; instead, it's "'almost universally recognized' as an appropriate anti-gerrymandering standard." *Schrage*, 88 Ill. 2d at 96. Stunningly, almost half of the 118 Representative Districts in the Enacted Plan are statistically less compact than the district that this Court struck down as being insufficiently compact in *Schrage*. This Court should not allow the General Assembly's flouting of *Schrage*—and the words of the Illinois Constitution—to continue.

Moreover, this Court has said a districting plan must be "politically fair." *Burris*, 147 Ill. 2d 270, 296 (1991); *Cole-Randazzo v. Ryan*, 198 Ill. 2d

233, 236 (2001). While this Court has never expressly defined "political fairness," in *Davis v. Bandemer*, 478 U.S. 109 (1986), a plurality of the U.S. Supreme Court explained that it is politically unfair when an election system "substantially disadvantages certain voters in their opportunity to influence the political process effectively." *Id.* at 133. This can be proven, it held, if there is "evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process." *Id.* The Enacted Plan does exactly this.

The Illinois Constitution specifically vests this Court with jurisdiction over actions concerning redistricting. *See* ILL. CONST. art. IV, § 3(b). As such, this Court can and should resolve these issues as matters involving state constitutional law, as it has done on several occasions. *See, e.g.*, *Burris*, 147 Ill. 2d 270; *Schrage,* 88 Ill. 2d 87; *People ex rel. Scott v. Grivetti,* 50 Ill. 2d 156 (1971). Additionally, the timing is right for this Court to act. For one thing, there is no impending election breathing down the Court's neck. Plus, the time since the Enacted Plan was passed has allowed critical data to be collected that shows the full, pernicious effect of the General Assembly's gerrymandering.

In sum, these issues are critically important—and not just for Republicans, but for Illinoisians as a whole. Plaintiffs deserve their day in court to litigate them.

II. This Court Should Set a Briefing Schedule and Hold Oral Argument.

This Court's rules give broad discretion as to the appropriate procedure in these cases. *See* SUP. CT. R. 382(b). Plaintiffs respectfully submit that this case deserves full briefing and oral argument. While Plaintiffs, of course, defer to this Court's calendaring, we suggest the following briefing schedule may be appropriate:

- **Plaintiffs' Opening Brief:** Due 60 days after leave is granted;
- **Defendants' Response Brief:** Due 30 days after Plaintiffs' Opening Brief is filed;
- **Plaintiffs' Reply Brief:** Due 14 days after Defendants' Response Brief is filed.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant them leave to file their Complaint challenging the Enacted Plan under Article IV, Section 3 of the Illinois Constitution. This Court should additionally set a briefing schedule.

Dated: January 28, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and those matters appended to the brief under Rule 342(a) is 22 pages.

/s/ Charles E. Harris, II
Charles E. Harris, II
Mayer Brown LLP

No. _____

IN THE SUPREME COURT OF ILLINOIS

TONY MCCOMBIE, in her official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter; ROBERT BERNAS, individually as a registered voter; THOMAS J. BROWN, individually as a registered voter; and SERGIO CASILLAS VAZQUEZ, individually as a registered voter; JOHN COUNTRYMAN, individually as a registered voter; and ASHLEY HUNSAKER, individually as a registered voter, Plaintiffs, v. ILLINOIS STATE BOARD OF ELECTIONS and JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, RICK S. TERVEN, SR., CASANDRA B. WATSON, and JACK VRETT, all named in their official capacities as members of the State Board of Elections, Defendants.	Original Action under Article IV, Section 3 of the Illinois Constitution

TO: Marni M. Malowitz
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NOTICE OF FILING OF MOTION FOR LEAVE TO FILE COMPLAINT

PLEASE TAKE NOTICE that on January 28, 2025, the undersigned electronically filed the Brief of Plaintiffs in Support of Motion for Leave to File Complaint in the above-captioned case with the Clerk of the Supreme Court of Illinois using Odyssey eFileIL. A copy is hereby served upon you.

Dated: January 28, 2025

Respectfully submitted,

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Charles E. Harris, II, an attorney, hereby certify that on January 28, 2025, I caused a Notice of Filing and the Brief of Plaintiffs in Support of Motion for Leave to File Complaint to be electronically filed with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system. I further certify that I will cause one copy of the above-named filings to be served upon counsel listed below via electronic mail on January 28, 2025.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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Counsel for Plaintiffs

No. _____

IN THE SUPREME COURT OF ILLINOIS

TONY MCCOMBIE, in her official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter; ROBERT BERNAS, individually as a registered voter; THOMAS J. BROWN, individually as a registered voter; and SERGIO CASILLAS VAZQUEZ, individually as a registered voter; JOHN COUNTRYMAN, individually as a registered voter; and ASHLEY HUNSAKER, individually as a registered voter,	)	
Plaintiffs,	)	Original Action under Article IV, Section 3 of the Illinois Constitution
v.	)	
ILLINOIS STATE BOARD OF ELECTIONS and JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, RICK S. TERVEN, SR., CASANDRA B. WATSON, and JACK VRETT, all named in their official capacities as members of the State Board of Elections,	)	
Defendants.	)	

COMPLAINT

1. The districts of the Illinois State House of Representatives (the "Enacted Plan") are the byproduct of extreme partisan gerrymandering. They are drawn by the political party in control and are intended to entrench the

Democratic Party in power. The districts are also meant to prevent voters affiliated with the minority party from electing candidates of their choice. In other words, the general election outcomes are rigged.

2. This is not a secret. A federal court acknowledged it. The mapmaker for the Illinois Democratic Party admitted it. One read through the legislative history confirms it. And a glance at the Enacted Plan—with all its contorted, odd-shaped districts—shows it.

3. The recently completed election cycle made clear how successful the partisan gerrymandering really was. Of the 2024 Illinois House of Representatives elections, Democratic candidates won 55% of the statewide vote. But Democratic candidates won a super-majority of seats (78 of 118, or 66.1%).

4. The 2022 election cycle was worse. There, Republican candidates for the Illinois House of Representatives won a majority—50.9%—of the statewide votes. But Republican candidates won only a third of seats (40 of 118).

5. With this level of entrenched dominance, it is unsurprising that almost half (54 of 118) of the state House elections in 2024 were uncontested. For would-be Republican candidates in artificially "safe" Democratic districts,

there's no point in running. The same goes for would-be Democratic candidates in districts that have been artificially "packed" with Republicans.

6. The volume of uncontested races means that almost half of the state's Representatives will represent Illinoisians, not because they were elected and had to present their policy ideas to voters through debate and outreach, but only because they submitted the proper forms to the Illinois State Board of Elections. This is not how it is supposed to work. Extreme partisan gerrymandering like this is poisonous to the functioning of any democracy.

7. In addition to being bad policy, extreme partisan gerrymandering is unconstitutional. The Illinois Constitution requires that "[a]ll elections shall be free and equal." ILL. CONST. art. III, § 3. But under the Enacted Plan, that is an impossibility. It also requires that all "Legislative Districts shall be compact." *Id.* art. IV, § 3(a). But the Enacted Plan subordinates compactness to the partisan and incumbent-protection goals of the majority political party.

8. The U.S. Supreme Court has given the responsibility of ending extreme partisan gerrymandering to the states. Pennsylvania and, for a time, North Carolina, picked up the torch, striking down redistricting plans on the basis of identical or comparable constitutional provisions. This Court should follow suit and declare that the Enacted Plan is invalid, enjoin the Illinois State Board of Elections from enforcing it, and appoint a special master to draft a redistricting plan that complies with the Illinois Constitution.

PARTIES

9. Plaintiff TONY MCCOMBIE is a state representative from House District 89, a citizen of the United States and of the State of Illinois, and a duly registered voter of Carroll County, Illinois. McCombie is also the Minority Leader of the Illinois House of Representatives, as provided by Article IV, Section 6(c) of the Illinois Constitution. In this role, McCombie has the duty to promote and express the views, ideas, and principles of the House Republican caucus in the 104th General Assembly and of Republicans state-wide.

10. Plaintiff ROBERT BERNAS is a citizen of the United States and of the State of Illinois and a duly registered Republican voter in Cook County within the boundaries of House District 56 of the Enacted Plan.

11. Plaintiff THOMAS J. BROWN is a citizen of the United States and of the State of Illinois and a duly registered Republican voter in Cook County within the boundaries of House District 57 of the Enacted Plan.

12. Plaintiff SERGIO CASILLAS VAZQUEZ is a citizen of the United States and of the State of Illinois and a duly registered Republican voter in Macon County within the boundaries of House District 96 of the Enacted Plan.

13. Plaintiff JOHN COUNTRYMAN is a citizen of the United States and of the State of Illinois and a duly registered Republican voter in DeKalb County within the boundaries of House District 76 of the Enacted Plan.

14. Plaintiff ASHLEY HUNSAKER is a citizen of the United States and of the State of Illinois and a duly registered Republican voter in St. Clair County within the boundaries of House District 113 of the Enacted Plan.

15. Defendant ILLINOIS STATE BOARD OF ELECTIONS is the entity responsible for overseeing and regulating public elections in Illinois, including elections for the Illinois House of Representatives. *See* ILL. CONST. art. III, § 5; 10 ILCS 5/1A-1 *et seq*.

16. Defendant JENNIFER M. BALLARD CROFT is a member of the ILLINOIS STATE BOARD OF ELECTIONS and is sued only in her official capacity as member of the ILLINOIS STATE BOARD OF ELECTIONS.

17. Defendant CRISTINA D. CRAY is a member of the ILLINOIS STATE BOARD OF ELECTIONS and is sued only in her official capacity as member of the ILLINOIS STATE BOARD OF ELECTIONS.

18. Defendant LAURA K. DONAHUE is a member of the ILLINOIS STATE BOARD OF ELECTIONS and is sued only in her official capacity as member of the ILLINOIS STATE BOARD OF ELECTIONS.

19. Defendant TONYA L. GENOVESE is a member of the ILLINOIS STATE BOARD OF ELECTIONS and is sued only in her official capacity as member of the ILLINOIS STATE BOARD OF ELECTIONS.

20. Defendant CATHERINE S. MCCRORY is a member of the ILLINOIS STATE BOARD OF ELECTIONS and is sued only in his official capacity as member of the ILLINOIS STATE BOARD OF ELECTIONS.

21. Defendant RICK S. TERVEN, SR. is a member of the ILLINOIS STATE BOARD OF ELECTIONS and is sued only in his official capacity as member of the ILLINOIS STATE BOARD OF ELECTIONS.

22. Defendant CASANDRA B. WATSON is a member of the ILLINOIS STATE BOARD OF ELECTIONS and is sued only in her official capacity as a member of the ILLINOIS STATE BOARD OF ELECTIONS.

23. Defendant JACK VRETT is a member of the ILLINOIS STATE BOARD OF ELECTIONS and is sued only in his official capacity as member of the ILLINOIS STATE BOARD OF ELECTIONS.

JURISDICTION

24. This Court has original and exclusive jurisdiction over this action under Article IV, Section 3 of the Illinois Constitution. *See, e.g.*, *Schrage v. State Bd. of Elections*, 88 Ill. 2d 87, 91 (1981); *see also* SUP. CT. R. 382.

STATEMENT OF FACTS

25. The Illinois Constitution requires the General Assembly to enact a new plan for Representative (House) Districts and Legislative (Senate) Districts after each decennial census. ILL. CONST. art. IV, § 3(b). If a plan is not effective by June 30 of the year after the census, then control over redistricting shifts from the General Assembly to a bipartisan commission, as it has many times since the most recent Illinois Constitution took effect in 1970. *Id.*; *see, e.g.*, *Cole-Randazzo v. Ryan*, 198 Ill. 2d 233, 235 (2001); *People ex rel. Burris v. Ryan*, 147 Ill. 2d 270, 275 (1991).

26. In 2021, the results of the 2020 census were delayed. To avoid the risk of a bipartisan process, the General Assembly elected to rely on data from the American Community Survey ("ACS"), a population estimate previously published by the Census Bureau, rather than wait for the release of the official

population totals from the 2020 U.S. decennial census to determine the boundaries of Illinois legislative districts. Thus, the decision to rely on the ACS data estimates, and to rush the creation of the redistricting plan, was driven solely to avoid ceding political control of the legislative redistricting process.

27. On May 28, 2021, the Illinois General Assembly approved a state legislative redistricting plan (the "June Redistricting Plan"). *See* Public Act 102-0010. That plan was enjoined by a federal court because it failed to provide districts that were substantially equal in population.

28. On August 31, 2021, the Illinois General Assembly approved a revised state legislative redistricting plan, which was approved by the Governor on September 24, 2021 (the "Enacted Plan"). *See* Public Act 102-0663. That plan was upheld by the federal court despite challenges by several plaintiff groups, including the NAACP and MALDEF, that it violated federal voting and civil rights laws.

A. The Enacted Plan features extreme partisan gerrymandering.

29. Time and again, it has been shown that the Enacted Plan was created with one overarching goal: maximizing the political power of Democrats in Illinois. This fact has been recognized by a federal district court, admitted by the Director of Redistricting for the House Democratic Caucus and Democratic Representatives themselves, and cited in the public legislative record.

1. The federal district court in *McConchie v. Scholz* concluded the mapmakers were principally motivated by partisan concerns.

30. In the wake of the June Redistricting Plan, several consolidated lawsuits were filed in federal court, alleging that the plan violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. *See McConchie v. Scholz*, 567 F. Supp. 3d 861 (N.D. Ill. 2021) ("*McConchie I*"). Specifically, the plaintiffs there argued that the plan ran afoul of the U.S. Constitution's promise of "one-person, one-vote," as legislative districts featured maximum population deviations of more than 20%. *Id.* at 871, 886.

31. The three-judge federal court agreed, finding that the "maximum deviations in the June Redistricting Plan exceed any limit tolerated by any case law." *Id.* at 887.

32. In coming to this conclusion, the court found that the General Assembly had rushed the completion of the June Redistricting Plan "to avoid ceding political control of the legislative redistricting process" to "a bi-partisan commission." *Id.* at 888–89. It held that this desire to "secur[e] partisan advantage" was not "a proper rationale for violating constitutionally-required mandates," such as the "one-person, one-vote" principle. *Id.*

33. In response, the General Assembly passed a second map after the release of the census data: the Enacted Plan. It was again challenged, but this time on the grounds that legislative districts were racially gerrymandered in violation of Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301, and

the Fourteenth Amendment's Equal Protection Clause. *McConchie v. Scholz*, 577 F. Supp. 3d 842, 851 (N.D. Ill. 2021) ("*McConchie II*").

34. This time, the court rejected the plaintiffs' challenge. But in so doing, the court held that "the voluminous evidence submitted by the parties overwhelmingly establishes that *the Illinois mapmakers were motivated principally by partisan political considerations*." *Id.* at 885 (emphasis added).

35. This conclusion was supported by the fact that the General Assembly's Democratic leadership argued that "politics . . . drove the configuration of all of the challenged districts." *Id.* at 877. Time and again, the court made clear that it saw that enshrining political advantage was the main driver of the Enacted Plan. *E.g.*, *id.* at 873 ("[S]tate legislators unabashedly put politics front and center . . . ."); *id.* at 879 ("General Assembly staff and state legislators admit that they divided up HD[s] 112 [and] 113 . . . to shore up the Democratic vote . . . ."); *id.* at 883 ("[T]he record is replete with political . . . justifications for the districts that the legislature drew.").

2. The deposition of Jonathan Maxson confirms the mapmakers were principally motivated by partisan concerns.

36. The federal court's conclusion that partisanship drove the Enacted Plan was largely supported by deposition testimony of Jonathan Maxson, the Director of Redistricting for the House Democratic Caucus who oversaw the 2021 redistricting process. *McConchie II*, 577 F. Supp. 3d at 872; Dep. Tr. of Jonathan Maxson ("Maxson Dep."), Ex. A at 20:6–19, 21:9–12.

37. Through his testimony, Maxson made clear that the Democratic state legislature put politics front and center in the redistricting process.

38. One focus in *McConchie II* was on House Districts ("HD") 112 and 113, both of which were "particularly vulnerable to a viable Republican challenge." 577 F. Supp. 3d at 879.

39. In light of that vulnerability, Maxson described how the primary goals for the configurations of HDs 112 and 113 was shoring up Democratic seats.

40. Maxson stated that the goal of redrawing HD 112 was to "enhance the Democratic performance" of that district. Ex. A, Maxson Dep. at 204:9–12. To this end, he said that he sought to "keep the Edwardsville base of that district together," as it was "important politically" for the Democratic incumbent. *Id.* at 204:6–8. When asked whether he endeavored to improve Democrats' performance in HD 112, Maxson responded: "[a]s much as possible, yes." *Id*. at 208:4–6.

41. As pertains to redrawing HD 113, Maxson testified that the goal was to keep the district "at about an equal Democratic performance, which is where [it] started at." Ex. A, Maxson Dep. at 204:22–205:3.

42. Maxson further testified that, in drawing these House Districts, he looked at "some countywide election results and the individual results from . . . their previous races" to strategize to protect the Democratic incumbents. Ex. A, Maxson Dep. at 205:18–22.

43. In light of Maxson's admissions, the court in *McConchie II* made this unsurprising conclusion: "[O]verwhelming evidence demonstrates that" the relevant parts of the Enacted Plan "was drawn to protect Democrats from Republican challenges in . . . HD[s] 112 and 113." 577 F. Supp. 3d at 879.

3. Legislative history confirms the mapmakers were principally motivated by partisan concerns.

44. The Democrats' partisan motives were far from secret. In the resolution passed by the Illinois House of Representatives that sets forth the redistricting principles and summaries of the proposed district boundaries included in the Enacted Plan, these considerations were explicitly cited as justifications for various district boundaries. H.R. 0443 (the "House Resolution").

45. The House Resolution states that HD 26 was altered "for political purposes" and was not adjusted in response to testimony requesting that the Black population in the district be increased in part because such a change would "potentially pair multiple incumbent Democratic legislators."

46. The House Resolution included "incumbent preservation" and "the ability to increase the partisan advantage" as factors driving the drawing of HDs 3 and 4, and "enhancing partisan composition" was a justification for the boundaries of HDs 96 and 98.

47. The House Resolution publicly explains that for multiple other districts, "partisan advantage" was explicitly considered for those that "traditionally elect members of the Democratic party," and still more were

"drawn for political purposes to assist with increasing the political advantage" and "to impact the political composition of neighboring districts."

4. The public believes the process was unfair.

48. The General Assembly received feedback and concern from a wide array of community and advocacy groups reflecting their dismay with the process that led to the 2021 maps and the General Assembly's lack of responsiveness to public feedback as it instead prioritized its own political goals.

49. The testimony of Ryan Tolley, the Policy Director for CHANGE Illinois, a nonpartisan nonprofit that advocates for ethical government and elections, exemplifies these concerns: "The voices and concerns of those who have already testified this year including Illinois Muslim Civic Coalition, UCCRO, League of Women Voters of Illinois, Latino Policy Forum, Common Cause Illinois, Indivisible Naperville, Better Government Association, Coalition for a Better Chinese American Community, Black Roots Alliance, MALDEF, Chicago Lawyers' Committee for Civil Rights, Mujeras Latinas en Accion, Nonprofit Utopia, Faith Coalition for the Common Good, Mano a Mano Family Resource Center, and many more organizations need to be heard and reflected in any changes to this map. Many more individual community members provided testimony that is also not reflected in the current maps. I would strongly urge committee members and members of the General Assembly to go back and review the testimony from the Spring that largely

seemed to be ignored and draw maps that prioritize that testimony over any political or self-interest."[1]

B. Analysis of data from the recent election clearly shows the effects of extreme partisan gerrymandering.

50. The intended goals of the redistricting worked. While the Republican statewide vote share has gradually increased since 2020, the Republican share of House seats has decreased, cementing the Democratic Party's super-majority control over the legislature.

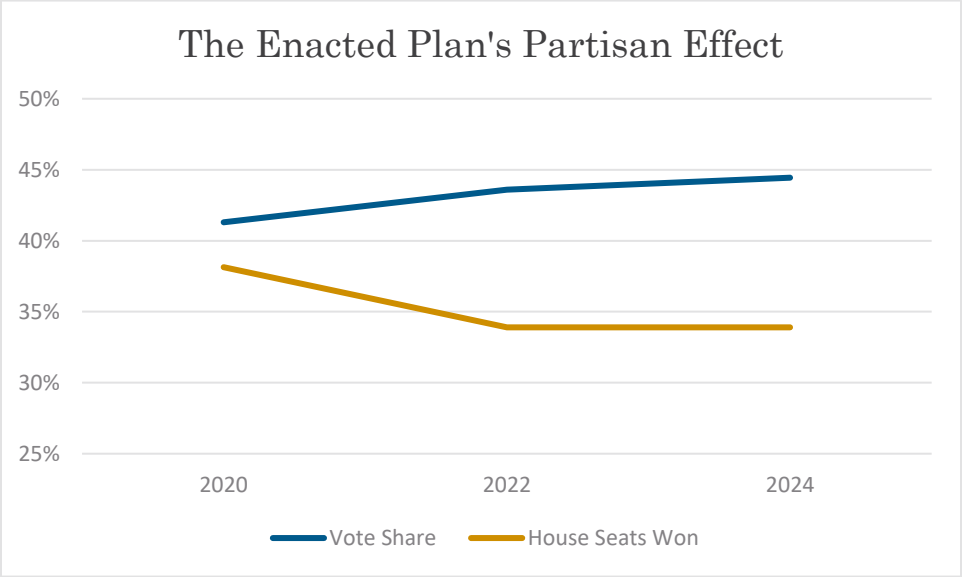


Figure 1. *The table above shows the share of Republican votes as a percentage of votes cast for Republican and Democratic candidates for president and governor in the relevant election year.*

51. While proportionality provides a signal, the conclusion can be drawn from Dr. Jowei Chen's expert analysis. Expert Report of Jowei Chen, Ph.D. ("Chen Rep."), Ex. B.

[1] Letter from CHANGE Illinois to House and Senate Redistricting Committees (Aug. 28, 2021), *available at* https://ilga.gov/house/committees/Redistricting/102Redistricting/HRED/2021August/CHANGE%20IL%20redistricting%20testimony.pdf.

52. Dr. Chen performed a simulation of 10,000 Illinois state House District plans. To comply with minimum redistricting requirements, each simulated plan was required (1) to include only contiguous districts, (2) to tolerate a population difference between the most-populated and least-populated districts that was no larger than in the Enacted Plan, (3) to minimize the number of districts whose Polsby-Popper and Reock compactness scores were less than the scores of the "*Schrage* district," or if possible include only districts with compactness scores above the *Schrage* district scores, and in either case to have plan-wide average compactness scores at least equal to those of the Enacted Plan,[2] and (4) to include at the least the same number of majority-Black and majority-Hispanic districts, measured by voting age population or citizen voting age population, as the Enacted Plan (*i.e.*, 13 majority-Black districts and 11 majority-Hispanic districts). Within those constraints, the plans were then randomly drawn by the computer. *Id.* at 19, 21–23.

53. The results are astonishing yet unsurprising. Dr. Chen found that "the Enacted Plan creates a significant pro-Democratic electoral bias," resulting in as many as 11 fewer Republican-favoring districts when compared to the median outcome among the non-partisan computer-simulated plans. In

[2] The Polsby-Popper and Reock scores are two of the most commonly used and accepted measures of compactness and are used broadly by courts. *See, e.g.*, *Cooper v. Harris*, 581 U.S. 285, 311 (2017); *Vesilind v. Virginia State Bd. of Elections*, 813 S.E.2d 739, 743 & n.3 (Va. 2018). The "*Schrage* district" refers to the district that this Court struck down as being insufficiently compact in *Schrage v. State Bd. of Elections*, 88 Ill. 2d 87, 91 (1981). *See also infra*, § D (discussing *Schrage*).

the most competitive elections, when Republican candidates have the best opportunity to win, the Enacted Plan's effect is most insidious; that is, the more competitive the election, the larger the Democratic advantage. Put plainly, the better Republican candidates do, the more effective the Democrats' gerrymander is. *Id.* at 31–52.

54. The Enacted Plan accomplishes this result by shifting Democratic votes from uncompetitive areas to the most competitive districts. "When compared to the simulated plans, the Enacted Plan effectively removed Republican voters from districts that would otherwise have been electorally competitive or slightly Republican-leaning, thus weakening these districts' likelihood of electing a Republican. These removed Republican voters were instead placed in districts that were already extremely safe Republican or extremely safe Democratic districts; placing these Republican voters into such lopsided districts had almost no effect on these districts' likelihood of electing a Republican or a Democrat in those safe districts." *Id.*

C. There is ample support that extreme partisan gerrymandering is unconstitutional and improper.

55. In *Rucho v. Common Cause*, the U.S. Supreme Court held that partisan gerrymandering claims cannot be brought in federal court. In so holding, it noted that states—including state courts—bore the responsibility for tamping down this practice. *See* 588 U.S. 684, 719–20 (2019).

1. Pennsylvania's Supreme Court determined that partisan gerrymandering violates an identical Free and Equal Election clause under its Constitution.

56. The Pennsylvania Supreme Court has picked up the torch that was laid down in *Rucho*.

57. A group of voters filed a lawsuit in Pennsylvania in 2017 over the Commonwealth's redistricting plan for the U.S. Congress. They alleged that the plan, which was adopted in 2011, skewed the representation of the Commonwealth's 18 districts in favor of the Republican party. This plan, they alleged, violated a requirement in the Pennsylvania Constitution that "[e]lections shall be free and equal." PA. CONST. art. I, § 5; *see League of Women Voters v. Commonwealth*, 178 A.3d 737, 766 (Pa. 2018) ("*LWV*"). This constitutional provision is identical to the one found in the Illinois Constitution.

58. After analyzing text, history, and precedent, the court held that the clause "should be given the broadest interpretation, one which governs all aspects of the electoral process, and which provides the people of this Commonwealth an equally effective power to select the representative of his or her choice, and bars the dilution of the people's power to do so." *Id.* at 814. It also noted that this clause has no analogy in the U.S. Constitution. *Id.* at 804.

59. The court determined that a violation of the clause can be proven by showing that neutral redistricting criteria—like contiguity, compactness, and equality of population—"have been subordinated, in whole or in part, to extraneous considerations such as gerrymandering for unfair partisan political

advantage." *Id.* at 816–17. The court also suggested that a redistricting map can violate this clause even if it "minimally comport[s] with these neutral . . . criteria," but "nevertheless operate[s] to unfairly dilute the power of a particular group's vote." *Id.* at 817.

60. It then applied these standards to the 2011 redistricting plan. The court examined expert reports, including one from Dr. Chen that determined that "there is a small geographic advantage for the Republicans, but it does not come close to explaining the extreme 13–5 Republican advantage in the 2011 plan." *Id.* at 774–75 (cleaned up). Relatedly, it also observed how, in the most recent election, Democrats received 45.9% of the statewide vote, yet only won 27.7% of Congressional seats. *Id.* at 763–64.

61. In light of these and other factors, the court held that "it is clear, plain, and palpable that the 2011 [p]lan subordinates the traditional redistricting criteria in the service of partisan advantage," thereby violating the Free and Equal Elections clause. *Id.* at 818.

62. The congressional map was redrawn, and the elections became "free and equal": In the ensuing two congressional elections, the Republicans and Democrats evenly split the Commonwealth's 18 seats.[3]

[3] *See* Pennsylvania Department of State, *2020 General Election – Official Returns*, https://www.electionreturns.pa.gov/_ENR/General/OfficeResults?OfficeID=11&ElectionID=83&ElectionType=G&IsActive=0; Pennsylvania Department of State, *2018 General Election – Official Returns*, https://www.electionreturns.pa.gov/_ENR/General/OfficeResults?OfficeID=11&ElectionID=63&ElectionType=G&IsActive=0.

2. North Carolina courts have previously determined that partisan gerrymandering violates a comparable Free Election clause under its Constitution.

63. North Carolina's Constitution likewise requires that "[a]ll elections shall be free." N.C. CONST. art. I, § 10.

64. In 2018, plaintiffs filed a lawsuit that alleged that the legislative districts enacted by and for the General Assembly in 2017 violated, among other things, this "Free Elections" clause. *Common Cause v. Lewis*, No. 18 CVS 014001, 2019 WL 4569584, at *1–2 (N.C. Super. Ct. Sept. 3, 2019). A three-judge trial court agreed. *Id.* at *2.

65. The court analyzed text, history, and precedent and found that this clause prohibited "extreme partisan gerrymandering—namely redistricting plans that entrench politicians in power, that evince a fundamental distrust of voters by serving the self-interest of political parties over the public good, and that dilute and devalue votes of some citizens compared to others." *Id.* at *110. It also noted that the Free Elections clause was one of the "clauses that makes the North Carolina Constitution more detailed and specific than the federal Constitution in the protection of the rights of its citizens." *Id.* at *109.

66. The court was convinced that the General Assembly's redistricting plan struck "at the heart" of the Free Elections clause. *Id.* at *112. It found that the legislators in power "manipulated district boundaries, to the greatest extent possible, to control the outcomes of individual races so as to best ensure their continued control of the legislature." *Id.*

67. In coming to this conclusion, the court analyzed expert reports—again, including one from Dr. Chen—which determined that the gerrymandered districts made it "nearly impossible for Democrats to win majorities in either chamber in any reasonably foreseeable electoral environment." *Id.* at *112.

68. In addition to finding that the plaintiffs had shown that the General Assembly intentionally manipulated the statewide map for political gain, the court held that the manipulation was *effective*. As an example, the court noted that the Republicans maintained a 54% majority in the State House and a 58% majority in the State Senate despite obtaining less than 50% of the two-party statewide vote in 2018. *Id.* at *74.

69. The remedial maps created after the *Common Cause* ruling resulted in Democratic gains in both the State House and State Senate.[4]

70. Several years later, the North Carolina Supreme Court put its stamp of approval on the logic of this ruling. *Harper v. Hall*, 868 S.E.2d 499, 542 (N.C. 2022) ("*Harper I*"). In *Harper I*, the court determined that "partisan gerrymandering, through which the ruling party in the legislature manipulates the composition of the electorate to ensure that members of its party retain control, is cognizable under the [F]ree [E]lections clause because it can prevent elections from reflecting the will of the people impartially and by diminishing or diluting voting power on the basis of partisan affiliation." *Id.*

[4] *See 2020 North Carolina Election Results*, N.Y. TIMES, https://www.nytimes.com/interactive/2020/11/03/us/elections/results-north-carolina.html.

It then applied strict scrutiny to the 2021 House map and determined that it was not "narrowly tailored to a compelling governmental interest." *Id.* at 556.

71. That court later repeated this holding, stating that, "when the General Assembly enacts a districting plan that systematically makes it harder for certain voters to elect a governing majority based on partisan affiliation, that plan is subject to strict scrutiny and is unconstitutional unless the General Assembly can demonstrate that the plan is narrowly tailored to advance a compelling governmental interest." *Harper v. Hall*, 881 S.E.2d 156, 181 (N.C. 2022) ("*Harper II*") (cleaned up) (determining that remedial plan also did not pass strict scrutiny).

72. After Republicans flipped control of the North Carolina Supreme Court in 2022, it overruled *Harper I*, withdrew the opinion in *Harper II*, and abrogated the holding in *Common Cause*. *See Harper v. Hall*, 886 S.E.2d 393, 447–48 (N.C. 2023) ("*Harper III*").

73. The dissenting opinion in *Harper III*, however, was strident: "A rigged election is not, in any sense of the word, a free election. Nor is an election in which a voter's voice is worthless because the election's results have been preordained by whoever wields political power in the General Assembly." 886 S.E. 2d at 457 (Earls, J., dissenting).

3. This Court requires that legislative redistricting maps be politically fair.

74. In addition to the decisions in *LWV*, *Common Cause*, *Harper I*, and *Harper II*, precedent from this Court supports a determination that extreme partisan gerrymandering is unlawful.

75. On two occasions, this Court has held that legislative redistricting maps must "meet all legal requirements regarding political fairness." *People ex rel. Burris v. Ryan*, 147 Ill. 2d 270, 296 (1992); *accord Cole-Randazzo v. Ryan*, 198 Ill. 2d 233, 236 (2001).

76. While this Court has never expressly defined "political fairness," in *Davis v. Bandemer*, 478 U.S. 109 (1986), a plurality of the U.S. Supreme Court explained that it is politically unfair when an election system "substantially disadvantages certain voters in their opportunity to influence the political process effectively." *Id.* at 133. This can be proven, it held, if there is "evidence of continued frustration of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process." *Id.*

77. Scholars have defined "political fairness" more broadly. One definition is "the absence of partisan bias, where partisan bias is the degree to which the electoral system makes it easier for one party (and harder for the other) to translate its votes into seats." Adam Cox, *Partisan Fairness and Redistricting Politics*, 79 N.Y.U. L. REV. 751, 765 (2004). Another is "that each person or group in the community should have a roughly equal share of control

over the decisions made by . . . the state legislature." RONALD DWORKIN, LAW'S EMPIRE 178 (1986).

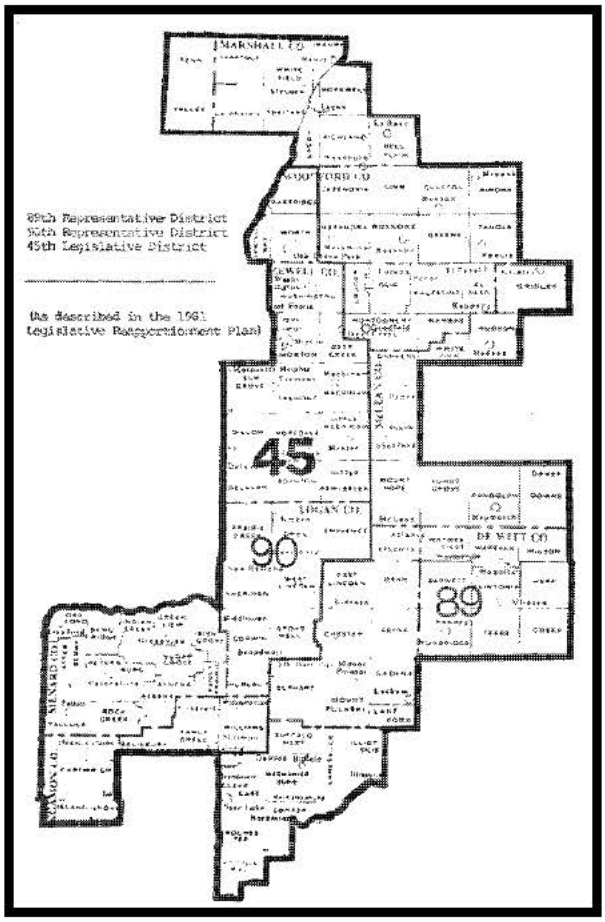
78. Whatever the appropriate definition, the requirement that redistricting maps be "politically fair" must foreclose any extreme partisan gerrymander. After all, it is not "politically fair" to draw districts in such a way to systematically and intentionally suppress a significantly sized political party.

D. Because the mapmakers were so concerned about partisanship, they flouted the Illinois Constitution's compactness requirement.

79. Under the Illinois Constitution, legislative districts must be "compact, contiguous and substantially equal in population." ILL. CONST. art. IV, § 3(a). The first of these requirements—compactness—is "'almost universally recognized' as an appropriate anti-gerrymandering standard." *Schrage v. State Bd. of Elections*, 88 Ill. 2d 87, 96 (1981)

80. The framers of the Illinois Constitution agreed. They noted that the compactness standard "reflect[s] the objective of improving legislative representation through seeking to insure that districts are not gerrymandered." 6 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 1352–53. They highlighted that, "[w]here no standards of this nature exist, there exists an open invitation to gerrymander." *Id.* at 1353.

81. This Court recognized these important principles in *Schrage*, a case that involved a compactness challenge to HD 89, which looked like this:



82. In *Schrage*, this Court determined that there were two ways to decide whether HD 89 was sufficiently "compact." One was to compare the district to a "mathematically precise standard of compactness." *Id.* at 98. The other was to "rely on a visual examination of the questioned district." *Id.*

83. This Court found that a visual examination of HD 89 was sufficient to show that it was not "compact." This examination "reveal[ed] a tortured, extremely elongated form which is not compact in any sense." *Id.* So, HD 89 "fail[ed] to meet the compactness standard" of Article IV, Section 3(a) of the Illinois Constitution. *Id.*

84. Here, applying either of *Schrage*'s tests to the Enacted Plan leads to one conclusion: A significant number of districts—as many as 52 districts identified by Dr. Chen—are not "compact in any sense." *Id.*; *see* Ex. B, Chen Rep. at 7–13.

1. A mathematical standard of compactness starkly reveals that many districts are not compact.

85. Dr. Chen computed the Polsby-Popper and Reock scores of the 118 House Districts in the Plan. The Polsby-Popper metric evaluates the perimeter of a district to its area; smooth perimeters score better, while cragged borders score worse. The Reock metric measures the relationship between the area of a district and the area of the smallest circle in which that district could fit; the more closely a district aligns to a circle, which is the most compact shape, the higher the score. Ex. B, Chen Rep. at 9.

86. The General Assembly's disregard for compactness is brazen. Of 118 House Districts, *49* districts have Reock scores less than that of the *Schrage* district, *25* districts have Polsby-Popper scores less than that of the *Schrage* district, *22* districts have both Reock and Polsby-Popper scores less than that of the *Schrage* district, and *52* districts are less compact by at least one of those measures. *Id.* at 11.

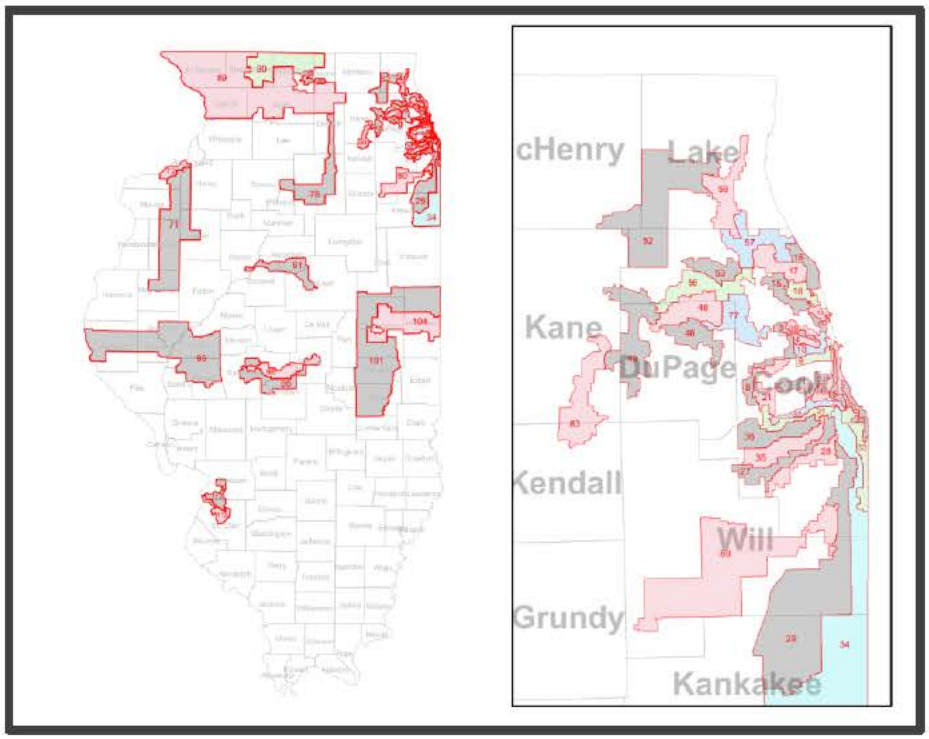
87. As noted above, Dr. Chen instructed his simulation to minimize the number of districts with compactness scores below that of the *Schrage* district. In all 10,000 simulations, *not one* district fell below those minimum scores. In other words, it is possible to draw *every* district to be at least as

compact as the *Schrage* district, even while equalizing population and creating districts that comply with Section 2 of the Voting Rights Act. *Id.* at 22–23.

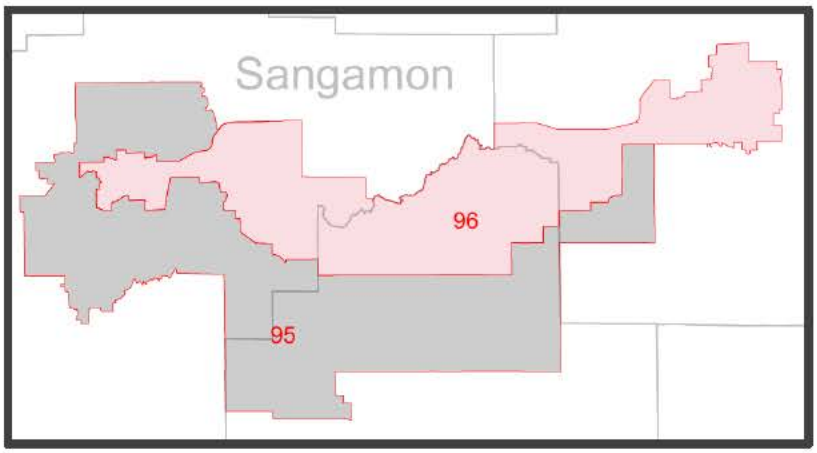
2. A visual examination also highlights that many districts are not compact.

88. The Enacted Plan is an embarrassment of oddly shaped districts that resemble nothing like the natural communities they purport to serve.

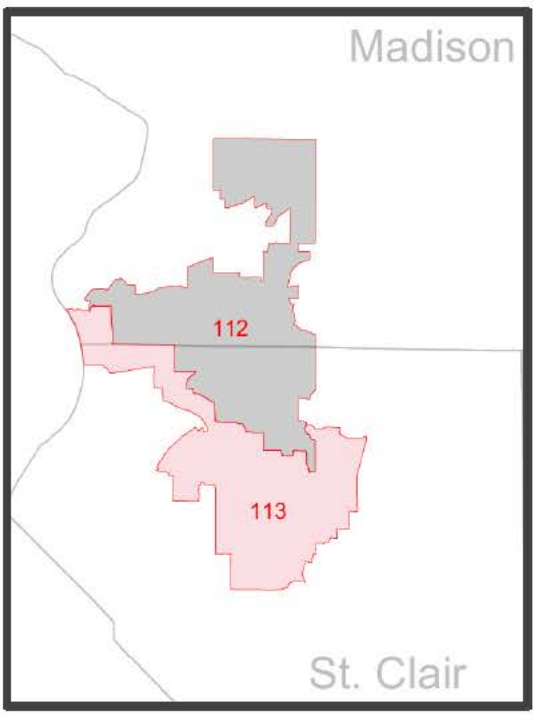
89. Figure 2 from Dr. Chen's report, which is replicated below, highlights the 52 House Districts that are less compact that the *Schrage* district. Districts in the Chicago region generally emanate from the City and snake into the suburbs. They are thin and gangly, often no more than a few blocks wide in parts while stretching for miles and across county borders. By contrast, the invalidated *Schrage* district was no thinner than an entire township at its narrowest.



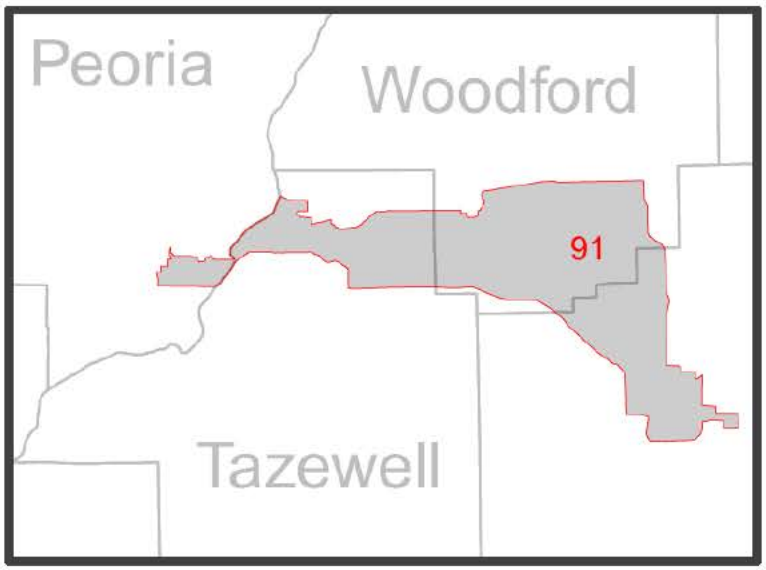
90. The non-compact districts are not confined to Chicago. A peculiar pair of districts, HD 95 and 96, intertwine between Springfield and Decatur. HD 95 wraps around HD 96 near Springfield like a hooked finger, only to come back around toward Decatur.



91. The Metro East region is also contorted. HDs 112 and 113 slice through Madison and St. Clair Counties at the expense of natural communities, in places no wider than a few blocks.



92. HD 91 stretches from Bloomington to Peoria. Near East Peoria, the district becomes so thin that it is not even contiguous by land: the connection between the two parts of the district is only as wide as the Illinois River.



3. Compactness was subordinated to partisan motives.

93. Across the State, the General Assembly's motive in drawing non-compact districts was consistent: partisanship advantage. As Dr. Chen concluded, "partisanship subordinated the traditional districting principles of drawing geographically compact districts." Ex. B, Chen Rep. at 59–60.

94. The majority-Black districts in the Chicago region were drawn to crack Republican votes in the suburbs. HDs 5, 6, 25, 26, 27, 28, and 33 are majority-Black districts starting in the south side of Chicago and stretching to the south suburbs. HDs 27 and 28 stretch from the south side of Chicago to the southwest suburbs. HDs 31 and 32 stretch from the west side of Chicago to the west suburbs. HD 8 begins in the west side of Chicago and wraps around to the

southwest suburbs. Both the Polsby-Popper and Reock compactness measures of all these districts are substantially below those of the *Schrage* district. *Id.* at 10.

95. Dr. Chen's analysis explains why. His simulations demonstrate that it is never necessary to draw districts with compactness scores below those of the *Schrage* district, even to accommodate at least the same number of majority-Black districts. All of the majority-Black districts in the Enacted Plan but one (HD 30) are less compact than the *Schrage* district, and all are substantially more Republican than would be naturally expected. "[D]rawing long, narrow districts with compactness scores below the *Schrage* District enabled the Enacted Plan's mapmakers to 'waste' suburban Republican votes in otherwise safe Democratic, majority-Black districts." *Id.* at 52–59.

96. The General Assembly's goal is evident: draw skinny Democratic districts that snake into Republican areas and absorb as many Republican votes as possible without jeopardizing Democrats' ability to win those districts, thereby making the adjacent areas easier for Democrats to win. The General Assembly is using Black-majority districts to crack Republican votes solely for partisan purposes. *Id.*

97. Near Springfield, HDs 95 and 96 were also drawn for partisan reasons. The legislature admitted as much in the House Resolution, explaining that its intent in crafting HD 96 was to "enhanc[e] partisan composition" of that district. The result is two districts whose Polsby-Popper and Reock

compactness scores are substantially lower than those of the *Schrage* district. *Id.* at 10.

98. The dissection of the Metro East region for partisan aims was already explained by Maxson. *See supra*, § A.2. Incumbent Democrats in HDs 112 and 113 demanded a careful manipulation of the region to shore up the partisan composition of those districts, notwithstanding any constitutional compactness requirement.

CAUSES OF ACTION

COUNT I
(Violation of the Illinois Constitution's Free and Equal Election Clause, Art. III, § 3)

99. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

100. Article III, Section 3 of the Illinois Constitution states that "[a]ll elections shall be free and equal."

101. This "Free and Equal Election Clause" requires that "each voter have the right and opportunity to cast his or her vote without any restraint and that his or her vote has the same influence as the vote of any other voter." *Goree v. LaVelle*, 169 Ill. App. 3d 696, 699 (1988) (citing *People v. Deatherage*, 401 Ill. 25, 37 (1948)).

102. In many parts of Illinois, Republican voters do not have "the same influence as the vote of any other voter." *Id.* This is by design.

103. As the federal district court in *McConchie II* noted, the primary intent in the redistricting process was to "shore up Democratic seats." 577 F. Supp. 3d at 879. As shown above, both the legislative history, as well as the mapmakers' own testimony, confirms the mapmakers were, at all times, principally motivated by partisan concerns.

104. In addition, the Enacted Plan had the effect of substantially diluting the power of Republican votes.

105. Dr. Chen's expert report confirms this. He found that the Enacted Plan creates a "significant pro-Democratic electoral bias," resulting in as many as 11 fewer Republican-favoring districts when compared to the median outcome among the non-partisan computer-simulated plans.

106. Republican voters in many parts of the State—including Plaintiffs ROBERT BERNAS, THOMAS J. BROWN, SERGIO CASILLAS VAZQUEZ, JOHN COUNTRYMAN, and ASHLEY HUNSAKER—therefore have less of an ability to elect representatives of their choice due to the gerrymandered nature of the Enacted Plan.

107. Finally, there is no legitimate, non-partisan justification for this discrimination.

108. In other words, the Enacted Plan—which features extreme partisan gerrymandering—violates the Free and Equal Election Clause. *See Rucho v. Common Cause*, 588 U.S. 684, 735–36 (2019) (Kagan, J., dissenting)

(noting that lower courts have used a framework of (a) intent, (b) effects, and (c) lack of justification to adjudicate partisan gerrymandering cases).

109. As others have recognized, "[b]y drawing districts to maximize the power of some voters and minimize the power of others, a party in office at the right time can entrench itself there for a decade or more, no matter what the voters would prefer." *Rucho*, 588 U.S. at 727, 750 (Kagan, J., dissenting) (pointing out that both Democrats and Republicans in underlying cases were responsible for their partisan gerrymandering). Partisan gerrymandering, at its most extreme, amounts to "rigging elections." *Id.* (quoting *Vieth v. Jubelirer*, 541 U.S. 267, 317 (2004) (Kennedy, J., concurring in the judgment)).

110. There is ample support for determining that the Free and Equal Election Clause prohibits extreme partisan gerrymandering. Indeed, the Pennsylvania Supreme Court—examining an identical constitutional provision—held just that. *LWV*, 178 A.3d at 766. It determined that Pennsylvania's Free and Equal Elections Clause requires that all voters "have an equal opportunity to translate their votes into representation," and that this requirement is violated where traditional districting criteria such as preserving political subdivisions and compactness are "subordinated, in whole or in part, to extraneous considerations such as gerrymandering for unfair partisan political advantage." *Id.* at 814, 817.

111. Moreover, North Carolina courts in a variety of cases until 2022 struck down maps that were the byproduct of partisan gerrymandering because

of, among other things, a state constitutional provision that required free elections. *Common Cause*, 2019 WL 4569584, at *2; *Harper I*, 868 S.E.2d at 556; *Harper II*, 881 S.E.2d at 181. In the views of these courts, "when the General Assembly enacts a districting plan that systematically makes it harder for certain voters to elect a governing majority based on partisan affiliation, that plan is subject to strict scrutiny and is unconstitutional unless the General Assembly can demonstrate that the plan is narrowly tailored to advance a compelling governmental interest." *Harper II*, 881 S.E.2d at 181 (cleaned up).

112. The Free and Equal Election Clause of the Illinois Constitution protects the rights of voters to at least the same extent as Pennsylvania's identical provision and North Carolina's comparable one, as understood by its courts prior to *Harper III*.

113. Additionally, this Court requires that legislative redistricting maps "meet all legal requirements regarding political fairness." *Burris*, 147 Ill. 2d at 296; *Cole-Randazzo*, 198 Ill. 2d at 236. It is not politically fair to draw an Enacted Plan with the purpose—and effect—of enshrining one political party's power.

114. The Enacted Plan was drawn with the primary motivation to ensure Democratic victories and is anything but "free and equal." The Enacted Plan thus denies voters their equal right to participate in the political process and to elect representatives of their choice, violating Article III, Section 3 of the Illinois Constitution.

COUNT II
(Violation of the Illinois Constitution's Compactness Requirement, Art. IV, § 3)

115. Plaintiffs hereby incorporate all other paragraphs as if fully set forth herein.

116. Under the Illinois Constitution, legislative districts must be "compact, contiguous and substantially equal in population." ILL. CONST. art. IV, § 3(a).

117. "[R]equiring compactness prevents gerrymandering. In fact, compactness is almost universally recognized as an appropriate anti-gerrymandering standard." *Schrage*, 88 Ill. 2d at 96 (internal quotations omitted). "Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering." *Id.* at 104 (quoting *Reynolds v. Sims*, 377 U.S. 533, 579 (1964)).

118. As Dr. Chen's expert report shows, the Enacted Plan contains 52 House Districts that fail to comply with the requirement of the Illinois Constitution that House Districts must be compact.[5]

119. These House Districts fracture a significant number of counties, municipalities, and townships.

[5] These districts are HDs 1, 3, 4, 5, 6, 8, 9, 10, 11, 13, 15, 16, 17, 18, 21, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 39, 46, 48, 49, 52, 53, 56, 57, 59, 68, 71, 72, 76, 77, 80, 83, 89, 90, 91, 95, 96, 99, 101, 104, 112, and 113.

120. There is no legitimate justification for the highly irregular, non-compact House Districts within the Plan. As Dr. Chen concluded, it is possible to draw *every* district to be at least as compact as the *Schrage* district, even while equalizing population and creating districts that comply with Section 2 of the Voting Rights Act.

121. The pervasive lack of compactness of the House Districts burdens Plaintiff TONY MCCOMBIE's ability to carry out her constitutionally prescribed duty of representing the interests of her caucus and Republican voters throughout the State of Illinois.

122. The pervasive lack of compactness of the House Districts also affords the voters that reside within them—including Plaintiffs ROBERT BERNAS, THOMAS J. BROWN, SERGIO CASILLAS VAZQUEZ, JOHN COUNTRYMAN, and ASHLEY HUNSAKER—less opportunities than other members of the electorate to participate in the political process and to elect representatives of their choice.

123. The lack of compactness is so pervasive that it is not possible to redraw only several House Districts. In other words, an actual controversy exists between Plaintiffs and Defendants regarding whether the Enacted Plan is invalid and void *ab initio*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

a. Assume jurisdiction over this action pursuant to Article IV, Section 3(b) of the Illinois Constitution and Supreme Court Rule 382.

b. Set an orderly briefing schedule for all parties herein to plead and file briefs.

c. Declare the Enacted Plan unconstitutional as violative of Article III, Section 3, and Article IV, Section 3(a) of the Illinois Constitution.

d. Issue a permanent injunction enjoining Defendants, their agents, employees, and those persons acting in concert with them, from enforcing or giving any effect to the Plan, including enjoining the Board Members from conducting any elections based on the Plan.

e. Appoint a Special Master to draft a valid and constitutionally acceptable redistricting plan or grant such other appropriate relief that allows for the drafting and implementation of a valid and constitutionally acceptable redistricting plan.

f. Make all further orders as are just, necessary, and proper to ensure complete fulfillment of this Court's declaratory, injunctive, and equitable orders in this case.

g. Grant such other and further relief as it deems is proper and just, including, but not limited to, reasonable costs and attorneys' fees.

Dated: January 28, 2025

Respectfully submitted,

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Counsel for Plaintiffs

No. _____

IN THE SUPREME COURT OF ILLINOIS

TONY MCCOMBIE, in her official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter; ROBERT BERNAS, individually as a registered voter; THOMAS J. BROWN, individually as a registered voter; and SERGIO CASILLAS VAZQUEZ, individually as a registered voter; JOHN COUNTRYMAN, individually as a registered voter; and ASHLEY HUNSAKER, individually as a registered voter, Plaintiffs, v. ILLINOIS STATE BOARD OF ELECTIONS and JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, RICK S. TERVEN, SR., CASANDRA B. WATSON, and JACK VRETT, all named in their official capacities as members of the State Board of Elections, Defendants.	)	Original Action under Article IV, Section 3 of the Illinois Constitution

TO: Marni M. Malowitz
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NOTICE OF FILING OF COMPLAINT

PLEASE TAKE NOTICE that on January 28, 2025, the undersigned electronically filed the Complaint in the above-captioned case with the Clerk of the Supreme Court of Illinois using Odyssey eFileIL. A copy is hereby served upon you.

Dated: January 28, 2025

Respectfully submitted,

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Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Charles E. Harris, II, an attorney, hereby certify that on January 28, 2025, I caused a Notice of Filing and the Complaint to be electronically filed with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system. I further certify that I will cause one copy of the above-named filings to be served upon counsel listed below via electronic mail on January 28, 2025.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Charles E. Harris, II
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Counsel for Plaintiffs

State of Illinois
Executive Department

I, JESSE WHITE, Secretary of State of the State of Illinois, do hereby certify that on this date a drawing was held to determine the length of State Senators terms of office. The drawing was held in compliance with provisions of 10 ILCS 5/29C-5. As a result of this drawing State Senators will be elected in the legislative districts for terms of office as set forth below.

FIRST GROUP	SECOND GROUP	THIRD GROUP
2022 – 4 Years	2022 – 4 Years	2022 – 2 Years
2026 – 4 Years	2026 – 2 Years	2024 – 4 Years
2030 – 2 Years	2028 – 4 Years	2028 – 4 Years
DISTRICTS	**DISTRICTS**	**DISTRICTS**
2	3	1
5	6	4
8	9	7
11	12	10
14	15	13
17	18	16
20	21	19
23	24	22
26	27	25
29	30	28
32	33	31
35	36	34
38	39	37
41	42	40
44	45	43
47	48	46
50	51	49
53	54	52
56	57	55
59		58

IN TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois. Done at the City of Springfield, **February 15, 2022.**

Jesse White

SECRETARY OF STATE