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

DAN MCCONCHIE, in his official capacity as Minority Leader of the Illinois Senate and individually as a registered voter, JIM DURKIN, in his official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter, the REPUBLICAN CAUCUS OF THE ILLINOIS SENATE, the REPUBLICAN CAUCUS OF THE ILLINOIS HOUSE OF REPRESENTATIVES, and the ILLINOIS REPUBLICAN PARTY,

Plaintiffs,

vs.

CHARLES W. SCHOLZ, IAN K. LINNABARY, WILLIAM M. MCGUFFAGE, WILLIAM J. CADIGAN, KATHERINE S. O'BRIEN, LAURA K. DONAHUE, CASANDRA B. WATSON, and WILLIAM R. HAINE, in their official capacities as members of the Illinois State Board of Elections, EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives, the OFFICE OF SPEAKER OF THE ILLINOIS HOUSE OF REPRESENTATIVES, DON HARMON, in his official capacity as President of the Illinois Senate, and the OFFICE OF THE PRESIDENT OF THE ILLINOIS SENATE,

Defendants.

Case No. 1:21-cv-03091

Circuit Judge Michael B. Brennan
Chief District Judge Jon E. DeGuilio
District Judge Robert M. Dow, Jr.

Three-Judge Court
Pursuant to 28 U.S.C. § 2284(a)

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REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Plaintiffs' Summary Judgment Memorandum ("MSJ Memo") [Dkt. No. 78] established that the June 2021 state legislative map (the "June Map") has a maximum population deviation nearly ***three times*** the 10% limit set by the Supreme Court and well outside the 16.4% level the Court has said "may well approach tolerable limits." *Mahan v. Howell*, 410 U.S. 315, 329 (1973). In other words, the level of population disparity is beyond that for which a justification can be offered. None of the Defendants contest the amount of the deviations in the June Map, and Plaintiffs are therefore entitled to summary judgment on their claims challenging the map.

In their Opposition ("Lead. Opp.") [Dkt. No. 104], the Leadership Defendants rely on a false narrative. They assert (at 2-3) the General Assembly had a "constitutional mandate" to enact a map by June 30th and that it was required to draft the map using population estimates from the American Community Survey ("ACS"), which was the "best data then available." But there is no "mandate" requiring the General Assembly to enact a map by June 30th. The Illinois Constitution specifically contemplates that a map might ***not*** become effective by that date and a commission will then be convened to draft a map, which has happened in four of the last five redistricting cycles. This year, however, in a blatant attempt to avoid having the redistricting authority shift to the commission, the General Assembly chose to rush through an invalid map. When it drew the June Map, the General Assembly knew that ACS estimates were never intended to be an accurate source of population data. And the passage of an invalid map did not advance any "rational state objective." Instead, the General Assembly irrationally attempted to subvert the long-standing redistricting process established by the Illinois Constitution.

Both the Board Member Defendants ("Board Opp.") [Dkt. No. 99] and the Leadership Defendants oppose Plaintiffs' summary judgment motion on a number of grounds, none of which

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has merit. ***First***, both sets of Defendants argue that Plaintiffs lack standing. Not true. Plaintiffs have established both individual and associational standing, either of which is sufficient. With respect to individual standing, Plaintiffs have shown that Leaders McConchie and Durkin vote in and represent overpopulated districts and have suffered injuries through the dilution of their voting power. With respect to associational standing, other members of the Republican Caucuses of the Illinois House of Representatives and Senate and the Illinois Republican Party (the "Associational Plaintiffs") also vote in and represent overpopulated districts and thus also have been injured.

Second, both the Board Members and the Leadership Defendants argue that this dispute is now moot because the General Assembly voted to pass a new map in August (the "August Map"), which has yet to be signed by Governor Pritzker. To the contrary, Plaintiffs' claims are not moot, regardless of whether the Governor approves the August Map. Plaintiffs and other Illinois voters have already been injured through the passage of the invalid June Map, which delayed the constitutionally mandated redistricting process from proceeding and delayed the appointment of members to a commission with authority to draft a valid map. This is an ongoing dispute between the parties that will not be rendered moot by the enactment of the August Map. In addition, the new legislation does not purport to repeal the June Map, but only supersede it. Thus, if the August Map is ultimately found to be invalid—which Plaintiffs believe will happen—the June Map will not be superseded, and the Board Members will have a statutory duty to conduct elections using the malapportioned districts in that map. Finally, this dispute is not moot because the General Assembly's actions in attempting to pass the June Map are relevant for evaluating the motivations and process used in passing the August Map, which will soon be before this Court.

Third, the Leadership Defendants argue that disputed factual issues exist regarding whether the deviations in the June Map are justified by a "rational state policy." This is also false.

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The degree of population deviation in the Map—nearly three times the Supreme Court's limits—is undisputed and far exceeds any justifiable amount, which renders the Map *per se* invalid. Moreover, the General Assembly did not articulate any purported justification (nor is there any) for such deviations when it passed the June Map and instead falsely insisted that the map created districts of substantially equal population. Any justifications now offered by the Leadership Defendants are simply *ex post facto* rationalizations. Finally, the Leadership Defendants' purported justification for using ACS estimates to draw the June Map is the alleged "constitutional mandate" to enact a map by June 30th. But there is no such "mandate" and the ACS estimates are not proper population data for redistricting purposes, much less the "best data available."

Fourth and finally, the Leadership Defendants argue that the only remedial option available to the Court is to defer to the General Assembly to pass a new map, as it purported to do in August. To the contrary, the Court has broad equitable authority to craft a remedy for an unconstitutional map. Given the General Assembly's improper actions in passing the June Map without accurate population data, the Court should not grant the General Assembly yet another opportunity to thwart and delay the redistricting process. Instead, the Court should undertake an "equitable weighing process" to select a remedy. *North Carolina v. Covington*, --- U.S. ---, 137 S. Ct. 1624, 1625 (2017). The Court has a variety of available equitable remedies, including ordering the Leadership Defendants to appoint members to a commission with authority to draft a map, as provided under the Illinois Constitution. Alternatively, the Court could appoint a special master or grant other equitable relief that allows for the drafting of a valid map.

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ARGUMENT

I. Plaintiffs Have Established Both Individual and Associational Standing.

Both the Board Members and the Leadership Defendants argue that Plaintiffs have failed to establish standing to bring this lawsuit. Board Opp. at 3-4; Lead. Opp. at 7-9. This is false. In

their Opposition to the Leadership Defendants' Motion to Dismiss ("MTD Opp.") [Dkt. No. 102] (at 6-11), Plaintiffs explained that they have established both individual and associational standing, either one of which is sufficient to satisfy federal standing requirements. Plaintiffs incorporate those standing arguments as if fully set forth herein and summarize those arguments below.

First, both Leaders McConchie and Durkin have established individual standing. Leader McConchie votes in and represents the 26th Senate District, which contains 2,733 persons more than the ideal district and 19,982 persons more (9.99% more) than the least-populated Senate District in the June Map. MTD Opp. at 8; Affidavit of Dr. Jowei Chen ("Chen Aff.") [Dkt. No. 79-1], attached as Exhibit A to Plaintiffs' Local Rule 56.1 Statement of Material Facts ("SOF") [Dkt. No. 79], at Table 2, p. 10, 12. Leader Durkin votes in and represents the 82nd House District, which contains 1,210 persons more than the ideal district and 17,401 persons more (18.8% more) than the least-populated House District in the June Map. *Id.* Both Leaders McConchie and Durkin have suffered and are suffering concrete and particularized injuries through the dilution of their voting power. This is more than sufficient to establish standing in a "one person, one vote" case. *See Baker v. Carr*, 369 U.S. 186, 206 (1962); *Hancock Cnty. Bd. of Sup'rs v. Ruhr*, 487 F. App'x. 189, 196 (5th Cir. 2012) (voters in overpopulated district have standing to challenge map).

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Second, the Associational Plaintiffs have standing to bring this case on behalf of their members. The Republican Caucuses have members who vote in and represent 22 House Districts and eight Senate Districts that are overpopulated as compared to the ideal districts. MTD Opp. at 9. And each member of the caucuses resides in and votes in a Senate or House District that is more populated than the least-populated district in the June Map. *Id.* Thus, each member has standing to sue on their own behalf and the caucuses therefore have associational standing.

The Leadership Defendants argue that the Illinois Republican Party has failed to establish

that it has members in "contested districts" because its "members" allegedly include only persons "who are part of the State Central Committee." Lead. Opp. at 8-9. The Leadership Defendants cite a provision of the Illinois Election Code, but that section does not define what constitutes membership in a political party. *Id.* at 8. Instead, it merely states that voters may declare their affiliation with statewide and local political parties when voting in a primary. 10 ILCS 5/7-44.

The Illinois Republican Party is comprised of hundreds of thousands of members and voters who reside in every Illinois Senate and House District. SOF ¶ 5. The party has officials who reside and vote in every Illinois county, including committeemen elected or designated from counties, townships, and wards throughout the state.[1] It is well established that state political parties have associational standing to represent their members. *See, e.g.*, *Smith v. Boyle*, 959 F. Supp. 982, 986 (C.D. Ill. 1997) (Illinois Republican Party had associational standing to sue on behalf of members), *aff'd by* 144 F.3d 1060 (7th Cir. 1998); *see also Texas Democratic Party v. Benkiser*, 459 F.3d 582, 587-88 (5th Cir. 2006) (political party had standing on behalf of member); *Nelson v. Warner*, 472 F. Supp. 3d 297, 309-10 (S.D. W.Va. 2020) (same).

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In addition, contrary to the Leadership Defendants' argument (at 9), there is no "conflict of interest" between members of the Illinois Republican Party. To the contrary, all members have a unified interest in being able to vote in districts with substantially equal populations. *See Baker*, 369 U.S. at 206. Thus, creating a valid map with equal districts does not cause any "direct detriment" to any individual members. *See, e.g.*, *Builders Ass'n of Greater Chicago v. City of Chicago*, 170 F.R.D. 435, 439 (N.D. Ill. 1996) (conflict of interest is present only when there is a

[1] *See* Lists of County Chairmen (https://ilsos.gov/publications/illinois_bluebook/chairman.pdf); Cook County Township Committeemen (https://www.cookrepublicanparty.com/leadership/township-committeemen/); Chicago Ward Committeemen (https://www.cookrepublicanparty.com/leadership/ward-committeemen/).

"direct detriment" to members' interests). Even if there was a conflict here (and there is not), such a conflict would not "preclude associational standing" because the Illinois Republican Party "has properly authorized the litigation" and there are "less drastic" ways to protect the rights of dissenting members, including allowing them to intervene. *Id.* at 439.

Plaintiffs have therefore established both individual and associational standing, either of which is sufficient for federal jurisdiction. *See Korte v. Sebelius*, 735 F.3d 654, 667, n.8 (7th Cir. 2013) (jurisdiction is secure whenever "at least one plaintiff has standing").

II. Plaintiffs' Claims Are Not Mooted by the Passage of the August Map.

The Board Members and Leadership Defendants both assert that Plaintiffs' claims became moot when the General Assembly voted to pass the August Map. Board Opp. at 5-6; Lead. Opp. at 6-7. "The party asserting mootness bears the 'heavy' burden of proof on this 'stringent' standard." *Freedom From Religion Foundation, Inc. v. Concord Community Schools*, 885 F.3d 1038, 1051 (7th Cir. 2018). "[A] case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013). Defendants have failed to meet their "heavy burden." As an initial matter, Governor Pritzker has not yet approved the August Map. Even if the Governor eventually approves the new map, Plaintiffs' claims still will not become moot for a number of reasons.

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First, Plaintiffs and other Illinois voters have already been injured through the passage of the invalid June Map, and there is an ongoing dispute between the parties. By purporting to pass the unconstitutional June Map, the General Assembly delayed the constitutionally required redistricting process, including delaying and seeking to avoid the appointment of members to a commission with authority to draft a valid map. Under the Illinois Constitution, redistricting must occur in the year following each federal census year, *i.e.*, in 2021. Ill. Const. 1970, art. IV § 3(b). If a valid map does not "become[] effective by June 30" of that year, then the appropriate state

officials, including the Leadership Defendants, must appoint members to a commission, and redistricting authority shifts to that commission for the remainder of the redistricting cycle. *Id.*

As shown in Plaintiffs' MSJ Memo (at 6-7), the June Map is unconstitutional and void *ab initio*. In their prior Motion to Dismiss [Dkt. No. 80] (at 11-13), the Leadership Defendants argued that a finding that the June Map is void *ab initio* would be irrelevant because such a ruling "would not erase the redistricting plan from existence." Under the Illinois Constitution, however, the issue is not whether the statute ever existed, but whether it was ever ***effective***. Ill. Const. 1970, art. IV, § 3(b) (commission must be convened if map does not "become[] effective" by June 30th). The very cases cited by the Leadership Defendants explain that a statute found to be unconstitutional and void is not ***effective***. *See People v. Blair*, 986 N.E.2d 75, 82 (Ill. App. Ct. 2013) ("[W]hen we declare a statute unconstitutional and void ab initio, we mean only that the statute was constitutionally infirm from the moment of its enactment and is, therefore, unenforceable. As a consequence, ***we will give no effect to the unconstitutional statute***." (emphasis added)).

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Indeed, the Illinois Supreme Court has long recognized that "[a]n unconstitutional law confers no right, imposes no duty and affords no protection." *Perlstein v. Wolk*, 218 Ill. 2d 448, 454-55 (2006) (internal citations omitted). To be sure, a court may provide equitable relief in the event that a third party "reasonably and in good faith relied upon" a statute that is later held unconstitutional. *Id.* at 466 (finding that party reasonably relied on statute of limitations that was later found to be unconstitutional). However, this exception is inapplicable here. No argument has or can be made that anyone detrimentally relied upon the June Map. Plaintiffs are not aware of any published case in which the General Assembly was able to claim good faith reliance on an unconstitutional and void statute that was passed by the General Assembly itself. This would be an unprecedented expansion of the exception to the "void *ab initio*" doctrine. Moreover, when it

passed the June Map, the General Assembly knew or should have known that the ACS estimates are not accurate population counts and are not intended to be used for redistricting.[2] There is no "good faith" reliance here; the June Map is void *ab initio*, and therefore it was never ***effective***.

Because no valid map became "effective" by June 30th, the redistricting authority should have shifted to a commission. Thus, there is an ongoing dispute between the parties because the Leadership Defendants refuse to appoint commission members. *See* Lead Opp. at 6-7, 14-15. And the Court can grant "effectual relief" by ordering the Leadership Defendants to appoint commission members and enjoining enforcement of the June Map. *See Chafin*, 568 U.S. at 172.

Second, even if the August Map is eventually approved by the Governor, the new legislation does not repeal the June Map. Section 10 of the Public Act that included the June Map (10 ILCS 92/10) lists descriptions of the House Districts, and Section 15 (10 ILCS 92/15) lists descriptions of the Senate Districts.[3] The legislation that includes the new August Map does not repeal Sections 10 or 15, but instead purports to add a new Section 11 (10 ILCS 92/11), which lists descriptions of the new House Districts.[4] Because the boundaries of the Senate Districts are dependent on the boundaries of the House Districts, this amendment also changes the boundaries of the Senate Districts. *See* 10 ILCS 92/15.

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Instead of repealing the descriptions of the districts contained in Section 10 of the June Map, the new legislation adds a paragraph stating that the boundaries in the August Map "shall be

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[2] Prior to passing the June Map, the General Assembly was warned by many groups historically involved in redistricting, such as MALDEF and Common Cause, that a map drawn with ACS estimates would fail. *See* Statement on Appropriate Data for Redistricting (https://www.lwv.org/sites/default/files/2021-04/Statement%20on%20Appropriate%20Data%20for%20Redistricting.pdf).

[3] *See* Public Act 102-0010 (https://www.ilga.gov/legislation/publicacts/102/PDF/102-0010.pdf).

[4] *See* SB0927 (https://www.ilga.gov/legislation/102/SB/PDF/10200SB0927lv.pdf).

construed to take precedence over any conflict of law in accordance with the Statute on Statutes." *See* SB0927 § 5(h) (10 ILCS 92/5(h)).[5] As the Court knows, Plaintiffs intend to challenge the validity and constitutionality of the August Map through a forthcoming amended complaint. If the Senate and House Districts in the August Map are also ultimately found to be invalid, then the June Map will not be superseded, and the Board Members will have a statutory obligation to oversee the 2022 primary and general elections using the malapportioned districts in the June Map. *See* 10 ILCS 92/10, 92/15; *see also* 10 ILCS 5/1A-1, *et seq.* (requiring Board Members to oversee elections pursuant to Illinois statutes). Thus, there remains an ongoing dispute regarding the validity and constitutionality of the districts in the June Map, and Plaintiffs' claims regarding the districts in the June Map are not moot.

Third and finally, the dispute regarding the June Map is not moot because the General Assembly's actions in attempting to pass a clearly invalid and unconstitutional map are relevant for evaluating the legislature's motivations and the process used in passing the August Map, which will soon be at issue before this Court. Despite lacking accurate population data, the General Assembly rushed through the passage of the June Map to avoid having the authority for redistricting shift to a commission. Then, rather than defending the June Map before this Court, the Leadership Defendants reconvened an emergency session of the General Assembly and purported to pass the August Map through an even more rushed and exclusive process. This background will be relevant in assessing the validity of the August Map. *See Abbott v. Perez*, --- U.S. ---, 138 S. Ct. 2305, 2324 (2018) (in the redistricting context, "the 'historical background' of

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[5] The Illinois Statute on Statutes provides that two or more statutes relating to the same subject matter will be construed together except in the case of an "irreconcilable conflict." 5 ILCS 70/6. If such a conflict exists, then the "Act last acted upon by the General Assembly is controlling to the extent of such conflict." *Id.*

a legislative enactment is 'one evidentiary source' relevant to the question" of the legislature's intent).[6]

III. There Are No Disputed Issues of Material Fact Precluding Summary Judgment.

The Leadership Defendants also argue that disputed issues of material fact preclude the Court from entering summary judgment. Lead. Opp. at 9-13. The Leadership Defendants have not submitted any evidence to dispute the findings of Plaintiffs' expert, Dr. Chen, that the June Map has a maximum population deviation nearly ***three times*** the 10% limit established by the Supreme Court. *See Carroll v. Lynch*, 698 F.3d 561, 564 (7th Cir. 2012) ("Once the moving party puts forth evidence showing the absence of a genuine dispute of material fact, the burden shifts to the non-moving party to provide evidence of specific facts creating a genuine dispute."). Instead, they argue that the deviations were justified by a "rational state policy" and that the General Assembly used the "best-available data" to draw the map. *Id.* at 10-11. The Leadership Defendants create a false narrative that is wrong for a number of reasons.

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First, as explained in Plaintiffs' MSJ Memo (at 7), the deviations in the June Map are simply too large to satisfy the requirements of the Equal Protection Clause, and the map is therefore *per se* invalid and unconstitutional. The Supreme Court has explained that, even if a state can articulate a rational policy supporting deviations between districts, there are "tolerable limits" to the amount of deviation allowed under the Equal Protection Clause. *Mahan*, 410 U.S. at 329. The Court has found that a maximum deviation of 16.4% "approach[es]" such tolerable limits. *Id.*; *see*

[6] The Board Members also argue that Plaintiffs' claims are "purely speculative and not ripe for review" because the claims supposedly rely on the premise that the Board Members will conduct elections using the June Map even if the map is found to be unconstitutional. Board Opp. at 5-6. However, as explained in Plaintiffs' Opposition to the Board Members' Motion to Dismiss [Dkt. No. 103] (at 11-13), Plaintiffs' claims are ripe because the Board Members are required by Illinois law to enforce the June Map during the upcoming election cycle, which begins in January 2022, only four months from now. Plaintiffs incorporate these arguments as if set forth in full herein.

also Daly v. Hunt, 93 F.3d 1212, 1218 (4th Cir. 1996) ("there is a level of population disparity beyond which a state can offer no possible justification"). The deviations in this case are nearly double that figure—nearly 30% for House Districts and over 20% for Senate Districts. SOF ¶¶ 34, 36. Plaintiffs are not aware of any court decision, nor do Leadership Defendants cite any court decision, upholding a map with deviations anywhere near as large as those present here. For this reason alone, there is no factual dispute precluding the Court from entering judgment that the June Map is unconstitutional.

Second, the Leadership Defendants' attempts to craft a "justification" for the deviations in the June Map are merely *ex post facto* rationalizations. When the General Assembly passed the June Map, it provided ***no*** justification for the deviations in the Plan. To the contrary, the General Assembly incorrectly claimed that "each of the Districts contained in the [June Map] was drawn to be substantially equal in population." SOF ¶ 25. The House and Senate falsely claimed that the maximum deviations in the map were less than 1% from the ideal districts. *Id.* ¶¶ 26-27. Because the General Assembly asserted that there would be no significant population deviations, it did not attempt to articulate any justification for such deviations. *Id.* ¶¶ 25-27. Thus, the Court should disregard any purported justifications that are now offered by the Leadership Defendants.

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Third and finally, the purported "rational state policy" offered by the Leadership Defendants is baseless and unsupported. The Leadership Defendants argue that the General Assembly had a "constitutional mandate" to pass a map by June 30th and that it used the "best-available data" to draw the map. Neither statement is correct. There is no "mandate" requiring the General Assembly to enact a map by June 30th. To the contrary, the Illinois Constitution specifically contemplates that a map might ***not*** become effective by that date, in which case a commission must be convened. Ill. Const. 1970, art. IV § 3(b). This is the most common outcome;

a commission has been convened in four of the last five redistricting cycles. *See Hooker v. Illinois State Bd. of Elections*, 2016 IL 121007, ¶ 5, 63 N.E.3d 824 (describing historical use of commission in redistricting). This year, however, the General Assembly attempted to thwart this process by rushing through the passage of a clearly invalid map. Courts have said that "certain legislative policies, such as making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbents, may justify population deviations, so long as those policies are nondiscriminatory and consistently applied." *Larios v. Cox*, 300 F. Supp. 2d. 1320, 1349-50 (N.D. Ga. 2004) (citing *Karcher v. Daggett*, 462 U.S. 725, 740 (1983)). None of these policies are at issue here. Defendants cite no authority, nor are Plaintiffs aware of any authority, for the proposition that a legislature may pass an invalid map in an attempt to thwart the shift of redistricting authority to a constitutionally authorized commission.

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Nor did the General Assembly use the "best-available data" to draw the June Map. Indeed, the Census Bureau, which gathers and publishes the ACS estimates has specifically warned that the estimates are "not the official source of population counts" and "***should not be used as actual population counts or housing totals for the nation, states or counties***."[7] Courts have likewise warned that ACS estimates are not "intended to be used in redistricting."[8] Indeed, ACS estimates are not population counts at all, much less the "best-available" population counts.

The Leadership Defendants cite a number of cases in which courts have held that a state is not required to use the "total population figures" from the census in determining the applicable

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[7] ACS Key Facts, Census.gov (https://www.census.gov/content/dam/Census/programs-surveys/acs/news/10ACS_keyfacts.pdf), at p. 1 (emphasis added).

[8] *Pope v. Cty. of Albany*, No. 1:11-cv-0736, 2014 WL 316703, at *13, n.22 (N.D.N.Y. Jan. 28, 2014); *see also Missouri State Conf. of the Nat'l Ass'n for the Advancement of Colored People v. Ferguson-Florissant Sch. Dist.*, 201 F. Supp. 3d 1006, 1022 (E.D. Mo. 2016), *aff'd*, 894 F.3d 924 (8th Cir. 2018) (ACS estimates are subject to sampling bias and margins of error and are not official population counts).

population for redistricting. Lead. Opp. at 11-12. However, none of those cases authorized the use of ACS estimates as the main source of population data for redistricting. To the contrary, the Supreme Court's 2016 *Evenwel* decision explained that all 50 states "use total-population numbers from the census when designing congressional and state-legislative districts, and only seven States adjust those census numbers in any meaningful way." *Evenwel v. Abbott*, 577 U.S. 937, ---, 136 S. Ct. 1120, 1124 (2016). Therefore, the General Assembly's decision to use ACS estimates to draw the June Map was not supported by precedent and was not justified by any legitimate state policy. Accordingly, there are no disputes of material fact precluding the Court from entering summary judgment with respect to Plaintiffs' claims regarding the validity of the June Map.[9]

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IV. The Court Should Award Prospective Equitable Relief that Allows for the Drafting of a Valid and Constitutional Map.

In its September 2, 2021 Order [Dkt. No. 94], the Court asked the parties to address three issues regarding the "remedial phase" of these proceedings. The questions are addressed below.

1. What event(s) trigger a "remedial phase" in redistricting litigation?

The Leadership Defendants concede that a remedial phase is triggered when there is a "finding of a constitutional violation." Lead. Opp. at 13. Indeed, "once a State's legislative apportionment scheme has been found to be unconstitutional," the Court must determine the appropriate remedy for that constitutional violation. *Reynolds v. Sims*, 377 U.S. 533, 585 (1964); *see also Chapman v. Meier*, 420 U.S. 1, 27 (1975) (if a state fails to enact "a constitutionally acceptable" redistricting plan, "the responsibility falls on the District Court"); *Holloway v. City of Virginia Beach*, No. 2:18-cv-69, 2021 WL 3037410, at *11 (E.D. Va. July 19, 2021) (district court

[9] The Board Defendants also argue that Plaintiffs are not entitled to summary judgment with respect to their claim under 28 U.S.C. § 1983. Board Opp. at 6. Plaintiffs already responded to this argument in their Opposition to the Board Members' Motion to Dismiss [Dkt. No. 103], at 13-14, which Plaintiffs incorporate by reference as if fully set forth herein.

should begin remedial phase when it finds that state redistricting plan violates federal law).

As explained in the MSJ Memo and above, Plaintiffs are entitled to a judgment that the June Map violates the Fourteenth Amendment to the U.S. Constitution, and therefore the Court should initiate a remedial phase to determine the appropriate remedy. Moreover, activities for the next primary and general election cycle will begin by January 2022, only four months from now. *See* 10 ILCS 5/2A-1.1b(b), (c). Thus, the Court should begin the remedial phase as soon as possible to allow time for the enactment of a valid redistricting plan. *See Reynolds*, 377 U.S. at 585 ("In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws.").

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2. What possible remedies can be fashioned during the remedial phase?

Federal courts have broad authority to order equitable and prospective relief when a redistricting plan is found to be invalid. *See Reynolds*, 377 U.S. at 585 ("any relief accorded can be fashioned in the light of well-known principles of equity"). Courts undertake an "equitable weighing process" to select a fitting remedy. *Covington*, 137 S. Ct. at 1625. In this process, courts consider "what is necessary, what is fair, and what is workable." *Id.* Courts employ a variety of different methods to remedy invalid maps, including overseeing the drawing of a new map and appointing a special master to draw a map.[10]

3. To the extent a remedy is necessary, how should the Court choose one?

The Court has a variety of available equitable remedies. Among other things, the Court

[10] *See, e.g.*, *Sanchez v. State of Colo.*, 97 F.3d 1303, 1329 (10th Cir. 1996) ("Order[ing] the State to implement a remedial plan of redistricting consistent with this opinion."); *Johnson v. Miller*, 864 F. Supp. 1354, 1393 (S.D. Ga. 1994) ("Reserve[ing] decision and jurisdiction to reconfigure the Eleventh Congressional District in a manner consistent with this opinion and after reviewing the parties' suggestions."), *aff'd and remanded*, 515 U.S. 900 (1995); *Covington v. North Carolina*, 283 F. Supp. 410, 458 (M.D.N.C. 2018) (adopting in part special master's recommended plan for redistricting), *aff'd in part, rev'd in part*, 138 S. Ct. 2548 (2018).

could order the Leadership Defendants to appoint members to a redistricting commission with authority to draft a valid map. Requiring that a commission oversee the redistricting process is "necessary," "fair," and "workable." *Covington*, 137 S. Ct. at 1625. Indeed, a commission is specifically contemplated under the Illinois Constitution and has been used in four out of the last five redistricting cycles. In the alternative, the Court could appoint a special master or grant other appropriate equitable relief that allows for the drafting of a valid map.

The Leadership Defendants argue that the Court must remand the matter back to the General Assembly to pass a new map in the first instance, as it purported to do in August. Lead. Opp. at 13-15. Defendants cite a number of cases, but those cases arose in jurisdictions in which a state or municipal legislature was the only designated entity with authority to draft a map. *See Chapman*, 420 U.S. at 27 (noting that "redistricting is primarily the duty and responsibility of the State through its legislature ***or other body***" (emphasis added)). Contrary to these cases, the Illinois Constitution provides that authority for redistricting will shift to a commission in the event that "no redistricting plan becomes effective by June 30." Ill. Const. 1970, art. IV, § 3(b). Accordingly, rather than deferring to the legislature, which attempted to pass a clearly invalid map and ignored this Court's prior directives to be inclusive in the map drawing process, the Court should instead select an appropriate equitable remedy that allows for the drafting of a valid map.

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CONCLUSION

For the reasons stated in Plaintiffs' initial summary judgment motion and supporting papers and those stated herein, the Court should grant summary judgment in Plaintiffs' favor and award the declaratory, injunctive, and prospective equitable relief requested in the Amended Complaint.

Dated: September 17, 2021

Respectfully submitted,

/s/ Phillip A. Luetkehans
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CERTIFICATE OF SERVICE

The undersigned certifies that on September 17, 2021, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will provide notice to all counsel of record in this matter.

/s/ Charles E. Harris, II
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