

**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, JAMES RIVERA, ANNA DE LA TORRE, DOLORES DIAZ, FELIPE LUNA JR., SALVADOR TREMILLO, CHRISTOPHER ROMERO, the REPUBLICAN CAUCUS OF THE ILLINOIS SENATE, the REPUBLICAN CAUCUS OF THE ILLINOIS HOUSE OF REPRESENTATIVES, and the ILLINOIS REPUBLICAN PARTY,

Plaintiffs,

vs.

IAN K. LINNABARY, CASANDRA B. WATSON, WILLIAM J. CADIGAN, LAURA K. DONAHUE, CATHERINE S. MCCRORY, WILLIAM M. MCGUFFAGE, and RICK S. TERVEN, SR., 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)

**PLAINTIFFS' REPLY BRIEF IN SUPPORT OF THEIR
REMEDIAL LEGISLATIVE REDISTRICTING MAP**

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INTRODUCTION

In their Opening Brief (“Br.”) [Dkt. No. 151], Plaintiffs showed that the September Map violates Section 2 of the Voting Rights Act (“VRA”) by denying equal voting opportunities to Latino voters in Cook County and Aurora and to Black voters in Metro East. Br. at 4-19.¹ Plaintiffs explained that the drafters of the September Map and their expert, Dr. Allan Lichtman, fundamentally erred by assuming a lack of racially polarized voting and failing to draw districts that allow minority voters to participate equally in the political process. Plaintiffs also showed that their Remedial Map is narrowly tailored to remedy the violations in the September Map while deferring to as many of the General Assembly’s policy choices and boundaries as possible.

The Legislative Defendants filed a 93-page Response Brief (“Resp.”) [Dkt. No. 160], which relies on Dr. Lichtman’s 205-page report [Dkt. No. 160-1]. These lengthy filings are replete with misdirection and misrepresentation, much of which flows from Dr. Lichtman’s erroneous conclusions regarding the alleged lack of racially polarized voting. Dr. Lichtman has served as a testifying expert for many decades, almost entirely in support of Democratic redistricting efforts. As recently as the late 1990s and early 2000s, Dr. Lichtman testified that elections in Illinois, and specifically in Cook County, ***are racially polarized***. Indeed, in 1996, a panel of this Court accepted Dr. Lichtman’s conclusion that Cook County elections are racially polarized and that Latino voters “would have a reasonable opportunity to elect a candidate of their choice . . . ***only in a district with a voting-age majority of Hispanics***.” *King v. State Bd. of Elections*, 979 F. Supp. 582, 613-14 (N.D. Ill. 1996), *vacated and remanded by* 519 U.S. 978 (“*King I*”) (emphasis added).

In this case, however, the tables have turned, and both the Legislative Defendants and Dr. Lichtman argue that racially polarized voting in Illinois is a thing of the past and that the September

¹ Unless otherwise defined, capitalized terms have the meaning given in the Opening Brief.

Map therefore cannot be found to violate the VRA. In reaching that conclusion, both the Legislative Defendants and Dr. Lichtman reference a prior decision by a panel of this Court, which dismissed a challenge to the 2011 congressional redistricting process. Resp. at 2; Lichtman Report at 44 (citing *Committee for a Fair and Balanced Map v. Illinois State Bd. of Elections*, 835 F. Supp. 2d 563 (N.D. Ill. 2011)). That panel held that the plaintiffs had failed to show racially polarized voting because their expert did not “examine actual election results to evaluate whether non-Latinos vote as a bloc to usually defeat the Latino’s candidate of choice.” *Id.* at 588. That is not the case here. To the contrary, Plaintiffs’ experts, Dr. Jowei Chen and Dr. Anthony Fowler, analyzed “actual election results” occurring after the 2011 decision and found that the majority usually votes sufficiently as a bloc to defeat the preferred minority candidate in the Cook County, Aurora, and Metro East areas. Thus, this case presents a far different record than the one in 2011.

Dr. Lichtman takes issue with the findings of Plaintiffs’ experts and asserts that the Latino-preferred candidate actually prevailed in 87% of the analyzed elections. *See* Lichtman Report at Table 9. However, this 87% “win rate” is the result of faulty methodologies and flawed analysis. To begin, Dr. Lichtman utilizes a method called ecological regression (“ER”), which is outdated and inferior to the ecological inference (“EI”) method used by Dr. Chen.

More fundamentally, Dr. Lichtman’s analysis violates the requirements set forth by the Supreme Court in the landmark case of *Thornburg v. Gingles*, 478 U.S. 30 (1986). In that case, the Supreme Court set forth the threshold factors for establishing a claim under Section 2 of the VRA and instructed that analyses of majority bloc voting should take into consideration any special circumstances, including whether any election victories occurred in districts in which the minority group made up the majority of voters and whether the prevailing candidates were incumbents or were appointed incumbents. *See Gingles* 478 U.S. at 57 (noting 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”).

Contrary to this clear instruction from the Supreme Court, Dr. Lichtman’s analysis inappropriately includes elections involving majority-minority districts, incumbent victors, or other special circumstances.² As the Supreme Court explained, such elections are not probative and should not be included in any analysis of bloc voting. *Gingles*, 478 U.S. at 57. In his Rebuttal Report, Plaintiffs’ expert, Dr. Chen, re-analyzes Dr. Lichtman’s “win rate” by selecting only the elections that were not subject to special circumstances effecting the outcome. *See* Rebuttal Report of Dr. Jowei Chen (“Chen Rebuttal”), Ex. A, ¶¶ 10-12, Table 1. Under this re-analysis, Dr. Lichtman’s “win rate” for Latino-preferred candidates drops from 87% to 0%. *Id.*

Likewise, in his Rebuttal Report, Plaintiffs’ other expert, Dr. Fowler, provides further evidence that racially polarized voting is extensive in Illinois generally and in Cook County, Aurora, and Metro East, in particular. *See* Rebuttal Report of Dr. Anthony Fowler (“Fowler

² This is hardly a new criticism of Dr. Lichtman. To the contrary, courts have previously criticized and rejected Dr. Lichtman’s testimony for including inappropriate election results in his analysis and using flawed methodologies. *See Southern Leadership Conf. of Ala. v. Sessions*, 56 F.3d 1281, 1293 (11th Cir. 1995) (finding that “Dr. Lichtman’s analysis was flawed” because he “failed to consider the effect on judicial election results of the power of incumbency and, with respect to incumbents who had been appointed to office, the prestige of merit selection”); *Johnson v. Mortham*, 926 F. Supp. 1460 1474-75 (N.D. Fla. 1996) (“we reject Dr. Lichtman’s results because of several critical methodological errors in his analysis”); *see also North Carolina State Conference of the NAACP v. McCrory*, 182 F. Supp. 3d 320, 495 (M.D.N.C. 2016), *reversed and remanded on other grounds* by 831 F.3d 204 (4th Cir. 2016) (disregarding Dr. Lichtman’s testimony “because his approach was single-minded and purposefully excluded evidence that contradicted his conclusions”); *Feldman v. Arizona Secretary of State’s Office*, 842 D.3d 613, 622 (9th Cir. 2016), *rehearing en banc granted* by 840 F.3d 1164 (9th Cir. 2016) (identifying “several inaccuracies” in Dr. Lichtman’s report “that would clearly justify the district court’s decision not to credit it as sufficient to satisfy the *Gingles* factors”); *Alabama Legislative Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1048 (M.D. Ala. 2017) (court “discredited” Dr. Lichtman’s statewide testimony because he “did not conduct any statistical analysis to determine whether factors other than race were responsible for the voting pattern”).

Rebuttal”), Ex. B, ¶¶ 10-26. Thus, Plaintiffs’ experts have engaged in a thorough analysis of actual election results and established the prevalence of racially polarized voting in Illinois.

In addition to satisfying the threshold *Gingles* factors, Plaintiffs have also shown that the totality of the circumstances establishes a violation of the VRA. Surprisingly, both the Legislative Defendants and Dr. Lichtman make the extraordinary claim that Plaintiffs “cite no proof from any expert report” regarding the two most important Senate Factors—Senate Factor 2 (the extent of racially polarized voting) and Senate Factor 7 (the extent to which minority group members have been elected). Resp. at 42; Lichtman Report at 103. This is blatantly untrue. In the Opening Brief, Plaintiffs cited extensive evidence and analysis from Dr. Chen and Dr. Fowler regarding these factors. Br. at 14-17. Plaintiffs also cited the report of Dr. Charles Gallagher with respect to Senate Factor 1 (past discrimination) and Senate Factor 5 (continuing effects of discrimination). In his Rebuttal Report, Dr. Gallagher responds to Dr. Lichtman’s criticisms and points to further evidence of the ongoing effects of racial discrimination on minority voters. *See* Rebuttal Report of Dr. Charles Gallagher (“Gallagher Rebuttal”), Ex. C, ¶¶ 11-15.³

The Legislative Defendants also criticize Plaintiffs’ Remedial Map on a number of grounds. Most prominently, the Legislative Defendants note several instances in the Remedial Map where more than one incumbent member of the General Assembly would reside within a proposed House District or Senate District. To be sure, Plaintiffs’ Remedial Map was crafted first and foremost to comply with Section 2 of the VRA, not to protect Democratic incumbents. Courts have suggested that incumbent protection may be a legitimate consideration in redistricting, but

³ To the extent the Court adopts any of the arguments or analysis set forth in the submissions from the *Contreras* plaintiffs or the NAACP plaintiffs in the companion cases, Plaintiffs adopt and incorporate such arguments and analysis as if set forth herein, to the fullest extent consistent with the arguments raised and the relief requested in this case.

not when it comes at the expense of the rights of minority voters, as it does with respect to the September Map. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 441 (2006) (explaining that goal of incumbency protection “cannot justify” a discriminatory “effect on Latino voters”). Because the Remedial Map corrects the VRA violations present in the September Map, any incidental effects on incumbent candidates are subordinate. Indeed, none of the affected incumbents are precluded from running for election in 2022 in their “old” districts, even if they no longer reside within them. The Illinois Constitution permits an incumbent to run for election immediately following a redistricting in “any district which contains a part of the district in which he resided at the time of the redistricting,” even if that incumbent does not reside in that new district. *See Ill. Const. (1970), art. IV, sec. 2(c)*.⁴

Finally, to the extent the Court finds a VRA violation (which it should), the Legislative Defendants ask that the Court grant them a *third bite* at the apple and remand the matter for the General Assembly to attempt to redraw the map yet again. There is no rational basis for such a request. The General Assembly failed to draw a constitutionally permissible map in June and again in September. Accordingly, as this Court has recognized, this case is now in a remedial phase, in which the authority for adopting a new legislative map falls on the Court. There is no basis to remand this matter to the General Assembly for yet another attempt to draw a map, which would likely result in further disputes and litigation and which would not be resolved in time for the upcoming 2022 elections in any event.

⁴ The different areas of Plaintiffs’ Remedial Map are severable, such that the Court could adopt parts, but not all, of the map. For example, the Court could chose to adopt just the Cook County and Metro East areas of the Remedial Map without adopting the Aurora area. However, as explained below, the Remedial Map remedies VRA violations in all four challenged areas of the September Map, and the Court should therefore adopt the Remedial Map in its entirety.

For the reasons set forth in the Opening Brief and supporting expert reports and materials, and for the reasons set forth herein and in the accompanying rebuttal reports and materials, the Court should enter an order holding that the September Map violates Section 2 of the VRA and should adopt Plaintiffs' Remedial Map as the effective legislative map for the next decade.

FACTUAL BACKGROUND

The factual history and background is set forth in detail in Plaintiffs' First Amended Complaint ("FAC") [Dkt. No. 51], Second Amended Complaint ("SAC") [Dkt. No. 116], and Summary Judgment Motion ("MSJ") [Dkt. No. 76], and the Court's October 19, 2021 Order ("Order") [Dkt. No. 131]. Accordingly, Plaintiffs do not set forth the background in full in this filing. However, Plaintiffs believe it is appropriate to include a brief discussion of certain aspects of the General Assembly's redistricting process in order to correct certain misstatements and false impressions in the Legislative Defendants' brief.

First, the Legislative Defendants recount a discussion between Senator Steven Landek and Leader Dan McConchie prior to passage of the June Map, in which Leader McConchie allegedly rejected an offer to work on a bipartisan redistricting plan in favor of filing a lawsuit. Resp. at 12. The Legislative Defendants misrepresent the discussion. As explained in Leader McConchie's attached affidavit, at the time of the discussion, he understood that the General Assembly intended to use estimates from the American Community Survey ("ACS") as the base population data to draw the map, rather than the official census data and believed that such a method would produce a malapportioned map. See Affidavit of Senator Dan McConchie ("McConchie Aff."), Ex. D, ¶¶ 2-5. Leader McConchie was ultimately proven correct in this belief when this Court ruled that the June Map was "unconstitutionally malapportioned." Order at 38.

Second, the Legislative Defendants suggest that Plaintiffs and other interested parties were given ample time and opportunity to comment and have input prior to the passage of the September

Map. Resp. at 9-13 (stating that the “2021 redistricting process” granted Plaintiffs and other interested parties “ample opportunities to participate, provide feedback, and submit proposals”). This could not be further from the truth. The first committee hearing on the new map was not held until August 26, 2021, and the map was passed only five days later on August 31, 2021. The Legislative Defendants did not release a draft of the September Map until *one day* before the final passage of the map and revised the draft two additional times prior to passage. There was no committee hearing at which Plaintiffs could comment on the final version of the September Map, and the map passed the Illinois Senate without a committee vote. *See, e.g.*, Plaintiffs’ September 1, 2021 Status Report [Dkt. No. 93] (describing lack of transparency and deliberation in the August redistricting process).

Moreover, throughout the hearing process, the chairpersons of the redistricting committees, Senator Aquino and Representative Hernandez, stated multiple times that they did not know who was drawing the maps or how that process worked. The last time this occurred was in the August 26, 2021 joint redistricting hearing.⁵ However, in the discovery process, witnesses with knowledge testified that committee members had direct input in the private map drawing process, including Senator Aquino and Representative Hernandez. Excerpts of Dep. Trans. for Jonathan Maxson (“Maxson Dep.”), Ex. E, at 96-101; Excerpts of Dep. Trans. for Michael Sadowski (“Sadowski Dep.”), Ex. F, at 183-89. These discrepancies demonstrate the misrepresentations and obfuscation that unfortunately characterized the redistricting process and prevented Plaintiffs and other interested parties from having meaningful input.

⁵ *See* August 26, 2021 Transcript of the State of Illinois Joint Redistricting Hearing (<https://www.ilga.gov/house/committees/Redistricting/102RedistrictingTranscripts/HRED/20210826BL/Thursday%20August%2026%20Hearing.pdf>), at 100-02 and 155-56.

ARGUMENT

In their Opening Brief, Plaintiffs demonstrated that the September Map violates the VRA, and that the Court should adopt Plaintiffs' Remedial Map. Br. at 4-39. In their Response Brief, the Legislative Defendants attempt to show that the September Map does not violate the VRA and also attack Plaintiffs' Remedial Map as an alleged attempt at racial and political gerrymandering. Resp. at 24-92. As shown below, however, the Legislative Defendants' arguments rely on misdirection and misapplication of governing legal principles. Accordingly, the Court should hold that the September Map violates the VRA and adopt Plaintiffs' Remedial Map.

I. The September Map Violates Section 2 of the VRA.

Plaintiffs' Opening Brief showed that all three of the threshold *Gingles* factors are met with respect to the September Map and the totality of the circumstances establishes a violation of Section 2 of the VRA. Br. at 4-19.

A. Plaintiffs have satisfied the three *Gingles* threshold factors.

As the Opening Brief showed, all three *Gingles* factors are met with respect to the September Map: (1) sufficiently large and compact minority groups, (2) cohesive minority voting, and (3) majority voting that usually defeats the minority group's preferred candidate. Br. at 5-12.

1. Minority populations are sufficiently large and compact (*Gingles* Factor 1).

The first *Gingles* factor requires a plaintiff to show "that it is possible to draw an election district of an appropriate size and shape" in which the minority group "exceeds 50% of the relevant population in the illustrative district." *Holloway v. City of Virginia Beach*, 531 F. Supp. 3d 1015, 1056 (E.D. Va. Mar. 31, 2021) (citing *Bartlett v. Strickland*, 556 U.S. 1, 18 (2009)). Plaintiffs' Opening Brief demonstrated that the Remedial Map draws additional qualifying districts in the four geographic areas at issue: (1) Northern Cook County, (2) Southern Cook County, (3) Aurora, and (4) Metro East. Br. at 6-8. The Legislative Defendants challenge the first *Gingles* factor with

respect to each of these areas. Resp. at 25-41. However, their challenges are baseless and fail to rebut Plaintiffs' showing regarding the first *Gingles* factor.

a. Northern and Southern Cook County

As explained in the Opening Brief, Dr. Chen analyzed and compared the minority population sizes in the districts in the September Map and in Plaintiffs' Remedial Map. Br. at 6-8. Dr. Chen found that Plaintiffs' Remedial Map creates: (1) four House Districts in Northern Cook County with a Latino voting-age population and citizen voting-age population ("CVAP") above 50% (House Districts 3, 4, 39, and 77), and (2) seven House Districts in Southern Cook County with a Latino voting-age population and CVAP above 50% (House Districts 1, 2, 21, 22, 23, 24, and 32). Br. at 6. Further, Dr. Chen found that all of these districts are more geographically compact than the least-compact district in the September Map. *Id.* at 7.

The Legislative Defendants do not dispute Dr. Chen's calculations, but instead attempt to raise three arguments to misdirect from the clear finding that Plaintiffs have satisfied the first *Gingles* factor. **First**, the Legislative Defendants appear to argue that CVAP is not the appropriate benchmark and that the Court should instead use voting-age population. Resp. at 25-26. As an initial matter, this argument is irrelevant because all of the Cook County districts at issue in Plaintiffs' Remedial Map include both 50%+ Latino CVAP and voting-age populations. *See* Report of Dr. Jowei Chen ("Chen Report") [Dkt. No. 151-2] at Table 1. Thus, regardless of whether the Court uses CVAP or voting-age population, Plaintiffs have established that it is possible to draw districts exceeding 50%+ Latino population in Cook County.

Moreover, it is well-established that CVAP is the appropriate measure for analyzing the first *Gingles* factor. *See Holloway*, 531 F. Supp. 3d at 1056 (holding that CVAP is appropriate benchmark because it establishes whether "the minority group will possess the potential to elect representatives of its choice"). Indeed, the Seventh Circuit has held that CVAP "is the basis for

determining equality of voting power that best comports with the policy of [the VRA].” *Barnett v. City of Chicago*, 141 F.3d 699, 704 (7th Cir. 1998); *see also Cano v. Davis*, 211 F. Supp. 2d 1208, 1233 (C.D. Cal. 2002) (“The Ninth Circuit, along with every other circuit to consider the issue, has held that CVAP is the appropriate measure to use in determining whether an additional effective majority-minority district can be created.”).⁶ In contrast, the Legislative Defendants do not cite any authority supporting the use of voting-age population instead of CVAP.

Second, the Legislative Defendants argue that Dr. Chen’s calculations are “unreliable” because he allegedly bases his calculation of the CVAP on five-year ACS estimates, which is the same data source that the General Assembly used to draw the malapportioned June Map. Br. at 27-28. This argument inappropriately attempts to conflate two unrelated issues. As Plaintiffs previously explained, the ACS five-year population estimates are not intended to be, and are not, an official count of the population. *See* FAC ¶ 4. Instead, as the Census Bureau has explained, the ACS estimates “are designed to show the *characteristics* of the nation’s population.” *Id.* (emphasis in original).⁷ Thus, although it is inappropriate to use the ACS five-year estimates as the main source for determining the total population in a redistricting plan, it is both appropriate and necessary to use disaggregated five-year estimates to determine the racial breakdown of the CVAP in a particular district, as Dr. Chen did in his initial report. *See* Chen Report ¶ 11.

As courts have explained, “[t]he ACS is the only source of local information on the citizen voting age population” and courts “have consistently relied upon ACS for examining demographic

⁶ Dr. Lichtman served as the testifying expert for a group of the plaintiffs in the consolidated *Barnett* cases. *See Barnett v. City of Chicago*, 969 F. Supp. 1359, 1422-23 (N.D. Ill. 1997). In that case, Dr. Lichtman testified that Chicago elections were racially polarized with respect to Latino voters. *Id.* at 1369.

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

information on minority populations for Section 2 cases.” *Holloway*, 531 F. Supp. 3d at 1061-62 (citing *Perry*, 548 U.S. at 438).⁸ In *Holloway*, the court accepted the analysis of the plaintiffs’ expert, who used ACS estimates to determine CVAP in the districts at issue, and found that the expert’s methodology was “clear, cogent, and convincing.” *Id.* at 1061-63. The same is true with respect to Dr. Chen’s analysis. Despite the Legislative Defendants’ attempts to confuse the issue, there is nothing improper with using disaggregated ACS estimates to determine CVAP. Instead, it is a well-accepted methodology.

Third, the Legislative Defendants argue that the first *Gingles* threshold factor cannot be met because different minority groups collectively make up a “majority” within the districts in the September Map. Resp. at 25-28. However, the Legislative Defendants do not cite any authority holding that different minority groups must be aggregated to determine whether existing districts already have a “majority-minority.” To the contrary, courts have consistently held that the first *Gingles* factor requires only that a district can be drawn in which the minority group at issue has a majority of the population. See *Holloway*, 531 F. Supp. 3d at 1056; *Gingles*, 478 U.S. at 50-51 (requiring only that minority group be “sufficiently large and geographically compact to constitute a majority in a single member district”); see also *Frank v. Forest Cnty.*, 336 F.3d 570, 575 (7th Cir. 2003) (describing aggregating minority groups for analysis under VRA as “problematic”). As shown in Plaintiffs’ Opening Brief and Dr. Chen’s initial report, Latino voters in Cook County are sufficiently large and compact so as to constitute a majority in eleven House Districts.

⁸ See also *United States v. Sch. Bd. of Osceola Cty.*, No. 6:08-CV-582, 2008 WL 11508421, at *1 (M.D. Fla. Apr. 23, 2008) (relying on ACS estimates to determine Latino population); *United States v. Euclid City Sch. Bd.*, 632 F. Supp. 2d 740, 745 (N.D. Ohio 2009) (relying on 2005-2007 ACS estimates to examine the growth rate and composition of African-American populations); *Benavidez v. City of Irving, Tex.*, 638 F. Supp. 2d 709, 729 (N.D. Tex. 2009); *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 687 (S.D. Tex. 2017).

b. Aurora

As explained in Plaintiffs’ Opening Brief and Dr. Chen’s initial report, Plaintiffs’ Remedial Map includes a House District in Aurora with a Latino population of 66.5%, a Latino voting-age population of 62%, and a Latino CVAP of 46.8% (House District 50). The Legislative Defendants argue that this district fails to satisfy the first *Gingles* factor because it is less than 50% Latino CVAP. Resp. at 40-41. This argument is ironic (and improper) given the Legislative Defendants’ insistence that a 50%+ CVAP is not needed for the Cook County districts discussed directly above.

Moreover, the Seventh Circuit and courts within the Seventh Circuit have adopted a “rule of thumb,” under which a district with a minority population of at least 65% is generally accepted to be effective at providing the minority group with a fair chance of electing the candidate of its choice. *Gonzales v. City of Aurora*, No. 02-C-8346, 2006 WL 681048, at *3 (N.D. Ill. Mar. 13, 2006). The Seventh Circuit has explicitly approved of the use of this “rule of thumb” in Section 2 cases. *Ketchum v. Byrne*, 740 F.2d 1398, 1415 (7th Cir. 1984) (noting that “a guideline of 65% of total population (or its equivalent) has achieved general acceptance in redistricting jurisprudence . . . as representing the proportion of minority population reasonably required to ensure minorities a fair opportunity to elect a candidate of their choice”); *see also Barnett*, 141 F.3d at 703 (stating that the use of the rule of thumb “is well entrenched in the [Section 2] cases”).

Plaintiffs’ Remedial Map draws a House District that meets the “rule of thumb” by including a total Latino population above 65%. Accordingly, Plaintiffs have satisfied the first *Gingles* factor with respect to Aurora as well.

c. Metro East

Plaintiffs’ Remedial Map draws a House District in Metro East with a Black CVAP of 51.3% (House District 114). Br. at 6; Chen Report at Table 1. The Legislative Defendants challenge the NAACP plaintiffs’ proposed remedial maps of Metro East because they allegedly

use “multiple maps” and “subordinate traditional redistricting principles.” Resp. at 34-36. But the Legislative Defendants do not address Plaintiffs’ showing with respect to the first *Gingles* factor in Metro East. *Id.* Accordingly, the Legislative Defendants have conceded and waived any response on this issue. *See, e.g., Bonte v. U.S. Bank, N.A.*, 624 F.3d 461, 466 (7th Cir. 2010) (“Failure to respond to an argument . . . results in waiver.”). Because Plaintiffs have shown that it is possible to create a House District with 50%+ Black CVAP, they have satisfied the first *Gingles* factor with respect to the Metro East area.

2. Minority groups vote cohesively (*Gingles* Factor 2).

As explained in the Opening Brief and the supporting reports of Dr. Chen and Dr. Fowler, the second *Gingles* factor is satisfied because Latino voter and Black voters vote cohesively in Illinois generally and in Cook County, Aurora, and Metro East specifically. Br. at 8-9. The Legislative Defendants conceded this issue in their Answer to the Second Amended Complaint. Answer [Dkt. No. 129] ¶¶ 9, 12, 68, 119. And they do not contest this factor in their Response Brief. Accordingly, Plaintiffs have satisfied the second *Gingles* factor.

3. There is sufficient majority bloc voting to usually defeat the minority group’s preferred candidate (*Gingles* Factor 3).

Plaintiffs’ Opening Brief and supporting expert reports from Dr. Chen and Dr. Fowler established that there is sufficient majority bloc voting to usually defeat the minority group’s preferred candidate in Cook County, Aurora, and Metro East. Br. at 10-12. Dr. Lichtman dedicates much of his 205-page report to attacking this conclusion, but his methodology is faulty and his results-driven analysis is fatally and inherently flawed.

As an initial matter, Dr. Lichtman relies on the ER methodology, which is far outdated and inferior to the EI methodology applied by Plaintiffs’ expert, Dr. Chen. As courts have noted, EI “is largely regarded as an improvement upon ecological regression.” *United States v. City of*

Eastpointe, 378 F. Supp. 3d 589, 597 (E.D. Mich. 2019); *United States v. City of Euclid*, 580 F. Supp. 2d 584, 598 (N.D. Ohio 2008) (holding that EI “is an improvement upon” other methodologies, including ER). Likewise, the academic literature also views EI as the superior analytical methodology. *See, e.g.*, Paul Moke & Richard B. Saphire, *The Voting Rights Act and the Racial Gap in Lost Votes*, 58 Hastings L.J. 1, 58 (2006) (“In many respects, ecological inference is superior to the other approaches [including ER] because it does not make a constancy assumption about both voter turnout and voting behavior by race.”).

More fundamentally, Dr. Lichtman errs in his analysis of each of the areas of the state at issue. As shown by Plaintiffs, there is sufficient majority bloc voting in each area.

a. Northern and Southern Cook County

As explained in the Opening Brief, Dr. Chen used EI to analyze election returns for Latino and white voters in recent Cook County elections and identified a number of recent elections demonstrating majority bloc voting that was sufficient to defeat the candidate of choice for Latino voters. Br. at 10-11 (citing Chen Report ¶¶ 38-40 and Tables 6 and 7). In addition, Dr. Fowler also analyzed data on the race of electoral winners in Illinois state legislative elections between 2012 and 2020 and found substantial evidence of sufficient majority bloc voting to usually defeat the minority group’s preferred candidate. *Id.* at 11-12 (citing Fowler Report ¶¶ 34-38).

Dr. Lichtman criticizes this analysis on a number of grounds. **First**, he argues that the Latino-preferred candidate has been successful in 87% of elections, which allegedly defeats any claim of majority bloc voting. Lichtman Report at Table 9. However, Dr. Lichtman’s analysis violates the requirements set forth by the Supreme Court in *Gingles*. The *Gingles* Court instructed that analyses of majority bloc voting should take into consideration special circumstances, including whether any election victories occurred in majority-minority districts and whether the prevailing candidates were incumbents or were appointed incumbents. *Gingles* 478 U.S. at 57.

Contrary to this instruction, Dr. Lichtman's analysis includes elections involving majority-minority districts, incumbent victors, or other special circumstances. In his Rebuttal Report, Dr. Chen re-analyzes the "win rate" by selecting only elections meeting the following criteria:

- a. The election contest is endogenous;
- b. The election contest does not contain an incumbent;
- c. The election is held in a legislative district that substantially overlaps with the area covered by the challenged districts;
- d. The district has a Latino CVAP between 25%⁹ and 50%, as reported by the 2019 5-year estimate under the American Community Survey; and
- e. The election contest had only two candidates.

Chen Rebuttal ¶¶ 10-12, Table 1. These criteria are appropriate for excluding elections characterized by the sorts of special circumstances that the Supreme Court identified in *Gingles*. Dr. Chen's analysis finds that only one of the 15 elections at issue satisfies all of these criteria: the 2014 House District 39 Democratic primary election. *Id.* ¶¶ 12. In this contest, the Latino-preferred candidate, Toni Berrios, was defeated. *Id.* Thus, under Dr. Chen's analysis, the "win rate" for Latino-preferred candidates drops from Dr. Lichtman's 87% to 0%. *Id.*

Second, Dr. Lichtman also criticizes Dr. Chen for allegedly deferring to counsel's criteria in choosing elections to analyze. Lichtman Report at 86. To the contrary, Plaintiffs' counsel asked Dr. Chen to identify which elections met certain conditions that he found reasonable to utilize. Chen Rebuttal ¶ 8. Dr. Chen chose the statistical methodology for answering the question posed to him, and he independently counted the number of elections in which Latino-preferred candidates won or lost. *Id.* In choosing the elections, Dr. Chen applied the following criteria:

- 1) The election was a primary election or a non-partisan municipal election;
- 2) For endogenous (State House or Senate) elections, the district is substantially within the region covered by the Plaintiffs' Remedial Plan;
- 3) Over 50% of Latino voters favored a single candidate; and

⁹ Dr. Chen utilized 25% as the lower bounds for this grouping because it is consistent with Dr. Lichtman's use of 25%-plus Latino CVAP districts in his report. *See* Lichtman Report at 84.

- 4) Over 50% of White voters favored a candidate other than the Latino-preferred candidate.

Id. ¶ 1. These benchmarks make sense given the circumstances in Illinois. As for the first criteria, given that Illinois is heavily Democratic, the state’s primary and non-partisan elections are most probative. *Pope v. Cty. of Albany*, 94 F. Supp. 3d 302, 321 (N.D.N.Y. 2015) (“Because the majority of voters in Albany County, and especially in the City, are Democrats, primary elections are far more probative than general elections of racial voting patterns in this case.”) (citation omitted). Regarding the second criteria, results from elections within the areas covered by Plaintiffs’ Remedial Map are most probative of the voting patterns in those regions. *Rangel v. Morales*, 8 F.3d 242, 248 (5th Cir. 1993) (plaintiffs “did not present evidence from enough of the ‘blocks’ within the twenty-county area to be probative of voting patterns”). Regarding the other two criteria, election results in Illinois often do not reflect voters’ divergent interests given that the state’s elections are routinely uncompetitive, and minority voters lack opportunities to elect candidates that support their interests. Fowler Report ¶¶ 17-33. Thus, elections where the interests of minority and white voters differ are the most probative. *Old Person v. Cooney*, 230 F.3d 1113, 1126 (9th Cir. 2000) (considering split-preference elections); *Davis v. Chiles*, 139 F.3d 1414, 1417 n. 5 (11th Cir. 1998) (“an analysis of split-preference elections is also appropriate and relevant”).

Third, Dr. Lichtman also claims that Dr. Chen’s analysis “fails to provide context” for the various elections in which the Latino-preferred candidate lost. Lichtman Report at 84. Dr. Lichtman identifies the following “context”: (1) non-Latino minorities supported the White-preferred candidate, Rahm Emanuel, in the 2015 Chicago mayoral election (Lichtman report at 84); (2) Toni Berrios, the Latino-preferred candidate who lost in the 2014 HD-39 Primary election, had previously won in 2012 (*id.* at 72); (3) Dr. Lichtman speculates that Toni Berrios would have lost the 2014 Primary election even if HD-39 hypothetically had a “65% Hispanic CVAP” (*id.*);

and (4) the 2018 Cook County Assessor Primary election, in which the Latino-preferred candidate, Joe Berrios, lost, featured three candidates, including the incumbent (*id.*). However, as Dr. Chen explains, this “context” is irrelevant to the question at issue: whether Latinos won or lost the majority of elections that fit the criteria at issue. Chen Rebuttal ¶¶ 5-6.

In addition, Plaintiffs’ other expert, Dr. Fowler, also found significant evidence of majority bloc voting that usually defeats the candidate of choice for minority voters. *See* Fowler Report ¶¶ 34-38. Dr. Lichtman criticizes Dr. Fowler’s analysis, but as explained in Dr. Fowler’s Rebuttal Report, Dr. Lichtman fails to utilize appropriate survey weights when assessing racial voting and underestimates the extent of racially polarized voting. Fowler Rebuttal ¶¶ 10-14. Accordingly, Plaintiffs have established that there is sufficient majority bloc voting in Cook County.

b. Aurora

The Legislative Defendants incorrectly assert that Plaintiffs’ experts “provide no analysis of racial bloc voting of Aurora whatsoever.” Resp. at 41. To the contrary, Dr. Fowler specifically analyzed racially polarized voting in Illinois and found significant racial polarization in Aurora. Fowler Report ¶¶ 14-15. Specifically, Dr. Fowler found that Latino voters in Aurora are 43.2 percentage points more Democratic than white voters. *Id.* ¶ 15. The Legislative Defendants point out that a Latino candidate, Karina Villa, won a Senate seat in the Aurora area in 2020. Resp. at 41. However, the Legislative Defendants concede that the Latino CVAP of the district at issue was only 10.7% Latino, which suggests that White and Latino voters did not back different candidates in the election. More fundamentally, the election of one particular candidate does not, and cannot, defeat Dr. Fowler’s analysis regarding the extent of racial polarization in the area.

c. Metro East

In the Opening Brief, Plaintiffs explained that the 2016 and 2020 general elections for House District 114 in Metro East demonstrate that majority bloc voting would usually defeat the

combined strength of minority support plus white crossover votes. Br. at 11. Specifically, in those races, 69.9% and 74.2% of whites voted for the non-Black-preferred candidate, but the Black-preferred candidate eked out wins in the elections with 57.2% and 57.1%. *Id.* (quoting Chen Report at Table 9). The September Map dropped the Black voting-age population in the district from 42.04% to 33.41%, leaving the Black-preferred candidate susceptible to white bloc voting. *Id.* In addition, Dr. Fowler also analyzed past election results and found significant racial polarization in Metro East. Fowler Report ¶¶ 34-38.

The Legislative Defendants do not address these arguments in their Response Brief, and they have therefore waived any challenge to those arguments. *See Bonte*, 624 F.3d at 466 (“Failure to respond to an argument . . . results in waiver.”). Instead, the Legislative Defendants challenge the NAACP’s argument on the third *Gingles* factor and assert that the September Map creates an allegedly effective “crossover” district in the area. Resp. at 36-40. As explained in the Opening Brief, however, the Black-preferred candidate has barely succeeded in House District 114 despite having nearly 9% higher Black voting-age population than the amount present in the September Map. Thus, there is no reason to believe that the districts in the September Map will be effective for Black voters. The third *Gingles* factor is satisfied with respect to the Metro East area.

B. The totality of the circumstances establishes a violation of the VRA.

As explained in the Opening Brief, once a plaintiff has established the three *Gingles* factors, “it will be only the very unusual case” in which the totality of the circumstances will not point to a violation of Section 2. *Jenkins v. Red Clay Consol. School Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993). In their Response Brief, the Legislative Defendants make a cursory attempt to address each of the Senate Factors. Resp. at 41-47. But the Senate Factors are “neither comprehensive nor exclusive.” *Gingles*, 478 U.S. at 45. Accordingly, “there is no requirement

that any particular number of factors be proven, or that a majority of them point one way or the other.” *Holloway*, 531 F. Supp. 3d at 1079.

Both the Legislative Defendants and Dr. Lichtman make the extraordinary claim that Plaintiffs “cite no proof from any expert report” regarding the two most important Senate Factors—Senate Factor 2 (the extent of racially polarized voting) and Senate Factor 7 (the extent to which minority group members have been elected). Resp. at 42; Lichtman Report at 103. This is patently false. In the Opening Brief, Plaintiffs cited extensive evidence and analysis from the reports of their experts—Dr. Chen and Dr. Fowler—regarding these two factors. Br. at 14-17. Plaintiffs also cited extensive evidence and analysis from the report of Dr. Charles Gallagher with respect to Senate Factor 1 (past discrimination) and Senate Factor 5 (continuing effects of past discrimination). As explained by Plaintiffs and their experts, the totality of the circumstances demonstrates a violation of Section 2 of the VRA.

1. The extent of racially polarized voting (Senate Factor 2).

As discussed above at 13-18 in connection with the second and third *Gingles* threshold factors, Plaintiffs have established the existence of racially polarized voting. As noted above, the Legislative Defendants concede that the second prong (minority cohesion) is satisfied. Thus, only the third prong (majority bloc voting) remains at issue.

In his Opening Report, Dr. Fowler established that racially polarized voting in Illinois is significant and is likely understated by the available data. Fowler Report ¶¶ 6-23. Dr. Lichtman criticizes Dr. Fowler’s analysis, but Dr. Lichtman’s analysis is again severely flawed. As explained in Dr. Fowler’s Rebuttal Report, Dr. Lichtman fails to utilize appropriate survey weights when assessing racial voting and therefore underestimates the extent of racially polarized voting. Fowler Rebuttal ¶¶ 10-14. As explained in detail in Dr. Fowler’s Rebuttal Report, the extent of racially polarized voting is significant and the second Senate Factor weighs in Plaintiffs’ favor.

2. Minority electoral success (Senate Factor 7).

Plaintiffs' Opening Brief demonstrated in detail that minority candidates generally cannot be elected outside of districts with a significant portion of minority voters. Br. at 15-18. The Legislative Defendants and Dr. Lichtman point to specific examples of minority statewide officials. Resp. at 44-46, Lichtman Report at 133-35. However, neither the Legislative Defendants nor Dr. Lichtman do anything to tie these particular officials to the specific districts at issue. Moreover, as explained by Dr. Grumbach, the expert for the *Contreras* plaintiffs, many of the elected Latinos in Illinois were appointed to office first. *See Contreras* Brief, No. 1:21-cv-03139, [Dkt. No. 135], at 35. Thus, these officials benefited from an incumbency advantage. Dr. Fowler explains in his Rebuttal Report that incumbents have a large advantage in state legislative elections. Fowler Rebuttal ¶¶ 27-32. Accordingly, outside of incumbency and being elected from a district with a 50%+ minority CVAP, minority candidates are significantly less likely to be elected to public office.

Thus, both of the two most important Senate Factors, factors 2 and 7, weigh in Plaintiffs' favor. The Court may find that the totality of the circumstances weighs in Plaintiffs' favor based on these factors alone. *See, e.g., Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1022 (8th Cir. 2006) (totality of the circumstances analysis was satisfied based on these two factors alone). Nonetheless, at least two additional factors weigh in Plaintiffs' favor.

3. History of past discrimination (Senate Factor 1) and effects of past discrimination (Senate Factor 5).

In the Opening Brief, Plaintiffs cited Dr. Gallagher's report as demonstrating past discrimination against minorities and the continuing effects of such discrimination. Br. at 17-19. The Legislative Defendants and Dr. Lichtman argue that Plaintiffs have failed to provide evidence of specific discrimination with respect to Illinois, apart from the country as a whole. Resp. at 45.

To the contrary, as explained in Dr. Gallagher's Rebuttal Report, there are numerous examples of official actions by the State of Illinois and political subdivisions that resulted in discrimination against minorities. *See* Gallagher Rebuttal ¶ 7. In the prior 2011 decision regarding congressional redistricting, a panel of this Court specifically recognized the history of discrimination against Latinos in the Chicago area:

We also note the history of discrimination against Latinos, *see* [*Hastert v. State Bd. of Elections*, 777 F. Supp. 634, 650 (N.D. Ill. 1991)] (finding a definite pattern and practice of electoral discrimination against the Hispanic community in Chicago); *see also* *Barnett*, 141 F.3d at 702 (noting that voting for alderman in Chicago is polarized and "Latinos are almost never elected in wards that do not contain a Latino majority of citizens of voting age."), and socioeconomic disparities among the Latino community, *see* 20 Ill. Comp. Stat. 3983/5 ("Latinos lag behind in major indicators of wellbeing relative to education, health, employment, and child welfare, as well as representation throughout the State."); *see also* Pl. Ex. A53 at 8 ("Latinos had lower family incomes than any other major racial or ethnic group in the Chicago region in ... 2006.").

Committee for a Fair and Balanced Map, 835 F. Supp. 2d at 586-87.

Indeed, the General Assembly itself has recognized the lingering and continuing effects of racial discrimination. In the Anti-Racism Commission Act, which is a brand new law that was just passed in 2021, the General Assembly provided the following findings and declarations regarding the continuing effects of racial discrimination in Illinois:

- (3) According to the Centers for Disease Control and Prevention, racism and segregation in the State of Illinois have exacerbated a health divide, resulting in Black residents having lower life expectancies than white citizens of this State and being far more likely than other races to die prematurely (before the age of 75) and to die of heart disease or stroke; Black residents of Illinois have a higher level of infant mortality, lower birth weight babies, and are more likely to be overweight or obese as adults, have adult diabetes, and have long-term complications from diabetes that exacerbate other conditions, including the susceptibility to COVID-19.
- (4) Black and Brown people are more likely to experience poor health outcomes as a consequence of their social determinants of health, health inequities stemming from economic instability, education, physical environment, food, and access to health care systems.

- (5) Black residents in Illinois are more likely than white residents to experience violence-related trauma as a result of socioeconomic conditions resulting from systemic racism.
- (6) Racism is a social system with multiple dimensions in which individual racism is internalized or interpersonal and systemic racism is institutional or structural and is a system of structuring opportunity and assigning value based on the social interpretation of how one looks; this unfairly disadvantages specific individuals and communities, while unfairly giving advantages to other individuals and communities; it saps the strength of the whole society through the waste of human resources.
- (7) Racism causes persistent racial discrimination that influences many areas of life, including housing, education, employment, and criminal justice; an emerging body of research demonstrates that racism itself is a social determinant of health.
- (8) More than 100 studies have linked racism to worse health outcomes.

20 ILCS 5180/130-5.

Thus, the General Assembly itself, the very body that purported to pass the September Map, is acutely aware of the lingering effects of racial discrimination in the state. Accordingly, as set forth in more detail in Dr. Gallagher's Rebuttal Report, Senate Factors 1 and 5 are also satisfied here. Thus, the totality of the circumstances establishes that the September Map violates Section 2 of the VRA.

II. Plaintiffs' Remedial Map Is An Appropriate Remedy to the Violations of the VRA.

Plaintiffs' Opening Brief outlined precisely why and how Plaintiffs' Remedial Map was crafted in order to respond narrowly to the violations of voting rights in the September Map, while still respecting the September Map as a "starting point." Br. at 19-39. The Legislative Defendants raise numerous criticisms with Plaintiffs' Remedial Map, which are addressed by region below. Some of those criticisms, however, apply generally or to multiple regions, and so are addressed more effectively upfront.

First, the Legislative Defendants note several instances in Plaintiffs’ Remedial Map where more than one incumbent member of the General Assembly would reside within a proposed House District or Senate District. There is no doubt that Legislative Defendants crafted the September Map carefully to keep every incumbent member of the Democratic caucuses in his or her own district, unpaired with any other Democratic incumbent (except one instance in which a current Democratic Senator is under indictment and facing trial); Democratic incumbent protection was a primary motive in both the June and September Maps.¹⁰ In fact, incumbent Democratic House and Senate members were permitted to primarily draw their own districts. *See* Maxson Dep., Ex. E, at 62-64, 127-131, 240-242; Sadowski Dep., Ex. F, at 45, 48, 51-52, 194. This is one reason that the September Map is not compact, particularly in the Chicago area where many Democratic incumbents live within close proximity of one another.

By contrast, Plaintiffs’ Remedial Map was crafted first and foremost to comply with Section 2 of the VRA, not to protect Democratic incumbents. Although some of those Democratic incumbents are members of the same minority communities protected by the VRA, the Act is intended to protect the rights of voters, not incumbents. *See Gonzalez v. City of Aurora, Illinois*, 535 F.3d 594, 598 (7th Cir. 2008) (VRA “protects the rights of individual voters”); *see also Perry*, 548 U.S. at 441 (explaining that goal of incumbency protection “cannot justify” a discriminatory

¹⁰ *See* H. Res. 443 (<https://www.ilga.gov/legislation/102/HR/PDF/10200HR0443lv.pdf>) (which includes 20 references to incumbent preservation), H. Res. 359 (<https://www.ilga.gov/legislation/102/HR/PDF/10200HR0359lv.pdf>) (33 incumbent references), S. Res. 326 (<https://www.ilga.gov/legislation/102/SR/PDF/10200SR0326lv.pdf>) (98 incumbent references), and S. Res. 3 (Spec. Sess.) (<https://www.ilga.gov/legislation/102/SR/PDF/10201SR0003lv.pdf>) (62 incumbent references), 102nd ILL. GEN. ASSEM. (2021). The General Assembly also declared that “the maintenance of incumbent-constituent relationships” and “other incumbent requests” were “redistricting principles” used in drawing the September Map. S. Res. 3 (Spec. Sess.) at 3. The only Democratic incumbents paired together were Senators Cullerton and Glowiak; Sen. Cullerton is under indictment.

“effect on Latino voters”). Many of those same incumbents were appointed by Democratic leadership in the first instance, not elected by voters. *See* Fowler Rebuttal ¶¶ 27-32, Table 2. By prioritizing *voters’* rights, Plaintiffs were able to draw a Remedial Map with more numerous and more compact majority-minority House Districts than any other plan currently before the Court.

The Court should also bear in mind that none of the affected incumbents are precluded from running for election in 2022 in their “old” districts, even if they no longer reside within them. While Dr. Lichtman laments that Plaintiffs’ Remedial Map would supposedly “devastate[] the Hispanic incumbents in the region” (Lichtman Report at 177), he fails to note—or perhaps is unaware—that the Illinois Constitution permits an incumbent to run for election immediately following a redistricting in “any district which contains a part of the district in which he resided at the time of the redistricting,” even if that incumbent does not reside in that new district. *See* Ill. Const. (1970), art. IV, sec. 2(c).

Relatedly, the Legislative Defendants and Dr. Lichtman note that some of the affected incumbents are members of legislative leadership or chairmen of committees. A large number of Democratic incumbents enjoy leadership positions—which entitle those incumbents to additional compensation. For example, in the current Senate, out of 41 Democrats, 14 Democratic Senators are designated as “leaders.”¹¹ In the current House, 12 Democratic Representatives are designated as “leaders.”¹² An even greater number of other Democratic incumbents chair committees, of

¹¹ *See* 102nd General Assembly Senate Leadership (https://www.ilga.gov/senate/102nd_Senate_Leadership.pdf).

¹² *See* 102nd General Assembly House of Representatives Officers (https://www.ilga.gov/house/102nd_House_Officers.pdf).

which there are 31 in the Senate and 46 in the House.¹³ Any impact to members of Democratic leadership or chairmen is unintended and a consequence of their multitude.

Second, the Legislative Defendants note that while 13 House Districts were challenged, 32 House Districts were adjusted in Plaintiffs' Remedial Map. Resp. at 3. This should be no surprise. Democratic staff themselves noted on multiple occasions that "every line change causes ripples through the map," and that "every district that is drawn necessarily has an impact on surrounding districts." See Maxson Dep., Ex. E, at 130; Sodowski Dep., Ex. F, at 159. Other proposed remedial plans before the Court affected fewer districts, but only Plaintiffs' Remedial Map affords the appropriate number of majority-Latino districts across all affected regions. Further, while 32 House Districts were adjusted in some manner, many of those changes were insignificant, such as adjusting only a border with an affected majority-minority district to equalize population. Of those districts that are not themselves majority-minority districts, six (House Districts 8, 41, 44, 46, 47, 82) have at least 90% unchanged population, another three (House Districts 6, 48, 83) have at least 80% unchanged population, and another six (House Districts 20, 35, 55, 56, 84, and 112) have at least 70% unchanged population. See Core Constituency Report, Ex. E to Plaintiffs' Opening Brief [Dkt. No. 151-5].

Third, the Legislative Defendants note that in certain, limited areas, the likely partisan character of districts impacted by Plaintiffs' Remedial Map would become more Republican. In addition to protecting Democratic incumbents, the Legislative Defendants' other primary motive in drafting the September Map was to gain partisan advantage for Democrats.¹⁴ In many areas

¹³ Senate Committees (<https://www.ilga.gov/senate/committees/default.asp>); House Committees (<https://www.ilga.gov/house/committees/default.asp>).

¹⁴ S. Res. 3 (Spec. Sess.), at p. 6 ("each of the Districts contained in the 2021 General Assembly Redistricting Plan was drawn taking into account the partisan composition of the District

neighboring Chicago, the Legislative Defendants accomplished their partisan goals by diluting Democratic voters in heavily Democratic urban areas—many of whom are Latino and Black voters—and mixing those voters with Republican voters in the suburbs. The Legislative Defendants cracked minority communities in order to spread Democratic votes across districts that otherwise would lean Republican. So it should be no surprise that, when the majority-minority districts are reconstituted to comply with the VRA, the remaining areas naturally become more Republican. Plaintiffs’ Remedial Map is neither improper nor surprising in that respect; what is improper, however, is the violations of minority voting rights used in the September Map to accomplish Democrats’ partisan objectives. *See Perry*, 548 U.S. at 441 (explaining that goal of incumbency protection “cannot justify” a discriminatory “effect on Latino voters”).

Fourth, the Legislative Defendants accuse Plaintiffs (and the other plaintiff groups) of crafting remedial plans through “racial gerrymandering.” A racial gerrymander is a district that, “though race neutral on its face, rationally cannot be understood as anything other than an effort to separate voters into different districts on the basis of race, and that the separation lacks sufficient justification.” *Shaw v. Reno*, 509 U.S. 630, 649 (1993). Racially gerrymandered districts are “bizarre” and “tortured” in their appearance. *Id.* at 646-47. By contrast, districts crafted to provide minority communities with opportunities to elect candidates of their choice under the VRA must be reasonably compact. As shown in Table 1 below, Plaintiffs’ Remedial Map made the districts at issue generally *more compact* than the comparable districts in the September Map.

and of the Plan itself”); Resp. at 83 (“Legislative Defendants do not dispute that partisanship played a central role in drawing [House Districts 112, 113, and 114].”).

Table 1
Compactness of September Map and Remedial Map Districts
Using Polsby-Popper Scores¹⁵

House District	September Map	Plaintiffs' Remedial Map
Northern Cook County		
3	0.124	0.187
4	0.179	0.241
39	0.210	0.248
40	0.225	0.241
77	0.210	0.223
Average	0.190	0.228
Southern Cook County		
1	0.147	0.206
2	0.295	0.277
21	0.126	0.301
22	0.535	0.242
23	0.286	0.409
24	0.197	0.290
32	0.100	0.400
Average	0.241	0.304
Aurora		
50	0.451	0.278
Metro East		
114	0.237	0.370

In contrast to Dr. Chen's detailed analysis, Dr. Lichtman does not analyze the compactness of the districts in the Remedial Map or compare the compactness of the maps. His 205-page report contains only two stray references to compactness. Lichtman Report at 33, 187.

Finally, Legislative Defendants falsely warn the Court that “[m]any of [the changes proposed by Plaintiffs and the *Contreras* and NAACP plaintiffs] fail to consider the ripple effects on other districts, and therefore could necessitate changes to further districts if adopted.” Resp. at

¹⁵ Chen Report, at Tables 3 and 4.

59. This is not true. As explained in Plaintiffs’ Opening Brief, Plaintiffs’ Remedial Map was drawn so that each of the four regions challenged by Plaintiffs stands independently; the regions are, in effect, severable. Br. at 20. While Plaintiffs believe that their Remedial Map is the best remedy to the multiple failings of the September Map, if the Court were to select a remedial plan proposed by the *Contreras* or NAACP plaintiffs in a particular region, that remedy would not conflict with Plaintiffs’ Remedial Map for other regions.

A. Northern Cook County

First, the General Assembly intended, but failed, to create four majority-Latino House Districts in the northern Cook County region (House Districts 3, 4, 39, 40). Resp. at 60 (“The September Plan creates four House districts and two Senate districts that ensure Latinos, as well as other communities of interest, have equal opportunities to elect candidates of their choice.”). Both Plaintiffs and the *Contreras* plaintiffs have vigorously disputed the Legislative Defendants’ contention that the four House Districts created by the September Map “have Latino CVAPs sufficient to allow them to elect the candidate of their choice.” Resp. at 63. As Dr. Chen’s report demonstrates, *none* of the September Map districts in this region would have elected the Latino-preferred candidate in the 2018 Cook County Assessor election, which Dr. Chen used to show the effectiveness of districts; in each case, Latino voters’ preferred candidate was defeated because of insufficient CVAP, even though Latinos constitute a majority of the total population or even voting-age population. Chen Report at Table 10.

Respecting the legislature’s objective, Plaintiffs put forward a Remedial Map that provides four effective majority-Latino House Districts (House Districts 3, 4, 39, 77). In fact, Plaintiffs’ Remedial Map is the *only* plan before the Court that would afford Latino voters the opportunity to elect candidates of their choice in four House Districts in this region. All four of those districts

would have elected the Latino-preferred candidate in the 2018 Cook County Assessor election. Chen Report at Table 11.

Second, the Legislative Defendants lament that Plaintiffs' Remedial Map includes a reconstitution of House District 77, which they believe has sufficient Latino CVAP (43.6%) "to elect a Latino candidate of choice" (Resp. at 65)—even though a white incumbent (Rep. Kathleen Willis) would reside in House District 77 and was assured by Democratic leaders that she would be spared a Latino primary challenge.¹⁶ Plaintiffs redrew House District 77 in their Remedial Map to actually provide four majority-Latino House Districts, as the General Assembly intended. As illustrated by the *Contreras* plaintiffs' remedial plan, which includes only three majority-Latino districts in this region, it is not possible otherwise.

Third, the Legislative Defendants note that four Democratic House incumbents would reside within the same House District (House District 39) in Plaintiffs' Remedial Map, and two Democratic Senate incumbents would reside within the same Senate District (Senate District 20). Those four House incumbents all live within a few blocks of Kimball Avenue in Chicago, while those two Senate incumbents all live within a few blocks of California Avenue in Chicago. It is unfortunate that all six incumbents live on the far eastern side of the region bounded by House Districts 3, 4, 39, and 40 under the September Map. It is also unfortunate that the Legislative Defendants believe that the half-million residents of these districts should be represented only by incumbents residing in the more affluent eastern area near Logan Square.¹⁷ As summarized above,

¹⁶ CapitolFax.com, *It probably isn't flattery if it's not attributed* (Nov. 3, 2021) <https://capitolfax.com/2021/11/03/it-probably-isnt-flattery-if-its-not-attributed/>.

¹⁷ "Who Can Live in Chicago? Average Individual Income (1970-2017)," University of Illinois at Chicago, The Nathalie P. Voorhees Center, available at <http://voorheescenter.uic.edu/who-can-live-in-chicago/>. The Democratic incumbents in this area generally live in or adjacent to the "Very High Income" areas that enjoy incomes at least 40% above average.

Plaintiffs sought to create a Remedial Map that included four effective majority-Latino House Districts in this region, not to protect incumbents—four of whom (Reps. Andrade, Delgado, and Ramirez and Sen. Pacione-Zayas) were initially appointed, not elected, to their offices, and one of whom (Rep. Guzzardi, who is white) defeated an incumbent Latina.¹⁸ Plaintiffs were not able to craft a Remedial Map that included four effective majority-Latino House Districts in a configuration that would have maintained a separate district for each Democratic incumbent.

Relatedly, Legislative Defendants point out that Plaintiffs' remedial districts in this region "run north to south, rather than east to west." Resp. at 65. This orientation is the natural consequence of subdividing a region that was defined by Legislative Defendants themselves in the September Map: the region comprising House Districts 3, 4, 39, and 40 is twice as wide (east to west) as it is tall (north to south). Legislative Defendants were able to create separate House Districts for their incumbents in this area only by creating long, thin, non-compact districts that run east-to-west. These four districts in the September Map (House Districts 3, 4, 39, 40) are among the *least* compact districts in September Map: House District 3 is the third-least compact district of all 118 House Districts in that plan using Reock scores, and all four districts are below the plan average using both Reock and Polbsy-Popper scores. Chen Report at Table 4. At their thinnest, House Districts 3 and 39 are just two blocks wide, while House District 4 is just a single block wide. While Legislative Defendants felt entitled to stretch the bounds of compactness absurdity, Plaintiffs, mindful of the Illinois Constitution's requirement that districts be compact, did not. *See* Ill. Const. (1970), art IV, sec. 3(a). Plaintiffs' Remedial Map improves the average

¹⁸ The sixth incumbent, Sen. Acquino, was appointed to his seat after winning a competitive Democratic primary election.

compactness of those four districts, which better aligns with natural communities of interest in the area. *See* Chen Report at Table 3; *see also supra* at Table 1.

Finally, the Legislative Defendants assert—without substantiation—that House District 56 would become a “swing district favoring Republicans” under Plaintiffs’ Remedial Map. This is not true. By their own calculation and admission, House District 56 would be changed from 54.56% Democrat-leaning to 53.89% Democrat-leaning. Ex. A to Declaration of Jonathan Maxson (“Maxson Decl.”) [Dkt. No. 160-2]. As explained above at 25-26, there are **limited** areas in which districts would become modestly more Republican as a natural consequence of unwinding the Legislative Defendants’ cracking of minority communities for their own partisan purposes. This is not such an example and is intended by Legislative Defendants only to distract the Court. House District 56 was reconfigured in Plaintiffs’ Remedial Map only in its eastern portion to equalize population with House District 77, as explained in Plaintiffs’ Opening Brief. Br. at 22.

B. Southern Cook County

According to the Legislative Defendants, the September Map includes four majority-Latino House Districts and two other “Latino opportunity districts.” Resp. at 77. Only the four majority-Latino districts are effective districts; the other two “opportunity districts” are not majority-Latino by CVAP or voting-age population and fail to elect Latino voters’ preferred candidate in the 2018 Cook County Assessor election. Chen Report at Table 10. As Plaintiffs have demonstrated, it is possible to have, and under the VRA there should be, **seven** effective majority-Latino House Districts in this region. Plaintiffs’ Remedial Map is the only plan currently before the Court that provides that opportunity to the largest minority community in Illinois and, therefore, brings the Latino community closer to having a proportionate share of legislative seats statewide.

Legislative Defendants assert that Plaintiffs' Remedial Map "gives no deference to the decisions made by the legislature, and blindly dismantles communities of interest." Resp. at 70.

This is not the case. As Plaintiffs' Opening Brief describes:

[Plaintiffs' proposed] Latino opportunity districts were configured taking into account communities identified within House Resolution 443 for the September Map where possible. For example, House District 21 was drawn to retain as many of the same communities as that district included in the September Map, particularly around Berwyn and Riverside. House District 1 is centered on Archer Heights, as it is in the September Map. House District 2 was drawn around Midway International Airport and the community of Clearing, which were joined to form the center of House District 22 in the September Map. Where borders needed to be moved to create effective districts, Plaintiffs followed natural communities boundaries, like the Chicago Sanitary and Ship Canal that separates House Districts 1 and 22.

Br. at 26-27.

Of course the creation of seven majority-Latino House Districts within a space for which Legislative Defendants drew only four such districts and other plaintiffs have proposed only six such districts requires some additional disruption to the September Map—to ensure that these districts actually provide Latino voters with opportunities to elect candidates of their choice, to restore demographic characteristics of neighboring Black opportunity districts as intended by the legislature, and to equalize population among districts.

Still, Plaintiffs endeavored to minimize the disruption to communities. Large cores of the September Map districts would remain intact under Plaintiffs' Remedial Map. The seven majority-Latino House Districts in Plaintiffs' Remedial Map maintain, on average, 55% of their population from a single district under the September Map.

Table 2
Population Sources for Plaintiffs’ Remedial Map Districts
in Southern Cook County¹⁹

Plaintiffs’ Remedial Map House Districts	Largest Source of Population from September Map Districts
1	1 (41%)
2	22 (56%)
21	21 (64%)
22	2 (75%)
23	23 (39%)
24	24 (67%)
32	22 (40%)
Average	(55%)

Legislative Defendants highlight particular examples where they believe Plaintiffs have failed to honor the General Assembly’s intentions—without noting the many examples where Plaintiffs do. While Plaintiffs do not feel obliged to reply to each criticism, particularly because many are irrelevant to this case, Plaintiffs wish to highlight the following:

- ***Little Village***: Legislative Defendants allege that Plaintiffs provided “no legitimate justification” for dividing the neighborhood known as Little Village among multiple House Districts—even though it is already divided under the 2011-2021 legislative map. Resp. at 71. Under the guise of preserving Little Village, the September Map packs Latino voters into a single district (House District 23) with a Latino voting-age population of 84.4%. H. Res. 443 at p. 21.

Neither Plaintiffs’ nor the *Contreras* plaintiffs’ Remedial Map would include Little Village within a single district because doing so significantly deprives Latino voters of the opportunity to elect candidates of their choice in the region. Packing Latinos into House District 23 is a primary reason why other districts in the September Map—such as those represented by Rep. Mike Zalewski and Sen. Steven Landek, who are white—would not be majority-Latino districts.

- ***Chinatown***: Legislative Defendants claim that the September Map includes all of “Chinatown” within a single House District (House District 24). The General Assembly defined the Chinatown community to include “the racially diverse Bridgeport neighborhood” (S. Res. 3 (Spec. Sess.) at 38), and Legislative Defendants touted their ability “to keep the Chinatown neighborhood connected to areas in Bridgeport, McKinley Park, and Brighton Park” (Resp. at 73). In fact, the

¹⁹ See Core Constituency Report, Ex. E to Plaintiffs’ Opening Brief [Dkt. No. 151-5].

September Map divides McKinley Park and South Bridgeport into multiple districts (House Districts 1 and 24 and Senate Districts 1 and 12). Nonetheless, Legislative Defendants then criticize Plaintiffs' Remedial Map for also dividing this area between two districts (House Districts 23 and 24, which would constitute a single Senate District). Resp. at 73.

The vast majority of Chinatown is maintained within House District 24 under Plaintiffs' Remedial Map, as Legislative Defendants themselves illustrate. Resp. at 74, Figure 11. Of the area moved from House District 24 to House District 23, which includes the portion of Chinatown at issue, the population is 59% Latino and only 20% Asian. See Core Constituency Report, Ex. E to Plaintiffs' Opening Brief [Dkt. No. 151-5]. There are no VRA claims concerning the Asian community.

- ***House District 82 (Leader Durkin)***: Legislative Defendants accuse Plaintiffs of “engaging in a brazen racial gerrymander to create a whiter district for named Plaintiff Republican Leader Jim Durkin.” Resp. at 76. That is untrue, no matter how emphatically stated. By their own admission, that district (House District 82) is little changed: the combined minority voting age population (Black, Asian, and Latino) for that district would be reduced by approximately 1%.²⁰

Further contradicting themselves, Legislative Defendants then assert that “[w]hite precincts in Proviso Township and Lyons Township are moved [from House District 82] into House District 8, a district with a Black incumbent.” So by Legislative Defendants' telling, Plaintiffs first attempted to make House District 82 ***more white*** and then tried to make it ***less white***—and all without having any net effect. The numbers reported by Legislative Defendants support what Plaintiffs explained in their Opening Brief: a small portion of House District 82, comprising less than 10% of the population of that district, was adjusted to restore population to House District 8, which lost population in Berwyn to a new majority-Latino district (House District 21), and to provide population to adjoining House District 22, another majority-Latino District. House District 82 just happens to border those districts, and that border was adjusted—without regard to the racial composition of its residents—to equalize population.

- ***Impact on Neighboring Black House Districts (House Districts 6, 8, 31, 36)***: Legislative Defendants raise contradictory alarms about the impacts to neighboring Black districts. First, Legislative Defendants have admonished Plaintiffs not to impact any surrounding districts, which Plaintiffs have sought to respect, making as few changes as possible. But second, Legislative Defendants assert that the impacts—necessitated by the addition of a seventh majority-Latino House District within an area originally consisting of only six House Districts—diminish Black

²⁰ Maxson Decl., Ex. A. By Mr. Maxson's calculation, the combined minority voting-age population for House District 82 would be reduced from 17.97% under the September Map to 16.71% under the Plaintiffs' Remedial Map. The combined minority CVAP for House District 82 would likewise be reduced from 17.9% to 16.9%.

representation. Plaintiffs have sought to balance these competing concerns as explained in the Opening Brief, including by maintaining as close as possible the Black voting-age population of each of these districts. Br. at 30, Table 2.

- **General Inaccuracies:** While Plaintiffs have sought to respect the General Assembly's intent, that intent is not always clear. House Resolution 443 and Senate Resolution 3 (Special Session), which purport to express the legislative intent for the September Map, include numerous inaccuracies. For example, consider just the description of Senate District 11, which comprises House Districts 21 and 22. Senate Resolution 3 states that "[t]he northern boundary [of Senate District 11] generally follows 13th St and 22nd St. in Cicero and Berwyn." S. Res. 3 (Spec. Sess.) at p. 35. In fact, Senate District 11 follows 22nd Street in Cicero and Berwyn for only two blocks, which is its *southern* boundary, not northern boundary. Senate Resolution 3 also claims that Senate District 11 is "serve[d]" by the Metra Burlington Northern Santa Fe (BNSF) commuter rail line. *Id.* There is no BNSF train station in Senate District 11.

C. Aurora

Plaintiffs contend that Latino voters in the Aurora region are entitled to a majority-Latino district and have provided such a district. Dr. Lichtman incorrectly states that Plaintiffs "maintain that districts must achieve [50% CVAP] to provide minorities equal opportunities equal opportunities for minorities [*sic*] to elect candidates of their choice." Lichtman Report at 193. As explained above at 12, Plaintiffs contend that the proposed Aurora district is effective because its total population is 66.5% Latino and its voting age population is 62.0%. Chen Report at Table 1. Moreover, the district is within a less-Democratic area than majority-Latino districts in the Chicago area.²¹ Because the Democratic primary election is very likely the election of consequence, and Latino voters are overwhelming Democratic in Illinois (*see* Lichtman Report at 25), a Latino community that comprises nearly 47% of the total CVAP of the district will represent a significant majority of the Democratic primary electorate of that district. It is therefore

²¹ Maxson Decl., Ex. A. (noting that the "Dem Index" for House District 50 under the September Map is 60.70% and under the Plaintiffs' Remedial Map is 68.10%).

reasonable to conclude that a district of this partisan composition with nearly 47% Latino CVAP will be sufficient to enable Latino voters to elect candidates of their choice.

Legislative Defendants then bemoan the impacts of the creation of a majority-Latino district. Without substantiation, they claim that House District 84 loses Democratic precincts to House District 50 (which presumably refers to the reconstitution of the Latino community that was cracked), and that those losses are replaced with “several Republican precincts from HD 41.” Resp. at 80-81. Yet, there is no material partisan impact: by their own admission, House District 84 remains a Democratic district, while House District 41 remains a coin-flip—neither changed by even 1%.²² In fact, under the Remedial Map, House District 84 becomes slightly *more Democratic*.

D. Metro East

Legislative Defendants assert that the remedial maps proposed by both Plaintiffs and the NAACP plaintiffs are “textbook examples of racial gerrymandering.” Resp. at 84. Reconstituting a cracked Black community is not “racial gerrymandering.” As summarized above, Plaintiffs created a more compact, natural district—regardless of its racial composition. House District 114 is more than 50% *more compact* under the Plaintiffs’ remedial map—increasing the Polsby-Popper compactness score from 0.237 to 0.370—as well more compact than the district proposed by the NAACP plaintiffs. See Table 1 above.

Legislative Defendants note that Plaintiffs’ proposed House District 114 would include both incumbent Reps. Hoffman and Greenwood, which is true, but that does not mean that both

²² Maxson Decl., Ex. A. According to Mr. Maxson’s “Dem Index,” House District 41 is changed from 50.22% Democrat to 49.74% Democrat, while House District 84 is changed from 58.17% Democrat to 58.65%.

incumbents would seek election to that district²³ or that incumbency should trump voters' rights. They also assert that proposed Senate District 57 (which comprises House Districts 113 and 114) would become "more competitive for Republicans"; yet according to Senate Democratic staff, Senate District 57 would actually become *more Democratic*.²⁴

CONCLUSION

For the reasons set forth in the Opening Brief and supporting expert reports and materials, and for the reasons set forth above and in the accompanying rebuttal reports and materials, the Court should enter an order holding that the September Map violates Section 2 of the VRA and should adopt Plaintiffs' Remedial Map as the effective legislative map for the next decade. Now that briefing is complete, the Court can enter an order based on the record before it. If there are any questions remaining, however, Plaintiffs suggest that the Court hold an evidentiary hearing or oral argument.

²³ As noted earlier, in the election following a redistricting cycle, an incumbent is not required by the Illinois Constitution to reside in that district, provided that the new district from which he or she seeks election contains part of his or her old district.

²⁴ Exhibit A to Declaration of Joseph Sodowski [Dkt. No. 160-6]. Mr. Sodowski's "Dem Index" indicates that Senate District 57 would increase from 54.22% to 56.55%.

Dated: December 1, 2021

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Respectfully submitted,

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EXHIBIT A

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**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, JAMES RIVERA, ANNA DE LA TORRE, DOLORES DIAZ, FELIPE LUNA JR., SALVADOR TREMILLO, CHRISTOPHER ROMERO, the REPUBLICAN CAUCUS OF THE ILLINOIS SENATE, the REPUBLICAN CAUCUS OF THE ILLINOIS HOUSE OF REPRESENTATIVES, and the ILLINOIS REPUBLICAN PARTY,

Plaintiffs,

vs.

IAN K. LINNABARY, CASANDRA B. WATSON, WILLIAM J. CADIGAN, LAURA K. DONAHUE, CATHERINE S. MCCRORY, WILLIAM M. MCGUFFAGE, and RICK S. TERVERN, SR., 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)

RESPONSE REPORT OF DR. JOWEI CHEN

I, Dr. Jowei Chen, upon my oath, declare and say as follows:

1. In my original report of November 10, 2021, I identified elections satisfying all four of the criteria listed below from data files reporting the precinct-level racial demographics and vote counts for 26 endogenous and exogenous elections occurring within Cook County:

- 1) The election was a primary election or a non-partisan municipal election;
- 2) For endogenous (State House or Senate) elections, the district is substantially within the region covered by the Plaintiffs' Remedial Plan;
- 3) Over 50% of Latino voters favored a single candidate; and
- 4) Over 50% of White voters favored a candidate other than the Latino-preferred candidate.

In summary, I found that five total elections satisfy these four criteria, and three of these five elections resulted in the defeat of the Latino-preferred candidate.

2. Dr. Lichtman tries to rebut my analysis in three ways, none of which has merit.¹

3. First, Dr. Lichtman claims that the four criteria used to identify elections are “arbitrary, biased criteria” that somehow “give a predetermined answer,” and Dr. Lichtman particularly criticizes the third and fourth criteria because they “eliminate all elections in which a majority or plurality of Hispanics and white or non-Hispanic voters preferred the same candidate” (p. 82, Lichtman Report). This criticism is nonsensical, and Dr. Lichtman appears to misunderstand my analysis. I simply counted how frequently Latino-preferred candidates win in elections in which Latinos and Whites preferred different candidates. To answer this question, it is obviously necessary to identify elections in which Latinos and Whites actually preferred different candidates. Identifying elections in which over 50% of Latinos and over 50% of Whites

¹ Dr. Lichtman also attempts to argue that the ecological inference method I used is supposedly unreliable. While ecological inference is clearly the current standard for analyzing these types of elections, Dr. Lichtman inexplicably cites a 2021 Yale Law Journal article in which I explained that I did not analyze New Jersey due of a lack of reliable ecological inference estimates for the state. It is unclear why Dr. Lichtman believes that the unavailability of voting patterns estimates in New Jersey would be relevant to any analysis of voting patterns in Illinois. In conducting my research for that Yale Law Journal article, I attempted to produce ecological inference estimates for US Presidential voting by race, but I found that my data files contained missing vote data for many precincts, which is what caused me to produce ecological inference estimates that I immediately found were based on flawed data for New Jersey precincts. That is why I abandoned my attempt to analyze New Jersey in that article. The lack of complete precinct-level election data would have doomed any effort to estimate voting patterns by race, regardless of one's preferred methodology, and should not be construed as an attack on the use of ecological inference as a methodology altogether as Dr. Lichtman suggests.

preferred different candidates is clearly a reasonable set of thresholds for identifying election contests in which Latinos and Whites preferred different candidates. These instances are indicative of when “the white majority votes sufficiently as a bloc... in the absence of special circumstances,” such that it can usually “defeat the [Latinos’] preferred candidate” as required under *Gingles*.

4. Second, Dr. Lichtman asserts that my analysis is “misleading” because the elections that I analyzed include the 2015 Chicago Mayoral and 2018 Cook County Assessor Primary elections. Specifically, Dr. Lichtman bizarrely claims that “This methodology produces misleading results, because as explained above wins or losses of Hispanic candidates of choice in Cook County or Chicago with low Hispanic percentages and a fundamentally different distribution of racial group CVAP have no bearing on Hispanic electoral opportunities in challenged districts” (p. 84, Lichtman report). Cook County and Chicago are obviously not jurisdictions with “low Hispanic percentages.” Indeed, Latinos comprise 29.8% of Chicago’s population and 26.2% of Cook County’s population in the 2020 Decennial Census. The fact that Chicago’s or Cook County’s Latino population is not identical to the Latino population of a particular challenged district is obviously a given when analyzing exogenous elections. But this is not inherently a reason to automatically ignore all exogenous elections.

5. Third, Dr. Lichtman claims that my analysis “fails to provide context” for the various elections in which the Latino-preferred candidate lost (p. 84, Lichtman report). Specifically, the “context” that Dr. Lichtman wishes I had provided is the following: 1. Non-Latino minorities supported the White-preferred candidate, Rahm Emanuel, in the 2015 Chicago mayoral election (p. 84, Lichtman report); 2. Toni Berrios, the Latino-preferred candidate who lost in the 2014 HD-39 Primary election, had previously won in 2012 (p. 72, Lichtman report); 3.

Dr. Lichtman speculates that Toni Berrios would have lost the 2014 Primary election even if HD-39 hypothetically had a “65% Hispanic CVAP” (p. 72, Lichtman report); and 4. The 2018 Cook County Assessor Primary election, in which the Latino-preferred candidate, Joe Berrios, lost, featured three candidates, including the incumbent.

6. All of this “context” that Dr. Lichtman raises regarding these elections is irrelevant to the question at issue: whether Latinos won or lost the majority of elections that fit my criteria. The sort of political commentary that Dr. Lichtman provides regarding these elections is similar to commentary that one could offer regarding virtually any heavily contested election in Chicago or Cook County. Dr. Lichtman’s commentary regarding these elections does not attempt to dispute my main calculation that the Latino-preferred candidate lost in three of the five elections and won in the other two elections.

7. Most importantly, Dr. Lichtman does not dispute the fact that the five elections I identified indeed satisfy the four criteria I outlined in my November 10 report. Nor does Dr. Lichtman dispute that I correctly identified the Latino-preferred candidates in these five elections, or that these Latino-preferred candidate lost in three of the five elections. Instead, Dr. Lichtman alleges errors in the election results I was given in several of the 23 endogenous elections I reviewed to find whether the minority group was politically cohesive. However, none of these elections are the five elections referred to above and therefore immaterial. Further, the deletion of these elections that allegedly contained problematic data does not change my finding that Latinos vote cohesively in either Cook County as a whole or the areas in Cook County that are at issue in the five elections.²

² Dr. Lichtman’s data, in fact, has flaws. For instance, on Table 4 of Dr. Lichtman’s report at page 27, he lists the election of Julianna Stratton over Evelyn Sanguinetti as a Black candidate winning an election against a White candidate. There are two major problems with the use of

8. Fourth, Dr. Lichtman makes the absurd and hyperbolic insinuation that plaintiffs' counsel is somehow "compromising the scientific integrity of an expert" by "dictating the procedure for analyzing the elections" (p. 86, Lichtman report). Contrary to Dr. Lichtman's assertions throughout his rebuttal report, plaintiffs' counsel did not tell me which specific elections to count in my analysis or what methodology to use to analyze the elections. Instead, plaintiffs' counsel asked me to identify which elections met certain conditions that I found reasonable to utilize, such as having different candidates preferred by White and Latino voters. I chose the statistical methodology for answering the question that plaintiffs' counsel posed to me, and I independently counted the number of elections in which Latino-preferred candidates won or lost. Again, it is striking how Dr. Lichtman objects vociferously to the analysis that I conducted, but he never disputes that the five elections I identified indeed satisfy the criteria that I described in my November 10 report. Nor does he ever dispute my conclusion that (1) the Latino-preferred candidate lost in three of the five elections.³

this election. First, Ms. Sanguinetti is Latino, not White. Also, Lieutenant Governor is not elected on an individual basis but is actually paired on the ballot with the office of Governor. One cannot vote for only a Lieutenant Governor candidate without voting for the higher office of Governor.

³ Dr. Lichtman claims that I "adamantly reject the single-race minority 50%+ demographics threshold" in an article I co-authored. Professor Lichtman grossly misrepresents my comments in the article. I did not reject the single-race minority 50%+ threshold at all. Rather, in this article, I merely argued that this is one plausible interpretation of Supreme Court precedent. Specifically, the article says "something close to it is arguably compelled by section 2 precedent." I then explain that recent Supreme Court cases raise the issue of whether announced minority percentage targets would be unconstitutional, and that Supreme Court precedent suggests that the question should be whether the minority group in fact has the potential to elect a representative of its choice. We then incorporate these factors into our definition of "opportunity district" *for purposes of the study only*, not because we advocate for it. Not only did I not "adamantly reject" the single-race minority 50%+ concept, I did not take any position on it at all. Jowei Chen & Nicholas O. Stephanopoulos, *The Race-Blind Future of Voting Rights*, Yale L.J. (2021), 130, at 901-902.

9. In my November 10 report, I found that only four of the challenged Cook County districts in the Enacted Plan would be expected to support Berrios based on the 2018 Cook County Assessor primary election. I also found that ten of the twelve Cook County districts in the Remedial Plan would favor Berrios based on the 2018 Cook County Assessor primary election. Dr. Lichtman does not provide any alternative estimates of his own that would dispute these calculations. Instead, Dr. Lichtman attempts to dismiss my calculations by noting that the VAP percentages of ethnicities in my Tables 10 and 11 do not add up to 100% because they do not include non-Latino minorities. It is obviously correct that Tables 10 and 11 report only the Latino VAP and non-Latino White VAP percentages for each district. However, as I explained earlier in that report, all of my racial voting analyses produce estimates based on all racial groups, including non-Latino minorities, and I accounted for all racial and ethnic groups in my calculations. I simply did not report the non-Latino minority percentage in Tables 10 and 11 in order to simplify the presentation in these Tables.

Analysis of Dr. Lichtman's Reported "Win Rate" Among Endogenous Elections

10. In Table 9 of his rebuttal report, Dr. Lichtman analyzes 15 Cook County endogenous (State House and State Senate) elections that I had analyzed in my November 10 report. Dr. Lichtman reports that the Latino-preferred candidate won in 13 of these 15 endogenous elections, thus leading him to report a "win rate" of 87% for the Latino-preferred candidate.

11. Below, I re-analyze this “win rate” by selecting only the elections meeting the following criteria:

- a. The election contest is endogenous;
- b. The election contest does not contain an incumbent;⁵
- c. The election is held in a legislative district that substantially overlaps with the area covered by the challenged districts;⁶
- d. The district has a Latino CVAP between 25%⁷ and 50%, as reported by the 2019 5-year estimate under the American Community Survey; and
- e. The election contest had only two candidates.

12. Table 1 on the following page contains Dr. Lichtman’s original Table 9, but with a new final column identifying elections that satisfy these five criteria. I found that only one election satisfies all five of these criteria: the 2014 HD-39 Democratic Primary election. In this election contest, the Latino-preferred candidate: Toni Berrios, was defeated in the 2014 HD-39 Democratic Primary. Hence, the relevant “win rate” in the Table for Latino-preferred candidates is not 87% but actually 0%.

⁵ Plaintiffs counsel provided me with a copy of Dr. Anthony Fowler’s rebuttal report. In this report, Dr. Fowler found that in the elections held between 2012 and 2020, “when the previous electoral winner sought reelection, they won 92.8 percent of the time, and when the appointed incumbent sought reelection, they won 91.3 percent of the time.” Rebuttal Report of Anthony Fowler, para. 31.

⁶ SD 22 is miles from overlapping with the Cook County districts challenged by the McConchie Plaintiffs.

⁷ I utilize 25% as the lower bounds for this grouping because it is consistent with Dr. Lichtman’s use of 25% plus Latino CVAP districts in his report. See Lichtman Report, p. 35.

Table 1:**LICHTMAN TABLE 9: ANALYSIS OF ENDOGENOUS ELECTIONS EXAMINED BY DR. CHEN**

COUNT	DISTRICT & ELECTION	CANDIDATE OF CHOICE OF HISPANIC VOTERS	CANDIDATE OF CHOICE OF WHITE VOTERS?	HISPANIC CANDIDATE OF CHOICE WINS?	Incumbent	More Than Two Candidates	District Overlap	25-50% LCVAP (2019 ACS)
ENDOGENOUS ELECTIONS								
1	HD40 2012	MELL	YES	YES	YES	NO	YES	YES
2	HD 39 2012 DEM	BERRIOS	NO	YES	YES	NO	YES	YES
3	HD 40 2014 DEM PRIMARY	ANDRADE	YES	YES	YES	Schiavione, Goldstein, Harmston,	YES	YES
4	HD39 2014 DEM	BERRIOS	NO	NO		NO	YES	YES
5	HD77 2016 DEM	WILLIS	YES	YES	YES	NO	YES	YES
6	HD 24 2016	HERNANDEZ	YES	YES	YES	NO	YES	NO 66.25%
7	SD 22 2016	CASTRO	YES	YES		NO		YES
8	HD 2 2016	ACEVEDO	YES	NO	YES	NO	YES	YES
9	SD 22 2016	CASTRO	YES	YES		Caramelli, Evans		YES
10	HD22 2016 DEM	MADIGAN	YES	YES	YES	Gonzales,	YES	NO 60.36%
11	HD1 2018 DEM	ORTIZ	NO	YES		NO	YES	NO 63.46%
12	HD4 2018 DEM	RAMIREZ	NO	YES		Millan, Pattison, Shaw	YES	YES
13	SD20 2018 DEM	MARTINEZ	YES	YES	YES	NO	YES	YES
14	SD11 2020	VILLANEUVA	YES	YES	YES	NO	YES	NO 57% ⁸
15	SD22 2020 DEM	CASTRO	YES	YES	YES	NO	YES	YES
SUM:								
0 Wins and 1 Loss (Berrios -2014) for Latino Preferred Candidate								
WIN RATE = 0%								

⁸ For ease of calculation, the SD LCVAP is just an average of the two House Districts.

Dated this 1st day of December, 2021.

A handwritten signature in black ink, appearing to read 'Jowei Chen', written over a horizontal line.

Jowei Chen

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EXHIBIT B

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**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,
JAMES RIVERA, ANNA DE LA TORRE,
DOLORES DIAZ, FELIPE LUNA JR., SALVADOR
TREMILLO, CHRISTOPHER ROMERO, the
REPUBLICAN CAUCUS OF THE ILLINOIS
SENATE, the REPUBLICAN CAUCUS OF THE
ILLINOIS HOUSE OF REPRESENTATIVES, and
the ILLINOIS REPUBLICAN PARTY,

Plaintiffs,

vs.

IAN K. LINNABARY, CASANDRA B. WATSON,
WILLIAM J. CADIGAN, LAURA K. DONAHUE,
CATHERINE S. MCCRORY, WILLIAM M.
MCGUFFAGE, and RICK S. TERVEN, SR., 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)

REBUTTAL REPORT OF ANTHONY FOWLER

A. Introduction

1. I concluded in my initial report that (1) there is significant racially polarized voting in Illinois; (2) voters in minority districts have little opportunity to elect their preferred officials or

incentivize their officials to work hard on their behalf; and (3) Latino legislators are unlikely to emerge in districts that are not predominantly Latino.

2. I submit this rebuttal report to address several inaccuracies in Dr. Allan J. Lichtman's report as he attempted to rebut my conclusions and those offered by other experts in the above-caption matter, and the related cases. As discussed below, Dr. Lichtman failed to utilize survey weights when assessing racial voting in Illinois General Assembly elections, which leads him to underestimate the extent of racially polarized voting. He also appears to have misunderstood my analysis of district demographics and the race of election winners.

3. This report is based on the information now known to me. I reserve the right to supplement this report or revise my opinions if new or additional information becomes available. I am compensated for my work at a \$500 hourly rate. My compensation in no way depends on the opinions that I offer or the outcome of this case.

B. Summary

4. Dr. Lichtman's report discusses my analyses of racially polarized voting in statewide elections in Illinois and my analyses of the extent to which district demographics correspond with the race of general election winners in state legislative elections.

5. Dr. Lichtman does not seriously engage with my analyses of appointments and uncontested races. I found that minority districts are especially unlikely to have electoral choices, which means that voters in minority districts have less opportunity to select their leaders and hold them accountable.

6. Dr. Lichtman also does not engage with my discussion of why racially polarized voting likely understates the extent to which minority groups have divergent interests. We would not expect to see racially polarized voting if minority voters aren't presented with viable candidates who would differentially represent their interests. Therefore, the absence of racially polarized

voting in a particular instance does not necessarily mean that minority voters do not have important and divergent interests from white voters.

7. In discussing my analyses of racially polarized voting in statewide elections, Dr. Lichtman adds an analysis of racially polarized voting in Illinois state legislative races in 2018 and 2020. However, Dr. Lichtman fails to utilize survey weights in this analysis, which are necessary for generating representative results. I find that racially polarized voting is greater in Illinois state legislative elections than Dr. Lichtman's report suggests when I improve this analysis by utilizing the weights provided by the survey vendor. Specifically, Dr. Lichtman's analysis overestimates the extent to which white voters in Illinois support Democratic candidates in state legislative races and underestimates the extent to which Latino voters support Democratic candidates.

8. Much of Dr. Lichtman's discussion of my analyses of district-level demographics and the race of election winners appears to stem from a misunderstanding of my analysis. Below, I clarify that my analyses utilized data from real state legislative elections between 2012 and 2020. Indeed, my estimates are essentially moving averages, summarizing the frequency with which different types of districts produce electoral winners of a particular race.

9. I also present supplemental data on the electoral dominance of incumbents in Illinois General Assembly elections to rebut Dr. Lichtman's attempts to minimize the importance of incumbency in Illinois elections.

C. Racially Polarized Voting in Illinois General Assembly Elections

10. Dr. Lichtman's report includes an assessment of racially polarized voting in Illinois General Assembly races in 2018 and 2020. Analyzing data from the Cooperative Election Study (CES) and pooling all districts together, he computes the share of respondents from different racial groups that reported voting for a Democrat versus a Republican (excluding those who report not voting or supporting a third-party candidate)

11. I replicated Dr. Lichtman's analysis and found that he likely did not utilize survey weights in this analysis. Survey weights are essential for obtaining representative estimates from this data, and therefore, Dr. Lichtman's estimates are unreliable.

12. The CES and their survey vendor, YouGov, provide survey weights intended to correct for the potential unrepresentativeness of their sample. For example, if the share of women in the survey sample is smaller than the share of women in the population of voting-age Illinoisans, analysts can account for this by putting more weight on women in the sample. YouGov provides weights to minimize the extent to which the distributions of age, gender, race, education, political party, and income differ between the sample and the voting-age population.¹

13. Table 1 reports the results of these estimates with and without the use of survey weights. The top row of each panel shows results without utilizing survey weights, which closely match those on p. 126 of Dr. Lichtman's report.² The bottom row shows the same estimates after utilizing survey weights. The results show that the unweighted analysis overstates the extent to which white voters supported Democrats in these elections, and it understates the extent to which Latino voters supported Democrats.

14. Importantly, Dr. Lichtman's table suggests that the majority of white voters supported the same party as the majority of minority voters. But the more reliable analysis that

¹ For more information on the survey weights provided by YouGov and the CES, see yougov.co.uk/about/panel-methodology/research-qs/ and cces.gov.harvard.edu/frequently-asked-questions. In some cases, the CES provides multiple survey weights. To ensure consistency across all of my analyses, I utilize the "common weight," which is available for all CES surveys. The other weights yield similar estimates, but failing to utilize survey weights at all can yield very different estimates that are likely biased by the unrepresentativeness of the survey sample.

² There are two minor discrepancies for which I have no explanation. Specifically, Dr. Lichtman's table reports lower Democratic support among Black voters in the 2020 Illinois House elections and higher Democratic support among Asian voters in the 2018 Illinois House elections.

utilizes survey weights shows that the majority of white voters supported a different party than the majority of minority voters. Furthermore, Dr. Lichtman's table suggests that Latino voters were 19-20 percentage points more likely to support Democratic candidates than white voters. But the more reliable weighted analysis suggests that Latino voters were 31-33 percentage points more likely to support Democratic candidates. This analysis suggests that the extent of racially polarized voting in Illinois General Assembly elections is significant, and Dr. Lichtman's analysis significantly understates this phenomenon.

D. Summarizing the Relationship between District Demographics and the Race of Election Winners

15. My previous report summarized the extent to which the share of a minority group in a district corresponded to the probability of electing a state legislator from that minority group. I reached my conclusion by analyzing Illinois General Assembly elections between 2012 and 2020 and presenting the results of local polynomial regressions, a commonly used method for summarizing nonlinear relationships.

16. Much of Dr. Lichtman's discussion of these analyses reflects a misunderstanding of my analysis. On p. 88 of his report, for instance, Dr. Lichtman states that I presented a "generic, statewide theoretical model." He then attempts to discredit my analysis by selectively reporting statistics that appear to be inconsistent with my figures.

17. To be clear, my results did not come from a "theoretical model"; I analyzed real data from Illinois General Assembly elections. Dr. Lichtman may not be familiar with local polynomial regressions, but this is a standard tool used by quantitative analysts to summarize a potentially non-linear relationship without making strong modeling assumptions.³ Local polynomial

³ See, for example, Cleveland, William S. 1978. Robust Locally Weighted Regression and Smoothing Scatterplots. *Journal of the American Statistical Association* 74(368):829-836 and Fan,

regressions are similar to moving averages. So my figures simply show the share of cases in which districts within a nearby range of minority population elected a minority candidate.

18. As noted above, local polynomial regressions are similar to moving averages. Thus, my plots are showing how often districts within a certain range of minority population produce an electoral winner from that minority group. Dr. Lichtman points out that “Black candidates won 100% of districts with black [sic] CVP percentages ranging from 42.55% to 47.95%” and that my analyses do not show a 100 percent probability of Black winners in these cases. This is true, but there are cases just outside this range where Black candidates did not win, and my local polynomial regressions draw information from these cases.⁴

19. A key benefit of local polynomial regressions is that they do not require strong modeling assumptions and they allow for any kind of continuous relationship between the two variables of interest.⁵ One potential limitation is that they can produce biased estimates near the endpoints of the explanatory variable of interest.⁶ To avoid this potential problem, we would have to forgo some of the benefits of local polynomial regressions by imposing stronger parametric

Jianqing. 1992. Design-adaptive Nonparametric Regression. *Journal of the American Statistical Association* 87(420):998-1004.

⁴ Specifically, there are five cases in my data where a district that is 37 percent Black did not produce a Black winner, and there are eight cases where a district that is 53 percent Black did not produce a Black winner.

⁵ Other descriptive or predictive methods would typically impose strong assumptions about the nature of the relationship between the two variables of interest. For example, a linear regression would assume that the relationship is linear, a quadratic regression would assume that the relationship follows the shape of a parabola, etc. Local polynomial regression makes no such assumption and finds whatever continuous curve best summarizes the data.

⁶ To see why, imagine that we wanted to predict the probability of electing a Black candidate in a hypothetical district that has a higher share of Black residents than any actual district in our data set. All of our information would come from districts with a lower share of Black residents, so our estimate could potentially be biased downward.

assumptions.

20. Figure 1 re-displays my previous results using a local polynomial regression (black) and also shows results from a logit regression (gray). A logit regression imposes stronger assumptions about how the variables of interest relate to one another, but it is less susceptible to concerns about the potential for endpoint bias.

21. For the sake of transparency, Figure 1 also shows binned averages. Specifically, each circle shows the share of elections won by a Black or Latino candidate for each 10-percentage-point bin of the demographic variable of interest. The sizes of the circles are proportional to the number of cases in each bin.

22. In other words, Figure 1 uses three different methods to assess the extent to which the share of minority residents in a district corresponds with the chances of electing a minority legislator. In general, the three different methods produce similar results and tell essentially the same story.

23. If anything, Figure 1 suggests that the local polynomial regression utilized in my previous report may have underestimated the importance of majority-Latino districts for electing Latino legislators. Compared with the local polynomial approach, the logit regression predicts lower chances of a Latino electoral winner when a district is less than 50 percent Latino and higher chances of a Latino winner when a district is more than 50 percent Latino.

24. The binned averages in Figure 1 suggest that majority-Latino districts are important for producing Latino election winners. In districts that are 40-50 percent Latino, a Latino candidate won in 14 out of 31 elections (approximately 45 percent), and in districts that are 50-60 percent Latino, a Latino candidate won in 17 out of 20 elections (85 percent).

25. Although 14 out of 31 races in districts that are 40-50 percent Latino were won by a

Latino candidate, only one of those races was won by a non-incumbent Latino. By comparison, non-incumbents won in three of the 17 cases where a non-Latino candidate won. So cases of non-incumbents winning are rare, and instances of non-incumbent Latino candidates winning are especially rare, even in districts that are 40-50 percent Latino.

26. Between the Illinois House and Senate, there were seven districts for which the share of Latino residents was between 40 and 50 percent for the 2012-2020 redistricting cycle. Of those seven districts, six started the redistricting cycle with an incumbent. Five of the incumbents were Latino and one was white. In the district without an incumbent seeking reelection in 2012 (H-77), a white candidate (Kathleen Willis) won and continued to win each election through 2020. In the district with a white incumbent (H-23), the incumbent won every election between 2012 and 2020. In the districts with Latino incumbents, two of the five seats (H-2 and H-39) are currently held by non-Latino legislators. These patterns suggest that Latino candidates have a difficult time emerging in districts that have large but non-majority Latino populations.

E. The Dominance of Incumbents in Illinois General Assembly Elections

27. In my previous report, I documented the lack of electoral competition in Illinois elections, and I cited studies that estimate the large advantages of incumbency in state legislative elections. Here, I further document the extent to which incumbents in the Illinois General Assembly are successful in winning reelection. This evidence is relevant for understanding the extent to which Illinois voters have viable choices at the ballot box. Furthermore, the fact that incumbents are so dominant in these elections suggests that many elections with incumbents may not provide voters with a viable alternative, and therefore, these elections may not be good opportunities for assessing the extent to which minority voters have divergent interests.⁷

⁷ See, for example, *S. Christian Leadership Conf. of Alabama v. Sessions*, 56 F.3d 1281, 1293 (11th Cir. 1995) (en banc) (affirming district court, and noting that it found Dr. Lichtman's analysis

28. Utilizing data on General Assembly election results between 2012 and 2020 and the members who served in the 98th through 102nd Assemblies, I tracked various outcomes of interest. Specifically, for all elections between 2014 and 2020, I documented who won office in the previous election for that seat, and I counted how often that previous winner won reelection, lost in the primary election, lost in the general election, resigned, or retired. And in cases of resignation, I counted how often a newly appointed incumbent won the next election, lost in the primary, or lost in the general.

29. Table 2 shows the results of these tabulations. In total, there were 592 General Assembly elections for which I can track these outcomes of interest. In 451 cases, the previous winner ran again and won. In only six cases, the previous winner ran for reelection and lost in the primary election. In 29 cases, the previous winner ran for reelection and lost in the general election. In 63 cases, the previous winner resigned and the newly appointed incumbent won reelection. In one case, the previous winner resigned and the newly appointed incumbent lost in the primary. In five cases, the previous winner resigned and the newly appointed incumbent lost in the general. And in only 37 cases, the winner of the election served out their term and retired.

30. The rates of these various outcomes are similar between the Illinois House and Senate. Considering appointments, an incumbent was on the ballot in 93.8 percent of all elections, and when an incumbent ran, they won 92.6 percent of the time.

31. The fact that most incumbents win may not be especially surprising or troubling to many. Perhaps they became incumbents because their constituents liked them. What is perhaps more surprising and troubling is the fact that appointed incumbents perform almost as well as those

was “flawed” where he “failed to appropriately consider the effect on judicial election results of the power of incumbency and, with respect to incumbents who had been appointed to office, the prestige of merit selection”).

incumbents who previously won. When the previous electoral winner sought reelection, they won 92.8 percent of the time, and when an appointed incumbent sought reelection, they won 91.3 percent of the time.

32. These results, in conjunction with the results in my previous report, suggest that most Illinois voters have little opportunity to select their representatives in the General Assembly. Incumbents are significantly advantaged in Illinois General Assembly elections—even incumbents who were not initially selected by the voters.

Dated this 1st day of December 2021 at Chicago, Illinois.

A handwritten signature in black ink that reads "Anthony Fowler". The signature is written in a cursive style with a horizontal line underneath it.

Anthony Fowler

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Table 1. Racially Polarized Voting in Illinois General Assembly Elections

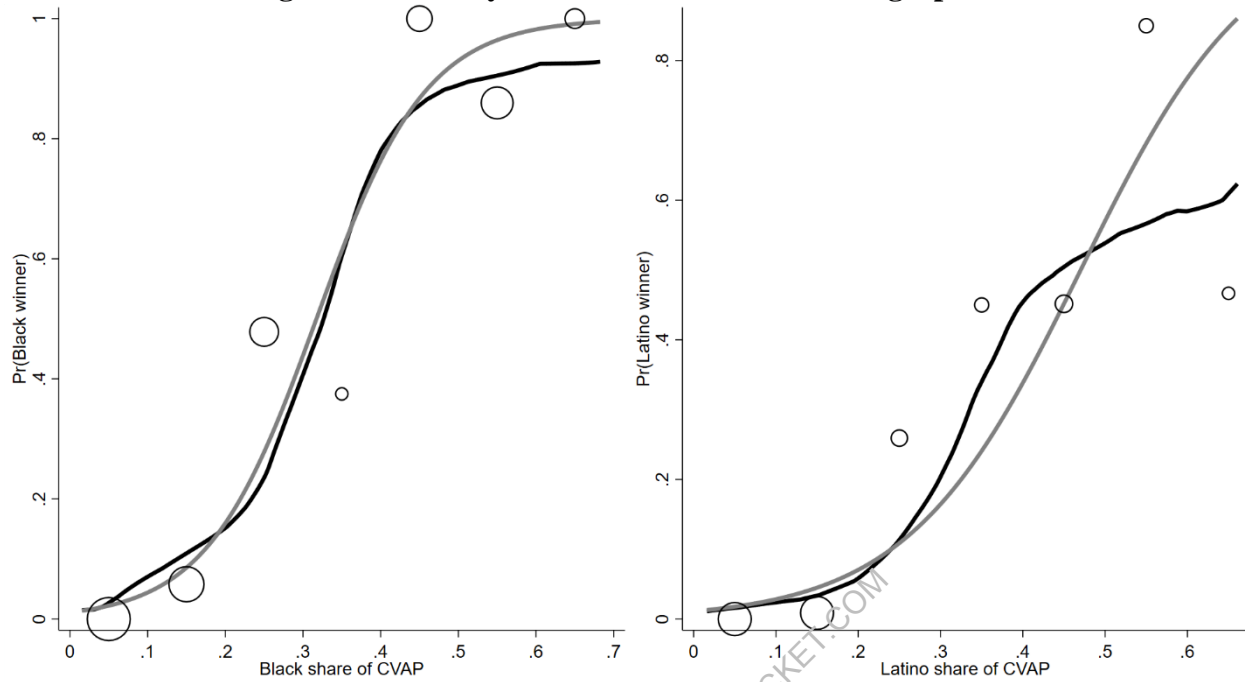
Elections	Weights?	White	Black	Latino	Asian	B-W	L-W	A-W
Illinois Senate 2020	No	.568	.967	.759	.830	.399	.190	.262
	Yes	.497	.941	.807	.709	.443	.310	.211
Illinois House 2020	No	.563	.963	.763	.804	.400	.200	.242
	Yes	.490	.945	.804	.692	.455	.314	.202
Illinois Senate 2018	No	.539	.959	.731	.775	.420	.192	.236
	Yes	.482	.954	.801	.710	.473	.319	.228
Illinois House 2018	No	.534	.945	.720	.786	.411	.187	.252
	Yes	.477	.945	.804	.720	.468	.327	.243

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Table 2. Incumbent Dominance in Illinois General Assembly Elections, 2014-2020

	House	Senate	combined
won reelection	367	84	451
lost in primary	6	0	6
lost in general	22	7	29
resigned, appointed incumbent won	42	21	63
resigned, appointed incumbent lost in primary	1	0	1
resigned, appointed incumbent lost in general	4	1	5
retired, open seat race	30	7	37
total	472	120	592
Pr(winner reelected seeking reelection)	.929	.923	.928
Pr(appointed incumbent elected appointment)	.894	.955	.913
Pr(elected or appointed incumbent wins seeking election)	.925	.929	.926
Pr(incumbent running)	.936	.942	.938

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Figure 1. Minority Winners and District Demographics

The black curves are kernel-weighted local polynomial regressions (Epanechnikov kernel, bandwidth = .1) showing how the probability that the general election winner is from a minority group relates to the share of the district's CVAP comprised of that group. The gray curves show predicted probabilities from a logit regression. The circles represent binned averages, and the sizes of the circles are proportional to the number of cases in each bin. The sample includes all state legislative general elections (from both chambers) between 2012 and 2020 in districts where at least 15 percent of the citizen voting-age population (CVAP) is Black, 15 percent is Latino, or 15 percent is Asian.

EXHIBIT C

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**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)

REBUTTAL REPORT OF CHARLES A. GALLAGHER, Ph.D.

Summary

In his report, Professor Allan J. Lichtman agrees that socioeconomic disparities have existed, and continue to exist, between Whites, Blacks and Latinos in Illinois, and that those disparities have hindered, and continue to hinder, political participation by Blacks and Latinos. Moreover, Professor Lichtman does not deny that official discrimination has occurred and touched

upon these groups' participation in the democratic process. Despite these core concessions by Professor Lichtman, he then misinterprets and misapplies the Senate Factors, the law and the facts, and tries to divert the Court's attention from these undisputed facts in an attempt to defend the map passed by the General Assembly.

There are numerous and serious flaws in Professor Lichtman's report. First, he improperly dismisses the historical and contemporary social forces that have resulted in severe socioeconomic disparities between Whites and racial minorities and how these disparities depress participation in the electoral process. Second, he misreads or misapplies Senate Factors One and Five. Third, he refuses to acknowledge how a history of discrimination in the public and private sectors shape the life chances of racial minorities today and their ability to fully participate in the election process.

Professor Lichtman's responses to the various Plaintiffs' expert witness reports attempt to distract the Court from the undisputed fact that a history of racially discriminatory conditions hinder, or "touch," the ability of racial minorities in Illinois to participate in the democratic process in Illinois. To be sure, these "group members bear the effects of past discrimination in such areas as education, employment and health which hinder their ability to participate effectively in the political process." Racial discrimination in its past and present manifestations and how these actions shape voting outcomes is well established in the social science literature. Nevertheless, Professor Lichtman ignores or summarily dismisses, without any support, the role these factors play.

Professor Lichtman Agrees With Many of My Findings

1. Professor Lichtman agrees with my opinion that socioeconomic disparities exist between Whites, Blacks and Latinos in Illinois. In particular, Professor Lichtman states "Like other

states, Illinois does exhibit a socio-economic divide between whites and minorities and lower minority turnout in general elections.” (Dkt. 156-1, p. 101) He also states:

I do not dispute that in Illinois as in virtually every state there are substantial socioeconomic disparities between whites and both Blacks and Hispanics. I do not dispute that Hispanics and to a lesser extent Blacks have lower turnout rates than whites. I do not dispute that Chicago is a highly segregated city. (Dkt. 156-1, p. 135)

Indeed, Defendants concede these points. (Dkt. 156, p. 45)

2. Professor Lichtman also does not challenge any of the scores of quality of life measures detailing racial disparities between Whites, Blacks and Latinos in Illinois overall or those regarding Cook County, Chicago and East St. Louis. Nor does he dispute that such socioeconomic inequalities have hindered Blacks’ and Latinos’ ability to participate in the political process. (Dkt. 156-1, p. 135) Thus, Professor Lichtman recognizes these socioeconomic conditions, which arise from historical discrimination (both official and unofficial) result in lower voter turnout for Blacks and Latinos. (Dkt. 156-1, p. 135)

3. Despite these key admissions, Professor Lichtman comes to the specious and unsupported conclusion that these undisputed racial disparities in rates of poverty, unemployment, home ownership, educational attainment, health and other categories in Illinois, Cook County, Chicago and East St. Louis are irrelevant because: (1) they supposedly were not caused by any action of the State of Illinois; (2) they exist elsewhere; and (3) because he believes they have been cured or simply no longer matter due to more recent legislative actions (and even mere *proposals*). As shown below, Professor Lichtman is wrong on each basis.

4. The analysis in my initial report is not lacking as Professor Lichtman suggests; he simply ignored it. The only way Professor Lichtman can arrive at his conclusion is to dismiss or disregard over 32 quality of life indicators (the majority from 2018 to 2021) that are detailed in

my report (see Gallagher Report, ¶¶ 9-25), and to ignore the current scholarship that clearly demonstrates how socioeconomic status and race shapes voter participation. (see Gallagher Report, ¶¶ 26-30). Professor Lichtman himself has relied on exactly the same type of analysis I performed in this case to demonstrate the effects of discrimination against minorities. See, e.g., *Holloway v. City of Virginia Beach*, 531 F. Supp. 3d 1015, 1086-90 (E.D. Va. 2021) (Professor Lichtman relies on data such as graduation rates, academic achievement, school discipline, household income, poverty rates, unemployment rates, home ownership, wealth disparities, home values, etc. in demonstrating the effects of discrimination against minorities). Professor Lichtman cannot simply ignore my analysis (the same analysis he has performed) to argue it does not exist.

Professor Lichtman Misapplies the Senate Factors

5. Somewhat surprisingly for a person of his considerable experience in Voting Rights Act litigation, Professor Lichtman misrepresents the Senate Factors. In order to discount Senate Factor Five, and by extension Senate Factor One, Professor Lichtman rewrites the Senate Factors to fit his argument about which Senate Factors contribute to the “totality of circumstances.” However, Professor Lichtman is not at liberty to rewrite the Senate Factors.

6. For instance, on page 101 of his report, Professor Lichtman writes:

Like other states, Illinois does exhibit a socio-economic divide between whites and minorities and lower minority turnout in general elections. But plaintiffs’ experts have not tied this finding to policies of the state rather than federal policy and private action and have not properly interpreted the findings. (Dkt. 156-1, p. 101)

On page 154 of his report, Professor Lichtman again writes “plaintiffs do not link socio-economic disparities or differences in turnout to discrimination by the state of Illinois, which has facilitated access to voting and registration, especially for low-income minorities” (Dkt. 156-1, p. 154). Professor Lichtman repeatedly and incorrectly asserts that Plaintiffs must establish that

socioeconomic disparities and low voter turnout are directly caused by actions by the State of Illinois.

7. First, as a matter of fact, he is wrong. For example, my report cites to official action by the State of Illinois which discriminated against Latinos. See Gallagher Report, ¶¶ 42, 43, 45, 47. More fundamentally, he is wrong because Senate Factor One asks whether a “history of official discrimination in the state or political subdivision [] touched the right of members of the minority group... to participate in the political process.” Nothing in this factor requires the State of Illinois to have acted to cause the discrimination; rather, the discrimination must be “in the state or **political subdivision**.” Tellingly, Professor Lichtman cites no authority in support of his multiple repetitions of his false statement in this regard. Professor Lichtman does not dispute that official discrimination has occurred in Illinois and, specifically, in the areas challenged by Plaintiffs. His only retort is that it occurred in the past so the Court should ignore it, a surprising suggestion from a history professor.

8. Professor Lichtman also ignores that a panel of this Court in the 2011 redistricting litigation (in which he testified, and that he cites for other purposes throughout his report) specifically noted the history of discrimination against Latinos in the Chicago area:

We also note the history of discrimination against Latinos, *see Hastert*, 777 F.Supp. at 650 (finding a definite pattern and practice of electoral discrimination against the Hispanic community in Chicago); *see also Barnett*, 141 F.3d at 702 (noting that voting for alderman in Chicago is polarized and “Latinos are almost never elected in wards that do not contain a Latino majority of citizens of voting age.”), and socioeconomic disparities among the Latino community, *see* 20 Ill. Comp. Stat. 3983/5 (“Latinos lag behind in major indicators of wellbeing relative to education, health, employment, and child welfare, as well as representation throughout the State.”); *see also* Pl. Ex. A53 at 8 (“Latinos had lower family incomes than any other major racial or ethnic group in the Chicago region in ... 2006.”).

Committee for a Fair & Balanced Map vs. Ill. State Board of Elections, 835 F. Supp. 2d 563, 58-87 (N.D. Ill. 2011). This is the most recent pronouncement by the Court regarding the history of discrimination against Latinos in Illinois. Indeed, no more recent pronouncement from the Court could be made in this context since 2011 is the most recent redistricting cycle. Professor Lichtman's criticism that my analysis contains "outdated" information, therefore, is false. On the contrary, the Court explicitly relied on such information in finding historical discrimination against Latinos in 2011.

9. Moreover, Professor Lichtman attempts to impose a causation requirement that does not exist. In fact, a causation requirement was explicitly rejected in the Senate Report and has been rejected by courts. In expanding upon Senate Factor Five, the Senate Report states:

The courts have recognized that disproportionate educational, income level and living conditions arising from past discrimination tend to depress minority political participation. Where these conditions are shown, and where the level of black participation in politics is depressed, ***plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation.*** (emphasis added)

Senate Report 97-417 (1982), n.114 ; *Harper v. City of Chicago Heights*, 1997 WL 102543, * 10; *Barnett v. City of Chicago*, 969 F. Supp 1359, 1447-48 (N.D. Ill. 1997), *aff'd in part, vacated in part*, 141 F.3d 699 (7th Cir. 1998); *N.A.A.C.P. v. City of Niagara Falls*, 65 F.3d 1002, 1021 2d Cir. 1995. Professor Lichtman argues that information reported by Plaintiffs' experts have "not tied" their findings to state policies or "do not link socio-economic disparities or differences in turnout to discrimination by the state of Illinois." No such "linkage" is required under Senate Factor Five. *Id.*

10. The Collingwood report found voting differentials between Blacks and Whites from 10% to 24%. The reports written by Gallagher, Tolson and Weichert provide historic and

social science data detailing the past and present racial disparities in Illinois, Cook County, Chicago and East St. Louis. In fact, Latino voter turnout in Illinois was about 23% lower than that of Whites at the November 2020 election.¹ These conditions are shown in my report and the reports of the others, and my report establishes disparate socioeconomic status and resultant depressed levels of political participation.

Lichtman Displays A Lack of Understanding of Ongoing Systemic Racism and Links To Political Participation and Voting

11. Professor Lichtman states that the socioeconomic disparities I identify should be ignored because these types of disparities exist in nearly all states. (Dkt. 156-1, p. 135; Dkt. 156, p. 45) Thus, Professor Lichtman concludes that if this is correct, Senate Factor Five would apply to nearly all states. Again, Professor Lichtman provides no authority for his proposition. Regardless, that these disparities exist elsewhere is irrelevant. The question is whether they exist in Illinois and the areas at issue in this case. Professor Lichtman admits that they do, so his attempt to divert attention from this fact fails.

12. Incredibly, Professor Lichtman suggests that the racial disparities I identified are cured or are on their way to being cured because of legislation recently enacted by the Illinois General Assembly. Illinois elected officials explicitly state otherwise, as obviously one year of legislation in 2021 does not automatically cure decades of discrimination:

- Regarding the Illinois Community Reinvestment Act:

It's easy to see the terrible consequences of systemic racism in economic access, in equity, in opportunity. But, it's another thing to actually do something about it," Pritzker said. "Together, these four bills mark significant progress in our efforts to close the racial gaps and eliminate

¹ https://www.kff.org/other/state-indicator/voting-and-voter-registration-as-a-share-of-the-voter-population-by-raceethnicity/?currentTimeframe=0&selectedDistributions=percent-of-voter-population-that-voted-by-raceethnicity_white--percent-of-voter-population-that-voted-by-raceethnicity_hispanic&selectedRows=%7B%22states%22:%7B%22illinois%22:%7B%7D%7D%7D&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

barriers that have for too long unfairly held Black and brown Illinoisans back.

Gov. Pritzker, https://www.wsilTV.com/news/illinois-capitol-news/pritzker-signs-bills-enhancing-access-to-jobs-and-community-reinvestment-capping-loan-prices/article_b44cfb0f-f1a2-5c40-ba0f-811493c05921.html

- Regarding the Safe-T Act:

Ahead of the signing, Pritzker said the bill “marks a substantial step toward dismantling the systemic racism that plagues our communities, our state and our nation” and brings the state closer to “true safety, true fairness and true justice.”

<https://chicago.suntimes.com/2021/2/22/22295393/illinois-governor-jb-pritzker-criminal-justice-reform-bill-cash-bail-police-bodycams>

- Regarding House Bill 158:

Speaker Welch, one of the Defendants in this litigation, stated “this legislation creates an Anti-Racism Commission to eliminate systemic racism prevalent in health care....”

<https://www.emanuelchriswelch.com/recent-press/2021/4/22/delivering-on-promises-speaker-welchs-first-100-days>

- Speaker Welch regarding police reform and investment in black communities:

It was important for [Governor Pritzker] to hear our demands to address systemic racism and poverty. To start, we need real police reform and investment in black communities.

<https://twitter.com/repchriswelch/status/1269712179231588361>

13. Contrary to Professor Lichtman’s claim, both Governor Pritzker and the General Assembly have recognized the continued existence of systemic racism and racial disparities, even as recently as April 2021:A. In the Anti-Racism Commission Act (20 ILCS 5180/130-5, *et seq.*), enacted in 2021, the General Assembly states:

(3) According to the Centers for Disease Control and Prevention, racism and segregation in the State of Illinois have exacerbated a health divide, resulting in Black residents having lower life expectancies than white citizens of this State and being far more likely than other races to die prematurely (before the age of 75) and to die of heart disease or stroke; Black residents of Illinois have a higher level of infant mortality, lower birth

weight babies, and are more likely to be overweight or obese as adults, have adult diabetes, and have long-term complications from diabetes that exacerbate other conditions, including the susceptibility to COVID-19.

(4) Black and Brown people are more likely to experience poor health outcomes as a consequence of their social determinants of health, health inequities stemming from economic instability, education, physical environment, food, and access to health care systems.

(5) Black residents in Illinois are more likely than white residents to experience violence-related trauma as a result of socioeconomic conditions resulting from systemic racism.

(6) Racism is a social system with multiple dimensions in which individual racism is internalized or interpersonal and systemic racism is institutional or structural and is a system of structuring opportunity and assigning value based on the social interpretation of how one looks; this unfairly disadvantages specific individuals and communities, while unfairly giving advantages to other individuals and communities; it saps the strength of the whole society through the waste of human resources.

(7) Racism causes persistent racial discrimination that influences many areas of life, including housing, education, employment, and criminal justice; an emerging body of research demonstrates that racism itself is a social determinant of health.

(8) More than 100 studies have linked racism to worse health outcomes.

B. In the Illinois Latino Family Commission Act (20 ILCS 3983/1 *et seq.*), the General

Assembly states:

Latinos are well represented among the families of Illinois. The Illinois Latino population is the fifth largest in the nation. Over 14% of the estimated 12,000,000 people that live in Illinois are Latinos. According to the 2000 Census figures, more than 1,750,000 Latinos make Illinois their home. This figure represents a 69.2% increase from the 1990 Census figures compared to about 3.5% for non-Latinos. The Latino population explosion accounted for two-thirds of the total population change in Illinois and it is visible throughout the State.

In Cook County alone, the Latino population has increased to about 1,071,740. In the 6 county region including Cook County, nearly 69% of new residents were Hispanic. Roughly 23.7% of Kane County residents are Latino. In Lake County, Latinos make up 14.4% of the total county population.

Latinos are not only the fastest growing ethnic group in the State, they are also the youngest. The median age for Latinos in Illinois is 25, compared to 36 for non-Latinos. Despite unprecedented population growth, Latinos lag behind in major indicators of well-being relative to education, health, employment, and child welfare, as well as representation throughout the State. Moreover, Latino children and families present unique linguistic, cultural, and immigration issues for the State.

Latinos have a well-established presence in the child welfare system. Of the total 86,973 children that were reported abused or neglected in Fiscal Year 2001, about 8,442 or 9.7% were Hispanic children. About 25% of these hotline reports were indicated, for a total of 2,155 Latino children in Fiscal Year 2001. As of August 2003, there were about 1,367 open Latino child abuse cases in Illinois. This figure is only slightly lower than the 1,491 open Latino child cases reported for the previous fiscal year. Hispanic cases make up about 6% of all open child cases (excluding adoption assistance and home of parent living arrangement). Latino families receiving services make up about 16% of all intact family cases. It is estimated that between 60% and 80% of all Latino families involved with the Illinois Department of Children and Family Services (IDCFS) will need bilingual services at some point during the time their case is open. However, IDCFS struggles to meet the demand for bilingual services. There are similar examples throughout the State demonstrating that Illinois lacks a unified and comprehensive strategy for addressing the unique needs of Latino families.

Latino families remain outside of the margins of opportunities in the State. There are tremendous challenges faced by Latino families and children in the State. Clearly, the growing Latino presence demands that government, child and family advocates, and other key stakeholders come together to identify and implement policy strategies that can create an infrastructure of support for Latino families in the State. Building this needed infrastructure of policies must involve multiple State agencies. The Illinois Latino Family Commission shall lead the effort, advising the Governor and assisting State agencies with this task.

C. In the Racial Disproportionality in Child Welfare Task Force Act (20 ILCS 4105/1, et. seq), the General Assembly states:

(1) Historically, Black children and Black parents and caregivers, women in particular, are disproportionately represented in the child welfare system.

(2) According to the Fiscal Year 2018 Disproportionality and Disparity Report prepared by the Children and Family Research Center of the University of Illinois, School of Social Work, racial disparities exist at each

key decision point in the Illinois child welfare system with Black children being overrepresented at each point.

* * *

(5) As of December 31, 2020, the population of Illinois' youth in care was approximately 44% Black according to data from the Department of Children and Family Services, while recent data from the Annie E. Casey Foundation's KIDS COUNT Data Center estimate the 2019 child population of Illinois to have been approximately 15% Black.

(6) Black children and youth are represented in the child welfare system in Illinois at approximately 3 times the percentage of the statewide child population that is Black. Nationally, Black children and youth are represented in foster care at approximately 2 times the percentage of the national child population that is Black according to the National Conference of State Legislatures.

D. In Executive Order 2021-29 Implementing a Comprehensive Approach to Reducing Firearm Violence in Illinois, Governor Pritzker states:

WHEREAS, the State of Illinois recognizes that firearm violence has a disproportionate impact on Black, Latinx, and other communities of color as a result of systemic racism;

In short, Professor Lichtman's claim that discrimination, and the effects of discrimination, against minorities and that discrimination's effect on minority members' political participation is not only without support, it is actually refuted by the legislature's explicit acknowledgements of the continued effects of historical discrimination. If Professor Lichtman was correct, this type of legislation would be unnecessary

14. In his attempt to showcase new "pioneering" initiatives the 2021 General Assembly has taken up to address systemic racism in the Chicago and Illinois housing market, Professor Lichtman also cites to a number of press release sound bites from Housing Action Illinois. Had Professor Lichtman looked at their website and read their material on the state of housing in Illinois, he would understand why such organizations came into being in the first place; racial

segregation in housing markets continues today. In their Organizational News Update of June 12, 2021, Housing Action Illinois had this to say about discrimination in the housing market and ongoing systemic racism:

We have long known that racial justice demands fair, affordable, and accessible housing. Who lives where—and in what kind of home—is **deeply constrained by systemic and individual discriminatory policies and practices that may have shifted forms but have persisted for centuries.** Our nation’s history of racist housing policies and practices is directly connected to today’s over-policing and disinvestment of Black and Brown communities, as well as the tragedy of how disasters like the COVID-19 pandemic disproportionately harm people of color. Controlling access to quality, affordable homes has underpinned racism for far too long, in far too many ways. Redlining in the 1930s denied Black households access to home mortgages and drew community lines along racial boundaries that still exist today. Individuals and families continue to be denied rental housing because of their race. Government and private investments and policies benefit majority White communities over everyone else, again and again. This has to change” (Housing Action Illinois) (emphasis added)

15. Professor Lichtman’s blurbs championing new legislative initiatives gloss over the fact that the history of residential and housing segregation in Illinois (to take just one example) continues to play out in today’s housing market. It is more than ironic that a history professor would dismiss the role that history has played in creating the racialized social structures we all inhabit. Indeed, the legislation Professor Lichtman touts as evidence that these problems are cured would not be necessary if he were correct.

Conclusion

Professor Lichtman wants to have it both ways; he agrees with my facts and analysis but rejects the conclusion that a history of institutional, systemic racism (official and unofficial) as expressed in Senate Factor One and those groups who currently “bear the effects of discrimination” as described in Senate Factor Five are relevant to the extent to which Blacks and Latinos are hindered from voting participation. Professor Lichtman readily acknowledges in his report that

racial socio-economic disparities exist, that these disparities are rooted in a history of institutional racism, that these conditions create obstacles for Blacks and Latinos to fully participate in the political process, and that these groups' participation in the political process lags behind that of Whites, but he discounts or is in denial about the manner in which this has structured the institutional and systemic racism we see today. No social scientist can in good faith state that the institutional and system racism and discrimination that has occurred and continues to occur no longer affects minority group members from effectively participating in the political process. I am being compensated at the rate of \$300 per hour. The fact that I am being compensated has not altered the facts or opinions that I have given or will give in this case.

A handwritten signature in blue ink, appearing to read 'C. A. Gallagher', is written over a horizontal line.

Charles A. Gallagher, Ph.D.

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EXHIBIT D

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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, *et al.*

Plaintiffs.

v.

IAN K. LINNABARY, *et al.*,

Defendants.

Case No. 1:21-CV-03091

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

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

Magistrate Beth W. Jantz

AFFIDAVIT OF SENATOR DAN McCONCHIE

I, the Affiant, Dan McConchie, having been first duly sworn upon oath, do state and depose that I have personal knowledge of all facts which follow and, if called, I could competently testify to the following:

1. I am currently, and since 2016 have been, a member of the Illinois Senate representing the 26th District.
2. In the spring session of the 2021 General Assembly, Senator Steven Landek spoke to me and suggested that we should try to work together to try to come to some understanding of how to better prepare a new redistricting map for Illinois to protect incumbents and lessen the chance of litigation.
3. I told Senator Landek that I could not participate in any such map because I would likely be a Plaintiff in litigation regarding the 2021 redistricting map based upon my knowledge at the time of this conversation that the persons drafting the map intended to use American

Community Survey data rather than the official PL 94-171 data to determine the total population in each district.

4. I also believed at that time that utilizing total population numbers from the American Community Survey data for the State of Illinois would create a malapportioned map; accordingly, I could not support or vote for a redistricting map that would be in violation of the United States and Illinois Constitutions.


5. My belief that a redistricting map based on American Community Survey data would violate federal and state law was ultimately proven correct, as the court in this litigation held that the redistricting map passed by the General Assembly on May 29, 2021 was unconstitutional.

Further Affiant Saith Not.


Dan McConchie

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

SUBSCRIBED and SWORN to before me
this 30th day of November, 2021.



Notary Public

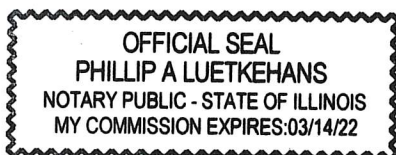


EXHIBIT E

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

JULIE CONTRERAS, IRVIN FUENTES,)
ABRAHAM MARTINEZ, IRENE PADILLA,)
ROSE TORRES, LAURA MURPHY,)
CRISTINA FLORES, JOSE ALCALA,)
TROY HERNANDEZ, GABRIEL PEREZ,)
IVAN MEDINA, ALFREDO CALIXTO,)
HISPANIC LAWYERS ASSOCIATION OF)
ILLINOIS and PUERTO RICAN BAR)
ASSOCIATION OF ILLINOIS,)

Plaintiffs,)

-vs-)

No. 1:21-cv-3139

ILLINOIS STATE BOARD OF)
ELECTIONS, IAN K. LINNABARY,)
WILLIAM J. CADIGAN, LAURA K.)
DONAHUE, WILLIAM M. MCGUFFAGE,)
CATHERINE S. MCCRORY, RICK S.)
TERVEN, SR. and CASANDRA B.)
WATSON, in their official)
capacities as members of the)
Illinois State Board of)
Elections, DON HARMON, in his)
official capacity as President of)
the Illinois Senate, and THE)
OFFICE OF THE PRESIDENT OF THE)
ILLINOIS SENATE, EMANUEL)
CHRISTOPHER WELCH, in his)
official capacity as Speaker of)
the Illinois House of)
Representatives, and THE OFFICE)
OF THE SPEAKER OF THE ILLINOIS)
HOUSE OF REPRESENTATIVES,)

Defendants.)

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1 Deposition via videoconference of JONATHAN
2 MAXSON taken before TRACY L. BLASZAK, CSR, CRR, and
3 Notary Public, pursuant to the Federal Rules of Civil
4 Procedure for the United States District Courts
5 pertaining to the taking of depositions, at 82 South
6 LaGrange Road, in the Village of LaGrange, Cook County,
7 Illinois at 10:08 a.m. on the 3rd day of November, A.D.,
8 2021.

9 There were present at the taking of this
10 deposition via videoconference the following counsel:

11 MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL
12 FUND by
13 MR. ERNEST HERRERA
14 643 South Spring Street
15 Suite 1100
16 Los Angeles, California 90014
17 (213) 629-2512
18 eherrera@maldef.org

19 -and-

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1 legislative redistricting?

2 MS. YANDELL: Objection. Are we talking about June
3 or August? I'm actually curious.

4 MR. HERRERA: Q Sure. So prior to the May 28th,
5 2021, maps being passed by the General Assembly, who did
6 you invite to room 401 of the Stratton Building for the
7 purposes of working on AutoBound?

8 A I can't give you a complete list. I could say
9 that I was inviting members of the House Democratic
10 caucus.

11 Q I'll have some names to ask you. Do you recall
12 ever inviting Michael Zalewski?

13 A I don't recall ever inviting him to room 401.

14 Q Do you recall him ever being in the room?

15 A Yes.

16 Q Okay. And with Mr. Zalewski, was he working on
17 his district?

18 MS. YANDELL: Objection.

19 THE WITNESS: I don't recall what he was -- whether
20 he was there to view something or work on something or
21 what his meeting entailed.

22 MR. HERRERA: Q So I want to back up a second. So
23 on the computers that had AutoBound for 2021 legislative
24 redistricting, were you personally involved in drawing

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1 lines for maps for consideration by the General
2 Assembly?

3 MS. YANDELL: Objection.

4 THE WITNESS: Yes.

5 MR. HERRERA: Q And was anyone else involved or
6 was anyone else that you saw, that you recall of the
7 staff members you mentioned also drawing lines for
8 districts?

9 MS. YANDELL: Ernest, are we talking about in May
10 and June, or are we talking about the map that has been
11 passed and is current?

12 MR. HERRERA: Q So I'm going to start with prior
13 to May 28th, 2021. Actually, let me -- so when I asked
14 you about you being involved in drawing lines using
15 AutoBound, did you do so in both -- both before May 28th
16 and after May 28th for legislative redistricting in
17 2021?

18 A Yes.

19 Q Okay. Now, going back to May 28th, 2021, who
20 else was involved in using AutoBound to draw district
21 lines of staff members?

22 MR. VAUGHT: Ernest, we're just clarifying, I know
23 you're asking the question, but throughout this line of
24 questioning we're referring specifically to the House

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1 Democratic staff, correct?

2 MR. HERRERA: Yes.

3 Q So you mentioned several members of the House
4 Democratic staff earlier. Who was involved in
5 manipulating or drawing lines for the 2021 legislative
6 plans before May 28th, 2021, in AutoBound?

7 A The staff that I had previously identified
8 served as technicians in meetings with members of the
9 House Democratic caucus.

10 Q Okay. And so the people you mentioned earlier,
11 right?

12 A The people -- the names that I had mentioned
13 previously served as the technicians in meetings with
14 the House Democratic caucus.

15 Q And so in those meetings with the House
16 Democratic caucus, these staff members serving as
17 technicians would change the lines of districts, right?

18 A They would produce drafts in conjunction with
19 the members of the caucus.

20 Q They would produce drafts of the district
21 boundaries, is that right?

22 A Yes.

23 Q So this is before May 28th, 2021, again, you did
24 recall Michael Zalewski being in there with you. So is

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1 preferences?

2 MS. YANDELL: Objection.

3 THE WITNESS: The best way I can answer that would
4 be to say that Representative Guerrero Cuellar had
5 requested that Midway Airport and a number of the
6 surrounding communities be kept as whole in her district
7 as possible and that the final version of the district
8 was created in such a way to keep Midway Airport and the
9 communities, surrounding communities as whole as
10 possible in that district.

11 MR. HERRERA: Q Okay. With Representative
12 Guerrero Cuellar, did she request that the districts be
13 at a certain level of Hispanic population?

14 A No.

15 Q Okay. What about did -- before May 28, 2021,
16 did Representative Guerrero Cuellar request that her
17 district be at certain percentage of Hispanic citizen
18 voting age population?

19 A No.

20 Q So I'm going to go back to the meetings with
21 Representative Hernandez. Do you recall what
22 preferences Representative Hernandez relayed to you
23 about her district before May 28th, 2021?

24 MR. VAUGHT: Objection. Can you clarify which

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1 Representative Hernandez.

2 MR. HERRERA: Q Sorry, Elizabeth Hernandez.

3 A Representative Elizabeth Hernandez's preference
4 was to have -- to maintain the portion of Cicero that
5 her district has now and potentially add additional
6 portions of the city of Cicero.

7 Q Before May 28th, 2021, did Representative
8 Elizabeth Hernandez say which portions of Cicero she
9 wanted to add?

10 A Her interest was in having as much of the city
11 of Cicero as possible.

12 Q And before May 28th, 2021, was Representative
13 Elizabeth Hernandez's district modified to include
14 that -- modified based on that preference or to meet
15 that preference that her district include as much of
16 Cicero as possible?

17 MS. YANDELL: Objection.

18 THE WITNESS: I would say that the district that was
19 passed on May 28th, 2021, includes more of the city of
20 Cicero than it did previously.

21 MR. HERRERA: Q Do you recall how much more of
22 Cicero was added to Representative Elizabeth Hernandez's
23 district before May 28th, 2021?

24 MR. VAUGHT: Objection. Can you describe how you

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1 want that described, when you say how much, like people,
2 city blocks, can you describe how much, when you say how
3 much more, what do you mean?

4 MR. HERRERA: Q Let me back up and ask.

5 Mr. Maxson, before May 28th, 2021, in redistricting, how
6 were you measuring how much of Cicero you were adding to
7 Representative Elizabeth Hernandez's district?

8 A I think in different situations there would be
9 different ways that you would measure that. In this
10 case in particular we measured that based on the
11 number -- we would have measured that based on the
12 number of residents of Cicero were in that district.

13 Q And before May 28th, 2021, when you were drawing
14 her district, did you have a limit on the number of
15 residents of Cicero that you were adding to her
16 district?

17 MS. YANDELL: Objection.

18 THE WITNESS: I don't understand the question with
19 regard to a limit.

20 MR. HERRERA: Q Is there a reason -- Well, first
21 of all, let me ask, when you say residents, were you
22 measuring by residents in terms of total population that
23 you were adding to Representative Elizabeth Hernandez's
24 district?

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1 A Yes.

2 Q Sorry, to clarify, that's residents of Cicero.

3 So you were adding residents of Cicero in terms
4 of total population to Representative Elizabeth
5 Hernandez's district in 2021 before May 28th?

6 A I'm sorry, can you repeat that.

7 Q So before May 28, 2021, in redistricting, you
8 were adding residents of Cicero to Representative
9 Elizabeth Hernandez's district by total population,
10 right?

11 A Yes.

12 Q Okay. Now, is there any reason you did not add
13 all of Cicero to Representative Elizabeth Hernandez's
14 district before May 28, 2021?

15 MS. YANDELL: Objection.

16 THE WITNESS: I would say there were several
17 reasons -- there were several limits to that extent.

18 MR. HERRERA: Q Okay. I'm going to pull up
19 another exhibit here. Well, we'll get to that in a bit.

20 So what were those limits?

21 A So first and foremost, the district can only
22 include approximately 108,000 people. There is a
23 population limit as to how many people need to be in a
24 representative district to achieve equal population.

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1 Then there will be additional considerations
2 with regard to all of the surrounding districts needing
3 to also attain equal population.

4 And, obviously, there is a limit to the number
5 of people who reside in the city of Cicero. I am not
6 aware of the population of the city of Cicero. So it's
7 possible they could not all fit into a representative
8 district.

9 It's also possible that other districts needing
10 to achieve equal population would end up taking
11 population -- would need some of that population, as
12 well.

13 Q Okay. And were there any other considerations
14 by you as to why you didn't add all of Cicero to
15 Representative Elizabeth Hernandez's district before May
16 28th, 2021?

17 MS. YANDELL: Objection, form.

18 THE WITNESS: I don't recall any further
19 limitations.

20 MR. HERRERA: Q Besides the total population
21 figures from parts of Cicero that you were looking at,
22 were you considering any other characteristics of the
23 residents of the city of Cicero when you were
24 considering adding portions of it to Representative

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1 Elizabeth Hernandez's district before May 28, 2021?

2 A Not that I recall.

3 Q What other characteristics do you recall?

4 A I don't recall other characteristics.

5 Q When you were -- well, we'll come back to that
6 one. So I'm going to move on to another area here.

7 So --

8 MS. YANDELL: I'm sorry, Ernest, to interrupt you.
9 I'm actually going to be leaving the deposition, and my
10 colleague Colleen Smith is going to be swapping in for
11 me on behalf of President Harmon and the Office of the
12 President. So, Tracy, I know I gave you all that detail
13 before. Thanks, everyone. See you next time.

14 MR. HERRERA: Thank you. Thank you, Colleen.
15 You're on mute, I think.

16 MS. SMITH: I was double muted. Thanks, Elizabeth,
17 and hi, everyone.

18 Sorry to interrupt, Ernest. I just wanted to
19 make sure you knew the handoff was happening. So please
20 continue.

21 MR. HERRERA: Thank you.

22 Q Mr. Maxson, earlier you were talking about
23 laptops. So the laptops that had AutoBound before May
24 28th of 2021, you said that there were two of those,

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1 MR. VAUGHT: Again, object. He is not an expert on
2 the voting Rights Act. He is not a lawyer. To the
3 extent you can answer, go ahead.

4 THE WITNESS: I would say I'm not qualified to
5 identify what would be an effective opportunity
6 district.

7 MR. HERRERA: Q Did anyone inform you before May
8 28th, 2021, what would constitute -- or strike that.

9 Before May 28th, 2021, did anyone inform you
10 about whether House district 21 as you drew it in that
11 plan would be a Latino opportunity district?

12 A No.

13 Q Were you primarily responsible for drawing the
14 boundaries of House district 21 in the HB2777 plan?

15 MR. VAUGHT: Objection. Can you clarify what you
16 mean by responsible. He is a House staffer.

17 MR. HERRERA: Q So did you draw the district lines
18 for House district 21 in the HB2777 plan?

19 A With regard to that, I would say I was the
20 director of redistricting for the project that
21 ultimately created this district in consultation with
22 the members of the General Assembly.

23 Q Okay. So in the case of House district 21
24 before May 28th, 2021, in the HB2777 plan, which members

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1 did you work with to create House district 21?

2 A By members, do you mean members of the General
3 Assembly?

4 Q Yes, yes.

5 A House district 21 would have been created as a
6 result of conversations with Representative Zalewski and
7 surrounding members because, obviously, any change
8 that's made to a neighboring district is going to have
9 an impact on this district to some extent.

10 Q Okay. And was it, in fact, drawn in conjunction
11 with Representative Zalewski?

12 A Can you define drawn in conjunction with?

13 Q Well, the way you were just defining it, did he
14 help you draw this district?

15 A Representative Zalewski provided some input on
16 the district lines which were taken into consideration,
17 among other factors.

18 Q Okay. And what were those other factors?

19 A Achieving equal population, total population.

20 Q And what else?

21 A The interests of members in neighboring
22 communities, neighboring districts which ultimately have
23 impact on the configuration of what this district looked
24 like.

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1 Q And what else?

2 A Those are the primary guiding factors that I can
3 think of.

4 Q And when you say the neighboring -- members from
5 the neighboring districts, which members had input on
6 the boundaries of HD 21 before May 28th, 2021?

7 A What I would say is that the requests and the
8 input that we received from representatives in all of
9 the neighboring districts ultimately had an impact on
10 what district 21 looked like.

11 Q Okay. Whose decision was it to lower or whose
12 decision was it to put the Latino CVAP of that district
13 at 42.2 percent?

14 MR. VAUGHT: Objection on foundation. I don't think
15 you have established that anybody made that decision.

16 MR. HERRERA: Q If you know.

17 A Again, I would -- I think your question implies
18 that there was a decision made to draw the district to
19 that specific citizen voting age population, and that is
20 not a conversation that I ever had.

21 Q So you mentioned the neighboring districts that
22 were members who had input on the boundaries of HD 21,
23 who were those members before May 28th, 2021?

24 A I think we touched on one earlier when we

1 discussed how Representative Guerrero Cuellar wanted to
2 include the Midway Airport and a number of the
3 surrounding neighborhoods. That, obviously, had an
4 impact on what the 21st district looked like.

5 And I would say that the other members of the
6 House Democratic caucus in that area also had feedback
7 on their specific communities that ultimately impacted
8 the 21st district.

9 Q Okay. And who were those other members besides
10 Representative Guerrero Cuellar?

11 A Representative Lisa Hernandez, Aaron Ortiz,
12 Representative Edgar Gonzalez, and going even as far
13 east as Representative Theresa Mah, Representative Sonya
14 Harper and others in that area.

15 As I said, every district that is drawn
16 necessarily has an impact on surrounding districts.
17 We're not drawing these in a vacuum.

18 Q I understand.

19 Did any of those other members you just
20 mentioned comment specifically on the boundaries of
21 House district 21?

22 A Not that I recall.

23 Q What do you recall about what these other
24 members said about the boundaries of House district 21?

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1 A Once again, I don't recall them making specific
2 comments on the boundaries of district 21.

3 Q Okay. You said -- also, you said Lisa
4 Hernandez. Which district is that?

5 A I believe the new number for her district is
6 district No. 2.

7 Q And how many times did you meet with Lisa
8 Hernandez about her district boundaries?

9 MR. VAUGHT: Objection, you've asked and answered
10 about Representative Hernandez before, but you can
11 answer again.

12 THE WITNESS: To my previous answer, I find it
13 difficult to characterize the number of meetings that I
14 had with her given her role as the chairperson of the
15 redistricting committee.

16 I met with her dozens of times over the last
17 several months related to redistricting.

18 MR. HERRERA: Q And is Representative Lisa
19 Hernandez also known as Elizabeth Hernandez?

20 A That's correct.

21 Q Okay. And what do you recall from your meetings
22 with Representative Lisa Hernandez before May 28, 2021,
23 in terms of her comments on the boundaries of House
24 district 21?

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1 A My role was to assist the members of the House
2 Democratic caucus throughout the redistricting process.

3 Q So you kind of saw them as actually drawing the
4 map in each individual district between them, is that a
5 fair statement?

6 A What I would say is that they were ultimately
7 the ones who had to vote on it, so their insight is what
8 guided the work that my team and I did.

9 Q Okay. Obviously, there are times when members
10 disagree on boundaries. And we've all lived this long
11 enough to know that happens.

12 What would happen when two members disagreed,
13 how would you handle that?

14 A It depends on the situation.

15 Q Would you make the decision or would you try and
16 get the members together to make that decision or would
17 someone else make that decision?

18 A Make the decision more often than not had to --
19 typically had to be made by the members.

20 Q Okay. So that was your first goal, was to get
21 them to kind of agree, would that be fair to say?

22 A Yes.

23 Q Okay. If they were not able to agree, who made
24 those decisions, do you know?

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1 A No, I don't.

2 Q They would be made somewhere above you? Who you
3 take -- So let's say member A and member B, both of them
4 wanted a specific neighborhood and they couldn't agree,
5 did that ever happen for a specific area?

6 A Not to the best of my recollection.

7 Q Okay. So, in essence, to your recollection, all
8 of the disputes between members got worked out amongst
9 themselves?

10 A The disputes between members as far as I can
11 recall got worked out amongst members.

12 Q Okay. And when you say members, you mean like
13 the particular members involved in those districts or
14 did it have to go to higher -- to the majority
15 leadership?

16 A As far as I know -- I apologize. As far as I
17 know, the members of the district.

18 Q Don't apologize, I pretty much cut the question
19 in two, so please don't apologize.

20 Okay. So as far as you recall, those decisions
21 were made by the members, the members who didn't have to
22 go to caucus leadership, is that a fair statement?
23 Because I cut you off. I apologize.

24 A I can't recall instances of multiple members

1 going to leadership or caucuses and trying to settle on
2 that, no.

3 Q So you kind of -- and I don't mean to -- I'm not
4 trying to downgrade your role, but it kind of sounds
5 like you saw your role as trying to facilitate members
6 drawing maps, at least related to mapping?

7 A That's accurate.

8 MR. LUETKEHANS: Okay. I think I'm done. But just
9 give me a minute to look at my notes, guys. I
10 apologize.

11 Q You talked about the four races you had on your
12 computer system when you were mapping, the 2020
13 president, 2016 president, 2014 general or, excuse me,
14 and the gov and the 2016 Mendoza-Munger race.

15 Did you have a composite of those races in some
16 way, shape, or form on your computer?

17 A Yes.

18 Q Do you know how that composite, how that was
19 measured or how you came up -- or what the composite
20 consisted of?

21 A Equal weighting among the four races.

22 Q Got it. One moment, please.

23 MR. LUETKEHANS: I have nothing further. Thank you,
24 Mr. Maxson, for your time.

EXHIBIT F

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

JULIE CONTRERAS, IRVIN FUENTES,)
ABRAHAM MARTINEZ, IRENE PADILLA,)
ROSE TORRES, LAURA MURPHY,)
CRISTINA FLORES, JOSE ALCALA,)
TROY HERNANDEZ, GABRIEL PEREZ,)
IVAN MEDINA, ALFREDO CALIXTO,)
HISPANIC LAWYERS ASSOCIATION OF)
ILLINOIS and PUERTO RICAN BAR)
ASSOCIATION OF ILLINOIS,)

Plaintiffs,)

-vs-

No. 1:21-cv-3139

ILLINOIS STATE BOARD OF)
ELECTIONS, IAN K. LINNABARY,)
WILLIAM J. CADIGAN, LAURA K.)
DONAHUE, WILLIAM M. MCGUFFAGE,)
CATHERINE S. MCCRORY, RICK S.)
TERVEN, SR. And CASANDRA B.)
WATSON, in their official)
capacities as members of the)
Illinois State Board of)
Elections, DON HARMON, in his)
official capacity as President of)
the Illinois Senate, and THE)
OFFICE OF THE PRESIDENT OF THE)
ILLINOIS SENATE, EMANUEL)
CHRISTOPHER WELCH, in his)
official capacity as Speaker of)
the Illinois House of)
Representatives, and THE OFFICE)
OF THE SPEAKER OF THE ILLINOIS)
HOUSE OF REPRESENTATIVES,)

Defendants.)

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1 Deposition via videoconference of
2 JOSEPH SODOWSKI taken remotely before JUNE M.
3 FUNKHOUSER, CSR, RMR, and Notary Public, pursuant
4 to the Federal Rules of Civil Procedure for the
5 United States District Courts pertaining to the
6 taking of depositions, at 2:03 p.m. on the 4th day
7 of November, A.D., 2021.

8
9
10 There were present at the taking of
11 this deposition via videoconference the following
12 counsel:

13 MEXICAN AMERICAN LEGAL DEFENSE AND
14 EDUCATIONAL FUND by
15 MR. ERNEST HERRERA
16 643 South Spring Street
17 Suite 1100
Los Angeles, California 90014
(213) 629-2512
eherrera@maldef.org

18 -and-
19
20
21
22
23
24

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1 AutoBound or the computers with AutoBound were
2 configured in April of 2021?

3 A Yes.

4 Q Okay. Now, when you would move lines in
5 AutoBound in order to draw legislative districts,
6 was there anyone who instructed you to move those
7 lines?

8 A Yes.

9 Q Okay. And who was that?

10 A The members of the Illinois Senate
11 Caucus.

12 Q Is that the members of the Illinois
13 Senate Democratic Caucus?

14 A Yes.

15 Q Now the room where the -- and would
16 you -- okay. So let me back up a second to the
17 desktops that had AutoBound in 2021 for 2021
18 redistricting. So those AutoBound desktop
19 computers for 2021 redistricting, was the -- was
20 access open to anyone in that room to get to those
21 computers?

22 MR. BRUCE: I'm going to object to form
23 on that one, Ernest. Can you tighten that up,
24 please?

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1 BY MR. HERRERA:

2 Q Sure. So the room where the -- in the
3 Stratton Building where the desktops with AutoBound
4 were located in 2021, how do you access that room?

5 A With a key card.

6 Q And did you have a key card in 2021 for
7 accessing the Stratton Building room where the
8 desktop -- desktops with AutoBound were located?

9 A Yes.

10 Q Okay. Did anyone -- did you share your
11 key card to the room in the Stratton Building where
12 the AutoBound computers were located during
13 redistricting?

14 A No.

15 Q Okay Which other people in -- or let me
16 just say which other people besides yourself had
17 key cards to access the room in the Stratton
18 Building that had the AutoBound desktops in 2021?

19 A Do you want names or?

20 Q Yes. Yes, please.

21 A Magen Ryan, Michael Beatty, Nick
22 Giannini.

23 MR. BRUCE: Can you spell that?

24 THE WITNESS: No.

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1 MR. BRUCE: Giannini.

2 MR. RANDAZZO: I believe it is
3 G-i-a-n-n-i.

4 THE WITNESS: Yeah.

5 MR. BRUCE: Thank you. Go ahead. I'm
6 sorry.

7 THE WITNESS: Giovanni Randazzo. And
8 that's it.

9 I'm sorry. Reena Tanden and Ashley
10 Jenkins.

11 BY MR. HERRERA:

12 Q And who was the last one? Sorry.

13 A Ashley Jenkins.

14 Q Okay. Are any of the individuals who you
15 just listed who had key cards to access the
16 Stratton Building room with the AutoBound desktops
17 for Senate redistricting, were any of those
18 individuals elected officials?

19 A No.

20 Q Okay. Were any -- any Illinois
21 senators -- I'm sorry. Did any Illinois senators
22 have key cards to access the Stratton Building room
23 that had the AutoBound desktop computers for 2021
24 redistricting?

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1 MR. BRUCE: Objection, foundation, but go
2 ahead if you know.

3 THE WITNESS: No.

4 BY MR. HERRERA:

5 Q Now you said that members of the Senate
6 Democratic Caucus would instruct you to move Senate
7 lines in the software, AutoBound software, for
8 redistricting. How would members of the Senate
9 Democratic Caucus instruct you to move lines for
10 legislative districts in AutoBound in 2021?

11 MS. YANDELL: Object to form.

12 MR. BRUCE: You mean other than telling
13 him or is that what you're asking?

14 BY MR. HERRERA:

15 Q I'll rephrase it.

16 How would elected members of the
17 Senate Democratic Caucus instruct you to move
18 legislative district lines before May 28th, 2021,
19 in the AutoBound software?

20 MR. BRUCE: Objection to form.

21 Go ahead, Miles.

22 THE WITNESS: They would tell me.

23 BY MR. HERRERA:

24 Q Okay. And how would they tell you?

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1 A Verbally.

2 Q Okay. Now would they be -- when they
3 were telling you verbally, would those members of
4 the Senate Democratic Caucus be in the room where
5 the AutoBound desktop computers were located for
6 legislative district redistricting?

7 MR. BRUCE: Objection -- objection to
8 form. You're asking in toto all -- there are
9 probably more than one conversation, so go ahead,
10 Miles.

11 BY MR. HERRERA:

12 Q You can --

13 A I don't know.

14 Q Okay.

15 MR. BRUCE: My point, Ernest, is they may
16 have been in the room sometimes; they may have been
17 elsewhere other times. I don't know.

18 BY MR. HERRERA:

19 Q Was there ever any instance where a
20 senator, a state senator, who is a member of the
21 Senate Democratic Caucus was in the Stratton
22 Building room with you to instruct you to move
23 lines to draw legislative districts before
24 May 28th, 2021?

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1 A I don't recall.

2 Q So what do you recall about how members
3 instructed you, members of the Senate Democratic
4 Caucus instructed you, to move legislative
5 redistricting lines in 2021 before May 28th?

6 MR. BRUCE: Objection, form, broadly.
7 Go ahead.

8 THE WITNESS: We would have in-person
9 meetings and then do what they requested.

10 BY MR. HERRERA:

11 Q And do you remember any of the -- let me
12 see. Give me one second. I'll get you a specific
13 question here.

14 Okay. Now when you -- did you ever
15 meet with Senator Antonio Munoz in order for him to
16 instruct you to change legislative district lines
17 for 2021 redistricting?

18 MR. BRUCE: At what point in time? Or at
19 any time?

20 BY MR. HERRERA:

21 Q Sorry. So before May 28th in 2021 did
22 you ever meet with Senator Antonio Munoz in order
23 to receive instructions to move legislative
24 district lines in AutoBound?

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1 A Yes.

2 Q And do you recall when that meeting was?

3 A March of 2021.

4 Q Was there ever -- was there more than one
5 meeting with Senator Munoz?

6 MR. BRUCE: That Mr. Sodowski had
7 regarding the redistricting process, is that what
8 you're asking?

9 BY MR. HERRERA:

10 Q Yeah. So did you have more than one
11 meeting with Senator Antonio Munoz regarding
12 instructions to move legislative district lines
13 before May 28th, 2021?

14 A We had one meeting.

15 Q Did you ever meet -- did you ever meet
16 with -- did you ever meet with Senator Celina
17 Villanueva about or in order to receive
18 instructions to move Senate district lines before
19 May 28th of 2021?

20 A Yes.

21 Q Okay. How many times did you meet with
22 Celina Villanueva to discuss or receive
23 instructions on moving Senate district lines before
24 May 28th of 2021?

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1 A Don't recall.

2 Q Do you recall if there was more than one
3 meeting before May 28th, 2021, to receive
4 instructions on how to move Senate district lines
5 in AutoBound with Senator Villanueva?

6 A Yes.

7 Q Okay. And did you -- before May 28th of
8 2021 did you ever meet with Senator Steven Landek
9 in order to receive instructions on moving Senate
10 district lines in AutoBound?

11 A Yes.

12 Q Okay. When was your first meeting with
13 Senator Landek before May 28th, 2021, to receive
14 instructions to draw Senate district lines before
15 May 28th, 2021?

16 MR. BRUCE: Objection. The form of that
17 presumes there's more than one, but go ahead.

18 THE WITNESS: March of 2021.

19 BY MR. HERRERA:

20 Q Was there more than one meeting with
21 Senator Landek to order in receive instructions to
22 move Senate district lines in AutoBound before
23 May 28th, 2021?

24 A No.

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1 MS. YANDELL: Object to form.

2 THE WITNESS: Again, every line change
3 causes ripples through the map, and this is a
4 similar construction to what it was in 2011.

5 BY MR. HERRERA:

6 Q Okay. And so are you -- are you saying
7 that there are conservative Democrats that you were
8 grabbing for Senator Munoz that caused the Senate
9 District 11 to look like this?

10 MS. YANDELL: Objection to form.

11 MR. BRUCE: Objection to the form,
12 grabbing. Objection to foundation.

13 Go ahead and answer, Miles.

14 THE WITNESS: We have to create districts
15 that are substantially equal in population.

16 BY MR. HERRERA:

17 Q Okay. So you said -- I asked you about
18 the shape of Senate District 11 and you brought up
19 Senator Ortiz's district, right?

20 MR. BRUCE: Munoz.

21 BY MR. HERRERA:

22 Q I'm sorry, Munoz. Which -- which Senate
23 District is Senator Munoz's in 927?

24 A District 1.

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1 that were left out of the resolution?

2 A No.

3 Q Have you read the resolution?

4 MR. BRUCE: Objection; asked and
5 answered.

6 Go ahead.

7 THE WITNESS: Yes.

8 MS. WRIGHT: I don't think I have any
9 further questions, so I'll pass the witness.

10 MR. BRUCE: Phil?

11 MR. LUETKEHANS: Yep. I'm here.

12 MR. BRUCE: Okay.

13 EXAMINATION

14 BY MR. LUETKEHANS:

15 Q Mr. Sodowski, a few questions.

16 Before May 28th, 2021, did you have
17 any conversations with mayor -- or with Senator
18 Aquino regarding his district or any districts in
19 the map?

20 MS. YANDELL: Object to form.

21 THE WITNESS: I don't understand the
22 question.

23 BY MR. LUETKEHANS:

24 Q Did you have any conversations with

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1 Senator Aquino like you had -- like you've had with
2 other members regarding their district or other
3 districts in the map, in the -- in the plan?

4 A Yes.

5 Q How many conversations do you recall with
6 Senator Aquino before May 28th?

7 A I don't recall.

8 Q More than three?

9 A Don't recall.

10 Q Do you recall the substance of any of
11 those conversations with Senator Aquino?

12 A Don't recall.

13 Q Were the conversations about his
14 particular district?

15 A Sorry. Sorry. Can you repeat the
16 question?

17 Q Did you have conversations with Senator
18 Aquino before May 28th about his particular
19 district?

20 A Yes.

21 Q Did you have conversations with Mayor
22 Aquino about districts other than his particular
23 district before May 28th?

24 MR. RANDAZZO: Phil, did you say Mayor

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1 Aquino?

2 MR. LUETKEHANS: I'm sorry. I'm sorry.
3 I probably did, but obviously I meant Senator
4 Aquino.

5 MR. RANDAZZO: Not mayor yet.

6 THE WITNESS: Sorry. Can you repeat that
7 one?

8 BY MR. LUETKEHANS:

9 Q Of course. Sorry. No worries.

10 Do you recall having any conversations
11 with Senator Aquino prior to May 2021 about
12 districts other than his own district?

13 A Don't recall.

14 Q Senator Aquino, you said you had
15 conversations with Senator Aquino about his
16 district. Would it be fair to say that he knew you
17 were involved in the map or in the drawing of the
18 district lines in the map?

19 MR. BRUCE: Objection; form.

20 Go ahead.

21 THE WITNESS: Yes.

22 BY MR. LUETKEHANS:

23 Q Okay. Let's go to Senator Sims for a
24 minute.

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1 MR. BRUCE: I'm sorry?

2 MR. LUETKEHANS: Senator Sims.

3 MR. BRUCE: Sims, okay.

4 MR. LUETKEHANS: S-i-m-s for the court
5 reporter, and Aquino is A-q-u-i-n-o.

6 BY MR. LUETKEHANS:

7 Q Did you have conversations with Senator
8 Sims between -- or before May 28th, 2021, relating
9 to the map?

10 A Yes.

11 Q Do you recall approximately how many
12 conversations you had with him?

13 A I do not recall.

14 Q Did you have conversations with Senator
15 Sims about his particular district?

16 A Yes.

17 Q So, again, it's fair to say he knew you
18 were part of a team that was drawing the map as it
19 related to these Senate districts, correct?

20 A Yes.

21 Q Okay. Did you have any conversations or
22 do you recall whether you had any conversations
23 with Senator Sims about districts other than
24 those -- other than his district?

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1 A Don't recall.

2 Q Okay. So Ms. Wright mentioned a thing
3 that I kind of wondered about more generally. We
4 had this issue, and we heard it yesterday and we've
5 heard a little bit today, that in essence that you
6 drew lines based primarily on what the members
7 asked you to draw. Is that a fair statement?

8 A Yes.

9 Q And we heard the same thing from the
10 House, I'll tell you, but same thing we heard from
11 the House yesterday from Mr. Maxson.

12 What happened when -- I mean, you
13 can't draw -- as we well know they're nested, or
14 paired, however you want to call it, in Illinois.
15 You can't draw one without the other. If he's
16 drawing a map and you're drawing a map in that same
17 area, we can use Metro East or any other area, how
18 did you -- who made the decision on how to -- how
19 to come up with -- how to make the changes when
20 they weren't the same changes, I guess?

21 MS. YANDELL: Objection; form.

22 THE WITNESS: The members.

23 BY MR. LUETKEHANS:

24 Q So then the House and Senate members

1 would sit down together; is that what you're
2 saying?

3 MR. BRUCE: Objection; foundation.

4 MS. YANDELL: Calls for speculation.

5 MR. LUETKEHANS: Well, he just said the
6 members.

7 BY MR. LUETKEHANS:

8 Q So please answer.

9 A Don't know.

10 MR. BRUCE: You can answer.

11 MR. LUETKEHANS: I don't think I heard
12 either the objection or the answer on that one.

13 MR. BRUCE: I was objecting on
14 foundation, Phil.

15 Please, Miles, go ahead and answer his
16 question if you can.

17 THE WITNESS: I don't know. I don't
18 know.

19 BY MR. LUETKEHANS:

20 Q Well, you just said that when there was a
21 dispute between a Senate district and a House
22 district that the members made the decision. Do
23 you have any idea how that decision was made or how
24 that occurred or who was present for any of those?

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1 A How they did it I don't know.

2 Q Were you present for any of those
3 conversations?

4 THE REPORTER: I'm sorry. I didn't hear
5 the answer.

6 THE WITNESS: I don't recall.

7 BY MR. LUETKEHANS:

8 Q So miraculously a map shows up that's got
9 both sets of lines in it and you have no idea how
10 it happened, you just saw a shapefile at the end of
11 the day that had that?

12 MS. YANDELL: Objection; argumentative.

13 MR. LUETKEHANS: That's okay.

14 MR. BRUCE: I have to object on form.

15 BY MR. LUETKEHANS:

16 Q You can answer, Mr. Sadowski.

17 A I don't know.

18 Q Okay. There are 42 senators at the time
19 you drew the map in May, right, 42 Democratic
20 senators, correct?

21 A It's 41.

22 Q Sorry. I can't do math. 58 minus 17,
23 41. Or 18. See, I still can't do math. I know
24 how many there will be after this map. How's that?

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1 THE WITNESS: No.

2 BY MR. LUETKEHANS:

3 Q Okay. So when you exchanged shapefiles
4 how did you coordinate -- oh, you said you don't,
5 the members did. Okay.

6 And then after the members coordinated
7 the lines someone would come and tell you here's
8 the line or send you a shapefile with that line?

9 A Yes.

10 Q Okay. Did you ever have any
11 conversations with anyone from the Governor's
12 Office related to this map at any point?

13 A I guess I don't understand the question.

14 Q Well, you know who the Governor of the
15 State of Illinois is obviously, much better than I
16 do.

17 A Uh-huh.

18 Q Did you have any conversations with
19 anyone from his office related to any maps for this
20 legislative redistricting cycle?

21 A No.

22 MR. LUETKEHANS: Okay. Nothing further.

23 MR. BRUCE: Okay, everyone. It's been a
24 long day. Thank you. We'll see everybody tomorrow