

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

JULIE CONTRERAS, IRVIN FUENTES,
ABRAHAM MARTINEZ, IRENE PADILLA, and
ROSE TORRES

Plaintiffs,

v.

ILLINOIS STATE BOARD OF ELECTIONS,
CHARLES W. SCHOLZ, IAN K. LINNABARY,
WILLIAM J. CADIGAN, LAURA K. DONAHUE,
WILLIAM R. HAINE, WILLIAM M.
MCGUFFAGE, KATHERINE S. O'BRIEN, 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.

Case No. 1:21-cv-3139

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)

**DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION TO
COMPEL**

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DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL

Defendants 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 (collectively, "Defendants") hereby submit this Opposition to Plaintiffs' Motion to Compel Legislative Defendants to Respond to Plaintiffs' Discovery Requests (ECF No. 44) (the "Motion").

I. INTRODUCTION

Plaintiffs' allegations in this action can be distilled to a single concern: whether Illinois' 2021 Redistricting Plan "contain[s] equally apportioned districts" compared to the now-released 2020 decennial census data such that the Plan complies with the "one-person, one-vote" standard mandated by the Fourteenth Amendment. FAC ¶¶ 2, 5. Plaintiffs core allegation is that the Redistricting Plan is unconstitutional because, due to being based on the Census Bureau's American Community Survey data ("ACS data"), its districts will not be "sufficiently equipopulous as measured by" the "2020 Census redistricting data contained in the Public Law 94-171" ("decennial census data"). *See id.* ¶¶ 2, 6, 57. Plaintiffs further allege that their claims exist only "unless and until [the Plan is] shown to contain equally apportioned districts as measured by the [decennial census data]," further driving home the narrow scope of their case. *Id.* ¶ 6. As the Court is aware, the decennial census data was released on August 12, 2021.

During the panel's initial conference on July 14, 2021, Plaintiffs' counsel reiterated their singular focus: "[D]efendants or any other states may use whatever data they like, including having their grandmother count residents or psychics" but "in order to measure whether the districts are malapportioned, you need to use census redistricting data to confirm that the districts

are constitutional.” Ex. 1 (July 14, 2021 Hr’g Tr.) at 19:23-25. In response, Judge Dow recognized that any fact questions distill down to how the decennial census data compares to districts in the current Plan: “So [] another way of saying that is the benchmark is always going to be [decennial census data] and . . . whatever number the state comes up with, it has to be measured against the [decennial census] data?” Plaintiffs’ counsel affirmed: “[T]hat is our position.” Ex. 1 at 20:1-6.¹

The Amended Complaint makes no claims of misconduct or negligence, or misapplication of the ACS data by Defendants. Notably, there are no allegations that Defendants’ conduct in creating the Redistricting Plan was not an “honest and good faith effort” as required by the Equal Protection Clause’s equal population principle. Like the plaintiffs in the related action, Plaintiffs here make no allegations whatsoever regarding *how* or *why* (i) ACS data was used to create the Redistricting Plan, or (ii) the actual districts were actually drawn. In fact, Plaintiffs allege the reason the General Assembly used ACS data: the decennial census data would be delayed beyond the date they were constitutionally required to have a redistricting plan in place. FAC ¶ 33.

Plaintiffs motion to compel should be denied for at least four reasons. *First*, Plaintiffs flouted this Court’s procedural requirements by filing the Motion in the midst of the parties’ conferral. Plaintiffs did not respond to Defendants’ recent discovery letter—through which they agreed to produce additional materials responsive to *twenty-three* of Plaintiffs’ twenty-four “priority requests” and explained how those materials were responsive—before filing this Motion the next day. Defendants’ letter specifically asked if “these requests seek any other information” and if so to “please explain what kind of information . . . you believe should be produced as well

¹ It was following these exchanges and the parties’ agreement to attempt to stipulate to much of the factual record that the Court discussed and set the schedule and trial date for this case. The current schedule therefore does not contemplate (or allow for) voluminous fact discovery on the parties’ every request, which is only one of many reasons this Motion should be denied in its entirety.

as why that information is relevant your claim[.]” *See* Ex. 2. Plaintiffs are not exempt from the well-established requirement to meaningfully confer before burdening the Court and Defendants with motion practice, and this Motion should be denied on this basis alone. *See* Local Rule 37.2.

Second, Plaintiffs’ requests—which their Motion admits are related to how and why the Plan’s districts were drawn as they are, Mot. at 4-6—are simply not relevant to their claim that the current Plan’s districts are malapportioned as compared to the decennial census data. Defendants’ relevance objection, therefore, is anything but “boilerplate.” *See, e.g.*, Mot. at 8. Plaintiffs’ efforts to establish the relevance of their discovery requests are comprised of citing to cases where “process-related” information was held to be discoverable, but omit that those cases all involved claims of intentional discrimination or malintent. There are no such allegations here. Plaintiffs’ Motion should be denied because they have failed to satisfy the threshold requirements of establishing their requests’ relevance to their claims.

Third, Plaintiffs have failed to establish that their requests are proportional to the needs of this case. Their Motion itself, which asks the Court to compel all of Plaintiffs nearly fifty requests, with no refinement, prioritization, or compromise from Plaintiffs—flies in the face of the realities of what *this case* requires. It is also unjustifiable in light of the panel’s (i) skepticism that the “process” by which the Redistricting Plan “matters” at all, (ii) recognition that this case is likely to come down to numbers, and (iii) request that the parties stipulate to much of the factual record. The Motion should be denied in its entirety on this basis alone.

Fourth, Plaintiffs’ demand for a privilege log before the proper bounds of discovery have been set is premature and unnecessary. Defendants have not refused to provide a privilege log, and will do so at the appropriate and usual time—after the scope of discoverable documents has

been determined and Defendants can identify which, if any documents, must be withheld to protect a privilege. Plaintiffs' demand for a privilege log now is baseless and should be denied.

* * *

Plaintiffs have not meaningfully attempted to defend their discovery requests, nor have they satisfied their obligation to work with Defendants to reach compromise as to the requests' volume, breadth, and burden. Their Motion seeks a blanket order compelling responses to every of their requests as drafted, and without compromise, without refinement, and importantly, without support. It should be denied in its entirety.

II. RELEVANT BACKGROUND

On July 28, 2021, Plaintiffs filed an Amended Complaint which challenges, as did the initial complaint, the constitutionality of Illinois' 2021 Redistricting Plan. Plaintiffs' core allegations are that Illinois' redistricting plans must not deviate from the decennial census data, and that the Redistricting Plan is unconstitutional because, being created with ACS data, its districts are bound to deviate from the decennial census data to some degree. *See* FAC ¶¶ 2, 6. Assuming any deviation exists between the Plan's districts and those that would be drawn with the decennial census data, Plaintiffs seek to invalidate the Redistricting Plan in its entirety, and ask the Court to issue an injunction requiring the General Assembly (not a special commission) to create a new redistricting plan that complies with the "one-person, one-vote' principles of the Fourteenth Amendment as measured by [the decennial census data]." *See id.* at Prayer ¶ 3.

Plaintiffs do not allege that Defendants incorrectly applied or otherwise misused the Census Bureau's ACS data in creating the Redistricting Plan, nor that the Plan was created with malintent, in bad faith, or reflects racial gerrymandering. Plaintiffs do not seek to correct the current Plan, or to adjust the process by which the General Assembly would create a new plan.

The Amended Complaint instead seeks only for the Redistricting Plan to be voided, and a new redistricting plan created with different data—specifically the decennial census data.

On July 12, 2021, Plaintiffs served thirty requests for production and seventeen interrogatories. The substance of Plaintiffs’ discovery requests is largely focused on the process through which the current Redistricting Plan was created; to quote the Motion: “who participated in the process,” “what data and programs were used,” the “extent of public input in the redistricting process,” and the number, dates, and substance of “earlier drafts” of the Plan, among other categories. Mot. at 4-6. Defendants served responses and objections to both sets of discovery requests on July 23, 2021 (the Court-ordered due date), which included objections on grounds of relevance, overbreadth, burden, and disproportionality, among others. *Id.* at 2; *see also* ECF Nos. 44-1, 44-2, 44-3, 44-4. Without waiving their objections, on July 27, 2021, Defendants provided Plaintiffs a link to the full set of ACS data that was used to create the Redistricting Plan, as well as the shape and block files. Two days later, the parties met and conferred regarding Defendants’ objections, Mot. at 3, during which Plaintiffs were unable to provide any explanation of why their process-related requests are relevant to their claims. Defendants nonetheless agreed to consider Plaintiffs’ prioritized requests, which Plaintiffs provided the next day. *Id.*

On August 10, Defendants served a letter agreeing to produce additional materials that are responsive to all but one of Plaintiffs’ twenty-four priority requests. *See* Ex. 2. As the letter itself demonstrates, the parties were far from impasse on any issue. *Id.* In response, Plaintiffs filed this Motion the next day without responding to Defendants’ letter or even communicating to Defendants how their agreement was deficient or what additional materials Plaintiffs sought. In moving to compel their entire set of forty-seven discovery requests, Plaintiffs ask this Court to compel the production of materials that Defendants had already agreed to produce when this

Motion was filed, and that Defendants have now already produced. *See* Ex. 2. The Motion also ignores not only the focus of this case as expressed by the panel, but the realities of the current schedule by refusing to prioritize or narrow any request, or even pick up where the parties' conferral left off.

On July 14, long before Plaintiffs filed their Motion, the three-judge panel held its first status conference. During the conference, the panel repeatedly suggested that this case will center on whether the deviations between the Redistricting Plan's districts are permissible when compared to the decennial census data, and *not* on the "process" used to create the Redistricting Plan. *See, e.g.*, Ex. 1 at 11:8-12 ("How much does the process matter to those? If the numbers are what the numbers are, isn't that going to be more important than what the process was at getting at the numbers?"); *id.* at 12:4-9 ("If your legal argument at the end is going to be the numbers under the actual census deviate too much from the numbers that were actually used, and those numbers came from an identifiable place, how much does that process even matter? Those are the things I want you to think about."); *id.* at 14:25-15:5 ("[B]ut doesn't this claim really come down to the census numbers and whether or not they demonstrate the deviations that are unacceptable? And if that's true, then why is it necessary or important to show that the ACS estimates are an inappropriate source for conducting a redistrict?").

Based on this interpretation of Plaintiffs' case, the Court encouraged the parties to stipulate to much of the factual record. *Id.* at 26:8-20. Defendants have subsequently proposed such factual stipulations, and the parties are conferring regarding the same. The panel subsequently set a pre-trial schedule and a three-day trial for September 27-29, 2021.

III. ARGUMENT

A. The Motion Should Be Denied As Moot and Because Plaintiffs Flouted Their Procedural Obligations

This Court strictly requires parties to engage in a meaningful conferral before moving for relief—such cooperation is especially encouraged for discovery motions. *See* Local Rule 37.2; *see also* M.J. Jantz Case Procs. for Discovery Mots. Following the parties’ initial conferral on July 29, 2021, Plaintiffs identified twenty-four “priority requests,” which Defendants agreed to consider. ECF No. 44-5 at 5. Defendants’ provided responses, explanation, and further questions for twenty-three of these requests on August 10, 2021. *See* Ex. 2. Specifically, Defendants responded to, agreed to produce, or identified materials responsive to RFPs 3, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 19, 25, 27 and Interrogatories 2, 4, 5, 9, 10, 11, 12, 13. *See id.*

Defendants agreed to provide (i) the disaggregated ACS five-year data, in addition to having previously provided the aggregated ACS data; (ii) voter registration data from the Illinois Board of Elections used in the disaggregation process; (iii) the 2020 Census Bureau geography data; and (iv) the House and Senate contracts with experts who consulted on redistricting. Defendants identified the software programs used to create the Plan in response to RFPs 13 and 16. Defendants also identified the following as containing the materials Plaintiffs seek: (i) the text of House Bill 2777 and Public Act 102-10, which contain the Redistricting Plan; (ii) the related resolutions; and (iii) links to the web location of additional information regarding the Redistricting Plan. *See id.* Of course, the fact that the General Assembly makes much of this data available to the public does not make it less responsive to Plaintiffs’ discovery requests.²

² The Motion repeatedly references Plaintiffs’ need for documents regarding “whether the redrawn districts are, in fact, equipopulous.” Mot. at 1, 4, 76; *see* FAC ¶ 51. The Redistricting Plan’s House and Senate district populations, however, are available in House Resolution 359 and on the

The letter demonstrates that the parties' conferral was ongoing (and productive); for instance, Defendants asked Plaintiffs to explain why drafts of the Redistricting Plan are relevant to their claim that the final Plan should be voided and recreated using decennial census data, and closes with an offer to further "meet and confer on these or any other discovery issues." *Id.* Despite Plaintiffs' lack of a response and filing this Motion, Defendants have produced (or provided links to, due to volume) everything listed above, as well as (i) the witness testimony and transcripts from hearings on the creation and passage of the Redistricting Plan, and (ii) the transcript of the House floor debate regarding ACS data specifically. *See* Ex. 3. Defendants have further agreed to produce email correspondence from witnesses who testified at those hearings next week. *Id.* Those materials are responsive to RFP No. 22 and Interrogatory No. 6.

Defendants' agreement to provide (and production of) these materials unquestionably moots much of the Motion, which bluntly seeks to compel further responses to their entire set of discovery requests as drafted and with no compromise—and with no reference to the compromises Defendants have already made. It also lays bare Plaintiffs' claims that Defendants are "stonewalling," "ducking," "hiding behind vague, boilerplate objections," and are in defiance of an obligation to provide "fulsome responses." Mot. at 8-9. Of course, the obligation to provide any response applies only to requests "not objected to." Fed. R. Civ. P. 33(b)(3).

In sum, the Motion certainly cannot be granted in its current form, which does not account for Defendants' recent productions or the Parties' ongoing conferral regarding factual stipulations. The Motion should be denied as moot, and for Plaintiffs' failure to meaningfully confer.

Senate's redistricting website, respectively, both of which were identified in Defendants' August 10, 2021 letter which they served before this Motion was filed (and are publicly available).

B. The Documents and Information Plaintiffs Seek Are Irrelevant

Information sought during discovery must be “relevant to any party’s claim or defense and proportional to the needs of the case.” *United States v. Handrup*, 2016 WL 8738943 at *1 (N.D. Ill. July 11, 2016); *see also BankDirect Capital Fin., LLC v. Capital Premium Financing, Inc.*, 2018 WL 946396, at *3 (N.D. Ill. Feb. 20, 2018) (“[The] core requirement of any discovery request is that the information be relevant.”). On a motion to compel, “the party requesting discovery bears the initial burden of establishing its relevancy;” failure to do so compels denial of the motion. *Eternity Mart, Inc. v. Nature’s Sources, LLC*, 2019 WL 6052366, at *2 (N.D. Ill. Nov. 15, 2019) (motion to compel denied where party “failed to show the relevance of information” sought in discovery requests); *BankDirect Capital*, 2018 WL 946396 at *4 (“Unless the requestor can demonstrate that the materials sought are relevant, judges should not hesitate to exercise appropriate control over the discovery process”).

Plaintiffs have not come close to establishing that the information they seek in response to the remaining disputed requests meets this relevance standard. Instead, they simply assert that their forty-seven requests are “plainly relevant to” and “go to the very heart of their malapportionment claim” without explaining how that is so or attempting to justify any individual request. *See* Mot. at 4-6. The Amended Complaint brings a single claim, and it is that the Redistricting Plan’s districts are malapportioned because “they are not sufficiently equipopulous as measure by the [decennial census] data.” FAC ¶¶ 53-58. Plaintiffs seek a declaratory judgment that the Plan is unconstitutional and “an order enjoining the implementation of the [Plan] unless and until they are shown to contain equally apportioned districts as measured by the [decennial census] data.” *Id.* ¶ 6. In other words, and as the panel recognized and Plaintiffs confirmed to the Court, the only question will be answered through a comparison of the two sets of numbers: Judge

Dow: “the benchmark is always going to be P.L. [decennial census data]. . . whatever number the state comes up with, it has to be measured against the P.L. data?” Mr. Del Castillo: “That is our position.” Ex. 1 at 11:7-12. That comparison can and will be performed with the discovery Defendants have already provided, the substantial publicly available material related to the Redistricting Plan, and the recently-released decennial census data. Given that *nothing more is required* to determine whether the Plan “contain[s] equally apportioned districts as measured by the [decennial census] data,” Mot. at 4, Plaintiffs face a steep uphill battle to establish their requests’ relevance (and proportionality to this case, *see infra*). *See* Ex. 1 (July 14, 2021 Panel Hr’g Tr.) at 11:7-12, 12:2-9, 15:16-16:4, 14:24-15:5, 17:5-12 (rebuking Plaintiffs’ attempts to focus on the “process” by which the General Assembly created the Redistricting Plan).

On their face, Plaintiffs’ requests are simply not relevant because they almost exclusively seek information regarding how, when, why, or by whom the Redistricting Plan was created. *See* Mot. at 4-5 (summarizing Plaintiffs’ requests). Through their Motion, Plaintiffs make two attempts to meet their burden to establish the relevance of their process-related discovery. First, as discussed above, the Motion summarizes Plaintiffs’ requests and conclusorily states that they are “plainly relevant” to their malapportionment claim. *Id.* Such a tepid effort is not sufficient to compel Defendants to further respond to dozens of unrefined, uncompromised discovery requests while trial looms six weeks away. *See, e.g., Piacenti v. General Motors Corp.*, 173 F.R.D. 221, 225 (N.D. Ill. 1997) (denying motion to compel supported by conclusory assertions of relevance); *Handrup*, 2016 WL 8738943 at *1 (denying motion to compel “given the marginal-at-best relevance of any of these documents” and because “the breadth of [the] subpoenas poses a burden on [the party] which outweighs their potential benefit”).

Second, Plaintiffs attempt to justify process-related discovery by reference to the Equal

Protection Clause’s requirement that “a State make an honest and good faith effort to construct districts . . . as nearly of equal population as is practicable. *Id.* at 6 (citing *Reynolds v. Sims*, 377 U.S. 533, 577 (1964)) (emphasis is Plaintiffs’). Discovery related to whether a state made “an honest and good faith effort” in their redistricting is only relevant, of course, if dishonesty, a bad faith effort, or other misconduct *is alleged*. But that is not Plaintiffs’ claim or case theory. Plaintiffs’ alleged constitutional violation has nothing to do with intent or conduct. Rather, so long as a redistricting plan is sufficiently equipopulous when compared to the decennial census data, Plaintiffs say nothing else matters, including the type of data or the process. *See, e.g.*, Ex. 1 (Plaintiffs’ counsel: “I would like to clarify that defendants or any other states may use whatever data they like, including having their grandmother count residents or psychics. But in order to measure whether the districts are malapportioned, you need to use census redistricting data to confirm that the districts are constitutional.”). Because there are no allegations regarding the process, conduct, or intent, Plaintiffs do not get discovery into Defendants’ process, conduct, or intent—including the questions of who, how, when, and why that comprise their requests.

Plaintiffs’ citation to a single allegation in their relevance argument also does not satisfy their burden to establish the relevance nearly fifty requests. Even if it could, the allegation—that “the General Assembly has failed to comply with its constitutional obligations to enact districts that are sufficiently equipopulous as measured by the PL [decennial census] data,” Mot. at 6 (citing FAC ¶ 56)—is an iteration of their claim that a comparison of the two sets of numbers is required to determine the constitutionality of the Redistricting Plan. To establish relevance, Plaintiffs would need to answer *why* they need discovery into (i) “what datasets [were] used to draw, develop or evaluate the [Plan],” (ii) “what datasets did you consider using to draw the enacted plan but did not ultimately use,” (iii) “any revisions to the draft plans based on public input,” (iv) “when drafts

. . . were first produced,” (v) “how many drafts were produced,” (vi) “who reviewed which specific version of a draft,” and (vii) “all individuals . . . who have provided assistance,” among dozens and dozens of others. Mot. at 4-5. Plaintiffs’ burden is to establish the relevance of *each one*. The Motion fails because they have not articulated the relevance of a *single one*.

The cases Plaintiffs cite as examples of process-related discovery being granted are irrelevant for one simple reason: unlike here, they all involved claims of discrimination on the basis of race, racial gerrymandering, or other *intentional misconduct*. For instance, in *Committee for a Fair & Balanced Map v. Illinois State Board of Elections*, this Court granted a motion to compel documents “likely to contain the motives, impressions and/or opinions of those responsible for drafting the 2011 Map” because the plaintiffs’ claims of intentional discrimination and racial gerrymandering required “[p]roof of discriminatory intent.” 2011 WL 4837508 at *1 (N.D.Ill. Oct. 12, 2011). Even then, the Court refused to compel “documents containing the (1) motives, objectives, plans, reports, and/or procedures created formulated or used by lawmakers to draw the 2011 Map” and requests seeking the “identities of persons who participated in decisions regarding the 2011 Map.” *Id.* at *11.

Similarly in *Baldus v. Members of the Wisconsin Government Accountability Board*, the court held that documents “relating to how the Legislature reached its decision on the 2011 redistricting maps are relevant to the plaintiffs’ claims as proof of *discriminatory intent*.”). 2011 WL 6122542, *6 (E.D. Wisc. Dec. 8, 2011) (emphasis added). Finally, *Favors v. Como* involved allegations that the defendants had failed to make “an honest and good faith effort to adhere to the Fourteenth amendment’s equal population principle” and “specifically intended to perpetuate the Republic[an] majority in the Senate” 285 F.R.D 187, 195 (E.D.N.Y. 2012).

Here, the plain language of the Amended Complaint makes clear that Plaintiffs do not alleged intentional discrimination, racial gerrymandering, or other misconduct or even negligence of any kind. Plaintiffs instead acknowledge that Defendants' motivation in creating the plan with ACS data was the delay in the decennial census data. FAC ¶ 33. Having failed every opportunity to articulate the relevance of their requests to their allegations, Plaintiffs have also failed their burden on this Motion. *Eternity Mart, Inc.*, 2019 WL 6052366 at *3-5. This Court should exercise its discretion to require more from Plaintiffs before subjecting Defendants to Plaintiffs' voluminous and burdensome requests. *BankDirect Capital*, 2018 WL 946396, at *5-6.

C. Plaintiffs Have Failed to Justify Their Requests on Other Grounds

Relevance is not the only limit on discovery. A moving party must also demonstrate requests are "proportional to the needs of the case" considering, among other things "the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1).

Plaintiffs' position is that all of their "requested discovery is proportional to the needs of this case." Mot. at 6. That position is absurd, and flies in the face of the realities of "this case." The panel that will decide this case has already rebuked the suggestion that the "process" by which the Plan was created "matters," Ex. 1 at 12:3-9, recognized that this case is likely to be resolved by the aforementioned data comparison, *see id.* at 11:7-12, and requested that the parties stipulate to as much of the factual record as possible, *id.* at 11:17-25. This should be acceptable to Plaintiffs, who allege that the Redistricting Plan is unconstitutional "unless and until they are shown to contain equally apportioned districts as measured by the [decennial census] data." FAC ¶ 6. *Any amount* of discovery into the "process," therefore, would not be proportionate to the needs of *this*

case that will turn on a data comparison—much less forty-seven requests’ worth *on top of Defendants previous productions*.

The Motion’s strategy of methodically addressing the “proportionality factors” does nothing to justify Plaintiffs’ laundry list. Mot. at 7-8. For instance, the “critical importance” of this case, which Defendants do not dispute, does not entitle Plaintiffs to unbridled discovery. The assertion that “the requested discovery” is “crucial to Plaintiffs’ malapportionment claim” is a regurgitation of their relevance argument, and fails for the same reasons. Finally, Plaintiffs’ claims that their voluminous and overly broad requested discovery is “readily accessible by Defendants” and does not represent a significant burden to Defendants are flatly unfounded. *Id.* Having failed entirely to articulate how their discovery requests are relevant to any claim they have pleaded and presented to the Court, no amount of process-related discovery is proportional to the needs of this case. The Motion should be denied on this basis alone.³

D. Plaintiffs’ Demand for a Privilege Log Is Premature and Unnecessary

Rule 26(b)(5) requires litigants to provide a privilege log for information that is withheld on the basis of privilege only when such information is “otherwise discoverable.” Fed. R. Civ. P. 26(b)(5)(A). This is consistent with Rule 26’s other provisions, which permit discovery only of “nonprivileged matter that is *relevant* to any party’s claim or defense.” Fed. R. Civ. P. 26(b)(1) (emphasis added). Indeed, Plaintiffs acknowledge that a privilege log is necessary only for “responsive documents” that are withheld based on privilege. Mot. at 10. In other words, a privilege log is required only for documents that the parties agree, or a court determines, are responsive and likely to be relevant—and are therefore “discoverable” in the first place. *See, e.g.,*

³ Denial is also warranted because the Motion does not even address, much less overcome, Defendants’ other objections. *See Stallings v. Union Pac. R. Co.*, 2003 WL 21317297 at *11-*12 (N.D. Ill. June 6, 2003) (denying motion to compel that failed “to specifically address the alleged deficiencies in Defendants’ objections and responses”).

Harris Davis Rebar, LLC v. Structural Iron Workers Loc. Union No. 1, Pension Tr. Fund, 2019 WL 454324, at *4 (N.D. Ill. Feb. 5, 2019) (granting motion to compel privilege log only “to the extent [the producing party] believes any *relevant, responsive documents* are subject to privilege or work-product protection”) (emphasis added). Rule 26 does not require a privilege log be produced at a certain time. Rather, courts require parties “timely” provide privilege logs. *Hobley v. Burge*, 433 F.3d 946, 947 (7th Cir. 2006).

As Plaintiffs’ motion and this brief demonstrate, the parties strongly dispute the contours of discoverable information. Only once the parties agree, or this Court orders, whether further discovery is necessary can Defendants review and determine which of any responsive, relevant documents must be withheld to protect a privilege—and create a privilege log therefrom. *See Naik v. Boehringer-Ingelheim Pharms., Inc.*, No. 07C3500, 2008 WL 4866015, at *3 (N.D. Ill. June 19, 2008) (privilege logs must identify “information for each separate document” for which a privilege is claimed). Plaintiffs’ demand for a privilege log now, before the Parties’ dispute over the scope of discoverable information has been adjudicated, is thus premature. Tellingly, Plaintiffs make no attempt to argue that Defendants’ privilege log is “untimely” under the applicable case law. *Hobley*, 433 F.3d at 947. Plaintiffs also omit that they, too, have not yet provided a privilege log in response to Defendants’ requests for production for which they claimed privilege. *See* Ex. 4 (Pl.’s Resp. to Defs’ Interrogs. Nos. 13, 14); Ex. 5 (Pl.’s Resp. to Defs’ RFPs Nos. 6, 7).

Plaintiffs’ request is also unnecessary because Defendants have not refused to provide a privilege log. Defendants intend to provide a log of any privileged materials among the documents that are determined to be both responsive and relevant, once discovery has proceeded such that those documents can be identified. Plaintiffs’ premature request should be denied.

IV. CONCLUSION

Defendants respectfully request that the Court deny Plaintiffs’ Motion in its entirety.

Dated: August 14, 2021

Respectfully submitted,

/s/ Sean Berkowitz

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EXHIBITS INDEX

No.	Description
1	Transcript of the Panel's July 14, 2021 Hearing
2	Defendants' August 10, 2021 Letter to Plaintiffs
3	Defendants' August 13, 2021 Production Cover Email
4	Plaintiffs' Responses and Objections to Defendants' First Set of Interrogatories
5	Plaintiffs' Responses and Objections to Defendants' First Set of Requests for Production

EXHIBIT 1

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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, and)
JIM DURKIN, in his official)
capacity as Minority Leader of the)
Illinois House of Representatives)
and individually as a registered)
voter,)

Plaintiffs,)

v.)

ILLINOIS STATE BOARD OF)
ELECTIONS, 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.)

Docket No. 21 CV 3091

Chicago, Illinois
July 14, 2021
10:01 A.M.

JULIE CONTRERAS, IRVIN FUENTES,)
ABRAHAM MARTINEZ, IRENE PADILLA,)
and ROSE TORRES,)

Plaintiffs,)

vs.)

ILLINOIS STATE BOARD OF ELECTIONS)

Docket No. 21 CV 3139

Chicago, Illinois
July 14, 2021
10:01 A.M.

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

12
 13 TRANSCRIPT OF PROCEEDINGS - HEARING
 BEFORE THE HONORABLE CIRCUIT JUDGE MICHAEL B. BRENNAN
 14 BEFORE THE HONORABLE CHIEF DISTRICT JUDGE JON E. DEGUILIO
 BEFORE THE HONORABLE DISTRICT JUDGE ROBERT M. DOW, JR.

15 THREE-JUDGE COURT

16 PURSUANT TO 28 U.S.C. SECTION 2284(a)

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O'Brien and Casandra B.
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1 (The following court proceedings were held via
2 videoconference.)

3 THE CLERK: I will open up court. Hear ye, hear ye,
4 hear ye. The United States District Court for the Northern
5 District of Illinois is now in session. The Honorable Robert
6 M. Dow, Jr., presiding. The Honorable Michael B. Brennan
7 presiding. The Honorable Jon E. DeGuilio presiding. And the
8 cases on the call are 21 Civil 3091, McConchie versus the
9 Illinois State Board and 21 Civil 3139, Contreras versus the
10 Illinois State Board of Elections.

11 DISTRICT JUDGE DOW: Okay. Thank you so much,
12 Carolyn. So just so the judges can introduce themselves. I'm
13 Judge Dow and I'm in Chicago here. And I'll let my colleagues
14 introduce themselves. I will start with you, Judge Brennan.

15 CIRCUIT JUDGE BRENNAN: Good morning for all. This is
16 Judge Michael Brennan. I am calling in from Milwaukee.
17 Looking forward to working with everyone in the case.

18 DISTRICT JUDGE DOW: Okay. And Judge DeGuilio?

19 CHIEF JUDGE DEGUILIO: Good morning, Counsel, Jon
20 DeGuilio. I'm the Chief Judge in the Northern District of
21 Indiana, and right now I am sitting in Hammond.

22 DISTRICT JUDGE DOW: Okay. Great. So let's just go
23 around the horn here. If I could start with the McConchie
24 plaintiffs, please.

25 MR. HARRIS: Yes, your Honor. Charles Harris on

1 behalf of the plaintiffs, and I will have my colleagues
2 introduce themselves as well.

3 MR. PANOFF: Hello, your Honor. Tom Panoff, also of
4 Mayer Brown, on behalf of the plaintiffs.

5 MR. LUETKEHANS: Phil Luetkehans on behalf of the
6 plaintiffs, your Honor.

7 DISTRICT JUDGE DOW: Okay. So that's the -- the
8 McConchie plaintiffs there is three lawyers on for you all; is
9 that right?

10 MR. HARRIS: Yes.

11 DISTRICT JUDGE DOW: Okay. Terrific.

12 How about the Contreras plaintiffs, please?

13 MR. DEL CASTILLO: Francisco Fernandez Del Castillo,
14 MALDEF, here on behalf of the Contreras plaintiffs. Also
15 present is Griselda Vega Samuel on behalf of the Contreras
16 plaintiffs.

17 DISTRICT JUDGE DOW: Okay. Great. Thank you.

18 Okay. How about for the defense? I don't know if you
19 all represent all, or if you represent certain defendants, if
20 you could tell us, that would be great.

21 MR. KASPER: Michael Kasper on behalf of the House
22 Speaker and the Senate President and their offices.

23 MR. VAUGHT: Good morning, your Honor. Adam Vaught on
24 behalf of the House Speaker and the President and their
25 offices.

1 MR. BRUCE: Good morning, your Honor. Devon Bruce on
2 behalf of both the Speaker and the President.

3 MR. BERKOWITZ: And Sean Berkowitz from Latham on
4 behalf of President Harmon.

5 MS. JOHNSON: Good morning, your Honor. Assistant
6 Attorney General Mary Johnson on behalf of the Illinois State
7 Board of Education who is an Illinois State Board Of Elections
8 member.

9 DISTRICT JUDGE DOW: Okay. Great.

10 Is there anybody else who is counsel of record for any
11 party?

12 (No verbal response.)

13 DISTRICT JUDGE DOW: Okay. We have got you all.
14 Thank you very much for jumping on here. Was there another
15 one?

16 I saw one of the icons jump up and down, so I thought
17 maybe it was someone trying to get in here.

18 Okay. So I think what makes sense here, we judges got
19 together last week on one of these same Teams type of calls,
20 and we put together a little agenda of what we would be
21 interested in each side's views on, and then we'll put together
22 a more detailed schedule. And one thing for the trial dates,
23 obviously, we're working around three different judges'
24 calendars, and as I am sure you all can appreciate, the number
25 of backlogged cases for trial is pretty severe right now. And

1 we'll certainly work you guys in in a manner that is timely for
2 a decision in this case, but that's one of the complications
3 here.

4 But we put out four different areas we would like each
5 of you to address. And it probably makes sense to give each
6 party a chance through their lawyers to say whatever they would
7 like on those, so Mr. Harris, I'm going to start with you guys.

8 MR. HARRIS: Yes. Thank you, your Honor. Let me
9 start off just by saying that this is a very straightforward
10 and simple case. And not only that, the principles that you
11 have to consider in this case are also very well established.
12 So just -- the point that I want to make here is that this is
13 really straightforward. And touching on that same point, we
14 really only have one main claim, which is that the
15 redistricting plan that the General Assembly passed last month,
16 violates the one-person, one-vote principle under the Equal
17 Protection Clause. Now, you probably know that that principle
18 requires that state legislators be elected from voting
19 districts that are substantially equal in population. That's
20 kind of the main issue here.

21 The seminal case that created this rule about
22 substantially equal in population is a case from 1964. That
23 case is called *Reynolds vs. Sims*. Now, since Reynolds, the
24 courts have established benchmarks for determining whether a
25 voting plan violates the one-person, one-vote principle, and

1 the benchmarks have come out. There's essentially three.

2 So the first is, where a redistricting plan has a
3 national population deviation over 10 percent, that's from
4 between the largest and the smallest districts, that creates a
5 prima facie case that that plan is unconstitutional, and then
6 the burden shifts to the General Assembly, to the defendants in
7 this case, to justify deviation.

8 The second level, so to speak, is where you have
9 population deviations that are so high that they're considered
10 per se unconstitutional. And courts have said that is around
11 16 percent, where we get to the issue -- the point where the
12 defendants couldn't justify the plan.

13 And, finally, the final level is where you have the
14 initiative of the rest of the 10 percent. Now this isn't a
15 safe harbor, even where the deviations are under 10 percent,
16 which that isn't the case here, as we said in our complaint.
17 But even when deviations are under 10 percent, they can still
18 -- you can still have a constitutional violation where you can
19 prove -- where we can prove in this instance is that the
20 actions of the General Assembly were arbitrary and
21 discriminatory. So that's just generally the law that you will
22 be considering here in order to make -- in order to decide our
23 case.

24 DISTRICT JUDGE DOW: Okay. Thank you, Mr. Harris. I
25 take it you just answered part A, which is the legal

1 principles.

2 Do you want -- yes. You might as well go through each
3 of them so we can get the lay of the land here.

4 MR. HARRIS: Okay. Sure.

5 As far as the facts, again, touching on the point that
6 I said before, that I started off with, we consider this
7 straightforward, too. From our vantage point, we don't see
8 that there are going to be any significant factual disputes.
9 The question for us is, "What did you do, General Assembly, in
10 order to draw the map?" The map is the process as we've talked
11 about for coming up for this map -- or developing this map.
12 They've done it in secret.

13 So we generally have an understanding of what was
14 done. We know they used ACS estimates in order to draw the
15 map, but a lot of process behind the scenes we don't know. So
16 we want to understand the process in order to present that
17 process to you. And our primary -- so that's our primary goal
18 from a factual standpoint is to find out exactly what was done,
19 and, again, we don't consider that -- we don't think there's
20 going to be any significant factual disputes there. And
21 actually maybe a lot of this information can be presented
22 through depositions and other things and not live testimony at
23 the trial.

24 DISTRICT JUDGE DOW: So let me ask you two questions
25 here, if I could, Mr. Harris.

1 MR. HARRIS: Yes.

2 DISTRICT JUDGE DOW: I think what you just told us
3 about the legal principles, and this is -- I don't have a lot
4 of experience in this area. I did the 2011 Wisconsin case.
5 That was about Voting Rights Act. This is a different case
6 than that. In fact, most redistricting cases, my understanding
7 is they're Voting Rights Act cases. This is an equal
8 protection case. You just give us these principles, these
9 benchmarks. How much does the process matter to those? If the
10 numbers are what the numbers are, isn't that going to be more
11 important than what the process was at getting at the numbers?

12 MR. HARRIS: Well, absolutely. And that's going
13 to kind of touch, you know, on our second -- on our third
14 point. On the third thing we want to discuss what the experts
15 will testify about. And should I try and go into that?
16 Because I think that would answer your question.

17 DISTRICT JUDGE DOW: Sure. Just on the facts, though.
18 I guess, what I would like everybody to think about is how much
19 of the record could be stipulated to. I mean, there probably
20 isn't a lot of -- you can depose Senator Harmon. You can
21 depose the Speaker. You can depose all of these people. And
22 my guess is they're going to tell you pretty much the same
23 thing because they all know what the process was.

24 And if you stipulate -- the more facts you can
25 stipulate to, the less need there is to take up trial time, and

1 probably the faster the judges can get together to issue a
2 ruling. And I am just wondering how much of this record truly
3 is going to be in dispute. And even if there are, how much
4 does the process even matter? If your legal argument at the
5 end is going to be the numbers under the actual census deviate
6 too much from the numbers that were actually used, and those
7 numbers came from an identifiable place, how much does that
8 process even matter? Those are the things I want you to think
9 about. If the answer is C, we'll answer B, we're all for it.

10 MR. HARRIS: So let me go to C. So as far as experts,
11 we intend to have two experts. So our first expert is a former
12 special assistant at the Census Bureau. She will educate you
13 on the intended uses of ACS estimates, as well as the 2020
14 single census populations counts, and just populations counts
15 in general. And what she'll explain is why the Census Bureau
16 has said that ACS estimates should not be used for
17 redistricting as the General Assembly does here. She will also
18 talk about some of the problems that arise when you do so.

19 Now, taking that one step further, and touching on
20 kind of what your Honor just mentioned from the numbers
21 standpoint. Our second expert is going to discuss exactly what
22 you talked about, why we can show here that the deviation is
23 way outside of the illegal bounds. And he has -- what he has
24 done is he has compared plans that are drawn using a 2005 and
25 2009 five-year ACS data. And so what the General Assembly used

1 here was the newer ACS -- five-year ACS data. But he has drawn
2 using the A data from 10 years ago, and he had drawn plans,
3 again, using that data. And he has compared that to the plan
4 that we have drawn as an official 2010 since this populations
5 data back in 2010. And what he's found is that using the ACS
6 estimates invariably results in population deviations that are
7 well above 10 percent. And, in fact, the plan is based on the
8 ACS data that show that there were maximum population
9 deviations generally between 23 percent and 47 percent, which,
10 again, is far outside of the justifiable range.

11 DISTRICT JUDGE DOW: Okay. And so, then, I guess we
12 have D as well.

13 MR. HARRIS: Yes.

14 DISTRICT JUDGE DOW: Obviously. And we're just trying
15 to figure out -- the judges, I'm saying now -- how much time
16 needs to be set aside, and maybe it will be a rough estimate
17 now. But what do you guys think?

18 MR. HARRIS: So as far as actual trial time, your
19 Honor, I mean I -- we completely review that much of the
20 factual record can be stipulated. And if we do that, we expect
21 that maybe we need probably 8 to 15 hours of actual trial time,
22 at the most. So we're talking about two days of trial, as we
23 see it at the most. And, again, we expect, in answer to your
24 other question posed, we expect the bulk of the trial to be
25 testimony. From our standpoint we don't think we need more

1 than 30 minutes for an opening and 30 minutes for a closing.

2 So, again, just touching on the point I started with,
3 we expect this to be very straightforward and very contained
4 and very simple for you.

5 DISTRICT JUDGE DOW: Okay. And you think most of that
6 testimony is going to be your expert?

7 MR. HARRIS: Yes, your Honor.

8 DISTRICT JUDGE DOW: Okay. And we'll have to think
9 about how much of that testimony could be presented more
10 concisely, even through expert reports, rather than having
11 you recite into the record everything an expert is going to say
12 different than -- easier than taking a fact witness for
13 example. But let's see what everybody else has to say.
14 Thanks, Mr. Harris, I appreciate that.

15 So if we could hear from the Contreras plaintiffs
16 please.

17 CHIEF JUDGE DEGUILIO: Judge Dow?

18 DISTRICT JUDGE DOW: Yes.

19 CHIEF JUDGE DEGUILIO: Could I ask Mr. Harris a
20 question?

21 DISTRICT JUDGE DOW: Oh, absolutely. At any point,
22 Judges, you should jump in any time when your curiosity is
23 piqued.

24 CHIEF JUDGE DEGUILIO: A question that might show my
25 ignorance about these types of cases, but doesn't this claim

1 really come down to the census numbers and whether or not they
2 demonstrate the deviations that are unacceptable? And if
3 that's true, then why is it necessary or important to show that
4 the ACS estimates are an inappropriate source for conducting a
5 redistrict?

6 MR. HARRIS: Well, so we -- so, your Honor, we wish
7 that we were talking about the census numbers here. We think
8 we should be, but the redistricting plan that was passed last
9 month didn't use the census numbers. And that's because the
10 census numbers haven't come out yet. They're supposed to come
11 out in mid-August.

12 DISTRICT JUDGE DOW: I understand that. But by the
13 time this case gets to trial, you represented in your complaint
14 that the census information will be reported by August 16th. I
15 guess, I would like to know if that's still true. And
16 secondly, if it is true, then we'll have that information by
17 the time of trial to be able to verify whether there are
18 unconstitutional deviations in this plan.

19 MR. HARRIS: Yes, you're right. You're right, your
20 Honor. And as soon as that data comes out, and we think that,
21 like I said, it will come out, we will have our experts'
22 reports to look at and we'll be able to present that to you at
23 trial.

24 DISTRICT JUDGE DOW: And maybe Judge DeGuilio's
25 question may be "Isn't this simpler than you're making it

1 sound?"

2 MR. HARRIS: You know, maybe it is. We expect that it
3 will be once the numbers come out. But, you know, we have to
4 work with what we're presented with now, which is we're
5 presented with a plan that's been passed that is drawn with ACS
6 estimates. So we have to look at our historical data in order
7 to prove our case now. But, of course, if you suggest it, once
8 we get the actual census, the 2020 annual census numbers, we
9 will have what we think is even more evidence that we have
10 substantial deviations here and that this map is
11 unconstitutional.

12 DISTRICT JUDGE DOW: And does anybody know if that
13 data comes -- if that August 16th date is an official date or
14 is it, like, a no later than August 16th date? In other words,
15 should we all be sitting as if we know the egg is going to
16 hatch on August 16th or could it hatch before then?

17 MR. HARRIS: From my understanding, it's probably not
18 going to be before then. I think that's a hard and fast date,
19 but maybe my colleagues know -- can speak to that better than I
20 can. I'm not positive.

21 MR. KASPER: This is Michael Kasper. I've sort of
22 been treating it as a no sooner than, rather than no later.

23 DISTRICT JUDGE DOW: Okay. Well, that's probably less
24 advantageous to all of us if it's a no sooner than, but I guess
25 we'll have to wait for it to happen.

1 One thing that we on the judges side of this, as soon
2 as that comes out, it would be helpful if we could be notified.
3 And it sounds like we probably ought to have another case
4 management conference, you know, a few days after it comes out
5 to see if, maybe -- I think where Judge DeGuilio and I are
6 heading is it could well be that this case is easier than you
7 think it is, depending on what those numbers say. And since
8 none of us have seen those numbers, it's premature -- what we
9 ought to do is set aside the maximum amount of time that might
10 be necessary, with the possibility of shaving it back if the
11 case is, in fact, simpler and doesn't require two days of
12 expert testimony.

13 Judge Brennan, did you have any questions for
14 Mr. Harris as long as we still have him on the hot seat.

15 CIRCUIT JUDGE BRENNAN: I did. You mentioned 8 to 15
16 hours of trial time in response to Question D. Was that just
17 for the McConchie plaintiffs or was that your estimate for --

18 MR. HARRIS: No -- so that estimate is with total
19 time. I mean, of course, we don't know how many
20 plaintiffs -- I mean how many witnesses the defendants have,
21 but I suspect that with our two experts we probably don't need
22 more than six hours or so. So that's allowing for time for
23 them as well.

24 CIRCUIT JUDGE BRENNAN: Thank you.

25 No further questions.

1 DISTRICT JUDGE DOW: And, Judge DeGuilio, are you good
2 for the moment with Mr. Harris?

3 CHIEF JUDGE DEGUILIO: I am. Thank you.

4 DISTRICT JUDGE DOW: I guess, now we'll turn it over
5 to the Contreras plaintiffs, and whichever counsel would like
6 to take the lead, we'll be grateful.

7 MR. DEL CASTILLO: Your Honor, our statements of the
8 legal principles is somewhat similar to the McConchie
9 plaintiffs. However, there is one important difference in our
10 claims. We claim that as a constitutional matter, you need to
11 use -- or rather the state needs to use, the defendants need to
12 use, census redistricting data, otherwise known as P.L. 94-171
13 data, to measure whether the districts are malapportioned.
14 Right now they have not done that because it has not been
15 released for 2020.

16 Our view, as of now, the only appropriate data to
17 measure whether the districts are malapportioned is the 2010
18 data. And using that data, the districts are malapportioned.
19 So that's our view of the law.

20 Our view of the facts, we believe that the facts may
21 turn out to be a little more complicated than the McConchie
22 plaintiffs view. It's true that when census numbers come out
23 we are going to know much better how the various districts are
24 populated and we will not have to rely as much on estimates.

25 Nevertheless, one could use ACS data as the standard

1 as whether districts are malapportioned. And if it turns out
2 that districts are malapportioned using census data, we
3 anticipate the defendants will argue that the ACS is a
4 reasonable standard for measuring malapportionment, thus the
5 factual issues could become complicated. We'll have to account
6 for error related to margins of error, confidence levels, and
7 waiting factors in the use of ACS data, and that will require
8 experts. We anticipate that this could be an expert-intensive
9 case. And we believe that that merits a slightly less
10 accelerated discovery schedule.

11 DISTRICT JUDGE DOW: Okay. Can I ask you a question,
12 then? So it sounds to me like your core legal argument is that
13 if only -- I think P.L. data is the way you said it -- that
14 only comes out every 10 years, right?

15 MR. DEL CASTILLO: That's correct, your Honor.

16 DISTRICT JUDGE DOW: So your core legal argument is
17 there's no deviation from that, that's the standard. And
18 whenever those P.L. numbers are out, that's what you can use
19 and you can use nothing else.

20 MR. DEL CASTILLO: Well, I would like to clarify that
21 defendants or any other states may use whatever data they like,
22 including having their grandmother count residents or psychics.
23 But in order to measure whether the districts are
24 malapportioned, you need to use census redistricting data to
25 confirm that the districts are constitutional.

1 DISTRICT JUDGE DOW: Right. Okay. So I guess,
2 another way of saying that is the benchmark is always going to
3 be P.L., and you have to measure -- that's what you measure,
4 whatever number the state comes up with, it has to be measured
5 against the P.L. data?

6 MR. DEL CASTILLO: That is our position.

7 DISTRICT JUDGE DOW: Okay. All right. That's
8 helpful.

9 And then how about -- do you have experts of your own?
10 Are you using different experts than the McConchie plaintiffs?

11 MR. DEL CASTILLO: We are. We retained a demographer,
12 Dave Ely, and we anticipate that we will retain an expert who
13 is a former census employee who will speak to the various
14 reasons why ACS data is not appropriate for redistricting.

15 THE COURT: And it sounds like that second expert
16 you're talking about is going to overlap, potentially, with the
17 first expert that Mr. Harris talked about because he also
18 talked about having a census bureau person talk about how ACS
19 estimates don't work. Does that sound right? Am I missing
20 something?

21 MR. DEL CASTILLO: Yes, your Honor. That sounds
22 correct to me.

23 DISTRICT JUDGE DOW: Okay. Because we certainly don't
24 want to have duplicative testimony. If the experts, once their
25 reports are done, if they're basically saying the same thing,

1 we would hope to fold them in together or at least get them not
2 to repeat each other.

3 And then what do you think in terms of -- I think
4 Mr. Harris was guessing it would take two days, assuming his
5 experts would take around six hours. What do you think your
6 directs would be, so to speak?

7 MR. DEL CASTILLO: It's very difficult to say for sure
8 at this early stage of the litigation, but right now we
9 anticipate that it will take at least two days for us to put on
10 our case.

11 THE COURT: Okay. All right. Sounds good. Thank you
12 for your help.

13 Judge DeGuilio -- Judge Brennan, any questions at this
14 point?

15 JUDGE BRENNAN: No.

16 CHIEF JUDGE DEGUILIO: I have none.

17 DISTRICT JUDGE DOW: Okay. Thank you so much. I
18 appreciate it.

19 Defense side?

20 MR. KASPER: Thank you, your Honor. This is Michael
21 Kasper and I will speak for the defendants briefly. Regarding
22 the legal issues presented by the case, we agreed in major ways
23 with the -- both defendants about what the substantive issue
24 is.

25 We have a couple of additional issues. First and

1 foremost, we think that the plaintiffs have some significant
2 standing hurdles in this case, in both cases, both sets of
3 plaintiffs have significant standing principles. As Mr. Harris
4 cited a case, I'll cite some Supreme Court case of my own in
5 case called *Theo* and a recent case out of Wisconsin, and a case
6 called *Hayes*, the Supreme Court has ruled that one-person,
7 one-vote dilution plaintiffs lack standing unless they allege
8 that they live in a district that -- in which their vote is
9 diluted, and there is no allegation of this.

10 We think that they have a significant standing problem
11 as has been discussed previously. On this ball, we think they
12 have significant rights problems, mainly that the allegations
13 in both complaints are that the use of the ACS data will result
14 in deviations that are beyond what is constitutionally
15 permissible.

16 And, of course, the data set of the ACS only determine
17 whether or not that data segment is accurate by having a
18 benchmark. And the benchmark doesn't exist yet, by
19 Mr. Harris's own confession. So we think that the case is not
20 ripe. This is highly speculative that these deviations will
21 exceed constitutional limits once the data comes out, and for
22 that reason we think the case is wholly premature because as we
23 said before, your Honor, that we're going to know very, very
24 shortly whether or not the benchmark against which they would
25 like it to be measured is accurate or not. So for that reason,

1 we think that there's some ripeness problems.

2 The remedy that the McConchie plaintiffs think the
3 mandamus -- we think there are significant legal issues. And
4 the idea of this Court mandamus the state presiding officers
5 in any regard, let alone this regard here, to present, to get
6 to the next step in the constitutional process of the
7 legislative redistrict mission, we think that that -- the
8 question of whether or not the mission ought to be created in
9 this is a question of Illinois state law interpreting the
10 Illinois Constitution.

11 And, then, finally, the merit about the issue and we
12 agree with both sets of plaintiffs, is that the issue is really
13 regarding whether or not the Constitution requires states use
14 only final census numbers, this P.L. data that Mr. Harris
15 talked about, or whether or not the Constitution allows the
16 states more flexibility. So we think that those are the legal
17 issues to be presented.

18 Regarding factual record, we agree with Mr. Harris,
19 this is a pretty straightforward case. And I think it presents
20 a legal question, and that is, as a matter of law, are states
21 permitted to use data other than the final census numbers to
22 redraw a district.

23 And I tend to agree with your comment, Judge Dow, if
24 that's the legal question, what the process was becomes
25 somewhat less relevant. In their complaint, they made

1 reference to all of these models that they ran that were unable
2 to create districts that had acceptable deviations, and they
3 waited for this and they waited for that. We probably want to
4 at least see where that came from and which people created
5 those models and what their models had.

6 We agree that it's largely a case about experts.
7 These redistricting cases are almost always about experts and
8 going back to the factual record. Having been involved in a
9 couple of these before, we've always been able to anticipate,
10 at least the parties in the past, about the nature of the data,
11 the census data, what was done to it, and how -- the census
12 data blocks, various elements, so, hopefully, we will be able
13 to do that again.

14 We anticipate that we would probably, given what we
15 have heard from the plaintiffs, we will have three or four
16 experts of our own, who will be largely similar working from
17 the plaintiffs. They will be demographers and census experts
18 who will testify regarding the various census outlines.

19 We agree that it's going to be overwhelmingly witness
20 testimony, mostly expert testimony. From our perspective, we'd
21 at least -- we would present experts, and we can certainly live
22 with an hour to an hour and a half for the opening and closing.
23 So I think that answers all of the questions that were
24 outlined.

25 One housekeeping matter, pursuant to your standing

1 rule, Judge Dow, I have conferred with the lawyers for both
2 sets of plaintiffs and we would like to file our motions to
3 dismiss aligning the issues that I just talked about is due
4 Friday, and we would like to file 20 pages. We think we can
5 cover everything in 20 pages, and both sides have agreed.

6 DISTRICT JUDGE DOW: So, Mr. Kasper, you're suggesting
7 that we would extend the briefs to 20 pages instead of the 15
8 that's in our local rule?

9 MR. KASPER: Correct.

10 THE COURT: The motion to dismiss briefing, so just do
11 that blanket across the board?

12 MR. KASPER: Yes, we certainly could. We could live
13 with less on our reply.

14 THE COURT: Okay. So what if we did 20, 20, and 15.

15 MR. KASPER: That's fine with us.

16 DISTRICT JUDGE DOW: Is that okay for both sets of
17 plaintiffs? Just give me a thumbs-up.

18 (Attorneys did as requested.)

19 DISTRICT JUDGE DOW: Okay. So we'll extend the
20 briefing to 20, 20, and 15 on the briefing schedule that's
21 already been set. I think that will be fine.

22 Okay. Judge Brennan, any questions for Mr. Kasper?

23 CIRCUIT JUDGE BRENNAN: I do not.

24 DISTRICT JUDGE DOW: Okay. Judge DeGuilio, any
25 questions?

1 CHIEF JUDGE DEGUILIO: No.

2 DISTRICT JUDGE DOW: Okay. I think what I'm hearing
3 is we can permit you all to do short openings and short
4 closings. But most of the time we are going to be reserving is
5 for experts. And that there may be somewhere between six and
6 eight experts, depending on how many you all call. And,
7 obviously, you will have to wait until you see the reports to
8 see how much they agree. And it sounds like the factual record
9 may be largely stipulated and the better you can do on that,
10 obviously, the less time it will take. Obviously, your clients
11 pay money for the time. And getting three judges to sit for
12 five days and listen to expert testimony is going to be quite a
13 request, so we'll have to talk amongst ourselves and see when
14 we might be able to set aside the days. And, hopefully, as
15 this case progresses, you all will come to the conclusion that
16 you need less than five days, either because you can stipulate
17 to certain things or you can present certain things on the
18 written record without a need to -- perhaps you can
19 cross-examine the witnesses, but, you know, a lot of the --
20 otherwise it would be direct. You could just tell the judges,
21 "Please read in advance of the hearing the expert report on
22 these pages," and then we'll cross the expert on those pages.

23 But -- and, obviously, I need to confer with the
24 three -- well, the three judges need to confer, basically, on
25 this, but, you know, I also think it makes sense for us to have

1 another meeting as soon as those -- the real -- the census
2 numbers come out, and maybe the case will be simpler than you
3 think it is at the moment. But, obviously, you have to prepare
4 for whatever the most complicated case could be because you
5 can't be surprised. But those, you know, you guys can do your
6 initial assessment of how far the districts that have been
7 drawn by the law that's in place deviate or don't deviate.
8 Nobody can know, I guess, at this point, so we'll have to wait
9 and see.

10 Judge Brennan or Judge DeGuilio, did you guys have any
11 other comments you wanted to make just for the good of the
12 order here?

13 CIRCUIT JUDGE BRENNAN: I do not. Thank you.

14 CHIEF JUDGE DEGUILIO: I don't. Thank you.

15 DISTRICT JUDGE DOW: Okay. All right. So I think the
16 next thing we judges need to do is to give you a little bit
17 more detail in the scheduling order and give you some
18 information on when we're available for the trial. And now
19 that we have a better picture of what it's going to be, we'll
20 be able to actually put our calendars together and see what we
21 can come up for you.

22 Let me ask you this, too. So, obviously, I think the
23 first time we all got together, and this was before I knew who
24 my fellow judges were going to be, I think what I said to you
25 all is that the primary being pushed out three months gives us

1 some extra time, but it doesn't give us three months of extra
2 time because we have a trial and three judges who need to get
3 together to produce a ruling. And then if there is a
4 violation, we need a remedy that would be effective.

5 So I don't think we're inclined to say, you know,
6 whatever was originally proposed and pushing it out three
7 months. But is there anybody who wanted to say anything
8 about -- obviously, all of the other deadlines in the
9 Constitution, as far as I can tell, have already been blown in
10 the sense that we're already past the next deadline.

11 But if there's a violation, I can't believe that the
12 judges are unable to fashion an equitable remedy that would do
13 the best in the circumstances. But is there anybody who wanted
14 to say anything about the timing here? The argument I read in
15 the McConchie plaintiffs' brief was based on the Constitution,
16 all of the dates that are set forth in Article IV. Those dates
17 have already come and gone, some of them. So that can't be the
18 way that we have to run our schedule. But if there's anybody
19 who thinks there's going to be a remedial problem at the end,
20 like a violation, this would be a good time to tell us. I will
21 just go one at a time to make sure everybody has their
22 opportunity.

23 So, Mr. Harris, what do the McConchie plaintiffs have
24 to say about that particular issue?

25 You're on mute.

1 MR. HARRIS: Sorry. Sorry about that. So we agree
2 with you that some of the dates in the Constitution Article IV
3 have come and gone. But there are some of them that are still
4 alive and very important and very critical for us. And we also
5 believe that there may be some remedial order that you can
6 fashion that addresses some of the dates in the Constitution.
7 That said, the Constitution was ratified by the Illinois
8 citizens, the Illinois voters, and we believe that the schedule
9 should reflect and give effect to the Constitution and what's
10 required under the Constitution.

11 And as you know from our complaint, what we've said is
12 that there was no effective plan that was issued or that was
13 passed and that was effective before June 30th. And the
14 Constitution says that because there wasn't, there has to be a
15 bipartisan commission that is established, and that bipartisan
16 commission has to draw a map. And so in our view, the schedule
17 should reflect that.

18 And we think not only that, we think we have time in
19 order to draw a plan, once the Court makes a decision on what
20 we think is an unconstitutional map. So I think -- and that's
21 kind of the alacrity that we see here, and why we're looking to
22 get a declaration from the Court as quickly as possible.
23 That's not to suggest that, as your Honor suggested, there is
24 not some type of order that the Court could put into place to
25 address some of these issues, some of the timing issues.

1 DISTRICT JUDGE DOW: Well, let me ask you maybe
2 another more direct way of asking the question. Do you see a
3 drop-dead date for the panel to issue a decision that you think
4 after which would be problematic for effectuating the relief
5 you're requesting?

6 MR. HARRIS: Well, it depends on what order your Honor
7 actually enters. I mean, we would like to see something
8 done -- we would like to see a decision at least. I mean,
9 we're not talking about necessarily a long, written decision,
10 but at least some decision by mid-September. I mean, that
11 would be ideal for us. I mean, as you know, we have asked for
12 a trial date in early September, so that would be ideal for us.

13 THE COURT: I guess ideal is different than drop dead.

14 MR. HARRIS: Yes.

15 THE COURT: Is there a time after which you think a
16 decision would not be -- a remedy would not be effective?

17 MR. HARRIS: I don't -- well, I mean.

18 THE COURT: So the primary is in June, right. The
19 primary is now in June. The primary used to be in March.

20 MR. HARRIS: Right.

21 DISTRICT JUDGE DOW: So let's assume that if we had
22 gone to the commission, which Illinois has done more times than
23 it hasn't. If we moved all of those dates back three months,
24 presumably that would be okay, right? Because the primary now
25 has been moved three months, and we have operated under those

1 systems many, many times in the past, at least three by my
2 count. So I guess -- my way of thinking is the drop-dead date
3 is you actually could move everything back three months, and we
4 have managed that before in this state, so maybe it is not as
5 urgent as your proposed schedule is, but it's not anything to
6 dilly dally with either.

7 MR. HARRIS: Well, that's why I'm struggling with
8 coming up and taking a position on the drop-dead date because
9 it all kind of depends on what relief that the Court -- your
10 Honor fashions, if you understand what I mean.

11 I mean, if you think you have the ability, which I
12 would agree with, in order to extend some of these dates in the
13 Constitution, then that's one thing. But if we're sticking by
14 those dates, I think that, again, mid-September would be an
15 ideal date for us.

16 DISTRICT JUDGE DOW: Okay.

17 MR. PANOFF: Your Honor --

18 DISTRICT JUDGE DOW: Go ahead, Mr. Panoff.

19 MR. PANOFF: -- if I could just -- I wanted to just
20 kind of elaborate on what Mr. Harris was saying. I think our
21 overall intention here was we wanted to give effect to the
22 constitutional provisions that are in place here, and that's
23 the schedule that we had proposed because it's the last date in
24 the constitutional provision is that October 5th deadline. But
25 if the Court were willing to entertain an equitable relief that

1 would keep that constitutional structure in place but
2 potentially move the dates in a commensurate fashion with the
3 other extensions that have occurred, I think that's something
4 that could work as well, but our overarching goal, whether
5 trying to fit it in the existing constitutional deadline or by
6 moving those deadlines three months out, the goal is to give
7 effect to the constitutional structure that's in place that the
8 citizens have ratified. So if you go with the existing one, we
9 could make it work, but an extension could work as well.

10 DISTRICT JUDGE DOW: All right. How about the
11 Contreras plaintiffs, any thoughts on that?

12 MR. DEL CASTILLO: Your Honor -- sorry -- our position
13 is that under -- well, so first of all, our plaintiffs aren't
14 arson plaintiffs, they're registered voters whose interest is
15 that their vote not be diluted, so it's not our primary concern
16 who draws the map. Nonetheless, after having analyzed the
17 plain language of the Illinois Constitution, we do believe that
18 the inactive clients applied the June 30th deadline in the
19 Constitution. I also believe -- we also believe that that is a
20 pure question of law and that the Court accept briefing on and
21 settle more quickly than some of the other factual issues in
22 the case.

23 If our position is correct and defendants have
24 complied with the deadline in the Illinois Constitution, we
25 believe that the proper remedy is that the Court would give

1 defendants a chance to draft a certain map. And if they do so
2 effectively, then that would go into effect. If not, the
3 responsibility falls to the Court and not to anyone in the
4 Illinois General Assembly.

5 DISTRICT JUDGE DOW: And not to a commission either?

6 MR. DEL CASTILLO: Not to a commission.

7 DISTRICT JUDGE DOW: So your view is that the
8 commission will not be involved, period. If you both win your
9 claims and get the relief you're requesting, the commission
10 doesn't come into play. And it sounds like the McConchie
11 plaintiffs think the remedy if this map is invalid under the
12 law is that the commission does come into play; am I
13 understanding that right?

14 MR. DEL CASTILLO: Yes, your Honor.

15 THE COURT: Okay. So your view, the Contreras
16 plaintiffs' view is that you -- the plaintiffs get another
17 shot, and if the plaintiffs fail on that shot, it goes to the
18 Court.

19 MR. DEL CASTILLO: The defendants, yes.

20 DISTRICT JUDGE DOW: Very good. If I start using
21 names it will be easier.

22 Terrific. Thank you for your help with that, too.

23 THE COURT: How about the defendants?

24 MR. KASPER: Thank you, your Honor. We agree with the
25 MALDEF plaintiffs that to the extent that there is any remedy,

1 it should be back to the Illinois General Assembly, if
2 necessary. Because we agree with the MALDEF plaintiffs that
3 the General Assembly supplied this constitutional-required
4 tacit plan that became effective when the governor signed it,
5 just like any other law. A redistricting plan is just an
6 enactment of the General Assembly. It becomes effective when
7 the governor signs it. The governor signed this plan prior to
8 the June 30th date and effect.

9 To answer your first question, though, your Honor,
10 what is the drop-dead date, I think that from our perspective,
11 the districts ought to be known to the public what the final
12 districts are going to look like no later than early January.
13 Because while the primary has been delayed until June, in order
14 to run for office, you have to circulate nominating petitions.
15 There's a period of time of a couple of months to do that.
16 That begins sometime in January. Illinois law has a system
17 whereby there is a lot more flexibility in deciding where
18 you're going to run from. If your house in is in a district
19 exactly, you should only run your district. In a year after
20 redistricting, you can run in your new district or in any other
21 district that has some geographical territory in your old
22 district, so it's a little bit more flexible. But,
23 nonetheless, your Honor, it is right around the first of the
24 year so that when people go out and pass a petition to run for
25 the legislature, they know exactly what district they are going

1 to run in. So I think that provides a little more flexibility.

2 And to add to that, given the remedy, if there is any
3 remedy, that we would agree is the appropriate one, I'm told
4 the legislature gets this data, gets it in whatever position it
5 needs to be in to be manipulated to districts within a matter
6 of days rather than weeks or months. Fairly easy process, not
7 that complicated of a process. So if that answers your
8 questions, then I think the date, as we thought, should there
9 be a necessity for a trial, which I don't want anyone to think
10 we are less than confident in our motion, but should there be
11 one, we would think a time early to mid-October.

12 THE COURT: Okay. All right. That's great help.

13 Judge Brennan, any other questions for counsel?

14 CIRCUIT JUDGE BRENNAN: No, thank you.

15 DISTRICT JUDGE DOW: Judge DeGuilio?

16 CHIEF JUDGE DEGUILIO: I don't. Thank you.

17 DISTRICT JUDGE DOW: Judges, do you have a couple more
18 minutes?

19 CHIEF JUDGE DEGUILIO: Yes.

20 DISTRICT JUDGE DOW: Maybe we should all disconnect
21 and then just the three of us will call back into this same
22 number and let's say take five maybe; is that okay?

23 CIRCUIT JUDGE BRENNAN: Thank you.

24 DISTRICT JUDGE DOW: All right. Counsel, thank you so
25 much for all of your help today. We will be asking you for

1 help throughout this I am sure.

2 Was there anybody else that they wanted to put on the
3 record this morning?

4 (No verbal response.)

5 DISTRICT JUDGE DOW: Okay. Wonderful. Thank you for
6 all of your help. I'm sure you will be of great help to us as
7 we go through and we'll go back to you as we need your help and
8 we'll try to give you some help with a better schedule as soon
9 as we can sort it out. So, thanks, everybody. Have a good
10 day. Bye-bye.

11 (Proceedings concluded at 10:47 A.M.)

12 * * * * *

13 C E R T I F I C A T E

14 I certify that the foregoing is a correct transcript from
15 the record of proceedings in the above-entitled matter.

16

17

18 /s/Kristin M. Ashenurst, CSR, RDR, CRR July 15, 2021
19 Kristin M. Ashenurst, CSR, RDR, CRR Date
20 Federal Official Court Reporter

21

22

23

24

25

EXHIBIT 2

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August 10, 2021

VIA EMAIL
CONFIDENTIAL

Griselda Vega Samuel
Mexican American Legal Defense and Educational Fund
11 E. Adams, Suite 700
Chicago, IL 60603
gvegasamuel@maldef.org

Re: Contreras v. Illinois State Board of Elections, et al., Case No. 1:21-CV-3139

Dear Ms. Vega Samuel:

We write in response to your request that Defendants provide additional information in regard to certain document requests and interrogatories propounded by Plaintiffs in this case. Additional responses notwithstanding, Defendants maintain their objections set forth in their July 23, 2021 responses to Plaintiffs’ document requests and interrogatories.

Requests for Production Nos. 3, 10, and 11; Interrogatories Nos. 2, 4, 5, and 13: Each of these requests seeks documents regarding the data and datasets used or not used in creating the map. Defendants, in their Rule 26(a)(1) initial disclosures, have previously provided a link to the ACS 2015-2019 5-year data from the U.S. Census Bureau. Defendants will also produce the disaggregated American Community Survey (“ACS”) 2015-2019 5-year data and the voter registration data from the Illinois State Board of Elections used in disaggregating that ACS data, as well as the 2020 Census Bureau geography data. To the extent that these requests seek any other information, please explain what kind of information or categories of documents you believe should be produced, as well as why that information is relevant to your claim that “[f]ive-year ACS estimates are not current for purposes of determining whether districts comply with the one-person, one-vote standard.” Am. Compl. ¶ 41. Plaintiffs’ claims relate to the use of ACS data, and requests for any other data or information used or not used in drawing the map appear to be irrelevant. *See* Fed. R. Civ. P. 26(b)(1) (a party need only produce “nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case”). To the extent any other data or information may be relevant, please explain what data is sought and why it would be relevant to the claim regarding ACS data.

Requests for Production Nos. 5–9: These requests seek documents relating to the calculation of population counts and demographic characteristics, both in Illinois and in individual districts of the state. The disaggregated ACS 2015-2019 5-year data, which will be produced in response to the first group of requests discussed above, contains information

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responsive to these requests. Further, Public Act 102-10, House Bill 2777, House Resolution 359, and Senate Resolution 326 contain responsive information and are publicly available to Plaintiffs on the Illinois General Assembly website (www.ilga.gov). Lastly, spreadsheets containing responsive information are publicly available to Plaintiffs on the House Democrats' redistricting website (<https://ilhousedems.com/redistricting/>) and the Senate Democrats' redistricting website (<https://www.ilsenateredistricting.com/>). To the extent that these requests seek any other information, please explain what kind of information or categories of documents you believe should be produced, as well as why that information is relevant to your claim. *See* Fed. R. Civ. P. 26(b)(1).

Requests for Production Nos. 13 and 16: These requests seek information about the software used in creating the map. The software utilized in performing the map drawing processes was AutoBound EDGE 2020 and ArcGIS Pro. Because of licensing and ownership restrictions, Defendants cannot provide copies of the actual software.

Requests for Production Nos. 12, 25, and 27; Interrogatories Nos. 10 and 12: These requests seek information about individuals, including the retention of demographers who had a role in the development of the map and any communications with Kimball Brace. Defendants agree to produce contracts with Kimball Brace and Allan Lichtman. Defendants also refer Plaintiffs to their Rule 26 disclosures, naming individuals who are relevant to this litigation. Defendants do not consider any other information or any other individuals' involvement to be both non-privileged and "relevant to any party's claim or defense." Fed. R. Civ. P. 26(b)(1).

Requests for Production Nos. 14, 15, and 19: Plaintiffs seek documents relating to the methodology for estimating block level data and total population, as well as confidence levels and potential errors in the enacted plans. The disaggregated ACS 2015-2019 5-year data, which will be produced in response to the first group of requests discussed above, contains information responsive to these requests. To the extent that these requests seek any other information, please explain what kind of information or categories of documents you believe should be produced, as well as why that information is relevant to your claim. *See* Fed. R. Civ. P. 26(b)(1).

Interrogatories No. 9: This interrogatory seeks information about drafts of the redistricting plans. Please explain what kind of information or categories of documents you believe should be produced, as well as why that information is relevant to your claim. *See* Fed. R. Civ. P. 26(b)(1). Plaintiffs' claim is that the "current redistricting plans are [] not in compliance with the Fourteenth Amendment's one-person, one-vote mandate," Am. Compl. ¶ 50, and information about drafts does not appear to be relevant.

Interrogatory No. 11: This interrogatory seeks the "overall range" of the enacted plans. House Resolution 359 and Senate Resolution 326 contain responsive information and are publicly available to Plaintiffs on the Illinois General Assembly website (www.ilga.gov). Lastly, spreadsheets containing responsive information are also publicly available to Plaintiffs on the House Democrats' redistricting website (<https://ilhousedems.com/redistricting/>) and the Senate Democrats' redistricting website (<https://www.ilsenateredistricting.com/>). To the extent that these requests seek any other information, please explain what kind of information or categories of documents you believe should be produced, as well as why that information is relevant to your claim. *See* Fed. R. Civ. P. 26(b)(1).

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* * * *

Defendants will produce the above-identified information in a prompt manner, and are available to meet and confer on these or any other discovery issues. Please let us know if you have any further questions.

Best regards,

/s/ Colleen Smith
of LATHAM & WATKINS LLP

CC: Francisco Fernandez del Castillo
Thomas A. Saenz
Ernest Herrera

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EXHIBIT 3

Gold, Miri (CC)

From: Yandell, Elizabeth (Bay Area)
Sent: Friday, August 13, 2021 12:53 PM
To: gvegasamuel@maldef.org; tsaenz@maldef.org; eherrera@maldef.org; ffernandez-delcastillo@maldef.org; bja@lbgalaw.com; ccomstock@mayerbrown.com; mholzrichter@mayerbrown.com; pal@lbgalaw.com; meza@meza.law; jgn@lbgalaw.com; tpanoff@mayerbrown.com
Cc: Berkowitz, Sean (CH); Smith, Colleen (SD); Gold, Miri (CC); Bridegan, Tyler (DC); Caldwell, Sheridan (Bay Area); mjkasper60@mac.com; avaught@hinshawlaw.com; dbruce@powerrogers.com; heather@wiervaught.com; cohagan@hinshawlaw.com; sdalton@powerrogers.com; mary.johnston@illinois.gov
Subject: McConchie et. al. v. Ill State Bd. of Elections, et. al., 2021-cv-3091 & Contreras v. Ill. State Bd. of Elections, et al., 1:21-cv-3139

Counsel,

Defendants are producing the following materials in response to Plaintiffs' requests for production and following the parties' recent conferrals on the same. With this production, Defendants do not waive their general or specific objections to any discovery request. The non-public materials in this production are confidential and cannot be used or shared outside of this litigation. The following hard copy materials will follow via Latham Secure Transfer (our FTP site) due to their size. You will have to create an account to access the materials. That transmission will include:

1. Autobound report for HB 2777
2. Transcripts of the House Floor Debate (May 28, 2021)
3. House Resolution No. 359
4. Text of HB 2777
5. Senate Resolution No. 326
6. Voter registration data from the State Board of Elections
7. Disaggregated ACS 5-year data (2015-2019)
8. The House and Senate contracts with Election Data Services (Kimball Brace) and with Allan Lichtman

Due to their volume, Defendants are providing links to the following responsive materials that are publicly available:

1. 2020 Census Bureau Geography: https://www2.census.gov/geo/tiger/TIGER2020PL/STATE/17_ILINOIS/
2. Senate Witness Testimony: <https://www.ilga.gov/senate/committees/Redistricting%20Hearings.asp?CommitteeID=2742&Description=Redistricting&Code=SRED&GA=102>
3. Senate Public Map Submissions: <https://www.ilga.gov/senate/committees/RedistrictingPublicMaps.asp?CommitteeID=2742&Description=Redistricting&Code=SRED&GA=102>
4. Senate Committee Transcripts: <https://www.ilga.gov/senate/committees/RedistrictingTranscripts.asp?CommitteeID=2742&Description=Redistricting&Code=SRED&GA=102>
5. House Witness Testimony and Public Map Submissions: <https://ilga.gov/house/committees/Redistricting%20Hearings.asp?CommitteeID=2800&Description=Redistricting%20Committee&Code=HRED&GA=102>
6. House Redistricting Committee Transcripts: <https://ilga.gov/house/committees/RedistrictingHearingsTranscripts.asp?CommitteeID=2800&Description=Redistricting%20Committee&Code=HRED&GA=102>

7. House Redistricting Committee

Audio: https://drive.google.com/drive/folders/1_LTovlSf1xvP34NxdcFAFu4WVMyrL8t?usp=sharing

Defendants will also produce the email messages from witnesses who testified at the relevant hearings. Those materials will follow in a separate production next week.

Best,
Libby

Libby Yandell

Pronouns: she/her/hers

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EXHIBIT 4

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

JULIE CONTRERAS, IRVIN FUENTES,
ABRAHAM MARTINEZ, IRENE PADILLA, and
ROSE TORRES

Plaintiffs,

v.

ILLINOIS STATE BOARD OF ELECTIONS,
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-03139

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

Judges presiding

**PLAINTIFFS' OBJECTIONS AND RESPONSES TO DEFENDANTS'
INTERROGATORIES TO PLAINTIFFS**

Pursuant to Federal Rule of Civil Procedure 33, Plaintiffs, by and through their attorneys, hereby object and respond to Defendants Emanuel Christopher Welch, in his official capacity as Speaker of the Illinois House of Representatives, Office of the Speaker of the Illinois House of Representatives, Don Harmon, in his official capacity as President of the Illinois Senate and Office of the President of the Illinois Senate's Interrogatories To Plaintiffs, served on Plaintiffs on July 12, 2021 (the Interrogatories, and each an Interrogatory), as follows:

GENERAL OBJECTIONS

1. Plaintiffs generally object to these Interrogatories, and to every definition and instruction therein, to the extent that they seek to impose burdens greater than those imposed by the Federal Rules of Civil Procedure, as reasonably interpreted and supplemented by local court rules.
2. Plaintiffs generally object to these Interrogatories, and the definitions and instructions therein, to the extent that they call for the disclosure of any document or communication that is privileged, was prepared in anticipation of litigation or for trial, and/or otherwise constitutes attorney work product or is immune from discovery. Inadvertent identification or production of any such document or communication shall not constitute a waiver of any privilege or protection with respect to the subject matter thereof or the information contained therein, and shall not waive the right of Plaintiffs to object to the use of any such document or communication (or the information contained therein) during this or any subsequent proceeding.
3. Plaintiffs generally object to these Interrogatories to the extent that they require identification of documents not within Plaintiffs' possession, custody, or control.
4. All responses are based on Plaintiffs' current knowledge and reasonable belief, and Plaintiffs reserve the right to amend or supplement these Objections and Responses.
5. Plaintiffs object to these requests to the extent that they seek information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C). Without waiving these objections, Plaintiffs will disclose non-protected information at the time ordered by the Court and in accordance with Fed.R.Civ.P. 26.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify the population of the largest Legislative District and smallest Legislative District for the 2021 Redistricting Plan. For each answer, identify the Legislative District and state the data relied upon.

RESPONSE TO INTERROGATORY NO. 1:

Plaintiffs object to this interrogatory to the extent that it implies that figures reported by the Illinois General Assembly as being the population of various Legislative Districts in the 2021 Redistricting Plan are based on an actual enumeration of the population.

Plaintiffs object to this interrogatory to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving these objections, Plaintiffs respond that Plaintiffs live in districts which are malapportioned under the 2010 decennial census data and, on information and belief, are malapportioned under the 2020 decennial census data. As a result of this malapportionment, Plaintiffs' votes in the 2022 election will be diluted.

INTERROGATORY NO. 2:

State the sum of the percentage deviations from the target population of the most- and least-populated Legislative Districts identified in the answer to Question #1.

RESPONSE TO INTERROGATORY NO. 2:

Plaintiffs object to this interrogatory to the extent that it implies that figures reported by the Illinois General Assembly as being the population of various Legislative Districts in the 2021 Redistricting Plan are based on an actual enumeration of the population.

Plaintiffs object to this interrogatory to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving these objections, Plaintiffs respond that Plaintiffs live in districts which are malapportioned under the 2010 decennial census data and, on information and belief, are malapportioned under the 2020 decennial census data. As a result of this malapportionment, Plaintiffs' votes in the 2022 election will be diluted.

INTERROGATORY NO. 3:

Identify the population of the largest Representative District and smallest Representative District for the 2021 Redistricting Plan. For each answer, identify the Representative District and state the data relied upon.

RESPONSE TO INTERROGATORY NO. 3:

Plaintiffs object to this interrogatory to the extent that it implies that figures reported by the Illinois General Assembly as being the population of various Representative Districts in the 2021 Redistricting Plan are based on an actual enumeration of the population.

Plaintiffs object to this interrogatory to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving these objections, Plaintiffs respond that Plaintiffs live in districts which are malapportioned under the 2010 decennial census data and, on information and belief, are malapportioned under the 2020 decennial census data. As a result of this malapportionment, Plaintiffs' votes in the 2022 election will be diluted.

INTERROGATORY NO. 4:

State the sum of the percentage deviations from the target population of the most- and least-populated Representative Districts identified in the answer to Question #3.

RESPONSE TO INTERROGATORY NO. 4:

Plaintiffs object to this interrogatory to the extent that it implies that figures reported by the Illinois General Assembly as being the population of various Representative Districts in the 2021 Redistricting Plan are based on an actual enumeration of the population.

Plaintiffs object to this interrogatory to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving these objections, Plaintiffs respond that Plaintiffs live in districts which are malapportioned under the 2010 decennial census data and, on information and belief, are malapportioned under the 2020 decennial census data. As a result of this malapportionment, Plaintiffs' votes in the 2022 election will be diluted.

INTERROGATORY NO. 5:

State the deviation between the target population for Representative Districts and the population of the Representative District 60 where Plaintiff Contreras resides and the source of population data used to identify the deviation.

RESPONSE TO INTERROGATORY NO. 5:

Plaintiffs object to this interrogatory to the extent that it implies that figures reported by the Illinois General Assembly as being the population of various Representative Districts in the 2021 Redistricting Plan are based on an actual enumeration of the population.

Plaintiffs object to this interrogatory to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving these objections, Plaintiffs respond that Plaintiff Contreras lives in a representative district which is malapportioned under the 2010 decennial census data and, on information and belief, is malapportioned under the 2020 decennial census data. As a result of this malapportionment, Plaintiff's vote in the 2022 election will be diluted.

INTERROGATORY NO. 6:

State the deviation between the target population for Legislative Districts and the population of the Legislative District 30 where Plaintiff Contreras resides and the source of population data used to identify the deviation.

RESPONSE TO INTERROGATORY NO. 6:

Plaintiffs object to this interrogatory to the extent that it implies that figures reported by the Illinois General Assembly as being the population of various Legislative Districts in the 2021 Redistricting Plan are based on an actual enumeration of the population.

Plaintiffs object to this interrogatory to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving these objections, Plaintiffs respond that Plaintiff Contreras lives in a legislative district which is malapportioned under the 2010 decennial census data and, on information and belief, is malapportioned under the 2020 decennial census data. As a result of this malapportionment, Plaintiff's vote in the 2022 election will be diluted.

INTERROGATORY NO. 7:

State the deviation between the target population for Representative Districts and the population of the Representative District 1 where Plaintiff Fuentes resides and the source of population data used to identify the deviation.

RESPONSE TO INTERROGATORY NO. 7:

Plaintiffs object to this interrogatory to the extent that it implies that figures reported by the Illinois General Assembly as being the population of various Representative Districts in the 2021 Redistricting Plan are based on an actual enumeration of the population.

Plaintiffs object to this interrogatory to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving these objections, Plaintiffs respond that Plaintiff Fuentes lives in a representative district which is malapportioned under the 2010 decennial census data and, on information and belief, is malapportioned under the 2020 decennial census data. As a result of this malapportionment, Plaintiff's vote in the 2022 election will be diluted.

INTERROGATORY NO. 8:

State the deviation between the target population for Legislative Districts and the population of the Legislative District 1 where Plaintiff Fuentes resides and the source of population data used to identify the deviation.

RESPONSE TO INTERROGATORY NO. 8:

Plaintiffs object to this interrogatory to the extent that it implies that figures reported by the Illinois General Assembly as being the population of various Legislative Districts in the 2021 Redistricting Plan are based on an actual enumeration of the population.

Plaintiffs object to this interrogatory to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving these objections, Plaintiffs respond that Plaintiff Fuentes lives in a legislative district which is malapportioned under the 2010 decennial census data and, on information and belief, is malapportioned under the 2020 decennial census data. As a result of this malapportionment, Plaintiff's vote in the 2022 election will be diluted.

INTERROGATORY NO. 9:

State the deviation between the target population for Representative Districts and the population of the Representative District 86 where Plaintiff Martinez resides and the source of population data used to identify the deviation.

RESPONSE TO INTERROGATORY NO. 9:

Plaintiffs object to this interrogatory to the extent that it implies that figures reported by the Illinois General Assembly as being the population of various Representative Districts in the 2021 Redistricting Plan are based on an actual enumeration of the population.

Plaintiffs object to this interrogatory to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving these objections, Plaintiffs respond that Plaintiff Martinez lives in a representative district which is malapportioned under the 2010 decennial census data and, on information and belief, is malapportioned under the 2020 decennial census data. As a result of this malapportionment, Plaintiff's vote in the 2022 election will be diluted.

INTERROGATORY NO. 10:

State the deviation between the target population for Legislative Districts and the population of the Legislative District 43 where Plaintiff Martinez resides and the source of population data used to identify the deviation.

RESPONSE TO INTERROGATORY NO. 10:

Plaintiffs object to this interrogatory to the extent that it implies that figures reported by the Illinois General Assembly as being the population of various Legislative Districts in the 2021 Redistricting Plan are based on an actual enumeration of the population.

Plaintiffs object to this interrogatory to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving these objections, Plaintiffs respond that Plaintiff Martinez lives in a representative district which is malapportioned under the 2010 decennial census data and, on information and belief, is malapportioned under the 2020 decennial census data. As a result of this malapportionment, Plaintiff's vote in the 2022 election will be diluted.

INTERROGATORY NO. 11:

State the deviation between the target population for Representative Districts and the population of the Representative District 6 where Plaintiffs Padilla and Torres reside and the source of population data used to identify the deviation.

RESPONSE TO INTERROGATORY NO. 11:

Plaintiffs object to this interrogatory to the extent that it implies that figures reported by the Illinois General Assembly as being the population of various Representative Districts in the 2021 Redistricting Plan are based on an actual enumeration of the population.

Plaintiffs object to this interrogatory to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving these objections, Plaintiffs respond that Plaintiffs Padilla and Torres live in a representative district which is malapportioned under the 2010 decennial census data and, on information and belief, is malapportioned under the 2020 decennial census data. As a result of this malapportionment, Plaintiffs' votes in the 2022 election will be diluted.

INTERROGATORY NO. 12:

State the deviation between the target population for Legislative Districts and the population of the Legislative District 3 where Plaintiffs Padilla and Torres reside and the source of population data used to identify the deviation.

RESPONSE TO INTERROGATORY NO. 12:

Plaintiffs object to this interrogatory to the extent that it implies that figures reported by the Illinois General Assembly as being the population of various Legislative Districts in the 2021 Redistricting Plan are based on an actual enumeration of the population.

Plaintiffs object to this interrogatory to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving these objections, Plaintiffs respond that Plaintiffs Padilla and Torres live in a legislative district which is malapportioned under the 2010 decennial census data and, on information and belief, is malapportioned under the 2020 decennial census data. As a result of this malapportionment, Plaintiffs' votes in the 2022 election will be diluted.

INTERROGATORY NO. 13:

Identify any Illinois law, statute, rule, or regulation that mandates the use of official decennial census population counts to adopt a decennial legislative redistricting plan.

RESPONSE TO INTERROGATORY NO. 13:

Plaintiffs object to the term "mandates" as vague.

Plaintiffs object to the interrogatory to the extent that it calls for an opinion or contention of law that is not an "application of law to fact." Fed.R.Civ.P. 33(a)(2). Plaintiffs object to this

interrogatory as calling for a purely legal conclusion about the applicable law rather than factual or applied-fact conclusion. Under Fed. R. Civ. P. 33 and the case law interpreting the rule, interrogatories that call for a purely legal analysis on the applicable choice of law are improper. *See Schumacher v. Principal Life Ins. Co.*, 2010 WL 11680588, at *2 (N.D. Ind. Jan. 20, 2010); *Walber v. Toyota Motor Mfg. Canada*, 2015 WL 12159423, at *3 (D. Alaska May 6, 2015).

Plaintiffs object to this interrogatory as calling for attorney work product and attorney-client privileged information by improperly asking Plaintiffs to describe the mental impressions and legal conclusions of Plaintiffs' counsel in violation of Fed. R. Civ. P. 26(b)(3). This interrogatory also seeks the disclosure of privileged communications between attorney and client.

INTERROGATORY NO. 14:

Identify any Illinois law, statute, rule, or regulation that prohibits the Illinois General Assembly from using the Census Bureau's American Community Survey population estimates as a source for the Illinois General Assembly to adopt a decennial legislative redistricting plan.

RESPONSE TO INTERROGATORY NO. 14:

Plaintiffs object to the term "prohibits" as vague.

Plaintiffs object to the interrogatory to the extent that it calls for an opinion or contention of law that is not an "application of law to fact." Fed.R.Civ.P. 33(a)(2). Plaintiffs object to this interrogatory as calling for a purely legal conclusion about the applicable law rather than factual or applied-fact conclusion. Under Fed. R. Civ. P. 33 and the case law interpreting the rule, interrogatories that call for a purely legal analysis on the applicable choice of law are improper. *See Schumacher v. Principal Life Ins. Co.*, 2010 WL 11680588, at *2 (N.D. Ind. Jan. 20, 2010); *Walber v. Toyota Motor Mfg. Canada*, 2015 WL 12159423, at *3 (D. Alaska May 6, 2015).

Plaintiffs object to this interrogatory as calling for attorney work product and attorney-client privileged information by improperly asking Plaintiffs to describe the mental impressions and legal conclusions of Plaintiffs' counsel in violation of Fed. R. Civ. P. 26(b)(3). This interrogatory also seeks the disclosure of privileged communications between attorney and client.

INTERROGATORY NO. 15:

Identify any and all states that have used or are expected to use American Community Survey data in formulating their legislative maps in 2021, including but not limited to: (1) use of the American Community Survey to formulate the total population of legislative districts and (2) use of the American Community Survey to determine the Citizen Voting Age Population in legislative districts.

RESPONSE TO INTERROGATORY NO. 15:

Plaintiffs object to this interrogatory as overly broad and unduly burdensome. Plaintiffs object to the terms “formulate” and “formulating” as vague. Plaintiffs object to the phrase “are expected to use” in the sense that it is unclear as to who has such expectations.

Without waiving their objections, Plaintiffs respond that they are unaware of any states that have used or are expected to use American Community Survey data in formulating the total population of legislative districts in 2021. Plaintiffs are currently unaware of how many states have used or are expected to use ACS data to determine the Citizen Voting Age Population in legislative districts.

INTERROGATORY NO. 16:

State whether Plaintiffs submitted any proposal for a legislative map, Legislative District, or Representative District in whole or in part to the Illinois General Assembly for the redistricting process during the 2021 spring legislative session. If so, identify the document which references that proposal.

RESPONSE TO INTERROGATORY NO. 16:

Plaintiffs object to the phrase “any proposal” as overly inclusive and vague.

Without waiving their objection, Plaintiffs respond that they did not submit any map proposals for Legislative or Representative Districts in 2021.

INTERROGATORY NO. 17:

Identify any and all sources of Illinois population data that were available during the period of January 1, 2021 to June 30, 2021.

RESPONSE TO INTERROGATORY NO. 17:

Plaintiffs object to the term “available” as vague. Plaintiffs object to the phrase “Illinois population data” as vague and overly broad.

Without waiving their objections, Plaintiffs respond that the Census Bureau’s ACS 5-Year 2015-2019 data are not a “source of population data for redistricting.” The population figures that are a part of ACS 5-Year 2015-2019 data are estimates of the characteristics of population, not population data. Only the P.L. 94-171 redistricting data are a source of population data from the Census Bureau.

INTERROGATORY NO. 18:

Identify any and all sources of Illinois population data available during the period of January 1, 2021 to June 30, 2021 that were a better source of population data for redistricting than the Census Bureau's American Community Survey 5-Year 2015-2019 data.

RESPONSE TO INTERROGATORY NO. 18:

Plaintiffs object to the term "available" as vague. Plaintiffs object to the phrase "Illinois population data" as vague.

Without waiving their objections, Plaintiffs respond that the Census Bureau's ACS 5-Year 2015-2019 data are not a "source of population data for redistricting." The population figures that are a part of ACS 5-Year 2015-2019 data are estimates of the characteristics of population, not population data. Only the P.L. 94-171 redistricting data are a source of population data from the Census Bureau.

Dated: July 23, 2021

Respectfully submitted,

/s/ Griselda Vega Samuel
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ATTORNEYS FOR PLAINTIFFS
MEXICAN AMERICAN LEGAL
DEFENSE & EDUCATIONAL

FUND

CERTIFICATE OF SERVICE

I hereby certify that, on July 23, 2021, a copy of the above was sent by email to:

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Ernest I. Herrera
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EXHIBIT 5

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

JULIE CONTRERAS, IRVIN FUENTES,
ABRAHAM MARTINEZ, IRENE PADILLA, and
ROSE TORRES

Plaintiffs,

v.

ILLINOIS STATE BOARD OF ELECTIONS,
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-3139

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

Judges presiding

**PLAINTIFFS' OBJECTIONS AND RESPONSES TO DEFENDANTS' REQUESTS TO
PRODUCE DOCUMENTS AND TANGIBLE ITEMS**

Pursuant to Federal Rules of Civil Procedure 34 and the Local Rules of this Court, Plaintiffs Julie Contreras, Irvin Fuentes, Abraham Martinez, Irene Padilla, and Rose Torres, through the undersigned counsel, hereby object and respond to Defendants Emanuel Christopher Welch, in his official capacity as Speaker of the Illinois House of Representatives, Office of the Speaker of the Illinois House of Representatives, Don Harmon, in his official capacity as President of the Illinois Senate and Office of the President of the Illinois Senate's, by and

through their counsel, Michael J. Kasper, Power Rogers, LLP and Hinshaw & Culbertson, LLP, Requests to Produce Documents and Tangible Items To All Plaintiffs (the “Requests,” and each a “Request”), served on Plaintiffs on July 12, 2021, as follows:

GENERAL OBJECTIONS

1. Plaintiffs object to Defendants’ Requests and to the instructions and definitions incorporated therein to the extent that they are inconsistent with or purport to impose obligations broader in scope or more burdensome than those imposed by the Federal Rules of Civil Procedure or Local Rules, and Plaintiffs expressly disclaim any obligation to provide any discovery beyond that required by such rules or in a manner not required by such rules. Plaintiffs are not withholding any responsive materials based on this objection.
2. Plaintiffs object to Defendants’ Requests and to the instructions and definitions incorporated therein to the extent that they call for the disclosure of information protected from discovery by the attorney-client privilege, the work-product doctrine, the joint-defense privilege, the common interest doctrine, or any other applicable privilege or immunity from discovery. Plaintiffs are withholding documents and/or ESI responsive to the following specific Requests based on one or more such privileges and immunities: Request Nos. 7 and 10. Plaintiffs will provide a privilege log by the date agreed upon for the exchange of privilege logs.
3. Plaintiffs object to Defendants’ Requests and to the instructions and definitions incorporated therein to the extent that they seek documents or information not in the possession, custody, or control of Plaintiffs. To the extent that Request Nos. 1, 2, 3, 4, 5, and 8 encompass legislative maps and related data, and records of payment to experts or consultants, Plaintiffs have not undertaken to search for or obtain such items because they are not within Plaintiffs’ possession, custody, or control.
4. Plaintiffs object to Defendants’ Requests to the extent that they seek disclosure of expert opinions or documents and other information generated by or at the request of Plaintiffs’ testifying experts prior to the exchange of expert reports and prior to the time for expert discovery as set forth in the Court's Scheduling Order. As set forth in response to Requests, Plaintiffs are withholding responsive materials based on this objection until the time provided for in the Court’s schedule for expert discovery.

SPECIFIC OBJECTIONS AND RESPONSES TO REQUESTS

REQUEST NO. 1:

Any and all maps, drawings, or drafts, whether of a whole statewide legislative plan or any Legislative District or Representative District, that Plaintiffs or their agents, representatives,

consultants, or experts prepared using the Census Bureau's American Community Survey 5-Year 2015-2019 data as a population basis.

RESPONSE TO REQUEST NO. 1:

Plaintiffs object to this request to the extent that it seeks information that is protected attorney work product. Plaintiffs object to this request as overly broad, for failure to specify a time period, and as vague. Plaintiffs object to this request to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving this objection, Plaintiffs respond that they do not possess any such documents. Plaintiffs did not draft any such maps.

REQUEST NO. 2:

Any and all maps, drawings, or drafts, whether of a whole statewide legislative plan or any Legislative District or Representative District, that Plaintiffs or their agents, representatives, consultants, or experts prepared using a population basis other than the Census Bureau's American Community Survey 5-Year 2015-2019 data, excluding maps, drawings, and drafts responsive to Request #1.

RESPONSE TO REQUEST NO. 2:

Plaintiffs object to this request to the extent that it seeks information that is protected attorney work product. Plaintiffs object to this request as overly broad, for failure to specify a time period, and as vague. Plaintiffs object to this request to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving this objection, Plaintiffs respond that they do not possess any such documents. Plaintiffs did not draft any such maps.

REQUEST NO. 3:

Any and all maps, drawings, or drafts, whether of a whole statewide legislative plan or any Legislative District or Representative District, that Plaintiffs or their agents, representatives, consultants, or experts submitted to the Illinois General Assembly prior to June 30, 2021.

RESPONSE TO REQUEST NO. 3:

Plaintiffs object to this request to the extent that it seeks information that is protected attorney work product. Plaintiffs object to this request to the extent that it seeks information that is part

of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving this objection, Plaintiffs respond that they do not possess any such documents. Plaintiffs did not submit any such maps to the Illinois General Assembly prior to June 30, 2021.

REQUEST NO. 4:

All data used to generate or analyze the maps, drawings, drafts, and plans responsive to Requests #1 through 3.

RESPONSE TO REQUEST NO. 4:

Plaintiffs object to this request to the extent that it seeks information that is protected attorney work product. Plaintiffs object to this request to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving this objection, Plaintiffs respond that they do not possess any such data; see responses to questions #1-3.

REQUEST NO. 5:

All documents, including but not limited to, reports, analyses, or communications, pertaining or relating to the analysis and assessment of the maps, drawings, drafts, and plans responsive to Requests #1 through 3.

RESPONSE TO REQUEST NO. 5:

Plaintiffs object to this request to the extent that it seeks information that is protected attorney work product. Plaintiffs object to this request to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving this objection, Plaintiffs respond that they do not possess any such documents; see answers to questions #1-3.

REQUEST NO. 6:

All data used to analyze the 2021 Redistricting Plan.

RESPONSE TO REQUEST NO. 6:

Plaintiffs object to this request as overly broad and vague. Plaintiffs object to this request to the extent that it seeks information that is attorney work product. Plaintiffs object to this request to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

REQUEST NO. 7:

All documents, including but not limited to, reports, analyses, or communications, pertaining or relating to the analysis and assessment of the 2021 Redistricting Plan.

RESPONSE TO REQUEST NO. 7:

Plaintiffs object to this request because it seeks attorney work product and privileged attorney-client communications. Plaintiffs object to this request to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

REQUEST NO. 8:

All records of payment to any expert, consultant, or other person who reviewed, commented on, advised, or otherwise rendered any advice, input, or opinion concerning the 2021 Redistricting Plan, the Complaint, or any maps, drawings, and drafts responsive to Requests #1 through 3.

RESPONSE TO REQUEST NO. 8:

Plaintiffs object to this request to the extent that it seeks information that is protected attorney work product. Plaintiffs object to this request to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving these objections, Plaintiffs will disclose non-protected records at the time ordered by the Court and in accordance with Fed.R.Civ.P. 26. Plaintiffs do not possess any information relating to drafts responsive to Requests #1 through 3.

REQUEST NO. 9:

All documents reviewed by, considered, generated by or relied upon by any expert, consultant, or other person in forming an opinion relating to any of the claims or allegations in the Complaint.

RESPONSE TO REQUEST NO. 9:

Plaintiffs object to this request to the extent that it seeks information that is protected attorney work product. Plaintiffs object to this request to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving these objections, Plaintiffs will disclose non-protected records at the time ordered by the Court and in accordance with Fed.R.Civ.P. 26.

REQUEST NO. 10:

All correspondence, emails, communications, and/or documents by or with Plaintiffs or their agents, representatives, consultants, or experts pertaining or relating to the use of the Census Bureau's American Community Survey data to draw a legislative redistricting plan in 2021.

RESPONSE TO REQUEST NO. 10:

Plaintiffs object to this request because it seeks attorney work product and privileged attorney-client communications.

Without waiving these objections, Plaintiffs will disclose non-protected records at the time ordered by the Court and in accordance with Fed.R.Civ.P. 26.

REQUEST NO. 11:

All documents referenced in Plaintiffs' Rule 26 disclosures.

RESPONSE TO REQUEST NO. 11:

Plaintiffs object to providing the only other documents referenced in Plaintiffs' Rule 26 disclosures, "[d]ocuments produced by Defendants in this case and in related case *McConchie et al. v. Illinois State Bd. of Elections*, et al., 1:21 cv 03091," on the grounds that these documents are obtainable from some other source that is more convenient, that source being the Defendants.

Without waiving this objection, Plaintiffs disclose documents bates-stamped as JC000001 – JC000021, pertaining to Plaintiffs' voting registration and records.

REQUEST NO. 12:

All documents identified in or relied upon in Plaintiffs' Answers to Defendants' Interrogatories.

RESPONSE TO REQUEST NO. 12:

Plaintiffs object to this request as overly broad and vague. Plaintiffs object to this request to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving this objection, Plaintiffs do not have any documents to disclose. Plaintiffs will disclose non-protected records at the time ordered by the Court and in accordance with Fed.R.Civ.P. 26.

REQUEST NO. 13:

All documents that support a denial, or anything other than an admission, to any of Defendants' Requests for Admission.

RESPONSE TO REQUEST NO. 13:

Plaintiffs object to this request as overly broad and vague. Plaintiffs object to this request to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving this objection, Plaintiffs do not have any documents to disclose. Plaintiffs will disclose non-protected records at the time ordered by the Court and in accordance with Fed.R.Civ.P. 26.

REQUEST NO. 14:

All other documents which Plaintiffs intend to use or rely on in support of their claims in their Complaint.

RESPONSE TO REQUEST NO. 14:

Plaintiffs object to this request as overly broad and vague. Plaintiffs object to this request to the extent that it seeks information that is attorney work product or that contains privileged attorney-client communications. Plaintiffs object to this request to the extent that it seeks information that is part of protected expert draft reports or disclosures or that constitute communications between Plaintiffs' attorneys and expert witnesses. *See* Fed.R.Civ.P. 26(b)(4)(B) - (C).

Without waiving this objection, Plaintiffs do not have any documents to disclose as discovery is ongoing. Plaintiffs will disclose non-protected records at the time ordered by the Court and in accordance with Fed.R.Civ.P. 26.

Dated: July 23, 2021

Respectfully submitted,

/s/Griselda Vega Samuel

MEXICAN AMERICAN LEGAL
DEFENSE AND EDUCATIONAL
FUND

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CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2021 a copy of the above was sent by email to:

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