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

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

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.

No. 21-CV-3139

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

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

Magistrate Judge Beth W. Jantz

ORDER

For the reasons discussed below, Plaintiffs' Motion to Compel Legislative Defendants to Respond to Discovery Requests [44] is granted in part and denied in part. Due to the expedited schedule in this case, the Legislative Defendants' supplemental responses and production, either as ordered by the Court (already provided to the parties by way of oral rulings in open court on August 18, 2021) or as previously promised by the Legislative Defendants, as indicated below, are due by August 20, 2021, including any corresponding privilege log.

STATEMENT

Background

Plaintiffs Julie Contreras, Irvin Fuentes, Abraham Martinez, Irene Padilla, and Rose Torres bring this action challenging the constitutionality of the apportionment of the state legislative districts set out in the 2021 redistricting plan passed by the Illinois General Assembly and signed into law by the Governor of Illinois (hereinafter, "the Redistricting Plan" or "the Plan"). [Dkt. 37, First Am. Compl.] Plaintiffs bring claims for declaratory and injunctive relief against Defendants Illinois State Board of Elections, its individual members in their official capacities, Emmanuel 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. [*Id.* ¶¶ 15-27.]

Plaintiffs are registered voters of Latino/Latina descent residing within certain districts that they assert are malapportioned under the Redistricting Plan. [*Id.* ¶¶ 10-14.] According to Plaintiffs, since P.L. 94-171's enactment in 1975,[1] the U.S. Census Bureau has provided redistricting data that is used by the states to determine whether representative and legislative districts comply with the principle of "one person, one vote" that is mandated by the Fourteenth Amendment's Equal Protection Clause. [*Id.* ¶¶ 28-32.] The release of 2020 decennial census data, however, was delayed first to March 2021, and then to August 2021. [*Id.* ¶¶ 33-34.][2] Plaintiffs allege that in the absence of decennial census data, and given certain redistricting deadlines provided by the Illinois Constitution, the Illinois General Assembly passed a Redistricting Plan that used data from the American Community Survey ("ACS") five-year estimates for 2015-2019 and other unspecified "election data" to draw the district boundaries in the Plan. [*Id.* ¶¶ 4-5, 32.] According to Plaintiffs, ACS estimates have different purposes and collection methodologies than decennial census data, are not current for redistricting purposes, and do not include data for the smallest geographical units used in redistricting, census blocks. [*Id.* ¶¶ 36-42.] Because the Redistricting Plan measures total population using the ACS estimates instead of actual enumeration data from the decennial census, Plaintiffs allege, it fails to comply with the Fourteenth Amendment. [*Id.* ¶¶ 2, 6, 50, 56-58.] Plaintiffs seek declaratory and injunctive relief barring implementation of the Plan "unless and until [it] is shown to contain equally apportioned districts," as measured by decennial census data. [*Id.* ¶¶ 6, 10-14, 52.]

Because the case challenges the apportionment of a statewide legislative body, a three-judge trial court was appointed pursuant to 28 U.S.C. § 2284(a) and N.D. Ill. Local Rule 9.1. [Dkt. 16, June 28, 2021 Order.] Shortly thereafter, an expedited schedule was set to get this case, and a related one also challenging the constitutionality of the Redistricting Plan, *McConchie v. Scholz, et al.*, N.D. Ill. Case No. 21-cv-3091, ready for a late September 2021 trial. [Dkt. 20, July 1, 2021

[1] Plaintiffs allege that P.L. 94-171 directs the Census Bureau to provide certain data to the fifty states to be used for redistricting. [First. Am. Compl. ¶ 30.]

[2] Decennial census data was subsequently released days ago, on August 12, 2021. [*See* Defs.' Resp. at 1; Pls.' Reply at 2.]

Minute Entry; dkt. 22, July 6, 2021 Minute Entry; dkt. 38, July 30, 2021 Minute Entry.] Consistent with this schedule, on July 12, 2021, Plaintiffs served discovery requests on Defendants Harmon, the Office of the President of the Illinois Senate, Welch, and the Office of the Speaker of the Illinois House of Representatives (the "Legislative Defendants"), and on July 23, 2021, the Legislative Defendants served responses. [Pls.' Mot. at 2 and Exs. A-D.] The parties conducted a teleconference on July 29, 2021, regarding the sufficiency of discovery responses, both in this case, and the related one. [*Id.*, Ex. E; dkt. 48, Defs.' Resp. at 5.] The next day, Plaintiffs identified their highest priority requests (eight of 17 interrogatories, and 16 of 30 requests for production), which Defendants agreed to consider by August 2, 2021. [Pls.' Mot. at 2; Defs.' Resp. at 5.] After an agreed extension, Defendants provided additional information to Plaintiffs by letter dated August 10, 2021, but did not formally supplement their discovery responses. [Defs.' Resp. at 5 and Ex. 2.] The next day, Plaintiffs moved to compel on all of their discovery, asserting that they required the Court's assistance.[3] [Pls.' Mot. at 3.]

As in *McConchie*, the Legislative Defendants argue that Plaintiffs prematurely ended the parties' negotiations by moving to compel, emphasizing that they had already agreed to supplement 23 of Plaintiffs' 24 high-priority requests and expressed their willingness to discuss the remainder only the day before the motion was filed. [Defs.' Resp. at 2 and Ex. 2.] As the Legislative Defendants see things, therefore, Plaintiffs' motion should be denied for failure to adequately meet and confer as required by N.D. Ill. Local Rule 37.2. [Defs.' Resp. at 7-8.] Further, the Legislative Defendants add, because Plaintiffs disregarded Defendants' promised supplement in moving to compel, many of the issues Plaintiffs raise are moot now anyway. [*Id.*]

This Court enforces the requirement of N.D. Ill. Local Rule 37.2 that parties meet and confer in efforts to reach an accord on discovery disagreements, and the record here demonstrates why that requirement is so important in crystallizing and minimizing the disputes requiring the Court's attention and resources. The parties' submissions demonstrate to the Court that their conferral was ongoing when Plaintiffs brought their discovery dispute to the Court. Nevertheless, given the necessarily extremely expedited schedule in this case, the fact that the Legislative Defendants have responded to the motion's entirety, and that no prejudice to the Legislative Defendants arises from its consideration, the Court declines to rule based on its otherwise premature presentation. Instead, the Court turns to its substance.

General Principles

A party may file a motion to compel under Federal Rule of Civil Procedure 37 whenever another party fails to respond to a discovery request or when its response is insufficient. FED. R. CIV. P. 37(a). In ruling on a motion to compel, the discovery standard set forth in Rule 26(b) applies. Rule 26(b)(1) provides, "Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the

[3] Because the two cases are being litigated on the same schedule, and Plaintiffs in each moved to compel discovery, the Court held a combined hearing in both cases on August 18, 2021, during which oral rulings were made. Nevertheless, the Court considered the motions separately, with specific reference to the unique claims and defenses in each case. *See* FED. R. CIV. P. 26(b)(1).

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). "While the federal discovery rules have an expansive reach, they are not without limits, and relevancy is perhaps the most important of those constraints." *BankDirect Cap. Fin., LLC v. Cap. Premium Fin., Inc.*, No. 15 C 10340, 2018 WL 946396, at *4 (N.D. Ill. Feb. 20, 2018) (internal citations omitted).

The party requesting discovery bears the initial burden of establishing its relevancy and proportionality to the needs of the case. *See, e.g., Sols. Team v. Oak St. Health, Mso, LLC*, No. 17 CV 1879, 2021 WL 3022324, at *3 (N.D. Ill. July 16, 2021); *Eternity Mart, Inc. v. Nature's Sources, LLC*, No. 19-CV-02436, 2019 WL 6052366, at *2 (N.D. Ill. Nov. 15, 2019). "If the discovery appears relevant, the party objecting to the discovery request bears the burden of showing why that request is improper." *Eternity Mart*, 2019 WL 6052366, at *2 (quoting *Trading Technologies Intern., Inc. v. eSpeed, Inc.*, No. 04 C 5312, 2005 WL 1300778, at *1 (N.D. Ill. Apr. 28, 2005)); *Doe v. Loyola Univ. of Chi.*, No. 18 CV 7335, 2020 WL 406771, *2 (N.D. Ill. Jan. 24, 2020). The resolution of discovery disputes is committed to the court's broad discretion. *Fields v. City of Chicago*, 981 F.3d 534, 550-51 (7th Cir. 2020); *Thermal Design, Inc. v. Am. Soc'y of Heating, Refrigerating & Air-Conditioning Eng'rs, Inc.*, 755 F.3d 832, 837 (7th Cir. 2014). The court "may grant or deny the motion in whole or in part, and . . . may fashion a ruling appropriate for the circumstances of the case." *Gile v. United Airlines, Inc.*, 95 F.3d 492, 495-96 (7th Cir. 1996). In ruling on a motion to compel, the court should "independently determine the proper course of discovery based upon the arguments of the parties." *Id.*; *accord Beijing Choice Elec. Tech. Co. v. Contec Med. Sys. USA Inc.*, No. 18 C 0825, 2020 WL 1701861, at *3 (N.D. Ill. Apr. 8, 2020).

Plaintiffs' Discovery Requests

Notwithstanding Plaintiffs' earlier identification of priority requests and the Legislative Defendants' agreement to supplement their responses to many, Plaintiffs move to compel responses to the entirety of their discovery requests. [Pls.' Mot.] According to Plaintiffs, information about the redistricting, "including but not limited to who participated in the process, what data and programs were used, and whether the redrawn districts are, in fact, equipopulous" is relevant to their malapportionment claim and proportional to the needs of the case. [Pls.' Mot. at 4.] Plaintiffs categorize their requests as seeking information regarding: (1) population data on which the redrawn districts are based; (2) software programs used in the redistricting process; (3) the extent of public input in the redistricting process; (4) earlier drafts of the redrawn districts and any subsequent revisions; (5) individuals who participated in the redistricting process and the nature of their participation; (6) apportionment of the redrawn districts; and (7) validity of the ACS data. [*Id.* at 4-5.] As Plaintiffs argue, because "'the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable' . . . information and documents concerning the redistricting process . . . is relevant to determining whether Legislative Defendants complied with their constitutional obligations." [Pls.' Mot. at 6 (quoting *Reynolds v. Sims*, 377 U.S. 533, 577 (1964)).]

As the Legislative Defendants correctly observe, however, Plaintiffs' complaint makes no claim about the *process* that resulted in the Redistricting Plan. [*See* Defs.' Resp. at 3, 9-13.] Unlike in Plaintiffs' cited authorities, *Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections*, No. 11 C 5065, 2011 WL 4837508 (N.D. Ill. Oct. 12, 2011) and *Baldus v. Members of the Wis. Gov't Accountability Bd.*, No. 11-CV-1011 JPS-DPW, 2011 WL 6122542, at *1 (E.D. Wis. Dec. 8, 2011*), order clarified*, No. 11-CV-1011 JPS-DPW, 2011 WL 6385645 (E.D. Wis. Dec. 20, 2011), Plaintiffs make no claim in this case of intentional discrimination, dishonesty, bad faith, or other misconduct on the part of the Illinois General Assembly. [*See* First Am. Compl; dkt. 51, Pls.' Reply at 7.] Instead, and crucially, Plaintiffs allege that because the Redistricting Plan is grounded in ACS estimates and election data, it is malapportioned as compared to decennial census data. [First Am. Compl. ¶¶ 2-6, 36-58.] Plaintiffs describe the relief they seek as an order barring implementation of the Plan "unless and until [it is] shown to contain equally apportioned districts as measured by the P.L. 94-171 [decennial census] data." [*Id.* ¶ 6.]

Plaintiffs explained the scope of their claims in a recent hearing before the presiding judges, as follows:

> Mr. Del Castillo: [I] would like to clarify that defendants or any other states may use whatever data they like . . . . But in order to measure whether the districts are malapportioned, you need to use the census redistricting data to confirm that the districts are constitutional.
>
> Judge Dow: . . . So I guess, another way of saying that is the benchmark is always going to be P.L [decennial census data], and you have to measure – that's what you measure, whatever number the state comes up with, it has to be measured against the P.L. data?
>
> Mr. Del Castillo: That is our position.

[Defs.' Resp. at Ex. 1, July 14, 2021 Hrg. Trans. at 19:20-20:06.][4] In clarifying how their claims differed from those raised in *McConchie*, Plaintiffs similarly explained:

> Mr. Del Castillo: We claim that as a constitutional matter, you need to use -- or rather the state needs to use, the defendants need to use, census redistricting data, otherwise known as P.L. 94-171 data, to measure whether the districts are malapportioned. Right now they have not done that because it has not been released for 2020.

[*Id.* at 18:10-15.]

Despite the narrow breadth of their complaint, Plaintiffs now argue that expansive discovery about the *process* of enacting the Redistricting Plan is nevertheless relevant because of

[4] Although Plaintiffs amended their complaint after this hearing took place, their amended complaint did not change the nature of their claims as relevant to this motion. [*Compare* dkt. 1, Compl. *with* First. Am. Compl.]

the statical presumptions the Supreme Court has established in determining whether an apportionment plan violates the Equal Protection Clause. [Pls.' Reply at 7-8 (citing *Brown v. Thomson*, 462 U.S. 835 (1983).] Specifically, Plaintiffs say, if a plan's maximum deviation is under 10%, the plan is presumptively constitutional, and the burden is on the plaintiff to show that the plan is based on illegitimate considerations, whereas if the maximum deviation is over 10%, the plan is presumptively unconstitutional, and the burden is on the defendant to show that the deviation is justified by a rational government objective. [*Id*.] "Either way," Plaintiffs claim, the state's redistricting process, and not just its result, is relevant. [*Id*.] Because they allege that the Plan's deviation is over 10% (*i.e*., malapportioned), Plaintiffs reason, the Legislative Defendants will need to show that they acted in furtherance of a rational government purpose, and Plaintiffs are thus, they argue, entitled to discovery concerning the redistricting process to explore whether the Legislative Defendants in fact acted on the basis of such a rational purpose. [*Id.* at 9.] At the same time, however, Plaintiffs acknowledge, "[t]his analysis may change if Legislative Defendants choose not to rebut the presumption, and instead go back to the drawing board." [*Id.*]

By Plaintiffs' own argument then, at best, discovery as to the process of crafting the Redistricting Plan may become relevant at a later date depending on whether the Legislative Defendants attempt to identify a rational purpose for the Plan that implicates the subject matter of the process that created it. The scope of relevant discovery, however, must be framed by the claims and defenses in this case, not the claims or defenses that might otherwise be made. *See* FED. R. CIV. P. 26(b)(1). While relevance is construed broadly under the Federal Rules, discovery is not without necessary limits. *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).

Moreover, relevance alone is not the only question. The Court must also consider proportionality to the needs of the case. *See* FED. R. CIV. P. 26(b)(1). The 2015 amendments to Rule 26 emphasize, "[t]he parties and the court have a collective responsibility to consider the proportionality of all discovery and consider it in resolving discovery disputes." *Id.* at Advisory Committee's Notes to 2015 Amendments. "Proportionality, like other concepts, requires a common sense and experiential assessment." *Generation Brands, LLC v. Decor Selections, LLC*, No. 19 C 6185, 2020 WL 6118558, at *4 (N.D. Ill. Oct. 16, 2020) (citing *BankDirect Capital Fin.*, 326 F.R.D. at 175 ("Chief Justice Roberts' 2015 Year-End Report on the Federal Judiciary indicates that the addition of proportionality to Rule 26(b) 'crystalizes the concept of reasonable limits on discovery through increased reliance on the common-sense concept of proportionality.'")).

While the issues at stake in this action—voting and representational rights of Illinois voters—are plainly of fundamental importance, this factor alone does not justify discovery that strays far afield from the complained of violation of those rights. Factors that suggest a circumscribed and proportional approach to the scope of discovery at this juncture include the complaint's narrow focus on the constitutionality of the *use* of ACS data, Plaintiffs' own uncertainty as to whether the expansive discovery they seek will ever be relevant to any claim or defense, and the extremely expedited schedule required to get this case to resolution within the time necessary to potentially implement the relief that Plaintiffs seek. Further, in light of the August 12, 2021, release of decennial census data, and its hefty significance to the parties' dispute, even if discovery into the process of crafting the Plan were relevant, it would only be marginally so at this juncture. This Court's broad discretion in deciding the scope of relevant discovery

includes the discretion to "prescribe the order and sequency otherwise appropriate discovery is to take." *BankDirect Cap. Fin.*, 2018 WL 946396, at *5 (N.D. Ill. Feb. 20, 2018). The Court may "grant or deny the motion in whole or in part and may fashion a ruling appropriate for and proportional to the circumstances of the case. *Id*. (citing *Gile*, 95 F.3d at 496). To the extent that discovery into the process that created the Plan could arguably be relevant at this juncture then, such discovery is disproportionate to the needs of the case. *See Motorola Sols., Inc. v. Hytera Commc'ns Corp*., 365 F. Supp. 3d 916, 926 (N.D. Ill. 2019) (collecting cases denying marginally relevant discovery on relevance and proportionality grounds).

With these factors in mind, the Court has provided the following rulings:

Interrog. No. 1: This interrogatory seeks the identification of all persons who "assisted or participated" in answering the interrogatories or otherwise answering Plaintiffs' discovery requests. The Legislative Defendants objected among other reasons on the basis of relevance, privilege, and work product protection. To the extent that this interrogatory seeks the identification of who among the Legislative Defendants' counsel worked on the discovery responses, such facts are irrelevant and protected from disclosure. The identification of persons possessing and providing information in discovery, however, is routinely asked and allowed, and the motion is granted in this respect. *See, e.g., Belcastro v. United Airlines, Inc.*, No. 17 C 1682, 2019 WL 1651709, at *6 (N.D. Ill. Apr. 17, 2019), *objections overruled*, No. 17-CV-01682, 2020 WL 1248343 (N.D. Ill. Mar. 15, 2020). Accordingly, the motion is granted in part and denied in part as to this interrogatory.

Interrog. Nos. 2, 4, 5, and 13; Production Request Nos. 3, 10, and 11: These requests seek documents and information regarding the data considered or used in creating the Redistricting Plan. Over their initial objections, the Legislative Defendants nevertheless agreed on August 10, 2021, to provide the disaggregated ACS five-year data for 2015-19, voter registration data from the Illinois Board of Elections used in the disaggregation process, the 2020 Census Bureau geography data, and the House and Senate contracts with experts who consulted on redistricting. In accordance with the Court's discussion above, and given Plaintiffs' complaint that the Redistricting Plan is malapportioned because it measures total population using ACS estimates instead of actual enumeration data from the decennial census, Plaintiffs have not sufficiently explained the arguable relevance of discovery regarding any other data considered or used in crafting the Plan. Accordingly, the motion is denied as moot to the extent that the Legislative Defendants have agreed to provide responsive information, and denied as to the remainder.

Interrog. No. 3; Production Request Nos. 13 and 16: These requests seek documents and information regarding the software used to create the Plan. Over their initial objections, the Legislative Defendants identified on August 10, 2021, the software used but asserted that they could not provide copies because of licensing requirements. In accordance with the Court's discussion above, and given that Plaintiffs include no claim arising from the process whereby the map was created but only that the Redistricting Plan is malapportioned because it measures total population using ACS estimates instead of actual enumeration data from the decennial census, Plaintiffs have not sufficiently explained the arguable relevance of further discovery as to the software used in its creation. Accordingly, the motion is denied as moot to the extent that the

Legislative Defendants have identified responsive information, and denied as to the remainder.

Interrog. No. 6; Production Request No. 22: These requests seek documents and information regarding public input in the development of the Redistricting Plan. Over their initial objections, the Legislative Defendants produced, or provided links to, the witness testimony and transcripts from hearings on the creation and passage of the Redistricting Plan, and the transcript of the House floor debate regarding ACS data specifically. Additionally, the Legislative Defendants have agreed to produce any email correspondence from witnesses who testified at those hearings. In accordance with the Court's discussion above, and given that Plaintiffs include no claim arising from the process whereby the map was created but only that the Redistricting Plan is malapportioned because it measures total population using ACS estimates instead of actual enumeration data from the decennial census, Plaintiffs have not sufficiently explained the arguable relevance of further discovery regarding public input. Accordingly, the motion is denied as moot to the extent that the Legislative Defendants have already provided or have agreed to provide responsive information, and denied as to the remainder.

Interrog. Nos. 7, 9; Production Request Nos. 1, 2: These requests seek documents and information regarding earlier drafts and the development of the Redistricting Plan. In accordance with the Court's discussion above, and given Plaintiffs' complaint that the Redistricting Plan is malapportioned because it measures total population using ACS estimates instead of actual enumeration data from the decennial census, Plaintiffs have not sufficiently explained the arguable relevance of discovery regarding earlier versions of the Plan or the process by which the Plan was developed. Accordingly, the motion is denied as to these requests.

Interrog. No. 8: This interrogatory seeks a description of what the Legislative Defendants consider to be traditional redistricting principles for drawing legislative plans. The Legislative Defendants object based on ambiguity, relevance, and privilege. Given Plaintiffs' complaint allegation that "[h]istorically and traditionally P.L. 94-171 data has been used for purposes of determining" whether districts are substantially equal in population [First Am. Compl. ¶ 32], the interrogatory seeks relevant information. The Legislative Defendants have not sufficiently explained why their other objections preclude responding, an issue as to which they have the burden. *See Eternity Mart*, 2019 WL 6052366, at *2. Therefore, the motion is granted as to this interrogatory; to the extent the Legislative Defendants understand this interrogatory, they must answer it. To the extent they withhold information based on privilege, they must provide a log in accordance with Fed. R. Civ. P. 26(b)(5).

Interrog. Nos. 10 and 12; Production Request Nos. 12, 25, and 27: These requests seek documents and information regarding demographers and other individuals involved in developing the Plan and any communications with Kimball Brace (who performed the disaggregation process). Over their initial objections, the Legislative Defendants agreed on August 10, 2021, to produce the contracts with two people who performed the disaggregation process, Kimball Brace and Allan Lichtman, and referred Plaintiffs to their Rule 26 disclosures, which identified individuals with relevant information. In accordance with the Court's discussion above, and given that Plaintiffs include no claim arising from the process of enacting the map but only that the Redistricting Plan is malapportioned because it measures total population using ACS estimates instead of actual enumeration data from the decennial census, Plaintiffs have not sufficiently

explained the arguable relevance of further discovery regarding the individuals involved in developing the Plan or their related communications. Accordingly, the motion is denied as moot to the extent that the Legislative Defendants have agreed to provide responsive information, and denied as to the remainder.

Interrog. Nos. 11, 14 and 15; Production Request Nos. 4: These requests seek documents and information regarding the Legislative Defendants' own analysis of the apportionment among the redrawn districts. Over their initial objections, the Legislative Defendants subsequently provided links to House Resolution 359, Senate Resolution 326, and spreadsheets available on both the House Democrats and Senate Democrats' redistricting websites. Plaintiffs make no specific argument challenging the sufficiency of that supplementation. Accordingly, the motion is denied as to these requests.

Interrog. No. 16, 17: These interrogatories seek information regarding the Legislative Defendants' view of whether the error or uncertainty in the Redistricting Plan is quantifiable, and identification of materials supporting their contention. The Legislative Defendants objected on the basis of breadth, burden, ambiguity, relevance, and privilege. Consistent with the Court's discussion above, and given that Plaintiffs include no claim arising from how or why the ACS data was used, but only that the Redistricting Plan is malapportioned because it measures total population using ACS estimates instead of actual enumeration data from the decennial census, Plaintiffs have not sufficiently explained the arguable relevance of discovery on these issues. Accordingly, the motion is denied as to these requests.

Production Request Nos. 5-9: These requests seek documents regarding the calculation of population and demographic characteristics of Illinois and its individual districts. Over their initial objections, the Legislative Defendants directed Plaintiffs on August 10, 2021, to what they viewed as responsive information: the disaggregated ACS five-year data for 2015-19, the text of House Bill 2777 and Public Act 102-10, which contain the Redistricting Plan; the related resolutions; and links to the web location of additional information regarding the Redistricting Plan. In accordance with the Court's discussion above, and given Plaintiffs' complaint that the Redistricting Plan is malapportioned because it measures total population using ACS estimates instead of actual enumeration data from the decennial census, Plaintiffs have not sufficiently explained the arguable relevance of discovery regarding any other calculation of population or demographic characteristics. Accordingly, the motion is denied as moot to the extent that the Legislative Defendants have identified responsive information, and denied as to the remainder.

Production Request Nos. 14, 15, and 19: These requests seek documents regarding the methodology for estimating block level data and total population, as well as confidence levels and potential errors in the Redistricting Plan. Over their initial objection, the Legislative Defendants provided the disaggregated ACS five-year data for 2015-19. Given that Plaintiffs include no claim arising from how or why the ACS data was used, but only that the Redistricting Plan is malapportioned because it measures total population using ACS estimates instead of actual enumeration data from the decennial census, Plaintiffs have not sufficiently explained the arguable relevance of further discovery on these issues. Accordingly, the motion is denied as moot to the extent that the Legislative Defendants have provided responsive information, and denied as to the

remainder.

Production Request Nos. 16[5]-21, 23-24: These requests seek documents regarding the analysis of errors or uncertainties and criteria that was considered in crafting the Redistricting Plan. Consistent with the Court's discussion above and given that Plaintiffs make no claim regarding *how* ACS estimates were used and implemented, but only that the Redistricting Plan is malapportioned because it measures total population using ACS estimates instead of actual enumeration data from the decennial census, Plaintiffs have not sufficiently explained the arguable relevance of these requests. Accordingly, the motion is denied as to these requests.

Production Request Nos. 28-30: These requests seek production of communications between various Democrat officials. The Legislative Defendants object based on relevance, overbreadth, and privilege. Because the requests are untethered to any particular subject, this Court agrees that they are unworkably broad and necessarily include within their scope a request for information that is irrelevant and/or protected from disclosure. Further, consistent with the Court's discussion above and given that Plaintiffs make no claim arising from the process of creating the Redistricting Plan but only that the Redistricting Plan is malapportioned because it measures total population using ACS estimates instead of actual enumeration data from the decennial census, Plaintiffs have not sufficiently explained the arguable relevance of discovery regarding communications related to the Plan's creation. Accordingly, the motion is denied as to these requests.

Privilege Log

Finally, Plaintiffs argue that the Legislative Defendants have failed to comply with Rule 26(b)(5)(A) because although they asserted protections from discovery in response to most of Plaintiffs' requests, they have not yet produced a privilege log. [Pls.' Mot. at 10-11; Pls.' Reply at 13.] According to the Legislative Defendants, however, Plaintiffs' request is premature in advance of an agreement or determination of the scope of relevant discovery. [Defs.' Resp. at 14-15.] They add that this is especially so given that Plaintiffs also have not yet produced a privilege log to support their own asserted protections from discovery. [*See* Defs.' Resp. at 15 and Exs. 4, 5.] Finally, the Legislative Defendants say that Plaintiffs' motion is unnecessary because they intend to provide a privilege log once the contours of discovery have been determined. [*Id.* at 15.] Plaintiffs nevertheless argue on reply that a log should be compelled now so that they may assess whether withheld materials are actually privileged. [Pls.' Reply at 13.]

Given the Legislative Defendants' commitment to produce a log as is required under Rule 26(b)(5)(A), Plaintiffs' motion is denied as moot on this issue. This order resolves the parties' dispute as to the scope of discovery from the Legislative Defendants, and thus provides the Legislative Defendants with the information necessary to determine whether responsive materials will be withheld from discovery, and if so, to prepare a corresponding privilege log. Accordingly, the Legislative Defendants are given until August 20, 2021, to do so, given the expedited discovery schedule in this case. To the extent that the parties dispute the adequacy of such a log or the

[5] Two production requests were marked No. 16. For clarity of the record, the Court adheres to Plaintiffs' numbering in discussing this request which appears second in the discovery. The court further notes that Plaintiffs' Production Requests did not include one marked No. 26.

propriety of asserted privileges, this Court expects that the parties will exhaust their efforts to meet and confer in good faith (by telephone or video, rather than just email) before filing any subsequent motion, particularly given that time is of the essence in resolving the remainder of this litigation.

CONCLUSION

For these reasons, Plaintiff's Motion to Compel Legislative Defendants to Respond to Discovery Requests [44] is granted in part and denied in part as specifically set out herein. Due to the expedited schedule in this case, the Legislative Defendants' supplemental responses and production, both offered by the Legislative Defendants and ordered by the Court as specified above (and already provided to the parties by way of oral rulings in open court on August 18, 2021), are due by August 20, 2021, including any corresponding privilege log. To the extent that the Legislative Defendants have already provided supplementation by letter or in filings with the Court, they are directed to incorporate such supplements into formal supplemental discovery responses.

Dated: 8/20/21

Beth W. Jantz

BETH W. JANTZ
United States Magistrate Judge