

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

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

Plaintiffs,

v.

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

Defendants.)

Case No. 1:21-CV-03139
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' ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT
AND AFFIRMATIVE DEFENSES**

NOW COME the Defendants, Emanuel Christopher Welch, in his official capacity as Speaker of the Illinois House of Representatives, the 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 (“Defendants”), by and through their counsel, and for their Answer to Plaintiffs’ Second Amended Complaint, state as follows:

INTRODUCTION

1. Defendants deny Plaintiffs have stated a claim under the United State Constitution or the Voting Rights Act of 1965 as alleged in Paragraph 1. Defendants deny the are charged with overseeing and conducting elections for state legislative seats. Defendants admit they are members of the Illinois General Assembly and that the General Assembly is charged with redrawing state legislative district boundaries after each decennial census. Defendants deny the remaining allegations in Paragraph 1.

The SB 927 Plans

2. Defendants deny Plaintiffs have stated a claim under the United State Constitution or the Voting Rights Act of 1965. Defendants deny the allegations in Paragraph 2.

The June 2021 Plans

3. Defendants deny Plaintiffs have stated a claim under the United States Constitution or the Voting Rights Act of 1965 and therefore deny the allegations in Paragraph 3.

4. Defendants admit the General Assembly used ACS data among other data and input in drawing the June 2021 Plan.

5. Defendants deny the allegations in Paragraph 5.

6. Paragraph 6 makes a legal conclusion for which no answer is required.

7. Paragraph 7 makes a legal conclusion for which no answer is required.

II. JURISDICTION AND VENUE

8. Defendants admit this Court has jurisdiction, but deny the remaining allegations in Paragraph 8.

9. Defendants admit venue is proper in the Northern District of Illinois. Defendants deny the remaining allegations in Paragraph 9.

10. Paragraph 10 makes a legal conclusion for which no answer is required. Defendants do not contest a three-judge panel.

III. PARTIES

11. Defendants lack knowledge or information to form a belief about the truth of the allegations in Paragraph 11 regarding Plaintiff Contreras. Defendants deny the June 2021 Plan was unconstitutionally malapportioned.

12. Defendants lack knowledge or information to form a belief about the truth of the allegations in Paragraph 12 regarding Plaintiff Fuentes. Defendants deny the June 2021 Plan was unconstitutionally malapportioned.

13. Defendants lack knowledge or information to form a belief about the truth of the allegations in Paragraph 13.

14. Defendants lack knowledge or information to form a belief about the truth of the allegations in Paragraph 14 regarding Plaintiff Padilla. Defendants deny the June 2021 Plan was unconstitutionally malapportioned.

15. Defendants lack knowledge or information to form a belief about the truth of the allegations in Paragraph 15 regarding Plaintiff Torres. Defendants deny SB 927 dilutes the Latino vote and deprives her of a meaningful opportunity to participate in the political process and election of representatives from that district.

16. Defendants lack knowledge or information to form a belief about the truth of the allegations in Paragraph 16 regarding Plaintiff Flores. Defendants deny SB 927 dilutes the Latino vote and deprives her of a meaningful opportunity to participate in the political process and election of representatives from that district.

17. Defendants lack knowledge or information to form a belief about the truth of the allegations in Paragraph 17 regarding Plaintiff Perez. Defendants deny SB 927 dilutes the Latino vote and deprives her of a meaningful opportunity to participate in the political process and election of representatives from that district.

18. Defendants lack knowledge or information to form a belief about the truth of the allegations in Paragraph 18 regarding Plaintiff Alcala. Defendants deny SB 927 dilutes the Latino vote and deprives him of a meaningful opportunity to participate in the political process and election of representatives from that district. Defendants deny SB 927 was race based.

19. Defendants lack knowledge or information to form a belief about the truth of the allegations in Paragraph 19 regarding Plaintiff Murphy. Defendants deny SB 927 dilutes the Latino vote and deprives her of a meaningful opportunity to participate in the political process and election of representatives from that district.

20. Defendants lack knowledge or information to form a belief about the truth of the allegations in Paragraph 20 regarding Plaintiff Medina. Defendants deny SB 927 dilutes the Latino vote and deprives him of a meaningful opportunity to participate in the political process and election of representatives from that district.

21. Defendants lack knowledge or information to form a belief about the truth of the allegations in Paragraph 21 regarding Plaintiff Hernandez. Defendants deny SB 927 dilutes the Latino vote and deprives him of a meaningful opportunity to participate in the political process and election of representatives from that district.

22. Defendants lack knowledge or information to form a belief about the truth of the allegations in Paragraph 15 regarding Plaintiff Calixto. Defendants deny SB 927

dilutes the Latino vote and deprives him of a meaningful opportunity to participate in the political process and election of representatives from that district.

23. Defendants lack knowledge or information to form a belief about the truth of the allegations in Paragraph 23 regarding Plaintiff Gneich. Defendants deny SB 927 dilutes the Latino vote and deprives her of a meaningful opportunity to participate in the political process and election of representatives from that district. Defendants deny SB 927 was race based.

24. Defendants lack knowledge or information to form a belief about the truth of the allegations in Paragraph 24 related to Plaintiff PRBA and its individual members. Defendants deny race was used as a predominant factor in determining the districts' boundaries in SB 927 .

25. Defendants lack knowledge or information to form a belief about the truth of the allegations in Paragraph 25 related to Plaintiff HLAI and its individual members. Defendants deny race was used as a predominant factor in determining the districts' boundaries in SB 927.

26. Defendants deny the allegations in Paragraph 26.

27. Defendants admit the allegations in Paragraph 27.

28. Defendants admit the allegations in Paragraph 28.

29. Defendants admit the allegations in Paragraph 29.

30. Defendants admit the allegations in Paragraph 30.

31. Defendants admit the allegations in Paragraph 31.

32. Defendants admit the allegations in Paragraph 32.

33. Defendants admit the allegations in Paragraph 33

34. Defendants admit the allegations in Paragraph 34.

35. Defendants admit the allegations in Paragraph 35.

36. Defendants admit the allegations in Paragraph 36.

37. Defendants admit the allegations in Paragraph 37.

38. Defendants admit the allegations in Paragraph 38.

39. Plaintiffs admit President Harmon was the presiding officer of the Illinois Senate and that Speaker Welch was the presiding officer of the Illinois House of Representatives when the June 2021 and August 2021 Plans were passed, and deny any remaining allegations in Paragraph 39.

40. Whether a person is acting under color of law is a legal conclusion for which no answer is required.

IV. FACTS

The 2021 Redistricting Process in Illinois

41. Defendants respond that the Illinois Constitution speaks for itself and deny any allegation inconsistent with the Illinois Constitution or its interpretation by the Illinois Supreme Court.

42. Defendants respond that they admit the Illinois Constitution speaks for itself and deny any allegation inconsistent with the Illinois Constitution or its interpretation by the Illinois Supreme Court.

43. Defendants admit the allegations in Paragraph 43.

44. Defendants admit the allegations in Paragraph 43.

45. Defendants admit the House and Senate Democrats issued a press release. Defendants deny the remaining allegations in Paragraph 45.

46. Defendants admit the House and Senate held hearings and the hearings met the requirements of House and Senate Rules and the requirements of the Illinois Constitution. Defendants deny the remaining allegations in Paragraph 46.

47. Defendants admit the allegations in Paragraph 47.

48. Defendants admit the June 2021 Plan used five-year ACS data and not P.L. 94-171 data as the United States Census Bureau had not released the P.L. data at the time the June 2021 plan was enacted. Defendants deny the remaining allegations in Paragraph 48.

49. Defendants admit the allegations in Paragraph 49.

50. Defendants admit the Census Bureau released P.L. 94-171 data in legacy format on August 12, 2021. Defendants deny the remaining allegations in Paragraph 50.

P.L. 94-171 Redistricting Data

51. Defendants respond that the United States Constitution speaks for itself and deny any allegation in Paragraph 51 inconsistent with the Constitution or its interpretation by the Federal Courts.

52. Defendants respond that the United States Constitution speaks for itself and deny any allegation in Paragraph 52 inconsistent with the Constitution or its interpretation by the Federal Courts.

53. Defendants respond that P.L. 94-171 speaks for itself.

54. Defendants lack of information and belief to form an opinion as to the truth of what all states do .

55. The allegation regarding compliance with the one person, one vote standard makes a legal conclusion for which no answer is required. Defendants admit P.L data has historically and traditionally been used in Illinois for redistricting districts.

56. Defendants admit the allegations in Paragraph 56.

57. Defendants admit the allegations in Paragraph 57.

58. Defendants admit the allegations in Paragraph 58.

The Inadequacy of ACS Estimates for Redistricting Purposes

Population Estimates vs. Enumeration

59. Defendants admit the allegations in Paragraph 59.

60. Defendants state that *Evenwel v Abbot* speaks for itself and deny any allegation in Paragraph 60 that is inconsistent with *Evenwel*. Defendants deny the remaining allegation in Paragraph 60.

61. Defendants lack knowledge or information sufficient to form a belief about the truth of why ACS does not produce data for the census blocks. Defendants admit the remaining allegations in Paragraph 61.

Timeliness

62. Defendants admit the allegations in Paragraph 62.

63. Defendants deny the allegations in Paragraph 63.

64. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 64.

65. Defendants admit the allegations in Paragraph 65.

SB 927 Plans

66. Defendants respond that the Voting Rights Act speaks for itself and deny any allegation in Paragraph 66 inconsistent with the Voting Rights Act or its interpretation by the Federal Courts.

67. Defendants respond that SB 927 is an amendment to House Bill 2777, not a “new” plan. Defendants admit the remaining allegations in Paragraph 67.

68. Defendants admit the allegations in Paragraph 68.

69. Defendants deny the allegations in Paragraph 69.

70. Defendants deny the allegations in Paragraph 70.

71. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 71 due to the Census Bureau's differential privacy requirements and changes to the Census questions from 2010 to 2020.

72. Defendants admit the Latino citizen voting age population in Illinois increased as estimated by the ACS 5-year estimates for 2005-2009 compared to those for 2015-2019, which is data Plaintiffs allege is unreliable. Defendants deny the remaining allegations in Paragraph 72.

73. Defendants deny the allegations in Paragraph 73.

74. Defendants deny the allegations in Paragraph 74.

75. Defendants deny the allegations in Paragraph 75.

House District 3

76. Defendants deny the allegations in Paragraph 76.

77. Defendants deny the allegations in Paragraph 77.

House District 4

78. Defendants deny the allegations in Paragraph 78.

79. Defendants deny the allegations in Paragraph 79.

80. Defendants deny the allegations in Paragraph 80.

House District 21

81. Defendants deny the allegations in Paragraph 81.

82. Defendants deny the allegations in Paragraph 82.

83. Defendants deny the allegations in Paragraph 83.

House District 24

84. Defendants deny the allegations in Paragraph 84.

85. Defendants deny the allegations in Paragraph 85.

House District 39

86. Defendants deny the allegations in Paragraph 86.

87. Defendants deny the allegations in Paragraph 87.

88. Defendants deny the allegations in Paragraph 88.

Senate District 2

89. Defendants deny the allegations in Paragraph 89.

90. Defendants deny the allegations in Paragraph 90.

Senate District 11

91. Defendants deny the allegations in Paragraph 91.

92. Defendants admit the allegations in Paragraph 92.

93. Defendants admit House District 23 and 24 were in Senate District 12 in the 2011 Plan. Defendants deny the remaining allegations in Paragraph 93.

94. Defendants admit House Districts 21 and 22 are nested in Senate District 11 in SB 927. Defendants deny the remaining allegations in Paragraph 94.

95. Defendants deny the allegations in Paragraph 95.

96. Defendants deny the allegations in Paragraph 96.

97. Defendants deny the allegations in Paragraph 97.

98. Defendants deny the allegations in Paragraph 98.

Racially Polarized Voting

99. Defendants deny the allegations in Paragraph 99.

100. Defendants admit Latino votes are politically cohesive for voting for the Latino candidate of choice. Defendants admit the Latino candidate of choice is not always a Latino candidate. Defendants admit Latinos have been successful in electing the Latino candidate of choice under the 2011 Plan and will be under SB 927.

101. Defendants deny the allegations in Paragraph 101.

History and Effects of Discrimination

102. Defendants deny the allegations in Paragraph 102.

103. Defendants deny the allegations in Paragraph 103.

104. Defendants deny the allegations in Paragraph 104.

105. Defendants deny the allegations in Paragraph 105.

106. Defendants deny the allegations in Paragraph 106.

V. CAUSES OF ACTION

First Cause of Action

**(Equal Protection Clause of the 14th Amendment
to the United States Constitution— Malapportionment)**

107. Defendants incorporate their answers to the preceding Paragraphs.

108. Defendants deny Plaintiffs have plead a cause of action under the Fourteenth Amendment. The remaining allegations in Paragraph 108 call for a legal conclusion for which no answer is required.

109. Defendants state the allegations in Paragraph 109 call for a legal conclusion for which no answer is required.

110. Defendants deny the allegations in Paragraph 110.

111. Defendants deny the allegations in Paragraph 111.

112. Defendants deny the allegations in Paragraph 112.

Second Cause of Action

**(Equal Protection Clause of the 14th Amendment
to the United States Constitution – Racial Gerrymandering)**

113. Defendants incorporate their answers to preceding paragraphs.

114. Defendants deny the allegations in Paragraph 114.

115. Defendants deny the allegations in Paragraph 115.

116. Defendants deny the allegations in Paragraph 116.

117. Defendants deny the allegations in Paragraph 117.

118. Defendants respond that they did not use race as a predominant factor in creating the SB 927 Plan, and further respond that the allegations in Paragraph 118 make a legal conclusion for which no response is required.

119. Defendants deny the allegations in Paragraph 119.

Third Cause of Action

**(Section 2 of the Voting Rights Act of 1965,
52 U.S.C. § 10301)**

120. Defendants incorporate their answers to preceding paragraphs.

121. Defendants deny the allegations in Paragraph 121.

122. Defendants deny the allegations in Paragraph 122.

ATTORNEY'S FEES

123. Defendants deny the allegations in Paragraph 123.

PRAYER FOR RELIEF

Defendants deny that Plaintiffs are entitled to any relief.

GENERAL DENIAL

Defendants deny each and every allegation of the Complaint not expressly acknowledged in this Answer.

AFFIRMATIVE AND OTHER DEFENSES

Defendants assert the following affirmative defenses, without assuming the burden of proof or persuasion as to any issue or element that would rest upon Plaintiffs. Defendants do not admit or concede any element of Plaintiffs' claims through these affirmative defenses. Defendants have not knowingly or intentionally waived any applicable defenses, and reserve the right to assert and rely on additional affirmative and other defenses as may become apparent during the course of this action.

Defendants reserve the right to amend this Answer and/or its affirmative defenses during the course of this action and/or if Plaintiffs amend their pleadings.

FIRST AFFIRMATIVE DEFENSE

The Second Amended Complaint, and each purported cause of action therein, fails to allege facts sufficient to constitute a cause of action, and/or fails to state a claim upon which the relief sought by Plaintiffs, or any relief at all, can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, because they do not have standing to bring the causes of action in the Second Amended Complaint.

THIRD AFFIRMATIVE DEFENSE

The September Map was signed into law by Governor Pritzker on September 24, 2021. The September Map supersedes the June Map. As a result, the June Map will never be used for any election. All of Plaintiffs' claims related to the June Map are therefore moot.

Date: October 15, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2021, I electronically filed the above **DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to all counsel of record.

By: /s/Adam R. Vaught