

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

DAN MCCONCHIE, <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 1:21-CV-3091
)	
v.)	Circuit Judge Michael B. Brennan
)	Chief District Judge Jon E. DeGuilio
CHARLES W. SCHOLZ, <i>et al.</i> ,)	District Judge Robert M. Dow, Jr.
)	
Defendants.)	Three-Judge Court
)	Pursuant to 28 U.S.C. § 2284(a)
)	

**DEFENDANT MEMBERS OF THE ILLINOIS STATE BOARD OF ELECTIONS’
RESPONSE TO PLAINTIFFS’ LOCAL RULE 56.1 STATEMENT OF FACTS**

Defendants Charles W. Scholz¹, Ian K. Linnabary, William M. McGuffage, William J. Cadigan, Katherine S. O’Brien, Laura K. Donahue, Cassandra B. Watson, and William R. Haine (collectively the “Board Members”), in their official capacities as members of the Illinois State Board of Elections, by their attorney, Kwame Raoul, Attorney General of Illinois, in response to Plaintiffs’ Local Rule 56.1 Statement of Facts state:

The Parties

A. Plaintiffs

1. Plaintiff DAN MCCONCHIE is a state senator for Illinois’ 26th Senate District, a citizen of the United States and the State of Illinois, and a duly registered voter residing in Lake County, Illinois. Mr. McConchie is also the Minority Leader of the Illinois Senate, vested by Article IV, Section 6(c) of the Illinois Constitution with the duty to promote and express the views, ideas,

¹ On July 1, 2021, Member Charles W. Scholz was replaced with Rick S. Terven, and Member Katherine S. O’Brien was replaced with Catherine S. McCrory. Because Members Scholz and O’Brien were named in their official capacity, the new members were automatically substituted as the appropriate defendants pursuant to Federal Rule of Civil Procedure 25(d).

and principles of the Senate Republican caucus in the 102nd General Assembly and of Republicans in every Senate District throughout the State of Illinois. Mr. McConchie is also the leader of the Plaintiff Republican Caucus of the Illinois Senate, having been elected its leader pursuant to Article IV, Section 6(c) of the Illinois Constitution and Rule 2-3 of the Illinois Senate.

RESPONSE: Undisputed.

2. Plaintiff JIM DURKIN is a state representative from Illinois' 82nd Representative District, a citizen of the United States and the State of Illinois, and a duly registered voter residing in Cook County, Illinois. Mr. Durkin is also the Minority Leader of the Illinois House of Representatives, vested by Article IV, Section 6(c) of the Illinois Constitution and with the duty to promote and express the views, ideas, and principles of the House Minority Republican caucus in the 102nd General Assembly and of Republicans in every Representative District throughout Illinois. Mr. Durkin is also the leader of the Plaintiff Republican Caucus of the Illinois House of Representatives, having been elected its leader pursuant to Article IV, Section 6(c) of the Illinois Constitution and Rule 2 of the Illinois House of Representatives.

RESPONSE: Undisputed.

3. Plaintiff REPUBLICAN CAUCUS OF THE ILLINOIS SENATE is an association consisting of 18 elected members of the Illinois Senate belonging to the Republican Party. The Republican Caucus of the Illinois Senate is comprised of members who reside and vote in Various Senate Districts throughout the State of Illinois and represent their respective Senate Districts and constituent voters in the General Assembly. The Republican Caucus of the Illinois Senate is currently comprised of members representing Illinois Senate Districts, 26, 32, 33, 35, 36, 37, 38, 41, 44, 45, 47, 50, 51, 53, 54, 55, 58, and 59.

RESPONSE: Undisputed.

4. Plaintiff REPUBLICAN CUACUS OF THE ILLINOIS HOUSE OF REPRESENTATIVES, is an association consisting of 45 elected members of the Illinois House of Representatives belonging to the Republican Party. The Republican Caucus of the Illinois House of Representatives is comprised of members who reside and vote in various Representative Districts throughout the State of Illinois and represent their respective Representative Districts and constituent voters in the General Assembly. The Republican Caucus of the Illinois House of Representatives is currently comprised of members representing Illinois House Districts: 20, 37, 42, 45, 47, 50, 51, 52, 54, 63, 64, 65, 69, 70, 71, 73, 74, 75, 79, 82, 87, 88, 89, 90, 91, 93, 94, 95, 97, 99, 100, 101, 102, 104, 105, 106, 107, 108, 109, 110, 111, 115, 116, 117, and 118.

RESPONSE: Undisputed.

5. Plaintiff ILLINOIS REPUBLICAN PARTY is an established political party in the State of Illinois, organized and existing under the election laws of the State of Illinois. The Illinois Republican Party is comprised of hundreds of thousands of members and voters who reside in every Senate District and Representative District in the State of Illinois.

RESPONSE: Undisputed.

B. Defendants

6. The Illinois State Board of Elections is the entity responsible for overseeing and regulating public elections in Illinois as provided by Article III, Section 5 of the Illinois Constitution and 10 ILCS 5/1A-1, *et seq.* The Board has eight members who are named as Defendants in this action (collectively the “Individual Board Member Defendants”).

RESPONSE: Disputed. While the Board is typically comprised of eight members, the Board currently has seven members as Board Member Haine recently passed away² and his position on the Board has not been filled at this time.

7. Defendant CHARLES W. SCHOLZ is the Chairman of the Illinois State Board of Elections.

RESPONSE: Disputed. Charles W. Scholz was replaced on the Illinois State Board of Elections by Rick S. Terven, Sr. on July 1, 2021.³

8. Defendant IAN K. LINNABARY is the Vice Chairman of the Illinois State Board of Elections.

RESPONSE: Disputed. Mr. Linnabary is now the Chair of the Illinois State Board of Elections.⁴

9. Defendant WILLIAM M. MCGUFFAGE is a member of the Illinois State Board of Elections.

RESPONSE: Undisputed.

10. Defendant WILLIAM J. CADIGAN is a member of the Illinois State Board of Elections.

RESPONSE: Undisputed.

11. Defendant KATHERINE S. O'BRIEN is a member of the Illinois State Board of Elections.

RESPONSE: Disputed. Ms. O'Brien was replaced on the Illinois State Board of Elections by Catherine S. McCrory on July 1, 2021.⁵

² <https://www.thetelegraph.com/news/article/Senator-William-Haine-dead-16390775.php>.

³ <https://www.elections.il.gov/AboutTheBoard/MemTerven.aspx?T=637667852595149779>

⁴ <https://www.elections.il.gov/AboutTheBoard/MemLinnabary.aspx?T=637668758395401447>.

⁵ <https://www.elections.il.gov/AboutTheBoard/MemMcCrory.aspx?T=637667852618299056>.

12. Defendant LAURA K. DONAHUE is a member of the Illinois State Board of Elections.

RESPONSE: Undisputed.

13. Defendant CASANDRA B. WATSON is a member of the Illinois State Board of Elections.

RESPONSE: Disputed. Ms. Watson is the Vice-Chair of the Illinois State Board of Elections.⁶

14. Defendant WILLIAM R. HAINE is a member of the Illinois State Board of Elections.

RESPONSE: Disputed. Mr. Haine passed away on August 16, 2021. Mr. Haine's position on the Illinois State Board of Election has not been filled at this time.

15. Defendant EMANUEL CHRISTOPHER WELCH is a state representative from Illinois' 7th Representative district.

RESPONSE: Undisputed.

16. Defendant the OFFICE OF THE SPEAKER OF THE ILLINOIS HOUSE OF REPRESENTATIVES is the office of the presiding officer of the Illinois House of Representatives, as designated by Article IV, Section 6(b) of the Illinois Constitution.

RESPONSE: Undisputed.

17. Defendant DON HARMON is a state senator from the 39th Senate District.

RESPONSE: Undisputed.

18. Defendant OFFICE OF THE PRESIDENT OF THE ILLINOIS SENATE is the office of the presiding officer of the Illinois Senate, as designated by Article IV, Section 6(b) of the Illinois Constitution.

RESPONSE: Undisputed.

⁶ <https://www.elections.il.gov/AboutTheBoard/MemWatson.aspx?T=637668758420569842>.

The General Assembly's Redistricting Plan

19. To enable state officials to draw legislative districts of substantially equal population, the U.S. Census Bureau (the "Bureau") generally provides states with the official census population counts per Public Law 94-171 (the "PL 940171 Data") within one year of the April 1st census date.

RESPONSE: Undisputed.

20. The most recent census date was April 1, 2020, so the date for the Bureau to release the PL 94-171 Data to the states was March 31, 2021. However, the Bureau was unable to release the data by that date. Instead, in March 2021, the Bureau announced that it would provide the PL 94-171 Data to the states by mid-August of 2021.

RESPONSE: Undisputed.

21. On May 28, 2021, despite lacking the PS 94-171 Data, the Illinois General Assembly passed, on a purely partisan roll call, a state legislative redistricting plan (the "Redistricting Plan" or "Plan"), which includes a legislative map setting forth districts for the Illinois House of Representatives ("House Districts") and the Illinois Senate ("Senate Districts").

RESPONSE: Undisputed.

22. On June 4, 2021, Governor Pritzker approved the Redistricting Plan.

RESPONSE: Undisputed.

23. In passing the Redistricting Plan, the General Assembly acknowledged that the Bureau had not yet provided the PL 94-171 Data and therefore the General Assembly could not use the data to draw the legislative map.

RESPONSE: Undisputed.

24. Instead, the General Assembly stated that it drew the map using population estimates derived from the 2015-2019 five-year responses to the American Community Survey (“ACS”), along with certain unspecified “election data” and “public input”.

RESPONSE: Undisputed.

25. The General Assembly did not acknowledge, let alone attempt to justify, any population deviations between the districts in the plan. Instead, it incorrectly claimed that “each of the Districts contained in the 2021 General Assembly Redistricting Plan was drawn to be substantially equal in population.”

RESPONSE: The Illinois State Board of Elections is a bipartisan entity and the Board Members are not involved in the drawing of any redistricting maps, including the map signed into law on June 4, 2021. As such, the Board Members have not analyzed or retained experts to analyze this map for any variance of deviation and cannot accept or reject the validity of this statement.

26. The House of Representatives asserted that the “largest deviation [with respect to House Districts is] 0.37% or 398 people, under the target population.”

RESPONSE: Undisputed.

27. The Senate similarly asserted that the “largest deviation [with respect to Senate Districts is] +0.2%/-0.17% or +422/-368 people, from the target population.”

RESPONSE: Undisputed.

Dr. Chen’s Analysis of the Maximum Population Deviations in the Redistricting Plan

28. On August 12, 2021, the Census Bureau released the PL 94-171 Data in “legacy” format.

RESPONSE: Undisputed.

29. Plaintiffs' expert, Dr. Jowei Chen, then used the PL 94-171 Data to calculate the populations in each House and Senate District in the Redistricting Plan.

RESPONSE: Undisputed.

30. Dr. Chen is an associate professor in the Department of Political Science at the University of Michigan, has extensive academic publications and experience regarding legislative districting and political geography, and has testified at deposition or trial in a number of redistricting cases.

RESPONSE: Undisputed.

31. Within an hour of its release, Dr. Chen was able to analyze that data and calculate the populations of the House and Senate Districts in the General Assembly's Redistricting Plan.

RESPONSE: Undisputed.

32. To calculate the populations of the House and Senate Districts in the Plan, Dr. Chen identified the districts to which each 2020 Census block is assigned and overlaid the appropriate Census block shapefiles provided by Defendants 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 (collectively, "the Leadership Defendants") onto the districts. Dr. Chen then used the PL 94-171 Data files to calculate the population of each House and Senate District in the Plan.

RESPONSE: Undisputed.

33. With respect to House Districts, Dr. Chen calculated that the ideal population of each of the 118 House Districts is 108,580.6. This number is based on the total Illinois population of 12,812,508, as reflected in the PL 94-171 Data.

RESPONSE: Undisputed that Plaintiff's expert reached this conclusion. However, the Illinois State Board of Elections is a bipartisan entity and the Board Members are not involved in the drawing of any redistricting maps, including the map signed into law on June 4, 2021. As such, the Board Members have not analyzed or retained experts to analyze this map for any variance of deviation and cannot accept or reject the validity of this statement.

34. Dr. Chen calculated that the lowest-populated district is House District 83, whose population is 14.91% the ideal population, and the highest-populated district is House District 5, whose population is 14.97% above the ideal population. Therefore, the maximum population deviation of the House Districts in the Plan is **29.88%**, the sum of the percentage deviations of House Districts 5 and 83.

RESPONSE: Undisputed that Plaintiff's expert reached this conclusion. However, the Illinois State Board of Elections is a bipartisan entity and the Board Members are not involved in the drawing of any redistricting maps, including the map signed into law on June 4, 2021. As such, the Board Members have not analyzed or retained experts to analyze this map for any variance of deviation and cannot accept or reject the validity of this statement.

With respect to Senate Districts, Dr. Chen calculated that the ideal population of each of the 59 Senate Districts is 217,161.2, which again is based on the total Illinois population of 12,812,508.

RESPONSE: Undisputed that Plaintiff's expert reached this conclusion. However, the Illinois State Board of Elections is a bipartisan entity and the Board Members are not involved in the drawing of any redistricting maps, including the map signed into law on June 4, 2021. As such, the Board Members have not analyzed or retained experts to analyze

this map for any variance of deviation and cannot accept or reject the validity of this statement.

Dr. Chen calculated that the lowest-populated district is Senate District 42, whose population is 7.94% below the ideal population, and the highest-populated district is House District 3, whose population is 12.31% above the ideal population. Therefore, the maximum population deviation of the Senate Districts in the Plan is **20.25%**, the sum of the percentage of deviations exhibited by Senate Districts 3 and 42.

RESPONSE: Undisputed that Plaintiff's expert reached this conclusion. However, the Illinois State Board of Elections is a bipartisan entity and the Board Members are not involved in the drawing of any redistricting maps, including the map signed into law on June 4, 2021. As such, the Board Members have not analyzed or retained experts to analyze this map for any variance of deviation and cannot accept or reject the validity of this statement.

September 10, 2021

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

/s/ Mary A. Johnston
Mary A. Johnston
Office of the Illinois Attorney General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-4417
Mary.johnston@ilag.gov

*Counsel for Illinois State Board of
Elections' Member Defendants*