

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

EAST ST. LOUIS BRANCH NAACP, *et al.*,

Plaintiffs,

v.

ILLINOIS STATE
BOARD OF ELECTIONS, *et al.*,

Defendants.

Civil Action No. 1:21-cv-05512

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

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

**PLAINTIFFS' BRIEF IN COMPLIANCE WITH COURT ORDER
DIRECTING PARTIES TO RESPOND TO DEFENDANTS' REMEDIAL HOUSE
LEGISLATIVE MAP AND IN SUPPORT OF PLAINTIFFS' REMEDIAL MAPS**

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I. INTRODUCTION

In redrawing the lines of House District (“HD”) 114 in the 2021 redistricting plan enacted in Senate Bill 927 (“S.B. 927”), the Illinois General Assembly, as approved by the Governor, unconstitutionally manipulated populations by race, unlawfully diluted the votes of Black voters, and ultimately lessened the election prospects of the only Black state representative elected to the legislature from the entire Metro East area or even Southern Illinois, all in order to bolster the prospects of a white incumbent in nearby district HD 112. The General Assembly did so despite its stated policy in S.B. 927 to preserve Black communities of interest in the redistricting process, and, indeed, despite the General Assembly’s legal duty under the Equal Protection Clause and Section 2 of the Voting Rights Act to not dilute the votes of Black voters in HD 114.

There is no other reasonable way to view the facts. Over the past decade, HD 114 and the surrounding St. Clair County continued their seismic loss of population and evolutions in Black population, including movement eastward in Metro East to the suburbs away from East St. Louis. The district, which has elected a Black representative since the 1970s, was witnessing increasingly competitive elections. By 2020, HD 114 was *underpopulated* by about ten percent compared to the benchmark for House districts. If the General Assembly were serious about preserving Black communities of interest, in light of the underpopulation of HD 114, the obvious districting decision would have been to *add* population to HD 114 from areas of St. Clair County connected in interest to the urban centers of the existing HD 114, where a higher concentration of Black voters reside.

Instead, Democratic legislators in the General Assembly (“Democratic legislators”) and the Legislative Defendants did the opposite, because their true priority was to bolster the white Democratic incumbent in HD 112, a district that had swung from a highly competitive Republican district to a highly competitive Democratic district over the last decade. In order to protect this incumbent, and aware that Black voters vote cohesively for Democrats in the Metro East area, the

Democratic legislators and Legislative Defendants had to find Black voters to move to HD 112. They found them in HD 113, a neighboring, but also underpopulated, Democratic district and moved approximately 5,000 Black voters from HD 113 to HD 112, even though HD 112 was overpopulated by approximately six percent compared to the benchmark for House districts. But having moved Black voters from HD 113 to HD 112, the Democratic legislators and Legislative Defendants had to find Black voters to replace them. They turned next to HD 114, moving a number of Black voters from HD 114 to HD 113 to make up for those moved to HD 112.

With HD 114 seriously underpopulated, the Democratic legislators and Legislative Defendants still had to find enough voters (regardless of race) to bring HD 114 up to one person/one vote standards. So they moved approximately 40,000 people into HD 114, of whom approximately 30,000 were of voting age, and less than a fifth of whom were Black. Most were white voters from the far-flung rural reaches of St. Clair County, communities with no connection to those in the urban areas of East St. Louis and Centerville, or even the diverse suburban/urban area of Belleville, which had been taken from HD 114 and given to HD 113.

That this was part and parcel of the Legislative Defendants' strategy to move Black voters to HD 112, with disregard to the consequences for Black voters in HD 114, is seen by a simple comparison of the racial breakdown for the 2011 plan with S.B. 927's 2021 plan, using the 2020 Census numbers. The overpopulated HD 112 **gained** 3,075 Black voters and **lost** 7,595 white voters, while the underpopulated HD 114 **lost** 254 Black voters and **gained** an almost identical 7,681 white voters. As a consequence of this manipulation, the Black Voting Age Population ("VAP") in HD 112 increased by 4.15%, while the Black VAP in HD 114 **decreased** by a similar amount, 3.67%, turning the only opportunity district in Southern Illinois where Black voters were able to elect candidates of their choice to, at best, a toss-up district—with increasingly bleaker

prospects for Black electoral success going forward.

That this has occurred in East St. Louis and its environs is sadly ironic. East St. Louis has one of the most horrific histories of racial strife in Illinois. The 1917 race riots, which resulted in the murder of innumerable Black citizens, left a searing impression on the Black community, and racial discrimination has taken a severe socioeconomic toll. That community's steadfastness in challenging the white political hegemony had paid off. Today, HD 114 boasts the only Black state representative elected from the entire Metro East area and even from Southern Illinois. S.B. 927 threatens this progress. It is also unconstitutional as a racial gerrymander and unlawful as a violation of the Voting Rights Act.

Accordingly, Plaintiffs, all organizations deeply invested in the redistricting process in HD 114 and the Metro East area both through their members and as organizations, have presented this Court with an alternative remedial map, which reverses the dilution of the Black voters in HD 114. Plaintiffs respectfully request that this Court reject S.B. 927, insofar as it bears on HD 112, 113, and 114, and adopt Plaintiffs' remedial map.¹

II. FACTS COMMON TO ALL CLAIMS

A. The History of Racial Discrimination in East St. Louis

As Professor Franita Tolson describes in her vivid report, the tragic story of race relations in East St. Louis unfolds against the backdrop of Illinois's own spotty history on the human and civil rights of Black people. Once a slave state, Illinois's "free state" status did not stop it from enacting laws that severely circumscribed the rights of its Black citizens, including, notably,

¹ In an order dated October 19, 2021, the Court requested the parties submit proposed revisions to the September Redistricting Plan and explain how the proposed revisions would cure any constitutional or statutory defects in the September Redistricting Plan. Because this submission is not simply a memorandum of law, the 15-page limitation on such documents contained in Local Rule 7.1 did not seem applicable. To the extent the Court intended for the parties to follow Local Rule 7.1, Plaintiffs hereby request leave of Court to file a longer submission.

refusing to allow Black citizens to vote, a prohibition that remained in Illinois's constitution until 1870. Expert Report of Franita Tolson ("Tolson Report") at 3-4.

The late nineteenth century stream of Black population into East St. Louis in search of factory jobs led to Black voters becoming a significant and influential force in the early part of the twentieth century—and to elections marked by racial appeals. *Id.* at 5-6. East St. Louis' Black population continued to increase markedly, with a notable uptick in 1917, creating significant racial tension in the city. In particular, white employers exploited the hostility between the white and Black communities by hiring Black workers for lower wages and replacing white workers with Black workers during labor strikes. *Id.* at 8-9. The situation came to a head in 1917, when the owners of the Aluminum Ore Company fired 200 white workers and replaced them with Black workers. The ensuing strike left a narrative that Black laborers had crossed the picket line, and some white workers concluding that "perhaps violence was the only effective method to frighten Negroes away from East St. Louis." *Id.* at 10-11.

And violence came. A series of deadly riots, fomented by unfounded rumors of the familiar racist trope of Black men insulting and injuring white women, occurred between late May and early July 1917. An untold number of Black men and women were murdered. Some of their mutilated bodies were found in Cahokia Creek, and many others burned to ashes. To this day, there is no way of ascertaining the actual toll. *Id.* at 11-14. The official reaction to the riots ranged from indifference to official reports that blamed the victims, claiming that the addition of "ten thousand or more strange negroes" made East St. Louis "a center of lawlessness." *Id.* at 15.

The 1917 riots left a permanent mark on the Black community in East St. Louis. As Professor Tolson states, it is a story of "a community in tatters." *Id.* at 17. Segregation in housing and public accommodations took hold. *Id.* at 18-19. And for decades well into the 1970s, white

leaders effectively shut out the Black community from the political process with an at-large election scheme for the East St. Louis City Council. Increased Ku Klux Klan activity in the region exacerbated the situation. *Id.* at 17-20.

The Black community would not give up, forming alliances with moderate white organizations, and fielding their own candidates, but without success. *Id.* at 18-19. Finally, in the late 1970s, the Black community was able to begin electing Black candidates. Indeed, since 1975, the voters of HD 114 have elected a Black representative to the legislature, the only state legislative district in the Metro East area and even Southern Illinois that has a Black representative. *Id.* at 20.

A. The Effects of the Past

But the effects of the area's ugly history are felt in the greater East St. Louis' Black community today. As Professor Ryan Weichelt explains, there is a wide socioeconomic disparity between Black and white populations in the surrounding East St. Louis area under virtually every metric. Expert Report of Ryan Weichelt ("Weichelt Report") at 11. Those in the Black community are approximately half as likely as those in the white community to have graduated from high school or from college. Unemployment is more than 50% higher for Black residents as for white (6.7% to 4.1%). Median Household Income is more than twice as high for white residents than for Black residents, with household income for Black residents at \$31,261. Thirty percent of Black residents live below the poverty level, three and a half times the level for white residents. Weichelt Report at 11.

Teresa Haley, President of Plaintiff Illinois State Conference of the NAACP, is an eyewitness to this plight, resulting from a century of discrimination, systemic racism and a white political machinery. She describes the deterioration of the city beginning in the late 1980s, with park closings, homes being boarded up, and basic resources unavailable. Declaration of Teresa Haley ("Haley Decl.") ¶ 4.

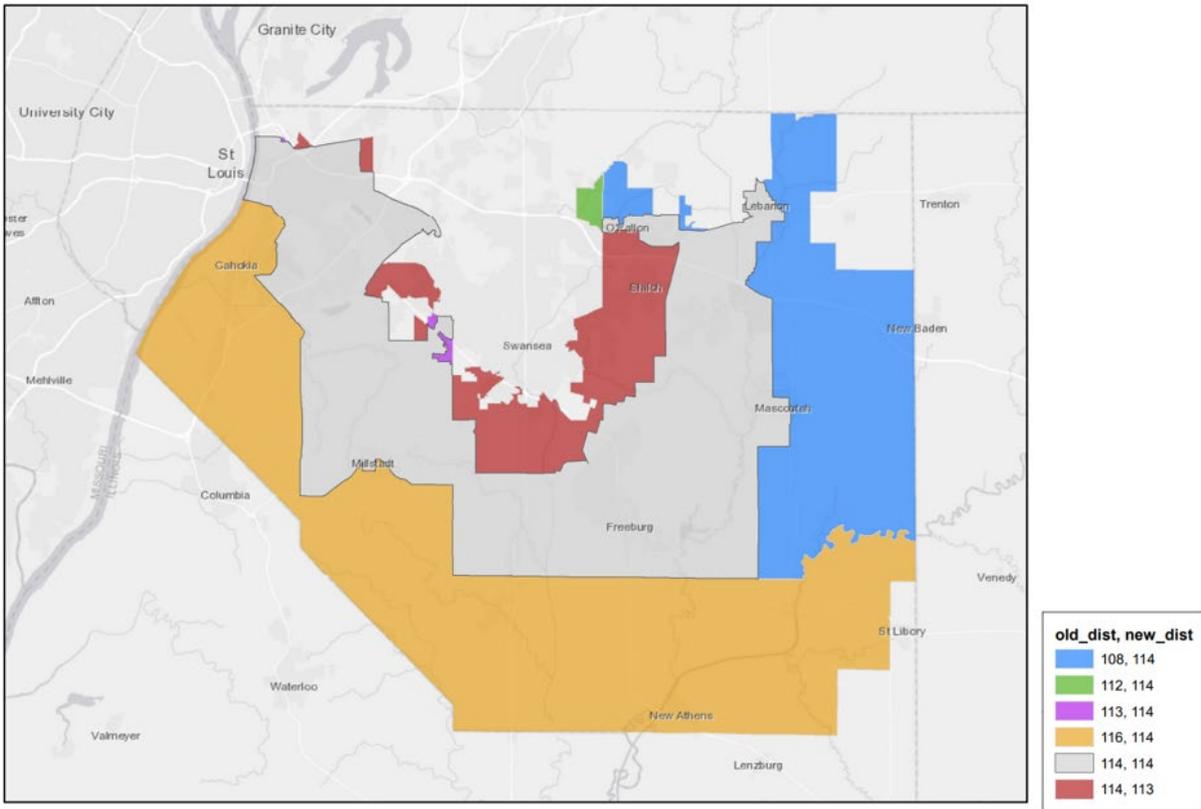
B. The Need for Black Representation

Against this dreadful history and equally troubling present circumstances, it is not surprising that Black voters of East St. Louis are adamant in their need to protect both their right to participate fully in the political process, and their opportunity to elect candidates of their choice who understand their community. As President Haley explains: “The people of East St. Louis want a representative who understands the challenges and issues of people who live in the community,” to make sure that “their voices and concerns were heard by their representatives, and that they had an advocate in debates happening at the State Capitol in Springfield.” Haley Decl. ¶¶ 35-36. And this means “being able to elect a representative who comes from the community and who can fully advocate for the community’s interests in the legislature.” Haley Decl. ¶ 14; *see also* Declaration of Roderick Wilson (“Wilson Decl.”) ¶ 12.

C. S.B. 927 Cracks the East St. Louis Area Black Community of Interest by Removing Black Voters from House District 114 and Violates Traditional Districting Principles

House District 114 is located in St. Clair County, in Southwestern Illinois, and is part of the Metro East area, the second largest urban area in Illinois after the Chicago metropolitan area. The Metro East area also includes Madison County, located to the north of St. Clair County. The Metro East area is comprised of older industrial cities such as East St. Louis, suburban satellite cities such as its largest city Belleville, and rural areas on the far outskirts that have little connection to the urban core. HD 114 has contained much of the Black urban core in the past few redistricting cycles. Approximately 60% of St. Clair County’s population of 257,400 is white, and approximately 30% is Black, with nearly 40% of the County’s Black population residing in East St. Louis and Belleville. Weichelt Report at 7-8 and Exhibit 1a. Under the 2011 map, HD 113 was located to the immediate north and east of East St. Louis and contained parts of both St. Clair and Madison Counties. House District 112 was further to the north and east and located entirely in

Madison County under the 2011 map. Both HD 112 and 113 have smaller proportions of Black voters and larger proportions of suburban white residents than HD 114 under the 2011 map.



The Metro East areas around St. Clair County have witnessed steady declines in population since the 1950s. East St. Louis alone lost 75% of its population between 1950 and 2020 dropping from 82,366 to 18,469. According to the 2020 Census, St. Clair County’s population decreased by 4.69% since the last Census. Weichert Report at 7. This is the largest loss of population of any county in Illinois. Ex. 3, Maxson Dep. Tr. 210:1-6.² These population shifts follow a distinct pattern of west to east progression. In the last decade, East St. Louis, Cahokia, Washington Park, Centreville, Fairmont, Madison, and Venice all saw Black population decrease, while other urban areas in Metro East such as Belleville and Shiloh saw increases in Black population over the same

² Unless otherwise noted, referenced exhibits are exhibits to the transmittal declaration of Elizabeth M. Wright.

period. Weichelt Report at Exhibit 1a.

In the 2011 redistricting, HD 114 was drawn “to preserve a downstate African American region in Illinois.” Ex. 5, House Resolution 385 at 347. According to the 2010 Census, 42.53% of the residents in HD 114 were Black and 53.42% were white under that plan. By the time of the 2020 Census, however, 37% of the residents of HD 114 in the 2011 plan were Black and 55% were white. Collingwood Report at 12. As the Black VAP in HD 114 decreased, the district, which had elected a Black representative since the 1970s, moved from having uncontested elections for Black voters’ candidate of choice in 2010 and 2014 to being contested in the 2016, 2018 and 2020 elections. By the 2020 election, when the Black population was the smallest in HD 114 since the district was adopted in 2011, the Black candidate of choice was winning reelection by an increasingly narrower margin. *See* Table 1.

Table 1. Appointments and Elections in HD 114 since 2009, by race, party, and vote total and percentage, with winner identified in bold.

Election	Democratic Candidate	Republican Candidate
2009 Appointment	Eddie Lee Jackson, Sr. (Black)	N/A
2010	Eddie Lee Jackson, Sr. (Black)	None
2012	Eddie Lee Jackson, Sr. (Black) 27,584 votes (59.9%)	Ryan Stookey (White) 18,474 votes (40.1%)
2014	Eddie Lee Jackson, Sr. (Black)	None
2016	LaToya Greenwood (Black) 26,029 votes (57.2%)	Bob Romanik (White) 19,492 votes (42.8%)
2018	LaToya Greenwood (Black) 21,530 votes (58.3%)	Jason Madlock (Black) 15,373 votes (41.7%)
2020	LaToya Greenwood (Black) 26,682 votes (57.1%)	Dave Barnes (White) 20,015 votes (42.9%)

Source: Illinois State Board of Elections, Election Results, *available at* <https://www.elections.il.gov/electionoperations/votetotalsearch.aspx>

From the outset of the redistricting process in 2021, members of the General Assembly and staff fully understood the importance of continuing to provide Black voters with equal opportunities to elect their candidate of choice from the Metro East area, which makes their failure to do so all the more distressing. Darrin Reinhardt, was a House Democratic redistricting staff member who worked with the members of the House Democratic caucus to create districts in the Metro East area. Ex. 3, Maxson Dep. Tr. at 203:1-13. During the April 19, 2021 Metro East redistricting hearing, Mr. Reinhardt testified about the need for legislators to identify communities of interest, which he described as “a group of people concentrated in a geographic area who are socially, culturally, ethnically, religiously or otherwise alike [and] can be joined in a district to most effectively have their voices heard.” Ex. 1 at 20. Mr. Reinhardt acknowledged that “[t]he principles of the federal Voting Rights Act are in place to prevent the reduction of opportunities for minority populations to participate equally in the electoral process.” *Id.* Democratic legislators and the Legislative Defendants described that among their “Guiding Principles” were to “[k]eep 2021 districts as similar as possible to the previous map” and “the preservation of communities of interest.” Ex. 6 at DemDefs-00001116. They did not follow this policy in the redrawing of HD 114 in S.B. 927.

S.B. 927 did not follow general redistricting principles, largely ignoring demographic patterns in the East St. Louis area. Although East St. Louis and Centerville remained in the district, and Cahokia was added to the south, HD 114 expanded very little to the immediate east, where significant population growth had occurred which could have ameliorated the underpopulation of HD 114. Indeed, areas around Belleville extending into Shiloh, housing significant numbers of Black voters, were stripped from HD 114 and added to the newly proposed boundaries of HD 113. Instead, under S.B. 927, the largest expansion of HD 114 occurred in the largely white far south

and eastern rural fringes of St. Clair County, whose residents share little in common with urban core Black residents. Weichelt Report at 17.

Under S.B. 927, 21,956 voters were moved out of HD 114, of whom 14,492 were white and 5,252 were Black. In return and to meet one person/one vote standards in the face of the prior loss of population in HD 114, 29,341 voters were added, of whom 22,212 were white, and 5,010 were Black. In sum, HD 114 gained 7,681 white voters, and lost 254 Black voters. As a result, HD 114 Black VAP fell from 37.55% under the 2011 plan to 33.55% under the new map. *See* Weichelt Report at Exhibit 3.

D. Race Was the Predominant Motivation in the Redistricting of HD 114

The Defendants used Black voters as pawns in a political game of chess, moving them around without regard for these voters' right to elect candidates of their choice. Removing voters from HD 114, an already underpopulated district, violated traditional districting principles and did nothing to achieve the supposed desire of the legislature to preserve Black communities of interest. The limited, expedited discovery in this litigation sheds light on what the legislature was really doing in the Metro East area. The legislature moved Black voters to shore up two white, Democratic incumbents in HD 112 and Senate District ("SD") 56 (which encompasses HD 111 and HD 112). Senator Crowe, whose district under the 2011 map was SD 56, specifically told a staffer working on redistricting to make her district "more Democrat." Ex. 4, Sodowski Dep. Tr. 176:11-18. A House staffer testified that he redrew the lines in Metro East "to enhance the Democratic performance of the 112th district." Ex. 3, Maxson Dep. Tr. 204:2-11. To do that, the legislature had to move Black population into an already over-populated HD 112 from its neighbor HD 113. But, because HD 113 was itself under-populated, population had to be shifted from HD 114 to HD 113. The domino effect of feeding more Black voters into HD 112 diluted the Black vote in HD 114.

1. Voting Is Polarized in the Metro East Area and in HD 114 Specifically

A predicate to understanding how and why the Democratic legislators and Legislative Defendants acted as they did is the essential fact that voting is polarized in the Metro East area and in HD 114, in that Black voters vote cohesively for candidates of their choice and white voters regularly vote for other candidates.³ Dr. Loren Collingwood, an Associate Professor of Political Science at the University of New Mexico, and an accepted expert on racially polarized voting, analyzed precinct-level election returns in seven White-Black races in St. Clair County. These elections were the 2014 and 2020 General Elections for County Board of Review; the 2016 General Election for County Circuit Clerk, the 2014 and 2018 state Senate races for SD 57 (which encompasses HD 114) and the 2016 and 2020 state House races for HD 114 itself.

Applying the accepted methodology for evaluating racially polarized voting described by Legislative Defendants' consultant Dr. Allan Lichtman, *see* Allan J. Lichtman & J. Gerald Hebert, *A General Theory of Vote Dilution*, 6 La Raza L.J. 1 (1993), Dr. Collingwood examined, although Black voters may not comprise a majority of voters in House District 114, “do Black voters have the ability to elect their candidates of choice or has their ability to elect a candidate diminished under the SB927 version of HD 114?” Collingwood Report at 4. Dr. Collingwood employed two widely accepted statistical methods in conducting his racially polarized voting analysis: ecological inference and homogenous precinct analysis. *See generally Thornburg v. Gingles*, 478 U.S. 30, 52-53 (1986) (approving of the district court’s reliance on “two complementary methods of analysis – extreme case analysis and bivariate ecological regression analysis – in order to determine whether blacks and whites in these districts differed

³ Racially polarized voting (RPV) occurs when a majority of voters of one racial group (e.g., Black voters) votes consistently for one candidate or set of candidates, and a majority of voters of the other racial group (e.g., white voters) regularly votes for another candidate or set of candidates in a two-candidate election. *See* Collingwood Report at 3.

in their voting behavior.”). The results were the same, revealing Black cohesiveness and “strong evidence” of “a consistent pattern of racially polarized voting” within the 2011 HD 114, the 2011 Senate District 57 (which encompasses HD 114), and St. Clair County at large. Collingwood Report at 7. Black voters backed Black candidates “at a rate above 80% and more often, greater than 90%. White voters meanwhile never give majority support to a Black candidate.” *Id.* at 8.

2. The Dilution of Black Votes in HD 114 Increased the Prospects of the White Incumbent in HD 112

Under the 2011 plan, HD 112 was north of HD 113, which in turn was north of HD 114. House District 113 was a reliably safe district for the white Democratic incumbent, Jay C. Hoffman, who prevailed with comfortable vote margins in every general election between 2012 and 2020: 65.6 percent in 2012; 59.5 percent in 2014; 59.1 percent in 2016; 62.9 percent in 2018; and 75.1 percent in 2020.⁴ *See* Ex. 18. In contrast, under the 2011 Plan, HD 112 was a highly competitive district in which candidates from both the Democratic and Republican Parties won between 2012 and 2020, with elections often decided by narrow margins. In the 2012 and 2014 elections, the Republican candidate, Dwight D. Kay, won with the following margins: 50.3 percent in 2012; and 58.7 percent in 2014. *Id.* From 2016 to 2020, the white Democratic candidate, Katie Stuart, won with the following margins: 51.6 percent in 2016; 55.1 percent in 2018; and 53.7 percent in 2020. *See id.*

While HD 114 had seen decreases in both total population and its proportion of Black population since the 2010 Census, as discussed above, the situations were different for HD 112 and HD 113. House District 112 had seen a major increase in total population, making it overpopulated compared to the 108,581 standard. HD 113 had seen a total population drop, but an

⁴ Searchable election results are available on the Illinois State Board of Elections’ website at <https://www.elections.il.gov/electionoperations/votetotalsearch.aspx>.

increase in its proportion of Black population. House District 112 under the 2011 Plan was “made up of primarily Caucasian residents, with small pockets of African Americans (7.2% voting-age population), Hispanic residents (3.03% voting-age population), and Asian residents (1.75% voting-age population) located throughout the district” following the 2010 Census. Ex. 5, House Resolution 385 at 341. Following the 2020 Census, the voting-age population in HD 112 remained predominately White (79.2 percent), with the Black VAP increasing to 10.4 percent. *See* Weichelt Report at Exhibit 3a. Under the 2011 Plan, HD 113 was a majority white district, with a “24.92% African American voting-age population, a 4.15% Hispanic voting-age population, and a 1.58% Asian voting-age population” following the 2010 Census. Ex. 5, House Resolution 385 at 346. Following the 2020 Census, the voting-age population in HD 113 remained majority White (59.0 percent), with the Black VAP increasing to 30.6 percent. *See* Weichelt Report at Exhibit 3a.

Faced with an under-populated HD 114 that had been electing a Black representative by increasingly slimmer margins and an over-populated HD 112 that had been electing a white representative in highly competitive races, the Democratic legislators and Legislative Defendants essentially used the safe HD 113 to funnel Black voters from HD 114 to HD 112, shoring up the white incumbent in HD 112 at the expense of the Black incumbent in HD 114.

This was a two-step process, accomplished with the express understanding that it would adversely impact HD 114. In drawing the original June Redistricting Plan using American Community Survey (“ACS”) data,⁵ Democratic legislators and Legislative Defendants recognized that under the 2011 Plan, there were 18 House Districts with 40 percent or larger Black CVAP

⁵ As summarized by this Court in its prior Order, *McConchie et al. v. Scholz et al.*, Case 1:21-cv-03139 (“*McConchie*”), ECF No. 117, Mem. Op. & Order 3, instead of waiting for the release of the delayed Census data, the Illinois General Assembly enacted state legislative and congressional plans using data from the American Community Survey signed into law on June 4, 2021 (“June Redistricting Plan”). *Id.* at 1-2, 4. After the Census data was released, the General Assembly enacted revised redistricting maps as Public Act No. 102-0663 (“S.B. 927”), signed into law on September 24, 2021 (“September Redistricting Plan”).

including HD 114. *See* Ex. 8 at DemDefs-00001124; Ex. 5, House Resolution 385 at 350. They also observed that HD 114 had experienced some population loss since the 2010 Census, which they indicated was -3,149 people according to 2019 five-year ACS estimates. *See* Ex. 7 at DemDefs-00001121. Nevertheless, in proposing the new boundaries for HD 114 in the June Redistricting Plan, the Democratic legislators and Legislative Defendants made further reductions to the underpopulated HD 114 by reducing the Black VAP in HD 114, from 42.04 percent under the 2010 Census, to a 2019 ACS five-year estimated Black CVAP of 39.4 percent. *Compare* Ex. 5, House Resolution 385 at 350 to Ex. 7 at DemDefs-00001121. At the time, Democratic Members acknowledged that this resulted in a net reduction of one House District statewide with a Black CVAP of 40 percent or higher. *See* Ex. 8 at DemDefs-00001124.

After the Census figures were issued and it became clear to the Democratic legislators and Legislative Defendants that the drop in population in St. Clair County was even greater than under the ACS, they made things even worse for Black voters in HD 114 in the September Redistricting Plan. They moved 15,944 voters, including 4,198 Black voters, from HD 113 to HD 112. To compensate for this loss to the already underpopulated HD 113, they then moved the aforementioned 21,956 voters from underpopulated HD 114 to HD 113, leading to the redrawing of HD 114 to increase its white voting population with the inclusion of the rural areas in order to bring the district up to one person/one vote standards. When the last domino fell, HD 112's Black VAP had risen from 10.36% under the 2011 plan to 14.51% under S.B. 927; and HD 114's Black VAP had fallen from 37.22% under the old plan to 33.55% under S.B. 927. Weichert Report at Exhibit 3a. HD 113's Black VAP was essentially unchanged, underscoring its function as a funnel of the required number of Black voters from HD 114 to HD 112. Even more telling, the overpopulated HD 112 *gained* 3,075 Black voters and *lost* 7,585 white voters, while the underpopulated HD 114

lost 254 Black voters and *gained* an almost identical 7,681 white voters. *See id.* As a consequence of this manipulation, the Black VAP in HD 112 increased by 4.15 percentage points, while the Black VAP in HD 114 *decreased* by a similar amount, 3.67 percentage points. *See id.*

3. The Redrawing of HD 114 in S.B. 927 Reduced the Prospects of Black Candidates in that District from a Safe District to, at Best, a Toss-up

The result of these maneuvers is a weakened HD 114 for the Black incumbent. Dr. Collingwood performed a racial polarization analysis for the S.B. 927 HD 114, and concluded that Black voters in that proposed district would back the Black candidate at rates between 90 to 99%, while white voters supported the white candidate between 72 to 74% of the time. Collingwood Report at 14. This means that fewer white voters in the portion of the county included in S.B. 927's HD 114 would support Black candidates than in St. Clair County as a whole.

Dr. Collingwood also performed an analysis of voter turnout by race involving Black and white candidates in the HD 114 area. As he explains, if Black “turnout is lower than that of whites, and given that we know there is racially polarized voting in the district, Black share of the new district’s voters might put Black elected officials at risk.” *Id.* at 10. Using an ecological inference method to estimate voter turnout, the “results show a very consistent pattern of turnout differential by race. The pattern holds across election year and office.” *Id.* The smallest gap is Black turnout that is **10 percentage points lower** than white voters in the 2018 SD 57 contest. A larger gap of Black turnout that is **24 percentage points lower** than white voters occurred in the 2020 Board of Review election. *Id.*

Finally, Dr. Collingwood conducted an election performance analysis of HD 114 as drawn in S.B. 927, by using precinct returns from recent elections, concluding that the redrawn district “has trended from favoring Black Democratic candidates to a toss-up,” if not a “coin flip.” *Id.* at 18. Further, given that the trend is for a further reduction in the Black population over the next

decade, the increased racial polarization in the redrawn HD 114, and the turnout differential, “the likelihood that Black’s candidate of choice will win will further reduce over time.” *Id.*

4. Legislative Defendants Were Aware of the Need to Preserve the Black Community of Interest in the Metro East Region

The Democratic legislators and Legislative Defendants who drew the House Districts in S.B. 927 knew about the need to preserve the Black community of interest in HD 114 through at least three sources: the legislative record from the 2011 redistricting cycle; a memorandum circulated to Members of the House Redistricting Committee summarizing public testimony from the 2011 redistricting cycle; and from the record developed at the public hearing on redistricting for the Metro East area on April 19, 2021.

The 2011 Plan described in detail the East St. Louis area community of interest: “The socioeconomic makeup of proposed RD 114⁶ is mostly uniform, with a large portion of the population falling into the \$68,000 to \$99,000 median income bracket. East St. Louis generally falls into the lowest median income bracket, \$2,499 to \$44,000, and some of the fringes of Belleville and O’Fallon fall into the \$44,000 to \$68,000 bracket. This remains essentially unchanged from current RD 114. Generally labeled as the ‘Metro-East,’ this area of Illinois shares the identity of a culturally and socioeconomically diverse region with common economic challenges and a strong sense of succeeding or failing together.” Ex. 5 at 349.

On March 12, 2021, before the public hearings on the 2021 redistricting plans commenced, Jessica Basham, Chief of Staff in the Office of the Speaker of the Illinois House of Representatives, e-mailed Members of the House information about the hearing schedule. Ex. 10, DemDefs-0001358-59. Along with that schedule, Ms. Basham included a “memo from the 2011 redistricting process summarizing the findings of their hearings.” *Id.* The memo included a detailed summary

⁶ The General Assembly used the term “Representative District,” or “RD,” for each House District.

of testimony from the 2011 redistricting hearings describing the need to maintain a Metro East district providing Black voters with equal opportunities to elect their candidates of choice. Ex. 10, DemDefs-0001368-70. According to the summary, Alvin Parks, then-Mayor of East St. Louis, offered remarks explaining the importance of preserving the Metro East Black community of interest together:

Mayor Parks urged the committee to keep East St. Louis in one district and not split the city. Further, he stated that Centerville, Alorton, Washington Park, and other similar surrounding communities should be in the same district as East St. Louis so that minorities can have adequate representation. He also thought that it was important for the citizens of East St. Louis to have a representative who comes from East St. Louis, looks like the citizens, and has a similar background to those he/she represents.

Id. at DemDefs-0001368. Several other witnesses stated similar views. Stanley Franklin of the East St. Louis NAACP expressed his concern about “the dilution of minority votes” and the need for “a map that is inclusive and gives minorities a fair chance to participate.” *Id.* at DemDefs-0001369. Joseph Hubbard of Catholic Urban Programs “urged the committee to keep the underprivileged and poor in one district and to not make the district too diverse to drown out the poor.” *Id.* at DemDefs-001370.

During the Metro East redistricting hearing on April 19, 2021, Redistricting Committee Members heard from witnesses who echoed the requests made in 2011 that resulted in the existing House District 114. Robert Eastern, Mayor of East St. Louis, requested “special consideration in relationship to this redistricting in our area.” Ex. 1, 4/19/2021 Tr. at 23-24. President Franklin explained that the “law encourages law makers involved in this redistricting process to draw lines around communities instead of through communities.” *Id.* at 26. He further admonished the Committee to avoid an “attempt to gerrymandering Black votes”:

Perhaps the most constant form of gerrymandering in the United States has been racial gerrymandering, where districts are drawn to prevent the racial

minorities from getting representation. Racial gerrymandering isn't just a coincidental side effect on general gerrymandering, but it's an intentional attempt to suppress, if not the vote of racial minorities, then the impact of the vote. As you know, gerrymandering is the act of changing boundaries of districts and states to manipulate the voting demographics within the districts, thus helping a political party maintain the power there... [T]he NAACP call on legislators to formulate an equitable distribution plan ... Blacks and people of color who live in a particular area should get a fair chance to elect a person of their choice.

Id. at 27-28.

Samer Aldroubi elaborated by testifying that “Groups that have a common interest should not be watered down by spreading them between multiple districts.” *Id.* at 40. Senator Christopher Belt, Sub-Chair of the Southwestern Illinois Redistricting Committee, recognized the commonality of the Black community in the Metro East region, acknowledging that municipalities such as East St. Louis, Venice, and Centreville were “underserved communities” and “Centreville, East St. Louis and Brooklyn are three of the top ten poor cities in Illinois...” *Id.* at 50. Black residents make up more than 95 percent of the population of those communities.

5. The Legislative Defendants Knew that Voting Was Racially Polarized in the Metro East Area

There is strong evidence that Democratic legislators and Legislative Defendants were aware that racially polarized voting was present in the St. Clair County area and that the enacted maps would dilute the voting strength of Black voters there, but they chose to ignore it. Highly reasonable inferences may be drawn from three sources: (1) the explanation by Dr. Lichtman, the expert used by the Democrats, about how racially polarized voting is measured in his previous literature; (2) the election data Dr. Lichtman requested to evaluate the June Redistricting Plan, particularly election data from St. Clair County; and (3) Defendants' failure to disclose what Dr. Lichtman was “seeing” in his review of the data. At a minimum, the facts support a conclusion that Legislative Defendants deliberately ignored evidence of racially polarized voting in the Metro

East area.

During the last public hearing on May 25, 2021, Dr. Lichtman detailed at length his qualifications as “the voting rights redistricting advisor to the house and the senate.” Ex. 2, DemDefs-0001951 to -0001954. He emphasized his scholarship in “the application of statistical, quantitative and historical methods to voting rights analysis.” *Id.*, DemDefs-0001953. One such work of scholarship is the article Dr. Lichtman co-authored entitled “A General Theory of Vote Dilution.” Allan J. Lichtman & J. Gerald Hebert, *A General Theory of Vote Dilution*, 6 *La Raza L.J.* 1 (1993). In that article, Dr. Lichtman explains, “To ascertain whether a particular electoral arrangement is likely to produce discriminatory effects, ***decision-makers must take race into account in formulating redistricting plans.***” *Id.* at 4 (emphasis added). That includes an assessment of racially polarized voting. “Legally significant bloc voting consists of ‘a white bloc vote that normally will defeat the . . . combined strength of minority support plus white ‘crossover’ votes. . . .’” *Id.* at 9 (quoting *Gingles*, 478 U.S. at 56). In conducting this analysis, “[t]he dimensions of this white bloc vote depend on ***district-specific factors.***” *Id.* (emphasis added). “Examples of practices that potentially ‘dilute’ minority voting strength include submerging minority voters within white-dominated single or multi-member districts. . . .” *Id.* at 2.

A finding of vote dilution based on minority versus white contests cannot be refuted by showing that . . . minorities can successfully influence the choice of one white candidate over another white candidate. . . . Minorities are not full participants in the political process if they prefer to vote for minority candidates, but are limited to influencing the choice among white candidates.

Id. at 12-13. According to Dr. Lichtman, “*prima facie* violations of the Voting Rights Act” are established by “majority-minority districts in which minorities cannot realistically expect to elect candidates of their choice” and “majority white districts in which minorities cannot realistically expect to elect candidates of their choice.” *Id.* at 14-15.

To conduct the analysis necessary to evaluate the impact of a redistricting plan on Black

and other minority voters in each district, on March 5, 2021, Dr. Lichtman requested an extensive list of materials “needed from Illinois”:

Copies of State House, State Senate, and Congressional Maps, Priority for State Plans.

Demographic data for each district in each plan, broken down according to voting age population by race and citizen voting age population for Hispanics and Asians if available.

Incumbent in each district in each plan, with race identified.

Election returns for statewide, countywide, citywide, and legislative and congressional district elections in which minority candidates are running against white candidates. These returns should be at the precinct level.

Matched with the returns, precinct-level racial demography, broken down according to voting age population by race and citizen voting age population for Hispanics and Asians if available.

Ex. 11 at DemDefs-000155-59. Between March 12, 2021 and May 24, 2021, legal counsel in the Office of the Senate President delivered Dr. Lichtman the requested data. *See* Exs. 12, 13, and 14 at DemDefs-0001560 to -0001584, -0001590 to -0001592, -0001594 to -0001678. The data provided to Dr. Lichtman included precinct-level election returns for seven Black-White races in St. Clair County: the 2014 General Election County Board of Review; the 2016 General Election for County Circuit Clerk, and for County Board Districts 4, 9, 10 and 25; and the 2020 General Election for the County Board of Review, and one White-Hispanic race in St. Clair County, the 2014 General Election for County Treasurer. Ex. 12 at DemDefs-0001582-83.

It is thus more than a reasonable inference from the record that the Democratic legislators and Legislative Defendants knew of racial polarization in the Metro East area. Their consultant Dr. Lichtman had the benefit of reviewing much of the same election data from St. Clair County as did Dr. Collingwood – and could easily have accessed other data upon which Dr. Collingwood relied, specifically the recent elections in HD 114 and SD 57.

Further, it appears that Dr. Lichtman did in fact perform some sort of analysis. On May 12, 2021, Giovanni Randazzo, Senate Parliamentarian and Chief Legal Counsel in the office of the Senate President, e-mailed Dr. Lichtman asking, “Could we have a call on Thursday or Friday *to discuss what you are seeing?*” Ex. 15 at DemDefs-0001627 (emphasis added). Dr. Lichtman agreed to provide feedback on his analysis of the election data he was reviewing, which apparently completed his request except for “a couple of statewide elections I don’t have. There is the Obama 2012 and the Duckworth 2016 general elections.” *Id.* According to e-mail correspondence, Dr. Lichtman spoke to the Democratic members about his findings on May 13, 2021. *See* Ex. 16, DemDefs-0001636 to -0001641. Defendants have not disclosed what Dr. Lichtman was “seeing” in all of the election data he was provided. However, following that call, Dr. Lichtman failed to prepare a written expert report using the methods he described as “[t]he fundamental principles of the Voting Rights Act as explained in *Gingles*.” As explained above, district-specific analysis to determine whether a district is one “in which minorities cannot realistically expect to elect candidates of their choice” must be conducted as part of the evaluation of whether vote dilution is present in each district in a redistricting plan. Lichtman & Hebert, *supra*, at 3, 9, 15.

The Court may infer from Dr. Lichtman’s credentials in the field of statistical analysis, *see* Ex. 2 at DemDefs-0001951-54, that Dr. Lichtman had undertaken a district-specific analysis and the Democratic legislators and Legislative Defendants decided that it not be included in a report after learning what Dr. Lichtman was “seeing” when they spoke on May 13, 2021. Ex. 16 at DemDefs-0001636-41. The Court likewise may conclude that what Dr. Lichtman was “seeing” was the same strong evidence of racial polarization in the St. Clair County area that Dr. Collingwood had seen. The reduction in Black VAP in HD 114 caused by the deliberate movement of Black VAP into HD 113 to compensate for a corresponding movement of Black VAP from HD

113 into HD 112, buttresses the inference that Democratic legislators and Legislative Defendants deliberately chose to ignore the effects of their racial gerrymander. Based upon this strong circumstantial evidence, the Court may reasonably conclude that Democratic legislators knowingly moved Black voters into HD 112 in S.B. 927 so as to bolster the white incumbent in that district, and as a result knowingly cracked Black voters in HD 114 in violation of the Fourteenth Amendment and Section 2 of the Voting Rights Act.

III. PLAINTIFFS HAVE STANDING

Plaintiffs have associational standing. As the Court previously explained, “an association may have standing solely as the representative of its members.” *McConchie*, ECF No. 117 at 19 (quoting *Warth v. Seldin*, 422 U.S. 490, 511 (1975)).

To establish associational standing, an entity must satisfy the three following prongs: ‘(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.’

Id. (quoting *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)). Plaintiffs readily meet these three requirements.

Members of an association have standing to sue in their own right when they reside in a district that is alleged to be the product of a racial gerrymander. *See United States v. Hays*, 515 U.S. 737, 744-45 (1995). Courts in this District have taken differing views on whether the *Hays* requirement for standing applies to Section 2 vote dilution cases. *Compare Barnett v. City of Chi.*, No. 92-C-1693, 1996 WL 34432, at *4 (N.D. Ill. Jan. 29, 1996) (Section 2 standing established where “[p]laintiffs allege that many of their class members live in majority white wards which could be drawn into majority African American wards”), *with Comm. for a Fair and Balanced Map v. Ill. Bd. of Elections*, No. 1:11-cv-5065, 2011 WL 5185567, at *1 n.1 (N.D. Ill. Nov. 1,

2011) (Section 2 plaintiff “must show that he or she (1) is registered to vote and resides in the district where the discriminatory dilution occurred; and (2) is a member of the minority group whose voting strength was diluted”).

Under either approach, Plaintiffs have established that they have members who have standing in their own right to bring both the racial gerrymandering and Section 2 claims. Plaintiffs have submitted declarations averring that they have members living in the HD 114 as proposed by the State in its remedial plan, and probably in those parts of the old HD 114 that are now parts of the proposed HD 113. Even without that information, “it seems highly likely” that statewide organizations like the Illinois NAACP and UCCRO, and the HD 114-specific organization of East St. Louis NAACP have members living in the districts, so as to provide an undisputed basis for standing. *Ala. Legis. Black Caucus v. Ala.*, 575 U.S. 254, 270 (2015).

Plaintiff also have established that the interests they seek to protect are germane to their respective purposes. All three Plaintiffs are non-partisan organizations which encourage voter engagement, effective and educated voting, and participation by Black voters in the redistricting process. Stanley Franklin, who is President of the East St. Louis NAACP and Second Vice President of the Illinois State Conference of the NAACP, testified at the Metro East redistricting hearings in 2011 and 2021, encouraging the preservation of the Black community of interest. *See* Exs. 1 and 10. During the 2011 and 2021 redistricting cycles, UCCRO submitted Unity Map redistricting proposals and engaged in advocacy efforts throughout the state to preserve communities of interest, including the one in HD 114 and the East St. Louis area. Wilson Decl. ¶¶ 10.

Neither the claims asserted nor the requested relief requires the participation of Plaintiffs’ individual members. As this Court determined previously, the claims may be determined without

the need for individualized testimony or evidence from particular members. *McConchie*, ECF No. 117 at 23. That is particularly true in this case because the Plaintiff organizations “have sought declaratory and injunctive relief, neither of which requires the participation of their members.” *Id.* at 23-24. Therefore, Plaintiffs have established their standing.

IV. HOUSE DISTRICT 114 IS AN UNCONSTITUTIONAL RACIAL GERRYMANDER

“The Equal Protection Clause of the Fourteenth Amendment limits racial gerrymanders in legislative district plans.” *Cooper v. Harris*, 137 S. Ct. 1455, 1463 (2017). Racial gerrymandering claims proceed “district-by-district.” *Ala. Legis. Black Caucus*, 575 U.S. at 262; *Bethune-Hill v. Va. Bd. of Elections*, 137 S. Ct. 788, 800 (2017) (“*Bethune-Hill I*”) (“[T]he basic unit of analysis for racial gerrymandering claims in general, and for the racial predominance inquiry in particular, is the district.”). Specifically, the “Equal Protection Clause prohibits a State, without sufficient justification, from ‘separating its citizens into different voting districts on the basis of race.’” *Id.* at 797 (quoting *Miller v. Johnson*, 515 U.S. 900, 901 (1995)). The touchstone is whether “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district,” such that the legislature subordinated traditional race-neutral districting principles . . . to racial considerations.” *Miller*, 515 U.S. at 916.

Here, as described above, S.B. 927 violates traditional districting principles, notably by failing to maintain communities of interest. *See Evenwel v. Abbott*, 136 S. Ct. 1120, 1124 (listing “maintaining communities of interest” as among “traditional districting objectives.”); *see also* Ex. 6, DemDefs-0000116 (Democratic legislators and Legislative Defendants listed as one of their “Guiding Principles” the need for “the preservation of communities of interest”). But, even were that not the case, S.B. 927 would constitute an unconstitutional racial gerrymander.

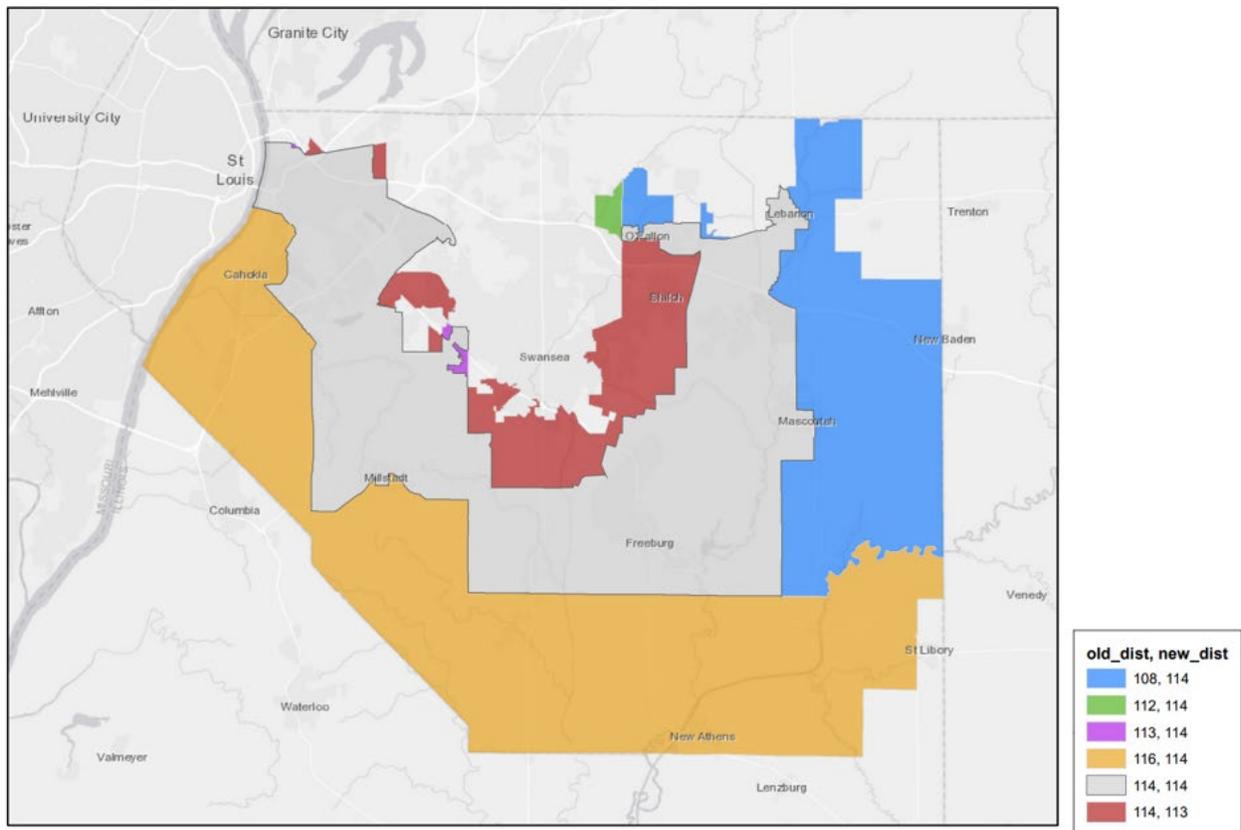
Racial gerrymandering claims are not limited to districts with bizarre shapes that widely

depart from traditional redistricting criteria, such as the districting plan challenged in *Shaw v. Reno*. See 509 U.S. 630, 646-47 (1993) (liability may be established for a district so highly irregular on its face it cannot be rationally understood as anything but an effort to separate voters based on race). Instead, there is no need to show “an actual conflict between the enacted plan and traditional redistricting principles.” *Bethune-Hill I*, 137 S. Ct. at 797-98. Plaintiffs may meet their burden through the use of “more direct evidence going to legislative purpose that [indicates] race was the predominant factor.” *Miller*, 515 U.S. at 916. “Race may predominate even when a reapportionment plan respects traditional principles . . . if ‘race was the criterion that, in the State’s view, could not be compromised,’ and race-neutral considerations [in those traditional principles] ‘came into play only after the race-based decision had been made.’” *Bethune-Hill I*, 137 S. Ct. at 798 (quoting *Shaw v. Hunt*, 517 U.S. 899, 907 (1996)).

In this case, the Democratic legislators and Legislative Defendants were well aware that HD 114 was the only district in the Metro East area of Illinois or even in Southern Illinois that elected a Black state Representative. Since first electing a Black state Representative in 1975, the legislature had taken pains to preserve the Black voters in East St. Louis and surrounding municipalities as a community of interest. Preservation of “a downstate African American region” in HD 114 was based on the historical ties of that community (*see* Tolson Report at 23) and because the “socioeconomic makeup” of the area “is mostly uniform,” encompassing communities like East St. Louis that “generally fall into the lowest median income bracket.” Ex. 5, House Resolution 385 at 349. In 2021, the House Redistricting Committee considered testimony from the 2011 redistricting hearings described the Metro East community of interest and its ties to the lengthy struggle of Black voters in the region to secure representation. Ex. 10 at DemDefs-0001358 to -0001370. They heard similar testimony in the only hearing held in the Metro East area to discuss

the 2021 redistricting plans. *See* Ex. 1, 4/19/2021 Tr. at 24-28. Southwestern Illinois Redistricting Committee Sub-Chair Christopher Belt recognized the regional community of interest that included “underserved communities” of Black residents. *Id.* at 50.

Population movements are the clearest evidence of the manner in which race predominated in how the Legislative Defendants drew HD 114. Under the 2011 Plan, according to the 2020 Census, HD 114 was underpopulated by over 10,000 people. Rather than simply adding population to the District to comply with equal population requirements, in order to bolster the prospects of the white incumbent in HD 112, the Democratic legislators and Legislative Defendants chose a different path.



These race-based population movements are apparent just from the numbers. S.B. 927 moved 4,182 Black VAP from HD 113 into HD 112 to make it a safer seat for the white Democratic

incumbent. At the same time, S.B. 927 moved 5,252 Black VAP from HD 114 to HD 113 to make up for the Black voters moved to HD 112 and allow it to remain a safe seat for the white Democratic incumbent. But when it came to HD 114, S.B. 927 moved approximately almost 30,000 VAP to HD 114, of whom less than one-fifth – well under 5,000 – were Black VAP. Weichelt Report at Ex. 3c.

“The ultimate object” of the racial gerrymandering inquiry “is the legislature’s predominant motive for the design of the district as a whole.” *Bethune-Hill I*, 137 S. Ct. at 800. In other words, this inquiry rests on whether the legislature placed “race ‘above traditional district considerations in determining *which* persons were placed *in appropriately apportioned districts.*” *Ala. Legis. Black Caucus*, 575 U.S. at 273 (citation omitted). The Supreme Court gave this highly relevant example:

In other words, if the legislature must place 1,000 or so additional voters in a particular district in order to achieve an equal population goal, the “predominance” question concerns *which voters the legislature decides to choose*, and specifically whether the legislature predominately uses race as opposed to other, “traditional” factors when doing so.

Id. (emphasis added). Here, the Democratic legislators and Legislative Defendants went further. Through a domino effect, they moved Black voters into an overpopulated district (HD 112) and out of an underpopulated district (HD 114). Using the “holistic analysis” of HD 114 and the pass-through scheme, with the “stark splits in the racial composition of populations moved into and out of disparate parts of the district,” the predominance of race in the scheme is readily obvious. *Bethune-Hill I*, 137 S. Ct. at 800.

It appears that Defendants intend to argue that the Democratic legislators and Legislative Defendants’ decisions of how to draw HD 114 resulted from purely political considerations to enhance the political performance of Democratic incumbents in districts in and near the Metro

East area. To support that contention, Defendants have pointed to the demographic tables that include a column labelled “D Index,” referring to the extent to which the identified district in S.B. 927 was expected to perform for Democratic candidates. As a corollary to that argument, it seems that Legislative Defendants maintain that any awareness of race the Democratic legislators may have had in drawing HD 114 in S.B. 927 was incidental to their primary goal of making districts in the region safer for their Democratic incumbents.

Compelling circumstantial evidence belies the contention that the Democratic legislators and Legislative Defendants made racial considerations, including those affecting HD 114, anything but a top priority. The press release issued by the Democratic legislators with the June Redistricting Plan emphasized “guiding principles” including to “ensure the broad racial and geographic diversity of Illinois is reflected in the General Assembly” and maintaining the state as a “model for the nation in terms of minority representation.” Ex. 6 at DemDefs-00001116. A document titled “Some House District Highlights” touted efforts such as combining “[t]wo historically Black Evanston wards ... into one House district.” *Id.* at DemDefs-00001117. Total population and CVAP of Black, Hispanic and Asian voters were the only demographic data included in many of the tables produced for the June Redistricting Plan and the S.B. 927 Plan. *See* Ex. 7 at DemDefs-00001118-21, Ex. 17 at DemDefs-0001902-04. The Democratic legislators and Legislative Defendants were keenly aware of the racial breakdown of the existing and proposed House Districts. For example, one of their internal documents was titled, in part, “2011 Plan Compared to Enacted 2021 Plan, Minority District Percentages.” Ex. 8 at DemDefs-00001123-24. The Democratic Members’ expert, Dr. Lichtman, examined election and Census data including analysis that “looks at the voting strength of minorities, showing that African Americans predominate in CVAP and voter percentage.” Ex. 9 at DemDefs-00001129.

Moreover, the Supreme Court has rejected a similar argument in a case with much stronger evidence of partisan (and supposedly not racial) motivations. In *North Carolina v. Covington*, the state contended that “there is no dispute that the General Assembly did *not* consider race *at all* when designing the 2017 [remedial plans] – not as a predominant motive, a secondary motive, or otherwise,” and that such ‘undisputed fact should have been the end of the plaintiffs’ racial gerrymandering challenges.’” 138 S. Ct. 2548, 2553 (2018) (*per curiam*) (quotation omitted). The Court concluded that the state’s argument, even if true, was not controlling. Instead, the district court had engaged in “detailed, district-by-district factfinding” of four of the state’s proposed remedial districts and “turned up sufficient circumstantial evidence that race was the predominant factor governing the shape of those . . . districts.” *Id.* The *Covington* Court explained, “[t]he defendants’ insistence that the . . . legislature did not look at racial data in drawing . . . districts does little to undermine the District Court’s conclusion – based on evidence concerning the shape and demographics of those districts – that the districts unconstitutionally sort voters on the basis of race.” *Id.* The same reasoning applies here. Defendants cannot offer evidence that changes the conclusion that the domino effect of moving Black voters into HD 112 and moving Black voters out of HD 114 unconstitutionally sorted those voters based on their race. *Cooper v. Harris*, 137 S. Ct. 1455, 1464 n.1, 1473 n.7 (2017) (Plaintiff succeeds on racial gerrymander claim even if legislature elevated race to predominant criterion in order to advance political goals).

Because Plaintiffs have succeeded in showing racial predominance in how population was moved into and out of HD 114, *Ala. Legis. Black Caucus*, 575 U.S. at 273, the “burden shifts to the State to ‘demonstrate that its redistricting legislation is narrowly tailored to achieve a compelling interest.’” *Bethune-Hill I*, 137 S. Ct. at 800-01 (quoting *Miller*, 515 U.S. at 920). Defendants cannot meet their burden. This is not a case in which the Defendants can use

compliance with the Voting Rights Act to justify the Democratic legislators’ and Legislative Defendants’ race-based decision to remove a core part of Black voters from HD 114. The opposite is true here because the cracking of that cohesive community of Black voters diluted their vote in violation of Section 2 of the Act. The absence of evidence showing that the Redistricting Committee had “‘*good reasons to believe*’ it must use race in order to satisfy the Voting Rights Act” by fracturing the Black voters in HD 114, necessarily precludes them from meeting the narrow tailoring requirement. *Bethune-Hill I*, 137 S. Ct. at 801.

By cracking the geographically compact and politically cohesive Black community of interest in the East St. Louis area, the redistricting of House Districts 112, 113 and 114 is a racial gerrymander, enacted for the purpose of electing and protecting white Democratic incumbents in House Districts 112 and 113 at the expense of the Black voters’ opportunities to elect their candidate of choice in House District 114. S.B. 927 therefore is an unconstitutional racial gerrymander in violation of the Fourteenth Amendment to the Constitution.

V. S.B. 927 VIOLATES SECTION 2 OF THE VOTING RIGHTS ACT

Section 2 of the Voting Rights Act provides that:

[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State . . . in a manner which *results* in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . . as provided in subsection (b) of this section.

42 U.S.C. § 1973(a) (emphasis added).

Subsection (b) provides that a violation of subsection (a)

is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State . . . are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

42 U.S.C. § 1973(b). As per the 1982 amendments to the Voting Rights Act, intent is not an

element of a “results” claim under the VRA. *See Ketchum v. Byrne*, 740 F.2d 1398, 1403 (7th Cir.1984).

“Vote dilution” claims are actionable results claims under the VRA. *See Gingles*, 478 U.S. at 30. To prove a vote dilution claim, the plaintiff need, first, meet three preconditions: (1) that the minority population comprises a sufficiently large group that is sufficiently geographically compact to constitute a majority in the challenged district; (2) that the minority group is “politically cohesive,” in that members of the group vote similarly; and (3) that the white majority votes as a bloc, allowing it to usually defeat the minority group’s candidates of choice. *Id.* at 48-51. Preconditions (2) and (3) taken together are commonly referred to as proof of “racially polarized voting.” Once these preconditions are met, the plaintiff succeeds on the claim by proving that the totality of the circumstances demonstrates that the challenged election practice – here the dilution of Black votes in HD 114 – “interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives.” *Id.* at 47.

In vote dilution cases, the totality of the circumstances is typically proved by reference to the non-exclusive factors set forth in the Senate Report that accompanied the 1982 amendments to the VRA. *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2337 (2021). These jurisdiction-specific factors are (1) the history of official discrimination in voting; (2) the extent of racially polarized voting; (3) the use of voting practices that enhanced discrimination against the minority group; (4) whether minority group members have been denied access to any candidate slating process; (5) the extent to which minority group members bear the effects of socio-economic discrimination that hinder their ability to participate effectively in the political process; (6) whether racial appeals, overt or subtle, have been used in political campaigns; (7) whether members of the

minority group have been elected to public office. Additional factors are whether elected officials have been responsive to the particularized needs of the minority group; and whether the justification for the challenged voting practice is tenuous. S. Rep., at 28-29, U.S. Code Cong. & Admin. News 1982, 206-207.

A. Proof of the *Gingles* Preconditions

Plaintiffs easily meet the *Gingles* Preconditions.

1. A Reasonably Compact Majority-Black District Can Be Created

As set forth in the accompanying report of Professor Weichelt, a district can be created in the East St. Louis area that has a Black VAP of 51.51%, a white VAP of 42.16%, and a Hispanic VAP of 2.49%. It meets one-person/one-vote standards with a total population deviation of +.34%. Weichelt Report at 19.

This district is compact and maintains communities of interest by taking advantage of the immediate growth to the east and by off-setting population declines in the west. Specifically, it keeps the largely majority Black communities of East St. Louis, Cahokia, and Centerville intact. Unlike S.B. 927, this plan fully incorporates Washington Park and includes much of the City of Madison, and much of the City of Belleville, which has witnessed population growth, particularly in the Black population.

2. Voting Is Racially Polarized in the Jurisdiction

As set forth in the accompanying report of Dr. Collingwood, voting is racially polarized in the East St. Louis area encompassing HD 114, in that Black voters usually vote for one set of candidates and white voters for another. Indeed, Defendants concede in their Answer that Black voters vote cohesively, Answer at ¶ 12, as does their consultant Dr. Lichtman. *See generally* Ex. 2 at DemDefs-0001955 (the Democratic legislators' expert, Dr. Lichtman, admitted "there is no question about overwhelming minority cohesion" in Illinois.). Dr. Collingwood analyzed 2

endogenous elections (i.e., elections dealing with the specific political subdivision, HD 114) and 5 exogenous elections (i.e., elections dealing with a jurisdiction – St. Clair County or SD 57 – that encompassed, but was not limited to, HD 114) spanning over a six-year period from 2014 to 2020. Each of the elections pitted a Black candidate against a white candidate. Using two accepted techniques of racial polarization analysis – the ecological inference and the homogenous analyses, Dr. Collingwood found that voting was racially polarized in each of the elections.

In each of the elections, between 85% and 99% of Black voters voted for Black candidates, and between 61 and 73% of white voters voted for White candidates under the ecological inference analysis and at approximately the same levels under the homogenous analysis. This, Dr. Collingwood concluded, provides “strong evidence” of racial polarization.

There is, of course, another element of proof: does the white voting bloc prevent Black voters from electing candidates of their preference? Here, that analysis must be prospective, because it is the change from district lines that had been allowing Black candidates to win election in HD 114 for decades that are at issue. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 427 (2006) (finding *Gingles*’ third precondition based on facts that “the projected results” in the new plan “will often, if not always, prevent Latinos from electing the candidate of their choice”). The proofs are clear that the threat is not hypothetical, it is real.

As Professor Weichelt explains in his report, the State’s proposed district would extend its boundaries, not towards the central areas of the Metro East region, which witnessed increases in Black population, but would add largely white and rural populations to the south and east. These mapping decisions decreased the Black VAP from 37.55% to under 34%, using the 2020 Census figures. Weichelt Report at Ex. 3c. As Dr. Collingwood explains, this drastic decrease in Black population, exacerbated by the highly racially polarized voting in the area and the decidedly lower

turnout among Black voters than white voters will change this district from a district where Black candidates had been consistently elected candidates to, at best, a toss-up, with bleaker prospects in the future as Black population continues to decline. Dr. Collingwood concludes that the proposed district from which Black candidates have been elected since the 1970s is likely to become “a toss-up,” if not a “coin flip.” Further, “the likelihood that Black’s candidates of choice will win will further reduce over time.” Collingwood Report at 18.

B. Proof of the Totality of the Circumstances

There is ample proof that the proposed change in the boundaries of HD 114 will interact with historical conditions in the area so as to diminish the opportunity of Plaintiffs’ members to participate fully in the political process in East St. Louis.

Senate Factor 1: As Professor Tolson recites, there is an unfortunate history of discrimination in voting in East St. Louis stretching back to post-Reconstruction through the latter quarter of the twentieth century. Tolson Report at 4-6, 17-24.

Senate Factor 2: As discussed at length above, Dr. Collingwood has found strong evidence of racially polarized voting in HD 114. Collingwood Report at 6.

Senate Factor 5: There is substantial evidence of socio-economic factors that hinder the ability of Black voters to participate in the political process.⁷ As Professor Weichelt explains, there is a wide, and across-the-board disparity between Black and white populations in the East St. Louis area under virtually every metric. Weichelt Report at 11. Those in the Black community are approximately half as likely as those in the white community to have graduated from high school or from college. Unemployment is more than 50% higher for Black residents as for white (6.7%

⁷ There is no requirement of demonstrating that these disparities actually result in lower voter turnout. *See Veasey v. Abbott*, 830 F.3d 216, 258-260 (5th Cir. 2016) (en banc). Dr. Collingwood has, nevertheless, identified turnout gaps between white voters and Black voters from a low of 10 percentage points to a high of 24 percentage points. Collingwood Report at 10.

to 4.1%). Median Household Income is more than twice as high for white residents than for Black, was household income for Black residents at \$31,261. Thirty percent of Black residents live below the poverty level, three and a half times the level for white residents. *Id.*

Senate Factor 7: Although HD 114 has elected a Black member of the State House since the 1970s, that representative is the only Black member of the State House in Southern Illinois.

Additional Factors: It is significant that the explanations given by the Democratic legislators and Legislative Defendants for the way HD 114 was drawn are completely unbelievable, demonstrating the Senate factor that those reasons are tenuous. Those involved in the map-drawing process, including the expert consultant Allan Lichtman, repeatedly denied that race was a factor in the way HD 114 was drawn. However, they cannot deny that Dr. Lichtman specifically asked for precinct-level racial demographic and election information and he received such data for Black-white elections in St. Clair County. Rather, the Defendants' witnesses repeatedly take a "See no evil" stance. What they cannot explain is what Dr. Lichtman told them when he was specifically asked for his observations on the racial information. Nor can they justify why they removed thousands of Black voters from an already under-populated HD 114, and why they added them to already sufficiently populated HD 112 and HD 113. Nor can they explain why they did all of this when they had previously acknowledged the need to maintain the Black communities of interest in Metro East.

The totality of the circumstance's points in one direction: the proposed mapping of HD 114 in S.B. 927 unlawfully diluted the votes of Black voters in violation of Section 2 of the Voting Rights Act.

VI. PROPOSED REMEDIAL DISTRICTS

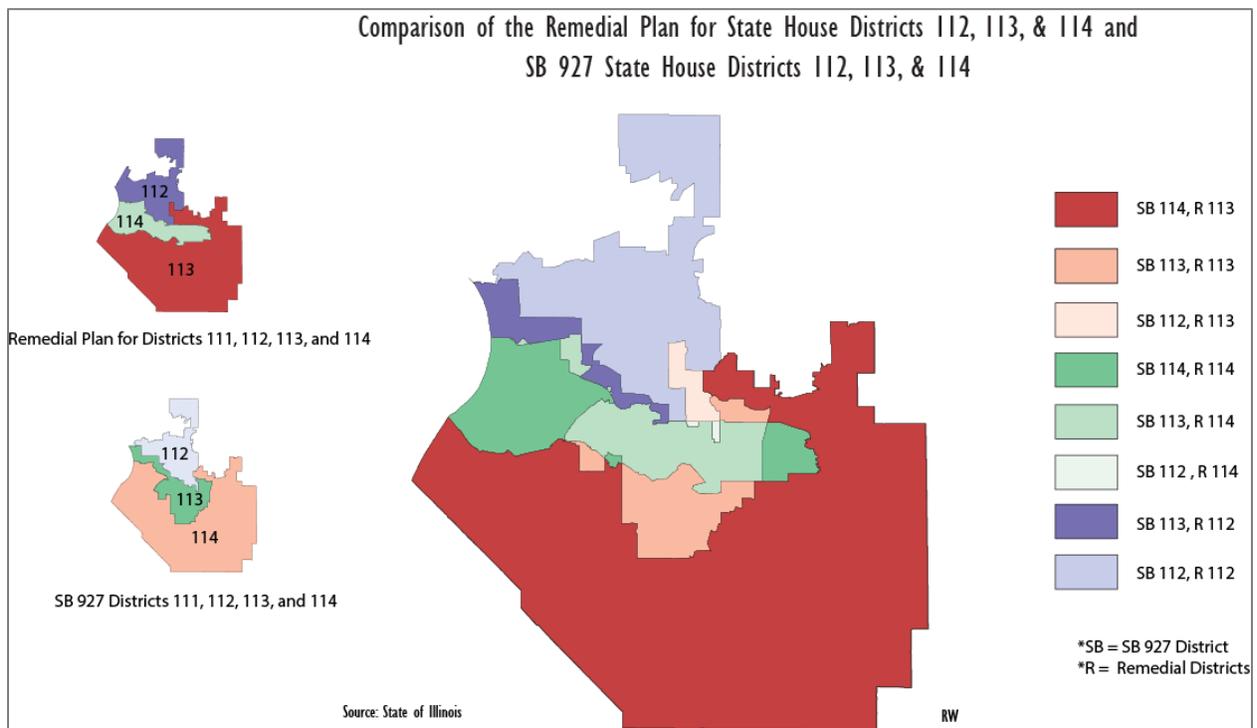
A federal court tasked with drawing a redistricting plan faces an “unwelcome obligation.” *Perry v. Perez*, 565 U.S. 388, 392 (2012) (quoting *Connor v. Finch*, 431 U.S. 407, 415 (1977)). Redistricting is “primarily the duty and responsibility of the State,” *Chapman v. Meier*, 420 U.S. 1, 27 (1975), with conflicting interests that are to be balanced in the plan better suited to the legislative process. *See generally White v. Weiser*, 412 U.S. 783, 794-95 (1973) (“From the beginning, we have recognized that ‘reapportionment is primarily a matter for legislative consideration and determination’”). In addressing this “unwelcome obligation,” the Court’s role is a narrow one. Its modifications to the challenged plan are “limited to those necessary to cure any constitutional or statutory defect.” *Upham v. Seamon*, 456 U.S. 37, 43 (1982). In the case *sub judice*, modifications to the redistricting plan in S.B. 927 are necessary to cure the racial gerrymander and violation of Section 2 of the Voting Rights Act present in HD 114. Once these constitutional and statutory defects are corrected, the Court’s role in Illinois’s redistricting process is “at an end.” *Covington*, 138 S. Ct. at 2555.

The scope of the Court’s consideration and adoption of a remedial plan is narrowed further by the constraints of federalism. Where, as is the case here, a constitutional or statutory violation is established as to a particular district in a legislative plan, the Court’s remedy is limited. The Court may not redraw the entire redistricting plan. Rather, with respect to those districts in the plan that are unaffected by the violation of federal law, “a court must defer to the legislative judgments the plans reflect, even under circumstances in which a court order is required to effect an interim legislative apportionment plan.” *Upham*, 456 U.S. at 40-41 (finding that the district court exceeded its remedial authority by ordering changes to districts in other parts of the state where no violation had been shown). As a result, “to best balance the need to remedy” the racial gerrymander and the Section 2 violation “with the deference otherwise due” to Illinois’s

redistricting choices, the Court’s “chosen remedial plan should not alter any districts outside of [HD 114] and those abutting it, but may make substantial changes to those districts” *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 563 (E.D. Va. 2016); *see also Bethune-Hill v. Virginia Bd. of Elections*, 368 F. Supp. 3d 872, 878 (E.D. Va. 2019) (“*Bethune-Hill II*”) (“In choosing a remedial plan, we endeavor to minimize the number of districts affected by our revisions, recognizing that districts immediately adjacent to the invalidated districts may be subject to significant changes.”).

In reviewing a proposed remedial plan, the Court is further guided by several principles. First, the Equal Protection Clause of the Fourteenth Amendment requires that the remedial districts be substantially equal in population. *Reynolds v. Sims*, 377 U.S. 533, 579 (1964). That mandate is reflected in the Illinois Constitution. *See* Ill. Const. art. IV § 3(a) (“Representative Districts shall be compact, contiguous, and substantially equal in population.”). “Court-ordered districts are held to higher standards of population equality than legislative ones.” *Abrams v. Johnson*, 521 U.S. 74, 98 (1997). Second, the Court must remedy the *Shaw* violation present in HD 114 under the S.B. 927 Plan, such that the redrawn district (and the adjoining districts) do not subordinate traditional districting principles to race absent a demonstrated compelling government interest and a narrowly tailored approach to achieve that interest. *See, e.g., Bethune-Hill I*, 137 S. Ct. at 798; *Miller*, 515 U.S. at 916. Third, the remedial districts “should be guided by the legislative policies underlying the existing plan, to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act.” *Abrams*, 521 U.S. at 79. Fourth, the Court must ensure that the violation of Section 2 of the Voting Rights Act is remedied. *See generally id.* at 90 (“On its face, § 2 does not apply to a court-ordered remedial redistricting plan, but we will assume courts should comply with the section when exercising their equitable powers to redistrict.”).

Plaintiffs have provided the Court with a proposed remedial plan that meets all of these requirements. As an initial matter, the remedial plan is limited in scope to just three of the Illinois’s 118 single-member districts in its House redistricting plan. *See* Ill. Const. art. IV § 1. It remedies the constitutional and statutory violations in HD 114, which also requires some population changes to two adjoining House Districts, HD 112 and HD 113, which were the products of those violations. Weichelt Report at 21. Those changes are within the Court’s remedial powers. *See Personhuballah*, 155 F. Supp. 3d at 563.



Weichelt Report, Exhibit 4d.

The three remedial districts achieve substantial equality in population to the target ideal population of 108,581 persons for each House District (obtained by taking the total population for Illinois reported in the 2020 Census, 12,812,508, and dividing that total population by 118, the number of House Districts). House District 114 in the remedial plan has a deviation of +218 people (or +0.20%) from the target, which is virtually the same deviation under S.B. 927's plan in which HD 114 has a deviation of -211 people (or -0.19%) from the target. The deviation of HD 113 improves under the remedial plan with a deviation of -69 people (or -0.06%) from the target, compared to -90 people (or -0.08%) under the S.B. 927 Plan. HD 112 in the remedial plan shows the biggest deviation, but it is only -432 people (-0.40%) from the target, compared to +4 people (0.00%) from the target under the S.B. 927 Plan. These very small deviations are well within the range of what will allow Illinois's State House redistricting map to maintain a total deviation under 10 percent, which is presumptively constitutional. *See Brown v. Thompson*, 462 U.S. 835, 842 (1983) ("Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations."). The remedial plan's adherence to constitutional equal population requirements likewise complies with the more stringent standard applied to court-drawn plans. *See Abrams*, 521 U.S. at 98.

Next, the proposed districts remedy the unconstitutional racial gerrymander and dilution of the Black vote in violation of Section 2 of the Voting Rights Act. Plaintiffs' plan "creates a remedial option that restores HD 114 as an effective district for Black voters to elect their candidates of choice," without subordinating traditional redistricting criteria to racial considerations. Weichelt Report at 20. In particular, the remedial plan cures the cracking of the Black Metro East community that is a principal source of both the constitutional and statutory violations. "Remedial District 114 keeps the Black Metro East community centered around East

St. Louis,” avoiding the split of Washington Park that occurs in the S.B. 927 Plan’s boundaries for HD 114. *Id.* The extremely modest changes made to the three House Districts (HD 114, 113 and 112) cure the racial gerrymander and dilution of the Black vote without dramatically altering the district lines. The proposed remedy keeps the community of interest that is at the core of HD 114 together, without the need to make the District majority-Black. As Table 3 in Professor Weichelt’s report shows, the Black VAP of the remedial HD 114 would be 49.45 percent, which is sufficient to continue to afford Black voters in that District equal opportunities to elect their candidate of choice. *Id.* at 21.

Finally, Plaintiffs’ proposed remedial districts respect traditional redistricting principles and the non-racial goals that guided the legislature in the Metro East area districts. Illinois law requires that districts be compact and contiguous. *See* Ill. Const. art. IV § 3(a). Furthermore, S.B. 927 identified additional redistricting criteria to be balanced in drawing the House Districts, including “preservation of the core or boundaries of the existing districts; the preservation of communities of interest; respect for county, township, municipal, ward, and other political subdivision boundaries; [and] the maintenance of incumbent-constituent relationships...” among other principles. Ill. Pub. Act. No. 102-0663 § 5(f). The legislature also stated its legislative priority for HD 114 was to include Scott Air Force Base within its boundaries (*see* Weichelt Report at 18), as it had under the 2011 Plan. *See* Ex. 5, House Resolution 385 at 347. Remedial plan HD 114 achieves each of these criteria.

Regardless of the measure used, the proposed remedial HD 114 is a slightly more compact district than HD 114 under the S.B. 927 Plan. Weichelt Report at 20. HD 114 is contiguous because all of its boundaries are connected in a seamless manner and does not resort to any of the practices that would raise concern, such as point contiguity or what has been referred to as “double-

crossover” contiguity. The remedial HD 114 improves on the preservation of the existing district and the Black Metro East community of interest, which is cracked under the S.B. 927 Plan. It respects municipal boundaries including the entirety of Washington Park, which is split in S.B. 927. Remedial HD 114 also achieves the legislature’s goal to maintain Scott Air Force Base within the District. As Professor Weichelt describes it, “Remedial District 114 keeps the Black Metro East community centered around East St. Louis and extends East through urban and suburban areas towards Scott Air Force Base.” Weichelt Report at 20. The remedial plan only splits portions of Belleville, “but attempts to minimize disrupting any further communities of interest throughout the area.” *Id.* “Areas of Belleville not included in Remedial 114 were added to Remedial District 113, and the areas of 113 that are to the north of Shiloh minimize splitting municipalities. Remedial 112 holds similar boundaries to the North and West as compared to S.B. 927, with changes in the southern area that added some areas equivalent to S.B. 927’s District 113. District 111 was not changed under either plan.” *Id.*

To summarize, Plaintiffs’ remedial districts remedy the constitutional and Section 2 violations by drawing House Districts 114, 113 and 112 based on race-neutral, traditional redistricting criteria. The remedial districts remain faithful to the legislature’s non-racial priorities for the Metro East region, including maintaining Scott Air Force Base in HD 114, preserving communities of interest, and minimizing the splitting of municipalities. Accordingly, Plaintiffs respectfully submit their remedial districts for the Court’s consideration to cure the constitutional and statutory defects under the existing S.B. 927 Plan for the Metro East area House Districts.

VII. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court reject S.B. 927, insofar as it proposes a remedial plan for HD 112, 113, and 114, on the basis that it constitutes an unconstitutional racial gerrymander as to all three districts and a violation of Section 2 of the Voting Rights Act as to HD 114; permanently enjoin Defendants from implementing S.B. 927, insofar as it affects the boundaries of HD 112, 113 and 114; and issue an order adopting the remedial plans offered by Plaintiffs for the boundaries of HD 112, 113, and 114, as the redistricting plans for those districts pursuant to the 2020 Census.

Dated: November 15, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on November 15, 2021, a copy of the above Plaintiffs' Brief in Compliance with Court Order Directing Parties to Respond to Defendants' Remedial House Legislative Map and in Support of Plaintiffs' Remedial Maps was filed electronically in compliance with Local Rule 5.9. All other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing.

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