

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

JULIE CONTRERAS, <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 1:21-cv-3139
)	
v.)	Circuit Judge Michael B. Brennan
)	Chief District Judge Jon E. DeGuilio
ILLINOIS STATE BOARD OF ELECTIONS, <i>et al.</i> ,)	District Judge Robert M. Dow, Jr.
)	
)	Three-Judge Court
Defendants.)	Pursuant to 28 U.S.C. § 2284(a)
)	

**DEFENDANTS ILLINOIS STATE BOARD OF ELECTIONS AND ITS MEMBERS’
RESPONSE TO PLAINTIFFS’ STATEMENT OF MATERIAL FACTS**

Defendants, the Illinois State Board of Elections (the “Board”), 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’ Statement of Material Facts state:

The Parties

1. Plaintiff Julie Contreras is a registered voter of Latina heritage residing within Representative District 60 under the Enacted Plans. Exhibit B.

RESPONSE: Undisputed.

2. Plaintiff Irvin Fuentes is a registered voter of Latino heritage residing within Representative District 1 under the enacted plans. Exhibit B.

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).

RESPONSE: Undisputed.

3. Plaintiff Abraham Martinez is a registered voter of Latino heritage residing within Representative District 86 under the Enacted Plans. Exhibit B.

RESPONSE: Undisputed.

4. Plaintiff Irene Padilla is a registered voter of Latina heritage residing within Representative District 6 under the Enacted Plans. Exhibit B.

RESPONSE: Undisputed.

5. Plaintiff Rose Torres is a registered voter of Latina heritage residing within Representative District 6 under the Enacted Plans. Exhibit B.

RESPONSE: Undisputed.

6. Defendant Illinois State Board of Election (“the Board”) supervises the administration of registration and election laws throughout Illinois under Article III, Section 5 of the Illinois Constitution and 10 ILCS 5/1A-1, *et seq.*, ensuring that elections in Illinois are conducted in accordance with all applicable laws. The Board will supervise the administration of the 2022 general election for the Illinois Senate and Illinois House of Representatives.

RESPONSE: Undisputed.

7. Defendant Charles W. Scholz is the Chair of the Illinois State Board of Elections and is sued in his official capacity. In this capacity, Mr. Scholz supervises the administration of registration and election laws throughout Illinois. Mr. Scholz will supervise the administration of the 2022 general election.

RESPONSE: Disputed. Charles W. Scholz was replaced on the Illinois State Board of Elections by Rick S. Terven, Sr. on July 1, 2021.²

² <https://www.elections.il.gov/AboutTheBoard/MemTerven.aspx?T=637667852595149779>

8. Defendant Ian K. Linnabary is the Vice Chair of the Illinois State Board of Elections and is sued in his official capacity. In this capacity, Mr. Linnabary supervises the administration of registration and election laws throughout Illinois. Mr. Linnabary will supervise the administration of the 2022 general election.

RESPONSE: Disputed. Mr. Linnabary is now the Chair of the Illinois State Board of Elections.³

9. Defendant William J. Cadigan is a member of the Illinois State Board of Elections and is sued in his official capacity. In this capacity, Mr. Cadigan supervises the administration of registration and election laws throughout Illinois. Mr. Cadigan will supervise the administration of the 2022 general election.

REPSONSE: Undisputed.

10. Defendant Laura K. Donahue is a member of the Illinois State Board of Elections and is sued in her official capacity. In this capacity, Ms. Donahue supervises the administration of registration and election laws throughout Illinois. Ms. Donahue will supervise the administration of the 2022 general election.

RESPONSE: Undisputed.

11. Defendant William R. Haine is a member of the Illinois State Board of Elections and is sued in his official capacity. In this capacity, Mr. Haine supervises the administration of registration and election laws throughout Illinois. Mr. Haine will supervise the administration of the 2022 general election.

RESPONSE: Disputed. Mr. Haine passed away on August 16, 2021.⁴ Mr. Haine's position on the Illinois State Board of Election has not been filled at this time.

³ <https://www.elections.il.gov/AboutTheBoard/MemLinnabary.aspx?T=637668758395401447>.

⁴ <https://www.thetelegraph.com/news/article/Senator-William-Haine-dead-16390775.php>.

12. Defendant William M. McGuffage is a member of the Illinois State Board of Elections and is sued in his official capacity. In this capacity, Mr. McGuffage supervises the administration of registration and election laws throughout Illinois. Mr. McGuffage will supervise the administration of the 2022 general election.

RESPONSE: Undisputed.

13. Defendant Katherine S. O'Brien is a member of the Illinois State Board of Elections and is sued in her official capacity. In this capacity, Ms. O'Brien supervises the administration of registration and election laws throughout Illinois. Ms. O'Brien will supervise the administration of the 2022 general election.

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

14. Defendant Casandra B. Watson is a member of the Illinois State Board of Elections and is sued in her official capacity. In this capacity, Ms. Watson supervises the administration of registration and election laws throughout Illinois. Ms. Watson will supervise the administration of the 2022 general election.

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

15. Defendant Don Harmon is a member of the General Assembly and is sued in his official capacity as President of the Illinois Senate. In this capacity, Mr. Harmon supervises the administration of registration and election laws throughout Illinois. Mr. Harmon will supervise the administration of the 2022 general election.

RESPONSE: Undisputed.

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

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

16. Defendant the 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.

17. Defendant Emanuel Christopher Welch is a member of the General Assembly and is sued in his official capacity as Speaker of the Illinois House of Representatives.

RESPONSE: Undisputed.

18. 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.

American Community Survey Data

19. The U.S. Census Bureau (the “Bureau”) generally provides states with the official census population counts per Public Law 94-171 (the “PL 94-171 Data”) within one year of the April 1st census date.

RESPONSE: Undisputed.

20. The General Assembly used estimates from the American Community Survey (“ACS”) five-year estimates for 2015-2019 and “other election data” to draw the boundaries for the districts used to elect members of the General Assembly.

RESPONSE: Undisputed.

21. ACS data are released in one-year and five-year estimates. One-year estimates are available for populations of at least 65,000. The Census Bureau combines five consecutive years

of ACS data to produce multiyear estimates for geographic areas with fewer than 65,000 residents.

RESPONSE: Undisputed.

22. PL 94-171 data captures a snapshot in time (i.e., the population on April 1, 2020), as opposed to the ACS, which is a five-year estimate.

RESPONSE: Undisputed.

23. ACS data are not available for census blocks, the smallest geographical units used in redistricting. Rather, ACS estimates are available only at the “block group” level. Block groups typically contain between 600 and 3,000 people. Although the ACS is designed to provide reliable estimates using one year of data for areas with populations over 65,000, which includes all states and many counties, multiple years of data must be aggregated in order to obtain data for smaller areas, such as block groups. The ACS does not produce data for census blocks because the populations in question are too small to estimate accurately.

RESPONSE: Undisputed.

24. The Census Bureau clearly states that users should not rely on the ACS data for population counts.

RESPONSE: Undisputed.

25. The decennial Census, not the ACS, provides the official population counts for states.

RESPONSE: Undisputed.

Redistricting Process

26. The Illinois Constitution governs the redistricting cycle. Ill. Const. art. IV, § 3(b). If a new legislative redistricting map is not passed by the General Assembly and signed into law by the Governor before June 30 in the year following the decennial census, a Legislative

Redistricting Commission (the “Redistricting Commission”) will be created on or before July 10.

Id. If the Redistricting Commission fails to file a plan on or before August 10, the Supreme Court must submit the names of two persons, not of the same political party, to the Secretary of State on or before September 1. *Id.*

RESPONSE: Undisputed.

27. On or before September 5, the Secretary of State must publicly and randomly choose the name of one of the two persons nominated by the Illinois Supreme Court to serve as the ninth member of the Redistricting Commission. Ill. Const. art. IV, § 3(b). On or before October 5, the newly constituted commission must file a redistricting plan with the Secretary of State. A plan so chosen, will have the force and effect of law. *Id.*

RESPONSE: Undisputed.

28. On May 28, 2021 the Legislature passed the Enacted Plans and sent them to the Governor for signing.

RESPONSE: Undisputed.

29. The Governor signed the Enacted Plans into law on June 4, 2021.

RESPONSE: Undisputed.

Malapportionment

30. On August 12, 2021, the Census Bureau release the PL 94-171 data.

RESPONSE: Undisputed.

31. David R. Ely, Plaintiffs’ Expert, Expert Ely analyzed the Enacted Plan using the following datasets: 2020 PL 94-171 redistricting data, 2020 PL 94-171 redistricting data, 2015-2019 American Community Survey (“ACS”) data. David R. Ely Decl., Exhibit A.

RESPONSE: Undisputed.

32. David R. Ely is the manager and founder of Compass Demographics, and consulting and database management firm specializing in projects involving census and election data, redistricting projects, demographic analysis, and analysis of voting behavior. David R. Ely Decl., Exhibit A.

RESPONSE: Undisputed.

33. The 2010 PL 94-171 and 2020 redistricting data file has data by Census Block David R. Ely Decl., Exhibit A.

RESPONSE: Undisputed.

34. The overall variance, or maximum deviation, as calculated by Plaintiffs' expert, David R. Ely, are as follows:

Dataset	Senate Overall Variance	House Overall Variance
2020 PL 94-171	20.3%	29.9%

David Ely Decl., Exhibit A, ¶¶ 21,27,28.

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.

35. Senate District 3 has a deviation of 12.3%. David R. Ely Decl., Exhibit A, ¶ 22.

RESPONSE: Undisputed that Plaintiff's expert reached this conclusion. However, the Illinois State Board of Elections is a bipartisan entity and the Board and 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 and 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.

36. Senate District 42 has a deviation of -7.9%. David R. Ely Decl., Exhibit A, ¶ 23.

RESPONSE: Undisputed that Plaintiffs' expert reached this conclusion. However, the Illinois State Board of Elections is a bipartisan entity and the Board and 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 and 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.

37. House District 5 has a deviation of 15%. David R. Ely Decl., Exhibit A, ¶ 24.

RESPONSE: Undisputed that Plaintiffs' expert reached this conclusion. However, the Illinois State Board of Elections is a bipartisan entity and the Board and 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 and 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.

38. House District 83 has a deviation of -14.9%. David R. Ely Decl., Exhibit A, ¶ 25.

RESPONSE: Undisputed that Plaintiffs' expert reached this conclusion. However, the Illinois State Board of Elections is a bipartisan entity and the Board and 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 and 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.

39. The calculations produced by the analysis reveal an overall variance, or a maximum deviation in the Enacted Plan approaching 30%. This calculation is the difference between the populated and least populated districts as a percentage of the ideal district population size. David R. Ely Decl., Exhibit A; Ely Tables 1 and 2 (House ideal district: 108580.5763; Senate ideal district: 217161.1525).

RESPONSE: Undisputed that Plaintiffs' expert reached this conclusion. However, the Illinois State Board of Elections is a bipartisan entity and the Board and 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 and 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 Defendants Illinois State
Board of Elections and its Members*