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

JULIE CONTRERAS, IRVIN FUENTES, ABRAHAM MARTINEZ, IRENE PADILLA, and ROSE TORRES, Plaintiffs, v. ILLINOIS STATE BOARD OF ELECTIONS, CHARLES W. SCHOLZ, IAN K. LINNABARY, WILLIAM M. MCGUFFAGE, WILLIAM J. CADIGAN, KATHERINE S. O'BRIEN, LAURA K. DONAHUE, CASANDRA B. WATSON, and WILLIAM R. HAINE, in their official capacities as members of the Illinois State Board of Elections, EMANUEL CHRISTOPHER WELCH, in his official capacity as Speaker of the Illinois House of Representatives, the OFFICE OF SPEAKER OF THE ILLINOIS HOUSE OF REPRESENTATIVES, DON HARMON, in his official capacity as President of the Illinois Senate, and the OFFICE OF THE PRESIDENT OF THE ILLINOIS SENATE, Defendants.	Case No. 1:21-cv-03139 Magistrate Judge Jantz Three-Judge Panel Pursuant to 28 U.S.C. § 2284(a)

PLAINTIFFS' MOTION FOR LEAVE TO FILE CORRECTED BRIEF

Now come the Plaintiffs Julie Contreras, et al. (collectively, "Plaintiffs"), by and through counsel, pursuant to Federal Rules of Civil Procedure and the Local Rules of this Court, respectfully file this motion for leave to file their corrected Proposed Alternative Remedial Plan and Statement in Support. In support of their motion, the Plaintiffs would show:

1. In an order dated October 19, 2021, the Court requested that the parties submit proposed revisions to the September Redistricting Plan, Public Act 102-0663, accompanied by a statement explaining how those proposed revisions would cure any constitutional or

statutory defects in the September Redistricting Plan. Dkt. 117.

2. In a minute order entered on November 5, 2021, the Court set the deadline for Plaintiffs' submissions as November 10, 2021. Dkt. 133.

3. Plaintiffs filed their Proposed Alternative Remedial Plan and Statement in Support on November 10, 2021 Dkt. Nos. 135 through Dkt. 135-23.

4. An additional review of Plaintiffs' brief, Plaintiffs found that the headings and subheading of sections IV. and V. were mislabeled thereby setting out the argument sections and subsections incorrectly. Ex. 2 E. Herrera Decl.

5. Plaintiffs have now corrected the headings and subheadings to ensure the Court gets Plaintiffs' arguments properly set out. Plaintiffs also corrected a grammatical error in a heading. Plaintiffs also updated page numbers and corrected a few typographical errors in the Table of Authorities. Plaintiffs made no additional changes to the brief. Ex. 1 Corrected Brief; Ex. 2 E. Herrera Decl.

6. Plaintiffs conferred with Defendants by and through Counsel on November 15, 2021. Defendants had not yet responded by the time Plaintiffs filed their Motion for Leave to file Corrected Brief.

WHEREFORE, Plaintiffs respectfully request that the Court grant them leave to file their corrected Proposed Alternative Remedial Plan and Statement in Support.

Respectfully submitted,

Dated: November 15, 2021

/s/ Julie Bauer
Julie A. Bauer (no. 6191271)
Nathan R. Gilbert (no. 6326946)
WINSTON & STRAWN LLP
35 W. Wacker Dr.
Chicago, IL 60601
Tel: (312) 558-8907
Email: JBauer@winston.com
Email: NRGilbert@winston.com

/s/ Ernest Herrera
Griselda Vega Samuel (no. 6284538)
Francisco Fernandez del Castillo
(no. 6337137)
MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND
11 E. Adams St., Suite 700
Chicago, IL 60603
Telephone: (312) 427-0701
Facsimile: (312) 588-0782

Email: gvegasamuel@maldef.org
Email: ffernandez-delcastillo@maldef.org

Thomas A. Saenz (*pro hac vice*)
CA State Bar No. 24005046
Ernest Herrera (*pro hac vice*)
CA State Bar No. 335032
Denise Hulett
CA State Bar No. 121553
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND
643 S. Spring St., 11th Fl.
Los Angeles, CA 90014
Telephone: (213) 629-2512
Email: tsaenz@maldef.org
Email: eherrera@maldef.org
Email: dhulett@MALDEF.org

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2021, a copy of the foregoing document was sent by electronic mail 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.

/s/ *Ernest I. Herrera*
Attorney for Plaintiffs

Exhibit 1

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JULIE CONTRERAS, et al.,

Plaintiffs,

v.

ILLINOIS STATE BOARD OF ELECTIONS, et al.,

Defendants,

Case No. 21-cv-03139

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

Pursuant to 28 U.S.C. § 2284(a)

CONTRERAS PLAINTIFFS' CORRECTED PROPOSED ALTERNATIVE REMEDIAL PLAN AND STATEMENT IN SUPPORT

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Contreras Plaintiffs respectfully submit the following proposed alternative maps for the Court's consideration and statement in support under the Court's order of October 19, 2021 [Dkt. 117]. This statement provides an explanation of the constitutional and statutory defects in the September Redistricting Plan passed by Legislative Defendants as Senate Bill 927 and how Contreras Plaintiffs' proposed alternative maps cure those defects.

I. INTRODUCTION

United States Census data show that the population of Illinois decreased over the last decade from 12,830,632 to 12,812,508.[1] Meanwhile, the Latino population in Illinois grew by 309,832 between 2010 and 2020.[2] The number of Latinos who are United States citizens and over the age of 18 grew by 316,555 between 2009 and 2019.[3] Despite this growth, the Illinois General Assembly and Defendants--the Speaker of the Illinois House, the President of the Illinois Senate, and their offices ("Legislative Defendants")--passed a state legislative redistricting plan on August 31, 2021, that gave Latinos fewer districts in which they comprise the majority of citizens of voting age. In doing so, Legislative Defendants committed a racial gerrymander in violation of the United States Constitution and decreased the number of Latino-majority citizen voting age districts from 5 to 4 in the Illinois House, and 3 to 2 in the Senate. Legislative Defendants diluted the voting strength of Latinos as they decreased the number of Latino-majority districts in the state, thereby violating section 2 of the federal Voting Rights Act.

---

[1] Census QuickFacts page, United States Census Bureau, https://www.census.gov/quickfacts/ (last accessed November 10, 2021) (comparing 2010 to 2020 total population figures for Illinois).
[2] *See id*.
[3] Citizen Voting Age Population page, United States Census Bureau, https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.html (last accessed November 10, 2021) (comparing 2005-2009 American Community Survey (ACS) data to 2015-2019 ACS data).

As detailed below, Legislative Defendants passed this map on August 31, 2021, only several months after passing another map that the Court found to be malapportioned unconstitutionally. *See* Dkt. 117. Rather than attempt to revise their May 28, 2021, map free of any other legal defects and in a manner that protected Latinos' voting rights, Legislative Defendants sent their legally defective map to Governor J.B. Pritzker for signature. The Governor signed these maps, which the Court refers to as the September Redistricting Plans. Contreras Plaintiffs provide an alternative remedial proposal that would revise the September Redistricting Plans in a manner that is free of statutory and constitutional legal defect and prevent the September Redistricting Plans from violating Latino voters' rights for the next decade.

In support of Contreras Plaintiffs' remedial proposal, Plaintiffs explain how Legislative Defendants' attempt to replace the May 28 maps with the September Redistricting Plans violates section 2 of the Voting Rights Act with regard to Latino voters on the north side and southwest side of Chicago. Plaintiffs also describe how Legislative Defendants' maps constitute a racial gerrymander of House District 21 and Senate District 11 in the September Plans. Finally, Plaintiffs describe how their alternative remedial proposal cures those legal defects while respecting the policy choices of the Illinois General Assembly

II. FACTUAL AND PROCEDURAL BACKGROUND

The Illinois Constitution governs redistricting in each cycle. ILL. CONST. art. IV, § 3(b). The Constitution establishes the following process: 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 will be created on or before July 10. *Id.* On or before October 5, the newly constituted commission must file a redistricting plan with the Secretary of State. *Id.*

In a closely guarded process, the Democratic-majority General Assembly began the process of creating legislative redistricting maps based on American Community Survey population estimates in Spring 2021. [Dkt. 66] at ¶20; Ex. 1 Maxson Dep. 59:2-61:20. The goal of the Legislature was to enact a redistricting plan before the June 30 constitutional deadline to avoid the creation of a Redistricting Commission. [Dkt. 66] at ¶26. The map-drawing process occurred behind closed doors in a room that was electronically locked and accessible only with keycards held by a select few redistricting staff members and elected officials. Maxson Dep.59:2-61:20; 76:4-24. On May 21, 2021, the General Assembly made public and proposed draft Representative and Senate redistricting maps. *Redistricting Testimony 102nd General Assembly, Hrg. Date May 25, 2021,* 6:21-22. https://ilga.gov/house/committees/Redistricting/102RedistrictingTranscripts/HRED/20210525SP/Tuesday%20May%2025%20Hearing.pdf (last visited 11/10/21). On May 25, 2021 and May 26, 2021, the Illinois House and Senate held virtual hearings to solicit public feedback on the proposed redistricting maps. *Proposed Legislative Map Reflects Diversity in Illinois*, https://www.ilsenateredistricting.com/resources/press-releases/17-proposed-legislative-map-reflects-diversity-of-illinois. On Thursday May 27, 2021, House and Senate Democrats issued a press release announcing the release of new, updated versions of the maps released just one or two days earlier. *House and Senate Democrats Release Revised Legislative Map and Propose New Cook County Board of Review Boundaries*, https://www.ilsenateredistricting.com/resources/press-releases/19-house-and-senate-democrats-release-revised-legislative-map-and-propose-new-cook-county-board-of-review-boundaries. Early Friday morning on May 28, 2021 House and Senate Democrats scheduled hearings to allow public comment on the updated maps. *Redistricting Testimony 102nd General Assembly, Hrg. Date May 28, 2021*

https://ilga.gov/house/committees/Redistricting/102RedistrictingTranscripts/HRED/20210528SP/Friday%20May%2028%20Hearing.pdf. The Legislature released only basic data along with the maps. *Id.* After only twelve hours, the General Assembly passed House Bill 2777 and Senate Floor Amendment 1 and sent the Enacted Plans to Governor Pritzker for approval. [Dkt. 66] at ¶28; *Ill. Gen. Assembly, HB 2777 Bill Status*, https://www.ilga.gov/legislation/BillStatus.asp?DocNum=2777&GAID=16&DocTypeID=HB&SessionID=110&GA=102. The Governor signed the Enacted Plans into law on June 4, 2021. *Id.* at ¶29. *Id.*

On June 6, 2021, Plaintiffs filed a complaint against the Illinois State Board of Elections, its members, and members of the State Senate and House of Representatives alleging that the Legislative drawn maps were malapportioned in violation of the Fourteenth Amendment. Dkt. 1. Plaintiffs subsequently filed an amended complaint with substantially the same allegations on July 28, 2021, Dkt. 37, and a second amended complaint on October 1. Dkt. 98. On August 20, Plaintiffs filed a motion for summary judgment on their claims. Dkt. 63-66. The court granted the Plaintiffs' motion on October 19, and this case proceeded to the current remedial phase. Dkt. 117.

In the meantime, on August 12, 2021 the Census Bureau released the 2020 redistricting population data (P.L. 94-171) to the states. *U.S. Census Bureau, 2020 Census Redistricting File (PL94-171) Dataset*, https://www.census.gov/data/datasets/2020/dec/2020-census-redistricting-summary-file-dataset.html.

The Legislature held joint hearings to discuss a new redistricting map on August 26-31, 2021. *Ill. Gen. Assembly, Redistricting Hearing Schedule*, https://ilga.gov/senate/committees/Redistricting%20Hearings.asp?CommitteeID=2742&Description=Redistricting&Code=SRED&GA=102. The Legislature released preliminary versions of the

redrawn redistricting maps on August 30, and a final version on August 31. *Illinois General Assembly, SB 927 Bill Status,* https://www.ilga.gov/legislation/billstatus.asp?DocNum=927&GAID=16&GA=102&DocTypeID=SB&LegID=133554&SessionID=110. The newly redrawn maps, SB 927, were passed by both houses of the Legislature on August 31. *Id.* The Governor enacted the new maps on September 24, 2021. *Ill. Pub. Act 102-0663.*

III. LEGAL STANDARD

As this court noted in its most recent order, "all redistricting maps, in Illinois and elsewhere, are subject to judicial review, as they must comply with (at a minimum) the Constitution and the Voting Rights Act." [Dkt. 117] at 42. Where the legislative body proposes a redistricting plan which is not unconstitutional or otherwise illegal, a federal court must defer to that legislative judgment, even if it is not the plan the court would have chosen. *Seastrunk v. Burns*, 772 F.2d 143, 151 (5th Cir. 1985). The court cannot however blindly defer to legislative prerogative. There are clear standards the Court must apply in deciding whether Defendants' proposed plan is acceptable under the Constitution and the Voting Rights Act. "The court should exercise its traditional equitable powers to fashion the relief so that it *completely* remedies the prior dilution of minority voting strength and *fully* provides equal opportunity for minority citizens to participate and to elect candidates of their choice." *Dillard v. Crenshaw County, Ala.*, 831 F.2d 246, 250 (11th Cir. 1987) (quoting 1982 U.S. Code Cong. Admin. News 177, 208).

As the Supreme Court stated in *United States v. Paradise*:

> A district court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar discrimination in the future. Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.

480 U.S. 149, 183-184 (1987) (quotations and citations omitted).

The Supreme Court has held that once a governmental action is found to violate the Equal Protection Clause, the governmental defendant bears the burden of demonstrating that its proposed remedial plan remedies the constitutional violation. *See, e.g., United States v. Virginia*, 518 U.S. 515, 547-48 (1996) (holding, in sex discrimination case, that "[h]aving violated the Constitution's equal protection requirement, Virginia was obliged to show that its remedial proposal 'directly address[ed] and relate[d] to' the violation" (quoting *Milliken v. Bradley*, 433 U.S. 267, 280 (1977)); *Keyes v. School District No. 1*, 413 U.S. 189, 208 (1973) (the Court shifting the burden of proof to the government to show that its past segregative acts did not create or contribute to the current segregated condition of the core city schools); *Greene v. Cty. School Bd. of New Kent Cty., Va.*, 391 U.S. 430, 439 (1968) ("The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work now.").

IV. CONSTITUTIONAL AND STATUTORY DEFECTS IN THE SEPTEMBER SB 927 REDISTRICTING PLAN.

A. The September Redistricting Plan (SB 927 Plan) Dilutes Latino Voting Strength in Violation of Section 2 of the Voting Rights Act of 1965.

Legislative Defendants enacted a plan that is defective under federal statute because it dilutes the voting strength of Latino voters in House Districts 3, 4, 21, 24, and 39, and in Senate Districts 2 and 11, in violation of § 2 of the federal Voting Rights Act. Section 2 of the federal Voting Rights Act prohibits any voting prerequisite, law, or procedure imposed or implied "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." 52 U.S.C. § 10301(a). A state violates § 2:

> if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of [a racial group] 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.

52 U.S.C. § 10301(b). A claim of vote dilution concerning a districting scheme is guided by the Supreme Court's opinion in *Thornburg v. Gingles*, which establishes three factors: (1) that the minority group be "sufficiently large and geographically compact to constitute a majority in a single-member district;" (2) that the minority group be "politically cohesive;" and (3) that the "majority vot[e] sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate." *Johnson v. De Grandy*, 512 U.S. 997, 1006–07 (1994) (quoting *Growe v. Emison*, 507 U.S. 25, 40 (1993) (in turn quoting *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986))).[4]

If plaintiffs satisfy the three *Gingles* factors, "the court moves on to decide, based on the totality of the circumstances, whether a Section 2 violation has occurred[…]considering […] the state's history of voting-related discrimination, the degree of racial polarization in voting, and" other factors explained in the totality of the circumstances section IV.(v) below. *Comm. for a Fair & Balanced Map v. Illinois State Bd. of Elections*, 835 F. Supp. 2d 563, 580–81 (N.D. Ill. 2011) (internal citations omitted). Congress established a set of Senate factors that are probative of a § 2 violation, and courts apply these factors to establish whether, under a totality of the circumstances, a redistricting scheme violates § 2. *Thornburg v. Gingles*, 478 U.S. 30, 44-45 (1986); S.Rep. No. 417 at 28-29, reprinted in 1982 U.S.Code Cong. & Admin. News at 205-06. No one factor or grouping of factors is dispositive of minority vote dilution. *Id*. at 29; 1982 U.S.Code Cong. & Admin.News at 207.

[4] Although the *Gingles* test was developed in litigation over an at-large election system, it also applies in redistricting cases where a plan is challenged for failure to draw a sufficient number of majority minority districts. *Growe*, 507 U.S. at 39-41.

1. Contreras Plaintiffs Satisfy *Gingles* 1 Because Latinos Are Sufficiently Large and Geographically Compact to Constitute a Majority in the Challenged Districts.

Satisfaction of the first *Gingles* requirement—that the minority group be sufficiently large and geographically compact to constitute a majority—requires the plaintiff to "show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." *Comm. for a Fair & Balanced Map v. Illinois State Bd. of Elections*, 835 F. Supp. 2d at 581 (quoting *Bartlett v. Strickland*, 556 U.S. 1, 129 S.Ct. 1231, 1246, 173 L.Ed.2d 173 (2009)). The Seventh Circuit does not appear to have decided on a single measure of minority population—voting age population, citizen voting age population, or some other standard— as the most appropriate for proving the first *Gingles* factor for Latinos.[5]

In a decision by this Court dealing with a section 2 challenge concerning City of Chicago aldermanic seats by both Latino and African American voters, the Court found that VAP was the appropriate measure. *See Barnett v. City of Chicago*, 969 F. Supp. 1359, 1409 (N.D. Ill. 1997), *aff'd in part, vacated in part*, 141 F.3d 699 (7th Cir. 1998) ("While several circuits have adopted a citizenship voting age population ("CVAP") standard as the population benchmark for the purposes of the first *Gingles* prong, […] this Court sees no reason for revisiting this circuit's use of VAP as a benchmark."). The Seventh Circuit vacated the judgment against African American voters as to this Court's decision in *Barnett* but affirmed the decision against the Latino plaintiffs'

[5] Other Circuits have found that citizen voting age population is the appropriate measure of population to examine in relation to the first *Gingles* factor. *See Negron v. City of Miami Beach, Fla.*, 113 F.3d 1563, 1569 (11th Cir. 1997) ("proper statistic for deciding whether a minority group is sufficiently large and geographically compact is voting age population as refined by citizenship"); *see also Campos v. City of Houston*, 113 F.3d 544, 548 (5th Cir. 1997) ("courts evaluating vote dilution claims under section 2 of the Voting Rights Act must consider the citizen voting-age population of the group challenging the electoral practice" for *Gingles* 1 purposes); *Romero v. City of Pomona*, 883 F.2d 1418, 1426 (9th Cir. 1989), *abrogated on other grounds by Townsend v. Holman Consulting Corp.*, 914 F.2d 1136 (9th Cir. 1990) (citizen voting age population correct measure because *Gingles* 1 turns on "eligible minority voter population").

dilution claims. *See Barnett v. City of Chicago*, 141 F.3d 699, 706 (7th Cir. 1998). In doing so, the Seventh Circuit did not abandon VAP as the first *Gingles* prong standard, but did set citizen voting age as the standard for determining proportionality.[6] *See Barnett*, 141 F.3d at 705 (7th Cir. 1998) ("Our conclusion that the proper benchmark for measuring proportionality is citizen voting-age population is consistent with the caselaw").

The Court need not decide in this case if citizen voting age population (CVAP) rather than voting age population (VAP) should be the standard because Contreras Plaintiffs satisfy the first *Gingles* factor using either standard. The Contreras Plaintiffs demonstrate that they meet the standard using citizen voting age population, which is a subset of VAP. Contreras Plaintiffs' alternative remedial plan, further described below, shows that compared to the September 2021 SB 927 Plan's CVAP-majority districts, Latinos are sufficiently geographically compact to comprise a majority of CVAP in:

- **3 additional house districts** on the north side of Chicago;
- **2 additional house districts** on the southwest side of Chicago and southwest suburbs of Cook County; and
- **2 additional senate districts**.

The maps attached as exhibits to Dave Ely's report show how Contreras Plaintiffs' maps would change the SB 927 maps. Ex. 7-8 Changed Maps.

(a) North Side of Chicago House Districts 3, 4, and 39.

In the 2011 Adopted Plan that was in place when Legislative Defendants undertook 2021 redistricting, Latinos on the north side of Chicago comprised a majority of citizen voting age population in that plan's version of House District 3. *See* Ex. 1-22 Existing District Demographics; Ex. 7-4 Benchmark (Table 2). The 2011 Adopted Plan's version of House District 3 had a Latino

[6] "Proportionality" is one of the totality of the circumstances considerations in a section 2 claim, comparing "the number of majority-minority voting districts to minority members' share of the relevant population. *See Johnson v. De Grandy*, 512 U.S. 997, 1013-1014 n.11 (1994).

CVAP (LCVAP)[7] of 58.6% using 2015-2019 5-year American Community Survey citizen voting age population data. *Id*. House District 4 had a LCVAP of 37.5% in the 2011 plan. *Id*. And HD 39 had a LCVAP of 48.6%. *Id*.

However, Legislative Defendants modified the three districts—HD 3, 4, and 39—in the SB 927 Plan in a manner that left no north side districts in which Latinos were the majority of CVAP. Ex. 1-23 SB 927 Matrix at 1. In SB 927, HD 3 has a Latino CVAP of 47.4%; HD 4 has a LCVAP of 45.2%; and HD 38 has a LCVAP of 45.6%. *Id*.

In Contreras Plaintiffs' Proposed Alternative Plan, the LCVAP is 51.8% in HD 3, 50.6% in HD 4, and 50.9% in HD 39. All three districts are compact. Additionally, the Latino voting age population (LVAP) is 58.5% in HD 3, 55.6% in HD 4, and 55% in HD 39.

(b) Senate District 2.

In both the 2011 Adopted Plan and the 2021 SB 927 Plan, HD 3 and HD 4 are paired to form Senate District 2. The 2011 Adopted Plan's version of Senate District 2 had a LCVAP of 46.92% using 2015-2019 5-year American Community Survey citizen voting age population data. Ex. 7-4 Benchmark (Table 4). In SB 927, SD 2 has a LCVAP of 46.6%. *See* Ex. 1-23 SB 927 Matrix at 1; Ex. 7-2 Legislative Proposal (Table 1).

In Contreras Plaintiffs' Proposed Alternative Plan, the LCVAP is 51.2% in a compact version of SD 2. Additionally, the LVAP is 57.1% in SD 2.

(c) Southwest Chicago and Southwest Suburbs of Cook County – House Districts 21 and 24.

In the 2011 Adopted Plan that was in place when Legislative Defendants undertook 2021 redistricting, Latinos in 4 of the 6 districts in the area known as southwest Chicago and the

[7] Contreras Plaintiffs use "Latino" and "Hispanic" interchangeably.

southwest suburbs of Cook County[8] comprised a majority of the citizen voting age population--then House Districts 1, 2, 21, 22, 23, and 24. *See* Maxson Deposition Ex. 22, Existing District Demographics. The 2011 Adopted Plan's version of House District 2 had a LCVAP of 42.6%, and House District 23 had a LCVAP of 44.5%.

However, Legislative Defendants modified the southwest Chicago configuration of districts and renumbered them in the SB 927 Plan. In the SB 927 Plan, the LCVAP of HD 24, which had much of the territory and the incumbent of HD 2 in 2011, is 43.9%. *See* Ex. 1-23 SB 927 Matrix at 1. Also in the 2021 plan, the LCVAP of HD 21, which had much of the territory and the incumbent of HD 23 in 2011, is 42.9%. *Id*. The other 4 southwest Chicago districts--HD 1, 2 (formerly 24), 22, and 23 (formerly 21)--are above 50% LCVAP in SB 927.

In Contreras Plaintiffs' Proposed Alternative Plan, the LCVAP is 53.5% in its version of HD 21, and 51.4% in its version of HD 24. Both districts are compact. Additionally, the LVAP is 64.3% in HD 21 and 58.5% in HD 24. As further explained in the remedial map section below, Contreras Plaintiffs' Proposed Alternative Map raises the LCVAP of HD 21 and 24 above 50% without lowering the LCVAP of the other 4 southwest Chicago districts, thereby creating 6 compact, LCVAP-majority districts in that area.

(d) Senate District 11.

In both the 2011 Adopted Plan, HD 23 and HD 24 were paired to form Senate District 12, in which Steven Landek was the incumbent. That District 12 had a LCVAP of 54.52% using 2015-2019 5-year American Community Survey citizen voting age population data.

[8] In the House Resolution accompanying the SB 927 Plan, the General Assembly refers to this area as "Chicago Southwest and Southwest Suburbs: Representative Districts 1, 2, 21, 22, 23, and 24 represent the Southwest side of the City of Chicago and southwest suburban Cook County." *See* Ex. 1-21 H.R. 443 at 15.

By contrast, in SB 927, SD 11, in which Senator Landek resides, has a LCVAP of 47.7%. Ex. 1-23 SB 927 Matrix at 1.

In Contreras Plaintiffs' Proposed Alternative Plan, the LCVAP is 54.6% in a compact version of SD 11. Additionally, the LVAP is 66.1% in SD 11. As further explained in the remedial map section below, Contreras Plaintiffs' Proposed Alternative Map achieves an LCVAP-majority version of SD 11 while maintaining the other 2 southwest Chicago senate districts as LCVAP-majority.

Contreras Plaintiffs demonstrate that the Latino population is sufficiently large and geographically compact enough to comprise a majority of the citizen voting age population in 3 total house districts and 1 senate district in the north side of Chicago (including the challenged HD 3 and 4 and SD 2), and 6 total house districts and 3 senate districts in the southwest side of Chicago (including the challenged HD 21 and 24 and SD 11). Contreras Plaintiffs would thereby satisfy prong 1 of the *Gingles* analysis.

2. Voting in the Challenged Legislative and Representative Districts is Racially Polarized.

The second *Gingles* precondition requires Plaintiffs to demonstrate that Latino voters in jurisdictions overlapping the challenged jurisdictions are politically cohesive, and the third *Gingles* prong asks whether Anglo bloc voting usually defeats the cohesive choice of the Latino voters. *See Gingles*, 478 U.S. at 51. *See also, Comm. for a Fair & Balanced Map v. Illinois State Bd. of Elections,* 835 F. Supp. 2d 563, 580 (N.D. Ill. 2011)

One way of showing Latino political cohesion (*Gingles* prong two) is to submit, through expert analysis, estimates of Latino voting behavior demonstrating that "a significant number of minority group members usually vote for the same candidate . . . ." *Id.* at 56. The same expert estimates of Anglo voting behavior demonstrate whether Anglo bloc voting works "usually to

defeat the minority's preferred candidate," though not necessarily every time (*Gingles* prong three). *Id.* at 50–51, 56. The *Gingles* analysis asks whether voting is usually polarized over a period of time; whether typical elections are characterized by racially polarized voting; and whether there is a difference between how Latino votes and non-Latino votes are cast. *Gomez v. City of Watsonville* , 863 F.2d 1407, 1415 (9th Cir. 1988).

Courts rely upon expert testimony as to the statistical significance of such polarization, because the racially polarized voting analysis is specific to the jurisdiction at hand. *Gingles*, 478 U.S. at 56. Plaintiffs' expert witness, Dr. Jacob M. Grumbach, conducted his analysis of racially polarized voting using the ecological inference method, a mathematical technique that describes the relationship between the racial composition of the electorate and the votes each candidate receives. This relationship demonstrates the extent to which the race of the voters correlates with voter support for each candidate.[9] *See Gingles*, 478 U.S. at 53 n. 20; *see also Garza v. County of Los Angeles*, 756 F. Supp. 1298, 1346 (C.Cd. Cal. 1990); *Romero v. City of Pomona*, 883 F.2d at 1423; *City of Yakima*, 40 F. Supp. 3d at 1402. Numerous courts recognize the ecological inference methodology as a "reliable improvement" on previously used methodology, and have relied on ecological inference results in finding racial polarization. *Bone Shirt v. Hazeltine*, 336 F.Supp.2d 976, 1003 (D. S.D. 2004); *Rodriguez v. Pataki*, 308 F.Supp.2d 346, 387–88 (S.D.N.Y. 2004). The district court in *Montes v. City of Yakima* relied solely on the ecological inference methodology. *Montes v. City of Yakima*, 40 F.Supp.3d 1377, 1402 (E.D. Wash. 2014).

[9] Because ballots are secret, expert witnesses estimate group voting behavior using statistical methodologies to compare two variables—the density (percentage) of Latino voters in each precinct, and the votes received by each candidate in the corresponding precincts. Dr. Grumbach explains his methodology, and describes the data he relied on, in his Report at pp. 4-6. *See Declaration of Jacob Grumbach in Support of Contreras Plaintiffs' Proposed Alternative Remedial Plan, Exhibit 1, Report (hereinafter "Grumbach Report")*

Dr. Grumbach selected for his analysis racially contested elections in the past decade--those elections where a Latino candidate is running against a non-Latino candidate--as the most probative for drawing conclusions about the second and third prongs of *Gingles. Ruiz v. City of Santa Maria,* 160 F.3d 543, 554 (9th Cir. 1998) ("Our rule [that a racially contested election is more probative than one that is racially uncontested] furthers the Voting Rights Act's goal of protecting the minority's equal opportunity to 'elect its candidate of choice on an equal basis with other voters.' "(quoting *Voinovich v. Quilter,* 507 U.S. 146, 153 (1993)). *See also U.S. v. Blaine Cnty, Montana.*, 363 F.3d 897, 911 (9th Cir. 2004).

Dr. Grumbach also recognizes that examination of whether voting is racially polarized should include not only elections in the challenged districts, but also in jurisdictions in the surrounding area, particularly in jurisdictions that geographically overlap with the challenged jurisdictions. "When examining evidence to determine polarized voting on a district-specific basis, we are not confined to elections solely within the district but can consider those in surrounding districts to determine voting patterns relevant to the challenged area." *Comm. for a Fair & Balanced Map v. Illinois State Bd. of Elections*, 835 F. Supp. 2d 563, 587 (N.D. Ill. 2011). Therefore, in addition to elections in state legislative districts (endogenous elections – Grumbach Report pp 7-11),[10] Dr. Grumbach also analyzed exogenous elections in jurisdictions that overlap the geographical areas of the challenged districts, *e.g.* Cook County-wide and Chicago city-wide elections, statewide elections, and a congressional race in the same geographical area as the challenged districts. *Grumbach Report pp. 12-15*. *See, Comm. for a Fair & Balanced Map v.*

[10] Of course no elections have occurred yet in the districts challenged in this litigation, so the endogenouos elections analyzed are those state legislative district elections that are in the same geographic vicinity, overlapping the challenged districts. The exogenous elections similarly overlap the challenged districts. *See Grumbach Report p. 4, n. 3 and attached maps in appendix B.*

Illinois State Bd. of Elections, 835 F. Supp. 2d 563, 588 (N.D. Ill. 2011) (In a challenge to Illinois Congressional redistricting plan, the court, in dicta, found fault with Plaintiffs' expert's failure to analyze congressional elections, state senate, or state representative elections). *See also Blaine Cnty.*, 363 F.3d at 912 (affirming district court's examination of exogenous elections "to supplement its analysis of racially cohesive voting patterns in [endogenous] elections." (citing *Citizens for a Better Gretna v. City of Gretna*, 834 F.2d 496, 502 (5th Cir.1987)("[T]he district court properly considered them as additional evidence of bloc voting—particularly in light of the sparsity of available data."); *see also Old Person v. Cooney*, 230 F.3d 1113, 1123 (9th Cir. 2000) (admitted and considered evidence of district-specific results for 258 election contests in the eight state legislative districts at issue, including "general elections, ballot initiatives and retention elections at the state and federal level."); *Garza v. Cnty. of L.A.*, 756 F. Supp. at 1329–31. (In challenge to County supervisorial plan, the court admitted evidence of exogenous elections, countywide and non-countywide, partisan and non-partisan, including elections for County Sheriff, County Assessor, seven elections for City Council, Congressional Districts, State Senate, and Assembly Districts); *Montes v. City of Yakima*, 40 F. Supp. 3d at 1401–02 (The court considered seven City Council elections, one ballot measure, Supreme Court Justice elections, and a school board election.); *Patino v. City of Pasadena*, 230 F.Supp.3d 667, 693 (S.D. Tex. 2017) ("[E]xogenous election results can be helpful in determining whether Anglos typically bloc vote to defeat a Latino-preferred candidate.") (citing *Rodriguez v. Bexar Cnty.*, 385 F.3d 853, 863, 865 (5th Cir. 2004)).

Dr. Grumbach analyzed 19 endogenous state legislative elections[11] in which a Latino candidate ran against one or more Latino candidates, and found that 13 of the 19 elections were characterized by racially polarized voting. He found that Latino candidates in endogenous elections received significantly greater support from Latino voters than non-Latino voters, whereas these candidates' non-Latino opponents received significantly greater support from non-Latino voters than Latino voters. *Grumbach Report pp. 2, 7-11, 16.*[12]

Dr. Grumbach also analyzed 17 exogenous elections (including U.S. House, statewide, county, and municipal offices in which there is geographic overlap with the endogenous state legislative districts), and found that all but one of the exogenous races showed evidence of racially polarized voting between Latinos and non-Latinos. *Id., pp. 2, 12-15, 16.* Specifically, Dr. Grumbach found racial polarization in both of the elections in congressional District 4, in each of the 3 statewide elections, in all 8 of the 9 County elections, and in all 3 of the Chicago City mayoral elections. *Id. pp. 12-15.*

Dr. Grumbach's primary analyses of individual elections finding racially polarized voting between Latinos and non-Latinos provides a detailed assessment of the extent of racially polarized voting in each election. In addition, he conducted a "meta-analysis" that combines all of the data on the 19 racially contested endogenous legislative elections, arriving at an *overall estimate* of electoral support for Latino candidates and their non-Latino electoral opponents by voter race/ethnicity. A meta-analysis aggregates the results of analyses of many elections into a single

[11] HD01, HD02, HD03, HD04, HD21, HD22, HD24, HD39, HD40, SD01, SD02, SD06, SD11, and SD12. Election cycles covered include 2012, 2014, 2016, 2018, and 2020.

[12] Dr. Grumbach divided the endogenous state legislative elections into two groups – Northside and Southside – which took place in the areas challenged in this election. He found racially polarized voting in 8 of the 10 Northside elections, *Id. pp. 7*-9, and found racial polarization in 5 of the 9 Southside elections. *Id. pp. 9-11.*

estimate. *Id.* p.6. Dr. Grumbach's meta-analysis results confirm that Latino voters are significantly more likely to vote for the Latino candidate than are non-Latino voters in these 19 elections. He found that non-Latino voters, by contrast, are significantly more likely to support the non-Latino electoral opponents than are Latino voters.[13] Specifically, the results suggest that 68.7 % of Latino voters supported Latino candidates in these elections, whereas only 37.5% of non-Latino voters supported Latino candidates. Dr. Grumbach also estimated that only 31.3% of Latinos voted for non-Latino candidates in these races, whereas 62.5% of non-Latinos voted for non-Latino candidates. *Id*. pp 11-12.

(a) Illinois Latino Voters are Politically Cohesive (*Gingles 2*)

Defendants admit that "Latino votes are politically cohesive for voting for the Latino candidate of choice." *Answer To Plaintiffs' Second Amended Complaint* [Dkt.115] at ¶*100.* Defendants' expert, Dr. Alan Lichtman, in his testimony before the Illinois Senate Joint Committee's May 25, 2021 redistricting hearing, admitted "overwhelming" minority cohesion in no uncertain terms:

> "Now, certainly minorities have remained cohesive behind candidates of their choice, which are typically minorities, but not always. There are occasionally white candidates who in competition with minorities are in fact the minority candidate of their choice but *there is no question about overwhelming minority cohesion."* (emphasis added).

Ex. 1-9 May 25, 2021 Joint Redistricting Hearing, at 25.

"Political cohesiveness must be evaluated 'primarily on the basis of the voting preferences expressed in actual elections.'" *Luna v. Cnty. of Kern*, 2016 WL 4679723, at *5 (E.D. Cal. Sept. 6, 2016) (quoting *Gomez*, 863 F.2d at 1415; *United States v. Blaine Cnty.*, 363 F.3d 897, 910

[13] Dr. Grumbach analyzed the state electoral results only in the precincts within Cook County. *Grumbach Report p. 13.*

(9th Cir. 2004)). Therefore, Dr. Grumbach's ecological inference analysis finding that Latinos voted cohesively in 13 of the 19 of the endogenous elections and 13 of the 17 exogenous elections, along with Defendants' admissions and the admission of their expert, are sufficient to establish the sufficiency of Plaintiffs' evidence establishing *Gingles* prong two cohesion. *Id*. pp. 7-11, 12-15.

(b) Anglo bloc voting (*Gingles* 3)

The third *Gingles* prong inquires whether the presence of anglo bloc voting, absent special circumstances, usually defeats the choice of Latino voters. *See Gingles*, 478 U.S. at 51. Therefore, the fate of the Latino-supported candidate is unarguably probative. Courts have interpreted "usually" to mean that minority candidates lost in more than half of the elections analyzed. *Radogno v. Illinois State Bd. of Elections*, 836 F. Supp. 2d 759, 773 (N.D. Ill. 2011), *aff'd sub nom. Radogno V. Illinois State Bd. of Elections***,** 568 U.S. 801 (2012) (after disregarding Latino victories characterized by special circumstances, one Latino loss was insufficient to establish the third *Gingles* prong). Once the candidates who were cohesively supported by Latino voters are identified, and the level of non-Latino bloc voting is described, then the court must resolve whether there are special circumstances, such as incumbency or majority-minority district composition, that warrant discounting any of the Latino victories. *Luna v. Cty. of Kern*, 291 F. Supp. 3d 1088, 1127 (E.D. Cal. 2018), citing. *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1020 (8th Cir. 2006); *see also Gingles*, 478 U.S. at 51, 106 S.Ct. 2752; *Old Person*, 230 F.3d at 1121–22.

After finding racially polarized voting in the 13 of the 19 endogenous elections, and all but one of the 17 exogenous elections, Dr. Grumbach found the presence of Anglo bloc voting in over half of the elections he analyzed – 12 of the 19 endogenous elections and 10 of the 17 exogenous elections. *Id*. pp 7-11, 12-15. Despite the high number of racially polarized elections, Latino candidates succeeded in 11 of the 19 endogenous elections and 8 of the 17 exogenous elections.

Consistent with *Gingles*'s instruction however, the racially contested elections analyzed in this case warrant more than a simple tally. First, Latino-preferred candidate victories in preexisting majority-minority districts do not necessarily negate the conclusion that the district experiences legally significant bloc voting. *Gingles*, 478 U.S. at 57. In *Johnson v. De Grandy*, for example, the Supreme Court held that a district court's finding that there was a "tendency of non-Hispanic whites to vote as a bloc to bar minority groups from electing their chosen candidates except in a district where a given minority makes up a voting majority" satisfied the third *Gingles* precondition. *Johnson v. De Grandy*, 512 U.S. 997, 1003–04 (1994); *see also Old Person v. Cooney*, 230 F.3d at 1122 (holding that American Indian electoral success in majority–American Indian districts was only relevant to the totality of the circumstances inquiry and noting that "[t]o do otherwise would permit white bloc voting in a majority-white district to be washed clean by electoral success in neighboring majority-[American Indian] districts"). *Old Person*, 230 F.3d at 1122. *See also, Luna v. Cty. of Kern*, 291 F. Supp. 3d 1088, 1129 (E.D. Cal. 2018) (Where Latino candidates lost only two of the five endogenous elections, plaintiffs nonetheless demonstrated legally sufficient polarization because one of the elections took place in a majority-Latino district and should "therefore be disregarded," and the other two Latino victories were by a candidate who consistently fared better with non-Latino voters than Latino voters and whose elections were not characterized by racially polarized voting.)

Second, the Supreme Court specifically included incumbency in a non-exclusive list of special circumstances that "may explain minority electoral success in a polarized contest," and explained that such victories do not necessarily negate a finding of legally significant bloc voting. *Thornburg v. Gingles*, 478 U.S. at 57. "The concern is necessarily temporal and the analysis historical because the evil to be avoided is the subordination of minority groups in American

politics, not the defeat of individuals in particular electoral contests." *Id.* See also *Patino v. City of Pasadena*, 677 F. App'x 950, 954 (5th Cir. 2017) (Special circumstances, such as incumbency, prevented the defeat of Latino preferred candidates in two Anglo majority districts, and did not negate a conclusion of racially polarized voting.)

This court must therefore take a closer look at the circumstances surrounding the tally of Latino victories, in the endogenous and exogenous elections that support Dr. Grumbach's finding of racial polarization.

Of the 19 endogenous elections Dr. Grumbach analyzed, there were 11 Latino victories, and all but 2 of the winning candidates ran as incumbents. Of the 7 winning candidates in the Northside districts, 6 were incumbents. In fact, Jaime Andrade, whose repeated victories account for 3 of the 7 wins as an incumbent, was appointed prior to running. Toni Berrios, who won the 2012 election in HD 39, lost to an Anglo candidate in the very next election. *Grumbach Report p. 9.*

In the Southside elections, there were 4 Latino winning candidates, but of the 4, three were incumbents (Acevedo, Hernandez, Villanueva), and the fourth (Ortiz) ran in a majority Latino CVAP district, as did two of the winning incumbents (Hernandez, Villanueva). Villanueva was appointed prior to the primary. Thus, of the 4 Southside Latino wins, ***all*** were either incumbent candidates, or ran in a majority district, or were appointed prior to running, and one (Villanueva) enjoyed all three advantages that rendered anglo bloc voting ineffective in their districts. *Id.*, p. 11.

DISTRICT	CANDIDATE	Southside/ Northside	SPECIAL CIRCUMSTANCE(S)
HD01- 2018P	Ortiz	Southside	Majority LCVAP district (59.4% LCVAP[14])

[14] LCVAP from ACS 2012-2106. *Grumbach Report Appendix A.*

HD02 – 2012P	Acevedo	Southside	Incumbent
HD04 - 2016P	Soto	Northside	Incumbent
HD04 – 2018P	Ramirez	Northside	
HD24 – 2016G	Hernandez	Southside	Incumbent Majority LCVAP district (62.6% LCVAP)
HD39 – 2012P	Berrios	Northside	Incumbent Subsequently lost next election
HD40 – 2014P	Andrade	Northside	Incumbent, appointed 2013
HD40 – 2016P	Andrade	Northside	Incumbent, appointed 2013
HD40 – 2020P	Andrade	Northside	Incumbent, appointed 2013
SD11	Villanueava	Southside	Incumbent Majority LCVAP district (54.7% LCVAP) Appointed 2020
SD20	Martinez	Northside	Incumbent

Dr. Grumbach found racially polarized voting in all but one of the 17 exogenous elections, and found anglo bloc voting in 10 of those elections. *Id., pp. 2, 12-15, 16.* Latino candidates nonetheless won 8 of the 17 exogenous elections. However, again, three of those victories enjoyed the benefits of incumbency, and two others were elections held in majority-Latino districts.

Office	candidate	Special Circumstances
State Office[15] - Comptroller – 2016GE	Mendoza	
State Office – Comptroller – 2018GE	Mendoza	incumbent
Cook County State's Attorney – 2012 GE	Alvarez	incumbent
Cook County Commission District 8 2018G	Arroyo	incumbent
Cook County Clerk of Court – 2020GE	Martinez	
Cook County Clerk of Court – 2020P	Martinez	
Congressional District 4 - 2014P	Gutierrez	Majority LCVAP district (53%)
Congressional District 4 – 2018G	Garcia	Majority LCVAP district (53%)

This is not the case, as it was in *Radogno v. Illinois State Bd. of Elections*, 836 F. Supp. 2d at 773, where disregarding victories characterized by special circumstances left plaintiffs with "evidence that a white candidate defeated a Latino candidate in one election," or *Valladolid v. City of Nat'l City*, 976 F.2d 1293, 1297–98 (9th Cir.1992), where special circumstances left plaintiffs with no evidence at all to establish third *Gingles* requirement.

Without the assistance of special circumstances to ameliorate the effects of racially polarized voting, Latino voters were unable to elect their candidate of choice in 17 of the elections analyzed by Dr. Grumbach.[16] The Illinois General Assembly violates the Voting Rights Act when

[15] Analyzed in Cook County precincts only. *Grumbach Report p. 13*.
[16] See *Jamison v. Tupelo, Mississippi*, 471 F. Supp. 2d 706, 713 (N.D. Miss. 2007)(Successful Plaintiffs' evidence of 4 endogenous and 10 exogenous racially polarized elections sufficient to support a meet the second and third *Gingles* prongs.)

its actions afford Latino voters "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Gingles*, 478 U.S. at 43. The Voting Rights Act protects voters, not candidates, and that protection must not depend on whether advantages like appointments or incumbency grace the candidates of choice for Latino voters. Legally sufficient racially polarized voting is present in the areas encompassed by the challenged districts. [17]

3. The Totality of the Circumstances Demonstrates Dilution of Latino Voting Strength and a Violation of Section 2 of the Voting Rights Act of 1965 in Illinois.

Section 2 of the Voting Rights Act is violated when "the totality of the circumstances" show that "the political processes leading to nomination or election ... are not equally open to participation by members of a [minority group] ... 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." 52 U.S.C. § 10301(b); *Thornburg v. Gingles*, 478 U.S. 30, 45 (1986). Congress established a set of Senate factors that are probative of a § 2 violation, and courts apply these factors to establish whether, under a totality of the circumstances, a redistricting scheme violates § 2. *Thornburg v. Gingles*, 478 U.S. 30, 44-45 (1986); S.Rep. No. 417 at 28-29, reprinted in 1982 U.S.Code Cong. & Admin.News at 205-06. No one factor or grouping of factors is dispositive of minority vote dilution. *Id*. at 29; 1982 U.S.Code Cong. & Admin.News at 207. The factors include: the history

[17] Defendants' expert, Dr. Alan Lichtman, insists that racially polarized voting is decreasing, as evidenced by the current number of Latino legislators in the Assembly. *See* Ex. 1-9 May 25, 2021 Joint Redistricting Hearing, at 24-25.
Even if his observations were relevant to a proportionality inquiry, and they are not (see Section IV.A.3.(i). *infra.*), they are most certainly not indicative of the presence of racially polarized voting, which requires analysis of voting behavior in actual elections. *Luna v. Cnty. of Kern*, 2016 WL 4679723, at *5 (E.D. Cal. Sept. 6, 2016) (quoting *Gomez*, 863 F.2d at 1415; *United States v. Blaine Cnty.*, 363 F.3d 897, 910 (9th Cir. 2004)). Of the 16 current Latino representatives, 9 were initially appointed to office, a serendipitous happenstance that cannot inform the court about voter behavior. *Grumbach Report p. 18.*

of official voting-related discrimination in the state or political subdivision; the extent to which voting in the elections of the state or political subdivision is racially polarized; the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, and prohibitions against bullet voting; the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction. S. Rep. No. 417 at 28-29. The Senate provided additional factors that courts consider in making a determination whether under the totality of the circumstances, vote dilution and a section 2 violation has occurred. These include, "whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs" of the minority group; "whether the policy underlying the . . . use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous;" and "whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area." *LULAC v. Perry*, 548 U.S. 399, 426 (*citing Johnson v. De Grandy*, 512 U.S. 997, 1000 (1994)); Sen. Rep. 417 at 29.

Plaintiffs first point to the history of adjudicatory findings of discrimination under the totality of circumstances test in Illinois. *See e.g., Rybicki v. State Board of Elections*, 574 F. Supp. 1082 (N.D.Ill.1982); *Ketchum v. Byrne*, 740 F.2d 1398 (7th Cir.1984)): *Hastert v. State Bd. of Elections*, 777 F. Supp. 634 (N.D. Ill. 1991). In those cases, courts considered the Senate Factors and found over and over again that Hispanic plaintiffs proved the discriminatory

conditions that signal vote dilution under Section 2. The judicial findings in these cases demonstrate the existence of a history of discrimination against Latinos by state and local officials which has had lasting effects. In this case as well, the totality of the circumstances supports a finding that the state's SB 927 maps violate §2. Each factor is discussed below.

(a) The History of Discrimination and its Effects on Latino Political Participation (Senate Factors 1 and 5)

Two of the Senate Factors touch on historical discrimination: 1) the history of official voting-related discrimination in the state or political subdivision; and 2) the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process. Both of these factors weigh in favor of Plaintiffs.

(i) Voting-Related Discrimination

Illinois has a long history of official discrimination—particularly in Cook County—affecting the right of Latinos to register, to vote, or otherwise to participate in the democratic process. There are numerous examples of violations of Latino voting rights by governmental entities whose jurisdictions include all or part of the areas in question. *Ketchum v. Byrne*, 740 F.2d 1398, 1408 (7th Cir. 1984) (dilution of Latino voting strength through manipulation of the City of Chicago ward boundaries); *Rybicki v. State Bd. of Elections*, 574 F. Supp. 1147, 1151 (N.D. Ill. 1983) (preservation of white incumbents was intertwined with, and dependent on, racial discrimination against Blacks and Latinos); *see also United States v. Cicero*, 2000 WL 34342276 (N.D. Ill. Mar. 15, 2000) (granting preliminary injunction to stop the certification of election results where an 18-month residency requirement was adopted "at least in part with the racially discriminatory purpose of targeting potential Hispanic candidates" and consequently keeping Hispanic voters from electing candidates of their choice).

Voting related discrimination has a deleterious effect that can be seen in the voter registration gap between Latinos and non-Latinos. Plaintiffs' expert, Dr. Grumbach, found that eligible Latino voters in Illinois are substantially less likely to be registered to vote than are those of other racial/ethnic groups. Illinois's registration rate for eligible Latino voters is below average among states. The gap between Latino and non-Hispanic white registration in Illinois is also above average among states. *Grumbach Report, p. 19.*

(ii) Other Forms of Official Discrimination

The voting-related discrimination tracks the other forms of discrimination against Latinos that resulted in the housing segregation of Latino communities throughout the State, segregation in employment, and discrimination in education. Mexicans and Puerto Ricans faced an intractable racial hierarchy that kept the majority of them stuck in subordinate roles in the labor market and in inadequate housing and education. *Fernandez Report, p. 27.* Mexicans and Puerto Ricans found themselves limited by longstanding racial prejudices that kept them in unskilled and lower-level positions and prevented them from moving up the employment ladder into more skilled work. *Fernandez Report, p. 6.* Housing discrimination resulted in the segregation of Latinos in Near West Side neighborhoods, including in communities within Pilsen. *Fernandez Report, p. 11-12.* Mexicans as well as Puerto Ricans faced widespread housing discrimination in the late forties and through the sixties, turned away by landlords when their ethnic/national origin was revealed, or when landlords encountered darker-skinned family members on move-in day. *Id.* The animus against Latinos was fueled by both local and federal policies. *Fernandez Report, p. 13.* A brief economic recession in 1953–1954 and the responses to both Mexicans and Puerto Ricans brought them increased public scrutiny. *Id.* Puerto Ricans drew the unwanted attention of local welfare officials who raised alarms about the population's growing unemployment rates during the downturn. Some officials had even begun encouraging migrants to "repatriate" to their island and

hoped to discourage others from setting out for the city in the future. *Id.* At the same time, unauthorized Mexican immigrants whose numbers had grown during this period were becoming the targets of public hysteria and more aggressive deportation raids. *Id.* In the 1950s, both Puerto Ricans and Mexicans encountered a hostile climate in the city and experienced heightened policing and harassment. *Fernandez Report, p. 13-15.* The local media fanned the flames. The *Chicago Tribune* carried two separate stories on February 2, 1954 on what they described as a Puerto Rican welfare "menace" and Mexican "hordes" invading the border. *Fernandez Report, p. 14.* One headline warned, "Puerto Ricans Pour into City and Ask Dole," while another declared, "Mexican Horde Repulsed by Border Patrol." *Id.* At a moment of economic crisis, Latinos found themselves repelled by government officials and local citizens. *Fernandez Report, p. 15.*

Discriminatory federal housing and lending policies affected Latinos housing and neighborhood choices. As neighborhoods transitioned because of white flight, and Latinos settled into once-white neighborhoods, Latinos faced hostilities and violence. *Fernandez Report, p.* 15-16. The Little Village community became a site of racial conflict, for example. Guadalupe Lozano, another Mexican American woman whose family was one of the first on her block, explained, "Our neighbors were all white. . . [and we experienced] a lot of discrimination." Jesus Garcia noted how elderly white residents resented large Mexican families in their neighborhoods, especially the presence of so many children. *Fernandez Report, p. 16.* These dynamics resulted from an intentional strategy, according to one scholar, by real estate agents who purposefully encouraged and recruited Mexican American settlement in order to keep African Americans out of white ethnic neighborhoods. Realtors like Richard Dolejs have openly admitted that they used Mexicans and Mexican Americans (and in other areas, Puerto Ricans) as a buffer group, and therefore sold homes to them as an alternative to allowing black Chicagoans to buy in the

community. While this meant that Mexican Americans had access to housing that African Americans did not, this did not mean that Mexican Americans were shielded from discrimination or welcomed by their neighbors. *Fernandez Report, p. 6-7.* Instead, they were pawns in racially-biased housing schemes meant to protect white residents. *Fernandez Report, p. 17.*

Latinos were discriminatorily denied conventional mortgage opportunities. Latinos were targeted for unlawful lending practices such usurious lease-to-own contracts that made home buying difficult. *Fernandez Report, p. 17-19.* Even as recently as 2009, federal judges found realtors guilty of steering Hispanic homebuyers to suburban areas that were predominantly African American and Latino, but steering white homebuyers with similar financial profiles to white areas. *Fernandez Report, p. 37.*

In addition to housing discrimination, Latinos faced discrimination in policing practices. Latinos frequently experienced discrimination from local law enforcement. *Fernandez Report, p. 19.* One Puerto Rican man, Carlos Alvarez, related a story to famed oral historian Studs Terkel of his experience coming off the night shift as a security guard at a local museum. When he was leaving the building, police officers stopped to question him. *Fernandez Report, p. 19.* They refused to believe he was the night watchman and instead mocked, mistreated him, and fractured his arm. Eventually fourteen squad cars surrounded him outside the museum. Officers ultimately jailed him, and the man had to appear in court before a judge where he was found guilty of charges that he did not even understand because he did not speak English. *Fernandez Report, p. 20.* The excessive police presence and gratuitous abuse that Alvarez experienced was common during interactions with Latinos in the 1960s. Puerto Ricans, who are U.S. citizens at birth, described experiencing police abuse that reflected nativist and anti-Mexican sentiments as well. *Fernandez Report, p. 20.* Another Puerto Rican man, Roberto Medina, remembered that as a teenager, "If the

police saw you in a car (I have my own personal experiences of this) they would pull you out and ask if you were a 'wet back' because at that time everybody was 'wet back'. . . They would just pull you out of your car, totally violate your civil rights, search your car, hit you with their sticks, and just harass you." *Fernandez Report, p. 20.* As civil servants meant to protect local residents, police often carried many of their fellow white citizens' same prejudices and racial resentments and manifested them while on duty. Latino young men regularly complained of being harassed, roughed up, and even brutally beaten. Several prominent cases of police killing Latino men drew widespread community attention in these years. *Fernandez Report, pp. 20-22.* Well into the 1980s, police abuse was rampant. The infamous torture operations of Chicago Police Commander Jon Burge, which targeted African American men primarily, extended beyond his supervision to other precincts and to Latinos as well. Latino men testified to being sodomized and abused at a Homan Square "black site" where police allegedly took criminal suspects to extract confessions from them using force. *Fernandez Report, p. 22.* Such blatant misconduct was not limited to the city of Chicago either. In surrounding suburbs and distant towns, other examples of police violence against Latinos appeared as well. *Fernandez Report, p. 22.* Not only did Latinos complain about police abuse against the population, but some argued that the Chicago Police Department violated Latino civil rights by discriminating in its hiring policies against both them and African Americans. *United States v. City of Chicago*, 385 F. Supp. 540 (N.D. Ill. 1974); *Fernandez Report, p. 23*. This legal challenge was part of a growing Latino conscious in the early seventies of employment discrimination in many sectors. *Fernandez Report, p. 23-24.*

Latino children suffered discrimination in education, especially as more Latinos settled in cities. Latinos/as had an average of 8.7 years of schooling compared to 11.3 for the general population. *Fernandez Report, p. 25.* In the 1970s, only 77.6 percent of Latino/a youth aged 16 to

17 were enrolled in high school compared to nearly 88 percent of all other Chicagoans. *Id*. at 26. A 1971 study of Puerto Rican students found an even higher dropout rate of over 70 percent. *Id.*

In 2005, Latino plaintiffs sued a school district in the state alleging discrimination in school assignments, school closures, English Language Learner (ELL) services, and gifted education. As the second-largest school district in Illinois, U-46 serves Latino-dense communities including Elgin. *McFadden v. Bd. of Ed. for I. Sch. Dist. U-46*, 922 F.Supp. 882 (2013). The court eventually ruled that the district did unlawfully exclude minority students from the school's gifted program. *Id.*; *Fernandez Report, p. 37.*

The Senate Report addressed the correlation between socioeconomic status and participation in the political process as follows:

> The courts have recognized that disproportionate educational, employment, income level and living conditions arising from past discrimination tend to depress minority political participation. Where these conditions are shown and where the level of [minority] participation in politics is depressed, plaintiffs need not prove any further causal nexus between the disparate socioeconomic status and the depressed level of political participation.

S. Rep. 417 at 29 n. 114, reprinted in 1982 U.S. Code Cong. Admin. News at 207 n. 114. Due to these disparities in socioeconomics, people of lower income levels often are unable to financially support a candidate's campaign and often have greater difficulty in getting to the polls. *Jamison v. Tupelo, Mississippi*, 471 F. Supp. 2d 706, 714-15 (N.D. Miss. 2007). *See also Sanchez v. State of Colorado*, 97 F.3d 1303, 1323-24 (10th Cir. 1996) (education, age, income and employment impede Hispanic participation in the political process); *Magnolia Bar Ass'n, Inc. v. Lee*, 793 F. Supp. 1386, 1409 (S.D. Miss, 1992) (person with less education is less likely to vote than one with more education, and the person with less money is less likely to own a car and go to polls to vote or to the courthouse to register); *Thornburg v. Gingles*, 478 U.S. 30, 69-70 (1986) (if minorities earn less than whites, they will not be able to provide the candidate of their choice with

the same level of financial support that whites can provide to theirs). In Illinois, Latinos have historically suffered from lower socioeconomic status. *See Fernandez Report, pp. 27-29*. For example, Latinos experienced significant economic disparities compared to white Chicagoans. *Id*. at 27. Indications of socioeconomic inequalities became apparent in U.S. census data that for the first time disaggregated "Spanish-speaking" people as a distinct group in 1970. *Id.* In 1970, nearly 38 percent of Spanish-speaking families earned less than $7000 yearly, compared to only 28 percent of other families. Sixteen percent of Latino/a families compared to only ten percent of all other families lived in poverty. *Id*. Moreover, Latinos/as had slightly higher unemployment rates compared to other Chicagoans—officially 6.0 percent versus 4.3 percent. *Id*. By 1980, "More than a third of Chicago's 115,000 Puerto Ricans were living below the federal poverty level. . . One in four working-age Puerto Ricans in Chicago was unemployed. *Fernandez Report, p. 27.* These socioeconomic disparities persist to the present in the challenged districts. Ex. 7-7 Socioeconomic Maps.

There are other lasting effects of discrimination against Latinos in housing, education, policing, and employment that hinder their ability to participate effectively in the political process. Latinos were considered so irrelevant to electoral politics that they were not even counted separately in Chicago elections until 1975. *Fernandez Report*, p. 31. Indeed, until 1980 when the U.S. Census Bureau allowed respondents to identify as "Hispanic", most population data was only classified as "White", "Black", or "Other", not recognizing Latinos as a distinct population. *Id*. at 28. It was not until that decade's census that Chicago's Latinos selected the "Other" category in significant numbers, thus signaling their recognition that they did not fit into the nation's dualistic black-white classifications. *Id*. That so many Latinos in Chicago identified themselves as "other" compared to the rest of the country suggests the reality of their lived experiences with racism,

"othering", and prejudice that they encountered repeatedly. *Id.* Latinos in segregated, predominantly Latino census tracts and neighborhoods identified at even higher rates as "other", signaling their understanding of themselves as not "white" or "black" based on their experiences in the city over two decades or more. *Id.*

When Hispanics did get counted in voter returns and election results, it was clear that as a group they far surpassed both Whites and African Americans as "non-voters." In the 1975 Democratic mayoral primary, for example, 51.4 percent of Whites were non-voters compared to 65.8 percent of African Americans, and 75.0 percent of Latinos citywide. *Fernandez Report, p. 30-31; Grumbach Report, p. 19.*

(b) Racially Polarized Voting in Illinois (Senate Factor 2)

Plaintiffs refer the Court to Section IV.A.2. of this statement *(Racially Polarized Voting),* which details the extent of racially polarized voting in Illinois.

(c) The State's Use of Voting Practices/Procedures that Enhance the Opportunity for Discrimination Against Latinos (Senate Factor 3)

In general, policies designed to restrict voting access include practices such as requiring documentary proof of citizenship during voter registration; voter intimidation; failure to provide adequate language support; and discriminatory redistricting. In Illinois, Plaintiffs first direct the Court to the adjudications of several redistricting lawsuits over the past few decades that demonstrate how redistricting practices in the state have acted as barriers to equitable representation. *See Ketchum v. Byrne*, 740 F.2d 1398, 1408 (7th Cir. 1984) (dilution of Latino voting strength through manipulation of the City of Chicago ward boundaries); *Rybicki v. State Bd. of Elections*, 574 F. Supp. 1147, 1151 (N.D. Ill. 1983) (preservation of white incumbents was

intertwined with, and dependent on, racial discrimination against Blacks and Latinos); *Hastert v. State Bd. of Elections*, 777 F. Supp. 634 (N.D. Ill. 1991).

In addition to redistricting practices, jurisdictions in Illinois have attempted to enact residency requirements for participation in elections. In *United States v. Cicero*, 2000 WL 34342276 (N.D. Ill. Mar. 15, 2000), for example, the court granted Plaintiffs a preliminary injunction to stop the certification of election results in a contest involving a long residency requirement for candidates. The court found the 18-month residency requirement was adopted "at least in part with the racially discriminatory purpose of targeting potential Hispanic candidates" and consequently keeping Hispanic voters from electing candidates of their choice.

Multiple incidents of polling place voter intimidation and harassment have been reported in Illinois. In some voting places, armed police officers have been present at the polls reviewing voter credentials. In some voting places voters have improperly been asked for identification. and harassed by law enforcement at the polls. *Fernandez Report at 35*; Illinois Advisory Comm. to US Comm. on Civil Rights, *Civil Rights and Voting in Illinois*, 20 (2018), https://www.usccr.gov/files/pubs/2018/IL-Voting-Rights.pdf.

(d) The State's History of Candidate Slating and Exclusion of Latinos (Senate Factor 4)

The State has a history of candidate slating, a process that has historically disadvantaged Latino candidates, and affected the ability of Latinos to elect the candidates of their choice. *See King v. State Bd. of Elections*, 979 F. Supp. 582, 614 (N.D. Ill. 1996) ("While [one Latino's] electoral success raises hopes for a color-blind slating and election processes in the future, the problems of racial bloc voting and exclusion of Hispanics from the powerfully important slating process remain.") (vacated on other grounds by *King v. Ill. State Bd. of Elections*, 519 U.S. 978

(1996)). In that case, the court reviewed the findings of an earlier tribunal requiring the creation of a majority Hispanic congressional district. The court noted a "'judicially recognized history of discrimination, both past and present, against the Chicago Hispanic community and its attendant impact on effective political participation and representation." *King v. Ill. State Bd. of Elections*, 979 F. Supp. 582 at 597. The court noted, moreover, that candidate slating excluded Latino candidates for the most part:

> Since 1988, only three Hispanic candidates have been elected in citywide elections. Two Hispanic judges were elected in 1988 and 1990; however, both candidates won with less than a majority of the vote due to a splintering of votes among multiple white candidates. In addition, Miriam Santos, an Hispanic, was elected as city treasurer in 1991; however, Ms. Santos had been slated for this position by the Chicago Democratic Party and she ran on a slate that included incumbent mayor Richard Daley. Ms. Santos subsequently ran as an incumbent in 1995 and was reelected. With the exception of Ms. Santos, the Democratic Party has not slated an Hispanic candidate for alderman, state senate, state representative, or congress in any district with a white majority voting age population.

King, 979 F. Supp. 582 at 613.

In addition, the slating process has been used in Illinois to exclude Latino candidates and defeat the preferences of Latino voters in the context of judicial elections where being slated could all but guarantee a victory. *Fernandez Report, p. 35.* For example, the Democratic Party, which controls the majority of the seats on the Cook County bench, would use its influence to reward precinct captains, ex-office holders, and fundraisers by all but appointing them to the bench via the judicial slating process, a process that excluded minority candidates including Latinos. *Id*. In short judicial elections were and remain part of a patronage system which disproportionately rewards wealthier candidates. *Id*. Political connections and donations are important in the judicial slating process and that dynamic excludes Latinos. *Fernandez Report, p. 35.*

(e) The Use of Overt or Subtle Racial Appeals in Political Campaigns (Senate Factor 6)

Historically, politicians have resorted to racial appeals, portraying Latinos as too radical. Latino candidates were described as communists, socialists, or advocates of Puerto Rican independence if they were progressive. Ex. 8 *Del Valle Decl. at 11.* Or they were portrayed as gang-related candidates or as criminals. Ex. 8 *Del Valle Decl. at 11.* More recently, racial appeals in political campaigns have appeared in Illinois in the form of anti-immigrant signaling. For example, a 2004 political ad run by U.S. Senate candidate Jim Oberweis raised fears of unfettered immigration:

> "Illegal aliens are coming here to take American workers' jobs, drive down wages and take advantage of government benefits such as free health care, and you pay." "How many? Ten thousand illegal aliens a day. Enough to fill Soldier Field every single week."
>
> *Fernandez Report,* pg. 35.

In a more recent political campaign, Alma Anaya, Latina candidate for Cook County Commissioner was targeted with anti-immigrant ads proclaiming that "Anaya is not from here." *Id.*

(f) The Extent to Which Latinos Have Been Elected to Public Office in the State (Senate Factor 7)

Latinos are much less likely to obtain public office in the State of Illinois than their white counterparts. *Fernandez Report at 34*. Throughout the State of Illinois, Latinos are rarely elected to local offices. *Id*. Moreover, as Dr. Grumbach points out, Latinos who have been elected, many were appointed to office first. Of the 16 current Latino representatives, 9 were initially *appointed* to office. *Grumbach Report, p. 17-18.* Therefore those appointed candidates who ran, ran as incumbents.

Latino Members of the Illinois General Assembly

House Incumbents	
HD01: Aaron Ortiz	
HD03: Eva Dina Delgado	**Appointed** (2019)
HD04: Delia C. Ramirez	**Appointed** (2019)
HD21: Edgar Gonzalez, Jr.	**Appointed** (2020)
HD22: Angelica Guerrero-Cuellar	**Appointed** (2021)
HD24: Lisa Hernandez	
HD40: Jaime M. Adrade, Jr.	**Appointed** (2013)
HD44: Fred Crespo	
HD83: Barbara Hernandez	**Appointed** (2019)
HD85: Dagmara Avelar	

Senate Incumbents	
SD01: Antonio "Tony" Garcia	
SD02: Omar Aquino	**Appointed** (2016)
SD11: Celina Villanueva	**Appointed** (2020)
SD20: Cristina Pacione-Zayas	**Appointed** (2020)

SD22: Cristina Castro

SD25: Karina Villa

Grumbach Report p. 17-18.

Therefore, the fact that the State House membership is approximately 8.5% Latino and the State Senate is approximately 10.2% Latino, both approaching the 11.2% Latino CVAP in Illinois, is of little import given the context of the elections giving rise to these percentages. As Dr. Grumbach notes:

> A vast literature in political science finds evidence of an "incumbency advantage," in which, all else equal, incumbents are more successful in elections than non-incumbent candidates in state and federal elections (*e.g.,* Ansolabehere and Snyder 2002). Because appointed candidates are provided this incumbency advantage in subsequent elections, the prevalence of appointees among the Latino candidates make it difficult to infer from these data whether Latino voters are able to elect a representative number of Latino candidates to the Illinois General Assembly.

Grumbach Report, pp. 17-18.

(g) Elected Official Have Remained Unresponsive to the Particularized Needs of Latinos

"Evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group . . . may have probative value." *LULAC v. Perry*, 584 U.S. 399, 426 (2006). In Illinois, elected officials have not historically been responsive to the needs of the Latino community, prioritizing the needs of white constituents over minority communities. *Fernandez Report, p. 30.*

Especially with respect to housing, quality of life and gentrification issues, elected officials have been less responsive to the needs of the Latino community. Ex. 8 *Del Valle Decl. at 8.* Before the 1980's there was no Latino representation in the General Assembly, there was no one to

protect the interests of the Latino community in the state. Ex. 8 *Del Valle Decl. at 9.* Tactics to draw Latinos away from neighborhoods such as Humboldt Park and Wicker Park in Chicago – such as arson –were successful in large part because state and local officials failed to invest in these neighborhoods. Ex. 8 *Del Valle Decl. at 8*. Furthermore, realtors pressured Latinos into selling their homes. Once the Latinos sold, the realtors would sell housing at a significant profit to more affluent non-Hispanic whites. Again, these tactics were enabled because before the 1980's there was no Latino representation in the General Assembly, there was no one to protect the interests of the Latino community in the state. Today very similar tactics are being used to drive Latinos out of the Humboldt Park area, and areas that have historically been home to many Latinos. Ex. 8 *Del Valle Decl. at 5.* Because of a lack of affordable housing and crime, many Latinos were forced out and these areas became gentrified, leading to expensive housing and a tremendous shift in the population. Ex. 8 *Del Valle Decl. at 6.*

Latinos have also suffered from lack of resources in educational facilities. Community members in neighborhoods where Latinos were increasingly becoming the majority through the 1970s and 1980s frequently complained about the crumbling, overcrowded buildings, lack of reinvestment in majority Latino schools, and blatant discrimination on the part of the board of education as white residents abandoned the Chicago Public School system (for parochial schools or the suburbs) and Latino children took their place in aging, deteriorated facilities. *Fernandez Report, at 25.* Many Mexican American parents in Pilsen complained about the Froebel School, which served as an overflow facility for ninth grades who transitioned into the much larger, overcrowded, and racially tense Harrison High School. *Id*.

(h) The Reasons Behind The State's Legislative Maps Were Tenuous

This Senate Factor requires the Court to consider whether the reasons behind the State's legislative mapping process were tenuous. S. Rep. No. 97-417, at 29; *LULAC v. Perry*, 584 U.S. 399, 426 (2006). Although courts must defer to legislative policy decisions governing how lines are drawn in redistricting, tenuous policy decisions deserve no such deference. Here, the Illinois Legislature's motives were attenuated from traditional policy factors that inform redistricting decisions such as geography from the beginning. Mem. Op. and Order [Dkt #117] at 34. The Legislature started its redistricting process in Spring 2021 with the premise that if it did not enact a map by June 1, 2021, the redistricting process would be submitted to a bipartisan redistricting commission. *Id*. The Legislature's decision to draw new maps based on population estimates in May taints its September redistricting process because the basic boundaries of the May map were themselves drawn for reasons that had nothing to do with the traditional policy choices involved in map drawing. Quite simply, the Legislature drew the May maps, and the Governor enacted them, on a timeline that prevented the creation of a bipartisan Redistricting Commission. As this court noted in its summary judgment opinion, "the record reveals that, unlike the geographical and historical state policies advanced in the cases cited by Defendants, the General Assembly risked running afoul of the one-person, one-vote principle to avoid ceding political control of the legislative redistricting process." Mem. Op. and Order [Dkt #117] at 35. The strategic reasons for the earlier-enacted map infect the district boundaries for the September map. Again, as the court noted, "the General Assembly may not dilute a large percentage of votes to advance a preferred political outcome." *Id.*

The relevant question here is not whether the challenged law can be supported by valid neutral justifications, but whether the *actual* policy behind the law is tenuous. The justification

must have some basis in reality and not simply in conjecture. Once plaintiffs show that political consequences were a motivation for a voting restriction in the first place, the burden should shift to the jurisdiction to show it would have adopted the restriction in the absence of any political consequences. With respect to the most recently drawn map, Defendants cannot meet their burden. Indeed, as Plaintiffs demonstrate below in Section iv.b, not only were the reasons behind the development of the current mapping configurations tenuous, but race was unconstitutionally the predominant consideration in placing Latino voters into and out of house district 21 and senate district 11. This fact compounds the tenuousness of the State's policy decisions.

(i) The Number of Latino-Majority Districts Has Not Reached Proportionality with the Eligible Voter Population

Whether or not Latinos constitute the citizen voting age majority in a number of districts proportional to their population "is a relevant fact in the totality of circumstances." *Johnson v. De Grandy*, 512 U.S. 997, 1000 (1994); *LULAC v. Perry*, 584 U.S. 399, 426 (2006). *De Grandy*'s instruction to courts is to consider, when assessing the totality of circumstances, whether there exists a number of "majority-minority districts in substantial proportion to the minority's share of voting-age population [.]" Latinos comprise 11.2% of Illinois' citizen voting age population. In contrast, in the SB 927 Plan, 4 of the 118 House districts are majority Latino CVAP (HD1, HD2, HD22, HD23), and 2 of the 59 Senate districts are LCVAP majority (SD1, SD2). Therefore, Latino-majority districts comprise 3.3% of the House plan, 3.3% of the Senate plan, and 3.3% of the Assembly as a whole. There can be no doubt whatsoever that the number of Latino majority districts has not reached proportionality with the Latino share of eligible voters in Illinois. In fact, both Houses actually *lost* one majority Latino seat each from the plan that existed in the past decade. *Ex. 7 Ely Declaration at 22*. Latino underrepresentation persists.

Despite these stark underrepresentation realities,, Defendants' expert, Dr. Alan Lichtman, stated that "in terms of providing minority representation in the general assembly, the State of Illinois is an exemplar, it's a model for the nation," as evidenced by his calculation that "[a]bout a third, a little under a third, of members of the state house and the state senate are African Americans, Asian Americans, or Hispanics." Dr. Lichtman avers "[t]hat's right in line with the minority citizen voting age population in the state." Ex. 1-9 May 25, 2021 Joint Redistricting Hearing, at 24:8-16. To the extent that Defendants rely on this metric to support their contention that the September redistricting maps are proportional, Defendants are mistaken.

The court's proportionality inquiry focuses on the number of "effective" majority-minority districts, not office-holders. *Campuzano v. Illinois State Bd. of Elections*, 200 F. Supp. 2d 905, 908–09 (N.D. Ill. 2002) (citing J*ohnson v. De Grandy*, 512 U.S. 997, 1013–14 & n. 11, (1994)).[18] De Grandy's instruction to courts is to consider, when assessing the totality of circumstances, whether there exists a number of "majority-minority districts in substantial proportion to the minority's share of voting-age population[.]" See also *LULAC v. Perry*, 548 U.S. at 438 (considering only Latino majority districts in the proportionality inquiry).

Thus, the proportionality test turns on the amount of opportunity provided to minority voters in a redistricting plan through majority minority districts. The test has nothing to do with a snapshot of the racial composition of elected officials on the jurisdiction's governing body at any particular moment. The current number of Latino legislators is far less relevant to the totality of

[18]" 'Proportionality' as the term is used here links the number of majority-minority voting districts to minority members' share of the relevant population. The concept is distinct from the subject of the proportional representation clause of § 2, which provides that "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." 42 U.S.C. § 1973(b). This proviso speaks to the success of minority candidates, as distinct from the political or electoral power of minority voters". *De Grandy*, 512 U.S. at 1014 n. 11.

the circumstances inquiry than the fact that the number of Latino-majority districts actually decreased, particularly where the road to the Assembly by appointment initially had little or nothing to do with the legislator being the cohesive choice of Latino voters. See section IV(A)(3)(f)., *supra.*

B. The September Redistricting Plan Constitutes a Racial Gerrymander in its House District 21 and Senate District 11 Configurations in Violation of the Fourteenth Amendment.

In addition to diluting Latino voting strength in violation of § 2, evidence indicates that race predominated in the creation of two districts in SB 927.

A party proves a racial gerrymandering claim regarding an electoral district under *Shaw v. Reno*, 509 U.S. 630 (1993), and its progeny, in violation of the equal protection clause of the Fourteenth Amendment to the United States Constitution when: "(1) race is the 'dominant and controlling' or 'predominant' consideration in deciding 'to place a significant number of voters within or without a particular district," and (2) "the use of race is not 'narrowly tailored to serve a compelling state interest.'" *Ala. Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1264 (2015) (first quoting *Miller v. Johnson*, 515 U.S. 900, 913, 916 (1995), and then quoting *Shaw v. Hunt*, 517 U.S. 899, 902 (1996)).[19] Once a plaintiff establishes that race predominated, the burden shifts to the jurisdiction defending the redistricting plan to "demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest." *Bethune-Hill v. Virginia State Bd. of Elections*, 137 S. Ct. 788, 801 (2017) (citing *Miller*, 515 U.S. at 920).

[19] Even though a racial gerrymandering claim must be made as to a particular district, "[v]oters, of course, can present statewide evidence in order to prove racial gerrymandering in a particular district." *Alabama Legislative Black Caucus*, 575 U.S. at 263 (citing *Miller*, at 916). *Fernandez Report at 35.*

Under the racial gerrymandering framework, "[s]trict scrutiny applies where redistricting legislation ... is so extremely irregular on its face that it rationally can be viewed only as an effort to segregate the races for purposes of voting, without regard for traditional districting principles, ... or where race for its own sake, and not other districting principles, was the legislature's dominant and controlling rationale in drawing its district lines." *See Bush v. Vera*, 517 U.S. 952, 958 (1996) (internal quotations and citation omitted).[20] "The plaintiff's burden is to show, either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Miller*, 515 U.S. at 916.

The SB 927 Plan uses race as predominant factor in the creation of House District 21 and Senate District 11 to protect those districts' two non-Latino white incumbents. Legislative Defendants can offer no non-racial criteria that explain the configurations of these two districts in SB 927. The non-racial criteria given both in testimony and in resolutions accompanying the August 2021 plan's legislation are filled with contradictions that undermine their plausibility. Having analyzed the Latino CVAP and other figures of the two districts during the May 2021 process without conducting a full section 2 analysis, Defendants sought to contain the electoral power of Latinos by making districts that appeared majority Latino but that would not perform against white incumbents. Additionally, incumbency protection and traditional redistricting criteria goals could have been met without the race-based changes to HD 21 and SD 11. Therefore, Defendants did not use race to achieve a compelling state interest.

[20] However, "[r]ace may predominate even when a reapportionment plan respects traditional principles," and plaintiffs need not show that there was "a conflict or inconsistency between the enacted plan and traditional redistricting criteria." *Bethune-Hill*, 137 S. Ct. at 798-799.

1. Race was the Predominant Consideration in Placing Latino Voters Into and out of House District 21 and Senate District 11.

In the area that Legislative Defendants and members of the public identify as the "south west side of Chicago," there were in the 2011 Adopted Plan and are in the SB 927 Plan, 3 legislative (senate) districts and 6 representative (house) districts. Ex. 1-21 H.R. 443 at 15. Of those 3 senate districts, 2 are represented by Latino elected officials, Celina Villanueva and Antonio Muñoz, and 1 is elected by a non-Latino white incumbent, Steven Landek. *See* Profile of Senator Villanueva ;https://www.ilga.gov/senate/Senator.asp?GA=102&MemberID=2976; Profile of Senator Munoz https://www.ilga.gov/senate/Senator.asp?GA=102&MemberID=2797; Contreras Pls' Ex. 4-42. Of the 6 south west side house districts, only House District 23 in the 2011 Adopted Plan was represented by a non-Latino white incumbent, Michael Zalewski. Profile of Representative Zalewski https://www.ilga.gov/house/Rep.asp?GA=102&MemberID=2819. Following redistricting in 2021, Rep. Zalewski resides in HD 21, one of the districts paired to constitute Senate District 11 in which Sen. Landek now resides. Ex. 1-20 S.R. 003 at 36; Ex. 3 Zalewski Dep. 94:4-19.

In 2021, the Illinois General Assembly redrew its legislative district lines in two phases. In the weeks leading up to May 28, 2021, staff of the House Democratic Caucus and the Senate President's Office led a closely guarded process of drawing maps to be passed before the state constitutional date after which redistricting would become the province of a redistricting commission. During that spring session, members of the House Democratic Caucus and Senate Democratic Caucus gave staffers for the House Democratic Caucus and the Senate President's Office their preferences regarding their districts. Ex. 1 Maxson Dep. 64:15-19; Ex 3 Sodwoski Dep. 50:1-9]. These staffers controlled the mapdrawing process behind closed doors using computers equipped with mapdrawing software. Ex 1. Maxson Dep. 59:21-24; Ex. 3 Sodwoski

Dep. 46:1-5. Even elected members of the House and Senate Democratic Caucuses could not access these rooms without permission from those staffers. Ex. 3 Sodwoski Dep. 47:14-24; 48:1-3. During that process of mapdrawing, evidence indicates that the staffers and others working for the leadership of both chambers of the General Assembly examined statistics showing which 2011 Adopted Map districts were majority-Latino citizen voting age population districts. At the end of that first May mapping process, the map passing as House Bill 2777 had dismantled Senate District 11 (formerly 12), which in the 2011 Adopted Plan's configuration would have had a Latino CVAP higher than 50%, leaving it at only 47.38% LCVAP. Ex. 1-11, S.R. 326 at 30. The HB 2777 map that passed on May 28, 2021, also lowered the Latino CVAP of HD 21 (formerly 23) to 42.2%. Ex. 1-10, H.R. 359 at 14.

In August of 2021, a more rushed and closed process involved changes to districts, the stated primary purpose of which was to incorporate Census PL file data and equalize district population accordingly. At the end of the second mapping process, SB 927 kept a version of Senate District 11 similar to SD 11 in the May, HB 2777 map, leaving it at only 47.8% LCVAP. Like the May 28, 2021, map, the SB 927 Plan also lowered the Latino CVAP of House District 21 compared to its HD 23 configuration in the 2011 plan. Legislative Defendants did nothing to repair the HB 2777 configurations of HD 21 and SD 11 in the August remapping process that led to SB 927. Ex. 1 Maxson Dep. 29:3-12 Both of these resulting districts have non-Latino white incumbents—the only white incumbents in the south west side—residing in them.

(a) Legislative Defendants Used Race to Reduce the Latino CVAP of HD 21 and SD 11 in SB 927.

Legislative Defendants used CVAP data broken down by race and ethnicity to place Latinos into and out of HD 21 and SD 11. As the two mapdrawers who were in charge of drawing legislative and representative district lines testified, Legislative Defendants' staffers examined

changes in American Community Survey citizen voting age population broken down by race ethnicity in charts next to maps as they changed district lines. Ex. 1 Maxson Dep. 82:20-83:5. The two in charge of drawing lines--Miles Sodowski in the Senate President's Office and Jon Maxson in the House Democratic Caucus Redistricting Office--supervised a handful of staffers who worked on maps in locked rooms where redistricting computers were located. Ex. 1 Maxson Dep. pg 76:19-23; Ex. 3 Sodowski Dep. 68:1-16. These staffers used a software called Autobound and uploaded the ACS data in order to draw maps. Ex. 1 Maxson Dep. pg 54:17-18; Ex. 3 Sodowski Dep. 93:7-13.

In addition to the racial and ethnic CVAP data available to mapdrawers in the Autobound software, one document indicates that staffers had examined districts in the 2011 Adopted Map in which Latinos would comprise a majority of citizen voting age population as of the most recent count of such data by the ACS. In a Microsoft Excel file titled "Existing District Demographics," there is a tab titled "House" and a table titled "Senate." *See*. Ex. 1-22 Existing District Demographics; Ex 1-26 Existing District Demographics excel properties.[21]

As Mr. Maxson acknowledged in deposition, red or pink highlighted cells in the "Existing District Demographics" document appear to indicate districts in which a demographic percentage for a certain race or ethnicity exceeds 50%, and yellow highlighted cells appear to indicate percentages between 40 and 50%. *See* Dep. Ex 1-26 Existing District Demographics excel properties. Even though Mr. Maxson said he did not recall seeing the document before, metadata

[21] Under the House tab, the first column heading reads "RD," which could mean representative district, as the General Assembly's redistricting legislation refers to house districts. Similarly, under the Senate tab, the first column heading reads "LD," which could mean legislative district, which is how legislation refers to senate districts. In both the Senate and House tabs, the spreadsheets give percentages under the headings "%Black," "%Hispanic," and "%Asian" repeated under the two super headings "Demographics - Total" and "Demographics - CVAP."

for the Excel document indicates that its creator is "Jon Maxson," and that it was created on April 7, 2021. *See* Ex. 1-22 Existing District Demographics; Ex 1-26 Existing District Demographics excel properties; Ex. 1 Maxson Dep. pg 187:11-188:24; Ex. 9 Herrera Decl. As indicated in Plaintiffs' counsel's declaration, Legislative Defendants' counsel provided this document to Plaintiffs in a discovery folder entitled "House Data Prepared for Lichtman." Ex. 9 Herrera Decl. Therefore, Legislative Defendants were aware of the number of districts that were over 50% Latino CVAP before they completed the first map in May of 2021. This indicates that Defendants "mechanically rel[ied] upon numerical percentages" without a purpose related to VRA or statutory compliance. *See Alabama Legislative Black Caucus*, 575 U.S. at 256 (finding predominance of race where mapdrawers focused on numerical targets without conducting analysis that district could elect minority candidate of choice).

Specific swapping of larger areas of HD 21 and resulting changes in SD 11, in which HD 21 is paired with HD 22, also point to movement of Latino voters into and out HD 21 and SD 11 on the basis of race. Mapdrawers moved certain portions of the community of Little Village and the town of Cicero out of what was HD 23 to create the HD 21 in SB 927. Ex. 1 Maxson Dep. 194:1-9. Consequently, the SB 927 version of SD 11 in which Sen. Landek resides and HD 21 is nested contains those changes as well. Little Village and Cicero are areas with high concentrations of Latino CVAP--most Census blocks in these areas have between 75 and 100% LCVAP. *See* Ex. 2-35 LCVAP Map of 2011 HD23 and 2021 HD21; Ex. 2-36 LCVAP Map of 2011 HD23 and 2021 HD22; *Redistricting Testimony 102nd General Assembly, Hrg. Date April 3, 2021*,23:19-25:4 https://ilga.gov/house/committees/Redistricting/102RedistrictingTranscripts/HRED/20210403BC/Saturday%20April%203%20-%20Berwyn%20Cicero.pdf (last visited 11/10/2021); Dave Ely's

Map with CVAP shading. HD 23 in the 2011 Adopted Plan had portions of Little Village as well as a greater share of Cicero than it does in the HD 21 configuration in SB 927.

The switching of house districts paired in the renamed SD 11 in SB 927 as compared to SD 12 in the 2011 Adopted Plan also indicates movement of Latino population into and out of SD 11 on the basis of race. As Sen. Landek--the incumbent of SD 12 in the 2011 Adopted Plan and a resident of SD 11 in SB 927--acknowledged in a deposition, the pairing of the districts associated with his senate district changed. Ex. 4 Landek Dep. 72:7-11. Both versions of Sen. Landek's senate district include a version of the district in which Rep. Zalewski resides: HD 21 in the SB 927 Plan and HD 23 in the 2011 Plan. Ex. 4 Landek Dep. 21:11-17; 71:16-21. However, SD 12 in the 2011 Adopted Plan included House District 24, in which Representative Elizabeth Hernandez was the incumbent, while SD 11 in SB 927 included House District 22, in which Representative Angelica Guerrero-Cuellar resides. Ex. 4 Landek Dep. 71:16-21; 21:13-21. Rep. Hernandez's HD 24 changed in portions to become HD 2 in the SB 927 Plan, in which Rep. Hernandez resides. Ex. 1-21 H.R. 443 at 17-18. The table below demonstrates how Rep. Hernadez's former HD 24 gave Landek's old SD 12 a house district with very high LCVAP--66.3% as measured by ACS 2015-2019 data--but replacing it with Guerrero-Cuellar's HD 22 gives Sen. Landek an associated house district with lower LCVAP in both plans. This is in addition to the lower LCVAP that HD 21 in SB 927 has compared to HD 23 in the 2011 Adopted Plan, and HD 22, which is itself much lower in LCVAP in SB 927.

Incumbent House Representative	**House District (LCVAP%) in 2011 Adopted Plan**	**Paired in Sen. Landek's SD 12 in 2011 Adopted Plan**	**House District (LCVAP%) in SB 927 Plan**	**Paired in Sen. Landek's SD 11 in SB 927 Plan**
Guerrero-Cuellar	22 (60.39%)		22 (52.7%)	x
Zalewski	23 (44.45%)	x	21 (42.7%)	x
Hernandez	24 (66.07%)	x	2 (55.1%)	
Landek Sen. Dist. (LCVAP %)	SD 12 in 2011 (**54.52%**)		SD 11 in SB 927 Plan (**47.7%**)	

Sources: Ex. 1-22 Existing District Demographics; Ex. 7-2 Legislative Proposal (Table 1); Ex. 7-4 Benchmark (Table 2).

Even though each of the paired districts themselves changed in configuration from the 2011 Adopted Plan to the SB 927 Plan, the area of southwest Chicago and southwest Cook County suburbs that HD 22 in both plans occupies is very different from the areas that Hernandez resides in each plan. The net result of these changes is that Senate District 11 in SB 927 has 47.7% LCVAP, down from the 54.7% that Landek's former SD 12 in the 2011 plan had. Therefore, a holistic view of the changes to Senator Landek's resulting SD 11 indicates that it was drawn with race as a predominant factor. *See Bethune-Hill*, 137 S. Ct. at 800 ("holistic analysis" of district changes necessary in determining predominant motive rather than "[c]oncentrating on particular portions in isolation").

The reduction of Latino population in SD 11 went contrary to testimony by Illinois Latino advocates. The Latino Policy Forum ("Forum"), a state-wide, non-profit advocacy and policy organization with a 30-year history of building the leadership of the Latino community, testified at nine redistricting hearings held by the Illinois General Assembly for the drawing of 2021 state legislative maps. *Redistricting Testimony 102nd General Assembly, Hrg. Dates*: March 30, 2021, April 1, 2021, April 3, 2021, April 8, 2021, April 12, 2021, May 25, 2021, May 28, 2021, August

26, 2021, August 28, 2021, https://ilga.gov/senate/committees/Redistricting%20Hearings.asp?CommitteeID=2742&Description=Redistricting&Code=SRED&GA=102. The Forum, part of whose mission is to strengthen leadership by ensuring a fair redistricting process that would provide the Latino community an opportunity to elect the candidate of their choice, told the Illinois General Assembly that SD 11 should remain a Latino majority district, along with the benchmark house districts 23 and 24 (currently House Districts 21 and 2 respectively, in September 2021 maps), that were nested in Senate District 11. IL. H.R. Redistricting Comm. Tr., R. Valdez Jr., 30:13-31:1, April 3, 2021.

The Forum highlighted the increase in Latino population since 2011, on the Southwest side, urging the Redistricting Committee to maintain these now larger and stronger Latino districts intact thereby ensuring Latinos would elect a candidate of their choice on the Southwest side of Chicago. *Id*. at 29:11-30:6. The Forum also recommended that House Districts 23 and 24 be maintained as part of the benchmark seven total Latino majority Southwest side house districts based on Latino voting age population, along with Senate 11 as one of the three total Latino majority Southwest side Senate districts. *Id*. The resulting Latino population figures in districts HD 21 and SD 11 indicate that Legislative Defendants ignored that public redistricting testimony.

Finally, the shapes of HD 21 and SD 11 are bizarre. HD 21 has a north and south end, and those ends are connected by a narrow land bridge. Because HD 21 is a component house district of SD 11, that senate district takes on a similarly bizarre north and south end. Other districts in the southwest Chicago region do not take on such shapes. However, the shape of the two districts that have the only white incumbents in the area lend circumstantial evidence that the districts are race-based. *See Miller*, 515 U.S. at 913 (citing *Shaw*, 509 U.S. at 649) (bizarreness of shape of district is relevant "because it may be persuasive circumstantial evidence that race" predominated).

(b) Legislative Defendants' Official Non-Racial Purposes for HD 21 and SD 11 are Contradictory and do not Explain Dismantling of Latino Opportunity Senate District.

Legislative Defendants' various stated reasons for the configurations of HD 21 and SD 11 that are race-neutral are contradictory and do not explain the race-based districts. One of Defendants' stated reasons centers on the moving of communities of interest into and out of districts. An example of such justification is the House Resolution's statement that Rep. Lisa Hernandez requested more of the town of Cicero. However, when asked in deposition, Mr. Maxson could not give a limiting rationale for how much of Cicero Rep. Hernandez would get or Rep. Zalewski would keep. Ex. 1 Maxson Dep. 100:20-101:2. Little Village, another community of interest raised in the General Assembly's redistricting committee hearings, is given as one reason for HD 21 and SD 11's shape. Ex. 1-21 H.R. 443 at 16; Ex. 3 Sodwoski Dep. 126:19-127:1. However, the main reason given for that change--which was not contained in the resolutions--was that Sen. Celina Villanueva wanted more "progressive Democrats" in her district. Ex. 3 Sodwoski Dep. 128:19-22.

Mapdrawers and incumbent Sen. Landek did not provide additional evidence that supported why mapdrawers would have granted Sen. Villanueva's request to add more "progressive Democrats" to her district. The mapdrawers could not point to any way to quantify or identify "progressive Democrats," such as through some election issue index. Ex. 3 Sodwoski Dep. 129:4-130:8. When asked about the issues that Sen. Landek believes define what a "progressive Democrat" in Little Village would prefer in terms of agenda, he said that he could

only recall that such voters favored granting driver's licenses to undocumented immigrants. Ex. 4 Landek Dep. 66:6-13.[22]

Another set of non-racial reasons given for HD 21 and SD 11's configurations relate to how the north and south ends of those districts are connected. The resolutions stated that the ends united working class households, and Sen. Landek said that the north and south ends united middle-class households. Ex. 1-20 S.R. 003 at 35; Ex. 4 Landek Dep. 77:16-21. Neither source gave an explanation of how to measure such household types. However, the resolutions gave other connecting criteria, such as thoroughfares. Of the 3 mentioned--I-55, Cicero Avenue, and Harlem Avenue--only one actually connects the north and south ends. Ex. 1-20 S.R. 003 at 35. Furthermore, for SD 11, the transportation-related sites mentioned in the Senate Resolution are all in the south end of the district. Ex. 3-40 2011 SD 12 and 2021 SD 11. Therefore, those transportation hubs do not add any evidence of connecting the north and south ends of the districts.

An additional redistricting principle that Legislative Defendants offered in deposition and the resolutions was the maintenance of incumbent-constituent relations. Ex. 1-21 H.R. 443 at 7; Ex. 1-20 S.R. 003 at 35. Ex. 3 Sodowski Dep. 133:10-16. For SD 11's configuration in the SB 927 Plan, this principle does not add much in the way of non-racial justification. The May Senate Resolution stated that SD 11 maintained only 49% of the constituency that Mr. Landek had in his SD 12 in the 2011 Adopted Plan. Ex. 1-11 S.R. 326 at 30.

In the last decade's litigation of Illinois's congressional map, this Court upheld Illinois Congressional District 4 when the plaintiffs challenged it as a racial gerrymander. *See Comm. for a Fair & Balanced Map*, 835 F. Supp. 2d at 593. It upheld such a district in part because it united

[22] After a break and meeting with counsel, Sen. Landek recalled other issues a progressive Democrat would have in their legislative agenda such as Chicago elected school board, a $15 an hour minimum wage, and the ability to change your birth certificate to a different gender. Ex. 4 Landek Dep. 94:12-95:19.

various communities of interest, including Latino communities of interest, and because its maintenance might have allowed the state to avoid violating section 2 in the dismantling of a Latino opportunity district. *See id*. at 592-593. Here, however, the bizarre HD 21 and SD 11 maps withdraw from Latino communities of interest and, with respect to SD 11, dismantle a potential Latino opportunity district by lowering LCVAP below 50 percent.

Finally, Legislative Defendants also cannot explain the configurations of HD 21 and SD 11 with partisan politics. In the southwest Chicago area made up of Senate Districts 1, 11, and 12, all three are Democrats. Current Senate Members, Illinois General Assembly, https://www.ilga.gov/senate/ (last visited Nov. 10, 2021). Evidence from deposition testimony used by Legislative Defendants during redistricting shows that they evaluated incumbent performance in 4 different reaggregated general elections between a Democrat and a Republican--Biden vs. Trump (2020), Clinton vs. Trump (2016), Quinn vs. Rauner, and Mendoza vs. Munger. Ex. 1 Maxson Dep. 86:6-24. Legislative Defendants also created a "D Index" that was the average of those general elections to see how Democrats generally performed in a given district formation. Ex. 1 Maxson Dep. 87:1-9; Ex. 1-23 SB 927 Matrix at "Combo Race Figures" tab, 4-6. The "D Index" for all of the House Districts paired in Senate Districts 1, 11, and 12--HDs 1, 2, 21, 22, 23, and 24--is higher than 65%. Ex. 1-23 SB 927 Matrix at "Combo Race Figures" tab, 4. Therefore, Legislative Defendants cannot argue that the predominant purpose of the configurations of HD 21 and SD 11 in SB 927 was "a desire to keep Democratic incumbents." *See Comm. for a Fair & Balanced Map*, 835 F. Supp. 2d at 590; *see also Contreras v. SBOE*, Memorandum Opinion and Order Granting Contreras Plaintiffs' Motion for Summary Judgment, 35, 1:21-cv-03139 Document #: 117 at 35, October 19, 2021 ("the General Assembly may not dilute a large percentage of votes to advance a preferred political outcome.")

Because the configurations of HD 21 and SD 11 can be attributed consistently to non-racial principles or criteria, evidence indicates that race was the predominant factor in redistricting of these districts.

2. Race-Based Configurations of HD 21 and SD 11 were not created for Purposes of Section 2 Compliance or Other Compelling State Interest.

Legislative Defendants' use of race as a predominant factor in the drawing the boundaries of HD 21 and SD 11 in SB 927 was not "narrowly tailored to serve a compelling state interest." *See Alabama Legislative Black Caucus*, 575 U.S. at 260. The principal mapdrawers for the House and Senate stated that they did not examine whether the maps violated section 2 of the Voting Rights Act as to Latino voters. Ex. 1 Maxon Dep. 215:5-22; Ex. 3 Sodowski Dep. 164:4-7. Therefore, they were not concerned as to whether the maps would violate section 2 of the Voting Rights Act. Mapdrawers also did not look at whether racially polarized voting existed in the areas of HD 21 and SD 11. Ex. 1 Maxson Dep. 112:19-113:18; Ex. 3 Sodowski Dep. 101:8-17; Ex. 4 Landek Dep. 82:16-20. Legislative Defendants included no other election data in Autobound besides that explained above to indicate partisan performance, such as data that would have showed if Latino candidates of choice performed well in districts like HD 21 and SD 11. Ex. 1 Maxson Dep. 86:6-24, 89:2-23; Ex. 3 Sodowski Dep. 101:8-17. Legislative Defendants therefore "can point to no meaningful legislative inquiry" into whether their configurations of use of race in drawing HD 21 and SD 11 was done to comply with section 2 or some other compelling state interest. *See Cooper v. Harris*, 137 S. Ct. 1455, 1471 (2017) (no compelling state interest to use race where jurisdiction failed to examine applicability of section 2 *Gingles* factors).

Principal mapdrawers did not consider turnout data for Latinos and non-Latinos because they did not look at turnout data at all. Ex. 1 Maxson Dep. 85:15-24. Madrawers also did not look at any primary election results. Ex. 1 Maxson Dep. 90:15-18. Therefore, unlike in *Bethune-Hill*,

mapdrawers did not conduct a "careful assessment of local conditions and structures" that would justify their use of racial figures. *See Bethune-Hill*, 137 S. Ct. at 801 (finding a compelling state interest where mapdrawer "considered turnout rates, the results of the recent contested primary and general elections in 2005, and the district's large population of disenfranchised black prisoners" in justifying use of Black voting age population target).

Defendants did not reconfigure HD 21 and SD 11 significantly in the August 2021 remap of those districts in order to address any potential section 2 or other federal statutory or constitutional defects that they had created in the process that led to the May 28 (HB 2777) maps. Leading up to the August 31, 2021, maps, principal madrawers excluded CVAP data from Autobound as they redrew district lines. Ex. 1 Maxson Dep. 149:23-150:6; Ex. 3 Sodowski Dep. 77:3-7. These mapdrawers also did not reconfigure significantly HD 21 and SD 11 between May 28 and August 21, 2021, because as they stated in deposition, their stated principal concern was equalizing districts. Ex. 1 Maxson Dep. 158:13-159:13; Ex. 3 Sodowski Dep. 34:21-35:11. In the May 28, 2021, map passed as HB 2777, HD 21 had a deviation of 2.1% over the ideal based on 2020 Census PL file data. *See* Ely Decl., Table 1 [Dkt. 66-1] at 1. None of HD 21's neighboring districts--HD 1, 2, 8, 22, 31, or 82--had a deviation of 5% outside of the ideal population based on Census PL file data. *See* Ely Decl., Table 1 [Dkt. 66-1] at 1-3. Similarly, for SD 11, there was only a deviation of 1% over the ideal population in HB 2777. *See* Ely Decl., Table 2 [Dkt. 66-1] at 2. Based on that limited purpose in the August remap, the deviations of HD 21 and SD 11 indicate that mapdrawers would not have looked to make further changes. Mapdrawers therefore largely left in place the race-based configurations they created in the May 28, 2021, maps.

Because Legislative Defendants use race as a predominant factor to draw districts HD 21 and SD 11 in SB 927 without a compelling state interest, the boundaries for those two districts constitute racial gerrymanders.

V. CONTRERAS PLAINTIFFS' PROPOSED ALTERNATIVE PLAN CURES DEFECTS IN THE SB 927 PLAN.

Contreras Plaintiffs' proposed alternative plan creates Latino CVAP-majority districts in the areas with statutory and constitutional defects. *See* Ex. 7-5 Alternative Proposal LCVAP Map; Ex. 7-6 Alternative Proposal (Table 3). As described in section IV(a)(i) above, which discusses satisfaction of *Gingles* prong 1, Latinos are sufficiently large and geographically compact to constitute a majority in modified versions of HD 3, 4, 21, 24, and 39, and SD 2 and 12. By creating districts in which Latinos comprise the majority of eligible voters, adoption of the Contreras Plaintiffs' proposed alternative plan would cure the § 2 violations in the area of the SB 927 versions of those districts. The tables below demonstrate data for each of those districts in Contreras Plaintiffs' plan:

Senate Districts - Alternative Proposal																	
	2020 Census Population							Voting Age Population					Citizen Voting Age Population				
District	Population	Deviation	% Deviation	% Hispanic	% White	% Black	% Asian	VAP	% Hispanic	% White	% Black	% Asian	CVAP	% Hispanic	% White	% Black	% Asian
01	217,043	-118	-0.1%	67.5%	24.9%	4.8%	1.7%	161,911	64.0%	28.2%	4.8%	1.8%	116,015	54.0%	38.0%	5.7%	1.9%
02	217,163	2	0.0%	60.5%	27.4%	7.1%	3.5%	170,713	57.1%	30.9%	7.0%	3.6%	130,776	51.2%	36.7%	7.9%	3.4%
04	217,272	111	0.1%	20.8%	29.1%	45.9%	2.6%	168,214	18.5%	30.7%	46.8%	2.5%	154,616	12.0%	33.4%	52.2%	2.0%
05	217,336	175	0.1%	12.7%	31.7%	45.0%	8.7%	175,914	11.7%	35.7%	41.4%	9.4%	151,716	8.3%	37.9%	47.1%	6.2%
10	217,128	-33	0.0%	25.6%	63.2%	2.1%	7.4%	174,645	23.2%	66.1%	1.9%	7.3%	151,710	19.8%	71.7%	2.0%	6.1%
11	217,008	-153	-0.1%	70.1%	23.4%	3.9%	1.7%	162,204	66.1%	27.2%	4.0%	1.8%	121,368	54.6%	37.7%	5.6%	1.8%
12	217,413	252	0.1%	66.5%	11.6%	5.0%	16.0%	166,978	63.0%	13.6%	5.5%	17.0%	117,398	53.4%	21.1%	9.6%	15.6%
20	217,011	-150	-0.1%	45.8%	40.3%	4.2%	7.7%	175,058	42.5%	43.7%	4.1%	7.9%	143,072	36.2%	51.0%	4.5%	7.5%

House Districts - Alternative Proposal

	2020 Census Population							Voting Age Population					Citizen Voting Age Population				
District	Population	Deviation	% Deviation	% Hispanic	% White	% Black	% Asian	VAP	% Hispanic	% White	% Black	% Asian	CVAP	% Hispanic	% White	% Black	% Asian
001	108,490	-91	-0.1%	73.1%	18.4%	5.7%	1.8%	80,243	69.4%	21.6%	6.1%	1.9%	56,046	56.8%	31.4%	9.2%	2.4%
002	108,523	-58	-0.1%	67.5%	26.3%	3.5%	1.5%	81,602	63.8%	30.0%	3.5%	1.6%	59,349	54.7%	39.4%	3.9%	1.5%
003	108,612	31	0.0%	62.1%	28.4%	4.2%	4.0%	85,449	58.5%	32.0%	4.1%	4.1%	64,894	51.8%	38.5%	4.9%	3.9%
004	108,551	-30	0.0%	59.0%	26.4%	10.0%	3.0%	85,264	55.6%	29.9%	9.8%	3.1%	65,882	50.6%	34.9%	11.0%	3.0%
007	108,592	11	0.0%	25.7%	27.2%	42.0%	3.5%	86,043	22.5%	29.6%	42.9%	3.4%	79,079	14.6%	33.1%	49.0%	2.8%
008	108,680	99	0.1%	15.9%	31.0%	49.9%	1.7%	82,171	14.3%	31.9%	50.9%	1.5%	75,537	9.2%	33.7%	55.7%	1.1%
009	108,687	106	0.1%	9.9%	30.0%	45.8%	12.3%	88,848	9.3%	34.0%	41.2%	13.5%	75,108	7.9%	36.6%	46.6%	8.4%
010	108,649	68	0.1%	15.5%	33.4%	44.2%	5.2%	87,066	14.1%	37.3%	41.7%	5.2%	76,608	8.7%	39.2%	47.5%	4.0%
019	108,508	-73	-0.1%	29.8%	56.4%	2.7%	9.1%	87,583	27.3%	59.3%	2.6%	9.1%	77,126	23.7%	65.8%	2.7%	7.4%
020	108,620	39	0.0%	21.4%	70.0%	1.4%	5.7%	87,062	19.0%	72.9%	1.3%	5.5%	74,584	15.9%	77.9%	1.2%	4.8%
021	108,520	-61	-0.1%	67.4%	23.5%	6.1%	1.8%	80,309	64.3%	26.5%	6.1%	2.0%	56,666	53.3%	36.4%	7.6%	2.4%
022	108,518	-63	-0.1%	67.1%	28.3%	2.0%	1.6%	81,961	62.8%	32.6%	2.0%	1.7%	65,322	52.6%	43.1%	2.6%	1.2%
023	108,740	159	0.1%	71.2%	10.4%	5.7%	11.8%	82,181	67.7%	12.3%	6.8%	12.4%	60,090	55.3%	19.9%	13.7%	10.9%
024	108,673	92	0.1%	61.7%	12.7%	4.2%	20.3%	84,797	58.5%	14.8%	4.3%	21.4%	57,308	51.4%	22.3%	5.2%	20.5%
039	107,775	-806	-0.7%	58.9%	30.9%	3.6%	4.9%	86,141	55.0%	34.7%	3.5%	5.2%	68,495	50.9%	39.9%	3.3%	5.1%
040	109,236	655	0.6%	32.9%	49.6%	4.8%	10.5%	88,917	30.5%	52.3%	4.7%	10.5%	74,577	22.8%	61.2%	5.6%	9.7%

Ex. 7-6 Alternative Proposal (Table 3).

Contreras Plaintiffs' plan offer also cures the racial gerrymander of House District 21 and Senate District 11 in SB 927. *See* Ely Report at ¶¶ 23, 25, 26. The proposed map would undo the dismantling of SD 11 as a majority LCVAP district and give it a less bizarre shape. *See* Ely Report at ¶¶ 23, 25, 26. As for HD 21, it would include more territory of Cicero and the Little Village again, withdrawing from its southern end slightly. *See* Ely Report Ex. 7-5.

The proposed plans' districts are also "guided by the legislative policies underlying" Defendants' state plan to the extent that they do not violate section 2 or the Constitution. *See Perry v. Perez*, 565 U.S. 388, 393 (2012). Contreras Plaintiffs' proposed alternative remedial plan stays within southwest Chicago and southwest Cook County suburbs senate district clusters under SB 927 map. It makes only minor changes to districts neighboring the north side districts 3, 4, 39, and 40. Ely Report at ¶ 25. Moreover, the districts are compact, do not pair any incumbents, respect town boundaries to the extent possible, and respect stated political goals to the extent possible. Ely Report at ¶ 23; Ely Report Ex. 5, 6. Finally, as the maps and data tables show,

Contreras Plaintiffs' alternative proposal does not cause ripple effects into other parts of the state. Ely Report at ¶¶ 25, 27; Ely Report Ex. 5, 6, 9.

CONCLUSION

Because the SB 927 map adopted in September of 2021 dilutes Latino voting strength in violation of § 2 of the Voting Rights Act and constitutes a racial gerrymander as to HD 21 and SD 11, t revisions to SB 927 are necessary. Contreras Plaintiffs request that the Court adopt their proposed alternative remedial map.

Dated: November 15, 2021

/s/ Julie Bauer
Julie A. Bauer (no. 6191271)
Nathan R. Gilbert (no. 6326946)
WINSTON & STRAWN LLP
35 W. Wacker Dr.
Chicago, IL 60601
Tel: (312) 558-8907
Email: JBauer@winston.com
Email: NRGilbert@winston.com

/s/ Ernest Herrera
Griselda Vega Samuel (no. 6284538)
Francisco Fernandez del Castillo
(no. 6337137)
MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND
11 E. Adams St., Suite 700
Chicago, IL 60603
Telephone: (312) 427-0701
Facsimile: (312) 588-0782
Email: gvegasamuel@maldef.org
Email: ffernandez-delcastillo@maldef.org

Thomas A. Saenz (*pro hac vice*)
CA State Bar No. 24005046
Ernest Herrera (*pro hac vice*)
CA State Bar No. 335032
Denise Hulett
CA State Bar No. 121553
MEXICAN AMERICAN LEGAL DEFENSE AND
EDUCATIONAL FUND
643 S. Spring St., 11th Fl.
Los Angeles, CA 90014
Telephone: (213) 629-2512
Email: tsaenz@maldef.org
Email: eherrera@maldef.org
Email: dhulett@MALDEF.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2021, a copy of the above Contreras Plaintiffs' Proposed Alternative Remedial Plan and Statement In Support Pursuant To Federal Rule Of Civil Procedure 24 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.

/s/ *Ernest Herrera*
Attorney for Plaintiffs

Exhibit 2

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

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

Plaintiffs,

v.

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

Defendants.

Case No. 1:21-cv-3139

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

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

DECLARATION OF ERNEST I. HERRERA IN SUPPORT OF PLAINTIFFS' PROPOSED ALTERNATIVE REMEDIAL PLAN

I, Ernest I. Herrera, declare:

1. I am a staff attorney at the Mexican American Legal Defense and Educational Fund and represent Plaintiffs in the above-captioned matter. I submit this declaration in support of Plaintiffs' Proposed Alternative Remedial Plan.

2. Plaintiffs filed their Proposed Alternative Remedial Plan and Statement in Support on November 10, 2021. Dkt. Nos. 135 through Dkt. 135-23.
3. On November 15, 2021 I was reviewing Plaintiffs brief [Dkt. 135] when I noticed that headings and subheadings in the Section IV. CONSTITUTIONAL AND STATUTORY DEFECTS IN THE SEPTEMBER SB 927 REDISTRICTING PLAN were mislabled in accordance to how the legal arguments should have been labeled to ensure the Court followed the roadmap we set out for our legal argument.
4. Once I realized the headings and subheading in Section IV were mislabeled that also affected the labeling in Section V. THE NUMBER OF LATINO-MAJORITY DISTRICTS HAS NOT REACHED PROPORTIONALITY WITH THE ELIGIBLE VOTER POPULATION.
5. I also corrected a grammatical error in the heading, "Race-Based Configurations of HD 21 and SD 11 not for Purposes of Section 2 Compliance or Other Compelling State Interest."
6. Additionally, I corrected several errors in Plaintiffs' table of authorities.
7. Only the headings, subheadings, corresponding internal references and page numbers, table of authorities were fixed, but no substantive changes were made to the brief.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 15, 2021, in Los Angeles, California.

/s/ Ernest I. Herrera
Ernest I. Herrera