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

Lionel Nixon, William k. Crosby, Robert R. McKay  
Harold Hall, Andre Smith, Sidney Moore,  
Harold Lucas, and Jessie M. Hinton

Plaintiffs,

v.

Case No. *21 CV 3139*

ILLINOIS STATE BOARD OF ELECTIONS,  
CHARLES W. SCHOLZ, IAN K. LINNABARY,  
WILLIAM J. CADIGAN, LAURAK. DONAHUE,  
WILLIAMR 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, GINA MARIE RAIMONDO,  
UNITED STATES SECRETARY OF COMMERCE,  
U.S. CENSUS BUREAU, DR RON JARMIN NATIONAL  
DIRECTOR, MARILYN A. SANDERS, CHICAGO REGIONAL  
DIRECTOR

Defendants.

**FILED**

DEC 03 2021 *AL*

THOMAS G. BRUTON  
CLERK, U.S. DISTRICT COURT

*"Motion to Join"*

~~COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF~~

**INTRODUCTION**

This action seeks declaratory and injunctive relief on behalf of Plaintiffs Lionel Nixon, William K. Crosby, Robert R. McKay, Harold Hall, Andre Smith Sidney Moore, and Jessie M Hinton, to secure the right to vote as protected by the Fourteenth Amendment to the United States Constitution, as follows:

1. Plaintiffs seek a declaratory judgment that the current legislative redistricting plans (the "Enacted Plans") for election of representatives and senators to the Illinois General Assembly (the "General Assembly"), which were passed on May 28, 2021, and signed into law by Illinois Governor J.B. Pritzker on June 4, 2021, are malapportioned.

2. Plaintiffs seek preliminary and permanent injunctions prohibiting the calling, holding, or certifying of any future election using the Enacted Plans. Plaintiffs seek the creation of representative and legislative plans that are equally apportioned as measured by the 2020 Census redistricting data contained in the Public Law 94-171 ("P.L. 94-171") file being issued by the U.S. Census Bureau (the "Bureau").

3. The General Assembly used data from the American Community Survey (the "ACS") five-year estimates for 2015-2019 and other election data to draw the boundaries for the districts used to elect members of the General Assembly. The Enacted Plans purportedly ensure compliance with the "one-person, one-vote" standard mandated by the Fourteenth Amendment; however, ACS data is inadequate for that purpose.

4. Under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, state legislative districts are required to be of substantially equal population. This requirement is encompassed in the "one-person, one-vote" standard. Under this standard, states must create legislative districts that are substantially equal in population, and the states are responsible for regularly reapportioning these districts to ensure constitutional compliance.

5. Plaintiffs seek a declaratory judgment that the Enacted Plans violate the Fourteenth Amendment to the United States Constitution, and an order enjoining the implementation of the Enacted Plans unless and until they are shown to contain equally apportioned districts as measured by the P.L. 94-171 data. II.

## II. JURISDICTION AND VENUE

6. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 over Plaintiffs claim, which arises under the laws of the Constitution of the United States. This Court has original jurisdiction over Plaintiffs' request for declaratory and injunctive relief under 28 U.S.C. §§ 2201 and 2202.

7. Venue is proper in this district under 28 U.S.C. § 1391(b) because Defendants reside in this district, and a substantial part of the events or omissions giving rise to the claim occurred in this district.

8. This action challenges the constitutionality of the apportionment of the General Assembly. Accordingly, "[a] district court of three judges shall be convened..." 28 U.S.C. § 2284(a).

### III. PARTIES

9. Plaintiff Lionel Nixon is a registered voter of African American heritage residing within Representative District 60 under the Enacted Plans.

10. Plaintiff William K. Crosby is a registered voter of African American heritage residing within Representative District 14 under the Enacted Plans.

11. Plaintiff Robert R. McKay is a registered voter of African American heritage residing within Representative District 34 under the Enacted Plans.

12. Plaintiff Harold Hall is a registered voter of African American heritage residing within Representative District 26 under the Enacted Plans.

13. Plaintiff Andre Smith is a registered voter of African American heritage residing within Representative District 5 under the Enacted Plans.

14. Plaintiff Sidney Moore is a registered voter of African American heritage residing within Representative District 30 under the Enacted Plans.

15. Jessie M. Hinton is a registered voter of African American heritage residing within Representative District 34 under the Enacted Plans.

16. Defendant Illinois State Board of Elections supervises the administration of registration and election laws throughout Illinois under Article III, Section 5 of the Illinois Constitution and 10 ILCS 5/1A-1, et seq.

17. Defendant Charles W. Scholz is the Chair of the Illinois State Board of Elections and is sued in his official capacity.

18. Defendant Ian K. Linnabary is the Vice Chair of the Illinois State Board of Elections and is sued in his official capacity.

19. Defendant William J. Cadigan is a member of the Illinois State Board of Elections and is sued in his official capacity.

20. Defendant Laura K. Donahue is a member of the Illinois State Board of Elections and is sued in her official capacity.

21. Defendant William R. Haine is a member of the Illinois State Board of Elections and is sued in his official capacity.

22. Defendant William M. McGuffage is a member of the Illinois State Board of Elections and is sued in his official capacity. Defendant Katherine S. O'Brien is a member of the Illinois State Board of Elections and is sued in her official capacity.

23. Defendant Casandra B. Watson is a member of the Illinois State Board of Elections and is sued in her official capacity.

24. Defendant Don Harmon is a member of the General Assembly and is sued in his official capacity as President of the Illinois Senate.

25. Defendant the Office of the President of the Illinois Senate is the office of the presiding officer of the Illinois Senate, as designated by Article IV, Section 6(b) of the Illinois Constitution.

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

27. Defendant the Office of the Speaker of the Illinois House of Representatives is the office of the presiding officer of the Illinois House of Representatives, as designated by Article IV, Section 6(b) of the Illinois Constitution.

28. Defendant U.S. Department of Commerce

29. Defendant the U.S. Secretary of Commerce, Gina M. Raimondo

30. Defendant U.S. Census Bureau

31. Defendant Dr. Ron Jarmin, Acting Director

32. Defendant Marilyn A. Sanders, Chicago, Regional Director

#### IV. FACTS

##### P.L. 94-171 Redistricting Data

33. The United States Constitution requires an actual Enumeration" of every person living in the United States to take place every ten years. U.S. CONST. art. I, § 2.

34. The decennial count of the national population is used to allocate seats in the United States House of Representatives to states based on the whole number of persons in each State." U.S. CONST. amend. XIV, § 2.

35. P.L. 94-171, enacted in 1975, "directs the Census Bureau to make special preparations to provide redistricting data needed by the fifty states. Within a year following Census Day, the Census Bureau must send the data agreed upon to redraw districts for the state legislature to each state's governor and majority and minority legislative leaders." The P.L. 94- 171 redistricting data provides the decennial count data by small area geography and includes tabulations by major racial/ethnic groups.

36. Following the release of the P.L. 94-171 redistricting data, states use the data to draw district lines that comply with the one person, one-vote standard.

37. To comply with the one-person, one-vote standard, the General Assembly's representative and legislative districts must be substantially equal in population." Historically and traditionally, P.L. 94-171 data has been used for purposes of determining whether representative and legislative districts follow the one-person, one-vote standard.

38. However, on April 13, 2020, the Bureau announced a new Census timeline that accounted for delays created by the COVID-19 pandemic (the "COVID-19 Plan"), among other reasons. The new timeline included postponed dates for collecting and processing data.

39. On February 12, 2021, because of these delayed processing dates, the Bureau announced that it will deliver the Public Law 94-171 redistricting data to all states by Sept. 30, 2021. COVID-19-related delays and prioritizing the delivery of the apportionment results delayed the Census Bureau's original plan to deliver the redistricting data to the states by March 31, 2021." Press Release: U.S. Census Bureau, Census Bureau Statement on Redistricting Timeline (Feb. 12, 2021) (available at <https://www.census.gov/newsroom/press-releases/2021/statement-redistricting-data-timeline.html>) (last visited June 10, 2021).

40. Although the Bureau will release redistricting data in final form on September 30, 2021, "[s]tates, as well as the public, will receive the data they need to begin redistricting by August 16." U.S. Census Bureau. 2020 Census Updates (June 8, 2021) (available at <https://www.census.gov/programs-surveys/decennial-census/decade/2020/2020-census-main.html>) (last visited June 10, 2021). Article I. Section 2 of the United States Constitution imposes one of the few affirmative obligations on the federal government: to conduct an

"actual Enumeration of all residents every ten years. Despite this duty, the United States has undercounted people of color since the nation's founding, starting with the decision to treat African American slaves as only three-fifths of a person. The Three-Fifths Clause appeared in the same constitutional provision that mandates a decennial census.

41. The failure fully to count African Americans has persisted to the present. In the 2010 Census, for example, there was a 2.1% net undercount of African Americans. Accordingly, in the past, federal officials have made considerable efforts to enumerate what the Census Bureau calls "hard-to-count" individuals, including African Americans, non-English speakers, and young people.

42. These efforts reflect the recognition that an inaccurate census hurts some communities more than others, depriving them of their constitutional right to representation and their fair share of resources.

43. The government's preparations for the 2020 Census, however, are so conspicuously deficient as to extend far beyond the failures of past censuses, such that they violate Defendants' constitutional duty to conduct an "actual Enumeration." U.S. Const., Art. I, § 2. Sufficient staffing, funding, and preparation in advance of the census are essential to such a monumental undertaking.

44. Yet, only two years from the 2020 Census, the Census Bureau lacks both a permanent director and a deputy director. A presidential hiring freeze has limited the Bureau's capacity to fill routine staff vacancies. The Bureau also canceled essential field tests last year and two of three "dress rehearsal" sites this year. Moreover, the Bureau's intention to adopt substantial new technologies for the 2020 Census makes these cancellations especially dangerous.

45. Defendants are unprepared to conduct the first-ever digital census, which will exacerbate undercounts and leave the census vulnerable to cyber-attack. Despite these imminent threats to the accuracy and integrity of the 2020 Census, the Bureau has been operating on the cheap, without sufficient funding to address its many challenges.

46. These deficiencies will result in a massive undercount of communities of color. The effects of an inaccurate census will be felt across the country, and especially in places like Chicago, Cook County, Illinois that are home to many "hard-to-count" people. Such a dramatic undercount will especially dilute the votes of racial and ethnic minorities, deprive their communities of critical federal funds, and undervalue their voices and interests in the political arena.

47. CMAP analysis of U.S. Census Bureau data and federal COVID-19 relief funding found that communities of color are filling out the census at much lower rates than communities with mostly white residents. Compared to the last census, some communities have self-response rates more than 20 percentage points below rates from 2010.

48. Fewer people in northeastern Illinois are filling out the census, putting the region at risk of a costly undercount. A new analysis of 2020 census data by the Chicago Metropolitan Agency for Planning found that the region's reduction in self-responses, compared to 2010, is concentrated in communities with large Hispanic and Black populations. The COVID-19 pandemic has made achieving a complete count more difficult at a time when maintaining government support is more important than ever.

### **Disparities are worsening among communities of color**

49. Response rates often vary across the region, but disparities in response rates are worse. Net census responses have historically been lower in communities of color. The regional self-response rate has fallen from 70.8 percent in 2010 to 69.1 percent in 2020 as of August 19, and the data suggest that areas with more people of color are filling out the census at lower rates than similar areas did in 2010. This small regional gap obscures bigger disparities in some tracts that could significantly impact future resources in these communities.

50. The map below shows census tracts across the region where current self-response levels are substantially below 2010 levels. Compared to the last census, some areas have rates that are lower by more than 20 percentage points.

51. CMAP identified these disparities by analyzing the relationship between self-response rates and the share of nonwhite residents in a given census tract. On average, tracts that have at least 50 percent white residents have the same response rates as tracts with a similar racial composition in 2010. However, tracts with predominantly Black, Hispanic, and Asian residents have much lower rates than they did in 2010. (The Census Bureau uses the term "Hispanic" to refer to residents of any race who have self-identified as being of Hispanic ethnicity.)

52. Black and Hispanic communities have average self-response rates of 55 percent — 14 percentage points below the region's current rate of approximately 69 percent. The decline is sharpest in majority Hispanic communities, where rates have fallen by more than seven percentage points since 2010. As shown in the map below, this pattern is playing out in communities across the region. Majority Black communities (as well as majority Asian communities) have seen smaller, but still concerning, average declines of two to three percentage points versus 2010.

53. Even during the pandemic, some communities, including Aurora and Elgin, are improving results through recent awareness-raising activities, including parade-like census caravans that encourage residents to respond. While some tracts in these cities still have self-response rates below 2010, local census leaders and the Metropolitan Mayors Caucus have reported that responses in the targeted areas accelerated immediately following the caravans. More ideas on how to encourage census participation are available from the Mayors Caucus' Plaintiffs Lionel Nixon, William K Crosby, Robert R. McKay, Harold Hall, Andre Smith, Sidney Moore, Jessie M. Hinton Harold Lucas.

## **The Inadequacy of ACS Estimates for Redistricting Purposes**

### **The ACS is a Survey and Does not Enumerate the Population**

54. P.L. 94-171 data and ACS estimates have different purposes and different collection methodologies. P.L. 94-171 data is based on the decennial census's actual enumeration of the population. The ACS is an ongoing, yearly, sample survey by the Bureau that collects detailed demographic information including ancestry, citizenship, educational attainment, income, language proficiency, migration, disability, employment, and housing characteristics from approximately 2.5 percent of U.S. households. ACS data are an estimate of population characteristics based on sample data, and not a count of U.S. citizens and non-U.S. citizens.

55. ACS data are not used to determine whether voting districts are equipopulous and comply with the one person, one-vote constitutional requirement. Rather, "in the overwhelming majority of cases, jurisdictions have equalized total population, as measured by the decennial census" total population enumeration. *Evenwel v. Abbott*, 136 S. Ct. 1120, 1125 (2016).

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55. ACS data are not available for census blocks, the smallest geographical units used in redistricting. Rather, ACS estimates are available only at the "block group" level. Block groups typically contain between 600 and 3,000 people.<sup>1</sup> Although the ACS is designed to provide reliable estimates using one year of data for areas with populations over 65,000, which includes all states and many counties, multiple years of data must be aggregated in order to obtain data for smaller areas, such as block groups. The ACS does not produce data for census blocks because the populations in question are too small to estimate accurately. Only an enumeration can measure the population of census blocks.

<sup>1</sup> See United States Census Bureau, Glossary, <https://www.census.gov/programssurveys/geography/about/glossary.html> [<https://pema.cc/A8JT-Y8Z8>] (last visited on May 6, 2021).

## **2. ACS Data is not Current for Redistricting Purposes**

55. ACS data are released in one year and five-year estimates. One-year estimates are available for populations of at least 65,000. The Bureau combines five consecutive years of ACS data to produce multiyear estimates for geographic areas with fewer than 65,000 residents.

56. Because one-year estimates are not suitable for populations under 65,000, redistricting maps drawn with ACS data, such as the Enacted Plans, require the use of five-year estimates.

57. Five-year ACS estimates are not current for purposes of determining whether districts comply with the one person, one-vote standard. Eighty percent of the data from the 2015-2019 ACS five-year survey was between two and five years old by Census Day, April 1, 2020.

58. P.L. 94-171 actual enumeration data captures a snapshot in time (i.e., the population on April 1, 2020).

### **Redistricting Deadlines Under the Illinois Constitution**

59. The Illinois Constitution provides deadlines for the 2021 redistricting cycle. ILL. CONST. art. IV, § 3(b). If a new legislative redistricting map is not passed by the General Assembly and signed into law by the governor before June 30 in the year following the decennial census, the task of redistricting falls to a Legislative Redistricting Commission (the "Redistricting Commission") to be created on or before July 10. *Id.* The Redistricting Commission must consist of eight members, no more than four of whom can be members of the same political party. *Id.* On or before August 10, the Redistricting Commission must file a redistricting plan that at least five members have approved with the Illinois Secretary of State. *Id.* If the Redistricting Commission fails to file a plan on or before August 10, the Supreme Court must submit the names of two persons, not of the same political party, to the Secretary of State on or before September 1. *Id.*

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

### **The 2021 Redistricting Process in Illinois**

61. On March 17, 2021, the General Assembly began holding virtual hearings to solicit public feedback on the redistricting process in Illinois.

62. On May 21, 2021, the General Assembly proposed draft representative and legislative redistricting maps. On May 25, 2021, and May 26, 2021, the Illinois House and Senate held virtual hearings to solicit feedback on the proposed redistricting maps.

63. On Thursday May 27, 2021. House and Senate Democrats issued a press release announcing the release of updated maps. For the first time, the General Assembly explained that the maps were generated using five-year ACS data and other election data." However, there was no explanation of how the General Assembly used ACS estimates and other election data" to populate representative and legislative districts. There was also no disclosure of either the estimated populations of the various representative and legislative districts or demographic breakdowns of these districts.

64. Early Friday morning on May 28, 2021, with only one-hours' notice, House and Senate Democrats scheduled hearings to allow public comment on the updated maps. Constituents and community advocacy organizations complained about the lack of notice and protested the fact that the General Assembly had neither given the public the underlying methodology used to populate representative and legislative districts nor provided them with time to analyze the underlying data and methodology used to create the maps.

65. Late that Friday evening, the General Assembly passed House Bill 2777 and Senate Floor Amendment 1 and sent the Enacted Plans to Governor Pritzker for approval.

66. The Enacted Plans measure total population using five-year ACS estimated data — not P.L. 94-171 actual enumeration data. The current redistricting plans are therefore not in compliance with the Fourteenth Amendment's one-person, one-vote mandate.

67. On June 4, 2021, Governor Pritzker signed House Bill 2777 into law. The public still did not have access to the methodology and data used to populate individual representative and legislative districts. The General Assembly still has not released the alleged populations of the individual representative and legislative districts.

## **BACKGROUND**

**A. The Illinois Constitution** Requires that Redistricting Occur Every Ten Years Pursuant to a Specific Timeline and Procedure

68. The Illinois Constitution states that one Illinois state senator is elected from each of the 59 Senate Districts.<sup>7</sup> Each Senate District is divided into two Representative Districts, and one Illinois state representative is elected from each of the 118 Representative Districts."

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<sup>7</sup>111 Const. 1970, aH. IV, §§ 1,2(a)."  
111 Const. 1970, aH. IV, § 206).

Article IV, Section 3 of the Illinois Constitution requires that redistricting of the Senate and Representative Districts occur in the year after each decennial census." The decennial census was conducted last year, in 2020, so legislative redistricting must occur this year, in 2021.

69. The Illinois Constitution entrusts the General Assembly to pass a redistricting plan in the first instance<sup>20</sup> However, if a valid redistricting plan does not become effective with the full force and effect of law by June 30, 2021, regardless of the reason for that failure, the Illinois Constitution shifts the responsibility for drafting a redistricting plan from the General Assembly to a bipartisan redistricting Commission, which must be constituted by July 10, 2021. The Illinois Constitution does not shift redistricting responsibility back to the General Assembly for any reason; rather, if the General Assembly fails to enact a valid redistricting plan by June 30, 2021, then a bipartisan Commission has the sole authority, duty, and responsibility to enact a valid legislative redistricting plan based on the 2020 decennial census.

70. The Commission consists of eight members, no more than four of whom are members of the same political party. The Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate are each required to appoint one member of the General Assembly and one person who is not a member of the General Assembly. The members of the Commission shall be certified to the Secretary of State by the appointing authorities.<sup>21</sup>

71. The Commission is required to file with the Secretary of State a redistricting plan approved by at least five members by August 10th. If it fails to file an approved redistricting plan

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<sup>20</sup> Ill Const. 1970. H. IV, § 3(6).

<sup>20</sup> Id.

<sup>21</sup> Id.

by August 10, 2021, the Supreme Court of Illinois must submit the names of two persons, not of the same political party, to the Secretary of State by September 1st. By September 5th, the Secretary of State must draw the name of one of the two persons to serve as the ninth member of the Commission. After the ninth member is appointed, by October 5th, the Commission must file with the Secretary of State a redistricting plan approved by at least five members.<sup>22</sup>

72. A redistricting plan that is approved by at least five members of the Commission and filed with the Secretary of State shall be presumed valid, shall have the force and effect of law, and shall be published promptly by the Secretary of State. <sup>23</sup>

**B. Illinois Has Historically Used a Commission in the Legislative Redistricting Process**

73. The use of a Commission in the legislative redistricting process is not unusual under the latest version of the Illinois Constitution, adopted in 1970. To the contrary, it has been the norm. Since 1970, five legislative redistricting plans have been enacted, but the General Assembly has directly approved a new plan only once in 2011. Following each of the four decennial censuses before 2010 (i.e., 1970, 1980, 1990, and 2000), a Commission was constituted to enact a plan.<sup>24</sup>

74. A three- judge panel of this Court upheld the constitutionality of this legislative redistricting process after the adoption of a legislative redistricting plan in 2001, including the use of a Commission and the selection of a ninth member of the Commission to break any ties.<sup>25</sup> That ruling was affirmed by the U.S. Supreme Court without a written opinion.<sup>26</sup>

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See Hooker I'. Illinois State Del. of Elections, 2015 IL 1 21007, 5 G3 N. E.3d 824 (describing historical use of Commission in legislative redistricting in Illinois).

<sup>25</sup> Winters i'. Illinois State Del. of Elections, 197 F. Supp. 2d 11 10 (N.D. 111. 2001).

<sup>26</sup> Winters i'. Illinois State Del. of Elections, 535 U.S. 9G7 (2002).

**C. The Equal Protection Clause of the U.S. Constitution Requires Senate and Representative Districts of Substantially Equal Population**

75. States are subject to limitations arising from the protections guaranteed by the U.S. Constitution in conducting state legislative redistricting, including limitations stemming from the Equal Protection Clause of the Fourteenth Amendment.<sup>27</sup> Among the most fundamental of these limitations is the well-established "one person, one vote" principle that requires states to design legislative districts that contain substantially equal populations and regularly reapportion districts to prevent malapportionment.<sup>28</sup>

76. The U.S. Supreme Court has held that a legislative redistricting plan in which the maximum population deviation between the largest and smallest districts is greater than 10a/r is "presumptively impermissible."<sup>29</sup>

77. Even if a redistricting plan results in a maximum population deviation of less than 10a/r, the plan nonetheless violates the Equal Protection Clause of the Fourteenth Amendment if the redistricting process contains the "taint of arbitrariness or discrimination." "" If the redistricting process was either arbitrary or discriminatory, then the resulting redistricting plan is unconstitutional and therefore void nfi initio.

**D. Like All Other States, Illinois Uses the Census Counts for Legislative Redistricting Because They Are the Best Measure of Population**

78. The official census counts have long been recognized as the best and most accurate source of population data for redistricting purposes, and the use of the census

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<sup>27</sup> See Eisen v. Carlisle & Johnson, 390 U.S. 145, 153 (1968) (citing Baker v. Carr, 369 U.S. 186, 191-92 (1962)).

<sup>28</sup> Id. at 1124 (citing Wesberry v. Sanders, 375 U.S. 1, 7-8 (1964), and Reynolds v. Sims, 377 U.S. 533, 538 (1964)).

<sup>29</sup> Id. (citing Gaffney v. Combs, 413 U.S. 725, 735 (1967)).

""Woman, 377 U.S. at 710.

population counts as the main source of population data in a legislative redistricting plan is presumptively valid."

79. As the Supreme Court recognized in 20 IG. "[I] today, all States use total population numbers from the census when designing congressional and state-legislative districts, and only seven States adjust those census numbers in any meaningful way."<sup>2</sup> Specifically y, three states (Hawaii, Kansas and Washington) exclude certain non-permanent residents, including nonresident members of the military, from the total-population apportionment base, and four other states (California, Delaware, Maryland, and New York) exclude inmates who were domiciled out-of-state prior to incarceration."<sup>1</sup> Even in these seven states, however, the total population numbers are still based on the official counts from the census.

80. Thus, in Illinois, the appropriate redistricting authorities(either a Commission or, in 2011, the General Assembly) have used the official census counts as the base population data when enacting are districting plan in connection with every legislative redistricting since at least the adoption of the 1970 Illinois Constitution.

**E. The Census Bureau Has Delayed Providing Official Census Counts to the States**

81. To enable state officials to draw districts of substantially equal population, the Census Bureau is tasked with providing the states with the official census counts to be used for legislative redistricting within one year after the April 1st census date. "

82. In November 2015, the Census Bureau issued its first 2020 Census Operational Plan. The plan set a date of March 31, 2021, for the Bureau to release the official 2020 census

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<sup>1</sup>See Karclier, 4G2 U.S. at 738; Kirk Patrick, 394 U.S. at 528.

<sup>2</sup> Eisenwiler, 13G S. Ct. at 1124.

Id., at 1124, n.3.

<sup>1</sup> 3 U.S.C. § 141(c).

counts to the states for redistricting purposes." However, the Bureau subsequently revised and delayed a number of its data collection and processing operations in connection with the 2020 census."

83. In March 2021, the Bureau announced that it would provide the untabulated census counts in a summary redistricting data file to all of the states by August 16, 2021, and explained that each state would have the opportunity to use an outside vendor to process the legacy format data file in August if the state does not have the capacity to tabulate the data on its own."<sup>7</sup> The legacy format data file is all that is necessary for redistricting and what the General Assembly has utilized in the past redistricting cycles to draw valid redistricting plans for legislative districts.

**F. The Redistricting Plan Passed by the General Assembly Uses Population Estimates from the ACS and Certain Unspecified "Election Data"**

84. Despite lacking the official population counts from the 2020 census, the General Assembly passed the plan on May 28, 2021, on a purely partisan roll call, and Governor Pritzker signed it into law on June 4, 2021.

85. The legislation passed by the General Assembly acknowledges that the Census Bureau has been delayed in providing the 2020 decennial census counts to the states for redistricting purposes. "Instead of the official census population counts, the legislation states that the Plan uses population estimates derived from the 2015-2019 ACS responses as the base

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" 2020 Census Operational Plan A New Design for the 21<sup>st</sup> Century, Version 1.1 (Nov. 2015), p. 9. 2.5 (<https://www2.census.gov/program-s-surveys/decennial/2020/program-management/planning-docs/2020-oper-plan.pdf>).

" 2020 Census Operational Adjustments Due to COVID-19, 2020Census.gov (<https://2020census.gov/en/news-events/operational-adjustments-covid-19.html>).

<sup>7</sup> Bureau March 2021 Statement.

" Pub. Act 102-0010 § 56).

population data." Both the Illinois Senate and House of Representatives stated that the Plan uses estimates derived from the 2015-2019 ACS responses, along with "election data" and "public input" to "establish the boundaries" in the Plan."

**G. The Decennial Census and the ACS Are Different Data Collection Projects that Use Different Methodologies and Have Different Purposes**

86. The decennial census is conducted every 10 years.<sup>41</sup> The goal of the census is to count every person in America to determine the total population count and location of each person as of April 1st, which in this case is April 1, 2020.<sup>42</sup> The census is conducted according to a detailed Operational Plan that outlines and defines specific timelines and milestones.<sup>43</sup> Among other things, the Census Bureau takes the following steps to complete the census:

- a. Establish where to count by: (1) identifying all addresses where people could live; (2) conducting a 100-percent review and update of the nation's address list; (3) using multiple data sources to identify areas with address changes, and (4) getting input from local governments.
- b. Motivate people to respond by: (1) conducting a nationwide communications and partnership campaign; (2) working with trusted sources to increase participation; (3) maximizing outreach using traditional and new media, and (4) targeting advertisements to specific audiences.
- c. Count the population by: (1) collecting data from all households, including group quarters and unique living arrangements; (2) making it easy for people to respond anytime, anywhere; (3) encouraging people to use the online response option, but also offering other modes such as traditional paper forms sent by mail and telephone data collection; (4) using the most

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<sup>0</sup> Pub. Act 102-0010 § 5(d).

<sup>0</sup> House Resolution 359 (<https://www.ilga.gov/legislation/102/HR/PDF/10200HR03591v.pdf>) ("HR0359"), at p. 5; Senate Resolution No. 32G (<https://www.ilga.gov/legislation/102/SR/PDF/10200SR032Genr.pdf>) (SR32G"), at p.5.

<sup>41</sup> 17 U.S.C. § 14 I (a).

<sup>42</sup> 17 U.S.C. § 14 I (b).

<sup>43</sup> 2020 Census Operational Plan. A New Design for the 21st Century, Version 4.0 (Dec. 2018) ("Census Operational Plan V 4 .0") (<https://www2.census.gov/programssurveys/decennial/2020/program-management/planning-docs/2020-oper-plan4.pdf>).

cost-effective strategy to contact and count nonresponding housing units; (5) streamlining in-field census taking; (G) in-person follow-up for nonresponding housing units, including the collection of data from knowledgeable proxy informants; and (7) utilizing administrative records to supplement field data and enhance data quality.

- d. Release the census results by: (1) processing and providing census data; (2) releasing apportionment counts to the President; (3) releasing counts for redistricting to the states; and (4) releasing results to the public.<sup>44</sup>

87. The decennial census is supported by billions of dollars of federal spending. In total, Congress appropriated approximately \$7.9 billion in federal funds to the Census Bureau to support the 2020 census operations.<sup>45</sup>

88. In addition to federal funding, in 2019, Governor Pritzker and the General Assembly allocated \$29 million in state funds to encourage Illinoisans to participate and be counted in the 2020 census. When the Bureau's operational deadlines were extended, Governor Pritzker and the General Assembly appropriated an additional \$14.5 million to extend the census outreach and educational efforts, for a total of \$43.5 million in state funds allocated towards improving participation in the census.<sup>46</sup>

89. Local governments and municipalities also contributed to the census efforts, with Chicago Mayor Lori Lightfoot pledging \$2.7 million in funding to encourage Chicagoans to participate and be counted in the 2020 census.<sup>47</sup> Thus, the State of Illinois and the City of

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<sup>44</sup>let. at p. 9.

<sup>45</sup> U.S. Census Bureau's Budget, Fiscal Year 2021, Department of Commerce, U.S. Census Bureau, Periodic Censuses and Programs. PROGRAM AND PERFORMANCE: DIRECT OBLIGATIONS, at Exhibit 10, CEN-87, n.1 (Feb. 2021) (FY 2021 Census Budget) (<https://www2.census.gov/about/budget/census-fiscal-year-21-presidents-budget.pdf>).

<sup>46</sup> 2020 Census: A Final Report on Illinois 2020 Census Self Response Rates (<https://www.dhs.state.il.us/OneNetLibrary/117935/documents/Census-2020-Final-Report-on-Illinois-Self-Response-Rate-12-30-2020.pdf>). at 2 (2020 Illinois Census Report").

<sup>47</sup> Mayor Lightfoot Announces \$2.7 Million Investment To Prepare For Full, Accurate Count Of Chicagoans In The 2020 U.S. Census, City of Chicago (Oct. 1, 2019)

Chicago together contributed over \$45 million in combined funding to encourage full participation in the 2020 census.

90. In June 2019, Governor Pritzker signed Executive Order 19-10, which established the Census Office within the Illinois Department of Human Services and established a Census Advisory Panel to coordinate the state's census efforts and encourage full participation.<sup>47</sup> The Executive Order defined "hard to count" areas as locations in which the self-response rate to the 2010 decennial census was 73a/r or less and explained that IGA/r of Illinois population live in "hard to count" communities, which include racial and ethnic minorities, foreign-born individuals, renders, people with disabilities, those living close to or below the poverty line, homeless persons, undocumented immigrants, young mobile persons. LGBTQ persons, persons who live in rural areas, children younger than five years old, and individuals living in homes without a broadband internet subscription.<sup>48</sup> The Executive Order directed the Census Advisory Panel to focus on ensuring that "hard to count" communities throughout Illinois receive specialized outreach and assistance to ensure participation in the 2020 census.<sup>49</sup>

91. Among other things, the Executive Order emphasized the importance of the census count by explaining that the count is used for Congressional reapportionment and budgeting and also used to provide the base population for "the redistricting of the State legislature."<sup>50</sup> Thus, in 2019, the Governor clearly envisioned and understood that the efforts to

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([https://www.chicago.gov/city/en/depts/mayor/press\\_room/press\\_releases/2019/october/CensusCountInvestment.html](https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2019/october/CensusCountInvestment.html)).

<sup>47</sup> Executive Order Cementing Illinois Comprehensive 2020 Census EffoH, Executive Order 2019-10 (<https://www.illinois.gov/Documents/ExecOrders/2019/ExecutiveOrder-10-2019.pdf>).

<sup>49</sup> Id. at p. 1.

increase participation in the 2020 census would help ensure appropriate redistricting because the census counts would provide the base population data for the redistricting process, as they had done with every prior legislative redistricting in Illinois and in every other state in the nation.

92. In contrast to the census, the ACS is a rolling sample survey of households. The ACS is not intended to, and does not provide a complete population count. Instead, the ACS collects and produces information on social, economic, housing and demographic characteristics to assist lawmakers and others in setting policies, distributing funds, and assessing programs.<sup>2</sup>

93. The decennial census asks respondents about the number of people in a household, their ages, sex, ethnicity, and owner or renter status. The ACS asks about a wide variety of other topics, including citizenship, education, employment, and transportation. This is because the ACS is not intended to provide a precise total population, but is instead intended to produce information on social, economic, housing and demographic characteristics."

94. In addition, the ACS and decennial census use different rules to establish residency. The decennial census asks about a respondent's usual residency (such that migrants are captured in their home state, for example), whereas the ACS asks respondents where they intend to live for the two months following the survey. Thus, if a person receives the survey at somewhere other than his or her permanent home and intends to stay there for the next two months, that person will be determined to reside at the location of the place where the survey was received, even if the person's permanent residence is elsewhere. This distinction in residency rules potentially affects migrants, laborers, college students, and others who may stay away from their permanent homes for extended periods throughout the year.

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<sup>2</sup> American Community Survey Information Guide, Census.gov, at p. 4 ([https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS\\_Information\\_Guide.pdf](https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS_Information_Guide.pdf)) ("ACS Info Guide").

95. Another difference between the ACS and the decennial census is language availability. The 2020 decennial census was available in 12 non-English languages, while the ACS generally is available in only English and Spanish.<sup>4</sup>

96. Unlike the decennial census, which receives billions of dollars of federal funding and is supported by additional state funding and programs, only between approximately \$210 and \$230 million in federal funding was apportioned for the ACS in each year between 2015 and 2019 (when the responses used in the estimates reflected in the Plan were gathered), which combined is approximately 13% of the total federal funding allocated to the decennial census." The State of Illinois and local governments in Illinois did not spend any funds to encourage Illinoisans to respond to the ACS during the past decade, nor did they conduct an extensive public outreach campaign, in contrast to the census.

**H. ACS Estimates Cannot be Used as the Base Population Data in Place of the Official Census Count for Purposes of Legislative Redistricting**

97. Because the decennial census and the ACS use different methodologies and have different purposes, the Bureau, which conducts both the decennial census and the ACS is careful

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<sup>4</sup> "The 2020 Census Speaks More Languages, Census.gov (Mar. 9, 2020) (<https://www.census.gov/newsroom/press-releases/2020/languages.html>).

" See FY2017 Budget at Exhibit 10, CEN-87

(<https://www.osec.doc.gov/bmi/budget/FY17CBJ/Census^/r20FY^/r202017/r20CBJ^/r20final/r20not508.pdf>) (2015 ACS budget of approximately \$230M); FY2018 Budget at Exhibit 10, CEN-77

([https://www.osec.doc.gov/bmi/budget/FY18SCBJ/CensusFY2018\\_Congressional\\_Budget\\_Submission\\_508\\_Compliant.pdf](https://www.osec.doc.gov/bmi/budget/FY18SCBJ/CensusFY2018_Congressional_Budget_Submission_508_Compliant.pdf)) (2016 ACS budget of approximately \$225M); FY2019 Budget at Exhibit 10, CEN-71 ([https://www.osec.doc.gov/bmi/budget/FY19CBJ/CensusFY19President'sBudget\\_Final.pdf](https://www.osec.doc.gov/bmi/budget/FY19CBJ/CensusFY19President'sBudget_Final.pdf)) (2017 ACS budget of approximately \$220M); FY2020 Budget at Exhibit 10, CEN-87

([https://www.osec.doc.gov/bmi/budget/FY20CBJ/fy2020\\_census\\_congressional\\_budget\\_justification.pdf](https://www.osec.doc.gov/bmi/budget/FY20CBJ/fy2020_census_congressional_budget_justification.pdf)) (2018 ACS budget of approximately \$210M); FY2021 Budget at Exhibit 10, CEN-87 (<https://www2.census.gov/about/budget/census-fiscal-year-21-presidents-budget.pdf>) (2019 ACS budget of approx. \$210M).

to warn users that the ACS "is not the official source of population counts." Instead, "the official population count—including population by age, sex, race and Hispanic origin—comes from the once-a-decade census, supplemented by annual population estimates (the Population Estimates Program).<sup>57</sup> Therefore, the Bureau warns that, although ACS population estimates may be useful in understanding the characteristics of persons or populations within a legislative district or other area, the ACS estimates should not be used as actual population counts or housing totals for the nation, states or counties."

98. The use of ACS estimates as the base population data for the Plan creates a number of problems and inaccuracies, including but not limited to the following five broad categories of issues:

- a. First, unlike the decennial census, which represents a complete count of the population, the ACS estimates represent a small sampling of addresses and are therefore subject to sampling errors and imprecision, which can be considerable for small geographic areas and population groups.

- (1) The Bureau selects a random sample of addresses to be included in the ACS. The Bureau then sends the surveys to approximately 295,000 addresses each month across the United States (or about 3.5 million addresses each year). This is a small sample of roughly 2.5 percent out of more than 140 million eligible addresses.'

- (2) ACS estimates can differ significantly from the official census count because the ACS is only a sample, not a specific population count. As an example, a comparison of the population estimates from the 2005-2009 ACS (the most current at the time of the last Illinois legislative redistricting in 2011) to the population count from the 2010 census show significant differences, such as county total populations varying from +36.6% to -51.5%.

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<sup>57</sup> ACS Key Facts, at p.1 .

<sup>57</sup> Id.

<sup>57</sup> ACS Info Guide, at p. 9.

- (3) ACS estimates are reported with a margin of error (e.g., +/- 1,000 people). That margin reflects a 90% confidence interval, meaning that there is a 90% likelihood that the true number lies within that margin and a 10% chance it does not.
  - (4) Each ACS estimate is reported by geographic unit. As the unit shrinks, the margin of error (as a percentage of the estimate) increases dramatically. This disproportionately affects the reliability of ACS estimates with respect to both smaller geographic units, like Blocks and Block Groups, and minority populations.
  - (5) For illustration, consider Census Tract 8212 in Cook County and, within that tract, Block Group 4, both of which are split in the Redistricting Plan between proposed Representative Districts 27 and 28." Both of those districts are intended to be majority-Black districts (54.0% and 50.0% Black citizen voting age population, respectively, according to the General Assembly)." The reported margin of error (at a 90% confidence interval) for the total population of Census Tract 8212 is 14.6% (925 people out of 6,327 estimated total); the reported margin of error for the total population of Block Group 4 within that Tract is 10.9% (725 people out of 2,020 estimated total); the reported margin of error for the Black population (one race) within that Tract is 10.9% (942 people out of 3,049 estimated total), and the reported margin of error for the Black population (one race) of Block Group 4 within that Tract is 57.4% (591 people out of 1,029 estimated total).<sup>2</sup>
  - (6) These margins of error for small units of geography and minority populations demonstrate the uncertainty and imprecision inherent in using ACS estimates for redistricting. Moreover, there are no reported estimates for specific blocks used to draw the boundary between the two districts.
- b. Second, the five-year ACS estimates are based on outdated survey responses dating back more than five years before the census date and fail to fully represent population changes that have occurred since that time.
- (1) ACS estimates are not reported for all geographic areas every year. Instead, reporting varies based on the estimated population of the

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<sup>1</sup> American Community Survey, 2019 5-Year Estimate, Table IDs DP05 and B01003, Census.gov (<https://www.census.gov/programs-surveys/acs/data.html>) ("ACS Table IDs DP05, B01003").

<sup>2</sup> House Res. 539.

<sup>3</sup> 2 ACS Table IDs DP05, B01003, B02001.

geographic area. Single-year estimates are made available only for areas with a population of 65,000 or more. Estimates for sparsely-populated areas, referred to as "small area estimates," are available only using five-year averages.

- (2) Only 23 of the 102 counties in Illinois and only 19 out of the 1,298 municipalities in Illinois are large enough to have single-year ACS estimates.
- (3) Because one-year estimates are not available for the entire state, the Redistricting Plan passed by the General Assembly uses five year estimates from the 2015-2019 ACS responses for complete statewide coverage. The five-year estimates reflect ACS responses from January 1, 2015, through December 31, 2019. Effectively, the average response reflected in the ACS estimates is from 2017.
- (4) By contrast, the census date is April 1, 2020. Therefore, the five year ACS estimates are, on average, three years older than the 2020 census count.
- (5) The five-year ACS estimates do not reflect a single point in time. This creates inaccuracies and fails to reflect the most recent population status. For example, a growing area would be under-represented because the five-year estimates would fail to capture all growth in the most recent years of the estimates. The example of Kendall County, Illinois below reflects this fact:

**One-Year Estimates**

Geographic Area Name	Date Description	Population
Kendall County	2015 population estimate	
Kendall County	<u>2017 population estimate</u> 2018 population estimate	

**Five-Year Estimate**

ACS DEMOGRAPHIC AND HOUSING ESTIMATES

- (6) In this example, the five-year estimate for the 2019 population of Kendall County would be 2,936 people lower than the one-year estimate, which further demonstrates the errors inherent in using five-year ACS estimates as the base population data for redistricting.
- c. Third, unlike the decennial census, which is supported by substantial federal, state, and local funding for public outreach campaigns, the ACS receives far less funding and has a lower response rate, which creates further imprecision.

- (1) As explained in detail in paragraphs 52 through 54 above, billions of dollars from the federal budget are allocated to increasing participation in the decennial census, and Illinois and Chicago have additionally dedicated over \$45 million in total to support census efforts.
- (2) Utilizing these funds, the census is conducted using a detailed operations plan that includes specific milestones and timelines." At a high level, the Bureau must: (i) make a list of every address in the 50 states, District of Columbia, and five U.S. territories - include houses, apartments, dormitories, military barracks, and more, (ii) ask a member of every occupied address to complete the census online, by phone, or by mail, and (iii) follow up with addresses that did not respond on their own, including through door-to-door visits and inquiries."
- (3) In contrast, only between approximately \$210 and \$230 million in federal funding was apportioned for the ACS in each year between 2015 and 2019, which combined is approximately 13% of the total federal funding allocated to the decennial census. The State of Illinois and local governments in the state did not spend any funds to encourage Illinoisans to respond to the ACS during the past decade, nor did they conduct an extensive public outreach campaign, in contrast to the census.
- (4) As expected, given the higher level of funding and emphasis, the completion rate for the 2020 decennial census in Illinois was approximately 99.9% (including enumerated and proxy data),

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" Census Operational Plan V 4.0.

" Conducting the Census 2020Census.gov (<https://2020census.gov/en/conducting-the-count.html>).

while the completion rate for the ACS in 2019 was only approximately 85.3%." r."

d. Fourth, ACS estimates are not available for individual Census Block units but are instead reposed in larger "Block Group" units. Thus, the ACS estimates must be manipulated to fit the Census Blocks used in redistricting.

(1) In addition to states, counties, and other large areas, the decennial census reports population count by:

- (i) Census Tracts (targeted to be 4,000 inhabitants and 1000 housing units)
- (ii) Census Block Groups (targeted to be 600 to 3,000 inhabitants and 240 to 1,200 housing units)
- (iii) Census Blocks (in Illinois, there are approximately 450,000 Blocks, or more than 40 Blocks for every Block Group)

(2) In contrast, ACS total population estimates are reposed only down to the Block Group unit, not the Block unit. ACS racial and ethnic estimates by age group, which are important for determining voting age population by race and ethnicity, are reposed down to the Tract unit, not the Block Group or Block units."

(3) The Redistricting Plan's Senate and Representative Districts were drawn using Blocks, not exclusively Block Groups or Tracts. The absence of Block-level estimates means that the Redistricting Plan passed by the General Assembly required manipulating the estimates by using certain assumptions about how a Tract or Block Group population should be allocated among Block units, which enhanced error rates in the plan. The General Assembly has not publicly stated what assumptions were used for this manipulation or how the manipulation was conducted.

e. Fifth, the ACS estimates are based on outdated geographic boundaries. Thus, the ACS estimates must be manipulated to fit the current geographic boundaries.

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" American Community Survey, Response Rates, Census.gov (<https://www.census.gov/acs/www/methodology/sample-size-and-data-quality/response-rates/>).

" American Community Survey 5-Year Data (2009-2019), Census.gov (<https://www.census.gov/data/developers/data-sets/acs-5year.html>).

- (1) The Bureau adjusts Tracts, Block Groups, and Blocks every 10 years. The 2020 census count will be based on new geographic boundaries, which have already been released to the public. It is apparent that the Plan was drawn using the 2020 geographic boundaries.
- (2) However, the 2015-2019 ACS population estimates are based on the prior geographic boundaries from the 2010 census.
- (3) Using the 2015-2019 ACS estimates to draw legislative districts thus requires further manipulation of the estimates to match the geographic boundaries from the 2020 census. That manipulation requires additional assumptions that enhance the errors inherent in the use of the ACS estimates. The General Assembly has not publicly stated what assumptions were used for this manipulation or how the manipulation was conducted.

99. Comparisons using historical data also demonstrate the problems inherent in using ACS estimates for redistricting. Experts have run comparisons of computer-generated plans drawn using the 2005-2009 ACS estimates, which show that the use of ACS estimates inevitably results in population disparities well in excess of 10a/r. Among a //sound computer-generated plans drawn using the 2005-2009 ACS estimates, while controlling for compactness and majority minority districts, not a single plan had a maximum population deviation within 10a/r when subsequently analyzed against the 2010 census counts. Instead, the plans based on ACS estimates showed maximum population deviations that were generally between 23 /r and 55^/r, far beyond the constitutional limits.

100. Even recent ACS estimates of the statewide Illinois total population—the largest sample, which should suffer the least error—show the inaccuracies from using ACS estimates. The ACS had predicted a steady decline in population between 2013 and 2019, with a total loss

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"Census Bureau to Release 2020 Census Geographic Products, 2020Census.gov (Jan. 14, 2021) (<https://2020census.gov/en/news-events/press-releases/2020-census-geographic-products.html>).

of 210,000 residents statewide." Yet when the 2020 apportionment count, which is from the decennial census, was released earlier this year, Illinois's population was roughly flat over the decade; the predicted loss didn't materialize.



101. In addition, courts have consistently recognized the distinctions between ACS estimates and the official decennial census counts and explained that ACS estimates are not sufficient for determining population or apportioning residents between districts."

"American Community Survey, 1-Year Estimates (2011-2019), Table ID BO 1003, Census.gov (<https://www.census.gov/programs-surveys/acs/data.html>).

"See Missouri State Conf. of Nat'l Assn's for Advancement of Colored People v. Ferguson-Florissant Sch. Dist., 201 F. Supp. 3d 100G, 1022 (E.D. Mo. 2016), aff'd, 894 F.3d 924 (8th Cir. 2018) (ACS estimates are subject to sampling bias and margins of error, and the Census Bureau warns users to use the official census for population counts); Po v. e, 2014 WL 316703, at \*13 n.22 (Census Bureau acknowledged that estimates provided by the ACS are not intended to be used in redistricting); Dena v. Iri'ing Incle v. Sch. Dist., Tex., G90 F. Supp. 2d 451,458 (N.D. Tex. 2010) (ACS estimates have higher margins of error compared to traditional census data).

102. In sum, it is improper to use ACS estimates as the population data for redistricting purposes. The use of the ACS estimates creates numerous errors and makes it impossible to determine with any accuracy the population in any Senate or Representative District.

**I. The Use of ACS Estimates as the Base Population in the Redistricting Plan Is Arbitrary.**

103. In addition to the fact that the Redistricting Plan violates the "one person, one vote" principle, the Plan also violates the Equal Protection Clause because it is arbitrary.

104. The General Assembly did not establish a sufficient legislative record to support the use of ACS estimates. In fact, in committee hearings and floor debates, the Plan's legislative sponsors professed to have no knowledge of precisely what data were used, how the data were manipulated to work for redistricting purposes, or even who drew the maps.

105. During a legislative hearing on May 25, 2021, after the Plan was publicly unveiled and shortly before its passage, Dr. Allan Lichtman, an expert retained by the House and Senate Democratic Caucuses, stated that he was not sure what data were ultimately used to draw the Plan and could not confirm whether ACS estimates were in fact used, did not participate in drawing the Plan, and had not analyzed the Plan. The legislative sponsors' explanation for the use of ACS estimates was that the Illinois Constitution's redistricting schedule necessitated the enactment of a plan prior to June 30th.

106. Also, despite professing to use "election data" and public input" in creating the Plan, Democratic legislative leaders who sponsored and pushed the Redistricting Plan through the General Assembly were unable to articulate during legislative proceedings precisely what "election data" were used or how they were used in combination with the ACS estimates.

107. Moreover, the General Assembly has not provided any explanation for why the five-year 2015-2019 ACS estimates were determined to be the best available population data or why the General Assembly chose to pass a map using those ACS estimates instead of the actual census counts, which will be available not later than August IG, 2020.

108. The taint of arbitrariness in the Redistricting Plan is illustrated by the oddly shaped boundaries for some of the proposed Representative Districts. There are many instances where presumably unpopulated blocks along road and highway medians are assigned to a Representative District without apparent reason—like superfluous appendages. Examples are illustrated immediately below."

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Rep. District 28 (shown in green), Block  
170318245093007

Rep.District 59 (shown in tan),  
Blocks 170978G45111032 and  
170978G45111038

Rep. District 87 (shown in green), Blocks  
171130052022093, 171130052022094,  
and 171130052022099

Rep.District 101 (shown in blue),  
Block 170190009022009

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7. Pub. Act 102-0010 and Google map representation of the Plan released by the House Democratic Caucus, available at [https://www.google.com/maps/d/u/2/viewer?mid=1Rs-85ic7W0nBZ2QPixsGlaz Zicynzico &ll=39.79510521942542\\*/r2C-89.50414500000001&z=7](https://www.google.com/maps/d/u/2/viewer?mid=1Rs-85ic7W0nBZ2QPixsGlaz Zicynzico &ll=39.79510521942542*/r2C-89.50414500000001&z=7).

109. The official decennial census counts are presumed to be accurate, valid, and the best data available to determine populations for redistricting purposes. The General Assembly has failed to rebut the presumption that the decennial census counts are the best population data for redistricting. Nor has the General Assembly shown that the ACS estimates are appropriate to use as the main source of population data in the Redistricting Plan. The Redistricting Plan is plainly arbitrary and capricious.

**J. The Use of ACS Estimates as the Base Population in the Redistricting Plan Is Discriminatory**

110. In addition to the fact that the Redistricting Plan violates the "one person, one vote" principle and the fact that the districting process was arbitrary, the Plan also violates the Equal Protection Clause because it is discriminatory. The use of ACS estimates results in a differential undercount that has a greater effect on racial and ethnic minorities and other minority groups that have historically been undercounted and thus underrepresented and underfunded.

111. Comparisons based on historical data confirm that ACS estimates undercount minority populations. When compared to the 2010 census count, the 2005-2009 5-Year ACS estimates for Illinois underestimated the entire Illinois population by 45,589 people, but the impact on specific sub-populations was even more significant. The Latino, Asian, and Native American populations were underestimated by 154,959 (7.6%/r), 48,200 (8.2%/r), and 20,755 (47.2%/r) persons, respectively. In contrast, the white population was over-estimated.

112. Also, computer-generated plans drawn using the 2005-2009 ACS estimates generally resulted in two fewer majority-Latino districts than plans drawn using the official 2010 census counts, even when controlling for compactness, the number of majority-Black districts, and certain other districting criteria. The Plan ensures that historically undercounted minority communities will continue to be underrepresented and lose their right to an equal vote in the legislature by foregoing the official census counts in favor of the ACS estimates.

113. Thus, it is no surprise that more than 50 good government groups and community advocates have publicly opposed the use of ACS estimates for the Plan, including the American Federation of Teachers, Asian American Legal Defense and Education Fund, CHANGE Illinois, Common Cause, Fair Elections Center, Georgetown Center on Poverty and Inequality, Lawyers for Good Government, League of Women Voters of the United States, MALDEF (Mexican American Legal Defense and Educational Fund), NAACP (National Association for the Advancement of Colored People), National Urban League, and SPLC Action Fund."

114. These organizations have correctly warned that the decision to use ACS estimates as the base for the Plan will disenfranchise at least tens of thousands of Illinoisans by creating representative maps that do not include them. Thus, the plan is discriminatory and improper.

**K. The Use of Unspecified Election Data Only Exacerbates the Problems Caused by the Use of ACS Estimates**

115. The Redistricting Plan attempts to mitigate the problems caused by the use of ACS population estimates by supplementing the ACS estimates with additional unspecified "election data." However, the legislative leaders who sponsored and pushed the Plan through the General Assembly were unable to articulate during legislative proceedings precisely what "election data" were used or how the data were used in combination with the ACS estimates.

116. Regardless, election data, whether consisting of the number of ballots cast or voter registration records, suffers from many of the same defects as the ACS estimates, including

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<sup>74</sup> Statement on Appropriate Data for Redistricting (<https://advancingjusticeaajc.org/sites/default/files/202104/Statements/r20on^/r20Appropriate/120Data\r20for^r20Redistricting/r20FINALNr204.27.2021.pdf>).

the fact that the use of that data results in a plan that disproportionately impacts minority communities. Thus, the use of election data only exacerbates the problems inherent in the Plan.

## **V. CAUSES OF ACTION**

### **First Cause of Action**

#### **(Equal Protection Malapportionment)**

117. Plaintiffs hereby reallege and incorporate by reference the allegations in all of the previous paragraphs.

118. This case arises under 42 U.S.C. § 1983 and the Fourteenth Amendment, Section 1, to the Constitution of the United States, which provides in pertinent part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

119. The Equal Protection Clause requires that the representative and legislative districts used to elect members of the General Assembly be substantially equal in population.

See *Reynolds v. Sims*, 377 U.S. 533, 569 (1964) ("We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis.").

120. The General Assembly enacted representative and legislative plans using five-year ACS data, which provide only population estimates. The General Assembly did not use P.L. 94-171 data from the 2020 Census, which contains an enumeration of the population.

121. The General Assembly has failed to comply with its constitutional obligation to enact districts that are sufficiently Equal population as measured by P.L. 94-171 data.

122. The Enacted Plans are therefore malapportioned and violate the one person, one-vote standard.

### **REQUEST FOR THREE JUDGE COURT**

123. This action challenges the constitutionality of the apportionment of the General Assembly. Accordingly, "[a] district court of three judges shall be convened ...." 28 U.S.C. § 2284(a).

### **ATTORNEY'S FEES**

124. In accordance with 52 U.S.C. § 10310(e) and 42 U.S.C. § 1988(b), Plaintiffs are entitled to recover reasonable attorney's fees, expenses, and costs.

## VI.

### **CAUSES OF ACTION**

#### **COUNT I**

#### **(Violation of the Equal Protection Clause, Actionable under 42 U.S.C. § 198.3)**

125. Plaintiffs re-allege the facts set forth in the paragraphs above as if set forth herein.

126. The Equal Protection Clause in the Fourteenth Amendment to the U.S. Constitution requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis and that states must draw Senate and Representative Districts with substantially equal populations.

127. Under this requirement, any plan that results in a greater-than- 10a/r population deviation between the largest and smallest legislative districts is "presumptively impermissible. <sup>72</sup> Even if the plan results in a smaller maximum population deviation, the plan will still be held invalid if the districts are drawn using arbitrary or discriminatory criteria."

128. The official population counts from the decennial census have long been recognized as the best source of population data to achieve such equality and are presumptively valid for redistricting purposes. <sup>74</sup>

129. Despite lacking the official population counts from the census, the General Assembly passed the Redistricting Plan on May 28, 2021, and Governor Pritzker signed it into law on June 4, 2021. Instead of the official census counts, the Redistricting Plan passed by the

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<sup>72</sup> Eiren wel, 1 3G S. Ct. at 11 24.

<sup>73</sup> fioinnD, 377 U.S. at 7 10.

<sup>74</sup> See, e.g., Karclier, 4G2 U.S. at 738; €irk/in/rick, 394 U.S. at 528.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully request the following relief:

1. A declaratory judgment that the Enacted Plans violate the Equal Protection Clause of the Fourteenth Amendment.
2. A preliminary and permanent injunction enjoining Defendants from certifying petitions or conducting future elections for the General Assembly under the Enacted Plans.
3. An injunction requiring Defendants to draw and establish maps that comply with and comport with the one-person, one-vote principles of the Fourteenth Amendment as measured by P.L. 94-171 data released following the 2020 Census.
4. Recovery of all costs against Defendants, including reasonable attorney's fees.
5. Continuing jurisdiction to render any and all further orders that this Court may from time to time deem appropriate; and
6. Such other and further relief as this Court deems just and proper.

Dated: November 30,2021

Respectfully submitted,

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William K. Crosby, pro se Plaintiff

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Harold Hall, pro se plaintiff

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Sidney Moore, pro se plaintiff

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Lionel Nixon, pro se plaintiff

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Robert R. McKay, pro se plaintiff

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Andre Smith, pro se plaintiff

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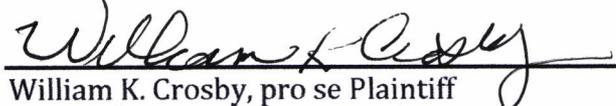
Jessie M. Hinton, pro se plaintiff

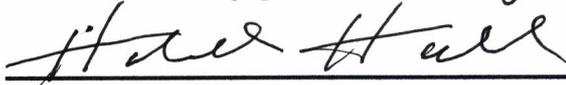
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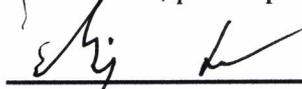
Harold Lucas, pro se plaintiff

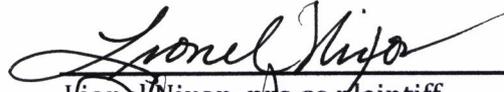
Dated: November 30, 2021

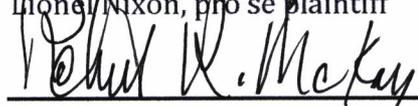
Respectfully submitted,

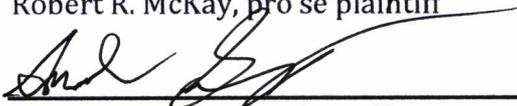
  
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William K. Crosby, pro se Plaintiff

  
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Harold Hall, pro se plaintiff

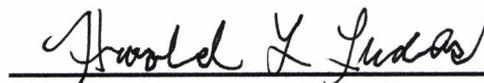
  
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Sidney Moore, pro se plaintiff

  
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Robert R. McKay, pro se plaintiff

  
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Andre Smith, pro se plaintiff

  
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Jessie M. Hinton, pro se plaintiff

  
\_\_\_\_\_  
Harold Lucas, pro se plaintiff

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

**CERTIFICATE OF SERVICE**

I hereby certify that, on November 30, 2021, a copy of the above Plaintiff's Complaint 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.

  
Signature