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

DAN MCCONCHIE, in his official capacity as Minority Leader of the Illinois Senate and individually as a registered voter, JIM DURKIN, in his official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter, the REPUBLICAN CAUCUS OF THE ILLINOIS SENATE, the REPUBLICAN CAUCUS OF THE ILLINOIS HOUSE OF REPRESENTATIVES, and the ILLINOIS REPUBLICAN PARTY,

Plaintiffs,

vs.

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-03091

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

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

PLAINTIFFS' OPPOSITION TO ILLINOIS STATE BOARD OF ELECTIONS MEMBERS' MOTION TO DISMISS

Defendant Members of the Illinois State Board of Elections (the "Board Members") argue that they should be dismissed from this case on two grounds—neither of which has merit. *First*, they argue that the claims against them should be dismissed for lack of standing under Rule 12(b)(1) because Plaintiffs "have not sufficiently alleged that the Board Members' actions have

caused any alleged injury," Memorandum in Support of Motion to Dismiss [Dkt. No. 67] ("Mot.") at 3, and because "Plaintiffs have not sufficiently alleged the Board Members can offer any relief to redress their alleged injury or that their claims are concrete and imminent and not speculative." *Id.* at 4. They further argue that Plaintiffs' claims are not yet ripe because "they rely on the assumption that if this Court finds that the Redistricting Plan is deemed unconstitutional [*sic*], the Board Members will still conduct an election in approximately ten months based on the Redistricting Plan in violation of this Court's holding." *Id.* at 5-6.

As demonstrated below, these arguments are baseless. Plaintiffs' First Amended Complaint [Dkt. No. 51] ("FAC") demonstrates that, absent judicial intervention, Board Members, acting in their official capacities as members of the Illinois State Board of Elections (the "Board of Elections"), will enforce an unconstitutional state legislative redistricting plan (the "Redistricting Plan" or "Plan") by conducting the 2022 primary and general elections using the House and Senate Districts set forth in the map contained in the Plan. Specifically, under Illinois law, established party candidates will begin circulating petitions for nominations for the general primary election on January 13, 2022, only four months from now, to be filed with the Board of Elections between March 7, 2022 and March 14, 2022. 10 ILCS 5/2A-1.1b(b), (c). The Board of Elections typically publishes a candidate guide, map, and form of petition for candidates to use in this process.

The Board of Elections will be required to certify the names of eligible candidates for the general primary election ballot by April 21, 2022. 10 ILCS 5/2A-1.1b(g). The general primary election will be held on June 28, 2022, and the general election will be held on November 8, 2022. 10 ILCS 5/2A-1.1b(k); 10 ILCS 5/2A-1.1c. Unless the Court enjoins the Board Members from beginning this process, Plaintiffs will be injured through the use of an unconstitutional legislative map in the primary and general elections. Indeed, at the hearing held in this case before Judge

Jantz on September 7, 2021, counsel for the Board Members represented that a trial in this matter would need to take place by the end of the year in order for the Board of Elections to conduct the primary and general election under the scheduled required by Illinois law. Thus, Plaintiffs have adequately pleaded an injury caused by the Board Members, which can be redressed by this Court.

Further, Plaintiffs' claims are sufficiently ripe because there are no further matters standing between the Board of Elections and the implementation of the Redistricting Plan in the 2022 primary and general elections. *E.g., Wis. Right to Life State Political Action Committee v. Barland*, 664 F.3d 139, 149 (7th Cir. 2011) (claims related to upcoming election were ripe when "the next election cycle" was "a scant few months away"; case was decided in December and general elections were scheduled for April and November of the next year); *Hooker v. Illinois State Bd. of Elections*, 63 N.E.3d 824, 830 (Ill. 2016) ("[T]he issue in this appeal is ripe . . . No additional matters appear to stand in the way of the proposal being placed in the ballot. The only steps remaining for the Board of Elections are solely administrative."). The parties need not wait until the eve of the 2022 primary and general elections to address this issue, particularly when it is all but certain that the Board Members intend to (and indeed are statutorily required to) implement and enforce the Redistricting Plan.

Second, the Board Members argue that the claims against them should be dismissed under Rule 12(b)(6) for failure to state a claim because, in their view, Plaintiffs have failed to raise any "substantive allegations" against them. But this argument is duplicative of their standing argument, and even if it was not duplicative, it still lacks merit. Contrary to the Board Members' assertions, Plaintiffs clearly allege that the Board Members are the parties charged under Illinois law with enforcing the Redistricting Plan and overseeing elections in Illinois, including the 2022 general election. FAC ¶¶ 21-30.

Accordingly, as explained below, the Board Members' arguments for dismissal are entirely inapposite to well-established Illinois and Federal law, and therefore the Motion should be denied.[1]

BACKGROUND

As explained in the FAC, on May 28, 2021, the Illinois General Assembly passed a legislative redistricting plan (the "Redistricting Plan"), on a purely partisan roll call, despite lacking the official population counts from the 2020 census. FAC ¶ 52. Instead of the official population counts, the Redistricting Plan arbitrarily uses population estimates derived from the 2015-2019 American Community Survey ("ACS") responses as the base population data. *Id.* ¶ 53. As a result, the General Assembly drafted a Plan that violates the "one person, one vote" principle derived from the Equal Protection Clause, disproportionately undercounts certain racial minorities, and is arbitrary and discriminatory, in violation of the Fourteenth Amendment to the U.S. Constitution. *Id.* ¶¶ 65-82.

On June 4, 2021, Governor J.B. Pritzker approved the Redistricting Plan. *Id.* ¶ 52. Under Illinois law, administrative responsibility for implementing the Redistricting Plan now passes to the Board of Elections. *Id.* ¶ 21; Ill. Const. 1970, Art. III, § 5; 10 ILCS 5/1A-1, *et seq*. Established party candidates will begin circulating petitions for nominations for the general primary election on January 13, 2022, only four months from now, and will file their nomination papers with the Board of Elections between March 7, 2022 and March 14, 2022. 10 ILCS 5/2A-1.1b(b), (c). The Board of Elections will be required to certify the names of eligible candidates for the general

[1] The Board Members also filed a Motion to Dismiss in the companion *Contreras* case, which raises similar arguments to their Motion to Dismiss in this case. On August 25, 2021, the *Contreras* plaintiffs filed an opposition to the motion, which demonstrates that the plaintiffs have standing to raise their claims and that they have stated plausible claims for relief. *See Contreras, et al. v. Illinois State Board of Elections, et al.*, No. 1:21-cv-03139 ("*Contreras*") [Dkt. No. 68]. Plaintiffs concur with the arguments set forth in the *Contreras* plaintiffs' opposition and adopt and incorporate those arguments as if fully set forth herein.

primary election ballot by April 21, 2022. 10 ILCS 5/2A-1.1b(g). The general primary election will be held on June 28, 2022, and the general election will be held on November 8, 2022. 10 ILCS 5/2A-1.1b(k); 10 ILCS 5/2A-1.1c.

Among other relief requested in the FAC, Plaintiffs seek an injunction to prevent the Board Members from implementing and enforcing the Redistricting Plan. FAC at p. 45 ("Plaintiffs respectfully pray that this Court . . . [i]ssue a permanent injunction enjoining Defendants . . . from enforcing or giving any effect to the Redistricting Plan, including enjoining Individual Board Member Defendants from conducting any elections for Senators or Representatives to represent the districts drawn in the Redistricting Plan.").

ARGUMENT

The Board Members move for dismissal under both Rule 12(b)(1) and Rule 12(b)(6). The Rule 12(b)(1) motion does not deny any of the factual allegations in the FAC, and is therefore a facial challenge to this Court's subject matter jurisdiction. *Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 443-44 (7th Cir. 2009). "Facial challenges require only that the court look to the complaint and see if the plaintiff has sufficiently *alleged* a basis of subject matter jurisdiction." *Id.* at 443 (emphasis in original) (citing *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990)).

A motion to dismiss under Rule 12(b)(6) must be denied when the complaint "state[s] a claim to relief that is plausible on its face." *Landale Signs & Neon, Ltd. v. Runnion Equip. Co.*, 274 F. Supp. 3d 787, 790 (N.D. Ill. 2017) (quoting *Yeftich v. Navistar, Inc.*, 722 F.3d 911, 915 (7th Cir. 2013)). A claim is plausible when a plaintiff "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The "[c]ourt must construe the Complaint in the light most

favorable to [Plaintiffs], accept as true all well-pleaded facts, and draw all reasonable inferences in [Plaintiffs'] favor." *Landale Signs*, 274 F. Supp. 3d at 790.

I. Plaintiffs Have Standing To Bring Their Claims Against The Board Members

The Board Members first move to dismiss the claims against them pursuant to Rule 12(b)(1) on the ground that Plaintiffs allegedly lack standing. Mot. at 3-5. To have standing to maintain a case in federal court, a plaintiff must establish "(1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likelihood that the injury will be redressed by a favorable decision." *Simic v. City of Chicago*, 851 F.3d 734, 738 (7th Cir. 2017).

The Board Members argue that Plaintiffs fail to satisfy the "causation requirement because they make no factual allegations establishing that the alleged injury is" traceable to the Board Members. Mot. at 4. Specifically, the Board Members argue that "Plaintiffs make no allegation that the Board Members have taken any specific actions, let alone any actions that injured Plaintiffs." *Id.* The Board Members have either missed the point, or they have intentionally avoided it. It is well-established that allegations of prospective injury are sufficient to establish Article III standing. *Clapper v. Amnesty Inter., USA*, 568 U.S. 398, 409 (2013). Here, as explained below, Plaintiffs allege that they will be injured by the Board Members' enforcement of the Redistricting Plan, and have filed this lawsuit to prevent such injuries.

A. Enforcement of the Redistricting Plan is an injury-in-fact

As explained by the Seventh Circuit, "prospective injury . . . can indeed present a cognizable injury-in-fact." *Milwaukee Police Ass'n v. Bd. of Fire & Police Comm'rs of City of Milwaukee*, 708 F.3d 921, 928 (7th Cir. 2013). When litigants have challenged the constitutionality of a statute, as Plaintiffs have effectively done here by challenging the Redistricting Plan, the Supreme Court has consistently held that "actual or threatened enforcement, whether today or in

the future" is sufficient to establish an injury-in-fact. *California v. Texas*, --- U.S. ---, 141 S. Ct. 2104, 2114 (2021). *See*, *e.g., Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979) ("[O]ne does not have to await the consummation of threatened injury to obtain preventative relief. If the injury is certainly impending, that is enough."). In the absence of present enforcement, plaintiffs can establish standing by showing that the likelihood of future enforcement is "substantial." *California*, 141 S. Ct. at 2114; *see also Massachusetts v. Mellon*, 262 U.S. 447, 488 (1923) (plaintiff satisfies standing by showing that a "statute is invalid" and the plaintiff "has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement").

Indeed, members of the Board of Elections have previously been sued for prospective injunctive relief regarding the administration of an upcoming election. *See Libertarian Party of Illinois v. Illinois State Bd. of Elections*, No. 12-C-2511, 2012 WL 3880124 (N.D. Ill. Sept. 5, 2012). In that case, the Board Members "acknowledge[d] that state officials may be sued for prospective injunctive relief," but argued that the plaintiffs should have instead sued the county officials with whom nominating petitions for county offices were to be filed and processed. *Id.* at *3. The court rejected that argument and held that the Board Members were subject to suit for injunctive relief because the Board of Elections "has general supervision over the administration of the registration and election laws throughout the State of Illinois." *Id.* Because the plaintiffs' alleged injuries stemmed "from the implementation of election laws," the court declined to dismiss the lawsuit. *Id.*

The same is true here. The FAC alleges that "the Redistricting Plan forces [Plaintiffs' members] to reside in, represent, and vote in Senate and Representative Districts with estimated populations that exceed the ideal (or average) population, thus reducing their voting power and violating their constitutional and legal rights." FAC ¶¶ 88-89. The FAC further alleges that the

Redistricting Plan violates the "one person, one vote" principle (*id.* ¶ 71), and is both arbitrary (*id.* ¶¶ 71–77) and discriminatory (*id.* ¶¶ 78–81). The FAC specifically alleges that "the decision to use ACS estimates as the base for the Redistricting Plan will disenfranchise at least tens of thousands of Illinoisans by creating representative maps that do not include them." *Id.* ¶ 82.

There is nothing "speculative" about Plaintiffs' prospective injury, as the Board Members suggest. Mot. at 4. Not only is the likelihood of future enforcement of the Redistricting Plan "substantial," it is guaranteed absent a court challenge. The General Assembly passed the Redistricting Plan on May 28, 2021, and Governor Pritzker signed it into law on June 4, 2021. FAC ¶ 52; Pub. Act 102-0010 § 1, *et seq*. The FAC – and Illinois law – make clear that the Board Members are required to implement and enforce the Redistricting Plan. FAC ¶¶ 22-29, 110; *id.* at p. 45; *see also* 10 ILCS 5/1A-8(12) (Board Members have a duty to "[s]upervise the administration of the registration and election laws throughout the State").

As explained in the Board Members' Motion, "it is presumed that the official acts of public officers will be discharged properly." Mot. at 6 (citing *U.S. v. Lee*, 502 F.3d 691, 697 (7th Cir. 2007)). This logic necessarily extends to the actions of the Board Members, who must adhere to Illinois election law. Because the Redistricting Plan has been signed into law, its future implementation and enforcement can be presumed. *Majors v. Abell*, 317 F.3d 719, 721 (7th Cir. 2003), *certified question accepted*, 785 N.E.2d 226 (Ind. 2003), and *certified question answered*, 792 N.E.2d 22 (Ind. 2003) ("A plaintiff who mounts a pre-enforcement challenge to a statute that he claims violates his [constitutional rights] need not show that the authorities have threatened to prosecute him . . . *the threat is latent in the existence of the statute*.") (emphasis added) (citations omitted); *Am. C.L. Union of Illinois v. Alvarez*, 679 F.3d 583, 591 (7th Cir. 2012) ("The 'existence of a statute implies a threat to prosecute, so pre-enforcement challenges are proper [under Article

III], because a probability of future injury counts as 'injury' for the purpose of standing.'") (quoting *Bauer v. Shepard,* 620 F.3d 704, 708 (7th Cir. 2010)). The threatened enforcement of the Redistricting Plan creates precisely the type of injury described in *California v. Texas*, and Plaintiffs have therefore adequately alleged an injury-in-fact under Article III.

B. Plaintiffs' injury is traceable to the Board Members

Traceability merely requires a "causal connection between the injury and the conduct complained of." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). In other words, the "injury must be fairly traceable to the challenged action of the [Defendants]" and "not the result of the independent action of some third party not before the court." *Id.* As shown above, Plaintiffs' alleged injury is the threatened implementation and enforcement of the Redistricting Plan. *See, supra*, at 6-9; FAC ¶ 110. Thus, to establish traceability for standing, Plaintiffs need only show a "causal connection" between the enforcement of the Redistricting Plan and the Board Members.

The connection, however, is obvious. Unlike other states, Illinois does not leave the administration of election law to the Secretary of State. Although the Board Members did not pass the Redistricting Plan, they are the *sole authority* tasked with implementing and enforcing it. FAC ¶¶ 22-29, 110; *id.* at p. 45; *see also* 10 ILCS 5/1A-1 ("A State Board of Elections is hereby established which shall have general supervision over the administration of the registration and election laws throughout the State, and shall perform only such duties as are or may hereafter be prescribed by law."); *Libertarian Party*, 2012 WL 3880124, at *3 (Board Members were subject to a suit for injunctive relief regarding the administration of the upcoming election because Board of Elections "has general supervision over the administration of the registration and election laws throughout the State of Illinois"). Hence, Plaintiffs' injuries are traceable to the Board Members through the threatened enforcement of the Redistricting Plan.

The Board Members argue that Plaintiffs' injuries are not traceable to them because "Plaintiffs make no allegation that the Board Members have taken any specific actions," with respect to the Redistricting Plan. Mot. at 4. These arguments miss the point. Plaintiffs' harm stems from the "latent threat" of the *enforcement* of the Redistricting Plan, not simply its passage. *Abell*, 317 F.3d at 721. Hence, Plaintiffs seek to prevent the enforcement of the Redistricting Plan in future elections altogether. Plaintiffs brought these claims once the Redistricting Plan was passed into law. Seeing as an election has not yet been held since the passage of the Redistricting Plan, it necessarily follows, therefore, that the Board Members have yet to take "any specific actions" with regard to the Redistricting Plan. This makes no difference to the ultimate analysis. Pre-enforcement actions against the Board of Elections Members (or similar authorities in other states) are not only proper, they are routine. *See e.g.*, *Stevenson v. State Bd. of Elections*, 638 F. Supp. 547, 549 (N.D. Ill.), *aff'd,* 794 F.2d 1176 (7th Cir. 1986) (citizen had standing to bring pre-enforcement action against Illinois Board of Elections Members challenging constitutionality of filing deadlines); *Gould v. Schneider*, 448 F. App'x 615, 618 (7th Cir. 2011) (plaintiff had standing to bring pre-enforcement action against Chair of Illinois Board of Elections to "enjoin the State Board of Elections from enforcing" an elections statute); *Winters v. Illinois State Board of Elections*, 197 F. Supp. 2d 1110, 1112 (N.D. Ill. 2001) (pre-enforcement action against Illinois Board of Elections to prevent enforcement of election law).

C. A judicial decision in Plaintiffs' favor would redress Plaintiffs' injury

The Board Members argue that Plaintiffs have failed to show redressability "because they cannot receive any requested relief from the Board Members." Mot. at 5. Again, the Board Members have completely missed the point. Plaintiffs seek relief from *the Court* in the form of an injunction to prevent the Board Members from causing the asserted injury.

In an action for injunctive relief, a plaintiff may demonstrate redressability by showing that a favorable decision will prevent the injury from occurring altogether. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 108 (1998) (plaintiff seeking injunction to prevent "threatened injury" or "the imminence of a future violation" satisfies the injury and redressability criteria when "the injunctive relief requested would remedy that alleged harm").

Here, Plaintiffs allege that they will be injured by the implementation and enforcement of the Redistricting Plan, and that the injury will be redressed by their requested relief: "a permanent injunction enjoining Defendants . . . including enjoining the Individual Board Member Defendants from conducting any elections for Senators or Representatives to represent the districts drawn in the Redistricting Plan." FAC at p. 45. By enjoining the implementation of the Redistricting Plan, a favorable decision will prevent the Plaintiffs' injury. Accordingly, Plaintiffs have sufficiently demonstrated redressability for purposes of standing.

* * *

Plaintiffs' allegations clearly establish Article III standing for their claims against the Board Member Defendants. Accordingly, the Board Members' Motion on these grounds should be denied.

II. Plaintiffs' Claims Are Ripe

The Board Members next argue, without support, that the Plaintiffs' claims are premature. Mot. at 5-6. Not only are their arguments completely baseless, they are in direct conflict with the established precedent of both state and federal law.

"Ripeness requires a showing that [claimants] will sustain an immediate injury from the challenged action or conduct of defendants." *Koch Ref. v. Farmers Union Cent. Exch., Inc.*, 831 F.2d 1339, 1353, n.15 (7th Cir. 1987) (citing *Duke Power Co. v. Carolina Environmental Study*

Group, Inc., 438 U.S. 59, 81-82 (1978)). In the context of challenges to election laws, the plaintiff need not wait until the eve of the election to bring their claims. Indeed, challenges to election laws in Illinois become ripe when "[n]o additional matters appear to stand in the way of" the alleged injury, and "[t]he only steps remaining for the Board of Elections are solely administrative." *Hooker*, 63 N.E.3d at 830 n.2. Moreover, the US Supreme Court has held that judicial relief becomes appropriate in redistricting cases when "a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." *White v. Weiser*, 412 U.S. 783, 794–95 (1973) (citing *Reynolds v. Sims*, 377 U.S. 533, 586 (1964)); *see also Carstens v. Lamm*, 543 F. Supp. 68, 76 (D. Colo. 1982) (claim was ripe because "[t]here is no indication that absent judicial intervention, a viable solution will be forthcoming").

Here, as explained in the FAC, the General Assembly has failed to produce a map in accordance with federal constitutional requisites. FAC ¶¶ 90–105; *Weiser*, 412 U.S. 794–95. Instead, they have produced the Redistricting Plan, which is arbitrary, discriminatory, and violates the "one person, one vote" principle. Moreover, as explained above, Governor Pritzker has signed the Redistricting Plan into law. FAC ¶ 52. Therefore, there are "no additional matters" that "stand in the way" of the enforcement of the Redistricting Plan by the Board of Elections. *Hooker*, 63 N.E.3d at 830 n. 2. Indeed, if left unchallenged, the Board Members are required by Illinois law to enforce the Redistricting Plan during the upcoming election cycle. 10 ILCS 5/1A-1 *et seq.*; *see also Stevenson*, 638 F. Supp. at 549 ("The duties of the [Illinois State Board of Elections] are ministerial; the language of the statute simple.").

Specifically, under Illinois law, established party candidates will begin circulating petitions for nominations for the general primary election on January 13, 2022, only four months from now, and will file their nomination papers with the Board of Elections between March 7, 2022 and

March 14, 2022. 10 ILCS 5/2A-1.1b(b), (c). The Board of Elections will be required to certify the names of eligible candidates for the general primary election ballot by April 21, 2022. 10 ILCS 5/2A-1.1b(g). The general primary election will be held on June 28, 2022, and the general election will be held on November 8, 2022. 10 ILCS 5/2A-1.1b(k); 10 ILCS 5/2A-1.1c. Indeed, at the hearing held in this case before Judge Jantz on September 7, 2021, counsel for the Board Members represented that a trial in this matter would need to take place by the end of the year in order for the Board of Elections to conduct the primary and general election under the scheduled required by Illinois law.

Accordingly, this matter is ripe for judicial review.

III. Plaintiffs Have Stated A Claim Under the Equal Protection Clause Against the Board Members[2]

Finally, the Board Members argue that Plaintiffs have failed to state a viable Equal Protection claim against them because "Plaintiffs have not alleged that the Board Members have taken any personal or official actions or made any decisions with regard to the 2021 Redistricting Plan." Mot. at 6. The Board Members essentially argue that pre-enforcement claims under section 1983 are unavailable, and that Plaintiffs must wait until "Board Members have taken any personal or official actions or made any decisions" to state a claim. Mot. at 6. As described above, this is flatly wrong. *Abell*, *supra*, at 6 ("A plaintiff who mounts a pre-enforcement challenge to a statute that he claims violates his [constitutional rights] need not show that the authorities have threatened to prosecute him."). The Board Members fail to recognize that Plaintiffs seek injunctive relief against the Board Members *to prevent enforcement* of the Redistricting Plan. Plaintiffs, therefore,

[2] The Board Members do not appear to raise a Rule 12(b)(6) challenge to Plaintiffs' claim against them for declaratory judgment (Count II of the FAC). For the reasons stated in the FAC and those stated herein, Plaintiffs have alleged a viable claim for declaratory judgment against the Board Members.

need only to allege facts to plausibly show that the Board Members intend to enforce the Redistricting Plan and that it violates the Equal Protection Clause.

As explained above, the Seventh Circuit has advised that once a statute (or, as in this case, a legislative redistricting plan) is in place, the threat of its enforcement may be presumed. *Alvarez*, *supra*, at 6; *Abell*, *supra*, at 6. And under Illinois law, the Board Members are required to implement the Redistricting Plan once it has been signed into law, as it was on June 4, 2021. 10 ILCS 5/1A-1, *et seq*. Further, the FAC clearly demonstrates that the Redistricting Plan would be unconstitutional. The FAC alleges that the Redistricting Plan is arbitrary because "[t]he General Assembly did not establish any substantive legislative record to support the use of ACS estimates." FAC ¶¶ 10, 72-77. The FAC also alleges that the Redistricting Plan is discriminatory because it "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." *Id.* at ¶¶ 78-82. The FAC further alleges that the Redistricting Plan violates the "one person, one vote" principle because it "fails to draw legislative districts of substantially equal populations." *Id.* at ¶ 103. These allegations are more than sufficient to establish Plaintiffs' Equal Protection claim. Accordingly, the Board Members' Motion on this basis must also be denied.

CONCLUSION

For the reasons discussed above, Plaintiffs respectfully request that the Board Member Defendants' Motion to Dismiss be DENIED.

Dated: September 10, 2021

Respectfully submitted,

/s/ Phillip A. Luetkehans
Phillip A. Luetkehans
Brian J. Armstrong
LUETKEHANS, BRADY, GARNER & ARMSTRONG, LLC

/s/ Charles E. Harris, II
Charles E. Harris, II
Mitchell D. Holzrichter
Thomas V. Panoff
Christopher S. Comstock

105 E. Irving Park Road
Itasca, Illinois 60143
Tel: (630) 760-4601
Fax: (630) 773-1006
pal@lbgalaw.com
bja@lbgalaw.com

Counsel for Plaintiffs Dan McConchie, in his official capacity as Minority Leader of the Illinois Senate and individually as a registered voter, Jim Durkin, in his official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter, the Republican Caucus of the Illinois Senate, and the Republican Caucus of the Illinois House of Representatives

/s/ Ricardo Meza
Ricardo Meza
Meza Law
161 N. Clark Street, Suite 1600
Tel: (312) 802-0336
rmeza@meza.law

Counsel for Plaintiffs Dan McConchie, in his official capacity as Minority Leader of the Illinois Senate and individually as a registered voter, Jim Durkin, in his official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter, the Republican Caucus of the Illinois Senate, and the Republican Caucus of the Illinois House of Representatives

Heather A. Weiner
Christopher A. Knight
Joseph D. Blackhurst
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606
Tel: (312) 782-0600
Fax: (312) 701-7711
charris@mayerbrown.com
mholzrichter@mayerbrown.com
tpanoff@mayerbrown.com
ccomstock@mayerbrown.com
hweiner@mayerbrown.com
cknight@mayerbrown.com
jblackhurst@mayerbrown.com

Counsel for Plaintiffs Dan McConchie, in his official capacity as Minority Leader of the Illinois Senate and individually as a registered voter, Jim Durkin, in his official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter, the Republican Caucus of the Illinois Senate, and the Republican Caucus of the Illinois House of Representatives

/s/ John G. Fogarty
John G. Fogarty
Clark Hill PLC
130 E. Randolph St., Suite 3900
Chicago, Illinois 60601
Tel: (312) 985-5900
Fax: (312) 985-5999
jfogarty@clarkhill.com

Counsel for Plaintiff the Illinois Republican Party

CERTIFICATE OF SERVICE

The undersigned certifies that on September 10, 2021, the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF system, which will provide notice to all counsel of record in this matter.

/s/ Charles E. Harris, II
Charles E. Harris, II