No. 131480

IN THE SUPREME COURT OF ILLINOIS

TONY MCCOMBIE, in her official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter; THOMAS J. BROWN, individually as a registered voter; and SERGIO CASILLAS VAZQUEZ, individually as a registered voter; JOHN COUNTRYMAN, individually as a registered voter; and ASHLEY HUNSAKER, individually as a registered voter,	)	
Plaintiffs,	)	Original Action under Article IV, Section 3 of the Illinois Constitution
v.	)	
ILLINOIS STATE BOARD OF ELECTIONS and JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, RICK S. TERVEN, SR., CASANDRA B. WATSON, and JACK VRETT, all named in their official capacities as members of the State Board of Elections,	)	
Defendants.	)	

BRIEF OF PLAINTIFFS REGARDING TIMELINESS OF MOTION FOR LEAVE TO FILE COMPLAINT

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

INTRODUCTION

Plaintiffs—the Minority Leader of the Illinois House of Representatives and five voters—seek to end the majority party's practice of gerrymandering the state's legislative map to entrench their political power. There are two reasons why. *First*, the gerrymandered map distorts the will of the people by diluting the voting power of certain voters, thereby violating the Illinois Constitution's guarantee of "free and equal" elections. *Second*, the map is full of bizarrely shaped, elongated districts in direct conflict with the Illinois Constitution's requirement that districts be "compact." This Court should declare as much, enjoin the enforcement of the gerrymandered map, and order a special master to draw a new one, as the situation demands.

This Court has asked whether Plaintiffs' case is "timely." The answer is yes, for several independent reasons. To start, Plaintiffs' constitutional challenge is subject to a five-year statute of limitations. Regardless of when the causes of action accrued, Plaintiffs filed their case within the five-year window—indeed, they filed the case less than two months after the most recent time Defendants certified an election under the gerrymandered map. Moreover, the statute of limitations does not run against Plaintiff Tony McCombie's claims, which are brought in her official capacity as Minority Leader to vindicate a public right. And in all events, Plaintiffs were diligent in filing their case. To bring a partisan gerrymandering claim, the US Supreme Court has recommended that multiple election cycles' worth of data is needed

to show whether there is a discriminatory effect. Plaintiffs filed this action swiftly after the second election cycle, in compliance with the US Supreme Court's guidance and the statute of limitations.

In sum, this case is timely. The Court should grant Plaintiffs' motion for leave to file their complaint and set a briefing schedule so it can decide this seminal case on its merits.

ISSUE PRESENTED

1. Whether Plaintiffs' Motion for Leave to File Complaint is timely.

STATEMENT OF JURISDICTION

This Court has original and exclusive jurisdiction over this matter under Article IV, Section 3 of the Illinois Constitution. *See, e.g.*, *Schrage v. State Bd. of Elections*, 88 Ill. 2d 87, 91 (1981).

CONSTITUTIONAL PROVISIONS INVOLVED

ILL. CONST. art. III, § 3:

> All elections shall be free and equal.

ILL. CONST. art. IV, § 3:

> (a) Legislative Districts shall be compact, contiguous and substantially equal in population. Representative Districts shall be compact, contiguous, and substantially equal in population.
>
> (b) In the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts and the Representative Districts.
>
> If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall be constituted not later than July 10. The Commission shall consist of eight members, no more than four of whom shall be members of the same political party.
>
> The Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly.
>
> The members shall be certified to the Secretary of State by the appointing authorities. A vacancy on the Commission shall be filled within five days by the authority that made the original appointment. A Chairman and Vice Chairman shall be chosen by a majority of all members of the Commission.
>
> Not later than August 10, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.
>
> If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1.
>
> Not later than September 5, the Secretary of State publicly shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission.
>
> Not later than October 5, the Commission shall file with the Secretary

of State a redistricting plan approved by at least five members.

An approved redistricting plan 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.

The Supreme Court shall have original and exclusive jurisdiction over actions concerning redistricting the House and Senate, which shall be initiated in the name of the People of the State by the Attorney General.

STATEMENT OF FACTS

I. The 2021 Redistricting Process

This case challenges the constitutionality of Illinois's current legislative map, which was signed into law in September 2021 as Public Act 102-0663 (the "Enacted Plan"). The Enacted Plan was the second attempt by the General Assembly to redraw legislative districts following the 2020 census. Compl. ¶¶ 26–27. The first attempt, Public Act 102-0010, was passed in June 2021 and challenged in federal court by plaintiffs who alleged that it violated the US Constitution's Equal Protection Clause by forming districts with significant population deviations. *See McConchie v. Scholz*, 567 F. Supp. 3d 861 (N.D. Ill. 2021) ("*McConchie I*"). The federal court agreed, declaring this map unconstitutional. It found that the map had a maximum population deviation of nearly 30 percent in the House districts—far exceeding the ten percent threshold that is presumptively invalid under federal law. *Id.* at 885–89.

The General Assembly returned to the drawing board and passed the Enacted Plan, which was again challenged in federal court by several plaintiff groups, including the NAACP and MALDEF. Compl. ¶ 28. Plaintiffs asserted that the Enacted Plan violated Section 2 of the Voting Rights Act and the Equal Protection Clause by diluting the voting power of racial minorities and engaging in racial gerrymandering. *McConchie v. Scholz*, 577 F. Supp. 3d 842 (N.D. Ill. 2021) ("*McConchie II*").

The federal court upheld the Enacted Plan. *Id.* at 885. But during the litigation, it became clear that the individuals behind the map had a driving

purpose: to secure partisan advantage at all costs. Compl. ¶¶ 30–43. Indeed, the *McConchie II* court held that "the voluminous evidence submitted by the parties overwhelmingly establishes that *the Illinois mapmakers were motivated principally by partisan political considerations*." *Id.* at 885 (emphasis added).

This partisan motivation was not hidden. Indeed, the General Assembly's Democratic leadership argued in *McConchie II* that "politics … drove the configuration of all of the challenged districts." *Id.* at 877. Jonathan Maxson, the Director of Redistricting for the House Democratic Caucus who oversaw the 2021 redistricting process, said similar things in a deposition in that case. Dep. Tr. of Jonathan Maxson ("Maxson Dep."), Compl., Ex. A. When asked about the configuration of certain House Districts (HDs), Maxson repeatedly testified about securing partisan advantage. He said that he tried to "enhance the Democratic performance" of HD 112. *Id.* at 204:9–12. And for HD 113, Maxson testified that the goal was to keep the district "at about an equal Democratic performance, which is where [it] started at." *Id.* at 204:22–205:3. Maxson's admissions also align with official statements made by Democrats in relevant legislative history. *See* Compl. ¶ 44. As just one example, the House Resolution states that "the ability to increase the partisan advantage" drove the drawing of HDs 3 and 4. *Id.* ¶ 46.

II. The Aftermath of the Enacted Plan

The Enacted Plan has provided the district boundaries for two election cycles: first in 2022 and then in 2024. While the 2022 election results hinted at

the discriminatory effect of the Enacted Plan, only the 2024 election results could confirm that the result was no fluke.

Start with 2022. Republican candidates for the Illinois House of Representatives won a *majority*—50.9%—of the statewide vote. Compl. ¶ 4. But what did that get them? A *third* of the seats in the state House. *Id.* Given these results, many individuals made the understandable choice not to run for the state House in the 2024 election cycle. *Id.* ¶ 5. This included would-be Republican candidates in artificially "safe" Democratic districts, as well as would-be Democratic candidates in districts that were artificially "packed" with Republicans. *Id.* Indeed, in 2024, nearly *half* of the state House elections went uncontested. *Id.*

The 2024 election cycle provided the confirmation needed to show that the Enacted Plan had an unconstitutionally discriminatory effect. Again, Democrats secured a supermajority of seats in the state House—a significant result, given that they won only 55% of the popular vote. *Id.* ¶ 3. Incredibly, not one seat in the entire General Assembly changed hands. These outcomes prompted at least one commentator to call the election results "predetermined," thus forcing "voter turnout … to trend downward." Sheldon H. Jacobsen, *Illinois election results show gerrymandering's bad outcome*, CHI. SUN-TIMES (Dec. 14, 2024).[1]

[1] *Available at* https://chicago.suntimes.com/other-views/2024/12/14/election-results-illinois-gerrymandering-party-control-republican-democrat-sheldon-jacobson.

Defendants certified the 2024 election results on December 2, 2024.[2]

III. This Case is Filed

After the 2024 election, it became clear that the game was rigged. While the Democratic mapmakers had admitted their partisan aims in various forums, the effectiveness of their map-drawing revealed itself through the disproportionate election results. To confirm that the top-line results reflected the intended effect of the Enacted Plan, Plaintiffs promptly engaged Dr. Jowei Chen, an expert in the use of computer simulations to show the effects of legislative redistricting maps. Expert Report of Jowei Chen, Ph.D. ("Chen Rep."), Compl., Ex. B.

Dr. Chen's analyses verified what was seemingly the case. He determined that "the Enacted Plan creates a significant pro-Democratic electoral bias," resulting in up to 11 fewer Republican-favoring districts when compared to the median outcome among the non-partisan computer-simulated plans. Compl. ¶ 53; Chen Rep. at 31–52. He also concluded that the gerrymandering worked best in competitive elections—meaning that the better Republican candidates did in a statewide election, the more effective the gerrymander was. Compl. ¶ 53.

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[2] State Board of Elections, Regular Meeting Minutes 1 (Dec. 2, 2024), *available at* https://www.elections.il.gov/NewDocDisplay.aspx?%2fM0cs48zOKUVo8NHFkkNhVwyxu6isYxmIQBUuKl3cnXZ14OCwk8xSlTDqHmM4r1%2fs4vCJdp%2fBAULh0fhhOvNcQKMupz63PW8BnpMpFzrWVbllAn4UKQXfLE47iAcYnjn2GWPs0P%2fV7xEASvh0jpXHsYQSDpNQGWnTXLosHsygLUzAkvz8nzwjBlxDToOwms%2b4%2fQqTDIRGCo%3d.

With the partisan intent and effect now established, Plaintiffs filed suit on January 28, 2025—less than two months after Defendants certified the 2024 election results. In line with this Court's procedures for redistricting cases, *see* ILL. SUP. CT. R. 382(a), Plaintiffs filed a Motion for Leave to File Complaint (the "Motion"). In the Complaint attached to the Motion, Plaintiffs alleged that the extreme partisan gerrymandering in the Enacted Plan violates two provisions of the Illinois Constitution: the requirement that elections be "free and equal" and the mandate that districts be "compact." ILL. CONST. art. III, § 3, art. IV, § 3(a).

On February 14, this Court directed the parties "to file briefs on the issue of whether the motion for leave to file a complaint for declaratory and injunctive relief as an original action pursuant to Supreme Court Rule 382 is timely." *McCombie v. Illinois State Bd. of Elections*, No. 131480 (Ill. Feb. 14, 2025).

ARGUMENT

The Motion is unquestionably timely. To begin with, a case can generally be dismissed as untimely only if a defendant successfully asserts such an affirmative defense. *Doe A. v. Diocese of Dallas*, 234 Ill. 2d 393, 412 (2009). As Defendants have not yet appeared, much less filed an answer or motion, respectfully, it is premature to decide any questions of timeliness. *See id.*; *Edwards v. Lombardi*, 2013 IL App (3d) 120518, ¶ 15 (stating that, when a party has not pleaded an affirmative defense, "the defense … cannot be considered").

That issue aside, the Motion is timely for three reasons. *First*, a five-year statute of limitations generally applies to constitutional challenges, and the Motion was filed with plenty of time to spare. *Second*, and alternatively, statutes of limitation do not run against Leader McCombie's claims. Settled precedent establishes that a public actor suing in her official capacity to vindicate a public right is not subject to timeliness defenses. *Third*, and in all events, Plaintiffs were diligent in filing the Motion and promptly filed this case after two election cycles—the only time that complies with both the US Supreme Court's guidance on when to file such cases and the five-year statute of limitations. This Court should find that the Motion is timely and grant it.

I. Plaintiffs' claims are subject to a five-year statute of limitations, which has not elapsed.

Plaintiffs mount a constitutional challenge, and claims like these generally face a five-year statute of limitations. Here, Plaintiffs' claims accrued

in early December 2024: the last time election results were certified under the unconstitutional Enacted Plan. Because the Motion was filed less than two months later, it is timely. And even if, *arguendo*, Plaintiffs' claims accrued when the Enacted Plan became law in 2021, the Motion is still timely.

A. The five-year "catchall" statute of limitations applies.

The Illinois Constitution directs that "actions concerning redistricting" be filed in this Court. ILL. CONST. art. IV, § 3(b). But this provision in the Constitution provides no time limit on these actions. Nor is there a time limit set under this Court's rules governing procedure for redistricting claims. *See* ILL. S. CT. R. 382.

When, as here, a provision "lacks a specific limitations period," Section 13-205 of the Code of Civil Procedure—the "catchall" statute of limitations—supplies one. *Tims v. Black Horse Carriers, Inc.*, 2023 IL 127801, ¶ 21. It states that "all civil actions" that do not otherwise have a statute of limitations "shall be commenced within 5 years next after the cause of action accrued." 735 ILCS 5/13-205.

It follows that redistricting claims, which have no statutory or constitutional time limit, are subject to a five-year statute of limitations. Though this Court has not yet ruled on this issue, this conclusion aligns with lower court precedent, which holds that a claim that is "based upon … a constitutional challenge" is subject to the "catchall" five-year statute of limitations. *See, e.g.*, *Raintree Homes, Inc. v. Vill. of Kildeer*, 302 Ill. App. 3d 304, 307–08 (1999); *see also Dotson v. City of Indianola*, 514 F. Supp. 397, 401

(N.D. Miss. 1981) (using state's "catchall" statute of limitations in Voting Rights Act case).

B. The Motion was filed within five years of the cause of action accruing.

The "catchall" statute of limitations requires that a lawsuit be filed within five years after "the cause of action accrued." 735 ILCS 5/13-205. A cause of action generally accrues "when facts exist that authorize the bringing of the cause of action." *Henderson Square Condo. Ass'n v. LAB Townhomes LLC*, 2015 IL 118139, ¶ 52. Here, the causes of action accrued in 2024—but, at minimum, they accrued in 2021. Either way, the Motion is timely.

1. The causes of action accrued in 2024.

The causes of action accrued on December 2, 2024, the date that Defendants certified the 2024 election results made possible by the Enacted Plan. This Court applies the "continuing violation" rule to determine when a cause of action has accrued. Under this rule, when a cause of action "involves a continuing or repeated injury, the limitations period does not begin to run until the date of the last injury." *Feltmeier v. Feltmeier*, 207 Ill. 2d 263, 278 (2003). Here, the "date of the last injury" was December 2, 2024.

On this date, Defendants last used the Enacted Plan. And when it did so, it imposed the results of an election based on a map hard-wired to benefit Democrats. Compl. ¶¶ 29–54; Chen Rep. at 31–52. As Plaintiffs' expert Dr. Chen concluded, the Enacted Plan's pro-Democratic bias results in "as many as 11 fewer Republican-favoring districts when compared to the median

outcome among the non-partisan computer simulated plans." Compl. ¶ 53. This is no accident: it has been "overwhelmingly establishe[d] that the Illinois mapmakers were motivated principally by partisan political considerations." *McConchie II*, 577 F. Supp. 3d at 886. It is also unconstitutional. ILL. CONST. art. III, § 3, art. IV, § 3(a).

When Defendants last used this unconstitutional map, it inflicted concrete injuries on Plaintiffs. For starters, Leader McCombie suffered ill effects: Despite winning 45% of the popular vote in 2024, her caucus obtained only 34% of the seats in the House. Compl. ¶¶ 3, 50 & fig. 1. What's more, the election was certified even though Plaintiffs had been "depriv[ed] … of an equal voice in choosing their representatives," as compared to other voters in the state. *Schrage*, 87 Ill. 2d at 105; Compl. ¶¶ 106, 122. And Plaintiff Robert Bernas—a registered Republican voter within the boundaries of House District 56—had no other choice on his ballot than the incumbent Democratic representative. Compl. ¶ 10.[3] That this race was uncontested results from the gerrymandered nature of the Enacted Plan. *Id.* ¶¶ 5–6.

Because Defendants' use of an unconstitutional map directly injured Plaintiffs on December 2, 2024, Plaintiffs' causes of action all accrued on this date. *See Feltmeier*, 207 Ill. 2d at 278; *cf. Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 348–49 (2002) (ruling that each allocation

[3] *See Election Results*, ILL. STATE BD. OF ELECTIONS, *https://www.elections.il.gov/electionoperations/ElectionVoteTotals.aspx?ID=rfZ%2buidMSDY%3d&OfficeType=TPsWaFcg2f%2bZHFrYI%2b6FR0aY47e3tS2y*.

of vehicles was a separate violation supporting a separate and new cause of action).

This conclusion is well-supported by on-point precedent from around the country. In *Blackmoon v. Charles Mix County*, for example, a group of voters alleged that certain districts did not comply with the one-person, one-vote standard. 386 F. Supp. 2d 1108, 1110 (D.S.D. 2005). The boundaries of the districts had been in place since 1968, but the voters did not file their lawsuit until 2005. *Id.* at 1114. Defendants argued that the three-year statute of limitations barred the claim. *Id.* at 1115. The court disagreed, however, holding that "each time an election occurs with the current [district] boundaries … , Plaintiffs suffer an alleged injury." *Id.*

So too in *Brown v. Kentucky Legislative Research Commission*, 966 F. Supp. 2d 709 (E.D. Ky. 2013). There, voters challenged state legislative districts as malapportioned. *Id.* at 712. These districts were drawn in 2002, but the challenge was not filed until early 2013. *Id.* at 719. Even so, the court held that the plaintiffs filed their claims within the one-year statute of limitations. That's because "the most recent election was held in November of 2012" and the "violation renews itself each time an election is held." *Id.*

Other cases say the same thing. *See, e.g.*, *Thomas v. Bryant*, 366 F. Supp. 3d 786, 802 (S.D. Miss. 2019) (holding that a Voting Rights Act suit was timely as it was "filed within three years of the last … election 'which improperly implemented' the Act"); *Dotson*, 514 F. Supp. at 401 (determining that a six-

year statute of limitations had not run, given that the most recent elections that used "the four challenged annexations" happened "[l]ess than four years ago"). The point is settled, even if these courts did not explicitly use the "continuing violation" rule: an election based on an unconstitutional map re-sets the statute of limitations.

This makes sense, because "[w]hen the continued enforcement of a statute inflicts a continuing or repeated harm, a new claim arises (and a new limitations period commences) with each new injury." *Flynt v. Shimazu*, 940 F.3d 457, 462 (9th Cir. 2019); *Doe ex rel. Doe #6 v. Swearingen*, 51 F.4th 1295, 1305 (11th Cir. 2022) ("A law inflicting a continuing and accumulating harm on a plaintiff actively deprives that plaintiff of his asserted constitutional rights every day that it remains in effect.") (cleaned up); *see also* Timothy Sandefur, *The Timing of Facial Challenges*, 43 AKRON L. REV. 51, 77 (2010) ("A common misconception holds that a facial challenge to the constitutionality of a law must be brought within a certain period after the enactment of that law. This is incorrect. … Only very rarely will the injury occur through the mere enactment of the law.").

In sum, because the causes of action accrued on December 2, 2024, and because Plaintiffs filed their Motion less than two months later on January 28, 2025, the Motion was timely filed within the five-year statute of limitations.

2. Alternatively, the causes of action accrued in 2021.

Even if the "continuing violation" rule does not apply, the Motion is still timely. The Enacted Plan became law on September 24, 2021. Compl. ¶ 28. The Motion was filed three years and four months later. This is also within the five-year statute of limitations.

II. Additionally, statutes of limitations do not run against Leader McCombie's vindication of public rights in her official capacity.

The Motion is timely for another reason: Leader McCombie's lawsuit cannot be untimely under the doctrine of *nullum tempus occurrit regi*—a doctrine that has been around for centuries and has long been accepted in Illinois courts. *Catlett v. People*, 151 Ill. 16, 23 (1894); *In re Estate of Deuth*, 2013 IL App (3d) 120194, ¶¶ 10–11 & n.1. Despite its ancient vintage, the doctrine still serves a vital purpose: it ensures that the public does not unfairly suffer the effects of a time-bar against government actors. *See City of Chicago ex rel. Scachitti v. Prudential Sec., Inc.*, 332 Ill. App. 3d 353, 361 (2002).

The *nullum tempus* doctrine has three elements. *First*, plaintiff must be a "governmental unit." *City of Shelbyville v. Shelbyville Restorium, Inc.*, 96 Ill. 2d 457, 462 (1983). *Second*, the governmental unit must be asserting a "right belonging to the general public," and not a right that "belongs only to the government or to some small and distinct subsection of the public at large." *Id.* *Third*, the statute of limitations must not "expressly appl[y] to claims brought by the government." *Deuth*, 2013 IL App (3d) 120194, ¶ 10. All three elements are met here.

A. Leader McCombie, who occupies a constitutionally defined role and brings this case in her official capacity, is a unit of government.

Leader McCombie is a unit of government. Her role—no less than that of the Governor or the Attorney General—is prescribed by the Illinois Constitution. *See* ILL. CONST. art. IV, § 6(c) ("[T]he Minority Leader of either house is a member of the numerically strongest political party other than the party to which the Speaker or the President belongs, as the case may be."). Additionally, Leader McCombie filed this case in her official capacity. Compl. at 1. This lawsuit is thus "the official act[] of [a] State officer[]" and is an "act[] of the State itself." *Smith v. Jones*, 113 Ill. 2d 126, 131 (1986).

This first element is met for Leader McCombie, just like it has been met for other state officials that have benefited from the *nullum tempus* doctrine. *E.g.*, *People ex rel. Martin v. Lipkowitz*, 225 Ill. App. 3d 980 (1992); *People ex rel. Jackson v. DeGroot Motor Services, Inc.*, 222 Ill. App. 3d 594 (1991).

B. This case involves rights belonging to the general public.

It's hard to imagine a right more quintessentially public than the right to have an electoral map free from extreme partisan gerrymandering and bizarrely shaped, noncompact districts. As this Court has noted, "questions relating to election law are inherently a matter of public concern." *Bettis v. Marsaglia*, 2014 IL 117050, ¶ 11; *see also Du Page Cnty. Election Comm'n v. State Bd. of Elections*, 345 Ill. App. 3d 200, 206 (2003) (determining that a case that could "impact voting rights of the citizens of Illinois … is a question of a substantial public nature").

This issue affects all voters in Illinois, regardless of party affiliation. If a map actually has "political fairness," *People ex rel. Burris v. Ryan*, 147 Ill. 2d 270, 296 (1992), Illinois voters could expect competitive elections, and not be saddled with the many uncontested races we have now. *See* Compl. ¶ 6. And they could anticipate increased "constituent-representative communication" with districts drawn in a compact manner with communities kept together, not chopped up. *Schrage*, 87 Ill. 2d at 100. These are real benefits, shared by all of us. These are not rights important only to a "small and distinct subsection of the public." *Shelbyville*, 96 Ill. 2d at 462.

In sum, voting cases "seek to vindicate public rights." *Comm. for a Fair & Balanced Map v. Illinois State Bd. of Elections*, 2011 WL 4837508, at *6 (N.D. Ill. Oct. 12, 2011). This second element is present here.

C. The statute of limitations does not expressly apply to governmental units.

Finally, the "catchall" statute of limitations requires that "all civil actions not otherwise provided for" in the Code "shall be commenced within 5 years next after the cause of action accrued." 735 ILCS 5/13-205. A plain reading of this statute shows that the provision "does not expressly apply to claims brought by the government." *Deuth*, 2013 IL App (3d) 120194, ¶ 10.

III. In all events, the Motion was filed at the most appropriate time.

One more feature of this case bears mentioning. In filing this case when they did, Plaintiffs have also complied with the *purpose* of statute of limitations

more generally; Plaintiffs showed "diligence in the bringing of [this] action[]." *Sundance Homes, Inc. v. Cnty. of DuPage*, 195 Ill. 2d 257, 265–66 (2001).

To bring a successful partisan gerrymandering claim, Plaintiffs need more than just partisan intent: there needs to be some evidence of the discriminatory *effect* of the map. *Rucho v. Common Cause*, 588 U.S. 684, 735 (2019) (Kagan, J., dissenting) (citing *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 864 (M.D.N.C. 2018); *Benisek v. Lamone*, 348 F. Supp. 3d 493, 498 (D. Md. 2018)). In showing this effect, a US Supreme Court plurality has held that "[r]elying on a single election … is unsatisfactory." *Davis v. Bandemer*, 478 U.S. 109, 135 (1986). This rule makes sense: one election can be an outlier; multiple elections show a trend.

In the absence of contrary direction from this Court (and there is not any), it is reasonable—if not wise—to follow *Davis*'s guidance. *Davis*'s guidance requires waiting to see how a legislative map plays out in the real world *for at least two election cycles* before bringing suit. Such a rule is a good idea from the Court's perspective, too: if election results show that the map has insufficient partisan effects, then a delay in filing will weed out non-meritorious claims.

Here, though, waiting two election cycles has revealed to Plaintiffs the drastic effects of the Enacted Plan. In 2022, Democrats received a *supermajority* of the seats in the House despite winning a *minority* of the popular vote. And the 2024 election cycle proved that the 2022 election cycle was no fluke, as Democrats retained their supermajority despite winning only

a bare majority of the popular vote. Put simply, Plaintiffs waited to see if there was a trend (and there was).

With sufficient information about the destructive effects of the Enacted Plan in tow, Plaintiffs acted swiftly in bringing suit less than two months after the 2024 election results were certified. The timing of this Motion is actually optimal. It allowed for multiple years' worth of election data, as *Davis* recommends. It beat the five-year statute of limitations (to the extent it applies). And it was filed early enough to be decided well before putative candidates must circulate petitions later this year for the 2026 election cycle.

The fact of the matter is that redistricting cases sometimes take a while to percolate. They are not—and, according to *Davis*, should not—routinely be filed right after a map is enacted. Redistricting cases are often filed years or decades after a map is first enacted. *See League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018) (map—2011; lawsuit—2017); *Blackmoon v. Charles Mix Cnty.*, 386 F. Supp. 2d 1108, 1115 (D.S.D. 2005) (map—1968; lawsuit—2005); *People ex rel. Engle v. Kerner*, 32 Ill. 2d 212 (1965) (map—1954; lawsuit—1964); *Reynolds v. Sims*, 377 U.S. 533 (1964) (map—1901; lawsuit—1961); *Baker v. Carr*, 369 U.S. 186 (1962) (map—1901; lawsuit—1959). This case was filed on a far more expedited basis than any of these cases, and thus it was brought diligently.

CONCLUSION

For the reasons stated, this Court should find that the Motion was timely filed. This Court should also grant the Motion, allowing leave to file the Complaint, and set a briefing schedule.

Dated: February 28, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and those matters appended to the brief under Rule 342(a) is 23 pages.

/s/ Charles E. Harris, II
Charles E. Harris, II
Mayer Brown LLP

No. 131480

IN THE SUPREME COURT OF ILLINOIS

TONY MCCOMBIE, in her official capacity as Minority Leader of the Illinois House of Representatives and individually as a registered voter; ROBERT BERNAS, individually as a registered voter; THOMAS J. BROWN, individually as a registered voter; and SERGIO CASILLAS VAZQUEZ, individually as a registered voter; JOHN COUNTRYMAN, individually as a registered voter; and ASHLEY HUNSAKER, individually as a registered voter, Plaintiffs, v. ILLINOIS STATE BOARD OF ELECTIONS and JENNIFER M. BALLARD CROFT, CRISTINA D. CRAY, LAURA K. DONAHUE, TONYA L. GENOVESE, CATHERINE S. MCCRORY, RICK S. TERVEN, SR., CASANDRA B. WATSON, and JACK VRETT, all named in their official capacities as members of the State Board of Elections, Defendants.	Original Action under Article IV, Section 3 of the Illinois Constitution

TO: Marni M. Malowitz
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NOTICE OF FILING OF BRIEF OF PLAINTIFFS REGARDING TIMELINESS OF MOTION FOR LEAVE TO FILE COMPLAINT

PLEASE TAKE NOTICE that on February 28, 2025, the undersigned electronically filed the Brief of Plaintiffs in Support of Motion for Leave to File Complaint in the above-captioned case with the Clerk of the Supreme Court of Illinois using Odyssey eFileIL. A copy is hereby served upon you.

Dated: February 28, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Charles E. Harris, II, an attorney, hereby certify that on February 28, 2025, I caused a Notice of Filing and the Brief of Plaintiffs Regarding Timeliness of Motion for Leave to File Complaint to be electronically filed with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system. I further certify that I will cause one copy of the above-named filings to be served upon counsel listed below via electronic mail on February 28, 2025.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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