Testimony of Lawrence Hill
On Behalf of African Americans for Legislative Redistricting
Illinois Senate Redistricting Committee
March 28, 2011

My name is Lawrence Hill. I am President of the Cook County Bar Association, the oldest black bar association in America. I am here today to testify on behalf of African Americans for Legislative Redistricting (AALR). We are a coalition of civic leaders and civic groups throughout the state of Illinois, including various local chapters of the NAACP and the National Urban League. Some of our members were participants in the 2001 legislative redistricting and thus bring with them invaluable historical insight.

My objective today is to outline AALR's vision of the minimum prerequisites of a fair districting plan for black residents of Illinois. In so doing, I address three areas of primary concern: 1) The Illinois Voting Rights Act of 2011; 2) Attempts at packing black voters; and 3) Other fairness considerations.

The Illinois Voting Rights Act of 2011

We believe that the Illinois Voting Rights Act of 2011 (IVRA) is a momentous and salutary law that promises a fairer redistricting process for all racial minorities if it is properly implemented. This act fills a void left by the federal Voting Rights Act of 1965 (VRA). In *Bartlett v. Strickland*, the United States Supreme Court held that the VRA's prohibition against minority vote dilution applies only where a minority group could constitute a voting-age majority in a putative district.[1] The Court, however, expressly left to the states whether other protections in addition to majority-minority districts would be available.[2] Illinois has elected to exercise the discretion left to it by the United States Supreme Court.

We read the IVRA to require the legislature to create a crossover, coalition or influence district where it is not feasible to create a majority-minority district and where doing so is otherwise consistent with other redistricting edicts and the United States Constitution. Our coalition views IVRA as a protection against gratuitously cracking the black vote. Cracking, of course, is a means of diluting the black vote by spreading the black population into multiple districts in which it cannot control the outcome of an election. In the absence of IVRA, in a district where blacks do not constitute a voting-age majority, it would be fair game to redistribute that population. However, assuming the other prerequisites of a vote dilution claim are satisfied,[3] if a black plurality can demonstrate the existence of white crossover votes sufficient to elect the black-preferred

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[1] 129 S.Ct. 1231, 1246 (2009).
[2] *Id.* at 1248.
[3] Those prerequisites are the existence of racially polarized voting and sufficient geographic compactness. Thornburg v. Gingles, 478 U.S. 30, 50-51 (1986).

candidate or can show sufficient support from other minority groups to elect the black-preferred candidate, then the IVRA mandates that the black population not be fractured. Our first minimum prerequisite for a fair redistricting process is that the Illinois Voting Rights Act of 2011 be followed.

We understand the IVRA and its additional minority-opportunity options to be consonant with the Equal Protection Clause of the Fourteenth Amendment. As Justice Kennedy wrote in *Bartlett*, "[C]rossover districts may serve to diminish the significance and influence of race by encouraging minority and majority voters to work together toward a common goal."[4] Quite apart from encouraging cross-racial coalitions, the flexibility provided by the IVRA helps to debunk the stereotype of the black vote as race-based and to permit traditional districting factors, such as partisanship and maintenance of communities of interests, to redound to the benefit of black voters. Let me be more specific.

The United States Supreme Court held in *Easley v. Cromartie* that where racial identification correlates highly with political affiliation, districts that concentrate blacks as strong Democrats do not abridge the Constitution.[5] In addition to demonstrating the continued existence of racially polarized voting in Illinois,[6] the 2010 midterm elections underscored black voters' position as the most loyal Democratic voters in the state. Exit polls show that the Democratic gubernatorial candidate captured 90% of the black vote while taking a mere 33% of the white vote—a difference that gave the Democrat a slim margin of victory.[7] In the United States Senate contest, black voters delivered 94% of their vote to the Democrat, while whites supplied only 31% of their votes.[8] Political cohesion of this magnitude makes it a stretch to caricature the minority-opportunity districts sanctioned by the IVRA as race-based. Black voters in Illinois are also the strongest partisans in the state and, as such, should not be characterized myopically as a racial group in the electoral process.

We also understand the IVRA to be sensitive to the idea of maintaining communities of interest. Many black voters in Illinois have a unique relationship with their current state representative or senator. These relationships are the product of constituent service and advocacy of issues that bear especially upon communities of color. Where such relationships exist, the IVRA allows for their continuance even if the black voting-age population does not constitute the majority in a district. Moreover, the United States Supreme Court has been solicitous of state efforts to maintain constituency-representative relations.[9] For this reason, we do not expect substantial change in the

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[4] 129 S.Ct. at 1248.

[5] 532 U.S. 234, 258 (2001).

[6] For example, two of three black candidates for statewide office lost in the 2010 midterm elections.

[7] http://www.cnn.com/ELECTION/2010/results/polls/#ILG00p1

[8] http://www.cnn.com/ELECTION/2010/results/polls/#val=ILS01p1

[9] *See, e.g.*, White v. Weiser, 412 U.S. 783, 791 (1973) ("The State asserts that the variances present in S.B. 1 nevertheless represent good-faith efforts by the State to promote 'constituency-representative relations,' a policy frankly aimed at maintaining existing relationships between incumbent congressmen and their constituents and preserving the seniority the members of the State's delegation have achieved in the United

current map as it relates to African American districts unless there is compelling reason for such a change.

Concerns Regarding Packing

I would like next to address our coalition's concern with the packing of black voters. Packing refers to the over-concentration of black voters in a few districts, thereby constricting their ability to control or influence outcomes in a greater number of districts. After the 2001 redistricting, the Illinois Republican Party, along with individual plaintiffs, brought a lawsuit under § 2 of the VRA claiming that several of the black-majority districts that had been created by the redistricting plan did not have enough African-Americans to give them effective control.[10] These claims were rejected by the court, which found that static rules of thumb about the requisite percentage of black voters necessary for an effective district must yield to countervailing empirical evidence.[11] The suit was then and is to this day perceived as an attempt by the Republican Party to pack black voters.

We understand that the districting process is political. We simply do not wish to be its pawns. Thus our second minimum prerequisite for fair redistricting is that the legislature be guided by the best available political data in determining which majority-minority districts to create, which IVRA minority-opportunity alternatives to create and what percentage of minority populations will create effective majority-minority and minority-opportunity districts. This obviously may not forestall litigation like the suit brought after the 2001 redistricting, but a baseline commitment to be guided by the best available data rather than generalizations will speed the resolution of any litigation. Of course, we respectfully request that all such data relied on by either of the parties be made available to the public.

Other Fairness Concerns

I would like to conclude my testimony by remarking on two other concerns of our coalition. First, we understand that it is the practice in Illinois to count prison inmates as residents of the localities in which they are imprisoned. Because blacks and Latinos constitute a disproportionately high share of the state and federal prison population in Illinois, we believe this practice is harmful to minority interests in the redistricting process. Therefore, a third minimum prerequisite for fair redistricting is to count inmates

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States House of Representatives. We do not disparage this interest.") (Footnotes omitted). The Court recognized that a similar interest may exist in state legislative redistricting. *Id.*

[10] *See* Campuzano v. Illinois State Board of Elections, 200 F.Supp.2d 905 (N.D. IL 2002).

[11] *Id.* at 912.

as residents of the locality from which they have come. This is the current practice in other large, racially diverse states such as Maryland and New York.[12]

Finally, our coalition is aware that the Illinois Voting Rights Act of 2011 does not expressly apply to congressional redistricting. However, the same discretion afforded to the states in *Bartlett* does apply to congressional redistricting. We believe, as a final minimum prerequisite for fair redistricting, that the legislature should apply the basic framework of the IVRA to its congressional redistricting.

Our coalition, African Americans for Legislative Redistricting, is looking forward to participating in future hearings. We thank you for your time.

[12] See, e.g., http://www.washingtonpost.com/maryland-completes-prison-inmate-count-needed-for-legislative-redistricting/2011/03/22/ABx111EB_story.html?wpisrc=emailtoafriend