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August 9, 2011

BY HAND DELIVERY & ECF FILING

Hon. Joan H. Lefkow
U.S. District Court for the Northern District of Illinois
Everett McKinley Dirksen United States Courthouse
219 South Dearborn Street
Chicago, IL 60604

Re: Appointment of Three-Judge Court; Committee for
a Fair and Balanced Map, et al. v. Illinois State
Board of Elections, et al., No. 11-c-5065

Dear Judge Lefkow:

As you know, I am counsel for plaintiffs in the above-referenced matter. During today's hearing, the Court asked for the parties' positions on consolidating this matter with litigation challenging the validity of districts for the Illinois General Assembly, which is currently pending before a three-judge Court comprised of Circuit Judge Diane S. Sykes, District Judge Elaine E. Bucklo (N.D. Ill.) and District Judge Philip P. Simon (N.D. Ind.). *Radogno, et al. v. Illinois State Board of Elections, et al.*, No. 11-c-4884. As stated in Court today, plaintiffs do not believe there is any basis for consolidating this matter with the *Radogno* matter and therefore oppose it. Plaintiffs submit this letter to more fully explain their position.

As you are aware, Local Rule 40.4 governs the management of related cases. According to subsection (a) of the Rule, "[t]wo or more civil cases may be related if one or more of the following conditions are met: (1) the cases involve the same property; (2) the cases involve some of the same issues of fact or law; (3) the cases grow out of the same transaction or occurrence; or (4) in class action suits, one or more of the classes involved in the cases is or are the same."

In addition, under subsection (b) of the Rule, a related case may be "reassigned to the calendar of another judge" only if **each** of the following criteria is met: (1) both cases are pending in this Court; (2) the handling of both cases by the same judge is likely to result in a substantial saving of judicial time and effort; (3) the earlier case has not progressed to the point where designating a later filed case as related would be likely to delay the proceedings in the earlier case substantially; and (4) the cases are susceptible of disposition in a single proceeding.

As described below, there are substantial differences between the two cases, which demonstrate that they are not "related" cases. Some of the more significant differences between the two cases include:

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- **Different Maps Are Challenged** – Plaintiffs are challenging the validity of the state’s 18 districts for the U.S. House of Representatives, whereas the *Radogno* plaintiffs are challenging the validity of a total of 177 districts (59 senate and 118 representative districts) in the Illinois General Assembly. Not only are the proposed maps and districts obviously different, but so were the processes leading to the adoption of the maps (*e.g.*, procedure for drafting the maps, process for public hearings, etc.), which will play a critical role in deciding the merits of both cases. In addition, the number of districts that will need to be analyzed, and the processes for doing so, will differ substantially between the two cases.
- **The Theories of Liability Differ** – Plaintiffs allege that Latino and Republican voters are disenfranchised by the congressional map recently signed into law and have alleged violations of the Voting Rights Act, and the First, Fourteenth, and Fifteenth Amendments. By contrast, the *Radogno* plaintiffs also challenge disenfranchisement of African-Americans, ask that the Illinois Voting Rights Act of 2011 be declared unconstitutional, and assert additional claims under Illinois state law – all causes of action not asserted in this case. Thus, the cases will require that substantially different elements be proved, including the discovery necessary to support that proof.
- **Scheduling** – As the Court is aware, plaintiffs have filed a motion for a preliminary injunction seeking to enjoin the September 6, 2011 date for the circulation of primary petitions and a motion for expedited discovery. The *Radogno* plaintiffs, however, have not filed similar motions, and according to the July 27, 2011 Minute Order (Dkt. 18) in that case, plan to file an amended complaint by August 10, 2011, with defendants filing a motion to dismiss by August 25, 2011. Accordingly, the two cases are already on far different schedules.
- **Jurisdictional Issues** – Upon information and belief, it is possible that a motion might be filed in the *Radogno* matter seeking to have that case heard by the Illinois Supreme Court pursuant to ILL. CONST. art. IV, § 3(b), which provides: “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.” This provision, however, does not apply to the present matter, which only challenges congressional districts. As such, jurisdictional questions that might arise in the *Radogno* matter will not arise in this case.

Even if they could be deemed “related” cases, consolidation is not appropriate under subsection (b) of L.R. 40.4, because consolidation is not “likely to result in a substantial saving of judicial time and effort” and the cases are not “susceptible of disposition in a single proceeding.”

For all of these reasons, plaintiffs respectfully submit that consolidation is not appropriate and that this Court should retain jurisdiction.

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However, should Chief Judge Easterbrook desire to appoint Circuit Judge Sykes and Judge Simon as the other two members of the three-judge Court with Your Honor, plaintiffs do not have any objection.

Sincerely,

/s/ Lori E. Lightfoot

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