

Introduction

In this action, Plaintiffs seek to invalidate, in whole or in part, Public Act 97-14, the 2011 congressional redistricting plan (the “Illinois Map” or the “Map”). Plaintiffs have served thirty subpoenas on various members and staff of the Illinois Senate and House of Representatives (collectively the “Illinois General Assembly”) for the production of documents concerning the preparation, drafting, and passage of that law. In addition to the thirty subpoenas served to date for the production of documents, Plaintiffs recently indicated that they also intend on serving subpoenas for depositions for at least a sub-set of the individuals who received subpoenas for documents. Plaintiffs’ subpoenas should be quashed because the Members and their staff are protected by legislative immunity. This long-recognized doctrine applies not only to immunity from liability but also as a privilege against disclosure of documents and as a testimonial privilege at deposition and trial. It is an absolute privilege from any inquiry into the legislative operations of the Illinois General Assembly. It protects both elected members and staff. And as numerous decisions across the country have held, it clearly applies in the context of redistricting, a fundamental legislative function of the State. Thus, Plaintiffs’ subpoenas for documents and depositions should be quashed and a protective order should be entered to bar depositions and other discovery protected by legislative immunity.

At the outset, we note a jurisdictional issue of which this Court should be aware. Twenty-five of the subpoenas served by Plaintiffs were issued out of the United States District Court for the Central District of Illinois (“Central District”), due to the fact that most of the witnesses subpoenaed for documents (whom Plaintiffs’ Counsel has indicated they will also seek to depose) reside in Springfield, Illinois. Five of the Plaintiffs’ subpoenas were issued out of the United States District Court for the Northern District of Illinois (“Northern District”). This Motion is directed towards the five subpoenas issued by the Plaintiffs from the Northern District.

To expedite a resolution to this matter, counsel for those who received subpoenas issued from the Central District of Illinois have informed Plaintiffs' counsel that the subpoenas *duces tecum* issued from the Northern District of Illinois and served respectively on the Office of the Senate President and Office of the Speaker of the House of Representatives in Chicago capture all of the documents falling within the scope of the Central District subpoenas. As explained to Plaintiffs' counsel, all of these documents are subject to the control of these Offices, including, if any, responsive email communications or other documents possessed by employees on personal email accounts (e.g., yahoo etc.) or computers. This is also true of any responsive documents of the Senate and House Redistricting Committees as the committee staff members are employees of either Office.

Background

On May 31, 2011, the Illinois General Assembly passed Public Act 97-14, the Illinois Map at issue. Plaintiffs filed this Complaint nine weeks later, on July 27, 2011. On August 22, Plaintiffs served subpoenas *duces tecum* on the (i) Illinois House of Representatives (through Tim Mapes, House Clerk); (ii) Office of the Speaker of the Illinois House of Representatives (through Tim Mapes, Chief of Staff); (iii) Illinois House Redistricting Committee (through Barbara Flynn Currie, Chairperson); (iv) Office of the Senate President (through Andrew Manar, Chief of Staff); and (v) Senate Redistricting Committee (through Kwame Raoul, Chairperson). (Copies of these subpoenas are attached hereto as Exhibit A-1-A-5.)

These subpoenas, which had a one-week return date, cover tens of thousands of documents, virtually every single document that could remotely relate to the redistricting process dating back to January 1, 2010 and going forward into the future. The subpoenas' scope includes: (1) all Member and staff communications regarding the Map with anyone within or outside the legislature; (2) all analyses and reports regarding the Map or specific districts,

including any expert or consultant reports or opinions; (3) all draft maps, no matter who drafted them or however preliminary; (4) all data files and software used in formulating the Map; and (5) all documents identifying the Members and any other persons involved with fashioning or providing input on the Map. (*See* Exhibit A.)

The General Assembly's counsel spoke with Plaintiffs' counsel on August 24. The attorneys agreed on a revised return date of September 2 for the subpoenas.

In its September 2 joint response, the General Assembly asserted all of the objections asserted herein. (*See* Exhibit B). The attorneys for each side conferred on September 6, 13, and 14, and were unable to reach a compromise.

Argument

I. Legislative Immunity Bars The Instant Subpoenas And Prohibits Any Discovery Directed At The General Assembly For Its Actions Concerning Redistricting.

Legislative immunity absolutely protects the legislative acts of state legislators and legislative aides not only from civil liability, but also from the burdens of document production, depositions, and trial testimony in civil proceedings. This broad privilege stems from the doctrine's fundamental purpose of prohibiting any interference with the integrity of the legislative process. Redistricting is a quintessential legislative function; indeed, the Map resulted from the legislative process culminating in the passage of Public Act 97-14. Because redistricting is part and parcel of the legislative process, legislative immunity precludes Plaintiffs' effort to obtain discovery concerning the legislative activities that resulted in the Map, either through documentary or oral discovery.

A. Legislative Immunity Applies To All Aspects Of The Legislative Process.

“Absolute legislative immunity attaches to all actions taken ‘in the sphere of legitimate legislative activity.’” *Bagley v. Blagojevich*, 646 F.3d 378, 391 (7th Cir. 2011) (quoting *Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998) and *Tenney v. Brandhove*, 341 U.S. 367, 376 (1951)). It protects from inquiry any actions that are an “integral part of the deliberative and communicative processes by which Members participate ... with respect to the consideration and passage or rejection of proposed legislation” *Gravel v. United States*, 408 U.S. at 625.

Legislative immunity applies to core legislative acts such as drafting, introducing, debating and voting on legislation. *Biblia Abierta v. Banks*, 129 F.3d 899, 903 (7th Cir. 1997); *Baraka v. McGreevey*, 481 F.3d 187, 196 (3rd Cir. 2007). It covers conduct and communications in preparation for core legislative acts, such as conducting committee hearings, meetings and other official legislative events. *Gravel*, 408 U.S. at 625.

It protects memoranda and other documents used or drafted by legislators or legislative aides for legislative use. *Gravel*, 408 U.S. at 625; *Doe v. McMillan*, 412 U.S. 306, 312-13 (1973) (committee report prepared by staff for legislative use protected); *Brown & Williamson Tobacco Corp. v. Williams*, 62 F.3d 408, 417 (D.C. Cir. 1995) (“Once the documents were received by Congress for legislative use ... an absolute constitutional bar of privilege drops like a steel curtain to prevent [a litigant] from seeking discovery”); *Lindley v. Life Insurance Co.*, No. 08-CV-379-CVE-PJC, 2009 WL 2245565 at *10 (N.D. Okla. 2009); *Municipal Revenue Services, Inc. v. Xspand, Inc.*, No.4:CV-05-0671, 2007 WL 1314875 at **2-4 (M.D. Pa. 2007); *United Transp. Union v. Springfield Terminal Ry. Co.*, 132 F.R.D. 4, 5-6 (D. Me. 1990) (blocking subpoena to depose senator and obtain production of internal memoranda and drafts of documents prepared for legislative use). The privilege even covers information gathered from

constituents and confidential sources. *McSurely v. McClellan*, 553 F.2d 1277, 1286-87 (D.C. Cir. 1976) (*en banc*); *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 530-31 (9th Cir. 1983); *Government of Virgin Islands v. Lee*, 775 F.2d 514, 520-21 (3rd Cir. 1985).

B. The Passing Of Redistricting Legislation Is Covered By Legislative Immunity.

The various steps necessary to research, investigate, prepare, draft, introduce, analyze, negotiate, and pass a congressional redistricting plan qualify as legitimate legislative activities. *Ryan v. State Bd. of Elec.*, 661 F.2d 1130, 1132 (7th Cir. 1981) (explaining that it is the constitutional duty and primary responsibility of the General Assembly to draw Illinois' congressional districts after each decennial census and apportionment).

Indeed, the legislative immunity doctrine has been successfully invoked in a great many redistricting cases, including claims of intentional discrimination and violations of the Voting Rights Act. *See, e.g., Gonzalez v. City of Aurora*, No. 02 C 08346, Minute Order (N.D. Ill. 2003) (attached as Exhibit C) (barring deposition of non-party local legislators regarding their subjective motives or reasoning in enacting Aurora's redistricting plan); *Cano v. Davis*, 193 F.Supp.2d 1177, 1180-81 (C.D. Cal. 2002) (three-judge panel) (holding that legislative immunity, when invoked by state legislator, "protects both against disclosure and against use" of legislative acts in redistricting); *Martinez v. Bush*, No. 1:02-cv-20244 AJ, Mem. Op. at 3-6 (S.D. Fla. July 12, 2002) (three-judge panel) (Exhibit D) (barring depositions of state legislators and staff on their motivations and reasons for enacting redistricting plan); *Chen v. City of Houston*, No. H-97-1180, Mem. Op. at 3-4 (S.D. Tex. Oct. 31, 1997) (attached as Exhibit E) (barring deposition of city councilmember on actions involving redistricting); *Simpson v. City of Hampton*, 166 F.R.D. 16, 18-19 (E.D. Va. 1996) (legislative immunity encompasses testimonial

privilege that blocked production of legislator's files and notes in redistricting case); *Hispanic Coalition on Reapportionment v. Legislative Reapportionment Commission*, 536 F. Supp. 578, 582-583 n.2 (E.D. Pa. 1982) (barring deposition of chairman of the redistricting commission).

C. The Instant Subpoenas Are Aimed At Protected Legislative Actions.

Nor can there be any serious question that the information Plaintiffs seek via their subpoenas "are integral to the deliberative and communication processes" that legislators and staff alike use to fulfill the General Assembly's constitutional obligation to redraw congressional lines. The subpoenas at issue, all of which request identical information, contain 21 different categories of documents, including "*All* documents related to the state of Illinois legislative and/or congressional Redistricting process which led to the planning, development, negotiation, drawing, revision or re-drawing of the Proposed Congressional Plan." (*See, e.g.*, Exh. A-1, p. 8 (emphasis added).) They seek all "reports [and] analyses" concerning congressional redistricting, as well as documents of any kind concerning "communications, discussions, meetings, and/or conversations" on that topic, without limitation. *Id.*

There can be no question that Plaintiffs are seeking an open window into the deliberative process of the Illinois General Assembly in drawing its 2011 congressional boundaries. They seek any document, preliminary or otherwise, and any communication, in any form, at whatever stage in the process from the first inkling in the first legislator's mind until final discussions leading up to the passage of Public Act 97-14. The subpoenas seek information that falls squarely within the sphere of legitimate legislative activity and is covered by legislative immunity.

D. Legislative Immunity Is An Absolute Privilege.

Legislative immunity, as a federal common-law privilege, exists for the same reason as the U.S. Constitution's Speech or Debate clause—to protect the integrity of the legislative process by insuring the independence of individual legislators without the fear of outside interference. *U.S. v. Brewster*, 408 U.S. 501, 507 (1972); *Supreme Court of Virginia v. Consumers Union of the United States*, 446 U.S. 719, 731 (1980). The Supreme Court and Seventh Circuit “equate” legislative immunity with the protections members of Congress enjoy in federal civil actions under the U.S. Constitution. *Bagley*, 646 F.3d at 397 (quoting *Consumers Union*, 446 U.S. at 731-32); accord *Bryant v. Jones*, 575 F.3d 1281, 1304 (11th Cir. 2009); *Larsen v. Senate of the Commonwealth of Pennsylvania*, 152 F.3d 240, 249 (3rd Cir. 1998); *National Ass’n of Social Workers v. Harwood*, 69 F.3d 622, 631 (1st Cir. 1995).

The rationale behind this principle of non-interference is that “[a]ny restriction on a legislator’s freedom undermines the public good by interfering with the rights of the people to representation in the democratic process.” *Banks*, 129 F.3d at 903 (quoting *Tenney*, 341 U.S. at 377). The doctrine of absolute legislative immunity “embodies the long-held belief that this country is better served by limiting recovery to injured parties rather than threatening the legislative process by placing legislators in fear of lawsuits from exercising their legislative duties.” *Rateree v. Rocket*, 852 F.2d 946, 951 (7th Cir. 1988).

And this non-interference principle applies with equal force whether the legislative actor is a defendant or a third party. “A litigant does not have to name [legislators] or their staffs as parties to a suit in order to distract them from their legislative work. Discovery procedures can prove just as intrusive.” *MINPECO, S.A. v. Conticommodity Services*, 844 F.2d 856, 859 (D.C.

Cir. 1988). *Accord Equal Employment Opportunity Comm'n v. Washington Suburban Sanitary Comm'n*, 631 F.3d 174, 181 (4th Cir. 2011).

This principle of non-interference is absolute. As the Seventh Circuit recently reiterated, once it is determined that legislative immunity applies, it is an “absolute bar to interference” from the judiciary. *Bagley*, 646 F.3d at 396 (quoting *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 502-03 (1975)). *Accord Brown & Williamson*, 62 F.3d at 418-19 (regarding subpoena for documents to Congress, “Once the legislative-act test is met, the privilege is absolute”) (quoting *Miller*, 709 F.2d at 529). Thus, the privilege, once applicable, carries with it no balancing of interests. *Eastland*, 421 U.S. at 509 (refusing to balance alleged First Amendment harms against need to protect legislative process from judicial interference because balancing test “ignores the absolute nature of the speech or debate protection and cases which have broadly construed that protection.”); *Harwood*, 69 F.3d at 634 (“balancing [of harms] plays no part” in legislative immunity analysis) (quoting *Eastland*, 421 U.S. at 510 n.16).

E. Absolute Legislative Immunity Applies To Both Legislators And Their Aides.

Courts long ago extended legislative immunity to the activities of legislative aides and consultants. *Gravel*, 408 U.S. at 615, 618; *Harwood*, 69 F.3d at 630-32 & n.10; *Ellis v. Coffee County Bd. of Registrars*, 981 F.2d 1185, 1192-93 (11th Cir. 1993) (collecting cases).

Indeed, in the recent *Bagley* decision, after the Seventh Circuit found that the governor’s issuance of a line-item veto enjoyed legislative immunity from liability, it upheld not only the quashing of the governor’s deposition but also the lower court’s order prohibiting the questioning of the governor’s aide, Julie Curry, about that topic (though she could be questioned on non-legislative matters). *Bagley*, 646 F.3d at 396-97. This conclusion naturally flows from what the Supreme Court instructed long ago. First, “it is literally impossible, in view of the

complexities of the modern legislative process . . . for [legislators] to perform tasks without the help of aides and assistants.” *Gravel*, 408 U.S. at 616. Second, if equivalent protection were not accorded to legislative aides regarding legislative activities, then “the central role of the Speech or Debate Clause—to prevent intimidation by the Executive and accountability before a possibly hostile judiciary—will inevitably be diminished and frustrated.” *Id.* at 617.

F. The Non-Interference Principle Of Absolute Legislative Immunity Applies Equally To Document Production And Oral Testimony.

Absolute legislative immunity protects legislators and their aides “not only from the consequences of litigation’s results but also from the burden of defending themselves” in a civil action. *Bagley*, 646 F.3d at 396 (quoting *Dombrowski v. Eastland*, 387 U.S. 82, 85 (1967)). No less than being hauled into court as a party, being compelled to comb through tens of thousands of documents, to submit to depositions, and perhaps to testify at trial in civil actions “force legislators to divert their time, energy, and attention from their legislative tasks . . .” *Id.* (quoting *Eastland*, 421 U.S. at 502-03).

It is for this reason that the Seventh Circuit in *Bagley* “[saw] no reason why the immunity protecting the Governor from liability for his veto (and Curry to the extent of her involvement in the veto) would not also protect them ‘from the burden of defending themselves.’” *Id.* (quoting *Dombrowski*, 387 U.S. at 85) (parenthetical in original).

Likewise, the D.C. Circuit Court of Appeals firmly rejected plaintiff’s claim that the scope of the Speech or Debate Clause’s testimonial/nondisclosure privilege would be any narrower than the scope of immunity from suit:

Looking only to the text of the Constitution, we would be inclined to conclude that, if anything, [plaintiff] has it backwards. The Clause says nothing specifically about lawsuits; what it does say is that members of Congress “shall not be *questioned* in any other place” about legislative actions. U.S. Const. art. I, § 6, cl. 1 (emphasis

added). Based on the text of the Constitution, it would seem that the immunity from suit derives from the testimonial privilege, not the other way around.

Brown & Williamson, 62 F.3d at 418 (emphasis in original). See *Bagley*, 646 F.3d at 397 (noting that the Supreme Court “generally equates the legislative immunity to which state legislators are entitled ... to that accorded Congressmen under the Constitution.”). Nor is there a meaningful distinction between an oral deposition and document production. See *Brown & Williamson*, 62 F.3d at 420 (“[d]ocumentary evidence can certainly be as revealing as oral communications”).

Indeed, “one of the functions of absolute [legislative] immunity is protecting the claimant from discovery.” *Schultz v. Stranczek*, 1991 WL 328518 at *1 (7th Cir. 1991). Thus, to fulfill the non-interference principle, federal courts have properly concluded that legislative immunity provides both testimonial immunity and a non-disclosure privilege pursuant to which legislators and their aides cannot be required to either produce documents or answer questions, whether in a deposition or on the witness stand, regarding legitimate legislative activities. *Gravel*, 408 U.S. at 616; *Equal Employment Opportunity Comm’n*, 631 F.3d at 181; *MINPECO*, 844 F.2d at 859; *Buonauro v. City of Berwyn*, No. 08-c-6687, 2011 WL 116870 at *10 (N.D. Ill. 2011) (legislative immunity precluded questions of non-party city council members concerning deliberations, thought processes, and motivations behind council's denial of business license); *Chen v. City of Houston*, 9 F.Supp.2d 745, 762 (S.D. Tex. 1998); *Municipal Revenue Services, Inc. v. Xspand, Inc.*, 2007 WL 1314875 at *3 (M.D. Pa. 2007) (agreeing with counsel that legislative immunity bars plaintiff from deposing or obtaining documents from a non-party state legislator about “[a]ll facts surrounding the introduction of [the legislation], discussions conducted by Representative Cappelli concerning [it], written documents concerning [it], debate concerning [it], etc.”).

G. Legislative Immunity Applies Regardless Of The Causes Of Action Asserted By Plaintiffs Or The Elements They Must Prove.

It is irrelevant that Plaintiffs here must prove that the General Assembly acted with discriminatory intent in drafting the congressional districts; legislative immunity attaches even “if the claim requires ‘proof of a legislative act or the motives or purposes underlying such an act.’” *Empress Casino Joliet Corp. v. Blagojevich*, 638 F.3d 519, 529 (7th Cir. 2011) (quoting *Thillens, Inc. v. Comty. Currency Exch. of Illinois*, 729 F.2d 1128, 1131 (7th Cir. 1984) and *Gravel*, 408 U.S. at 621). Indeed, the doctrine “would have ‘little value’” if it could be disregarded so easily by an allegation that the legislature acted unconstitutionally or illegally. *Id.* (quoting *Tenney*, 341 U.S. at 377). In the redistricting context, in particular, courts have rejected the notion that plaintiff’s need to prove discriminatory intent should vitiate the privilege. *See Simpson*, 166 F.R.D. at 18-19; *Cano*, 193 F. Supp. 2d at 1180; *Chen*, Mem. Op. at 2 (Exhibit E).

This is particularly true because Plaintiffs have other avenues for seeking evidence regarding their claim that this map was the product of intentional discrimination, including public statements by legislators, records of public proceedings, publicly-available documents, testimony of third parties who are not Members or staff of the General Assembly, expert testimony, and in this case, incumbent members of Congress who may have played a role in drawing the congressional map (whose immunity, if any, is not presently before the Court). *See Chen*, Mem. Op. at 4 (Exhibit E). The Plaintiffs’ subpoena to the Democratic Congressional Campaign Committee (“DCCC”) highlights that Plaintiffs have additional means to obtain the documents that it seeks to obtain from the moving non-parties. (*See Exhibit F, Plaintiffs’ subpoena to the DCCC*). The Plaintiffs are currently seeking to compel the DCCC, which the

Plaintiffs describe in their motion to compel as having drafted the map that the General Assembly subsequently passed, to produce documents concerning the preparation and passage of the congressional map. (*See* Exhibit F, Motion to Compel DCC). And while the DCCC has raised certain objections to the Plaintiffs' subpoena, the DCCC has not asserted legislative immunity as a basis for objecting to the Plaintiffs' subpoena.

Because there can be no dispute that the General Assembly's actions in drafting, discussing, analyzing, and passing Public Act 97-14 fall comfortably within the sphere of legitimate legislative actions, they are protected by legislative immunity. This privilege is unqualified and absolute. It applies with equal force to legislators and their aides and consultants. And it applies to the compelled production of documents, oral depositions, and trial testimony. For these reasons, the subpoenas at issue here should be quashed. In addition, this Court should enter a protective order (1) quashing all subpoenas for documents or discovery directed at the House, Senate, and its committees and staff and (2) limiting any subpoenas directed to Members of the General Assembly to those Members who affirmatively waive legislative immunity.

II. Independent of Legislative Immunity, the Documents at Issue are Privileged from Disclosure under the Deliberative Process Privilege, the Attorney-Client Privilege and the Attorney Work-Product Doctrine

Although the legislative immunity privilege is absolute, if the court were to find the privilege inapplicable, the documents requested would still be privileged under the deliberative process privilege, the attorney-client privilege and the attorney work-product doctrine.

A. The Deliberative-Process Privilege Applies to the Documents at Issue.

The deliberative process privilege protects communications that are part of the decision-making process of a governmental agency. *United States v. Farley*, 11 F.3d 1385, 1389 (7th Cir.

1993). The privilege protects advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975). The deliberative process privilege encompasses all deliberative communications regardless of what form they take. *Government Suppliers Consolidating Services, Inc. v. Bayh*, 133 F.R.D. 531, 535 (S.D. Ind. 1990). This means the privilege will apply to both testimony and to documents. *Id.*

The documents that Plaintiffs seek clearly contain deliberative communications between legislative members and legislative aides that were part and parcel to the legislative process to enact the 2011 Congressional Redistricting Map. (*See, e.g.*, Exhibit A-1 at 8-9.) Specifically, Plaintiffs seek documents regarding communications, discussions, meetings, and conversations relating to the redistricting process. *Id.* Documents of this type undoubtedly fall under the deliberative process privilege. *See Farley*, 11 F.3d at 1389 (staff memoranda containing recommendations and interpretations fall under deliberative process privilege); *United States Securities and Exchange Commission*, 2010 WL 4977220 at *3 (N.D. Ill. 2010) (recommendations, proposals, suggestions, draft documents, and other materials that reflect the personal opinions of the writer fall under the privilege). Accordingly, if the Court determines that legislative immunity is inapplicable, then counsel requests adequate time to prepare and submit a privilege log detailing the documents subject to the deliberative process privilege. Fed. R. Civ. P. 26(b)(5) & 45(c)(3).

B. The Attorney-Client And Work Product Privileges Bar The Disclosure Of Certain Documents.

In civil cases, the Illinois General Assembly (including its members and staff) enjoy the same attorney-client privilege as non-governmental entities. *United States v. Jicarilla Apache*

Nation, __ U.S. __, __, 131 S. Ct. 2313, 2320-21 (2011). This privilege promotes open discussions between attorneys and their government client by protecting communications made in confidence by a client and its employees to an attorney for the purpose of legal advice.

Sandra T.E. v. South Berwyn School District 100, 600 F.3d 612, 618 (7th Cir. 2010) (documents generated by school district's law firm during an investigation were protected by attorney-client privilege). The privilege applies not only when litigation is ongoing or imminent, but also when the communication is outside the litigation context where an attorney advises a government client or employee on legal requirements or addresses legal concerns. *Id.* at 621.

Similarly, the attorney work-product doctrine protects documents prepared by an attorney in anticipation of litigation for the purpose of analyzing and preparing a client's case. *Id.* at 618; *U.S. v. Nobles*, 422 U.S. 225, 238-39 (1975). The Seventh Circuit has ruled that the doctrine is intended to "protect an attorney's thought processes and mental impressions against disclosure." *Sandra T.E.*, 600 F.3d at 622; *see Hickman v. Taylor*, 329 U.S. 495 (1947). The Seventh Circuit has held that "documents prepared because of 'some articulable claim, likely to lead to litigation'" receive work-product protection. *Sandra T.E.*, 600 F.3d at 622; *see Binks Mfg. Co. v. Nat'l Presto Indus. Inc.*, 709 F.2d 1109, 1120 (7th Cir. 1983).

Both the Illinois Senate President and House Speaker employ attorneys as legislative aides to advise them, members of their caucuses, and other legislative employees on the requirements of state and federal law, including the legislature's redistricting obligations. As part of their duties, the attorneys have provided (and continue to provide) legal advice to legislators and legislative aides alike via written and oral communications on specific redistricting topics, whether proactively or in response to specific client requests. In turn, these

attorneys routinely rely upon the assistance of other legislative aides to obtain or compile certain information or other materials in order for the attorneys to render legal advice.

Plaintiffs' subpoenas seek a broad range of documents that include within their scope privileged attorney-client communications between attorneys employed by the Senate President and House Speaker and legislators and/or legislative aides involved in congressional redistricting process. Similarly, many of the documents requested by the Plaintiffs fall under the attorney work-product doctrine because the documents were prepared in anticipation of and as an outgrowth of the claims litigated against redistricting plans for the past four decades. Accordingly, if the Court determines that legislative immunity is inapplicable, then counsel requests adequate time to prepare and submit a privilege log detailing the documents subject to the attorney client privilege and attorney-work product doctrine. Fed. R. Civ. P. 26(b)(5) & 45(c)(3).

Conclusion

For the reasons stated above, the Court should enter an order quashing Plaintiffs' subpoenas and future subpoenas in a manner consistent with this Court's ruling on the privileges asserted.

Respectfully submitted,
By: /s/ Richard J. Prendergast, Esq.
One of the Attorneys for Non-party Movants

Non-Parties Senate President John J.
Cullerton, House Speaker Michael J.
Madigan, Senator Kwame Raoul,
Representative Barbara Flynn Currie, and
the subpoenaed General Assembly staff
members.

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EXHIBIT A-1

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Illinois

COMMITTEE FOR A FAIR AND BALANCED MAP

Plaintiff

v.

ILLINOIS STATE BOARD OF ELECTIONS

Defendant

Civil Action No. 1:11-cv-05065

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Office of the Speaker of the Illinois House of Representatives
Attn: Tim Mapes, Chief of Staff, 160 N. LaSalle St., Ste. N-600, Chicago, IL 60601

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Refer to attached Rider to Subpoena.

Place: Make produced documents available for messenger pick-up at 160 N. LaSalle St., Ste. N-600, Chicago, IL 60601.

Date and Time:

08/29/2011 10:30 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 08/19/2011

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) COMMITTEE FOR A FAIR AND BALANCED MAP, who issues or requests this subpoena, are:

Lori E. Lightfoot
71 S. Wacker Dr., Ste. 4471
Chicago, IL 60606llightfoot@mayerbrown.com
312-701-8680

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 1:11-cv-05065

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* Office of the Speaker of the IL House of Rep.
was received by me on *(date)* _____

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date: _____
_____ *Server's signature*

Printed name and title

Server's address

Additional information regarding attempted service, etc:

RIDER TO SUBPOENA

Plaintiffs, by and through their counsel, hereby request that the Office of the Speaker of the Illinois House of Representatives ("the Office") produce the following documents for inspection and copying at the recipient's address on the date set forth in the subpoena. The Office shall adhere to the Definitions and Instructions below.

DEFINITIONS

As used herein, the terms and phrases identified below shall have the following meanings:

The term "Action" when used herein means Case No. 1:11-CV-05065 filed in the United States District Court for the Northern District of Illinois Eastern Division.

The term "Complaint" when used herein means the Complaint filed on July 27, 2011 in the above referenced Action.

The terms "Plaintiff" or "Plaintiffs" refer to all of the following:

- (a) The Committee for a Fair and Balanced Map (the "Committee"), including its members: Tom Long, Tom Ewing, Larry Nelson, J. Dennis Hastert, James D. Pearson, Lynn Martin, Michael Keiser, and Alexander D. Stuart;
- (b) The Partisan Gerrymander Plaintiffs named in the Complaint;
- (c) The Racial Gerrymander Plaintiffs named in the Complaint; and
- (d) The Racial Dilution Plaintiffs named in the Complaint.

The term "Defendant" refers to all of the following: The Illinois State Board of Elections, including its members: William McGuffage, Jesse R. Smart, Harold D. Byers, Betty J. Coffrin, Ernest L. Gowen, Judith C. Rice, Bryan A. Schneider, Charles W. Scholz, or any employee.

officer, director, agent, attorney or other representative thereof, and any person acting or purporting to act on its behalf.

The terms "You" and "Your" when used herein mean the recipient of these Requests for Production, Your present and former attorneys, agents, investigators, representatives, or anyone else acting in cooperation or in concert with You.

The term "Person" when used herein means any individual, firm, corporation, joint venture, partnership, limited liability company, trust, association, entity or group of persons, unless the request is clearly referring only to an individual, human person.

The term "Illinois General Assembly" when used herein means the state legislature of the state of Illinois.

The terms "Illinois House of Representatives" and "House" when used herein mean the lower house of the Illinois General Assembly and its 118 representatives.

The term "Illinois Senate" when used herein means the upper house of the Illinois General Assembly and its 59 members.

The terms "Congressional District" and "District" when used herein refer to an electoral District in the state of Illinois that elects a single member of the U.S. House of Representatives.

The term "Redistricting" when used herein refers to the process of redefining the geographic boundaries of legislative or Congressional Districts.

The term "Illinois House Redistricting Committee" when used herein means the committee comprised of Democrat and Republican Illinois House members charged with conducting Redistricting hearings throughout the state of Illinois prior to the drawing of the state and congressional legislative maps. Members include: Barbara Flynn Currie, Mike Fortner,

Edward Acevedo, Marlow Colvin, Jim Durkin, Lou Lang, Frank Mautino, Chapin Rose, Timothy Schmitz, Jill Tracy, and Karen Yarbrough.

The term "Illinois Senate Redistricting Committee" when used herein means the committee comprised of Democrat and Republican Illinois Senate members charged with conducting Redistricting hearings throughout the state of Illinois prior to the drawing of the state and congressional legislative maps. Members include: Kwame Raoul, Michael Noland, Jacqueline Y. Collins, William R. Haine, Don Harmon, Mattie Hunter, Emil Jones, III, Kimberly Lightford, Edward D. Maloney, Iris Y. Martinez, Dale A. Righter, Shane Cultra, Kirk W. Dillard, Dan Duffy, David Luechtefeld, and Matt Murphy.

The term "Communication" when used herein means any and all of the following: written, electronic or otherwise, oral communications, conversations by telephone, meetings, and any contact, written, formal or informal, at any time or place, and under any circumstances whatsoever in which information of any nature was transmitted or exchanged in any form.

The term "Document" when used herein means any and all written, typed, printed, recorded, computerized, electronic, or graphic statements, Communications, or other matter, however, produced or reproduced, whether in final or draft form, and whether or not now in existence, in Your possession, custody, or control, including without limitation, all writings; studies; analyses; tabulations; evaluations; reports; reviews; agreements; contracts; letters or other correspondence; emails from all email accounts in Your possession, custody, or control, including, but not limited to, Your personal, professional, and official email accounts; messages; facsimile messages; text messages; memoranda; records; notes; reports; summaries; PDFs; spreadsheets; sound recordings or transcripts of personal or professional telephone conversations or messages; meetings; conferences or interviews; telephone toll records; diaries; desk calendars;

appointment books; drawings; graphs; charts; maps; diagrams; blueprints; tables; indices; pictures; photographs; films; tapes; statistical or analytical records; minutes or records of committee or other meetings or conferences; transcripts of testimony; reports or summaries of investigations; opinions or reports or summaries of investigations; opinions or reports of consultants; press releases; newspaper and magazine clippings; projections; and any other Document, writing, or other data compilation of whatever description, including, but not limited to, electronically stored data although not yet printed out or the memory units containing such data from which information can be obtained or translated into reasonable usable form; any other data types, including without limitation, all District mapping software data files and shapefiles, including data files in draft form.

The term "Proposed Congressional Plan" when used herein refers to the new map for the state of Illinois' Congressional Districts adopted by the Illinois General Assembly and signed into law by Governor Pat Quinn on Friday, June 24, 2011 as Illinois P.A. 97-14; including, but not limited to, Senate Bill 1178 and amendments thereto.

The terms "Compact" and "Compactness" when used herein mean the degree to which the territory assigned to a District is close together. There are several mathematical methods to measure the elements of Compactness, including, but not limited to, measuring the Circularity Ratio and the Schwartzberg Test:

- (a) The term "Circularity Ratio" when used herein refers to the ratio of the area of the proposed Districts to the area of a circle having the same perimeter; this measure of shape is used in Redistricting to maximize the Compactness of electoral Districts and avoid gerrymandering.

- (b) The term “Schwartzberg Test” when used herein refers to the perimeter-based measure that compares proposed Districts to a circle, measuring distance from the center of gravity to points in the District boundary. This test is used in Redistricting to maximize the Compactness of electoral Districts and avoid gerrymandering.

The term “Core Report” when used herein refers to the constituency report produced by Maptitude, AutoBound, or similar software that indicates the number of persons or voters residing in a district in a Redistricting plan, who also reside in that same numbered or a differently numbered district in another Redistricting plan.

The terms “Voting Age Population” and “VAP” when used herein mean all citizens above the voting age of eighteen years.

The term “2010 Census” when used herein refers to the twenty-third decennial national census of the United States.

The term “2010 Elections” when used herein means all 2010 Illinois state and Congressional Elections.

To “Identify” a Person or witness means to state his or her name, present employer, last known address, telephone number (business and home), and employer and position in which he or she was employed at the time in question.

To “Identify a Document” means the following: (a) the name and present address of the Person who prepared it; (b) the name and address of the Person to whom it was addressed or distributed; (c) a detailed description of the general nature of the Document’s contents; (d) the date it was prepared, and the date it was distributed; (e) the name and address of the Person having custody of the original and any copies; (f) whether the original will voluntarily be made

available for the Plaintiff to inspect and copy, and if not, the specified reason for this refusal and a detail explanation of why this reason is persuasive; and (g) whether the original Document has been destroyed, and if so, why it was destroyed, the Person who directed it to be destroyed, who destroyed the Document, and when it was done.

To "Identify" a Communication or discussion shall mean to state the following: (a) the name and present address of each of the Persons who were involved in any way with the Communication or discussion; (b) a detailed description of the subjects that were involved in the Communication or discussion; (c) whether any memoranda, notes or other compilations, by whatever means, relating to the Communication or discussion were ever created; (d) the general substance of what was said by each Person involved in the Communication or discussion; and (e) the date on which such Communication or discussion occurred.

INSTRUCTIONS

1. Each production request shall be construed to include all Documents within the Office's possession, custody or control, or the possession, custody or control of its present and former attorneys, agents, investigators, representatives, or anyone acting in cooperation or in concert with It in this case, as of the date of its response to these production requests, as well as any Document that subsequently is obtained or discovered and that demonstrates that any production originally provided in response to these production requests was incorrect or incomplete in any way when made or subsequently became incorrect or incomplete; such supplemental Documents are to be promptly supplied.

2. If the response to any production request consists, in whole or in part, of an objection to, or including burdensomeness, then provide those Documents which can be produced without undue burden. For such Documents that are too burdensome to produce,

describe the process or method required to obtain said Documents, the quantity and location of the Documents involved, and the number of employee hours and costs of the search.

3. If the response to the production requests is any other objection, provide all information not covered by the objection and state the basis of the objection.

4. If any Document responsive to these production requests has been destroyed, for each such Document state when it was destroyed, identify the Person who destroyed the Document and the Person who directed that it be destroyed. Also, detail the reasons for the destruction, describe the nature of the Document, identify the Persons who created, sent, received or reviewed the Document, and state in as much detail as possible the contents of the Document.

5. If You withhold any information requested by the production requests contained herein, furnish a list with Your responses to these discovery requests identifying all such withheld information together with the following:

- (a) a brief description of the nature of the information withheld;
- (b) the reason(s) for the withholding;
- (c) an identification of all Documents relating or referring to the information;
- (d) the name of each Person most knowledgeable as to the information, and an identification by employment and title of each such Person;
- (e) a statement of facts constituting the basis for the withholding; and
- (f) the discovery requests to which the information relates. (If any such withholding relates only to a portion of a particular discovery request specify the portion to which the withholding relates.)

6. The use of the singular form of any word shall be deemed to include the plural form and *vice versa*, and the use of one gender shall include all others, as appropriate in context.

7. The connectives "and," "or" and "and/or" shall be construed distinctively or conjunctively as necessary to bring within the scope of the request any information which might otherwise be construed to be outside its scope.

8. These Requests for Production are continuing in nature. In Your response to these Requests for Production, You are required to furnish all Documents available to You, including, but not limited to, Documents in the possession of any personnel, employees, attorneys, agents, investigators, representatives or anyone acting in cooperation or in concert with You.

9. As provided by the Federal Rules of Civil Procedure, You are under a duty to seasonably amend a prior response if You obtain information upon the basis of which You know that the response was incorrect when made or You know that the response, though correct, when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment. The Committee reserves the right to request additional Documents.

10. Unless otherwise indicated all Document requests should pertain to the time frame of January 1, 2010 to the present.

REQUESTS FOR PRODUCTION

Request No. 1

All Documents related to the state of Illinois legislative and/or congressional Redistricting process which led to the planning, development, negotiation, drawing, revision or re-drawing of the Proposed Congressional Plan.

Request No. 2

All Documents, including, but not limited to, reports, analyses, election results or other election data, and Communications pertaining or relating to the planning, development, negotiation, drawing, revision or re-drawing of the Proposed Congressional Plan.

Request No. 3

All Documents regarding any Communications, discussions, meetings, and/or conversations, pertaining or relating to the planning, development, negotiation, drawing, revision or re-drawing of the Proposed Congressional Plan with any of the following Persons:

- (a) Defendants;
- (b) Democratic Congressional Campaign Committee ("DCCC");
- (c) Any present and former staff, personnel, employees, attorneys, agents, investigators, representatives, experts, consultants, or anyone else acting on the DCCC's behalf;
- (d) Illinois House Redistricting Committee;
- (e) Illinois Senate Redistricting Committee;
- (f) Any member of the Illinois General Assembly;
- (g) Any present and former staff, personnel, employees, attorneys, agents, investigators, representatives, experts, consultants, or anyone else acting on the Illinois General Assembly's behalf;
- (h) Any current or former member of the United States Congress;
- (i) Any present and former staff, personnel, employees, attorneys, agents, investigators, representatives, experts, consultants, or anyone else acting on the United States Congress' behalf; and
- (j) Any interest groups which testified at Redistricting hearings.

Request No.4

All Documents, Communications, or other matter, including without limitation, all data files or any other data type, related to election and/or voter data; election Redistricting software, including, but not limited to, Maptitude and AutoBound shapefiles and data, and/or data from any other District mapping software program(s), including data files in draft form; Core and Compactness report data, and all 2010 Census data used for the purpose of planning and drawing the Proposed Congressional Plan or any other potential congressional plan that was not adopted.

Request No. 5

All Documents, Communications, or other matter, that constitute, refer or relate to data files and drafts of data files used to formulate the composition of Districts 3, 4, and 5 of the Proposed Congressional Plan, including Compactness reports, Core reports, and any 2010 Census processed data used in conjunction with any District mapping software program(s).

Request No. 6

Any draft drawings of any Districts of the Proposed Congressional Plan, whether created by You or by any other Person.

Request No. 7

All Documents which reflect the identity of any and all persons who assisted in the drawing of Districts 3, 4, and 5 as they appear in the Proposed Congressional Plan.

Request No. 8

All Documents which reflect when the planning and drawing of Districts 3, 4, and 5 of the Proposed Congressional Plan were finalized.

Request No. 9

With respect to District 3 of the Proposed Congressional Plan, all Documents which reflect the identity of the Person(s) who made or participated in the decision to have the Latino VAP in District 3 as 24.64%.

Request No. 10

With respect to District 4 of the Proposed Congressional Plan, all Documents which reflect the identity of the Person(s) who made or participated in the decision to have the Latino VAP in District 3 as 65.92%.

Request No. 11

With respect to District 5 of the Proposed Congressional Plan, all Documents which reflect the identity of the Person(s) who made or participated in the decision to have the Latino VAP in District 5 as 16.05%.

Request No. 12

All Documents which reflect the identity of any expert or consultant who reviewed, commented on, advised or otherwise rendered any advice or opinion concerning the Proposed Congressional Plan.

Request No. 13

All Documents which reflect the identity of any and all experts or consultants who conducted any racial block voting or racial polarization analyses concerning the Proposed Congressional Plan.

Request No. 14

If any racial block voting or racial polarization analysis was conducted by any expert or consultant, produce Documents which reflect all such analyses.

Request No. 15

All Documents or Communications pertaining or relating to any analysis, review, study, or consideration undertaken by any expert, consultant, scholar or other Person regarding whether the Proposed Congressional Plan complies with Section 2 of the Voting Rights Act of 1965, 42 U.S.C. §1973, the U.S. Constitution, or the Illinois Constitution.

Request No. 16

All Documents which consist of reports or opinions of any expert or consultant used to support the composition of the entire Proposed Congressional Plan.

Request No. 17

All Documents which reflect any and all analysis concerning the viability of drawing two Latino congressional Districts, whether the Districts be considered majority or influence Districts.

Request No. 18

Any engagement letters provided to experts or consultants engaged for the purposes of planning, preparing, drawing, analyzing or providing supporting evidence for the Proposed Congressional Plan.

Request No. 19

All records of payment to any experts or consultants.

Request No. 20

All Documents identifying any Person(s) involved in the decision to post the Proposed Congressional Plan on the Illinois Senate website during the early morning hours of May 27, 2011.

Request No. 21

All Documents identifying any Person(s) who actually posted the Proposed Congressional Plan on the Illinois Senate website during the early morning hours of May 27, 2011.

EXHIBIT A-2

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Illinois

COMMITTEE FOR A FAIR AND BALANCED MAP

Plaintiff

v.

ILLINOIS STATE BOARD OF ELECTIONS

Defendant

Civil Action No. 1:11-cv-05065

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Illinois House of Representatives

Attn: Tim Mapes, Chief of Staff, 160 N. LaSalle, Ste. N-600, Chicago, IL 60601

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Refer to attached Rider to Subpoena.

Place: Make produced documents available for messenger pick-up at 160 N. LaSalle, Ste. N-600, Chicago, IL 60601.

Date and Time:

08/29/2011 10:30 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 08/19/2011

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) COMMITTEE FOR A FAIR AND BALANCED MAP, who issues or requests this subpoena, are:

Lori E. Lightfoot
71 S. Wacker Dr., Ste. 4471
Chicago, IL 60606

lightfoot@mayerbrown.com
312-701-8680

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 1:11-cv-05065

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* Illinois House of Representatives
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of

\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

RIDER TO SUBPOENA

Plaintiffs, by and through their counsel, hereby request that the Illinois House of Representatives ("Illinois House") produce the following documents for inspection and copying at the recipient's address on the date set forth in the subpoena. The Illinois House shall adhere to the Definitions and Instructions below.

DEFINITIONS

As used herein, the terms and phrases identified below shall have the following meanings:

The term "Action" when used herein means Case No. 1:11-CV-05065 filed in the United States District Court for the Northern District of Illinois Eastern Division.

The term "Complaint" when used herein means the Complaint filed on July 27, 2011 in the above referenced Action.

The terms "Plaintiff" or "Plaintiffs" refer to all of the following:

- (a) The Committee for a Fair and Balanced Map (the "Committee"), including its members: Tom Long, Tom Ewing, Larry Nelson, J. Dennis Hastert, James D. Pearson, Lynn Martin, Michael Keiser, and Alexander D. Stuart;
- (b) The Partisan Gerrymander Plaintiffs named in the Complaint;
- (c) The Racial Gerrymander Plaintiffs named in the Complaint; and
- (d) The Racial Dilution Plaintiffs named in the Complaint.

The term "Defendant" refers to all of the following: The Illinois State Board of Elections, including its members: William McGuffage, Jesse R. Smart, Harold D. Byers, Betty J. Coffrin, Ernest L. Gowen, Judith C. Rice, Bryan A. Schneider, Charles W. Scholz, or any employee,

officer, director, agent, attorney or other representative thereof, and any person acting or purporting to act on its behalf.

The terms "You" and "Your" when used herein mean the recipient of these Requests for Production, Your present and former attorneys, agents, investigators, representatives, or anyone else acting in cooperation or in concert with You.

The term "Person" when used herein means any individual, firm, corporation, joint venture, partnership, limited liability company, trust, association, entity or group of persons, unless the request is clearly referring only to an individual, human person.

The term "Illinois General Assembly" when used herein means the state legislature of the state of Illinois.

The terms "Illinois House of Representatives" and "House" when used herein mean the lower house of the Illinois General Assembly and its 118 representatives.

The term "Illinois Senate" when used herein means the upper house of the Illinois General Assembly and its 59 members.

The terms "Congressional District" and "District" when used herein refer to an electoral District in the state of Illinois that elects a single member of the U.S. House of Representatives.

The term "Redistricting" when used herein refers to the process of redefining the geographic boundaries of legislative or Congressional Districts.

The term "Illinois House Redistricting Committee" when used herein means the committee comprised of Democrat and Republican Illinois House members charged with conducting Redistricting hearings throughout the state of Illinois prior to the drawing of the state and congressional legislative maps. Members include: Barbara Flynn Currie, Mike Fortner,

Edward Acevedo, Marlow Colvin, Jim Durkin, Lou Lang, Frank Mautino, Chapin Rose, Timothy Schmitz, Jill Tracy, and Karen Yarbrough.

The term "Illinois Senate Redistricting Committee" when used herein means the committee comprised of Democrat and Republican Illinois Senate members charged with conducting Redistricting hearings throughout the state of Illinois prior to the drawing of the state and congressional legislative maps. Members include: Kwame Raoul, Michael Noland, Jacqueline Y. Collins, William R. Haine, Don Harmon, Mattie Hunter, Emil Jones, III, Kimberly Lightford, Edward D. Maloney, Iris Y. Martinez, Dale A. Righter, Shane Cultra, Kirk W. Dillard, Dan Duffy, David Luechtefeld, and Matt Murphy.

The term "Communication" when used herein means any and all of the following: written, electronic or otherwise, oral communications, conversations by telephone, meetings, and any contact, written, formal or informal, at any time or place, and under any circumstances whatsoever in which information of any nature was transmitted or exchanged in any form.

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appointment books; drawings; graphs; charts; maps; diagrams; blueprints; tables; indices; pictures; photographs; films; tapes; statistical or analytical records; minutes or records of committee or other meetings or conferences; transcripts of testimony; reports or summaries of investigations; opinions or reports or summaries of investigations; opinions or reports of consultants; press releases; newspaper and magazine clippings; projections; and any other Document, writing, or other data compilation of whatever description, including, but not limited to, electronically stored data although not yet printed out or the memory units containing such data from which information can be obtained or translated into reasonable usable form; any other data types, including without limitation, all District mapping software data files and shapefiles, including data files in draft form.

The term "Proposed Congressional Plan" when used herein refers to the new map for the state of Illinois' Congressional Districts adopted by the Illinois General Assembly and signed into law by Governor Pat Quinn on Friday, June 24, 2011 as Illinois P.A. 97-14; including, but not limited to, Senate Bill 1178 and amendments thereto.

The terms "Compact" and "Compactness" when used herein mean the degree to which the territory assigned to a District is close together. There are several mathematical methods to measure the elements of Compactness, including, but not limited to, measuring the Circularity Ratio and the Schwartzberg Test:

- (a) The term "Circularity Ratio" when used herein refers to the ratio of the area of the proposed Districts to the area of a circle having the same perimeter; this measure of shape is used in Redistricting to maximize the Compactness of electoral Districts and avoid gerrymandering.

(b) The term “Schwartzberg Test” when used herein refers to the perimeter-based measure that compares proposed Districts to a circle, measuring distance from the center of gravity to points in the District boundary. This test is used in Redistricting to maximize the Compactness of electoral Districts and avoid gerrymandering.

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The terms “Voting Age Population” and “VAP” when used herein mean all citizens above the voting age of eighteen years.

The term “2010 Census” when used herein refers to the twenty-third decennial national census of the United States.

The term “2010 Elections” when used herein means all 2010 Illinois state and Congressional Elections.

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available for the Plaintiff to inspect and copy, and if not, the specified reason for this refusal and a detail explanation of why this reason is persuasive; and (g) whether the original Document has been destroyed, and if so, why it was destroyed, the Person who directed it to be destroyed, who destroyed the Document, and when it was done.

To "Identify" a Communication or discussion shall mean to state the following: (a) the name and present address of each of the Persons who were involved in any way with the Communication or discussion; (b) a detailed description of the subjects that were involved in the Communication or discussion; (c) whether any memoranda, notes or other compilations, by whatever means, relating to the Communication or discussion were ever created; (d) the general substance of what was said by each Person involved in the Communication or discussion; and (e) the date on which such Communication or discussion occurred.

INSTRUCTIONS

1. Each production request shall be construed to include all Documents within the Illinois House's possession, custody or control, or the possession, custody or control of its present and former attorneys, agents, investigators, representatives, or anyone acting in cooperation or in concert with It in this case, as of the date of its response to these production requests, as well as any Document that subsequently is obtained or discovered and that demonstrates that any production originally provided in response to these production requests was incorrect or incomplete in any way when made or subsequently became incorrect or incomplete; such supplemental Documents are to be promptly supplied.

2. If the response to any production request consists, in whole or in part, of an objection to, or including burdensomeness, then provide those Documents which can be produced without undue burden. For such Documents that are too burdensome to produce,

describe the process or method required to obtain said Documents, the quantity and location of the Documents involved, and the number of employee hours and costs of the search.

3. If the response to the production requests is any other objection, provide all information not covered by the objection and state the basis of the objection.

4. If any Document responsive to these production requests has been destroyed, for each such Document state when it was destroyed, identify the Person who destroyed the Document and the Person who directed that it be destroyed. Also, detail the reasons for the destruction, describe the nature of the Document, identify the Persons who created, sent, received or reviewed the Document, and state in as much detail as possible the contents of the Document.

5. If You withhold any information requested by the production requests contained herein, furnish a list with Your responses to these discovery requests identifying all such withheld information together with the following:

- (a) a brief description of the nature of the information withheld;
- (b) the reason(s) for the withholding;
- (c) an identification of all Documents relating or referring to the information;
- (d) the name of each Person most knowledgeable as to the information, and an identification by employment and title of each such Person;
- (e) a statement of facts constituting the basis for the withholding; and
- (f) the discovery requests to which the information relates. (If any such withholding relates only to a portion of a particular discovery request specify the portion to which the withholding relates.)

6. The use of the singular form of any word shall be deemed to include the plural form and *vice versa*, and the use of one gender shall include all others, as appropriate in context.

7. The connectives "and," "or" and "and/or" shall be construed distinctively or conjunctively as necessary to bring within the scope of the request any information which might otherwise be construed to be outside its scope.

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10. Unless otherwise indicated all Document requests should pertain to the time frame of January 1, 2010 to the present.

REQUESTS FOR PRODUCTION

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All Documents regarding any Communications, discussions, meetings, and/or conversations, pertaining or relating to the planning, development, negotiation, drawing, revision or re-drawing of the Proposed Congressional Plan with any of the following Persons:

- (a) Defendants;
- (b) Democratic Congressional Campaign Committee ("DCCC");
- (c) Any present and former staff, personnel, employees, attorneys, agents, investigators, representatives, experts, consultants, or anyone else acting on the DCCC's behalf;
- (d) Illinois House Redistricting Committee;
- (e) Illinois Senate Redistricting Committee;
- (f) Any member of the Illinois General Assembly;
- (g) Any present and former staff, personnel, employees, attorneys, agents, investigators, representatives, experts, consultants, or anyone else acting on the Illinois General Assembly's behalf;
- (h) Any current or former member of the United States Congress;
- (i) Any present and former staff, personnel, employees, attorneys, agents, investigators, representatives, experts, consultants, or anyone else acting on the United States Congress' behalf; and
- (j) Any interest groups which testified at Redistricting hearings.

Request No.4

All Documents, Communications, or other matter, including without limitation, all data files or any other data type, related to election and/or voter data; election Redistricting software, including, but not limited to, Mapitude and AutoBound shapefiles and data, and/or data from any other District mapping software program(s), including data files in draft form, Core and Compactness report data, and all 2010 Census data used for the purpose of planning and drawing the Proposed Congressional Plan or any other potential congressional plan that was not adopted.

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All Documents, Communications, or other matter, that constitute, refer or relate to data files and drafts of data files used to formulate the composition of Districts 3, 4, and 5 of the Proposed Congressional Plan, including Compactness reports, Core reports, and any 2010 Census processed data used in conjunction with any District mapping software program(s).

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Any draft drawings of any Districts of the Proposed Congressional Plan, whether created by You or by any other Person.

Request No. 7

All Documents which reflect the identity of any and all persons who assisted in the drawing of Districts 3, 4, and 5 as they appear in the Proposed Congressional Plan.

Request No. 8

All Documents which reflect when the planning and drawing of Districts 3, 4, and 5 of the Proposed Congressional Plan were finalized.

Request No. 9

With respect to District 3 of the Proposed Congressional Plan, all Documents which reflect the identity of the Person(s) who made or participated in the decision to have the Latino VAP in District 3 as 24.64%.

Request No. 10

With respect to District 4 of the Proposed Congressional Plan, all Documents which reflect the identity of the Person(s) who made or participated in the decision to have the Latino VAP in District 3 as 65.92%.

Request No. 11

With respect to District 5 of the Proposed Congressional Plan, all Documents which reflect the identity of the Person(s) who made or participated in the decision to have the Latino VAP in District 5 as 16.05%.

Request No. 12

All Documents which reflect the identity of any expert or consultant who reviewed, commented on, advised or otherwise rendered any advice or opinion concerning the Proposed Congressional Plan.

Request No. 13

All Documents which reflect the identity of any and all experts or consultants who conducted any racial block voting or racial polarization analyses concerning the Proposed Congressional Plan.

Request No. 14

If any racial block voting or racial polarization analysis was conducted by any expert or consultant, produce Documents which reflect all such analyses.

Request No. 15

All Documents or Communications pertaining or relating to any analysis, review, study, or consideration undertaken by any expert, consultant, scholar or other Person regarding whether the Proposed Congressional Plan complies with Section 2 of the Voting Rights Act of 1965, 42 U.S.C. §1973, the U.S. Constitution, or the Illinois Constitution.

Request No. 16

All Documents which consist of reports or opinions of any expert or consultant used to support the composition of the entire Proposed Congressional Plan.

Request No. 17

All Documents which reflect any and all analysis concerning the viability of drawing two Latino congressional Districts, whether the Districts be considered majority or influence Districts.

Request No. 18

Any engagement letters provided to experts or consultants engaged for the purposes of planning, preparing, drawing, analyzing or providing supporting evidence for the Proposed Congressional Plan.

Request No. 19

All records of payment to any experts or consultants.

Request No. 20

All Documents identifying any Person(s) involved in the decision to post the Proposed Congressional Plan on the Illinois Senate website during the early morning hours of May 27, 2011.

Request No. 21

All Documents identifying any Person(s) who actually posted the Proposed Congressional Plan on the Illinois Senate website during the early morning hours of May 27, 2011.

EXHIBIT A-3

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Illinois

COMMITTEE FOR A FAIR AND BALANCED MAP

Plaintiff

v.

ILLINOIS STATE BOARD OF ELECTIONS

Defendant

Civil Action No. 1:11-cv-05065

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTIONTo: Illinois House Redistricting Committee
Attn: Barbara Flynn Currie, Chairperson, 1303 E. 53rd Street, Chicago, IL 60615

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Refer to attached Rider to Subpoena.

Place: Make produced documents available for messenger
pick-up at 1303 E. 53rd Street, Chicago, IL 60615.

Date and Time:

08/29/2011 10:30 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 08/19/2011

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) COMMITTEE FOR A FAIR AND BALANCED MAP, who issues or requests this subpoena, are:

Lori E. Lightfoot
71 S. Wacker Dr., Ste. 4471
Chicago, IL 60606llightfoot@mayerbrown.com
312-701-8680

AQ 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 1:11-cv-05065

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* Illinois House Redistricting Committee
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

RIDER TO SUBPOENA

Plaintiffs, by and through their counsel, hereby request that the Illinois House Redistricting Committee ("HRC") produce the following documents for inspection and copying at the recipient's address on the date set forth in the subpoena. The HRC shall adhere to the Definitions and Instructions below.

DEFINITIONS

As used herein, the terms and phrases identified below shall have the following meanings:

The term "Action" when used herein means Case No. 1:11-CV-05065 filed in the United States District Court for the Northern District of Illinois Eastern Division.

The term "Complaint" when used herein means the Complaint filed on July 27, 2011 in the above referenced Action.

The terms "Plaintiff" or "Plaintiffs" refer to all of the following:

- (a) The Committee for a Fair and Balanced Map (the "Committee"), including its members: Tom Long, Tom Ewing, Larry Nelson, J. Dennis Hastert, James D. Pearson, Lynn Martin, Michael Keiser, and Alexander D. Stuart;
- (b) The Partisan Gerrymander Plaintiffs named in the Complaint;
- (c) The Racial Gerrymander Plaintiffs named in the Complaint; and
- (d) The Racial Dilution Plaintiffs named in the Complaint.

The term "Defendant" refers to all of the following: The Illinois State Board of Elections, including its members: William McGuffage, Jesse R. Smart, Harold D. Byers, Betty J. Coffrin, Ernest L. Gowen, Judith C. Rice, Bryan A. Schneider, Charles W. Scholz, or any employee,

officer, director, agent, attorney or other representative thereof, and any person acting or purporting to act on its behalf.

The terms "You" and "Your" when used herein mean the recipient of these Requests for Production, Your present and former attorneys, agents, investigators, representatives, or anyone else acting in cooperation or in concert with You.

The term "Person" when used herein means any individual, firm, corporation, joint venture, partnership, limited liability company, trust, association, entity or group of persons, unless the request is clearly referring only to an individual, human person.

The term "Illinois General Assembly" when used herein means the state legislature of the state of Illinois.

The terms "Illinois House of Representatives" and "House" when used herein mean the lower house of the Illinois General Assembly and its 118 representatives.

The term "Illinois Senate" when used herein means the upper house of the Illinois General Assembly and its 59 members.

The terms "Congressional District" and "District" when used herein refer to an electoral District in the state of Illinois that elects a single member of the U.S. House of Representatives.

The term "Redistricting" when used herein refers to the process of redefining the geographic boundaries of legislative or Congressional Districts.

The term "Illinois House Redistricting Committee" when used herein means the committee comprised of Democrat and Republican Illinois House members charged with conducting Redistricting hearings throughout the state of Illinois prior to the drawing of the state and congressional legislative maps. Members include: Barbara Flynn Currie, Mike Fortner,

Edward Acevedo, Marlow Colvin, Jim Durkin, Lou Lang, Frank Mautino, Chapin Rose, Timothy Schmitz, Jill Tracy, and Karen Yarbrough.

The term "Illinois Senate Redistricting Committee" when used herein means the committee comprised of Democrat and Republican Illinois Senate members charged with conducting Redistricting hearings throughout the state of Illinois prior to the drawing of the state and congressional legislative maps. Members include: Kwame Raoul, Michael Noland, Jacqueline Y. Collins, William R. Haine, Don Harmon, Mattie Hunter, Emil Jones, III, Kimberly Lightford, Edward D. Maloney, Iris Y. Martinez, Dale A. Richter, Shane Cultra, Kirk W. Dillard, Dan Duffy, David Luechtefeld, and Matt Murphy.

The term "Communication" when used herein means any and all of the following: written, electronic or otherwise, oral communications, conversations by telephone, meetings, and any contact, written, formal or informal, at any time or place, and under any circumstances whatsoever in which information of any nature was transmitted or exchanged in any form.

The term "Document" when used herein means any and all written, typed, printed, recorded, computerized, electronic, or graphic statements, Communications, or other matter, however, produced or reproduced, whether in final or draft form, and whether or not now in existence, in Your possession, custody, or control, including without limitation, all writings; studies; analyses; tabulations; evaluations; reports; reviews; agreements; contracts; letters or other correspondence; emails from all email accounts in Your possession, custody, or control, including, but not limited to, Your personal, professional, and official email accounts; messages; facsimile messages; text messages; memoranda; records; notes; reports; summaries; PDFs; spreadsheets; sound recordings or transcripts of personal or professional telephone conversations or messages; meetings; conferences or interviews; telephone toll records; diaries; desk calendars;

appointment books; drawings; graphs; charts; maps; diagrams; blueprints; tables; indices; pictures; photographs; films; tapes; statistical or analytical records; minutes or records of committee or other meetings or conferences; transcripts of testimony; reports or summaries of investigations; opinions or reports or summaries of investigations; opinions or reports of consultants; press releases; newspaper and magazine clippings; projections; and any other Document, writing, or other data compilation of whatever description, including, but not limited to, electronically stored data although not yet printed out or the memory units containing such data from which information can be obtained or translated into reasonable usable form; any other data types, including without limitation, all District mapping software data files and shapefiles, including data files in draft form.

The term "Proposed Congressional Plan" when used herein refers to the new map for the state of Illinois' Congressional Districts adopted by the Illinois General Assembly and signed into law by Governor Pat Quinn on Friday, June 24, 2011 as Illinois P.A. 97-14; including, but not limited to, Senate Bill 1178 and amendments thereto.

The terms "Compact" and "Compactness" when used herein mean the degree to which the territory assigned to a District is close together. There are several mathematical methods to measure the elements of Compactness, including, but not limited to, measuring the Circularity Ratio and the Schwartzberg Test:

- (a) The term "Circularity Ratio" when used herein refers to the ratio of the area of the proposed Districts to the area of a circle having the same perimeter; this measure of shape is used in Redistricting to maximize the Compactness of electoral Districts and avoid gerrymandering.

- (b) The term "Schwartzberg Test" when used herein refers to the perimeter-based measure that compares proposed Districts to a circle, measuring distance from the center of gravity to points in the District boundary. This test is used in Redistricting to maximize the Compactness of electoral Districts and avoid gerrymandering.

The term "Core Report" when used herein refers to the constituency report produced by Maptitude, AutoBound, or similar software that indicates the number of persons or voters residing in a district in a Redistricting plan, who also reside in that same numbered or a differently numbered district in another Redistricting plan.

The terms "Voting Age Population" and "VAP" when used herein mean all citizens above the voting age of eighteen years.

The term "2010 Census" when used herein refers to the twenty-third decennial national census of the United States.

The term "2010 Elections" when used herein means all 2010 Illinois state and Congressional Elections.

To "Identify" a Person or witness means to state his or her name, present employer, last known address, telephone number (business and home), and employer and position in which he or she was employed at the time in question.

To "Identify a Document" means the following: (a) the name and present address of the Person who prepared it; (b) the name and address of the Person to whom it was addressed or distributed; (c) a detailed description of the general nature of the Document's contents; (d) the date it was prepared, and the date it was distributed; (e) the name and address of the Person having custody of the original and any copies; (f) whether the original will voluntarily be made

available for the Plaintiff to inspect and copy, and if not, the specified reason for this refusal and a detail explanation of why this reason is persuasive; and (g) whether the original Document has been destroyed, and if so, why it was destroyed, the Person who directed it to be destroyed, who destroyed the Document, and when it was done.

To "Identify" a Communication or discussion shall mean to state the following: (a) the name and present address of each of the Persons who were involved in any way with the Communication or discussion; (b) a detailed description of the subjects that were involved in the Communication or discussion; (c) whether any memoranda, notes or other compilations, by whatever means, relating to the Communication or discussion were ever created; (d) the general substance of what was said by each Person involved in the Communication or discussion; and (e) the date on which such Communication or discussion occurred.

INSTRUCTIONS

1. Each production request shall be construed to include all Documents within the HRC's possession, custody or control, or the possession, custody or control of its present and former attorneys, agents, investigators, representatives, or anyone acting in cooperation or in concert with It in this case, as of the date of its response to these production requests, as well as any Document that subsequently is obtained or discovered and that demonstrates that any production originally provided in response to these production requests was incorrect or incomplete in any way when made or subsequently became incorrect or incomplete; such supplemental Documents are to be promptly supplied.

2. If the response to any production request consists, in whole or in part, of an objection to, or including burdensomeness, then provide those Documents which can be produced without undue burden. For such Documents that are too burdensome to produce,

describe the process or method required to obtain said Documents, the quantity and location of the Documents involved, and the number of employee hours and costs of the search.

3. If the response to the production requests is any other objection, provide all information not covered by the objection and state the basis of the objection.

4. If any Document responsive to these production requests has been destroyed, for each such Document state when it was destroyed, identify the Person who destroyed the Document and the Person who directed that it be destroyed. Also, detail the reasons for the destruction, describe the nature of the Document, identify the Persons who created, sent, received or reviewed the Document, and state in as much detail as possible the contents of the Document.

5. If You withhold any information requested by the production requests contained herein, furnish a list with Your responses to these discovery requests identifying all such withheld information together with the following:

- (a) a brief description of the nature of the information withheld;
- (b) the reason(s) for the withholding;
- (c) an identification of all Documents relating or referring to the information;
- (d) the name of each Person most knowledgeable as to the information, and an identification by employment and title of each such Person;
- (e) a statement of facts constituting the basis for the withholding; and
- (f) the discovery requests to which the information relates. (If any such withholding relates only to a portion of a particular discovery request specify the portion to which the withholding relates.)

6. The use of the singular form of any word shall be deemed to include the plural form and *vice versa*, and the use of one gender shall include all others, as appropriate in context.

7. The connectives "and," "or" and "and/or" shall be construed distinctively or conjunctively as necessary to bring within the scope of the request any information which might otherwise be construed to be outside its scope.

8. These Requests for Production are continuing in nature. In Your response to these Requests for Production, You are required to furnish all Documents available to You, including, but not limited to, Documents in the possession of any personnel, employees, attorneys, agents, investigators, representatives or anyone acting in cooperation or in concert with You.

9. As provided by the Federal Rules of Civil Procedure, You are under a duty to seasonably amend a prior response if You obtain information upon the basis of which You know that the response was incorrect when made or You know that the response, though correct, when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment. The Committee reserves the right to request additional Documents.

10. Unless otherwise indicated all Document requests should pertain to the time frame of January 1, 2010 to the present.

REQUESTS FOR PRODUCTION

Request No. 1

All Documents related to the state of Illinois legislative and/or congressional Redistricting process which led to the planning, development, negotiation, drawing, revision or re-drawing of the Proposed Congressional Plan.

Request No. 2

All Documents, including, but not limited to, reports, analyses, election results or other election data, and Communications pertaining or relating to the planning, development, negotiation, drawing, revision or re-drawing of the Proposed Congressional Plan.

Request No. 3

All Documents regarding any Communications, discussions, meetings, and/or conversations, pertaining or relating to the planning, development, negotiation, drawing, revision or re-drawing of the Proposed Congressional Plan with any of the following Persons:

- (a) Defendants;
- (b) Democratic Congressional Campaign Committee ("DCCC");
- (c) Any present and former staff, personnel, employees, attorneys, agents, investigators, representatives, experts, consultants, or anyone else acting on the DCCC's behalf;
- (d) Illinois House Redistricting Committee;
- (e) Illinois Senate Redistricting Committee;
- (f) Any member of the Illinois General Assembly;
- (g) Any present and former staff, personnel, employees, attorneys, agents, investigators, representatives, experts, consultants, or anyone else acting on the Illinois General Assembly's behalf;
- (h) Any current or former member of the United States Congress;
- (i) Any present and former staff, personnel, employees, attorneys, agents, investigators, representatives, experts, consultants, or anyone else acting on the United States Congress' behalf; and
- (j) Any interest groups which testified at Redistricting hearings.

Request No.4

All Documents, Communications, or other matter, including without limitation, all data files or any other data type, related to election and/or voter data; election Redistricting software, including, but not limited to, Mapitude and AutoBound shapefiles and data, and/or data from any other District mapping software program(s), including data files in draft form, Core and Compactness report data, and all 2010 Census data used for the purpose of planning and drawing the Proposed Congressional Plan or any other potential congressional plan that was not adopted.

Request No. 5

All Documents, Communications, or other matter, that constitute, refer or relate to data files and drafts of data files used to formulate the composition of Districts 3, 4, and 5 of the Proposed Congressional Plan, including Compactness reports, Core reports, and any 2010 Census processed data used in conjunction with any District mapping software program(s).

Request No. 6

Any draft drawings of any Districts of the Proposed Congressional Plan, whether created by You or by any other Person.

Request No. 7

All Documents which reflect the identity of any and all persons who assisted in the drawing of Districts 3, 4, and 5 as they appear in the Proposed Congressional Plan.

Request No. 8

All Documents which reflect when the planning and drawing of Districts 3, 4, and 5 of the Proposed Congressional Plan were finalized.

Request No. 9

With respect to District 3 of the Proposed Congressional Plan, all Documents which reflect the identity of the Person(s) who made or participated in the decision to have the Latino VAP in District 3 as 24.64%.

Request No. 10

With respect to District 4 of the Proposed Congressional Plan, all Documents which reflect the identity of the Person(s) who made or participated in the decision to have the Latino VAP in District 3 as 65.92%.

Request No. 11

With respect to District 5 of the Proposed Congressional Plan, all Documents which reflect the identity of the Person(s) who made or participated in the decision to have the Latino VAP in District 5 as 16.05%.

Request No. 12

All Documents which reflect the identity of any expert or consultant who reviewed, commented on, advised or otherwise rendered any advice or opinion concerning the Proposed Congressional Plan.

Request No. 13

All Documents which reflect the identity of any and all experts or consultants who conducted any racial block voting or racial polarization analyses concerning the Proposed Congressional Plan.

Request No. 14

If any racial block voting or racial polarization analysis was conducted by any expert or consultant, produce Documents which reflect all such analyses.

Request No. 15

All Documents or Communications pertaining or relating to any analysis, review, study, or consideration undertaken by any expert, consultant, scholar or other Person regarding whether the Proposed Congressional Plan complies with Section 2 of the Voting Rights Act of 1965, 42 U.S.C. §1973, the U.S. Constitution, or the Illinois Constitution.

Request No. 16

All Documents which consist of reports or opinions of any expert or consultant used to support the composition of the entire Proposed Congressional Plan.

Request No. 17

All Documents which reflect any and all analysis concerning the viability of drawing two Latino congressional Districts, whether the Districts be considered majority or influence Districts.

Request No. 18

Any engagement letters provided to experts or consultants engaged for the purposes of planning, preparing, drawing, analyzing or providing supporting evidence for the Proposed Congressional Plan.

Request No. 19

All records of payment to any experts or consultants.

Request No. 20

All Documents identifying any Person(s) involved in the decision to post the Proposed Congressional Plan on the Illinois Senate website during the early morning hours of May 27, 2011.

Request No. 21

All Documents identifying any Person(s) who actually posted the Proposed Congressional Plan on the Illinois Senate website during the early morning hours of May 27, 2011.

EXHIBIT A-4

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Illinois

COMMITTEE FOR A FAIR AND BALANCED MAP

Plaintiff

v.

ILLINOIS STATE BOARD OF ELECTIONS

Defendant

Civil Action No. 1:11-cv-05065

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Office of the Senate President

Attn: Andrew Manar, Chief of Staff, 160 N. LaSalle Street, S720, Chicago, IL 60601

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Refer to attached Rider to Subpoena.

Place: Make produced documents available for messenger pick-up at 160 N. LaSalle Street, S720, Chicago, IL 60601.	Date and Time: 08/29/2011 10:30 am
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☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 08/19/2011

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Lori E. Lightfoot *DLW*
Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party) COMMITTEE FOR A FAIR AND BALANCED MAP, who issues or requests this subpoena, are:

Lori E. Lightfoot
71 S. Wacker Dr., Ste. 4471
Chicago, IL 60606

lightfoot@mayerbrown.com
312-701-8680

AO 88B (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 1:11-cv-05065

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* Office of the Senate President
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

RIDER TO SUBPOENA

Plaintiffs, by and through their counsel, hereby request that the Office of the Senate President produce the following documents for inspection and copying at the recipient's address on the date set forth in the subpoena. The Office of the Senate President shall adhere to the Definitions and Instructions below.

DEFINITIONS

As used herein, the terms and phrases identified below shall have the following meanings:

The term "Action" when used herein means Case No. 1:11-CV-05065 filed in the United States District Court for the Northern District of Illinois Eastern Division.

The term "Complaint" when used herein means the Complaint filed on July 27, 2011 in the above referenced Action.

The terms "Plaintiff" or "Plaintiffs" refer to all of the following:

- (a) The Committee for a Fair and Balanced Map (the "Committee"), including its members: Tom Long, Tom Ewing, Larry Nelson, J. Dennis Hastert, James D. Pearson, Lynn Martin, Michael Keiser, and Alexander D. Stuart;
- (b) The Partisan Gerrymander Plaintiffs named in the Complaint;
- (c) The Racial Gerrymander Plaintiffs named in the Complaint; and
- (d) The Racial Dilution Plaintiffs named in the Complaint.

The term "Defendant" refers to all of the following: The Illinois State Board of Elections, including its members: William McGuffage, Jesse R. Smart, Harold D. Byers, Betty J. Coffrin, Ernest L. Gowen, Judith C. Rice, Bryan A. Schneider, Charles W. Scholz, or any employee,

officer, director, agent, attorney or other representative thereof, and any person acting or purporting to act on its behalf.

The terms "You" and "Your" when used herein mean the recipient of these Requests for Production, Your present and former attorneys, agents, investigators, representatives, or anyone else acting in cooperation or in concert with You.

The term "Person" when used herein means any individual, firm, corporation, joint venture, partnership, limited liability company, trust, association, entity or group of persons, unless the request is clearly referring only to an individual, human person.

The term "Illinois General Assembly" when used herein means the state legislature of the state of Illinois.

The terms "Illinois House of Representatives" and "House" when used herein mean the lower house of the Illinois General Assembly and its 118 representatives.

The term "Illinois Senate" when used herein means the upper house of the Illinois General Assembly and its 59 members.

The terms "Congressional District" and "District" when used herein refer to an electoral District in the state of Illinois that elects a single member of the U.S. House of Representatives.

The term "Redistricting" when used herein refers to the process of redefining the geographic boundaries of legislative or Congressional Districts.

The term "Illinois House Redistricting Committee" when used herein means the committee comprised of Democrat and Republican Illinois House members charged with conducting Redistricting hearings throughout the state of Illinois prior to the drawing of the state and congressional legislative maps. Members include: Barbara Flynn Currie, Mike Fortner,

Edward Acevedo, Marlow Colvin, Jim Durkin, Lou Lang, Frank Mautino, Chapin Rose, Timothy Schmitz, Jill Tracy, and Karen Yarbrough.

The term "Illinois Senate Redistricting Committee" when used herein means the committee comprised of Democrat and Republican Illinois Senate members charged with conducting Redistricting hearings throughout the state of Illinois prior to the drawing of the state and congressional legislative maps. Members include: Kwame Raoul, Michael Noland, Jacqueline Y. Collins, William R. Haine, Don Harmon, Mattie Hunter, Emil Jones, III, Kimberly Lightford, Edward D. Maloney, Iris Y. Martinez, Dale A. Righter, Shane Cultra, Kirk W. Dillard, Dan Duffy, David Luechtefeld, and Matt Murphy.

The term "Communication" when used herein means any and all of the following: written, electronic or otherwise, oral communications, conversations by telephone, meetings, and any contact, written, formal or informal, at any time or place, and under any circumstances whatsoever in which information of any nature was transmitted or exchanged in any form.

The term "Document" when used herein means any and all written, typed, printed, recorded, computerized, electronic, or graphic statements, Communications, or other matter, however, produced or reproduced, whether in final or draft form, and whether or not now in existence, in Your possession, custody, or control, including without limitation, all writings; studies; analyses; tabulations; evaluations; reports; reviews; agreements; contracts; letters or other correspondence; emails from all email accounts in Your possession, custody, or control, including, but not limited to, Your personal, professional, and official email accounts; messages; facsimile messages; text messages; memoranda; records; notes; reports; summaries; PDFs; spreadsheets; sound recordings or transcripts of personal or professional telephone conversations or messages; meetings; conferences or interviews; telephone toll records; diaries; desk calendars;

appointment books; drawings; graphs; charts; maps; diagrams; blueprints; tables; indices; pictures; photographs; films; tapes; statistical or analytical records; minutes or records of committee or other meetings or conferences; transcripts of testimony; reports or summaries of investigations; opinions or reports or summaries of investigations; opinions or reports of consultants; press releases; newspaper and magazine clippings; projections; and any other Document, writing, or other data compilation of whatever description, including, but not limited to, electronically stored data although not yet printed out or the memory units containing such data from which information can be obtained or translated into reasonable usable form; any other data types, including without limitation, all District mapping software data files and shapefiles, including data files in draft form.

The term "Proposed Congressional Plan" when used herein refers to the new map for the state of Illinois' Congressional Districts adopted by the Illinois General Assembly and signed into law by Governor Pat Quinn on Friday, June 24, 2011 as Illinois P.A. 97-14; including, but not limited to, Senate Bill 1178 and amendments thereto.

The terms "Compact" and "Compactness" when used herein mean the degree to which the territory assigned to a District is close together. There are several mathematical methods to measure the elements of Compactness, including, but not limited to, measuring the Circularity Ratio and the Schwartzberg Test:

- (a) The term "Circularity Ratio" when used herein refers to the ratio of the area of the proposed Districts to the area of a circle having the same perimeter; this measure of shape is used in Redistricting to maximize the Compactness of electoral Districts and avoid gerrymandering.

- (b) The term “Schwartzberg Test” when used herein refers to the perimeter-based measure that compares proposed Districts to a circle, measuring distance from the center of gravity to points in the District boundary. This test is used in Redistricting to maximize the Compactness of electoral Districts and avoid gerrymandering.

The term “Core Report” when used herein refers to the constituency report produced by Maptitude, AutoBound, or similar software that indicates the number of persons or voters residing in a district in a Redistricting plan, who also reside in that same numbered or a differently numbered district in another Redistricting plan.

The terms “Voting Age Population” and “VAP” when used herein mean all citizens above the voting age of eighteen years.

The term “2010 Census” when used herein refers to the twenty-third decennial national census of the United States.

The term “2010 Elections” when used herein means all 2010 Illinois state and Congressional Elections.

To “Identify” a Person or witness means to state his or her name, present employer, last known address, telephone number (business and home), and employer and position in which he or she was employed at the time in question.

To “Identify a Document” means the following: (a) the name and present address of the Person who prepared it; (b) the name and address of the Person to whom it was addressed or distributed; (c) a detailed description of the general nature of the Document’s contents; (d) the date it was prepared, and the date it was distributed; (e) the name and address of the Person having custody of the original and any copies; (f) whether the original will voluntarily be made

available for the Plaintiff to inspect and copy, and if not, the specified reason for this refusal and a detail explanation of why this reason is persuasive; and (g) whether the original Document has been destroyed, and if so, why it was destroyed, the Person who directed it to be destroyed, who destroyed the Document, and when it was done.

To "Identify" a Communication or discussion shall mean to state the following: (a) the name and present address of each of the Persons who were involved in any way with the Communication or discussion; (b) a detailed description of the subjects that were involved in the Communication or discussion; (c) whether any memoranda, notes or other compilations, by whatever means, relating to the Communication or discussion were ever created; (d) the general substance of what was said by each Person involved in the Communication or discussion; and (e) the date on which such Communication or discussion occurred.

INSTRUCTIONS

1. Each production request shall be construed to include all Documents within the Office of the Senate President's possession, custody or control, or the possession, custody or control of its present and former attorneys, agents, investigators, representatives, or anyone acting in cooperation or in concert with It in this case, as of the date of its response to these production requests, as well as any Document that subsequently is obtained or discovered and that demonstrates that any production originally provided in response to these production requests was incorrect or incomplete in any way when made or subsequently became incorrect or incomplete; such supplemental Documents are to be promptly supplied.

2. If the response to any production request consists, in whole or in part, of an objection to, or including burdensomeness, then provide those Documents which can be produced without undue burden. For such Documents that are too burdensome to produce,

describe the process or method required to obtain said Documents, the quantity and location of the Documents involved, and the number of employee hours and costs of the search.

3. If the response to the production requests is any other objection, provide all information not covered by the objection and state the basis of the objection.

4. If any Document responsive to these production requests has been destroyed, for each such Document state when it was destroyed, identify the Person who destroyed the Document and the Person who directed that it be destroyed. Also, detail the reasons for the destruction, describe the nature of the Document, identify the Persons who created, sent, received or reviewed the Document, and state in as much detail as possible the contents of the Document.

5. If You withhold any information requested by the production requests contained herein, furnish a list with Your responses to these discovery requests identifying all such withheld information together with the following:

- (a) a brief description of the nature of the information withheld;
- (b) the reason(s) for the withholding;
- (c) an identification of all Documents relating or referring to the information;
- (d) the name of each Person most knowledgeable as to the information, and an identification by employment and title of each such Person;
- (e) a statement of facts constituting the basis for the withholding; and
- (f) the discovery requests to which the information relates. (If any such withholding relates only to a portion of a particular discovery request specify the portion to which the withholding relates.)

6. The use of the singular form of any word shall be deemed to include the plural form and *vice versa*, and the use of one gender shall include all others, as appropriate in context.

7. The connectives “and,” “or” and “and/or” shall be construed distinctively or conjunctively as necessary to bring within the scope of the request any information which might otherwise be construed to be outside its scope.

8. These Requests for Production are continuing in nature. In Your response to these Requests for Production, You are required to furnish all Documents available to You, including, but not limited to, Documents in the possession of any personnel, employees, attorneys, agents, investigators, representatives or anyone acting in cooperation or in concert with You.

9. As provided by the Federal Rules of Civil Procedure, You are under a duty to seasonably amend a prior response if You obtain information upon the basis of which You know that the response was incorrect when made or You know that the response, though correct, when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment. The Committee reserves the right to request additional Documents.

10. Unless otherwise indicated all Document requests should pertain to the time frame of January 1, 2010 to the present.

REQUESTS FOR PRODUCTION

Request No. 1

All Documents related to the state of Illinois legislative and/or congressional Redistricting process which led to the planning, development, negotiation, drawing, revision or re-drawing of the Proposed Congressional Plan.

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All Documents, including, but not limited to, reports, analyses, election results or other election data, and Communications pertaining or relating to the planning, development, negotiation, drawing, revision or re-drawing of the Proposed Congressional Plan.

Request No. 3

All Documents regarding any Communications, discussions, meetings, and/or conversations, pertaining or relating to the planning, development, negotiation, drawing, revision or re-drawing of the Proposed Congressional Plan with any of the following Persons:

- (a) Defendants;
- (b) Democratic Congressional Campaign Committee ("DCCC");
- (c) Any present and former staff, personnel, employees, attorneys, agents, investigators, representatives, experts, consultants, or anyone else acting on the DCCC's behalf;
- (d) Illinois House Redistricting Committee;
- (e) Illinois Senate Redistricting Committee;
- (f) Any member of the Illinois General Assembly;
- (g) Any present and former staff, personnel, employees, attorneys, agents, investigators, representatives, experts, consultants, or anyone else acting on the Illinois General Assembly's behalf;
- (h) Any current or former member of the United States Congress;
- (i) Any present and former staff, personnel, employees, attorneys, agents, investigators, representatives, experts, consultants, or anyone else acting on the United States Congress' behalf; and
- (j) Any interest groups which testified at Redistricting hearings.

Request No.4

All Documents, Communications, or other matter, including without limitation, all data files or any other data type, related to election and/or voter data; election Redistricting software, including, but not limited to, Maptitude and AutoBound shapefiles and data, and/or data from any other District mapping software program(s), including data files in draft form, Core and Compactness report data, and all 2010 Census data used for the purpose of planning and drawing the Proposed Congressional Plan or any other potential congressional plan that was not adopted.

Request No. 5

All Documents, Communications, or other matter, that constitute, refer or relate to data files and drafts of data files used to formulate the composition of Districts 3, 4, and 5 of the Proposed Congressional Plan, including Compactness reports, Core reports, and any 2010 Census processed data used in conjunction with any District mapping software program(s).

Request No. 6

Any draft drawings of any Districts of the Proposed Congressional Plan, whether created by You or by any other Person.

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All Documents which reflect the identity of any and all persons who assisted in the drawing of Districts 3, 4, and 5 as they appear in the Proposed Congressional Plan.

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All Documents which reflect when the planning and drawing of Districts 3, 4, and 5 of the Proposed Congressional Plan were finalized.

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With respect to District 4 of the Proposed Congressional Plan, all Documents which reflect the identity of the Person(s) who made or participated in the decision to have the Latino VAP in District 3 as 65.92%.

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With respect to District 5 of the Proposed Congressional Plan, all Documents which reflect the identity of the Person(s) who made or participated in the decision to have the Latino VAP in District 5 as 16.05%.

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All Documents which reflect the identity of any expert or consultant who reviewed, commented on, advised or otherwise rendered any advice or opinion concerning the Proposed Congressional Plan.

Request No. 13

All Documents which reflect the identity of any and all experts or consultants who conducted any racial block voting or racial polarization analyses concerning the Proposed Congressional Plan.

Request No. 14

If any racial block voting or racial polarization analysis was conducted by any expert or consultant, produce Documents which reflect all such analyses.

Request No. 15

All Documents or Communications pertaining or relating to any analysis, review, study, or consideration undertaken by any expert, consultant, scholar or other Person regarding whether the Proposed Congressional Plan complies with Section 2 of the Voting Rights Act of 1965, 42 U.S.C. §1973, the U.S. Constitution, or the Illinois Constitution.

Request No. 16

All Documents which consist of reports or opinions of any expert or consultant used to support the composition of the entire Proposed Congressional Plan.

Request No. 17

All Documents which reflect any and all analysis concerning the viability of drawing two Latino congressional Districts, whether the Districts be considered majority or influence Districts.

Request No. 18

Any engagement letters provided to experts or consultants engaged for the purposes of planning, preparing, drawing, analyzing or providing supporting evidence for the Proposed Congressional Plan.

Request No. 19

All records of payment to any experts or consultants.

Request No. 20

All Documents identifying any Person(s) involved in the decision to post the Proposed Congressional Plan on the Illinois Senate website during the early morning hours of May 27, 2011.

Request No. 21

All Documents identifying any Person(s) who actually posted the Proposed Congressional Plan on the Illinois Senate website during the early morning hours of May 27, 2011.

EXHIBIT A-5

AO 88D (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Illinois

COMMITTEE FOR A FAIR AND BALANCED MAP

Plaintiff

v.

ILLINOIS STATE BOARD OF ELECTIONS

Defendant

Civil Action No. 1:11-cv-05065

(If the action is pending in another district, state where:)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Senate Redistricting Committee

Attn: Kwame Raoul, Chairperson, 1509 E. 53rd St 2nd Floor, Chicago, IL 60615

☒ **Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: Refer to attached Rider to Subpoena.

Place: Make produced documents available for messenger pick-up at 1509 E. 53rd St 2nd Floor, Chicago, IL 60615.

Date and Time:

08/29/2011 10:30 am

☐ **Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:**Date and Time:**

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 08/19/2011

CLERK OF COURT

OR

Lori E. Lightfoot DSO
Attorney's signature

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (name of party) COMMITTEE FOR A FAIR AND BALANCED MAP, who issues or requests this subpoena, are:

Lori E. Lightfoot
71 S. Wacker Dr., Ste. 4471
Chicago, IL 60606

llightfoot@mayerbrown.com
312-701-8680

Fm:Senator Kwame Raoul To:Mr. Eric Madlar (12177821631)

15:14 08/24/11GMT-05 Pg 03-14

AO 88H (Rev. 06/09) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. 1:11-cv-05065

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This subpoena for *(name of individual and title, if any)* Senate Redistricting Committee
was received by me on *(date)*

☒ I served the subpoena by delivering a copy to the named person as follows:

(date) *(signature)* *(title)*

☐ I returned the subpoena unexecuted because:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$

My fees are \$ for travel and \$ for services, for a total of \$ 0.00

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

RIDER TO SUBPOENA

Plaintiffs, by and through their counsel, hereby request that the Senate Redistricting Committee ("SRC") produce the following documents for inspection and copying at the recipient's address on the date set forth in the subpoena. The SRC shall adhere to the Definitions and Instructions below.

DEFINITIONS

As used herein, the terms and phrases identified below shall have the following meanings:

The term "Action" when used herein means Case No. 1:11-CV-05065 filed in the United States District Court for the Northern District of Illinois Eastern Division.

The term "Complaint" when used herein means the Complaint filed on July 27, 2011 in the above referenced Action.

The terms "Plaintiff" or "Plaintiffs" refer to all of the following:

- (a) The Committee for a Fair and Balanced Map (the "Committee"), including its members: Tom Long, Tom Ewing, Larry Nelson, J. Dennis Hastert, James D. Pearson, Lynn Martin, Michael Keiser, and Alexander D. Stuart;
- (b) The Partisan Gerrymander Plaintiffs named in the Complaint;
- (c) The Racial Gerrymander Plaintiffs named in the Complaint; and
- (d) The Racial Dilution Plaintiffs named in the Complaint.

The term "Defendant" refers to all of the following: The Illinois State Board of Elections, including its members: William McGuffage, Jesse R. Smart, Harold D. Byers, Betty J. Coffrin, Ernest L. Gowen, Judith C. Rice, Bryan A. Schneider, Charles W. Scholz, or any employee,

officer, director, agent, attorney or other representative thereof, and any person acting or purporting to act on its behalf.

The terms "You" and "Your" when used herein mean the recipient of these Requests for Production, Your present and former attorneys, agents, investigators, representatives, or anyone else acting in cooperation or in concert with You.

The term "Person" when used herein means any individual, firm, corporation, joint venture, partnership, limited liability company, trust, association, entity or group of persons, unless the request is clearly referring only to an individual, human person.

The term "Illinois General Assembly" when used herein means the state legislature of the state of Illinois.

The terms "Illinois House of Representatives" and "House" when used herein mean the lower house of the Illinois General Assembly and its 118 representatives.

The term "Illinois Senate" when used herein means the upper house of the Illinois General Assembly and its 59 members.

The terms "Congressional District" and "District" when used herein refer to an electoral District in the state of Illinois that elects a single member of the U.S. House of Representatives.

The term "Redistricting" when used herein refers to the process of redefining the geographic boundaries of legislative or Congressional Districts.

The term "Illinois House Redistricting Committee" when used herein means the committee comprised of Democrat and Republican Illinois House members charged with conducting Redistricting hearings throughout the state of Illinois prior to the drawing of the state and congressional legislative maps. Members include: Barbara Flynn Currie, Mike Fortner,

Edward Acevedo, Marlow Colvin, Jim Durkin, Lou Lang, Frank Mautino, Chapin Rose, Timothy Schmitz, Jill Tracy, and Karen Yarbrough.

The term "Illinois Senate Redistricting Committee" when used herein means the committee comprised of Democrat and Republican Illinois Senate members charged with conducting Redistricting hearings throughout the state of Illinois prior to the drawing of the state and congressional legislative maps. Members include: Kwame Raoul, Michael Noland, Jacqueline Y. Collins, William R. Haine, Don Harmon, Mattie Hunter, Emil Jones, III, Kimberly Lightford, Edward D. Maloney, Iris Y. Martinez, Dale A. Richter, Shane Cultra, Kirk W. Dillard, Dan Duffy, David Luechtefeld, and Matt Murphy.

The term "Communication" when used herein means any and all of the following: written, electronic or otherwise, oral communications, conversations by telephone, meetings, and any contact, written, formal or informal, at any time or place, and under any circumstances whatsoever in which information of any nature was transmitted or exchanged in any form.

The term "Document" when used herein means any and all written, typed, printed, recorded, computerized, electronic, or graphic statements, Communications, or other matter, however, produced or reproduced, whether in final or draft form, and whether or not now in existence, in Your possession, custody, or control, including without limitation, all writings; studies; analyses; tabulations; evaluations; reports; reviews; agreements; contracts; letters or other correspondence; emails from all email accounts in Your possession, custody, or control, including, but not limited to, Your personal, professional, and official email accounts; messages; facsimile messages; text messages; memoranda; records; notes; reports; summaries; PDFs; spreadsheets; sound recordings or transcripts of personal or professional telephone conversations or messages; meetings; conferences or interviews; telephone toll records; diaries; desk calendars;

appointment books; drawings; graphs; charts; maps; diagrams; blueprints; tables; indices; pictures; photographs; films; tapes; statistical or analytical records; minutes or records of committee or other meetings or conferences; transcripts of testimony; reports or summaries of investigations; opinions or reports or summaries of investigations; opinions or reports of consultants; press releases; newspaper and magazine clippings; projections; and any other Document, writing, or other data compilation of whatever description, including, but not limited to, electronically stored data although not yet printed out or the memory units containing such data from which information can be obtained or translated into reasonable usable form; any other data types, including without limitation, all District mapping software data files and shapefiles, including data files in draft form.

The term "Proposed Congressional Plan" when used herein refers to the new map for the state of Illinois' Congressional Districts adopted by the Illinois General Assembly and signed into law by Governor Pat Quinn on Friday, June 24, 2011 as Illinois P.A. 97-14; including, but not limited to, Senate Bill 1178 and amendments thereto.

The terms "Compact" and "Compactness" when used herein mean the degree to which the territory assigned to a District is close together. There are several mathematical methods to measure the elements of Compactness, including, but not limited to, measuring the Circularity Ratio and the Schwartzberg Test:

- (a) The term "Circularity Ratio" when used herein refers to the ratio of the area of the proposed Districts to the area of a circle having the same perimeter; this measure of shape is used in Redistricting to maximize the Compactness of electoral Districts and avoid gerrymandering.

(b) The term "Schwartzberg Test" when used herein refers to the perimeter-based measure that compares proposed Districts to a circle, measuring distance from the center of gravity to points in the District boundary. This test is used in Redistricting to maximize the Compactness of electoral Districts and avoid gerrymandering.

The term "Core Report" when used herein refers to the constituency report produced by Maptitude, AutoBound, or similar software that indicates the number of persons or voters residing in a district in a Redistricting plan, who also reside in that same numbered or a differently numbered district in another Redistricting plan.

The terms "Voting Age Population" and "VAP" when used herein mean all citizens above the voting age of eighteen years.

The term "2010 Census" when used herein refers to the twenty-third decennial national census of the United States.

The term "2010 Elections" when used herein means all 2010 Illinois state and Congressional Elections.

To "Identify" a Person or witness means to state his or her name, present employer, last known address, telephone number (business and home), and employer and position in which he or she was employed at the time in question.

To "Identify a Document" means the following: (a) the name and present address of the Person who prepared it; (b) the name and address of the Person to whom it was addressed or distributed; (c) a detailed description of the general nature of the Document's contents; (d) the date it was prepared, and the date it was distributed; (e) the name and address of the Person having custody of the original and any copies; (f) whether the original will voluntarily be made

available for the Plaintiff to inspect and copy, and if not, the specified reason for this refusal and a detail explanation of why this reason is persuasive; and (g) whether the original Document has been destroyed, and if so, why it was destroyed, the Person who directed it to be destroyed, who destroyed the Document, and when it was done.

To "Identify" a Communication or discussion shall mean to state the following: (a) the name and present address of each of the Persons who were involved in any way with the Communication or discussion; (b) a detailed description of the subjects that were involved in the Communication or discussion; (c) whether any memoranda, notes or other compilations, by whatever means, relating to the Communication or discussion were ever created; (d) the general substance of what was said by each Person involved in the Communication or discussion; and (e) the date on which such Communication or discussion occurred.

INSTRUCTIONS

1. Each production request shall be construed to include all Documents within the SRC's possession, custody or control, or the possession, custody or control of its present and former attorneys, agents, investigators, representatives, or anyone acting in cooperation or in concert with It in this case, as of the date of its response to these production requests, as well as any Document that subsequently is obtained or discovered and that demonstrates that any production originally provided in response to these production requests was incorrect or incomplete in any way when made or subsequently became incorrect or incomplete; such supplemental Documents are to be promptly supplied.

2. If the response to any production request consists, in whole or in part, of an objection to, or including burdensomeness, then provide those Documents which can be produced without undue burden. For such Documents that are too burdensome to produce,

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5. If You withhold any information requested by the production requests contained herein, furnish a list with Your responses to these discovery requests identifying all such withheld information together with the following:

- (a) a brief description of the nature of the information withheld;
- (b) the reason(s) for the withholding;
- (c) an identification of all Documents relating or referring to the information;
- (d) the name of each Person most knowledgeable as to the information, and an identification by employment and title of each such Person;
- (e) a statement of facts constituting the basis for the withholding; and
- (f) the discovery requests to which the information relates. (If any such withholding relates only to a portion of a particular discovery request specify the portion to which the withholding relates.)

6. The use of the singular form of any word shall be deemed to include the plural form and *vice versa*, and the use of one gender shall include all others, as appropriate in context.

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All Documents, Communications, or other matter, including without limitation, all data files or any other data type, related to election and/or voter data; election Redistricting software, including, but not limited to, Maptitude and AutoBound shapefiles and data, and/or data from any other District mapping software program(s), including data files in draft form, Core and Compactness report data, and all 2010 Census data used for the purpose of planning and drawing the Proposed Congressional Plan or any other potential congressional plan that was not adopted.

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All records of payment to any experts or consultants.

Request No. 20

All Documents identifying any Person(s) involved in the decision to post the Proposed Congressional Plan on the Illinois Senate website during the early morning hours of May 27, 2011.

Fm: Senator Kwame Raoul To: Mr. Eric Madiar (12177821631)

15:14 08/24/11 GMT-05 Pg 01-14

facsimile transmittal

To: Mr. Eric Madiar Fax: 12177821631

From: Senator Kwame Raoul Date: Aug 24, 2011

Re: Subpoena from Committee for a Fair and Balanced Ma Pages: 14

Urgent

For Review

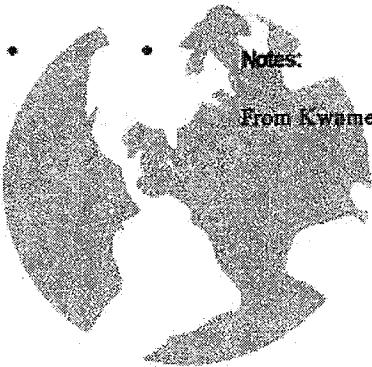
Please Comment

Please Reply

Please Recycle

Notes:

From Kwame



CONFIDENTIAL

EXHIBIT B



GENERAL ASSEMBLY

STATE OF ILLINOIS

September 2, 2011

Lori Lightfoot
71 S. Wacker Drive
Suite 4471
Chicago, IL 60606

VIA EMAIL lightfoot@mayerbrown.com

Re: Response to subpoenas in the matter of Committee For a Fair and Balanced Map v. Illinois State Board of Elections

Dear Lori:

We write in response to subpoenas, dated August 19, 2011, served upon the Illinois Senate, the Illinois House of Representatives, Office of the President of the Illinois Senate, Office of the Speaker of the Illinois House of Representatives, the Senate Redistricting Committee, the House Redistricting Committee, Ronald Holmes, Bria Scudder, and Travis Shea. As you are aware, we agreed that a response would be provided to you no later than Friday, September 2, 2011.

As a preliminary matter, we recognize that each party was served individually and acknowledge that the Senate and its employees, as well as the House and its employees, act independently. For ease of responding and to avoid undue confusion, the Senate and the House are responding collectively and shall be referred to in this response as the "Senate and House." Additionally, all subpoenas are referred to as the "Request."

General Objections

The Senate and House make the following general objections, whether or not separately set forth in response to each document request, to each and every instruction, definition and document request made in the subpoena for production of documents:

1. The Senate and House object generally to the Request to the extent that it seeks to impose requirements with respect to the production of documents that are in addition to or different from those set forth in Rules 26, 34, and 45 of the Federal Rules of Civil Procedure, and any other applicable Federal Rules or Local Rules for the Northern District of Illinois.

2. The Senate and House object generally to the Definitions and Instructions included in the "Rider to Subpoena" to the extent that said definitions or instructions purport to enlarge, expand or alter the plain meaning and scope of any individual request on the grounds that such enlargement, expansion or

alteration renders the request vague, ambiguous, unduly broad, and uncertain. The Senate and House further object to the definitions and instructions to the extent that they seek to impose obligations beyond the requirements of the Federal Rules of Civil Procedure, and any other applicable Federal Rules or Local Rules for the Northern District of Illinois.

3. The Senate and House object generally to the Request on the grounds that it is overbroad and unduly burdensome to the extent that it seeks production of "all" documents related to redistricting dating back to January 1, 2010.

4. The Senate and House object generally to the Request insofar as any individual request seeks production of documents or communications protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine.

Document Requests

1. All Documents related to the state of Illinois legislative and/or congressional Redistricting process which led to the planning, development, negotiation, drawing, revision or re-drawing of the Proposed Congressional Plan.

RESPONSE: The Senate and House object to request number 1 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine. Further, the Senate and House object to request number 1 on the grounds that it seeks documents not reasonably calculated to lead to the discovery of admissible evidence. The only non-privileged documents in the possession of the Senate and House that are responsive to your request are publicly available documents that were previously provided to one of your associates pursuant to the Freedom of Information Act. Please let us know if you would like an additional copy of those records.

2. All Documents, including, but not limited to, reports, analyses, election results or other election data, and Communications pertaining or relating to the planning, development, negotiation, drawing, revision or re-drawing of the Proposed Congressional Plan.

RESPONSE: The Senate and House object to request number 2 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine. Further, the Senate and House object to request number 1 on the grounds that it seeks documents not reasonably calculated to lead to the discovery of admissible evidence. Additionally, request 2 seeks the production of the documents sought in request 1.

3. All Documents regarding any Communications, discussions, meetings, and/or conversations, pertaining to or relating to the planning, development, negotiation, drawing, revision or re-drawing of the Proposed Congressional Plan with any of the following Persons:

- (a) Defendants;
- (b) Democratic Congressional Campaign Committee ("DCCC");
- (c) Any present or former staff, personnel, employees, attorneys, agents, investigators, representatives, experts, consultants, or anyone else acting on the DCCC's behalf;
- (d) Illinois House Redistricting Committee;
- (e) Illinois Senate Redistricting Committee;
- (f) Any member of the Illinois General Assembly;

- (g) Any present or former staff, personnel, employees, attorneys, agents, investigators, representatives, experts, consultants, or anyone else acting on the Illinois General Assembly's behalf;
- (h) Any current or former member of the United States Congress;
- (i) Any present or former staff, personnel, employees, attorneys, agents, investigators, representatives, experts, consultants, or anyone else acting on the United States Congress' behalf; and
- (j) Any interest groups which testified at Redistricting hearings.

RESPONSE: The Senate and House object to request number 3 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine. Further, request 3 seeks the production of the documents sought in requests 1 and 2.

4. All Documents, Communications, or other matter, including without limitation, all data files or any other data type, related to election and/or voter data; election Redistricting software, including, but not limited to, Maptitude and AutoBound shapefiles and data, and/or data from any other District mapping software program(s), including data files in draft form, Core and Compactness report data, and all 2010 Census data used for the purpose of planning and drawing the Proposed Congressional Plan or any other potential congressional plan that was not adopted.

RESPONSE: The Senate and House object to request number 4 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine. Additionally, the Senate and House object on the grounds that the request seeks the production of software and the applicable federal and local rules do not require the Senate and House to produce software programs. Further, request 4 seeks the production of the documents sought in requests 1 and 2.

5. All Documents, Communications, or other matter, that constitute, refer or relate to data files and drafts of data files used to formulate the composition of Districts 3, 4, and 5 of the Proposed Congressional Plan, including Compactness reports, Core reports, and any 2010 Census processed data used in conjunction with any District mapping software program(s).

RESPONSE: The Senate and House object to request number 5 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine. Further, request 5 seeks the production of the documents sought in requests 1 through 4.

6. Any draft drawings of any Districts of the Proposed Congressional Plan, whether created by You or by any other Person.

RESPONSE: The Senate and House object to request number 6 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine. Additionally, the Senate and House object on the grounds that the request seeks the production of software and the applicable federal and local rules do not require the Senate and House to produce software programs. Further, request 6 seeks the production of the documents sought in requests 1 and 2.

7. All documents which reflect the identity of any and all persons who assisted in the drawing of Districts, 3, 4, and 5 as they appear in the Proposed Congressional Plan.

RESPONSE: The Senate and House object to request number 7 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine.

8. All documents which reflect when the planning and drawing of Districts 3, 4, and 5 of the Proposed Congressional Plan were finalized.

RESPONSE: The Senate and House object to request number 8 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine.

9. With respect to District 3 of the Proposed Congressional Plan, all Documents which reflect the identity of Person(s) who made or participated in the decision to have the Latino VAP in District 3 as 24.64%.

RESPONSE: The Senate and House object to request number 9 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine. Further, the request, in conjunction with the provided definitions, is vague and not a viable request.

10. With respect to District 4 of the Proposed Congressional Plan, all Documents which reflect the identity of Person(s) who made or participated in the decision to have the Latino VAP in District 3 as 65.92%.

RESPONSE: The Senate and House object to request number 10 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine. Further, the request, in conjunction with the provided definitions, is vague and not a viable request.

11. With respect to District 5 of the Proposed Congressional Plan, all Documents which reflect the identity of Person(s) who made or participated in the decision to have the Latino VAP in District 5 as 16.05%.

RESPONSE: The Senate and House object to request number 11 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine. Further, the request, in conjunction with the provided definitions, is vague and not a viable request.

12. All Documents which reflect the identity of any expert or consultant who reviewed, commented on, advised or otherwise rendered any advice or opinion concerning the Proposed Congressional Plan.

RESPONSE: The Senate and House object to request number 12 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine.

13. All documents which reflect the identity of any and all experts or consultants who conducted any racial block [sic] voting or racial polarization analyses concerning the Proposed Congressional Plan.

RESPONSE: The Senate and House object to request number 13 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine.

14. If any racial block [sic] voting or racial polarization analysis was conducted by any expert or consultant, produce Documents which reflect all such analyses.

RESPONSE: The Senate and House object to request number 14 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine.

15. All Documents or Communications pertaining or relating to any analysis, review, study, or consideration undertaken by any expert, consultant, scholar or other Person regarding whether the Proposed Congressional Plan complies with Section 2 of the Voting Rights Act of 1965, 42 U.S.C. §1973, the U.S. Constitution, or the Illinois Constitution.

RESPONSE: The Senate and House object to request number 15 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine.

16. All documents which consist of reports or opinions of any expert or consultant used to support the composition of the entire Proposed Congressional Plan.

RESPONSE: The Senate and House object to request number 16 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine.

17. All Documents which reflect any and all analysis concerning the viability of drawing two Latino congressional Districts, whether the Districts be considered majority or influence District.

RESPONSE: The Senate and House object to request number 17 on the grounds that it is overly broad, unduly burdensome, vague, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine.

18. Any engagement letters provided to experts or consultants engaged for the purpose of planning, preparing, drawing, analyzing or providing supporting evidence for the Proposed Congressional Plan.

RESPONSE: The Senate and House object to request number 18 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine. Subject to and without waiving the foregoing objections, contracts for experts or consultants retained by the Senate and House were previously provided, as detailed in our response to request 1, as they are publicly available documents.

19. All records of payment to any experts or consultants.

RESPONSE: The Senate and House object to request number 19 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine. Further,

the Senate and House object to request number 1 on the grounds that it seeks documents not reasonably calculated to lead to the discovery of admissible evidence. As previously indicated to you in separate correspondence, Dr. Allan Lichtman, Dr. David Lublin, and Dr. Gerald Webster did not perform any analysis of the Proposed Congressional Plan, and therefore any payments to them would not fall within the scope of this request. Records of payments made to Election Data Services ("EDS"), another consultant we previously discussed, are available from the Office of the Comptroller. As a courtesy, we have made a request for records of payment and will produce them when they are made available to our office.

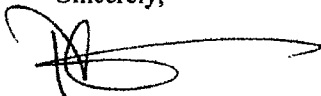
20. All Documents identifying any Person(s) involved in the decision to post the Proposed Congressional Plan on the Illinois Senate website during the early morning hours of May 27, 2011.

RESPONSE: The Senate and House object to request number 20 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine.

21. All Documents identifying any Person(s) who actually posted the Proposed Congressional Plan on the Illinois Senate website during the early morning hours of May 27, 2011.

RESPONSE: The Senate and House object to request number 21 on the grounds that it is overly broad, unduly burdensome, and seeks documents or communications that are protected by legislative immunity, the deliberative process privilege, the attorney-client privilege, and/or the work product doctrine.

Sincerely,



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EXHIBIT C

Case: 1:02-cv-08346 Document #: 26 Filed: 08/27/03 Page 1 of 1 PageID #:194

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	Ian H. Levin
CASE NUMBER	02 C 8346	DATE	8/27/2003
CASE TITLE	Gonzalez vs. City of Aurora		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

--

DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input checked="" type="checkbox"/>	Status hearing held.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Motion for entry of protective order is granted for the reasons stated of record and on the terms stated of record. All matters relating to the referral of this action having been resolved, the case is returned to the assigned judge.
(11)	<input type="checkbox"/>	[For further detail see order (on reverse side of/attached to) the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.	U.S. DISTRICT COURT CLERK AUG 27 PM 5:02 FILED FOR DOCKET ED-111111 Date/time received in central Clerk's Office	number of notices	Document Number 26
<input type="checkbox"/>	No notices required.		AUG 28 2003	
<input type="checkbox"/>	Notices mailed by judge's staff.		docketing deputy initials	
<input type="checkbox"/>	Notified counsel by telephone.		date mailed notice	
<input checked="" type="checkbox"/>	Docketing to mail notices.		mailing deputy initials	
<input type="checkbox"/>	Mail AO 450 form.			
<input checked="" type="checkbox"/>	Copy to judge/magistrate judge.			
SM	courtroom deputy's initials			

EXCERPTED TRANSCRIPT OF PROCEEDINGS

THE CLERK: Recall 2002-C-8346, Gonzalez vs. City of Aurora. State your names again for the record, please.

MS. VALDEZ: Maria Valdez on behalf of the plaintiffs.

MS. MEDENWALD: Jennifer Medenwald on behalf of the defendants.

THE COURT: All right, counsel, I'm ready to rule orally on the Defendants' Motion for Entry of Protective Order. It will take a few minutes so if you want to sit down and relax, whatever is comfortable for either of you, okay?

MS. VALDEZ: Thank you, your Honor.

THE COURT: Okay, thank you. First, while you're taking your seats, I will state here that I -- It probably is not going to come out like Oliver Wendell Holmes -- articulate orally like Oliver Wendell Holmes. But the motion -- I'm going to grant the motion with certain conditions which I will state at the end of my ruling statement.

First of all, I believe that the defendant has standing to raise the issue with certain qualifications that I'll discuss later in the concept of the protective order. First of all, since the body -- since the City and the City Council of the City of Aurora have been sued, as a practical matter since the body is represented, the Court must assume that the defense counsel speaks for the parties involved, particularly, I guess,

1 the most involved are the aldermen since they represent the
2 City Council as a body in the City.

3 And so it makes sense to me that they would have
4 standing and I realize also that the Schlitz and Drayton cases
5 do support it. I'm mindful that the plaintiff asserts that the
6 Fourth Circuit has to a restrictive standard, but I think as
7 stated in the Schlitz and Drayton cases, would support the
8 point that I just made and particularly I would cite the
9 Drayton case and I probably, for the record, should state that
10 the citations of the Schlitz case are, the Schlitz case is out
11 of the Fourth Circuit and is at 854 Fd.2d 43, and Drayton vs.
12 the Mayor and City Council of Rockwell, Maryland is 699 Fd.Sup.
13 1155.

14 And I think in the Drayton case, in the only -- I
15 think it's the only footnote in the case, the Court mentioned
16 that the defendant is entitled to legislative immunity accord-
17 ing to Schlitz, 854 Fd.2d at 46, and so, quote from the
18 footnote:

19 "Thus, the Mayor and City Council, as a body have
20 standing under Schlitz to claim legislative immunity."

21 So I think the Court would find, as I said, and I'm
22 going to make one qualification later which I think will
23 address one of the points that the plaintiff has made on
24 standing.

25 Next, the Court is mindful of the plaintiffs'

1 arguments as to qualified privilege versus absolute privilege
2 and the balancing tests that plaintiff feels are required and
3 the important federal interests that are involved here.

4 But ultimately the Court feels that the governing
5 case here is the Village of Arlington Heights case which I
6 should also cite if you'll bear with me for a moment. That's
7 the Village of Arlington Heights vs. Metropolitan Housing
8 Development, 429 US 252, 1977, and the reason the Court feels
9 that that case governs is that that court set forth the
10 standards for, quote, "determining whether invidious discrim-
11 inatory purpose was a motivating factor," end quote, in
12 determining the official actions of local authorities.

13 And that's at page 268, and at page 267 and 268 they
14 go through a multi-factor test, so I think that the issue here
15 is they did set forth the standards for the type of issue that
16 we have here, which is the question of the intentional and
17 invidious discrimination by the City Council and the City.

18 And I think in going through in that page 268 of that
19 case the Supreme Court stated that the -- After going through a
20 whole series of tests from page 266 on, which starts with:

21 "Determining whether a discriminatory purpose was a
22 motivating factor" --

23 And by the way, it's page 266, not 268 that I quoted from --

24 "this was a motivating factor demands a sensitive inquiry
25 into such circumstantial and direct evidence of intent as

1 may be available."

2 End quote. That's at page 266.

3 The Court then talks about different things and it
4 says:

5 "Cases where the evidentiary inquiry is relatively
6 easy are rare,"

7 and then goes into a multi-factor test talking about the
8 historical background and a series of other factors, and they
9 come down to -- The Supreme Court comes down to, makes a
10 statement at page 268, quote:

11 "The legislative or administrative history may be
12 highly relevant, especially where there are contemporary
13 statements by members of the decision-making body, minutes
14 of its meetings or reports. In some extraordinary circum-
15 stances, the members might be called to the stand at trial
16 to testify concerning the purpose of the official action,
17 although even then such testimony will frequently be
18 barred by privilege." [Citations omitted.]

19 And so the point is it seems to be that it's
20 generally in these types of situations it's only an extra-
21 ordinary instances that the city council members can be called
22 to the stand, and at footnote 18 of that case, the Supreme
23 Court states with respect to this issue:

24 "This court has recognized ever since Fletcher vs.
25 Peck" --

1 Which is an 1810 case, and I continue to quote:

2 -- "that judicial inquiries into legislative or executive
3 motivation represent a substantial intrusion into the
4 workings of other branches of government. Placing a
5 decision maker on the stand is therefore, quote, 'usually
6 to be avoided' and citation omitted."

7 And that's the reasoning, so basically, the law seems
8 to be in this situation that only in extraordinary circum-
9 stances do you have the testimony and that would include, I
10 think, depositions on these issues of motivation and so on and
11 so forth from the individual legislators.

12 And the Court finds that, with all the things that
13 exist here, no extraordinary circumstance has been shown and I
14 would say also that, respectfully, the cases that are cited by
15 plaintiffs' counsel don't really overcome that, are really not
16 -- And I'll go into a few of them. (Pause.)

17 For example, Reno vs. Bossier Parish School, 528 U.S.
18 320, which is cited by the plaintiff, does not deal with the
19 issue here. What the court was dealing with there was applying
20 the multi-factor test that was articulated in Arlington Heights
21 and we are applying the multi-factor test here. The plaintiff
22 is entitled to go into all those things but that does not
23 include the motivations and things of the individual
24 legislature. There's a whole series of standards.

25 And then Bossier Parish School Board vs. Reno, there

1 is a statement, you know, the plaintiff states that there was
2 testimony of superintendents, board members and map drawers
3 stated, you know, set forth in the case but that was part of
4 the legislative history and contemporaneous statements. And we
5 are agreeing that the legislative history and contemporaneous
6 statements which are reflected in the transcripts and other
7 things can be brought forward. That did not stand for the
8 proposition you can question individual legislators or aldermen
9 on their mental processes, et cetera.

10 And also the plaintiff cites Bush vs. Vera, 517 US
11 952 at 961. That was a very lengthy opinion on legislative
12 districts out of Texas with the Texas legislature, and there is
13 a statement in there, the testimonies of state officials con-
14 firmed certain things but that was not an issue -- The issue we
15 have was not addressed in that case. It may have been like the
16 city council case in Chicago where they agreed to testify.
17 There's no statement in the case of how that testimony came in,
18 so I don't think the issue was addressed.

19 So for the reasons that I've just stated, I think
20 that the motion would be granted. But here's the conditions
21 that I think ought to be put on it. There's three things.

22 First of all, I think that even though -- I think
23 the plaintiff has an argument that has a good point, that the
24 body can raise it but I don't know what each individual member
25 of the city council, who are the people you're trying to get

1 to, what their position is. I think a procedure should be set
2 up where the plaintiff could either subpoena them or they're
3 noticed for deposition or you could work out and if any of
4 these people want to waive it, I think they have the right to
5 waive it. And so I think you can work that out.

6 I don't know if you have to subpoena them or defense
7 counsel can work something out, but I do think ultimately, even
8 though I feel that they generally have standing, I do think
9 that plaintiff has a right to ask each individual, or find out
10 if each individual person wants to stand on that immunity. If
11 they want to stand on the immunity, then I've made my finding.
12 If they want to waive that immunity, then I think you have the
13 right to depose them.

14 Secondly, I think this addresses the point that you
15 raised at the end of the argument earlier today, that there
16 might be other things. My protective order and the motion
17 before me really asks, and I'm quoting from the motion itself,
18 Motion for Entry of Protective Order, that:

19 "Plaintiff and each of them be barred from any
20 inquiry pertaining or relating to the subjective motives,
21 mental processes, rationales or state of mind of any
22 member of the Aurora City Council," --
23 -- et cetera, et cetera. My protective order is solely limited
24 to that. Whether there's other things or not I think you're
25 going to have to work that out separately, if there are. I

1 don't know if that addresses what you're saying.

2 MS. VALDEZ: Could I --

3 THE COURT: Yes, let me just finish and then I'll --
4 Do the last thing. Then you'll say --

5 So that's what my protective order is. I think based
6 on what I've stated and the case law and the way it's been
7 argued, that's what it relates to. I don't know if that
8 answers -- So I was hoping that answered the question that sort
9 of came up at the end in the alternative, you know, if you lost
10 the motion.

11 And my view about the -- There's an argument over
12 whether the tapes are audible or not, and my view is that the
13 way -- Defendant says they're audible. Plaintiff says they're
14 not always audible, and I think you should work on that to try
15 to make them more audible, and to the extent that any of them
16 are really that the plaintiff feels are not audible, that the
17 defendant has to, at their cost, transcribe -- make the
18 transcriptions of the tapes and provide it to plaintiffs'
19 counsel.

20 So that's basically -- That's my ruling, so the
21 ruling will be the defendants' motion for entry of a protective
22 order -- Sheila?

23 THE CLERK: Yes.

24 THE COURT: -- is granted.

25 THE CLERK: (Inaudible, multiple voices.)

1 MS. VALDEZ: -- my understanding that the law would
2 provide such a privilege only in the context of the legislative
3 arena when they're actually undertaking a legislative duty or
4 responsibility. But if the alderman is meeting with his con-
5 stituents or talking to reporters about what their intent and
6 motivation was, then that is not covered by any privilege. So
7 what I'm seeking is some --

8 THE COURT: Well, you can get it from the reporter.

9 Yes, my view about it is -- and I don't -- Their
10 motion was addressed to the motives of setting and voting on
11 and selecting and acting or otherwise adopting the map, but --
12 And I say this respectfully to you, and I, you know, if this
13 happened. I have no, by the way, I don't know the City of -- I
14 didn't even know the City of Aurora had a suit, so I mean I
15 have no opinion about what's going on out there. I don't know.
16 But I certainly always have sympathy for minorities personally,
17 huh? If they feel they've been done, so it's not -- But I do,
18 you know, if they feel they've been discriminated against. If
19 they were, I wish you a lot of luck. At the same time I'm not
20 mad at the, you know. . .

21 But I think the case law is that . . . I think the
22 privilege that they have here goes to any legislative or
23 executive motivation, and I think some of those things might go
24 to that. If you can prove it through other means, I -- My
25 general view is I don't think you can get into that because I

1 think it's just -- And I don't say this disrespectfully -- I
2 know a good litigant -- I was a lawyer and you're an advocate,
3 but it sort of, in a sense, might be circumventing -- It sounds
4 to me like in a sense it's circumventing what we're doing here.

5 I'm not ruling on it because it's not before me, but
6 my general view is that they have protection against whatever
7 their motive was, and if that's what really that's doing is
8 saying, well, they had a motive, you know, had a motive, I
9 think you've got to prove it by these other things unless
10 there's the other things that are set forth in the Arlington
11 Heights case, and Supreme Court and there, you know, I'll just
12 go back to the quote, to where they say that:

13 "Since 1810, that judicial inquiries into legislator
14 or executive motivation represent a substantial intrusion
15 into the workings of other branches of government.

16 Placing a decision maker on the stand is therefore usually
17 to be avoided."

18 And so I would think you have a -- I'm not going to -- I'm only
19 ruling on what they have here, but I do feel, my own view about
20 it is that what you're doing, unless you can carve out an
21 exception that it's not really in that area, to motivation, is
22 I don't think you can get into that at this point.

23 MS. VALDEZ: Your Honor, if I could then file a
24 motion for clarification, provide you the legal authority which
25 limits --

1 THE COURT: Go to Judge Guzman.

2 MS. VALDEZ: Okay.

3 THE COURT: I'm not, you know, I can't -- You know,
4 that's -- I'm not ruling -- You know, you're asking me a
5 question I'm not -- You know, I'm really not ruling on that
6 because that's something that came up at the end. I'm just
7 telling you that's what it seems like to me. So why don't you
8 try to work that out with counsel?

9 MS. VALDEZ: All right, your Honor.

10 THE COURT: Because I think what the counsel's view
11 is I think that they thought that you were just going into
12 their mental processes for purposes of how they -- what their
13 motives were for enacting, you know, voting on it. Is that
14 correct, counsel?

15 MS. MEDENWALD: Yes.

16 THE COURT: Hm?

17 MS. MEDENWALD: Yes.

18 THE COURT: Yes. You can leave that for a later day.
19 Why don't you try to work that out? Hm?

20 MS. VALDEZ: It's just that I understand exactly what
21 the Court has ruled. It's just that I believe once the Court
22 has found such a privilege to exist, that the privilege doesn't
23 apply to all contacts. And that's all I'm seeking clarifica-
24 tion on, your Honor.

25 THE COURT: I think you'll have to work that out and

1 if it doesn't work out, you'll file a motion with Judge Guzman
2 and if he wants me to hear it, I'll hear it.

3 MS. VALDEZ: Okay, your Honor.

4 THE COURT: Because I've got this particular motion
5 and I think this is all I have. And I'm not trying to duck the
6 thing but I think this is -- Right now my -- I have -- For the
7 reasons that I've stated, I'm ruling in favor of the defendant.

8 MS. VALDEZ: Very well, your Honor.

9 THE COURT: Okay? Okay. Because I'm closing the
10 referral out. I don't mean that, you know, so I think if
11 you've got any -- My view about it is, counsel, that you've got
12 authorities but I -- You had a chance to -- Both sides had a
13 chance to brief it. You're on a discovery schedule. I think
14 you've got to go into these other areas. I don't think it's
15 proper to go into anything that deals with their motivation.
16 Okay? As to why they enacted things. Unless you can show
17 extraordinary circumstances and I think that would be the
18 subject of a separate motion. All right? Thank you very much.

19 MS. VALDEZ: Thank you, your Honor.

20 MS. MEDENWALD: Thank you.

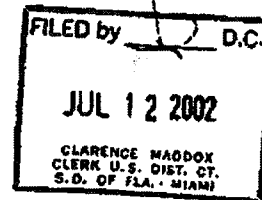
21 (Hearing adjourned.)

EXHIBIT D

Case 1:02-cv-20244-AJ Document:321 Entered on FLSD Docket 07/15/2002 Page 1 of 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION



HONORABLE RAUL L. MARTINEZ, et al.)

Plaintiffs)

vs.)

JOHN ELLIS "JEB" BUSH, et al.)

Defendants)

CASE NO. 02-20244-CIV-JORDAN

GEORGE MAURER)

Plaintiff)

vs.)

STATE OF FLORIDA, et al.)

Defendants)

CASE NO. 02-10028-CIV-JORDAN

MEMORANDUM OPINION CONCERNING PROTECTIVE ORDER¹

PER CURIAM:

This order sets out in greater detail the rationale for this court's May 30, 2002 order [D.E. 201] granting in part President McKay's motion for a protective order from the proposed depositions of Senators Jack Latvala and Daniel Webster [D.E. 166] and Speaker Feeney's amended emergency motion for a protective order from the depositions of legislators and their staff [D.E. 195].

The *Martinez* plaintiffs seek to depose state legislators regarding their decisions on how to implement the process leading up to redistricting. The Deutsch intervenors want to question the state legislators regarding their motivations in deciding where to draw district boundaries, as well as the thought processes and decision-making processes in voting on the redistricting plan. For the reasons set forth below, we find that both types of questioning of legislators and their staff are impermissible in this context.

It is well-settled that under 42 U.S.C. § 1983, state legislators are entitled to absolute immunity from liability for their legislative activities. *See, e.g., Bogan v. Scott-Harris*, 523 U.S. 44,

¹The clerk is directed to file this order in *Martinez v. Bush*, No. 02-20244-Civ-Jordan. Unless otherwise indicated, all docket entries refer to *Martinez v. Bush*, No. 02-20244-Civ-Jordan.

321
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Case 1:02-cv-20244-AJ Document 321 Entered on FLSD Docket 07/15/2002 Page 2 of 7

49, 118 S. Ct. 966, 970, 140 L. Ed. 2d 79 (1998) (“[W]e have held that state and regional legislators are entitled to absolute immunity from liability under § 1983 for their legislative activities.”) (citing *Tenney v. Brandhove*, 341 U.S. 367, 372-375, 71 S. Ct. 783, 786-88, 95 L. Ed. 1019 (1951)); *Ellis v. The Coffee County Bd. of Registrars*, 981 F.2d 1185, 1190 (11th Cir. 1993) (noting that the Supreme Court has extended absolute immunity in legislative functions to state legislators); *Berkley v. Common Council of the City of Charleston*, 63 F.3d 295, 301 n.5 (4th Cir. 1995) (“[T]he Supreme Court has also recognized an absolute immunity from section 1983 liability for state and regional legislators, who are not otherwise protected by the Speech or Debate Clause and whose state immunity would not protect them from suits brought under section 1983.”) (citations omitted).

The plaintiffs and intervenors in the case at bar do not seek to hold any legislator individually liable; rather, they seek discovery about processes and acts conducted by the legislators in order to prove that the redistricting plan violates the United States Constitution and the Voting Rights Act, 42 U.S.C. § 1973. There is a split amongst the circuit courts of appeals as to the nature and extent of the immunity state legislators enjoy in this context. One group of decisions extends state legislators full immunity analogous to the Speech or Debate Clause immunity granted to members of Congress by Art. I, § 6, cl. 1 of the Constitution. This immunity is subject to limitations imposed by the Supreme Court, such as the prosecution of a state legislator for violating the federal bribery statute. *See, e.g., United States v. Gillock*, 445 U.S. 360, 373-74, 100 S. Ct. 1185, 1193-94, 63 L. Ed. 2d 454 (1980) (holding that in the context of a federal criminal prosecution for bribery, federal common law does not recognize an evidentiary privilege for state legislators because the interest in avoiding federal interference was less than in a civil action brought by a private plaintiff to vindicate private rights); *Miles-Un-Ltd, Inc. v. Town of New Shoreham*, 917 F. Supp. 91, 100 (D.N.H. 1996) (holding generally that federal common law legislative immunity does not extend to traditionally legislative actions taken in bad faith, because of corruption or on primarily personal grounds, but noting that the court must consider whether disclosure is required to fully develop the facts and that “generally speaking, the motivation of local legislators in passing regulations is protected from disclosure.”).

The Fourth Circuit has adopted this full legislative immunity approach, *Burtnick v. McLean*, 76 F.3d 611, 613 (4th Cir. 1996), and district courts in other circuits have applied this reasoning.

See Cano v. Davis, 193 F. Supp. 2d 1177, 1180-81 (C.D. Cal. 2002) (full immunity); *M Sec. and Invs., Inc. v. Miami-Dade Co.*, No. 00CV1951, 2001 WL 1685515, at *2 (S.D. Fla. Aug. 14, 2001) (adopting Fourth Circuit reasoning); *Miles-Un-Ltd, Inc.*, 917 F. Supp. 91 at 100 (same). In contrast, the Third Circuit refused to recognize immunity for state legislators commensurate with the Speech or Debate Clause protection but did not preclude the possibility of a deliberative process privilege. *See In re Grand Jury*, 821 F.2d 946, 958-59 (3rd Cir. 1987) (rejecting a qualified speech or debate privilege for state legislators in the context of a grand jury subpoena duces tecum, but refusing to preclude "the possibility of a more narrowly tailored privilege for confidential deliberative communications," that applies only to "confidential deliberations of law or policymaking, reflecting opinions, recommendations or advice"). The deliberative process privilege is a qualified one that may be overcome by showing a sufficient need for the information or by making a prima facie showing of misconduct. *See id.*

Under either approach, state legislators are protected from answering questions about their motives for and decisions about establishing a process for gathering information from which to craft legislation. They are also protected from discovery as to their thought and decision-making processes in voting on the redistricting plan. We therefore decline to align ourselves specifically with one line of analysis or the other.

The privilege of legislative immunity applies to state legislators' actions taken "in the sphere of legitimate legislative activity." *Tenney*, 341 U.S. at 376, 71 S. Ct. at 788. The Eleventh Circuit has defined legislative activity as any conduct in furtherance of a legislator's duties. *See DeSisto College, Inc. v. P. Line*, 888 F.2d 755, 764-65 (11th Cir. 1989). Decision-making regarding the implementation of processes leading up to redistricting, which the *Martinez* plaintiffs seek to discover, qualifies as such an activity. The drafting of the redistricting plan, thought processes, and decision making processes in voting on the redistricting plan, which the *Deutsch* intervenors seek to discover, also qualifies as legislative activity.

Legislative immunity from liability also functions as a testimonial privilege concerning the motivations for engaging in such activities. *See, e.g., Schlitz v. Commonwealth of Virginia*, 854 F.2d 43, 45 (4th Cir. 1988) ("Where...the suit would require [state] legislators to testify regarding conduct in their legislative capacity, the doctrine of legislative immunity has full force."), *overruled on other*

grounds, Berkley, 63 F.3d at 303; *Marylanders for Fair Representation, Inc. v. Shaefer*, 144 F.R.D. 292, 297-98 (D. Md. 1992) ("Legislative immunity not only protects state legislators from civil liability, it also functions as an evidentiary and testimonial privilege."), quoted in *M Sec. and Invs., Inc.*, 2001 WL 1685515, at *2 (S.D. Fla. Aug. 14, 2001); *Knights of Columbus v. Town of Lexington*, 138 F. Supp. 2d 136, 140 (D. Mass. 2001) ("Legislative immunity functions as an evidentiary and testimonial privilege."). See also *Hispanic Coalition on Reapportionment v. Legislative Reapportionment Comm'n*, 536 F. Supp. 578, 583 n.2 (E.D. Pa. 1982) (noting earlier protective order entered in case), *aff'd*, 459 U.S. 801, 103 S. Ct. 32, 74 L. Ed. 2d 46 (1982).

Not only is the testimony privileged, but we also fail to see what probative value such testimony would give to the *Martinez* plaintiffs' and Deutsch intervenors' case. The Deutsch intervenors hope to show through deposition testimony that the legislature attempted to carve out districts to benefit one or more legislators' ability to win a seat in the United States House of Representatives, or to benefit or harm some minority group. This theory is simply flawed because the Deutsch intervenors would have to show that the intent of a few legislators was imputed to the entire legislature or that the entire body was somehow overwhelmingly influenced by those few, an impossible task. See, e.g., *Marylanders for Fair Representation, Inc.*, 144 F.R.D. at 299 n.16 (noting that even if the plaintiffs could obtain information from individual legislators concerning the redistricting process, "it is questionable how much assistance such information might prove in establishing plaintiffs' *prima facie* case" because the motivation of the entire legislature, rather than the motivation of a handful of members, is relevant) (citation omitted). Cf. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 558, 113 S. Ct. 2217, 2239-40, 124 L. Ed. 2d 472 (1993) (Scalia, J., concurring in part and concurring in the judgment) ("[I]t is virtually impossible to determine the singular 'motive' of a collective legislative body...and this Court has a long tradition of refraining from such inquiries.") (citations omitted); *Edwards v. Aguillard*, 482 U.S. 578, 636-37, 107 S. Ct. 2573, 2605-06, 96 L. Ed. 2d 510 (1987) (Scalia, J., dissenting) (noting that "determining the subjective intent of legislators is a perilous enterprise" because "[t]o look for the sole purpose of even a single legislator is probably to look for something that does not exist" as there are an infinite number of possible motivations behind a legislator's decision to enact a statute, that even if it were possible to assess an individual legislator's intent, it is unclear how many of them must

have the invalidating intent to establish legislative intent). Thus, even if we were operating under a deliberative process privilege, we find that the plaintiffs and intervenors have failed to make a showing sufficient to overcome the privilege.²

We believe that a state legislator cannot, under the circumstances of this case, be compelled to testify concerning his or her reasons for actions taken as part of the legislative process, which includes not only the casting of votes but also the processes leading to the formulation and consideration of legislation. *See, e.g., Simpson v. City of Hampton*, 166 F.R.D. 16, 18 (E.D. Va. 1996) (holding that, although legislative intent is a factor examined under the totality of circumstances test for Voting Rights Act violations, city council members' personal notes and files were protected by testimonial legislative privilege); *Marylanders for Fair Representation, Inc.*, 144 F.R.D. at 298 n.12 (holding that the Governor of Maryland was entitled to legislative immunity for his actions in preparing and presenting a legislative redistricting plan). *But see United States v. Irvin*, 127 F.R.D. 169, 174 (C.D. Cal. 1989) (holding that need for information to achieve the objectives of the Voting Rights Act overcame qualified deliberate process privilege for pre-decisional, non-factual, non-public communications within federal agencies).

Similarly, a legislator's staff cannot, under the circumstances of this case, be compelled to testify concerning communications with the legislator on the same subjects. *See Ellis*, 981 F.2d at 1192 (noting that the Supreme Court has extended the privilege of absolute legislative immunity to "committee staff, consultants, investigators, and congressional aides, insofar as they are engaged in legislative functions"); *Marylanders for Fair Representation, Inc.*, 144 F.R.D. at 298 ("The doctrine of legislative immunity is also applicable to legislative staff members, officers, or other employees of a legislative body, although it is considered 'less absolute' as applied to these individuals.").

The Deutsch intervenors' arguments about comity are not persuasive. All of the counts in the Martinez plaintiffs' corrected second amended complaint and the Deutsch intervenors' amended complaint are federal claims. We do not need to look to state law to determine whether Florida grants legislative immunity here because testimonial privilege is a matter of federal law with regard to the federal claims in this case. *See Fed. R. Evid. 501; Florida Ass'n of Rehab. Facilities, Inc.*, 164

²We note, in any event, that at trial there was no dispute that the party in power normally seeks to maximize its political strength through the redistricting process.

F.R.D. 257, 261, 265 n.2 (N.D. Fl. 1995) (holding that privilege is a matter of federal law where jurisdiction is premised upon a federal question and that Florida law is not dispositive where the privilege asserted is a federal one); *Irvin*, 127 F.R.D. at 171 (holding that federal privilege law, rather than the privilege law of the forum state, applied in a federal question case).


For the reasons set forth above, the plaintiffs and intervenors may not conduct depositions of Senators Latvala or Webster, or Representatives Feeney, Diaz-Balart, Rubio, or Thompson. They may, however, depose other state legislators or staff members who have not invoked the privilege.³ As stated at the May 29, 2002 status conference, given the types of questions sought to be asked by the plaintiffs and intervenors, we conclude that, as to the legislators whose counsel represented that their clients wanted to invoke legislative immunity, there is no need for the legislators to make that invocation personally at a deposition in response to specific questions. See *Florida Ass'n of Rehab. Facilities, Inc.*, 164 F.R.D. at 260 (holding that the issue of whether there was a legislative evidentiary privilege to preclude all questions pertaining to legislative duties was ripe even though the deponents did not appear at depositions and assert their privilege in the context of specific questions, where the Florida Legislature claimed that there was no testimony the deponents could provide outside of the scope of their legislative duties). Cf. *United States v. Klinger*, 128 F.3d 705, 709 (9th Cir. 1997) (affirming the exclusion of witness testimony where the district court conducted a thorough colloquy on the issue with counsel for both sides without holding an evidentiary hearing and holding that, "[w]here the district court finds that the witness could invoke his Fifth Amendment privilege as to all questions, it may recognize a witness's blanket privilege against self-incrimination if 'the court, based on its knowledge of the case and of the testimony expected from witnesses could legitimately refuse to answer essentially all relevant questions'" (quoting *United States v. Tsui*, 646 F.2d 365, 368 (9th Cir. 1981)); *United States v. Goodwin*, 625 F.2d 693, 701 (5th Cir. 1980) (holding that a witness may be totally excused from testifying under the Fifth Amendment privilege "only if the court finds that he could 'legitimately refuse to answer essentially all relevant questions'" (quoting *United States v. Gomez-Rojas*, 507 F.2d 1213, 1220 (5th Cir. 1975)).


³Because the legislative testimonial privilege is a personal privilege, it must be waived or asserted by each individual legislator personally or through his or her attorney. See *Marylanders for Fair Representation, Inc.*, 144 F.R.D. at 298.

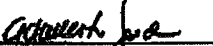
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As stated in this court's May 30, 2002 order [D.E. 201], the plaintiffs may depose staff member John Guthrie, but may not inquire into communications between Mr. Guthrie and any legislator regarding the legislator's reasons for actions taken as part of the legislative process. The plaintiffs may, however, question Mr. Guthrie about all statements in his Rule 26(a)(2) report/affidavit, including communications with legislators relating to statements in the report/affidavit, whether consistent or inconsistent with statements in the report.

DONE and ORDERED in chambers in Miami, Florida, this 11th day of July, 2002.


Gerald B. Tjoflat
United States Circuit Judge


Robert L. Hinkle
United States District Judge

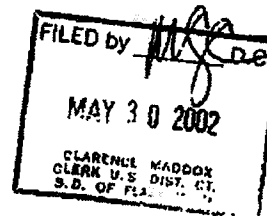

Adalberto Jordan
United States District Judge

Copy to: All counsel of record and *pro se* parties
Hon. Gerald B. Tjoflat
Hon. Robert L. Hinkle

Case 1:02-cv-20244-AJ Document 201 Entered on FLSD Docket 05/31/2002 Page 1 of 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION
(THREE-JUDGE COURT)



HONORABLE RAUL L. MARTINEZ, et al.)

Plaintiffs)

vs.)

JOHN ELLIS "JEB" BUSH, et al.)

Defendants)

CASE NO. 02-20244-CIV-JORDAN

GEORGE MAURER)

Plaintiff)

vs.)

STATE OF FLORIDA, et al.)

Defendants)

CASE NO. 02-10028-CIV-JORDAN

OMNIBUS ORDER

This order sets out, in rather summary fashion, rulings on some of the pending pretrial motions so that the parties will be better able to prepare for trial. A more detailed order explaining the rationale for some of the rulings will be issued when time permits. Unless otherwise indicated, all docket entries refer to *Martinez et al. v. Bush et al.*, No. 02-20244-Civ-Jordan. This order is to be filed in *Martinez* and in *Maurer v. State of Florida*, No. 02-10028-Civ-Jordan.

• The motions by Senate President Mc Kay and House Speaker Feeney for a protective order concerning the depositions of legislators and their staff [D.E. 166, 167] are GRANTED IN PART. The plaintiffs shall not conduct depositions of Senators Latvala or Webster or Representatives Feeney, Diaz-Balart, Rubio, or Thompson.¹ A state legislator cannot, under the circumstances of this case, be

¹As explained at yesterday's status conference, given the types of questions sought to be asked by the plaintiffs and intervenors, we conclude that as to these legislators – whose counsel represented that their clients wanted to invoke legislative immunity – there is no need for the legislators to make that invocation personally at a deposition. *See Fla. Association of Rehabilitation Facilities v. State of Florida*, 164 F.R.D. 257, 260 (N.D. Fla. 1995). We do not, of course, mean to say that no legislator may testify, or that no legislator may be deposed. A legislator may wish to

201/2/2

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compelled to testify concerning his or her reasons for actions taken as part of the legislative process (which includes not only the casting of votes but the processes leading to the formulation and consideration of legislation). Similarly, a legislator's staff cannot, under the circumstances of this case, be compelled to testify concerning communications with the legislator on the same subjects. Under 42 U.S.C. § 1983, state legislators are entitled to absolute immunity for their legislative activities, *see, e.g., Bogan v. Scott-Harris*, 523 U.S. 44, 49 (1998), and this immunity functions as a testimonial privilege concerning the motivations for engaging in such activities for the reasons expressed in cases like *Knights of Columbus v. Town of Lexington*, 138 F.Supp.2d 136, 140 (D.Mass. 2001), and *Marylanders for Fair Representation v. Schaefer*, 144 F.R.D. 292, 297-98, 304-05 (D.Md. 1992). *See also Hispanic Coalition on Reapportionment v. Legislative Reapportionment Committee*, 536 F.Supp. 578, 583 n.2 (E.D. Pa.) (noting earlier protective order entered in case), *aff'd*, 459 U.S. 801 (1982).

The plaintiffs may take the deposition of staff member John Guthrie, but may not inquire into communications between Mr. Guthrie and any legislator regarding the legislator's reasons for actions taken as part of the legislative process. The plaintiffs may, however, question Mr. Guthrie about all statements in his Rule 26(a)(2) report/affidavit, including communications with legislators relating to statements in the report/affidavit, whether consistent or inconsistent with the statements in the report.

- Representative Deutsch's motion for leave to add Dr. John Allford as an expert [D.E. 187] is GRANTED. The defendants may depose Dr. Allford prior to the start of trial, and – so that any prejudice to them will be eliminated – they can (to the extent they wish) wait until the week of June 17, 2002, to cross-examine Dr. Allford and/or present evidence (expert or otherwise) to rebut Dr. Allford's testimony.² This additional time should give the defendants sufficient breathing room to analyze, investigate, and counter Dr. Allford's opinions.

- Senate President Mc Kay's motion to realign Attorney General Butterworth [D.E. 146] is DENIED WITHOUT PREJUDICE. As explained at yesterday's status conference, Attorney General Butterworth will examine the plaintiffs' witnesses after the plaintiffs and intervenors and before the

testify or be deposed, and this ruling does not bar him or her from doing so.

²Should it become necessary for the court to convene the week of June 17, 2002, any trial schedule will be announced at the conclusion of the first week of trial.

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defendants, and will examine the defendants' witnesses after the defendants and before the plaintiffs and intervenors. If developments at trial warrant it, we will reconsider the motion to realign.

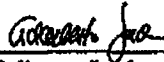
- The defendants' motions for judgment on the pleadings as to the City of Pembroke Pines [D.E. 111, 119] are GRANTED, for reasons to be set forth in a subsequent order.

- The defendants' other motions for judgment on the pleadings (or partial judgment on the pleadings) as to the complaints of the plaintiffs and intervenors [D.E. 110, 112, 117, 118 in *Martinez et al. v. Bush et al.*, No. 02-20244-Civ-Jordan, and D.E. 17, 19 in *Maurer v. State of Florida*, No. 02-10028-Civ-Jordan] are GRANTED IN PART and DENIED IN PART. For reasons to be set forth in a subsequent order, the motions are GRANTED as to Count II of the corrected second amended complaint in *Martinez*, and as to that portion of Count I of the second corrected amended complaint in *Martinez* that is based on § 2 of the Voting Rights Act, 42 U.S.C. § 1973. In all other respects, the motions are DENIED.

- Count III of the corrected second amended complaint in *Martinez et al. v. Bush et al.*, No. 02-20244-Civ-Jordan is DISMISSED based upon the *ore tenus* withdrawal of that claim by counsel at yesterday's status conference.

The parties shall exchange witness lists and lodge any objections to witness proffers by 5:00 p.m. on Friday, May 31, 2002. Trial will begin at 10:00 a.m. on Monday, June 3, 2002.

DONE and ORDERED in chambers in Miami, Florida, this 30th day of May, 2002.



Adalberto Jordan
United States District Judge
for the Three-Judge Court

Copy to: All counsel of record and *pro se* parties
Hon. Gerald B. Tjoflat
Hon. Robert L. Hinkle

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
ENTERED

OCT 31 1997

EDWARD CHEN, *et al.*,
Plaintiffs,

Michael N. Milby, Clerk

VS.

CIVIL ACTION NO. H-97-1180

CITY OF HOUSTON,
Defendant.

§
§
§
§
§
§
§

MEMORANDUM AND ORDER

This Voting Rights Act case is currently before the Court on Houston City Councilmember Martha Wong's Motion to Quash Subpoena [Doc. #45]. The issue is whether the existence of legislative immunity precludes the deposition of Councilmember Wong and any inquiry through Councilmember Wong into legislative motive concerning the adoption of the City's redistricting plan. The Court has considered the briefs filed by the parties and the limited case law, including conflicting decisions by various district courts. Based on this review, the Court concludes the motion to quash should be granted.

Federal common law immunity for state legislators was recognized by the United States Supreme Court in *Tenney v. Brandhove*, 341 U.S. 367, 376, *reh'g denied* 342 U.S. 843 (1951). This absolute legislative immunity was subsequently extended to "regional legislators" to the extent they act in a capacity similar to members of the state legislature. *Lake Country Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391, 402-06 (1979).

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In the Fifth Circuit, the immunity has also been extended to local legislators for acts in furtherance of their legislative duties.¹ *Hernandez v. City of Lafayette*, 643 F.2d 1188, 1193 (5th Cir. 1981), *cert. denied*, 455 U.S. 907 (1982). Legislative immunity also “functions as an evidentiary and testimonial privilege.” *Marylanders for Fair Representation, Inc. v. Schaefer*, 144 F.R.D. 292, 298 (D. Md. 1992).

Plaintiffs argue that legislative immunity should not apply to a Voting Rights Act case in which the legislators’ motive is an element of their claim.² The Supreme Court has long recognized “that judicial inquiries into legislative or executive motivation represent a substantial intrusion into the workings of other branches of government. Placing a decision-maker on the stand is therefore ‘usually to be avoided’.” *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 268 n.18 (1977), *quoting Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971). The Supreme Court in *Arlington Heights* also approved the district court’s order which “forbade questioning Board members about their motivation at the time they cast their votes.” *Arlington Heights*, 429 U.S. at 270 n.20.

Federal district courts which have considered the legislative immunity issue in the Voting Rights Act context have reached different conclusions. In *United States v. Irvin*, 127

¹ Plaintiffs admit in their response to Councilmember Wong’s motion that the focus of their inquiry is “the legislative process, including the factual bases and analyses available to the Council, as well as the impact of the plan, the sequencing of events, departures from usual practices, and similar matters.” Brief in Opposition, Doc. #48, p. 8.

² The Court notes that the relevant inquiry concerns the intent of the City through its City Council acting as a legislative body, not the intent of any individual councilmember.

F.R.D. 169, 173-74 (C.D. Cal. 1989), the district court applied a balancing of interests approach and required disclosure of records of nonpublic meetings of the county board of supervisors. The California court recognized the general rule that inquiry into the mental processes of administrative decision-makers should not be permitted. The court in *Irvin* then noted that there was "little evidence concerning the events immediately preceding the Board's adoption of the final redistricting plan." *Id.* at 173. Balancing competing interests, the court determined that the legislative immunity "must yield in this instance to the need for disclosure." *Id.* at 174.

A different result was reached by district courts on the east coast. In *Simpson v. City of Hampton*, 166 F.R.D. 16 (E.D. Va. 1996) and *Marylanders for Fair Representation*, 144 F.R.D. at 18, the district courts held that legislative immunity foreclosed discovery. The district court in *Simpson* relied heavily on the decision of the United States Court of Appeals for the Fourth Circuit in *Burtnick v. McLean*, 76 F.3d 611 (4th Cir. 1996). In *Burtnick*, the Fourth Circuit held that legislative immunity applied in an employment discrimination context to entitle a member of the Baltimore Board of Estimates to assert a privilege from testifying in federal district court as to his motives in abolishing the plaintiff's job. *Id.* at 613.

Plaintiffs argue that instead of recognizing testimonial legislative immunity in Voting Rights Act cases, the Court should apply a four-factor analysis, citing *American Civil Liberties Union of Mississippi, Inc. v. Finch*, 638 F.2d 1336, 1344 (5th Cir. 1981). Initially, the Court notes that the four-factor test recommended by Plaintiffs is directed more properly

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toward testimonial privilege regarding confidential relationships, not legislative functions of governmental officials.

Additionally, were the Court to apply this four-factor analysis instead of recognizing legislative immunity's testimonial privilege, the result would be the same. Confidential communications among legislators in conducting legislative business is an essential element of our system of government, a system which is to be fostered and protected by the community. The Court would also find that the damage to the legislative process if the legislators were required to disclose their own confidential communications and thoughts, as well as those of their fellow legislators, would be significant. This injury would be far greater than the injury to Plaintiffs in this case who are entitled to obtain records available to the public and evidence available from any councilmember who elects to waive the privilege.

The Court concludes that the deposition of Houston City Councilmember Wong is precluded by the testimonial privilege element of legislative immunity which the councilmember has chosen to exercise.³ Plaintiffs may present any direct evidence of intent they may be able to obtain from other, non-privileged sources, such as records of public proceedings, public statements by councilmembers, and evidence provided by councilmembers who elect to waive their testimonial privilege.

³ The testimonial privilege is personal and can be waived by any individual councilmember. See *Burnick v. McLean*, 76 F.3d 611, 613 (4th Cir. 1996). Any councilmember identified by the City as a trial witness waives the privilege and will be required to provide relevant discovery requested by Plaintiffs.

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IT IS ORDERED that Houston City Councilmember Wong's Motion to Quash Subpoena [Doc. #45] is **GRANTED**.

SIGNED this 31st day of October, 1997, at Houston, Texas.



NANCY F. ATLAS
UNITED STATES DISTRICT JUDGE

EXHIBIT F

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE FOR A FAIR AND BALANCED MAP, JUDY BIGGERT, ROBERT J. DOLD, RANDY HULTGREN, ADAM KINZINGER, DONALD MANZULLO, PETER J. ROSKAM, BOBBY SCHILLING, AARON SCHOCK, JOHN M. SHIMKUS, JOE WALSH, RALPH RANGEL, LOU SANDOVAL, LUIS SANABRIA, MICHELLE CABALLERO, EDMUND BREZINSKI, and LAURA WAXWEILER,

Plaintiffs,

v.

ILLINOIS STATE BOARD OF ELECTIONS, WILLIAM M. MCGUFFAGE, JESSE R. SMART, BRYAN A. SCHNEIDER, BETTY J. COFFRIN, HAROLD D. BYERS, JUDITH C. RICE, CHARLES W. SCHOLZ, and ERNEST L. GOWEN,

Defendants.

Case No. _____

Civil Action No. 1:11-cv-05065
(Pending in the U.S. District Court for the Northern District of Illinois)

**PLAINTIFFS' MOTION TO COMPEL DEMOCRATIC CONGRESSIONAL
CAMPAIGN COMMITTEE TO COMPLY WITH SUBPOENA
SEEKING THIRD PARTY DISCOVERY**

Pursuant to Federal Rules of Civil Procedure 37(a) and 45(c), Plaintiffs hereby move this Court to compel the Democratic Congressional Campaign Committee (“DCCC”) to comply with the subpoena (“Subpoena”, attached as Exhibit A) that Plaintiffs have issued to it, and to produce and permit for inspection and copying the materials specified therein. In support of this motion, Plaintiffs state as follows:

INTRODUCTION

1. In their Subpoena, Plaintiffs seek documents from the DCCC because, as set forth in more detail below, on information and belief, the DCCC, its employees, and/or agents had a substantive role in creating the 2011 Illinois congressional redistricting plan (“Proposed Congressional Plan”) enacted as Illinois P.A. 97-14. Having injected itself into the Illinois congressional redistricting process, the DCCC now seeks to hide behind a series of bogus objections which are wholly lacking in merit. Plaintiffs seek highly relevant information regarding the DCCC’s role in creating the Proposed Congressional Plan, which is a product of a backroom legislative process shrouded in darkness. Plaintiffs are entitled to that information to prove their claims that the Proposed Congressional Plan intentionally dilutes the votes of Latinos, enacts an unconstitutional racial gerrymander, and engages in blatant partisan gerrymandering. And the DCCC has no legitimate basis on which to shield that information from discovery.

2. Because the DCCC has regarded the Subpoena as something akin to a social invitation that it can ignore and has utterly failed to approach the meet and confer process with anything other than bad faith, Plaintiffs have no alternative but to seek this Court’s assistance to enforce the duly issued Subpoena.

FACTUAL BACKGROUND

3. On July 27, 2011, Plaintiffs filed a six-count complaint (the “Complaint,” attached as Exhibit B) in the United States District Court for the Northern District of Illinois challenging the legality of the Proposed Congressional Plan. Plaintiffs are comprised of the following: the Committee for a Fair and Balanced Map, an independent not-for-profit organization created by Illinois citizens concerned about the Congressional redistricting process

in Illinois; several Latino, Latina, and Republican voters who are residents of Chicago and the surrounding suburbs; and ten Illinois Republican congresspersons.

4. The action (“Action”), docketed as case no. 1:11-cv-05065, was initially assigned to District Judge Joan H. Lefkow and subsequently assigned to a three-judge panel consisting of Judge Lefkow, Circuit Judge John Daniel Tinder and District Judge Robert L. Miller, Jr. Plaintiffs brought Action against the Illinois State Board of Elections and its members Harold Byers, Betty Coffrin, Ernest Gowen, William McGuffage, Jesse Smart, Judith Rice, Bryan Schneider, and Charles Scholz (collectively the “Board”). Plaintiffs’ Complaint asserts that the Proposed Congressional Plan violates the Voting Rights Act, the Equal Protection Clause of the Fourteenth Amendment, the Fifteenth Amendment, and the First Amendment because it unlawfully uses racial gerrymandering to create a majority Latino district, dilutes the votes of Latinos by packing them into a single congressional district, and is gerrymandered to discriminate against Republican voters.¹

5. In light of the looming 2012 election season, for which the Proposed Congressional Plan was created, the parties conferred and submitted a agreed discovery schedule to the court, and on August 11, 2011, the court entered an order (“Order” attached as Exhibit C) setting a briefing schedule and granting expedited discovery. The briefing schedule accounted for the fact that the Defendants may file a motion to dismiss (Order ¶ 1) (which they did on

¹ Specifically, Plaintiffs allege that the Proposed Congressional Plan intentionally dilutes Latino votes, in violation of Section 2 of the Voting Rights Act (Count I), the Equal Protection Clause of the Fourteenth Amendment (Count II), and the Fifteenth Amendment (Count III). Plaintiffs also allege that the Proposed Congressional Plan discriminates on the basis of race without being narrowly tailored to further a compelling state interest, in violation of the Equal Protection Clause of the Fourteenth Amendment (Count IV). Finally, Plaintiffs allege that the Proposed Congressional Plan is an unconstitutional political gerrymander, in violation of the First Amendment (Count V) and the Equal Protection Clause of the Fourteenth Amendment (Count VI). *See* Compl. ¶¶ 108-38.

August 31), made the response due September 28, and made the reply due October 12. But the court nonetheless ordered discovery to proceed at the same time, setting expert discovery deadlines of September 14 and September 28 (*id.* ¶ 2.3), and mandating that “[d]iscovery shall be completed by October 19, 2011.” *Id.* ¶ 2.8.

6. On August 19, 2011, Plaintiffs issued the Subpoena to the DCCC, returnable on August 29, 2011. The Subpoena consisted of twenty-one requests for production seeking documents related to: (1) the Illinois congressional redistricting process and the planning, development, negotiation, drawing, revision, or re-drawing of the Proposed Congressional Plan; (2) election and voter data as well as software used to plan and draw the Proposed Congressional Plan, its respective districts, or any other potential redistricting plan that was not ultimately adopted; (3) expert or consultant reports or any other analyses regarding the Proposed Congressional Plan; and (4) the posting of the Proposed Congressional Plan on the Illinois Senate website on May 27, 2011. The DCCC received service of the Subpoena on or about August 22, 2011.

7. On August 26, 2011, counsel for Plaintiffs received an email from counsel for the DCCC attaching a four-page letter containing purported objections (“Objections” attached as Exhibit D) to the Subpoena.² The Objections made hardly any specific references to the twenty-one Subpoena requests and were replete with threats and mischaracterizations. The cover email nonetheless suggested a telephone conference to “discuss the matter.” *See* Ex. E. Counsel for Plaintiffs replied on the same day via email and voicemail message stating their willingness to speak with counsel for the DCCC regarding their Objections but expressing their concerns with

² All email correspondence between counsel for Plaintiffs and counsel for the DCCC relating to the Subpoena is attached as Exhibit E hereto.

the substance and tone of the Objections and “the complete absence of any indication that evidences any willingness to abide by a court order”. *See id.*

8. On August 29, 2011, counsel for Plaintiffs and counsel for DCCC exchanged email messages scheduling a telephone conference to discuss the Subpoena and Objections. *See id.* That afternoon, counsel for Plaintiffs and counsel for the DCCC participated in the telephone conference. During the call, Plaintiffs’ counsel learned that counsel for the DCCC had not conferred with his client as to whether the DCCC in fact had any responsive documents prior to either sending the August 26, 2011 letter containing the blanket Objections or participating in the August 29, 2011 call. Plaintiffs’ counsel expressed willingness to negotiate the scope of the Subpoena should the DCCC be willing to continue the meet and confer process.

9. On the evening of August 29, 2011, counsel for Plaintiffs sent a confirmatory email to the DCCC’s counsel memorializing the parties’ agreement that counsel for the DCCC would consult his client about the scope of its involvement in the process to redraw Illinois’ congressional districts and the types of documents that it maintains as a result of that involvement. *See id.* Counsel for Plaintiffs reiterated that Plaintiffs sought a request-by-request response to the Subpoena, including objections and a description of the documents the DCCC was willing to provide, no later than Friday, September 2, 2011. Counsel for Plaintiffs also requested a sample protective order since the DCCC’s counsel had raised concerns about producing documents in the absence of a protective order. *See id.*

10. On August 30, 2011, counsel for Plaintiffs and the DCCC exchanged emails in response to the August 29 telephone conference and confirmatory email. DCCC’s counsel stated that “[w]e have already objected to the subpoena” and represented that he would consult with his client and “provide a counterproposal by the end of the week.” Counsel for DCCC further stated

that his client would “consider what you said yesterday, and . . . determine what - if anything - it might have that would be both responsive to your needs, and respectful of its rights as a non-party under Rule 45.” *Id.*

11. Shortly before 5 PM on September 2, 2011—the Friday before the Labor Day holiday weekend—counsel for the DCCC sent counsel for Plaintiffs a letter attached to an email (“Sept. 2 Letter” attached as Exhibit F). Rather than offer a good faith “counterproposal” per his representation, the DCCC’s counsel wrote that, in light of the Board’s August 31, 2011 motion to dismiss, he and his client “believe that discovery from DCCC . . . would be premature until the court decides [the motion].” Counsel for Plaintiffs replied via email, expressing disappointment in the utter lack of the promised counterproposal. *See* Ex. E. Counsel for Plaintiffs also explained that the DCCC’s intention “to wait to address substantive compliance with the subpoena until the Court rules on the motion to dismiss is unworkable” since both the agreed scheduling order entered by Judge Lefkow and her standing order require that “discovery proceeds unabated even during the pendency of the briefing of the motion to dismiss.” *Id.* As of the time of this motion, six days later, the DCCC has failed to respond to that Sept. 2, 2011 email or otherwise provide any substantive response to the Subpoena.

ARGUMENT

I. Plaintiffs are Justified in Seeking Production of Documents from the DCCC.

12. Parties may issue subpoenas to “obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter.” *In re Providian Fin. Corp. Sec. Litig.*, 222 F.R.D. 22, 25 (D.D.C. 2004) (citing FED. R. CIV. P.

26(b)(1)); *see also Heat & Control, Inc. v. Hester Indus., Inc.*, 785 F.2d 1017, 1023 (Fed. Cir. 1986) (noting that Rule 45 must be read in light of Rule 26(b)). Federal Rule of Civil Procedure 45(c)(2)(B)(i) “provides that a person commanded to produce documents may object to the subpoena, but that the serving party may then move the Court for an order compelling production.” *In re Micron Tech., Inc. Sec. Litig.*, 264 F.R.D. 7, 8-9 (D.D.C. 2010). On a motion to compel, “[t]he moving party carries the burden of showing that the requested documents are discoverable within the meaning of Federal Rule of Civil Procedure 26(b)(1).” *Prescott v. Cnty. of Stanislaus*, 2011 WL 2119036, at *1 (E.D. Cal. May 23, 2011) (granting motion to compel). But “relevancy at the discovery stage is broadly defined.” *Albany Molecular Research, Inc. v. Schloemer*, 274 F.R.D. 22, 27 (D.D.C. 2011) (denying motion to quash). As set forth below, Plaintiffs’ requests plainly come within the scope of Rule 26.

13. Plaintiffs seek limited and specific categories of documents from the DCCC based on the DCCC’s involvement in developing the map that became the Proposed Congressional Plan. Based on several sources, Plaintiffs have a good faith basis to believe that the DCCC possesses such documents.

14. In particular, on information and belief, in late April 2011, an Illinois Democratic member of Congress approached an Illinois Republican member and presented a draft partial Congressional reapportionment plan. *See* Exhibit G. That Democratic member informed his Republican colleague that the DCCC and/or one of its agents created the draft map. That draft map was later incorporated almost wholesale into the map first debuted by Illinois state senate Democrats in the early morning hours of May 27, 2011, the Friday of Memorial Day weekend, and then passed by the Illinois General Assembly along party lines four days later on May 31, 2011.

15. For example, the distinct and unusual shape of the proposed 4th Congressional district—known as “the earmuff”—as passed by the Illinois General Assembly is nearly identical to the same district in the DCCC’s draft plan. *See* Exhibit H. Indeed, the division between the proposed 4th and 3rd districts in Chicago, which is where Plaintiffs allege intentional discrimination, appears *exactly* the same in both plans. *See id.* Likewise, the proposed 10th Congressional district of the Proposed Congressional Plan passed by the Illinois General Assembly is nearly identical to the same district in the DCCC’s draft plan, with the same two northern arms—one extending to Zion and the other to Round Lake Beach—and the same southern arm extending into Cook County along Interstate 294. *See* Exhibit I. In fact, most Chicago area districts appear to have originated in the DCCC’s draft plan. *See* Exhibit J. While minor changes were made in the version ultimately passed by the General Assembly—such as extending the proposed 5th district an additional block to separate Rep. Judy Biggert from her constituents—the plans clearly are related. Given this apparent nexus between the DCCC draft and the Proposed Congressional Plan which is now Illinois law, Plaintiffs, who challenge the constitutionality of the Proposed Congressional Plan, rightfully seek information from the entity and/or individuals who had a role in creating that plan.

16. Tellingly, neither in its four-page, single-spaced Objections, nor in any subsequent communications with Plaintiffs’ counsel, has the DCCC ever denied that it possesses relevant and responsive documents. Even when Plaintiffs’ counsel assured counsel for the DCCC that the Subpoena was limited to the role that the DCCC played in creating the Proposed Congressional Plan and not other information, the DCCC never stated that it played no such role or that it had no responsive documents. Had it done so, and affirmed that fact in writing, that

would have ended the inquiry. The only conclusion, therefore, is that the DCCC does indeed possess documents responsive to the Subpoena.

17. Rather than produce those documents in good faith compliance with the Subpoena, however, the DCCC has stonewalled Plaintiffs and attempted to evade the Subpoena with completely specious Objections.

II. The DCCC's Refusal to Comply with the Subpoena Based on the Pending Motion to Dismiss is Improper.

18. Per its Sept. 2 Letter, the DCCC unilaterally decided that it need not comply with the Subpoena because the Board filed a motion to dismiss in the underlying Action. As set forth above (*see* ¶ 4, *supra*), Judge Lefkow's August 19, 2011 Order clearly requires that discovery continue while the Board's motion to dismiss is pending. The DCCC has absolutely no right to defy that order and ignore the subpoena, a court order, in the meantime. "Rule 45 subpoenas are 'discovery' under Rules 16 and 26 of the Federal Rules of Civil Procedure, and are subject to the same deadlines as other forms of discovery." *Dag Enters., Inc. v. Exxon Mobil Corp.*, 226 F.R.D. 95, 104 (D.D.C. 2005). As this District has made clear, "[a] scheduling order is not a frivolous piece of paper, idly entered, which can be cavalierly disregarded by counsel without peril. Indeed, disregard of the order would undermine the court's ability to control its docket, disrupt the agreed-upon course of litigation, and reward the indolent and the cavalier." *Id.* (internal citations and brackets omitted).

19. Moreover, Judge Lefkow's standing order pertaining to discovery explicitly states that "the pendency of a motion, such as a motion to dismiss, *does not operate as a stay or extension of discovery.*" Exhibit K (emphasis added). The DCCC's position that it somehow is excused from producing documents during the pendency of the motion to dismiss is thus baseless.

20. Even in the absence of an order requiring that discovery proceed, it would not be for the DCCC, a non-party to the Action, to decide whether discovery should be stayed pending a decision on the motion to dismiss. That determination is solely for the court to make, and the DCCC requested no such relief.. *Beecham v. Socialist People's Libyan Arab Jamahiriya*, 245 F.R.D. 1, 3 (D.D.C.2007) (internal citations omitted) (denying stay of jurisdictional discovery). Nor would the filing of a dispositive motion presumptively entitle the DCCC to a stay of discovery even if they asked for it. *OMG Fidelity, Inc. v. Sirius Techs., Inc.*, 239 F.R.D. 300, 304 (N.D.N.Y. 2006) (mere filing of a motion to dismiss does not guarantee entitlement to a stay). The DCCC therefore cannot refuse to comply in light of the pending motion to dismiss the underlying Action.

III. The DCCC's Objections to Plaintiffs' Subpoena Fail.

21. The central, overarching problem with the DCCC's Objections to the Subpoena is that they are blanket, boilerplate objections and are therefore waived. A non-party "is subject to the same obligations and scope of discovery under Rule 45 as if it were a party proceeding under Rule 34." *Sabol v. Brooks*, 469 F. Supp. 2d 324, 328 (D. Md. 2006). Rule 34 thus "plainly states that objections to requests for production must be made on an individual basis." *Lurensky v. Wellinhoff*, 258 F.R.D. 27, 30 (D.D.C. 2009). And "[u]nder Rule 34, failure to make particularized objections to document requests constitutes a waiver of those objections." *Sabol*, 469 F. Supp. 2d at 328 (ordering non-party to produce documents requested by a Rule 45 subpoena); *see also* FED. R. CIV. P. 34 (b)(2)(B) ("For *each item or category*, the response must . . . state an objection to the request, including the reasons.") (emphasis added). The DCCC has not even attempted to comply with the specificity requirements of Rule 34. Thus, its Objections are waived, and the Court should grant Plaintiffs' motion.

22. Furthermore, the DCCC cannot rely on its status as “a Democratic national political party committee” (Objections at 1) as an excuse to disobey the Subpoena. It is well established that such entities are subject to the subpoenas. *See, e.g., Judicial Watch, Inc. v. U.S. Dep’t of Commerce*, 127 F. Supp. 2d 224 (D.D.C. 2000) (third party Democratic National Committee is subject to subpoena). The DCCC is subject to Rule 45 and must comply with the Subpoena accordingly.

A. The DCCC’s Relevance-Based Objection is Without Merit.

23. The DCCC’s first objection claims that there is no basis “to think that the subpoena will yield evidence relevant to [Plaintiffs’] case.” Objections at 1. Plaintiffs do not understand how counsel for the DCCC could make such an objection *before* bothering to consult with the DCCC on the extent of its involvement in the development of the Proposed Congressional Plan. In any event, it is well-settled that the scope of discovery through a subpoena is the same as that applicable to the other discovery rules, including FED. R. CIV. P. 26(b)(1). *See Gonzales v. Google, Inc.*, 234 F.R.D. 674, 679 (N.D. Cal. 2006) (granting in part motion to compel); *see also Linnebur v. United Tel. Ass’n, Inc.*, 2011 WL 3490022, at *7 (D. Kan. Aug. 10, 2011). Rule 26(b)(1) of the Federal Rules of Civil Procedure clearly allows discovery of “*any* matter relevant to the subject matter involved in the action.” FED. R. CIV. P. 26(b)(1) (emphasis added). “Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” *Id.* “Hence, a party may discover information which is not admissible at trial if such information will have some probable effect on the organization and presentation of the moving party’s case.” *Smith v. Schlesinger*, 513 F. 2d 462, 472-73 (D.C. Cir. 1975). There can be no doubt that the documents that are the subject of the Subpoena fall within the parameters of Rule 26.

24. As explained above (¶¶ 13-16, *supra*), on information and belief, the DCCC was intimately involved in the redistricting process, drafting substantive portions of the Proposed Congressional Plan that now is the law in Illinois. The DCCC nonetheless claims that “not a single page of DCCC documents would be necessary for Plaintiffs to prove those [constitutional and Voting Rights Act] violations.” On the contrary, documents related to the DCCC’s involvement in the redistricting process are likely to shed light on the goals and purposes of the Proposed Congressional Plan, as well as the motivation and intent of the Illinois lawmakers who engaged the DCCC to assist in drawing the Proposed Congressional Plan. Having interjected itself into this back-room legislative process, the DCCC cannot now complain that it is subject to discovery related to the scope of its participation in the development of the Proposed Congressional Plan.

25. Indeed, due to the opaque nature of the development of the Proposed Congressional Plan, Plaintiffs must turn to the entities that had a role in the redistricting process to obtain relevant information. For example, neither the Proposed Congressional Plan nor any of its preceding drafts were disseminated during the public hearings conducted by the Illinois Senate and House Redistricting Committees. Compl. ¶¶ 38, 40. In fact, the Proposed Congressional Plan was not made public until the early morning of May 27, 2011, four days before its ultimate passage on a straight party line vote. Illinois’ redistricting process has been excoriated for such secrecy. *See, e.g.*, ILLINOIS CAMPAIGN FOR POLITICAL REFORM, MAPPING IN THE DARK (2011), [http://www.ilcampaign.org/sites/default/files/Mapping%20in%20the%20Dark-Redistricting%20Illinois%20in%202011\(2\).pdf](http://www.ilcampaign.org/sites/default/files/Mapping%20in%20the%20Dark-Redistricting%20Illinois%20in%202011(2).pdf) (attached as Exhibit L) (“The Democratic leaders’ refusal to share their redistricting power with residents—despite repeated calls from voters, interest groups and civil rights organizations to do just that—allowed partisan interests to

again have priority over the public's interest.”). In such circumstances, the DCCC's statement that the requested documents are not relevant is plainly incorrect and is no excuse for noncompliance with the Subpoena.

26. Furthermore, “[a] non-party seeking relief from a subpoena bears the burden of demonstrating that the subpoena should be modified or quashed.” *Call of the Wild Movie, LLC v. Does 1-1,062*, 770 F. Supp. 2d 332, 354 (D.D.C. 2011). Thus, if “a party objects to the production of information or documents on the basis of relevancy, then the objecting party “must show specifically how each [request] is not relevant.” *In re Gateway Eng'rs, Inc.*, 2009 WL 3296625, at *3 (W.D. Pa. Oct. 9, 2009) (brackets in original) (denying motion to quash). *See also Teton Homes Europe v. Forks RV*, 2010 WL 3715566, at *2 (N.D. Ind. Sept. 14, 2010) (objecting party must specifically detail the reasons why each request is irrelevant). Here, the DCCC has not even attempted to explain its relevance objection with any specificity; indeed, its Objections related to relevance do not reference a single one of Plaintiffs' requests. Such a general statement of irrelevance cannot satisfy the DCCC's burden. *See Smith v. United Salt Corp.*, 2009 WL 2929343, at *6 (W.D. Va. Sept. 9, 2009) (To “assert in a conclusory fashion that the subpoenas . . . seek irrelevant information . . . does not meet the heavy burden of proof under Rules 26(c) and 45(c).”).

B. The DCCC's Objection Based on Overbreadth and Vagueness Fails.

27. The DCCC's objection on grounds of overbreadth and vagueness also fails.³ A request is overbroad only when it seeks categories of documents or information *beyond* those

³ To the extent that the DCCC's “vagueness” objection actually is distinct from its assertion of overbreadth, this objection also must fail. “[W]here a party objects on the grounds of vagueness and ambiguity, he has the burden to demonstrate the vagueness or ambiguity by setting forth specific facts in support of its objection.” *Rosales v. El Rancho Farms*, 2011 WL 2433352, at *2 (E.D. Cal. Jun. 13, 2011) (granting motion to compel). As a blanket objection to

which could be relevant to the litigation. *See, e.g., Presbyterian Manors, Inc. v. Simplex Grinnell, L.P.*, 2010 WL 3880027, at *10 (D. Kan. Sept. 28, 2010) (ordering compliance with subpoena despite overbreadth objections where opposing party could not show that any information sought was irrelevant); *Educ. Fin. Council v. Oberg*, 2010 WL 3719921, at *5, n.8 (D.D.C. Mar. 8, 2010) (declining to address overbreadth argument where amended subpoena was narrow and “reasonably tailored to seek relevant information”). Particularly since Plaintiffs specifically clarified in the meet and confer process that all of their requests are directed to the DCCC’s role in creating and reviewing redistricting plans for Illinois’s congressional districts based on 2010 census figures, the DCCC’s general overbreadth objection that Plaintiffs seek a “wide range of documents” (Objections at 2) is completely meritless. A request for a wide range of documents on a limited and relevant subject is not overbroad.

28. Aside from objecting to the undeniably short date range of January 1, 2010 to the present,⁴ the Objections make only one other specific assertion of overbreadth or vagueness, relating to Request No. 19 for “documents related to payment of experts”, which it claims is vague and overbroad because it is not limited to the redistricting process in Illinois. *See* Objections at 2. During their August 29, 2011 telephone conference, Plaintiffs stated that Request No. 19 should be construed to apply only to experts involved in the Illinois redistricting

the Subpoena, the DCCC’s assertion of vagueness is “not a legitimate objection to discovery.” *Williams v. Taser Intern., Inc.*, 2007 WL 1630875, at *3 (N.D. Ga. Jun. 4, 2007) (granting motion to compel and chastising objecting party for asserting “boilerplate objections”).

⁴ The DCCC’s Objections claim that because 2010 census data had not yet been circulated and the official legislative redistricting process had not begun, there is no reason to request documents dating back as far as January 2010. *See* Objections at 2. Because such data were going to be released and the redistricting process commenced in early 2011, it is logical that preparations were being made in 2010. In any event, if the DCCC has no relevant documents dating back as far as January 1, 2010, then there is nothing to produce and it can limit its production to the date range for which it possesses relevant documents.

process and resulting Proposed Congressional Plan, a limitation clearly spelled out in the preceding Request No. 18. *See* Ex. A. The DCCC thus has failed to carry its burden of proof on its overbreadth and vagueness objections.

C. The First Amendment Does Not Excuse the DCCC's Compliance with the Subpoena.

29. In its Objections, the DCCC asserts that the First Amendment relieves it of the obligation to comply with the Subpoena, referencing *Perry v. Schwarzenegger*, 591 F. 3d 1147 (9th Cir. 2010). But under *Perry*, the DCCC would have to make a prima facie showing that enforcement of the Subpoena would result in “harassment, membership withdrawal, or discouragement of new members.” *Id.* at 1160. Given that the DCCC is an association of elected officials whose political activity is quite public—rather than a group of private citizens anonymously participating in politics (as in *Perry*)—it is difficult to imagine how the DCCC could make such showing. Regardless, the DCCC has not even attempted to do so here, and its conclusory First Amendment objection therefore must fail.⁵

30. Even if the DCCC did demonstrate a credible First Amendment argument, Plaintiffs’ Subpoena seeks only a narrow set of documents regarding the DCCC’s role in serving as a mapmaking agent for the Democratic legislators of Illinois. The Subpoena’s requests are not intrusive: Plaintiffs do not seek documents such as membership lists or details of the DCCC’s advocacy efforts. In addition, Plaintiffs’ Complaint and related discovery efforts seek to vindicate the *at least* equally important First, Fourteenth, and Fifteenth Amendment rights of the Plaintiffs and the residents of Illinois generally.

⁵ The DCCC also cites *Federal Election Comm’n v. Machinists Non-Partisan Political League*, 655 F.2d 380 (D.C. Cir. 1981), but that case has nothing to do with the objection raised. There, the court simply concluded that because First Amendment interests were implicated by the subpoena, careful scrutiny of the FEC’s jurisdiction was required, and no jurisdiction existed. There is no dispute here about jurisdiction.

D. The DCCC's Objections Regarding Confidentiality and Privilege are Without Merit.

31. A subpoena recipient objecting to a discovery request on the ground of privilege must “describe the nature of the documents . . . not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” FED. R. CIV. P. 26(b)(5)(A)(ii). The proponent of the privilege “must do more than advance a blanket assertion of attorney-client privilege and attorney work product.” *Williams v. City of Dallas*, 178 F.R.D. 103, 115 (N.D. Tex. 1998) (To reject an argument to quash based on privilege “it is sufficient to point to [the party’s] obligation under Rule 45(d)(2) to lodge objections . . . that are supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.”). Rather, the proponent must assert the privilege on a document-by-document basis. *Id.* at 116 (citing *Hugley v. Art Inst. of Chi.*, 981 F. Supp. 1123, 1128 (N.D. Ill. 1997)). Once again, the DCCC has failed to make its objection with anything like the specificity that the Federal Rules require. It has submitted no privilege log showing which documents or communications might be protected, nor has it even attempted to explain how the privilege might apply to communications between a political campaign committee and state legislators related to a state legislative task.

32. Likewise, the DCCC’s objection on the ground of confidentiality is unfounded. The DCCC is well-aware that it can seek a protective order for its sensitive information so long as it can show good cause. *See* FED. R. CIV. P. 26(c); *see also Klayman v. Judicial Watch, Inc.*, 247 F.R.D. 19, 22 (D.D.C. 2007) (courts have broad discretion to issue protective orders). Moreover, courts often are willing to approve protective orders stipulated by the parties. *See, e.g., In re Application of Caratube Int’l Oil Co., LLP*, 730 F. Supp. 2d 101, 104 (D.D.C. 2010)

(approving protective order agreed to by the parties). Also, Plaintiffs' counsel agreed to consider a protective order and invited the DCCC's counsel to propose such an order. *See* Ex. E. The DCCC's counsel already has proposed a stipulated protective order in this case (attached hereto as Exhibit M) but did so while ignoring its commitment to provide a substantive counterproposal to the discovery sought by the Subpoena, and counsel for Plaintiffs have made clear their willingness to negotiate a suitable order for the court's approval.

E. The DCCC's Objection Based on Burden and Expense Fails.

33. The DCCC also objects that production of the requested documents would be unduly burdensome and expensive. Objections at 3-4. But the DCCC's burden objection comes in the context of the DCCC apparently having failed to determine whether in fact it possesses any relevant or responsive documents. How then can it even claim that any burden or expense associated with complying with the Subpoena is undue or excessive? The burden objection should be overruled on that ground alone.

34. In any event, "[w]hen the burdensomeness of a subpoena is at issue, the onus is on the party alleging the burden to prove that the subpoena violates Rule 45." *Flatow v. The Islamic Republic of Iran*, 196 F.R.D. 203, 207 (D.D.C. 2000), vacated in part on other grounds, 305 F.3d 1249 (D.C. Cir. 2002). In its blanket Objections, the DCCC has not made the requisite showing. In particular, the DCCC has declined to offer an estimate of how much staff time or expense would be involved in gathering the documents requested by the subpoena. "[A]ssertions of a burden without specific estimates of staff hours needed to comply will be categorically rejected." *Id.* (internal citations and quotation marks omitted). The DCCC's objection merely points out what courts have long recognized: "Compliance with a subpoena inevitably involves some measure of burden to the producing party." *Booth v. Davis*, 2011 WL 2008284, at *7 (D.

Kan. May 23, 2011) (denying motion to quash). And a court will not “excuse compliance with a subpoena for relevant information simply upon the cry of ‘unduly burdensome.’” *Id.*

35. Thus, there is no merit to the DCCC’s objection based on burden and expense, particularly in light of its absolute failure to determine whether it possessed any relevant or responsive documents.

F. There is no Basis for the DCCC’s Objection Based on the Time to Comply.

36. Finally, the DCCC’s objection regarding of the amount of time it had to comply with the Subpoena is without merit. Rule 45 does not specify what constitutes a reasonable amount of time to allow for compliance with a subpoena. See FED. R. CIV. P. 45(c)(3)(A)(i). Several courts have held that fourteen days is presumptively reasonable, *see In re Rule 45 Subpoena Issued to Cablevision Systems Corp. Regarding IP Address 69.120.35.31*, 2010 WL 2219343, at *5 (E.D.N.Y. Feb. 5, 2010) (collecting cases), and the expedited discovery schedule in this case justifies an even earlier return date. Importantly, moreover, Plaintiffs did not insist on strict compliance with the original 10-day return date and gave counsel for the DCCC an additional four days after the return date to consult with his client and provide a counterproposal regarding the Subpoena. The DCCC made no such counterproposal and offered no estimate of how quickly it could reply. Instead, it insisted that it does not have to do anything until after the motion to dismiss is decided (*see* Sept. 2 Letter), which will not occur until the end of October. In addition to being well past the fourteen-day window, this timeline violates the Order issued by Judge Lefkow under which discovery closes on October 19, 2011. *See* Order ¶ 2.8. The DCCC’s unilateral decision to delay is patently unreasonable.

37. Furthermore, the DCCC’s objection that the subpoena does not allow a reasonable time to comply plainly is a restatement of its undue burden argument. As shown above, that

objection fails because the DCCC has not presented a detailed estimate of the burden imposed.

See Flatow, 196 F.R.D. at 207.

CONCLUSION

WHEREFORE, for the foregoing reasons, the Court should order the Democratic Congressional Campaign Committee to comply with Plaintiffs' subpoena within ten (10) days and award Plaintiffs their attorneys' fees and other costs associated with Plaintiffs' Motion To Compel Democratic Congressional Campaign Committee To Comply With Subpoena Seeking Third Party Discovery.

Dated: Sept. 8, 2011

Respectfully submitted,



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CERTIFICATE OF CONFERENCE

Pursuant to Local Rule LCvR 7(m), in addition to exchanging emails on August 26, 2011, August 29, 2011, August 30, 2011, and September 2, 2011, on August 29, 2011, Lori E. Lightfoot and Dana S. Douglas (counsel for Plaintiffs) met and conferred telephonically with Brian G. Svoboda (counsel for the DCCC). *See* Ex. E. Despite their good faith efforts, Plaintiffs' counsel could not resolve the matters brought to the Court in the above motion.

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2011, a copy of the foregoing Motion to Compel Democratic Congressional Campaign Committee to Comply with Subpoena Seeking Third Party Discovery was provide to the following by email and overnight courier for delivery the next business day:


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