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

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. MCGUFFRAGE, 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. 1:11-cv-05065 Judge Joan Humphrey Lefkow Judge John Daniel Tinder Judge Robert L. Miller, Jr. (3-judge court convened pursuant to 28 U.S.C. § 2284)

PLAINTIFFS' RESPONSE TO NON-PARTIES' MOTION TO QUASH SUBPOENAS AND FOR PROTECTIVE ORDER

INTRODUCTION

At the conclusion of the 2011 redistricting process, numerous Springfield Democratic lawmakers called the process "the most transparent, accountable, open redistricting process in the history of the state of Illinois."[1] When Governor Quinn signed the bill enacting the 2011 Illinois Congressional Plan (hereinafter "the Plan"), he commended the "openness and transparency in the remap process." Throughout the entire redistricting process, Democratic lawmakers stated again and again that their goal was to "make this the most open redistricting process in Illinois history."

These numerous self-congratulatory and self-serving comments were clearly meant to beguile the public and hide the true nature of the completely closed, non-public deal-making that actually led to the creation of the Plan. As set forth in the Complaint, that process contained the following important elements that are relevant to the current efforts by these same Springfield Democrats to shield from public view the real process which birthed this constitutionally infirm Plan:

1. The actual deliberations that resulted in the Plan were completely and intentionally shielded from public view. Despite pretenses and promises to the contrary, and demands from the public to see the Congressional plan, **no** Congressional plan was submitted for discussion during a two-month "public" hearing process.[2]

2. The first time that the public ever saw the Plan was approximately 4:00 a.m. on the Friday of the Memorial Day holiday weekend.[3] No public hearings were held. *Id*. The final version of the Plan was not revealed until Memorial Day, Monday, May 30.

3. Over the holiday weekend, that Plan then passed both chambers of the Democratically-

[1] See Appendix for the source of all quotes in this Introduction section.
[2] *See* Cmplt. at ¶¶ 39, 40. Pursuant to a rule established by the Democratic chairpersons of the committees, members of the public were not permitted to ask questions of the members of the Redistricting Committees during this process. *See* Cmplt. at ¶ 38.
[3] *See Mapping in the Dark*: *Redistricting Illinois in 2011: Politics as Usual Under a Facade of Transparency*, ILL. CAMPAIGN FOR POLITICAL REFORM at 9 (2011), http://www.ilcampaign.org/mapping-in-the-dark-redistricting-2011.

controlled General Assembly **without any** public hearing, and predictably, along a straight, party-line vote. *See* Cmplt. at ¶¶ 42-45. The final vote came on Tuesday, May 31, just one day after the final Plan was first unveiled.[4]

4. The public portion of the review and passage of the final Plan consisted of a total of just a few hours on Memorial Day, between when the final amendment was first filed and then voted on by the House.[5]

5. During House and Senate floor discussions, when questioned, Democratic members who controlled the floor debate refused to answer important questions about the Plan. For example, when Republican Senator Kirk Dillard asked whether it was possible to draw two Latino districts, including one of the southwest side of Chicago, Senate Redistricting Committee Chairman Kwame Raoul stated that he did not know because he "didn't draw the map." When asked who drew the map, Chairman Raoul responded, "Staff members—I don't know which specific ones." When Senator Dillard asked "why does this map substantially dilute Latino representation in proposed district 3," Chairman Raoul stated that he was unaware of that conclusion. When Senate Dale Righter asked "who were the experts responsible for [reviewing] these [Congressional] lines," Chairman Raoul responded: "I don't have knowledge of that."[6]

Of course the actual actions of the Springfield Democrats are not the only thing shielded from view. What is also lurking just below the surface of this dark bottomless pool is the role of the national Democratic Congressional Campaign Committee ("DCCC") who the Springfield Democrats invited into this process. On information and belief, the DCCC and/or its agents and employees drew significant portions of the Plan as part of a larger national political agenda. *See* Exhibit D to Plaintiffs' Motion to Compel [Dkt. 52].

It is against this backdrop that the Springfield Democrats ask this Court to impose blanket, absolute immunity from any inquiry into their actions. What is fundamentally at stake is not just whether these Springfield Democrats can purposefully subvert the federal interest in the enforcement of important federal laws such as the Voting Rights Act ("VRA"). To be sure, Plaintiffs' motion arises from their effort to vindicate the VRA and other important federal

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[4] *See* Bill Status of S.B. 1178, 97TH ILL. GEN. ASSEMBLY, available at http://www.ilga.gov/legislation/billstatus.asp?DocNum=1178&GAID=11&GA=97&DocTypeID=SB&LegID=56012&SessionID=84.

[5] *Id.* House Floor Amendment No. 2 was both filed with and passed by the House on May 30, 2011.

[6] *See* Appendix for citations to the Transcript of the Senate Proceedings.

questions against the very people who were the drafters of the challenged Plan. Equally as important, however, is whether these Springfield Democrats or any future, one-party dominated General Assembly, can effectively thwart *any* federal oversight of legislative action which directly implicates important federal questions by legislating inside a black box insulated by legislative privilege. If the answer to that question is yes, then the VRA offers no protection to any Illinois voter.

Of course, the actual law dictates a different result. The case law establishes that *all* of the information sought by the Subpoenas is discoverable, including documents that reflect Respondents'[7] deliberations about the Plan. As set forth in Plaintiffs' Motion to Compel, decades of precedent clearly establish the following guiding principles for resolution of this particular dispute:

1. There is a recognized privilege from discovery for state lawmakers, but it is *qualified* and not absolute as Respondents urge. Motion to Compel at ¶¶ 9-11.[8]
2. That qualified privilege must yield when, after applying a balancing test, a Court finds that the interests of disclosure outweigh the interests of confidentiality. *Id.*
3. In this instance, a balancing of the relevant factors requires a finding that Respondents are not entitled to assert legislative privilege for *any* documents sought pursuant to Plaintiffs' Subpoenas. Motion to Compel at ¶¶ 11-17.

As to the first factor, Respondents do not deny that the evidence sought to be protected is

[7] Plaintiffs will refer to the recipients of its Subpoenas collectively as "Respondents."

[8] *See Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 (1977); *United States v. Gillock*, 445 U.S. 360, 370 (1980); *In re Grand Jury*, 821 F.2d 946, 957 (3d Cir. 1987); *Rodriguez v. Pataki*, 280 F. Supp. 2d 89, 102 (S.D.N.Y. 2003) (redistricting case); *Kay v. City of Rancho Palos Verdes*, 2003 WL 25294710, No. CV 02–03922, at *9-14 (C.D. Cal. Oct. 10, 2003); *United States v. Irvin*, 127 F.R.D. 169, 171-173 (C.D. Cal. 1989) (redistricting case); *Manzi v. DiCarlo*, 982 F. Supp. 125, 129 (E.D.N.Y. 1997); *Fla. Ass'n of Rehab. Facs. v. Fla. Dep't of Health & Rehab. Servs.*, 164 F.R.D. 257, 265 (N.D. Fla. 1995); *Newport Pacific Inc. v. County of San Diego*, 200 F.R.D. 628 (S.D. Cal. 2001).

highly relevant to Plaintiffs' claims, *Irvin*, 127 F.R.D. at 171; *Pataki*, 280 F. Supp. 2d at 102, and that direct evidence of their discriminatory intent can be obtained from no other source. As Plaintiffs' explained in their Motion, the second factor—the seriousness of the litigation and the issues involved—supports piercing Respondents' qualified privilege. As is evident from the detailed facts pleaded in the Complaint, the allegations of government misconduct are both serious and well-founded. Indeed, additional proof that Plaintiffs' claims are well-founded is the fact that three Democratic Members of Congress from Illinois (Representatives Jesse Jackson Jr., Danny Davis, and Bobby Rush) recently released a statement announcing that they would not help defend the Plan because it discriminates against Latinos. *See Jackson Won't Back New Ill. Congressional Map*, Sept. 22, 2011, salon.com (Attached hereto as Exhibit B).

The next factor—the "[f]ederal interest in the enforcement of federal law," *Irvin*, 127 F.R.D. at 171—strongly favors the requested discovery. As Plaintiffs explained, the very purpose of the VRA is to act as a check on state legislators. Motion to Compel at ¶¶ 13-15. Respondents are attempting to thwart any federal oversight of voters' constitutional rights by effectively denying any plaintiff the ability to ferret out intent behind legislative actions. The fourth factor supports piercing of the privilege because government action and participation is directly implicated in this lawsuit. *Id.* at ¶ 16. And as to the last factor, the fear that disclosure in this case will chill legislators in their future communications is entirely speculative. *Id.* at ¶ 17. For these reasons, Respondents should not be permitted to protect *any* of their responsive documents by relying on the legislative privilege.

In any event, even if Respondents were entitled to assert some form of legislative privilege over documents reflecting their core deliberations, many of the documents sought by the Subpoenas fall outside the scope of privilege. For the reasons explained in the Motion to

Compel and below, communications with outsiders (such as Democratic Members of Congress and the DCCC) are not privileged. Similarly, objective facts on which Respondents' relied to draw the map fall outside the scope of both the legislative (and deliberative process) privileges.

Respondents' other assertions of privilege similarly fail. The Court should deny Respondents' Motion and grant Plaintiffs' Motion to Compel.

ARGUMENT

I. Legislative Privilege For State Legislators is Qualified, Not Absolute

Respondents' Motion to Quash and for a Protective Order [Dkt. 59] rests entirely on the faulty premise that state legislators are *absolutely* immune from discovery concerning their legislative activities—they are not. *See* Motion to Compel at ¶¶ 9-11. The Supreme Court has twice recognized that there is no *absolute* testimonial or evidentiary privilege for state legislators. In *Gillock*, 445 U.S. at 370, the Court rejected an argument by a state legislator charged with bribery that his legislative privilege prohibited the introduction of any evidence at his federal criminal trial concerning his legislative acts and the motivations underlying them. 445 U.S. at 366. And in *Arlington Heights*, 429 U.S. at 268, the Court recognized that legislators "might be called to the stand at trial to testify concerning the purpose of the official action."

While some courts have erroneously considered the privilege to be absolute, most that have considered the question have found that it is only a *qualified* privilege, subject to a balancing test analysis. *See, e.g. Kay*, 2003 WL 25294710, at *9-14 (surveying authorities and concluding "although some cases suggest the privilege is absolute, the better view is that it is qualified"). Recognizing that state legislators enjoy only a qualified privilege against discovery, the great weight of courts have applied a balancing test, examining, as urged herein. *See* cases cited *supra* n.7; *see also* Motion to Compel ¶¶ 9-10.

Respondents' Motion improperly conflates state legislators' absolute *immunity* from civil suit and qualified legislative *privilege* from discovery. Further, many of the cases cited in Respondents' Motion pertain to *federal* Congresspersons' absolute privilege from discovery in matters related to their legislative function, which has its source in the Speech or Debate Clause of the Constitution, and which the Supreme Court has specifically found to be inapplicable to state legislators such as Respondents.

Unlike federal legislators, Respondents cannot claim the protection of the Constitution's Speech or Debate Clause. By its terms, the Speech or Debate Clause applies *only* to members of the U.S. Senate and House of Representatives and therefore does not apply to state legislators. U.S. Const., Art. I, § 6, cl. 1. ("The Senators and Representatives * * * shall not be questioned in any other place" than "their respective Houses" for any "Speech or Debate."); *Lake County Estates, Inc. v. Tahoe Regional Planning Agency*, 440 U.S. 391, 404 (1979) (Speech or Debate Clause is "[not] applicable to the members of state legislatures"). The Clause provides protection from both liability *and* third-party discovery as it pertains to acts taken in Congresspersons' legislative capacities. Most of the cases cited by Respondents for the proposition that *state legislators'* protection from discovery is absolute concern the inapplicable Speech or Debate Clause. *See, e.g. Brown & Williamson Tobacco Corp. v. Williams*, 62 F.3d 408, 417 (D.C. Cir. 1995); *United States v. Brewster*, 408 U.S. 501 (1972); *Gravel v. United States*, 408 U.S. 606 (1972); *Doe v. McMillan*, 412 U.S. 306, 312-312 (1973); *MINPECO, S.A. v. Conticommodity Services, Inc.*, 844 F.2d 856 (D.C. Cir. 1988); and *McSurely v. McClellan*, 553 F.2d 1277 (D.C. Cir. 1976).[9]

[9] The Fourth Circuit in *E.E.O.C. v. Washington Suburban Sanitary Comm'n*, 631 F.3d 174, 181 (4th Cir. 2011), appears to have made the same mistake as Respondents. That opinion discussed the Speech or Debate Clause and cited cases discussing that Clause, and then appears to have incorrectly applied the protection of that Clause to a local municipal board. *Id*. at 180-181.

Whereas both federal and state lawmakers enjoy "absolute legislative immunity" from *civil suit* for "all actions taken in 'the sphere of legitimate legislative activity,'" *Bogan v. Scott-Harris*, 523 U.S. 44, 54 (1998), contrary to the assertions of the Respondents, the immunity *from discovery* conferred on federal Congresspersons by the Speech or Debate Clause does not extend to state lawmakers. In *Gillock*, the Supreme Court distinguished the Constitution-based protection from discovery enjoyed by federal legislators from the more limited common law-based protection that covers state and local legislators. As the *Gillock* Court observed, compelling a state legislator to give evidence raised no separation of powers (or comity) concerns because the Supremacy Clause clearly contemplated that federal law would prevail in areas such as enforcement of federal laws. *Id.* at 370. The Court held instead that "where important federal interests are at stake * * * comity yields." *Id.* at 373.

Respondents' assertion that 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" (Motion to Quash at 7) is therefore true *only with respect to immunity from suit*, not immunity from discovery. *See Supreme Court of Virginia v. Consumers Union of the United States, et al.*, 446 U.S. 719, 732-33 (1980); *Gillock*, 445 U.S. at 370; *Pataki*, 280 F. Supp. at 95 ("Legislative privilege * * * is not absolute. * * * Thus, courts have indicated that, notwithstanding their immunity from suit, legislators may, at times, be called upon to produce documents or testify at depositions.") (internal citations omitted).[10]

A recent Seventh Circuit case to which Respondents cite (*Bagley v. Blagojevich*, 646

[10] As a further example, *see National Ass'n of Social Workers v. Harwood*, 69 F.3d 622, 634 (1st Cir. 1995). Respondents cite that case for the proposition that "'balancing [of harms] plays no part'" in legislative immunity analysis." Motion to Quash at 8. But that case involved state legislators' absolute *immunity from suit*; the case did not involve a request to discover information from the legislators. *Harwood*, 69 F.3d at 629. In *Buonauro v. City of Berwyn*, No. 08-cv-6687, 2011 WL 116870, at *9-10 (N.D. Ill. Jan 10, 2011), the court specifically declined to adopt an absolute or balancing-test approach to the legislative privilege question.

F.3d 378 (7th Cir. 2011)), is completely consistent with that approach. In *Bagley*, a group of former state employees sued various officials including the former governor and his deputy chief of staff, for wrongfully eliminating their positions through a veto of a budget line item that would have provided funding for their jobs. *Id.* at 380-84. The Seventh Circuit considered the nature of the Governor's action in vetoing the item, concluded that it was legislative in character, and thus held that both the Governor and his deputy were absolutely immune from suit for these actions. *Id.* at 393-96. The Seventh Circuit further held that "the district court did not *abuse its discretion* in blocking the Governor's deposition and limiting Curry's deposition." *Id.* at 396 (emphasis added).

Unlike this case, the *Bagley* decision involved an employment-related matter and was situated in a long line of cases involving employment-related claims made against officials acting in a legislative capacity.[11] Those cases did not involve the fundamental constitutional questions posed by this lawsuit—questions with undeniable public dimensions. Also central to the *Bagley* Court's analysis was the fact that both the Governor and his aide were named defendants in the lawsuit. Citing *Dombrowski v. Eastland*, 387 U.S. 82, 87 (1967), the Seventh Circuit reasoned that since legislative immunity protected the officials from "the consequences of litigation's results," it should also relieve them of "the burden of defending themselves" in litigation to which they were named as defendants. *Id.* Indeed, Courts are less willing to pierce legislative privilege when legislators are named parties in civil suits or the information obtained might be used against them in a later criminal prosecution. *Compare In re Grand Jury*, 821 F.2d at 956.

[11] *See id.* at 393-96 (citing, *inter alia, Nisenbaum v. Milwaukee County*, 333 F. 3d 804, 808 (7th Cir. 2003); *Strasburger v. Board of Education, Hardin County Community Unit School District No. 1*, 143 F.3d 351, 355 & n.1 (7th Cir. 1998); *Baird v. Board of Education for Warren Community Unit School District No. 205*, 389 F.3d 685, 696 (7th Cir. 2004)).

But the privilege has far less force when the legislators from whom discovery is sought are not parties. Recently, a court in this circuit construed *Bagley* and other legislative privilege cases and found that "[n]o party has cited a case from the Supreme Court or the Seventh Circuit regarding the scope of the testimonial privilege where the party claiming the privilege is not a defendant or a virtual alter ego of a defendant." *Metro Pony, LLC v. City of Metropolis*, 11-cv-144-JPG, 2011 WL 2729153, at *2 (July 13, 2011 S.D. Ill.). The *Metro Pony* Court held that "[i]n the absence of any binding precedent applying the doctrine of legislative immunity and its corresponding testimonial privilege to a non-party, this Court is not inclined to do so." *Id.* (permitting deposition of mayor for actions taken in his legislative capacity). The *Metro Pony* court reasoned that because "Metro Pony seeks no relief from [the mayor] based on his clearly legislative act * * * the original purposes of legislative immunity—to shield legislators from liability for their legislative acts—would not be served by applying the doctrine in the case at bar." *Id.* Likewise, Plaintiffs have not sued Respondents and seek no recovery from them.[12]

II. Discovery From Legislators is Often Granted in Redistricting Cases

As the cases cited by Plaintiffs in their Motion to Compel make clear, courts often allow discovery on legislators in redistricting cases. *See, e.g. Irvin*, 127 F.R.D. at 171; *Rodriguez*, 280 F. Supp. 2d at 102-103. None of the cases cited by Respondents that denied such discovery performed the balancing test required in such circumstances; they are accordingly of little precedential value. For the reasons explained above and in the Motion to Compel (at ¶¶ 12-17),

[12] Another case to which Respondents cite, *Shultz v. Stranczek*, 1991 WL 328518 (7th Cir. 1991), is distinguishable for the same reason. In that case it was the *defendants* who were claiming legislative immunity. *Id.* Should the Court conclude that Respondents are entitled to an absolute legislative privilege from discovery, Plaintiffs are entitled to a statement under oath (for example, in the form of an affidavit) from each of the Respondents and from each member of the House and Senate that he or she affirmatively chooses to assert legislative privilege and not provide documents and/or submit to a deposition. As Respondents recognize (Motion to Quash at 12), the legislative privilege is a personal one and must be waived or asserted by each individual legislator. *See, e.g. Almonte v. City of Long Beach*, 2005 WL 1796118, at n.2 (E.D.N.Y. July 27, 2005).

application of the relevant factors shows that discovery is warranted under these circumstances.

Respondents cite a number of cases for the proposition that "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." Motion to Quash at 5-6. None of the cases cited by Respondents are binding on the Court, most are easily distinguishable, and the analyses in the remainder of the cases are unpersuasive.

In *Cano v. Davis*, 193 F. Supp. 2d 1177, 1180-81 (C.D. Cal. 2002), the court addressed only a narrow question not at issue here: whether a legislator who *elected* to waive his privilege could also waive the privilege of other legislators. *Id*. at 1179. Respondents' citation to footnote 2 of *Hispanic Coalition on Reapportionment v. Legislative Reapportionment Commission*, 536 F. Supp. 578 (E.D. Pa 1982), is puzzling because the cited footnote actually suggests that the deposition *was* allowed, but made subject to a protective order which limited its scope.

The lack of analysis in other cases cited by Respondents renders those decisions of limited use to the Court. *See Chen v. City of Houston*, NO. H-97-1180, Mem. Op. at 3-4 (S.D. Tex Oct. 31, 1997); *Gonzalez v. City of Aurora*, NO. 02 C 08346 (N.D. Ill 2003).

Plaintiffs respectfully submit that a number of decisions cited by Respondents (including *Martinez v. Bush*, NO. 1:02-cv-20244 AJ, Mem. Op. (S.D. Fla. July 12, 2002); *Gonzalez*; and *Simpson v. City of Hampton*, 166 F.R.D. 16 (E.D. Va. 1996)) are unpersuasive, because the courts there did not employ the necessary balancing test in determining that discovery on legislators was unavailable. For the reasons discussed above, these decisions cannot be squared with Supreme Court and other precedents that require courts to balance competing interests before allowing or precluding discovery. Those decisions holding to the contrary are neither binding on this Court nor persuasive authority that the Court should follow. Further, *Gonzaelz*

and *Simpson* are inapt for the same reason that *Bagley* is—because they involve assertions of immunity by legislator-defendants. See *Gonzalez*, Respondents' Ex. C, at 2; *Simpson*, 166 F.R.D. at 17.

In their Motion, Respondents do not deny that they are in possession of evidence that is highly relevant to Plaintiffs' claims. While Plaintiffs are seeking to discover information from other sources, only Respondents will have direct evidence concerning their intentions in passing the Plan. *See Irvin*, 127 F.R.D. at 171-173 ("evidence concerning the intent with which the [redistricting body] adopted the plan and rejected certain alternatives," is highly-relevant and may be developed through discovery against legislators.).[13] Plaintiffs are entitled to pierce Respondents' qualified privilege and obtain *all* responsive documents in their possession.

III. Even if Respondents Were Shielded By Legislative Privilege, Much of the Information Sought Falls Outside the Scope of the Privilege

Even if the Court concludes that Respondents have an absolute legislative privilege, or even if the Court concludes that Respondents' qualified privilege should not be pierced under these circumstances, Plaintiffs' are *still* entitled to many categories of documents called for in the Subpoenas. Under any reading of the applicable caselaw, Respondents' communications with third parties and the objective facts on which Respondents' relied to formulate the Plan are discoverable.

First, Respondents have waived the privilege for all communications with parties outside of the General Assembly (including the DCCC and Democratic Members of Congress), or for documents shared with these third parties. See Motion to Compel at ¶¶ 19, 25 (citing *Almonte v.*

[13] As Respondents recognize (Motion to Quash at 11) plaintiffs in redistricting cases often have other sources to learn the intent of the legislature, such as from legislative history. No legislative history is available to Plaintiffs here. While the Springfield Democrats passed resolutions in a propagandistic attempt to explain the new *state* legislative districts, *see* S.R. 249 and H.R. 385, 97th Ill. General Assembly (2011), they made no attempt to introduce legislative history to explain or justify the Congressional districts—no doubt because the reasoning for each district is secret, improper, or both.

City of Long Beach, 2005 WL 1971014, No. CV 04-4192, at *3 (E.D.N.Y. Aug. 16, 2005); and other cases). As Plaintiff's stated in their Motion to Compel, Respondents met with Democratic Members of Congress on Saturday, May 21 to see drafts of their districts—documents shared at this or similar meetings are discoverable. *Id.* at ¶ 19.

In a similar vein, Respondents' own brief recognizes that legislative immunity "*only* applies to those legislators acting in their legislative capacity." *Biblia Abierta v. Banks*, 129 F.3d 899, 903 (7th Cir. 1997) (emphasis added); *see* Motion to Quash at 4.[14] Courts take a "functional approach" to this question which "focuses on the nature of the duties with which a particular government official has been lawfully entrusted." *Rateree v. Rockett*, 852 F.2d 946, 950 (7th Cir. 1988). But "[t]he Supreme Court has construed the legislative capacity narrowly, holding that legislative immunity 'does not prohibit inquiry into activities that are casually or incidentally related to legislative affairs but not *a part of the legislative process itself.*'" *Hansen v. Bennett*, 948 F.2d 397, 402 (7th Cir. 1991) (*quoting Brewster*, 408 U.S. at 528) (emphasis supplied by Seventh Circuit)); *see also Gravel*, 408 U.S. at 625. "In so holding, the Court noted that it has accorded legislators absolute immunity only when they were voting on a resolution, speaking on legislation or in a legislative hearing, or subpoenaing records for use in a legislative hearing. Cases subsequent to *Brewster*, both in the Supreme Court and in this Circuit, have continued to limit legislative immunity to these narrow functions." *Id.* "[T]he government official seeking immunity, therefore, has the burden of showing" that he was acting in a legislative capacity and is therefore entitled to immunity. *Rateree*, 852 F.2d at 950.

Respondents cite no case for the proposition that speaking with Democratic Members of

[14] The *Biblia* and *Rateree* cases (discussed in this section) concern legislative immunity from suit, not legislative privilege from discovery. However, for the reasons explained above, Respondents' legislative *immunity* is far stronger than the qualified legislative *privilege* that they enjoy. If liability for a legislator's act is not protected by legislative immunity, *see Biblia*, 129 F.3d at 903, there is no reason to think that the weaker legislative privilege might protect inquiry into that act.

Congress, consulting with the DCCC, or discussing redistricting with other outsiders are within the "narrow" confines of the legislative privilege. They have certainly not carried their burden of showing that they were acting in their legislative capacities during those communications. Indeed, the Court in *Pataki* concluded that "conversation[s] between legislators and knowledgeable outsiders, such as lobbyists, to mark up legislation" would not fall within the scope of the privilege. 280 F. Supp. at 101; *see also U.S. v. Williams*, 644 F.2d 950 (2d Cir. 1981) (immunity did not protect senator's conversations with undercover FBI agent about proposed bill).[15]

Further, as Plaintiffs explained in their Motion, neither the legislative privilege nor the deliberative process privilege protects the objective information (including voter and election data) available to Respondents when they were preparing the Plan. *See* Motion to Compel at ¶¶ 18, 24 (citing *Arlington Heights*, 429 U.S. at n.20; *ACORN v. County of Nassau*, 2009 WL 2923435, at *4 (E.D.N.Y. Sept. 10, 2009). No case cited by Respondents suggests otherwise.

Again, Plaintiffs repeat that in the event that the Court determines that Respondents are entitled to assert the legislative privilege, Defendants should not be permitted to offer evidence from Respondents in defense of this matter. "[O]ne cannot use a privilege as both a shield and a sword." *United Auto Ins. Co. v. Veluchamy*, 747 F. Supp. 2d 1021, 1030 (N.D. Ill. 2010).

IV. Respondents' Other Assertions of Privilege Fail

Plaintiffs established in their Motion to Compel the numerous flaws with Respondents' assertion of the deliberative process privilege. Respondents cite no case suggesting that *legislators*—as opposed to members of the administrative/executive branch—can assert this privilege. *See United States v. Zingsheim*, 384 F.3d 867, 872 (7th Cir. 2004); *Kay*, 2003 WL

[15] Similarly, while legislative privilege does extend to legislative aides, it only protects aides to the extent that they were acting in their legislative capacity. *See Bagley*, 646 F.3d at 396 (governor's deputy chief of staff could be questioned on non-legislative matters).

25294710, at *15. Further, Respondents have patently failed to make the document-by-document showing required to assert the privilege. *Artfield Builders, Inc. v. Village of Buffalo Grove*, 1992 WL 314185, at *1 (N.D. Ill. Oct. 26, 1992).

Even if the privilege were properly asserted and did apply, it would not apply to (1) documents or other communications received from or shared with third parties; and (2) "purely factual material" like voter data. Motion to Compel at ¶¶ 24-25 (citing *Howard v. City of* Chicago, 2006 WL 2331096, No. 03 C 8481, at *7 (N.D. Ill. Aug. 10, 2006) (deliberative process privilege can be waived); *Enviro Tech Int'l v. Envt'l Prot. Agency*, 371 F.3d 370, 375 (7th Cir. 2004) (deliberative process privilege does not cover "purely factual material"). Furthermore, the deliberative process privilege, like the legislative privilege, is not absolute and "may be overcome where there is a sufficient showing of a particularized need to outweigh the reasons for confidentiality." *United States v. Farley*, 11 F.3d 1385, 1389 (7th Cir. 1993). For the reasons explained in the Motion to Compel, the application of the deliberative process privilege is inappropriate in this case.

Next, Respondents' assertion of the work-product doctrine is far too broad. Respondents assert that many documents sought by the subpoena were prepared "in anticipation of and as an outgrowth of the claims litigated against redistricting plans for the past four decades." Motion to Quash at 15. Many acts of the General Assembly are challenged; if Respondents' view of the law were correct, the Assembly could claim protection for any document, because it somehow feared that litigation over the Assembly's action might ensue.

In truth, the doctrine is much narrower and Respondents have the burden of establishing the valid application of this protection on a document by document basis. Respondent have clearly not met this burden, nor can they. Work product privilege cannot be involved unless "the

document can fairly be said to have been prepared or obtained *because* of the prospect of litigation," *Binks Mfg. Co. v. National Presto Industries, Inc.*, 709 F.2d 1109, 1119 (7th Cir. 1983) (emphasis in original), or because "some articulable claim, likely to lead to litigation, *has arisen*." *Id.* (emphasis added). Documents prepared in the ordinary course of business when there is a "mere contingency that litigation may result" are not protected. *Id*. (internal quotation marks omitted). The documents sought by Plaintiffs here were created in the ordinary course of the legislature's business, at a time when *no* litigation loomed.

Next, Respondents suggest that the communications of legislative aides who happen to be lawyers are privileged. Here again, Respondents seek to expand a legitimate privilege beyond its reasonable boundaries. But "[a] communication is not privileged simply because it is made by or to a person who happens to be a lawyer." *United States v. Evans*, 113 F.3d 1457, 1463 (7th Cir. 1997). Instead, "the attorney-client privilege is limited to situations in which the attorney is acting as a legal advisor" and not in some other professional capacity, such as a business or political advisor. *Rehling v. City of Chicago*, 207 F.3d 1009, 1019 (7th Cir. 2000). To determine whether *any* communications with legislative aides are privileged in this case, Respondents must show that the communications were made by the aids acting in a legal capacity. *Id*. As with their assertion of work product privilege, Respondents have simply not met their burden.

Conclusion

This lawsuit challenges a pernicious gerrymander and seeks to vindicate Plaintiffs' constitutional and statutory right to vote. There are no circumstances more appropriate than these for piercing state legislators' qualified protection from third-party discovery. Respondents have subverted the democratic process to increase their chances of remaining in office; they should not now be permitted to use that office as a shield against discovery. To grant Respondents' motion would be to set a precedent that restrains plaintiffs from obtaining direct evidence of discrimination in voting rights cases, and frees legislators to engage in back room machinations completely shielded from public view without fear of inquiry. The relief the Springfield Democrats seek would put this kind of black box legislating beyond the reach of any court, even when as here, the federalism interest is at its lowest ebb in the face of a heightened federal interest such as the vindication of rights pursuant to the VRA. Such a result is simply beyond the pale and contrary to decades of well-established precedent. For these reasons, the Court should deny Respondents' Motion to Quash Subpoenas and for a Protective Order and grant Plaintiffs' Motion to Compel.

Respectfully Submitted,

Dated: September 27, 2011

By: /s/ Lori E. Lightfoot

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APPENDIX

APPENDIX

- "Barbara Flynn Currie, the House majority leader and top deputy of Democratic House Speaker Michael Madigan, said, "I think this has been the most transparent, the most accountable, the most open redistricting process in the history of the state of Illinois." *Senate Democrats Send New Legislative Map to Governor*, THE CHICAGO TRIBUNE, May 27, 2011, available at: http://newsblogs.chicagotribune.com/clout_st/2011/05/house-democrats-send-new-legislative-map-to-senate.html. *See also* June 24, 2011 statement of Illinois Senate President John J. Cullerton, available at http://senatedem.illinois.gov/index.php/component/content/article/101-blog-posts/2074-congressional-redistricting-proposal-signed-into-law (discussing the conclusion of "the most transparent redistricting process in state history.").

- When Governor Quinn signed the bill enacting the Proposed Congressional Plan, he commended the "openness and transparency in the remap process." *See* June 3, 2011 statement of Governor Pat Quinn, attached here to as Exhibit A-1.

- Throughout the entire redistricting process, Democratic lawmakers stated again and again that their goal was to "make this the most open redistricting process in Illinois history." *See* April 1, 2011 statement of Illinois Senate President John J. Cullerton, available at http://senatedem.illinois.gov/index.php/issues/veterans/benefit-information-for-veterans/1688--redistricting-hearings-begin-public-input-encouraged. *See also* Report of Proceedings of Illinois Redistricting Committee, April 16, 2011, at 4, attached hereto as Exhibit A-2 (Representative Karen A. Yarbrough: "Our goal is to hear from as many people as possible and ensure that this process is open to all residents of our state.").

- During House and Senate floor discussions, when questioned, Democratic members who controlled the floor debate answered inquiries about key issues. For example, when asked by Senator Kirk Dillard asked whether it was possible to draw two Latino districts, including one of the southwest side of Chicago, Senate Redistricting Committee Chairman Kwame Raoul stated that was not aware because he "didn't not draw the map." Transcript of Illinois Senate Floor Debate at 12:13-13:4 (May 31, 2011), Attached hereto as Exhibit A-3. When asked who drew the map, Chairman Raoul responded, "Staff members—I don't which specific ones." *Id*. at 13:6-9. When Senator Dillard asked "why does this map substantially dilute Latino representation in proposed district 3," Chairman Raoul stated that he was unaware of that conclusion. *Id*. at 13:16-22. When Senate Dale Righter asked "who were the experts responsible for [reviewing] these [Congressional] lines," Chairman Raoul responded: "I don't have knowledge of that." *Id*. at 26-27.

EXHIBIT A-1

From: Mason, Andrew
Subject: Governor Quinn Takes Bill Action**Friday, June 3, 2011**
Date: Friday, June 03, 2011 3:58:47 PM
Attachments: @

OFFICE OF GOVERNOR PAT QUINN

NEWS

FOR IMMEDIATE RELEASE:
Friday, June 3, 2011

CONTACT: Annie Thompson (o. 217-782-7355; c. 217-720-1853)
Grant Klinzman (o. 312-814-3158; c. 217-299-2448)

Governor Quinn Takes Bill Action
Friday, June 3, 2011*

CHICAGO – June 3, 2011. Governor Pat Quinn today took action on the following bill:

Bill No.: SB 1177
Creates the General Assembly Redistricting Act of 2011.
An Act Concerning: Redistricting
Action: Signed
Effective Date: Immediately

"Ensuring that everyone's voice is heard in government is crucial to our democracy. For the first time, the people of Illinois have been able to participate in public hearings and have their voices heard in drawing their legislative districts. I would like to commend lawmakers for significantly increasing openness and transparency in the remap process," said Governor Quinn. "I commend Sen. Kwame Raoul and Rep. Barbara Flynn Currie for their leadership in drafting a map that better represents the interest of our diverse communities."

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Bill Action Notice - 06.03.11 - RELEASE.pdf (49.9KB)
image001.png (31.5KB)

(81.3KB)

EXHIBIT A-2

STATE OF ILLINOIS
COUNTY OF CHAMPAIGN

A PUBLIC HEARING
BEFORE THE HOUSE REDISTRICTING COMMITTEE

Parkland College
2400 West Bradley Avenue
Champaign, Illinois
April 16, 2011
1:00 p.m.

House Redistricting Committee
Representative Karen Yarbrough, Chairman
Representative Jason Barickman
Representative Naomi Jakobsson
Representative Chapin Rose
Representative Jil Tracy

Court Reporting Services:

Brenda Zeitler, CSR-RPR
License #084-004062
MIDWEST LITIGATION SERVICES
(314) 644-2191

I N D E X

REPRESENTATIVE YARBROUGH: My name is Karen Yarbrough. I'm a member of the Redistricting Committee. I will be chairing the meeting this morning, or is it afternoon?

I'd like to recognize first the members of the House Redistricting Committee who are present here today: Representative Tracy; Representative Rose; Representative Barickman, a brand new rep -- say hi to the people -- Representative Rosenthal, another brand new rep; and Representative Naomi Jakobsson, whose district we are in.

Would you like to greet the folks, Naomi?

REPRESENTATIVE JAKOBSSON: Good afternoon, everybody. I just want to thank the committee for having the hearing here or whoever made that decision, maybe because some of us urged that to happen.

And I want to thank everyone for turning out and welcome you all. If you are not from this district, welcome to my district. Really, thank you for coming out to this event today because I think it's very important. And a nice thank you to Parkland College for making this space available to us.

REPRESENTATIVE YARBROUGH: I would be remiss if I didn't recognize former State Representative Bill

Black, who is in the audience. And I understand he's run for another office; so he's got another title. We're happy to see you here, Bill. Will you give him a hand? This is public service at its best. We miss that guy.

So thank you all for being here today. This is a very important meeting. I'm just going to go over a few things here.

At the end of 2010, the United States Census Bureau, as it does every decade, released its 2010 population totals for Illinois. The United States and Illinois Constitution requires that. In the year following the census, the General Assembly must redraw the boundary lines of the congressional, legislative and representative districts to account for the population shifts over the past ten years.

These hearings are a part of that process. The Redistricting Transparency and Public Participation Act requires us to hold at least four hearings throughout the state. Our intention is to hold far more than that minimum number. Our goal is to hear from as many people as possible and ensure that this process is open to all residents of our state.

We are holding hearings throughout the state -- currently 15 are scheduled -- to gain as much information as we possibly can as we undertake this important task.

We are guided in this endeavor by the U.S. Constitution, which requires that we respect the One Person One Vote principle and draw districts of substantially equal population.

We will also comply with the Federal Voting Rights Act, which requires us to provide minorities an equal opportunity to participate in the electoral process and elect candidates of their choice.

At the state level, the Illinois Constitution requires that the districts be substantially equal in population, compact and contiguous.

Finally, the Illinois Voting Rights Act further requires us to allow minorities a voice in the electoral process after compliance with the federal and constitutional requirements I have just described.

Now, in addition to those legal requirements, there are countless other factors that play a role in the redistricting process. We want to hear from you today in considering all of them without

EXHIBIT A-3

STATE OF ILLINOIS

SENATE

NINETY-SEVENTH GENERAL ASSEMBLY

JOHN J. CULLERTON, PRESIDENT

Regular Session - Senate Transcript

Third Reading of Senate Bill 1178

and

Motion to Concur in House Floor Amendment No. 2

Concerning Redistricting

Senate Sponsor

Sen. Kwame Raoul

REPORTED BY: Margaret R. Beddard, CSR
CSR NO: 084-003565
JOB NO: 173561

AUDIO TRANSCRIPTION

Chairperson: Kwame Raoul

Vice-Chairperson: Jacqueline Y. Collins

Member: William R. Haine

Member: Don Harmon

Member: Mattie Hunter

Member: Emil Jones, III

Member: David Koehler

Member: Kimberly A. Lightford

Member: Edward D. Maloney

Member: Iris Y. Martinez

Minority Spokesperson: Dale A. Righter

Member: Shane Cultra

Member: Kirk W. Dillard

Member: Dan Duffy

Member: David S. Luechtefeld

Member: Matt Murphy

Is there any discussion?

Senator Dillard, for what purpose do you rise?

SENATOR DILLARD: Thank you, Mr. President.

To ask a couple of questions, if I may, of the Sponsor.

PRESIDING OFFICER: Indicate to you a yield.

Senator Dillard.

SENATOR DILLARD: Senator, Latinos make up 15 percent of the population of the State of Illinois, and they are obviously a growing, growing constituency. Yet, there is still only one Latino district in this map which will govern the congressional districts for the next ten years. I mean, to me, it looks like the 4th Congressional District is racially gerrymandered, and the boundaries connecting the northern and southern parts would, you know, to me seem to be drawn for the purpose of connecting two separate communities. But, you know, why is there only one Latino district drawn here?

PRESIDING OFFICER: Senator Raoul.

SENATOR RAOUL: First of all, Senator

Dillard, the 4th Congressional District is preserved to be substantially similar to the 4th Congressional District as the 4th Congressional District was presented ten years ago by you in the map that you sponsored.

Secondly, we listened to advocacy groups from various Latino communities, and no such advocacy group has advocated for more than one Latino majority/minority district. And we balance all of the redistricting principles in coming up with the map that we have.

PRESIDING OFFICER: Senator Dillard.

SENATOR DILLARD: Thank you.

Well, you know, that was 10 or 12 years ago. If you haven't read a newspaper lately, the Latino influx into America and the State of Illinois is a heck a lot different than it was ten years ago. So have you examined at all whether you could create a southwest side of Chicago -- on the southwest side of Chicago two Latino districts or not?

PRESIDING OFFICER: Before we go to Senator Raoul, ladies and gentlemen, this is a very important issue. If we can hold the

conversation down, please.

Senator Raoul.

SENATOR RAOUL: Not that I'm aware of. But, as you know, I didn't draw the map.

PRESIDING OFFICER: Senator Dillard?

SENATOR DILLARD: Who did draw the map?

PRESIDING OFFICER: Senator Raoul.

SENATOR RAOUL: Staff members. I don't know which specific ones.

PRESIDING OFFICER: Senator Dillard.

SENATOR DILLARD: Continuing, you know, here we're going to be stuck with these decisions for ten years, and apparently we have nameless, faceless staff that have drawn the maps that 12 1/2 million people of Illinois for ten years will have to live with. Senator Raoul, why does this map substantially dilute the Latino representation in proposed District 3?

PRESIDING OFFICER: Senator Raoul.

SENATOR RAOUL: You stated a conclusion that I'm unaware of, so I can't comment on your opinion.

PRESIDING OFFICER: Senator Dillard.

SENATOR DILLARD: Senator Raoul, I'm a little

perplexed. Chicago lost more than 200,000 people in population, but it gains a congressional district under this map. How can that happen?

PRESIDING OFFICER: Senator Raoul.

SENATOR RAOUL: Senator, this map was drawn balancing the redistricting principles that I enumerated, and it's drawn in accordance with the Federal Voting Rights Act and trying to maintain the core districts that, again, were introduced by you ten years ago in balancing all the redistricting principles that I enumerated in my opening.

PRESIDING OFFICER: Senator Dillard.

SENATOR DILLARD: Thank you, Mr. President. And, I guess, to the bill.

Yesterday I was reading a nationally recognized website, "Political," which knows a little bit about congressional redistricting through America, and their term to describe this map was astonishing, astonishing. They had never seen a congressional map drawn anywhere in America, not even the map that my own party drew in Texas years ago, that was ever this brazen.

I guess that brings to light my point, is that people who somehow have the time to track this issue on an hour-by-hour basis are barely able to keep up with these changes, like people in here. How do you expect people back home to have any idea how these lines are changing or why they're changing?

PRESIDING OFFICER: Senator Raoul.

SENATOR RAOUL: I think we've provided -- more opportunity than ever has been historically provided to the people, whether it's been a map, such as the map sponsored by your colleague ten years ago or 20 years ago, 30 years ago. This has been the greatest opportunity the Republicans ever had.

PRESIDING OFFICER: Senator Righter.

SENATOR RIGHTER: The 24 hours of sunshine on the current lines is the greatest opportunity the people have ever had to provide input on a congressional map? Twenty-four hours?

PRESIDING OFFICER: Senator Raoul.

SENATOR RAOUL: Absolutely. You know, we put this up on a website. You know, no matter where people are they don't have to come down to

Springfield to see it. They could see it in the comfort of their own home. No time ever has the public ever had that -- such an opportunity.

PRESIDING OFFICER: Senator Righter.

SENATOR RIGHTER: How long was it, Senator Raoul, ten years ago between the time the map was made public and the hearing process started till the vote was taken in the Second Chamber of the General Assembly?

PRESIDING OFFICER: Senator Raoul.

SENATOR RAOUL: I believe it was 24 hours.

PRESIDING OFFICER: Senator Righter.

SENATOR RIGHTER: Well, I think you're wrong about that, but that's just fine. Let's move on to another area to be respectful of the chamber's and Mr. President's time.

Tell me, who were the experts that looked over these lines to deem that they were constitutional? Do you recall a few days ago you and I had a conversation about the magical Dr. Lickman and how he was able to define that the lines on the State map were constitutional even though he had not actually viewed the lines that are now on their way to Governor Quinn's

office? Who were the experts responsible for these lines?

PRESIDING OFFICER: Senator Raoul.

SENATOR RAOUL: I don't have knowledge of that.

PRESIDING OFFICER: Senator Righter.

SENATOR RIGHTER: Can you tell me what information the unknown experts utilized in determining that this map meets constitutional mandates?

PRESIDING OFFICER: Senator Raoul.

SENATOR RAOUL: Senator, based on my answer to your previous question, you're asking me to provide you information on a topic that I don't have knowledge of.

PRESIDING OFFICER: Senator Righter.

SENATOR RIGHTER: Thank you, Mr. President.

First, I asked you if you could tell me the name. Then I asked you about the statistics. So those are two separate questions. But let me ask you a third.

Can you tell me the source of the statistics that the unknown expert relied upon in order to determine that this map was

unconstitutional?

PRESIDING OFFICER: Senator Raoul.

SENATOR RAOUL: Well, given that I don't know his name, I probably -- his or her name, if they exist, you know, I probably don't know what he or she looked at, and so I cannot answer your question. If I knew that, I probably would know the name and I would have been able to answer your first question. That's why, you know, I referred to your --

PRESIDING OFFICER: Senator Righter.

SENATOR RIGHTER: To the bill, if I might, Mr. President.

PRESIDING OFFICER: To the bill.

Senator Righter.

SENATOR RIGHTER: To the motion.

Thank you, Mr. President.

PRESIDING OFFICER: To the motion. Thank you.

Senator Righter.

SENATOR RIGHTER: I would suggest for all of you who are thinking about voting for this map -- which, if you look at it in color, it looks like something that one of my kids would

EXHIBIT B

salon.com

From the Wires

THURSDAY Sep 22, 2011 21:54 EST

Jackson won't back new Ill. congressional map

By CHRISTOPHER WILLS and DEANNA BELLANDI , Associated Press

U.S. Rep. Jesse Jackson Jr. said Thursday that he and two other Democratic congressmen from Illinois won't help defend the state's new congressional voting districts, which he suggested fellow Democrats drew to help politicians instead of minority voters.

"For some, partisan advantage may be more important than fighting against discrimination. But not for us," Jackson said in a statement that he said was also on behalf of fellow Chicago Democrats Danny Davis and Bobby Rush.

The new congressional districts were drawn by Democratic leaders and approved by the state Legislature, which is controlled by Democrats. Because of slowing population growth, Illinois now will have 18 U.S. House seats instead of 19. The new map largely protects Democratic incumbents while creating districts that will put Republican candidates on the defensive.

But Jackson said he, Davis and Rush worry that the new districts do not provide enough representation for Chicago's growing Latino population. The new congressional map, produced after the 2010 census to reflect changes in population, includes just one district where Latinos represent the majority, although Illinois' Hispanic population is 32.5 percent.

Other Democratic members of Congress declined to comment on Jackson's statement or did not return calls seeking their views.

Juan Rangel, head of Chicago's United Neighborhood Organization, said he was surprised that Jackson is speaking out now, months after the congressional map was discussed and approved by lawmakers.

"I think that there has been a fairly wide consensus among Latinos and Latino organizations and advocacy groups in support of one congressional district," Rangel said, explaining that a second district might dilute the Latino vote.

Republicans are fighting the map in court, arguing the federal Voting Rights Act requires a second Latino-friendly district. Democrats who support the new districts have argued a second Latino district would have meant eating into African-American districts, creating a different problem under that federal law. The Voting Rights Act requires map drawers to give special protection to districts that contain mostly minorities.

"From the beginning we have said that the Democrats' map violates the Voting Rights Act," said John McGovern, a spokesman for the Committee for a Fair and Balanced Map, a plaintiff in the federal lawsuit.

Rangel said he is not worried that opposition from Davis, Jackson and Rush will help the Republican lawsuit.

The Mexican American Legal Defense and Educational Fund declined to comment Thursday. During hearings on the new district boundaries, fund officials testified that they were looking at the possibility of creating a second Latino district, but ultimately they never presented such a proposal.

In his statement Thursday, Jackson repeatedly questioned whether supporters of the new congressional districts are concerned about minority voters. He also said politicians of both parties may be "abandoning the fight against racism and discrimination."

"To gain a Democratic majority and partisan advantage, some Democrats may be prepared to tamper with and possibly violate the VRA, rather than support strict enforcement of its provisions. Congressman Rush, Davis and I are not prepared to do that," Jackson said.

Davis did not return a call for comment. Rush spokeswoman Renee Ferguson agreed that Rush was "not prepared to violate the law" and that he trust that a judge would fairly decide the litigation over the map.

Jackson spokesman Frank Watkins said Illinois' Democratic members of Congress were asked to donate $10,000 each to help fight the Republican legal challenge. Jackson, Davis and Rush won't be contributing to the legal defense, he said, but they hope that a judge finds that Democrats complied with voting rights laws when they drew the new districts.

Watkins said three congressmen's districts were not greatly changed under the new map, so they aren't speaking out of concern about their own political future.

Wills contributed to this report from Springfield, Ill.