

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

COMMITTEE FOR A FAIR AND BALANCED)	
MAP, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Case No. 11-C-5065
v.)	
)	Hon. John D. Tinder
ILLINOIS STATE BOARD OF ELECTIONS,)	Hon. Joan H. Lefkow
<i>et al.</i> ,)	Hon. Robert L. Miller, Jr.
)	(3-judge court convened pursuant to
Defendants.)	28 U.S.C. § 2284)

MOTION IN *LIMINE* TO BAR PLAINTIFFS' FACT WITNESSES

Defendants, ILLINOIS STATE BOARD OF ELECTIONS, *et al.*, by and through their counsel, Special Assistant Attorneys General Larry R. Rogers, Sr. and Devon C. Bruce, respectfully moves this Honorable Court for the entry of an Order, in *limine*, barring plaintiffs' fact witnesses from testifying at the trial of this matter. In support thereof, Defendants state:

Introduction

Plaintiffs have alleged in their complaint that the 2011 Illinois congressional map that passed both chambers of the Illinois legislature and was signed into law is unconstitutional in that (1) it violates Section 2 of the Voting Rights Act and (2) it is the result of political gerrymandering. A number of courts addressing re-districting cases involving similar types of constitutional allegations have held that the decisions in these matters rise and fall largely based upon the parties' expert testimony. *Barnett v. Daley*, 1995 WL 59229 (N.D.Ill., Feb. 10, 1995); *Illinois Legislative Redistricting Commission v. LaPaille*, 786 F.Supp. 704 (N.D.Ill.1992). This court has indicated as much in this case already: "I have already told (you) – we have told you that we don't think these witnesses are going to make a heck of a lot of difference." (Ex. A - Report of Proceedings dated 10/20/11 at p. 16.) Despite this court's admonishment and defense

counsel's requests to plaintiffs' counsel to limit the number of fact witnesses or exchange deposition designations, plaintiffs' counsel has insisted that they intend on calling *no fewer than 10 fact witnesses* during this short hearing. For the reasons set forth below, defendants move in *limine* to bar the testimony of 9 of the 10 plaintiff fact witnesses in their entirety or, in the alternative, at least bar these witnesses from testifying to certain topics, as described below.¹

Factual Background

Congresswoman Judith Biggert

Congresswoman Biggert never attended any Illinois re-districting committee hearings and never sent anyone on her behalf. (Ex. F - Biggert dep., p. 46) She never submitted a letter, draft map or provided any input as to how she believed the map should be drawn before the adopted map was passed into law. (Ex. F - Biggert dep., p. 46) Congresswoman Biggert never spoke to anyone who was involved in the drawing of the map. (Ex F - Biggert dep., p. 44) She has no knowledge of the map-making process. (Ex. F - Biggert dep., p. 43) She does not know anything about who drew the adopted map or what factors were considered by the map drawers in Springfield. (Ex. F - Biggert dep., p. 44) She never made any effort to speak to the re-districting committees while the legislature was going through the re-districting process. (Ex. F - Biggert dep., p. 57) Furthermore, she has no knowledge of the "demographic makeup" of the plaintiffs' own map, including the Latino VAP in these districts proposed by plaintiffs. (Ex. F - Biggert dep., p. 55-56) She has never been told by anyone that the adopted map was intentionally drawn to discriminate against Latinos. (Ex. F - Biggert dep., p. 45-46) She has no knowledge of the demographic make-up of the map that was passed into law. (Ex. F - Biggert

¹ Plaintiffs have indicated that they may call one other fact witness, Ed Marshall. (See [Proposed] Pre-Hearing Order, filed November 7, 2011.) Mr. Marshall is the subject of a separate Motion in *Limine*.

dep., p. 46) She has no knowledge of the demographic make-up of the map being offered by the plaintiffs. (Ex. F - Biggert dep., p. 55)

Congressman Donald Manzullo

Congressman Manzullo thinks he retained counsel before the map in Springfield was passed into law. (Ex. B - Manzullo dep., p. 34) He never went to any Illinois re-districting committee hearings or submitted information to them. Congressman Manzullo did not know if there were Republican members on the Illinois Re-Districting Committee. (Ex. B - Manzullo dep., pp. 31-32, 35-37, 49) He does not know the identity or intent of those individuals who drew the adopted map. (Ex. B - Manzullo dep., pp. 16-17) He believes that the intent was to give 5-6 Republicans very difficult districts; however, he testified he has *no first hand knowledge of this*. (Ex. B - Manzullo dep., pp. 16-17) No one ever told him that the intent of the drawers of the map was to discriminate against minorities. (Ex. B - Manzullo dep., pp. 30-31) He is unaware of any minority groups that have objected to the new map. (Ex. B - Manzullo dep., p. 51)² Congressman Manzullo has no opinion as to whether the 17th Congressional District was drawn for partisan purposes: “I really do not have an opinion on that.” (Ex. B - Manzullo dep., p. 32) Just like Congressman Shimkus, Congressman Manzullo testified that he was going to win regardless of whether he runs under the adopted map or the Republican map: “I’m going to win

² Congressman Manzullo claimed that there were no minority groups in Rockford to voice objections because “I have always represented them”. (Ex. B - Manzullo dep., pp. 51-52) Ironically, plaintiffs’ counsel chose to depose Rockford Mayor Lawrence J. Morrissey (over defendants’ objection), who flatly contradicted Congressman Manzullo. Mayor Morrissey identified a number of Latino and African-American community groups that are present in Rockford, including La Voz Latina, LULAC, Mexican American Chamber of Commerce and the NAACP. (Ex. G - Morrissey dep., pp. 54-55) To the Mayor’s knowledge, none of these minority groups raised any objections to the adopted map. (Ex. G - Morrissey dep., pp. 52,57) In fact, a prominent local member of the minority community in Rockford, Representative Chuck Jefferson, publicly voted to support the adopted map. (Ex. G - Morrissey dep., pp. 52-53) Mayor Morrissey went on to explain the *benefits* of having Rockford divided into two Congressional districts. (Ex. G - Morrissey dep., pp. 47-49)

in either district because I've represented most of that area for the past 18 years." (Ex. B - Manzullo dep., p. 42)

Congressman Peter Roskam

Congressman Roskam does not know the names of the individuals who drew the map. (Ex. D - Roskam dep., p. 23) Congressman Roskam has no knowledge of the intent of the individuals who created the adopted map. (Ex. D - Roskam dep., p. 24) He had no involvement in the Illinois re-districting process. (Ex. D - Roskam dep., pp. 36-39) He neither attended any of the re-districting committee meetings nor sent anyone of his behalf. (Ex. D - Roskam dep., p. 36-37) He never attempted to provide the re-districting committee with any alternative maps, although nothing precluded him from doing so. (Ex. D - Roskam dep., p. 37) No one has told him that the intent in drawing the map that was passed into law was to discriminate against minorities. (Ex. D - Roskam dep., p. 24) He cannot say that the adopted map is less advantageous for him than the map the plaintiffs themselves are proposing. (Ex. D - Roskam dep., p. 44)

Congressman John Shimkus

Congressman Shimkus had retained counsel in early Spring or mid-April. Congressman Shimkus does not know who drew the adopted map that was passed into law. (Ex. E - Shimkus dep., pp. 51-54) He never spoke to anyone involved in Springfield about the intent of the map drawing. (Ex. E - Shimkus dep., p. 97) He attended none of the Illinois re-districting committee hearings himself; nor did he have anyone attend these meeting on his behalf; nor did he provide any maps or have his counsel do so. (Ex. E - Shimkus dep., pp. 113-18, 122, 124-25) He has no knowledge that the adopted map was intended by the drafters to discriminate against Latinos. (Ex. E - Shimkus dep., pp. 99-102) In contradiction to the plaintiffs' complaint, Congressman

Shimkus said prior to the adoption of the map that he was willing to accept a map with only one Latino majority district. (Ex. H - Lipinski dep., pp. 34-36) Despite plaintiffs' claim of disadvantage under the new map, Congressman Shimkus has no knowledge about the percentage of Democrats or Republicans in any Congressional district in Southern Illinois under the map that has passed into law. (Ex. E - Shimkus dep., p. 21) Congressman Shimkus summarized his knowledge of the map up by simply stating, "*all the information I have on the map is based upon privileged communication with my attorneys.*" (Ex. E - Shimkus dep., pp. 26-27) Upon further questioning about percentages of Democratic versus Republican voters in the newly adopted 15th District, Congressman Shimkus continued to maintain that all of the information he had was based on attorney-client privilege. (Ex. E - Shimkus dep., pp. 35-37)

Argument

I. The four Congressional plaintiffs should be barred from offering testimony as they possess no knowledge as to the allegations in the plaintiffs' amended complaint

A. The Congressional plaintiffs should be barred from testifying that they were deprived of participation in the re-districting process

Both the original and amended complaints are replete with allegations of a "back room map making process" and the plaintiffs themselves testified that they were "shut out" of the process. (Ex. B - Manzullo dep., p. 31) The facts obtained in discovery, however, reveal that the plaintiffs retained the law firm of Mayer Brown in this matter as early as December 2010 or January 2011, long before the re-districting process had even begun. (Ex. C - Schock dep., p. 17.) None of the Congressional plaintiffs attended *any* of the numerous Illinois Re-Districting Committee hearings held throughout the State. None of the plaintiffs or their counsel submitted *any* proposed ideas, thoughts or maps to the Re-Districting Committee as to how they believed the map should have been drawn. It is undisputed that nothing prevented the plaintiffs from

doing so. (Ex. D - Roskam dep., p. 37) In short, neither the plaintiffs, nor their counsel, made any attempt to participate in the re-districting process and thus should be barred on foundational grounds from offering testimony or opinions that they were “shut out” of the process or that it would not have made a difference if they had chosen to do so (which they did not). Put simply, the plaintiffs should not be allowed to testify that they were deprived of participating in the re-districting process when they never made any attempt to do so.

B. The Congressional plaintiffs should be barred from testifying as to how or why the adopted map was created

As became clear in discovery, the Congressional plaintiffs do not know *who drew the map* at issue. The Congressional plaintiffs do not know *what factors the drafters relied upon* in drawing the map. None of the Congressional plaintiffs have any knowledge that the map was drawn to intentionally discriminate against the Latinos, which goes to the heart of the alleged violations of Section 2 of the Voting Rights Act. Lastly, the Congressional plaintiffs either claimed not to have analyzed the demographics of the newly adopted map in order to determine with any detail the political ramifications of the map or they refused to answer questions about the political composition of the map. (Ex. D - Roskam dep., p. 14; Ex. E - Shimkus dep., pp. 21, 26-27) The Congressional plaintiffs clearly are unhappy with the adopted map and would like to “say their piece”. As the court already has pointed out, however, in granting defendants’ motion to quash the deposition subpoena for Congressman Jesse Jackson, Jr., “every Congressman has a political opinion about it.” (Ex. A - Report of Proceedings dated 10/20/11 at p. 12) Nevertheless, allowing the Congressional plaintiffs to make broad, conclusory statements about why they believe the map was drawn the way it was is rank speculation when they lack knowledge about who drew the map, what factors the drafters relied upon or the details of the political

ramifications of the map. *See, e.g., Alston v. King*, 231 F. 3d 383, 387 (7th Cir. 2000) (affirming the exclusion of evidence that both lacked foundation and was speculative).

C. The Congressional plaintiffs should be barred from testifying about alleged out of court statements made by non-parties

Several of the Congressional plaintiffs testified in their depositions to various conversations they claim they had with non-party individuals about the map. These individuals who the Congressional plaintiffs claim to have spoken to include Illinois Senate President John Cullerton, Illinois House Speaker Michael Madigan, Congressman Jerry Costello, former Congressman William Lipinski, Congressman Jesse Jackson Jr., State Senator Bill Haine and State Representative Dan Beiser. All of these alleged statements are plain hearsay and as such the Congressional plaintiffs should not be allowed to testify to these alleged conversations with non-parties. *See, e.g., U.S. v. Lane*, 323 F.3d 568, 584 (7th Cir. 2003) (affirming exclusion of conversation as inadmissible hearsay). Specifically, defendants expect the plaintiffs to attempt to elicit testimony from Congressman Shimkus and Congressman Costello regarding a compromise that they attempted to reach regarding the congressional boundaries of a map. Not only are Congressman Costello's out of court statements hearsay, the whole topic area is irrelevant. A compromise was not reached between these two Congressmen and any map that they discussed was not adopted into law and has no bearing on the issues in this case.

D. The Congressional plaintiffs should be barred from testifying regarding the plaintiffs' "Republican" map

As part of the plaintiffs' case, the plaintiffs have proffered a self-styled "Fair and Balanced Map" candidly referred to by plaintiff Congressman Manzullo as the "Republican Map". (Ex. B - Manzullo dep., pp. 40, 41) During the depositions of each of the Congressional plaintiffs, they denied any substantive knowledge about this "Republican" Map. The

Congressional plaintiffs either did not know or were precluded by their counsel from answering any questions about the partisan make-up of the “Republican” map or the percentage of Latino VAP in a particular district or any other details about the partisan make-up of the plaintiffs’ proffered map. (Ex. D - Roskam dep., pp. 44-45; Ex. C - Schock dep., pp. 48-49; Ex. E - Shimkus dep., pp. 135-36) As such, the plaintiffs should be precluded from offering any such details at the hearing and leave such testimony, if any, to the experts.

E. The Congressional plaintiffs should be barred from offering testimony or opinions about the political ramifications of the adopted map

Surprisingly, several of the Congressional plaintiffs testified to their likelihood of prevailing under the adopted map, which refutes the plaintiffs’ gerrymandering contention entirely. For example, Congressman Shimkus testified that “it would be very difficult for a district to be drawn in Southwestern Illinois *that I cannot win in*”. (Ex. E - Shimkus dep., p. 64) Congressman Schock testified that his new district is *advantageous for a Republican*. (Ex. C - Schock dep., pp. 44-45) Furthermore, none of the Congressional plaintiffs testified to any detailed information on the partisan composition of the newly adopted map. Congressman Shimkus testified he had *no knowledge* of the percentage of Republican versus Democratic voters in the newly drawn Congressional map. (Ex. E - Shimkus dep., pp. 26-27) Furthermore, when pressed for details about the analysis of the partisan make-up of the adopted map, the Congressional plaintiffs did not have any information (or were instructed by counsel not to answer) regarding any partisan percentages. (*See* Ex. E - Shimkus dep., pp. 26-27, 35-37) As such, the Congressional plaintiffs should be precluded from testifying regarding any details of the partisan composition of the adopted map at the hearing of this matter.

II. The citizen plaintiff fact witnesses should be barred from offering any opinion testimony as they lack the foundation and expertise

For all of the reasons as to why the Congressional plaintiffs should be barred from testifying, the citizen plaintiff fact witnesses should be barred from offering any opinion testimony as well. The citizen plaintiffs who have been identified as witnesses for trial are Ralph Rangel, Lou Sandoval, Luis Sanabria, and Michelle Caballero. These plaintiff fact witnesses have as little knowledge about the issues raised in the amended complaint as do the Congressional plaintiffs. None of the citizen witnesses took part in or have any knowledge about how the adopted map was created. (Ex. I - Sanabria dep., pp. 12-15; Ex. J - Caballero dep., pp. 19, 20, 21; Ex. K - Rangel dep., p. 41-46) Although several of the citizen witnesses have their own *personal* opinions about the adopted Fourth Congressional District, they are simply non-expert opinions. None of the citizen witnesses reviewed, discussed or said that they relied upon any demographic data.

For example, Mr. Sanabria's testimony simply reiterates the allegations in plaintiffs' amended complaint that the adopted map, "packs Hispanic voters into District #4" and diminishes Hispanic influence in Districts #3 and #5. (Ex. I - Sanabria dep., pp. 11-12, 23-24) These conclusory opinions lack any foundation. Mr. Sanabria has not reviewed or relied upon any data to make these statements.

Similarly, Lou Sandoval's testimony re-stated the allegations in the amended complaint, but without foundation. While Mr. Sandoval volunteered that his statements are supported by census data and a New York Times article, he neither offered specifics as to his opinions nor detailed any educational and professional background in the areas of demography, political science, statistics, quantitative methodologies, electoral analysis, or election law that would

make him qualified to render those opinions. (Ex. L - Sandoval dep., p. 6-8; 75-82) After discussing the map with plaintiffs' lawyers, Ms. Caballero stated that she believes that the map unfairly segregates the 4th and 5th Districts into one Hispanic District. (Ex. J - Caballero dep., pp. 25-28) However, she likewise has no statistical or other expertise to render that opinion. Lastly, without any analysis whatsoever, Mr. Rangel testified that he is not really aware of the adopted map, but that it would create a potential of Spanish block other than District #4. (Ex. K - Rangel dep., pp. 30-31, 36-37)

Conclusion

For the reasons set forth above, defendants respectfully request that the four Congressional plaintiffs be barred from testifying at the hearing of this matter in their entirety or, in the alternative, request that the Congressional plaintiffs be barred from testifying regarding the following topics:

- A. Conclusions/opinions that they were "shut out" of the re-map process or that it would not have made a difference if they participated in the process;
- B. The map drawers' intent or factors that the drawers relied upon in drawing the adopted map;
- C. How or why the Congressional boundaries on the adopted map were drawn;
- D. That the intention of the map drawers was to intentionally discriminate against Latinos;
- E. Any details or statistical data about the plaintiffs' proffered map, also referred to as the "Republican Map";
- F. Any details or statistical data regarding the partisan breakdown of the adopted map;
- G. Any alleged out of court statements made by non-parties, including but not limited to:

Illinois Senate President John Cullerton

Illinois House Speaker Michael Madigan
Congressman Jerry Costello
Former Congressman William Lipinski
Congressman Jesse Jackson Jr.

- H. Any draft maps exchanged between Congressman Shimkus and Congressman Costello.

Plaintiff further moves this court to bar any opinion testimony from the citizen plaintiff fact witnesses due to lack of foundation and relevance including, but not limited to, any testimony that:

- A. the adopted map “packs” the Fourth Congressional District with Latinos
B. that the Hispanic vote in the 3rd and 5th Districts are diminished.

Respectfully submitted,

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