

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

COMMITTEE FOR A FAIR AND	)	
BALANCED MAP, et al.,	)	
Plaintiffs,	)	
v.	)	Case No. 1:11-cv-05065
	)	
ILLINOIS STATE BOARD OF ELECTIONS,	)	Hon. John Daniel Tinder
et al.,	)	Hon. Joan Humphrey Lefkow
	)	Judge Robert L. Miller
Defendants.	)	
	)	(3-judge court convened pursuant
	)	to 28 U.S.C. § 2284)

**DEFENDANTS’ MOTION *IN LIMINE* #3 TO BAR AND MOTION TO STRIKE  
PLAINTIFFS’ PROPOSED EXHIBITS P-42, P-44, P-51 THROUGH P-58, AND P-109**

Defendants, Illinois State Board of Elections, *et al.*, by their attorneys, respectfully move this Court for the entry of an Order, in *limine*, barring Plaintiffs’ use of Plaintiffs’ Proposed Exhibits P-42 (A52), P-44 (A54), P-51 (A61), P-52 (A62), P-53 (A63), P-54 (A64), P-55 (A65), P-56 (A66), P-57 (A67), P-58 (A68), and P-109. These documents were not disclosed in a timely fashion and constitute hearsay that does not fall into any exception or exemption. In addition, some of the exhibits appear to be offered to support conclusions that require expert analysis and opinion even though these documents were not offered by or relied on by any expert in this matter. Furthermore, these documents are irrelevant, immaterial, and their probative value is outweighed by the prejudicial effect on Defendants. As such, these exhibits should be barred from use at the hearing in this case and should be stricken from Plaintiffs’ Memorandum in Support of Their Motion for Permanent Injunction (“Injunction Memorandum” or “Inj. Memo.”).

**Plaintiffs' Proposed Exhibits**

In the Proposed Pre-Trial Order, Plaintiffs identify, *inter alia*, Plaintiffs' Proposed Exhibits P-42 (A52), P-44 (A54), P-51 (A61), P-52 (A62), P-53 (A63), P-54 (A64), P-55 (A65), P-56 (A66), P-57 (A67), P-58 (A68), and P-109 as possible exhibits for trial. Additionally, except for P-109, these documents are attached to and used in Plaintiffs' Injunction Memorandum. Plaintiffs provided the following descriptions of these exhibits:

<b>Hearing Ex. No.</b>	<b>Injunction Brief Ex. No.</b>	<b>Description</b>
P-42	A52	John J. Betancur & Maribel Ríos Louie, Latinos United, "The Latino Consent Decree 10 Years Later: Increasing Latin Access to Chicago Housing Authority Programs" (2006)
P-44	A54	The Cook Political Report, "Partisan Voting Index: Districts of the 111th Congress, Arranged by State/District," available at: <a href="http://cookpolitical.com/sites/default/files/pvistate.pdf">http://cookpolitical.com/sites/default/files/pvistate.pdf</a>
P-51	A61	Institute for Latino Studies at the University of Notre Dame, "Measuring the Minority Education Gap in Metropolitan Chicago" (2005)
P-52	A62	Latino Policy Forum, Statistics on Latinos, "2011 Data Series: Illinois Latinos at the Voting Booth" (2011)
P-53	A63	NationalJournal.com, "Almanac of American Politics: Cook Partisan Voting Index," available at: <a href="http://www.nationaljournal.com/almanac/2008/guide.php">http://www.nationaljournal.com/almanac/2008/guide.php</a>
P-54	A64	Rob Paral & Timothy Ready, Institute for Latino Studies at the University of Notre Dame, "The Economic Progress of US- and Foreign-Born Mexicans in Metro Chicago: Indications from the United States Census" (2005)
P-55	A65	Margery A. Turner, Stephen L. Ross, George C. Galster & John Yinger, Urban Institute Report to the U.S. Department of Housing and Urban Development, "Discrimination in Metropolitan Housing Markets: National Results from Phase I HDS 2000" (2002)
P-56	A66	Chicago Tribune, "House Democrats Send New Legislative Map to Senate" (5/27/11)
P-57	A67	Rick Miller, Capitol Fax.com, "Updated x13-Kirk: Map designed to force Pelosi back into power, Dems unveil new congressional maps and revised state maps" (5/27/11)
P-58	A68	Illinois Coalition for Immigrant and Refugee Rights, "Congressman Luis Gutierrez Withdrew His Endorsement of Congressman Lipinski" (1/31/08)
P-109	N/A	Summary Chart – Congressional Hispanic Caucus Data

**Documents regarding Socio-Economic Conditions**

Plaintiffs' Proposed Exhibits P-42, P-51 through P-52, and P-54 through P-58 are purported studies or reports produced by various third parties regarding the socio-economic conditions of Latinos. In their Injunction Memorandum, Plaintiffs utilize these documents to support the totality-of-the-circumstances analysis of intentional vote dilution under Count I (Section 2 of the Voting Rights Act), Count II (Equal Protection), and Count III (Fifteenth Amendment). Inj. Memo. at 2, 23, 32, and 27-8. These documents should be barred from use as support for the Plaintiffs' motion or during testimony at the hearing because they are hearsay, were untimely disclosed to Defendants, were not relied upon by Plaintiffs' disclosed experts, and are not relevant to the matter at hand.

First, these documents are hearsay and fall into no exception or exemption, and thus must be barred from introduction at the hearing as well as from any use in this case. Hearsay is a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." *Stillwater of Crown Point Homeowner's Ass'n, Inc. v. Kovich*, \_\_ F.Supp. 2d \_\_, 2011 WL 4818511 (N.D. Ind.), *quoting* FRE 801; *see also U.S. v. Albiola*, 624 F.3d 431, 440 (7th Cir. 2010). While Plaintiffs may argue that these documents qualify for an exception under FRE 803(18) (Learned Treatises), such exception only applies to expert usage. As explained below, there is no indication these documents are being proffered for use with Plaintiffs' experts because neither of Plaintiffs' experts considered, analyzed, or opined upon such issues or considered such documents at any point during this case.

Second, these documents were not timely disclosed to Defendants in this litigation. They were produced between October 19th and 26th, 2011. They were produced on or after the last day for fact discovery (October 19, 2011 was the last day for fact discovery depositions) and

well after Plaintiffs' expert disclosures were due – initial reports on September 14, 2011 and rebuttal reports on October 18, 2011. *See* Discovery and Preliminary Pre-Trial No. 1, 8/11/11; Agreed Order, 9/29/11. No indication exists that these documents were unavailable to Plaintiffs prior to those dates. Defendants would be prejudiced by their admission because neither they nor their experts have had the time to review and comment on these materials.

Third, Plaintiffs' expert disclosures – four reports between September 14, 2011 and October 19, 2011 – made no mention of or citation to these documents or any of the facts, data, issues, or opinions contained in these documents. Plaintiffs' experts during their depositions on October 21st (Dr. Peter Morrision) and October 25th (Dr. Richard Engstrom) provided no testimony about these documents or any of the facts, data, issues, or opinions contained therein. More significantly, Plaintiffs' experts have never provided any facts, data, analysis, or opinions on the socio-economic factor of the totality-of-the-circumstances test at any point in their disclosures or deposition testimony. Likewise, Plaintiffs' experts have not provided an overall analysis of the totality-of-the-circumstances test despite the fact that Defendants' expert, Dr. Allan Lichtman, provided substantial analysis of this test in his October 4, 2011 report, well before Plaintiffs' experts' rebuttal reports were due and depositions were taken. These documents have never been a part of Plaintiffs' experts' opinions and should not be permitted into evidence at this time.

Finally, these documents by themselves have no probative value and are, therefore, not relevant in this matter. While relevance is broadly defined, evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable....” FRE 401; *see also U.S. v. McKibbins*, 656 F.3d 707, 711 (7th Cir. 2011); *Hicks v. State*, 690 N.E.2d 215, 220 (Ind. 1997). Plaintiffs attempt to use

these exhibits to bolster, by way of legal argument, the totality-of-the-circumstances test. *See* Inj. Memo, at 26-28. However, in order to be relevant to the totality-of-the-circumstances test, the information about socio-economic conditions of a minority group must be connected to an effect on electoral opportunities and political participation. *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 426 (2006) (discussing “the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, *which hinder their ability to participate effectively in the political process*” as a factor relevant to the totality of the circumstances analysis) (emphasis added). None of these documents make such connections or draw such conclusions in isolation or in combination. The connection of the facts, data, and conclusions in these reports to electoral opportunities and political participation is the proper province of an expert, who can use his/her “scientific, technical, or other specialized knowledge...[to] assist the trier of fact to understand the evidence or to determine a fact in issue....” FRE 702. Only an individual qualified as an expert by his/her knowledge, skill, experience, training, or education can testify or opine on these subjects. *See* FRE 702. *See also Ammons v. Aramark Unif. Servs.*, 368 F.3d 809, 816 (7<sup>th</sup> Cir. 2004); *Ancho v. Pentek Corp.*, 157 F.3d 512, 515, 519 (7<sup>th</sup> Cir. 1998). To the extent that these articles are being offered as a basis for an opinion on the totality-of-the-circumstances test without the analysis of an expert, they must be barred from use in this case.

In sum, Plaintiffs’ Proposed Exhibits P-42, P-51 through P52, and P-54 through P-58 should be barred as untimely, hearsay, and irrelevant materials, the probative value of which is outweighed by the prejudicial result to Defendants.

### **Other Proposed Exhibits**

Defendants object to several other exhibits offered by Plaintiffs in their Memorandum in Support of Their Motion for a Permanent Injunction and for use at the hearing. First, Proposed Plaintiffs' Exhibit P-56 is a *Chicago Tribune* Web article, which has been cited for the premise that "top Democrats" stated that the map resulted from "the most transparent, the most accountable, the most open redistricting process in the history of the state of Illinois." Inj. Memo. at 2. This brief quotation is from a newspaper article quoting a non-party to this litigation. Therefore, the document is hearsay, and no exemption or exception applies. A comment by one member of the legislature regarding the redistricting process, contained within an article along with many other comments is irrelevant, and its prejudicial value outweighs the probative value.

Also, Proposed Plaintiff Exhibit P-57 is cited in Plaintiffs' Memorandum in Support of Permanent Injunction only for the facts about when the map was disclosed publicly (May 27, 2011), when voting on the map occurred, and what the vote results were. Inj. Memo. at 32. This basic date is available from other, more official sources. Furthermore, the document containing this bit of otherwise-available information is buried in a 26 page print-out of a Web site listing personal opinions contained in 107 blog comments from various unidentified sources. Thus, this document is irrelevant, hearsay, and any probative value is outweighed by prejudice to Defendants.

Similarly, Plaintiffs' Proposed Exhibit P-58 is a press release from an advocacy group in 2008 regarding opinions about U.S. Representative Bill Lipinski. This is hearsay without any exception or exemption. On its own, it has no probative value as to any of the issues in this case and should be barred from use or introduction into evidence in this case.

Moreover, Plaintiffs' Proposed Exhibit P-109 was first disclosed to Defendants on November 7, 2010 in the context of the Proposed Pre-Trial Order. This document purports to be a chart of various election results and demographic data for districts of various Latino U.S. Congressmen. The source for this data is *The Almanac of American Politics*. Data regarding the election results for U.S. Representative Luis Gutierrez and demographics for Illinois Congressional District 4 were referenced in this litigation; however, he is only one of 22 representatives listed on this table. Thus, except for that discrete piece of data, none of the other facts or data contained in this document were disclosed, utilized, or referenced in this litigation. As such, it is unclear as to how this document would or could be used in this litigation. Therefore, Plaintiffs' Proposed Exhibit P-109 should be barred from use in this case on hearsay, foundation and relevance grounds.

Finally, Plaintiffs' Proposed Exhibits P-44 and P-53 are also the subject of another Motion *in Limine* filed by Defendants. For reasons stated in that Motion *in Limine*, and additionally because these documents are hearsay, Plaintiffs' Proposed Exhibit P-44 and P-53 should be barred from use in this case and stricken from Plaintiffs' Injunction Memorandum.

### **Conclusion**

For the reason set forth above, Plaintiffs' Proposed Exhibits P-42 (A52), P-44 (A54), P-51 (A61), P-52 (A62), P-53 (A63), P-54 (A64), P-55 (A65), P-56 (A66), P-57 (A67), P-58 (A68), and P-109 should be barred from use at trial and stricken from Plaintiffs' Injunction Memorandum, and all testimony regarding these documents should be barred in this case.

Dated: November 10, 2011

Respectfully submitted,

THE ILLINOIS STATE BOARD OF ELECTIONS, ET AL.

/s/ Brent Stratton

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