

**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> ,	)	
	)	Case No. 1:11-cv-05065
Plaintiffs,	)	Hon. John D. Tinder
	)	Hon. Joan H. Lefkow
v.	)	Hon. Robert L. Miller, Jr.
	)	(3-judge court convened pursuant
ILLINOIS STATE BOARD OF ELECTIONS,	)	to 28 U.S.C. § 2284)
<i>ET AL.</i> ,	)	
	)	
Defendants.	)	

**PLAINTIFFS' RESPONSE TO MOTION TO QUASH CURRENT AND FUTURE
SUBPOENAS IN VIOLATION OF THIS COURT'S ORDER**

During discovery in this action, Plaintiffs unsurprisingly have learned of three additional third party witnesses with information relevant to Plaintiffs' claims set forth in the Complaint. Promptly after discovering the identities of these witnesses and before the close of discovery, Plaintiffs took steps to secure the depositions of these individuals: former Congressman William Lipinski, Congressman Jesse Jackson, Jr., and Rockford Mayor Lawrence J. Morrissey. In what can only be described as self-serving litigation strategy, Defendants have moved to quash the depositions of these three third party witnesses claiming without citation to any legal authority that the depositions are somehow improper and unfair to them. Tellingly, none of the targets of the subpoenas have joined in Defendants' motion to quash ("Motion") or have otherwise asked this Court for relief from the subpoenas. For the reasons set forth below, Defendants' Motion is without merit and should be denied.

I. The Witnesses Sought Are Relevant To This Action.

Defendants conclusorily complain that the three witnesses have no information relevant to the Plaintiffs' claims. Simply stated, it is not Defendants' place to decide whether third party deponents, who did not join in Defendants' Motion, may have information likely to lead to admissible evidence. As demonstrated below, evidence discovered to date certainly establishes information likely to be obtained from these three witnesses meets the low threshold for relevance at this discovery stage of these proceedings.

A. William O. Lipinski

Defendants deposed Congressman John Shimkus on September 29, 2011 and Congresswoman Judy Biggert on October 10, 2011. In those depositions and upon further investigation, Plaintiffs gained a good faith basis to believe that former Congressman Lipinski played a material role in the drafting of Adopted Plan CD3, the district drawn for his son, incumbent Congressman Dan Lipinski. Upon learning about William Lipinski's likely possession of information relevant to the planning, creation, and development of the 2011 Illinois congressional redistricting plan ("Plan") enacted as Illinois P.A. 97-14, Plaintiffs promptly contacted Mr. Lipinski and determined that it was necessary to depose him. After several discussions with Mr. Lipinski in an effort to arrange a mutually convenient time for his deposition, on Monday, October 17, Congressman Lipinski informed the undersigned counsel that Michael Kasper, one of the counsel for the Defendants, would arrange for his deposition. The undersigned counsel immediately contacted attorney Kasper with no response other than the filing of this Motion. Mot. ¶ 8. Mr. Lipinski's anticipated testimony is fact-based, limited to his personal involvement in influencing the drawing of CD3 which the Plaintiffs have alleged was

diluted of Latino voting age population (“VAP”) to benefit a white incumbent to the detriment of Latinos. Dkt. No. 1 at 2, 14. Lipinski’s testimony is therefore highly relevant.

B. Subpoena of Congressman Jesse L. Jackson, Jr.

Plaintiffs subpoenaed Congressman Jackson, who has spoken publicly about the Plan,¹ on October 14, 2011. Congressman Jackson has publicly expressed serious concerns that the Adopted Plan violates the Voting Rights Act by providing for only one Latino majority district. Jackson has also been highly critical of the process by which the Plan was drafted, saying that “[t]o 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.” *See supra* n.1. Congressman Jackson’s comments have been widely reported by local and national media outlets. It should come as no surprise to Defendants that Plaintiffs are interested in formally discovering, for example, “the specific sequence of events leading up to the challenged decision [and] departures from the normal procedural sequence. . .” Dkt. No. 77 at 7.

C. Mayor Lawrence J. Morrissey

Plaintiffs learned of Mayor Morrissey’s relevance during the October 7, 2011 deposition of Donald Manzullo, who testified about the Plan’s negative impact on Rockford, Illinois. Ex. A. Plaintiffs promptly reached out to Mayor Morrissey, but not before counsel for the Defendants.² On October 14, 2011, Plaintiffs notified Defendants that the Mayor agreed to be deposed in this matter. Ex. B. As apparently Mayor Morrissey informed counsel for Defendants, who called him directly on or about October 7, he is very alarmed that for the first time since the 1850s, Rockford will be in more than one Congressional district, divided along

¹ See Rich Miller (Sept. 22, 2011), <http://capitolfax.com/2011/09/22/black-delegation-takesstep-back-from-new-map/>.

² Apparently, Defendants’ attorney Bruce and the Mayor are law school classmates.

racial lines and the minority community of Rockford will reside in a district where the major population center is over 100 miles away in a completely different part of the state. The Mayor's testimony is relevant to the community of interest allegations in the complaint. Dkt. No. 1 at 22, 43.

II. The Timing Of The Depositions Of These Witnesses Poses No "Unfairness" To Defendants.

Defendants' Motion is laced with protests that these depositions are somehow unfair to them. This argument is unwarranted. The scheduling of depositions highlights who Plaintiffs believe has relevant information and also provides Defendants with ample opportunity to participate in the depositions of the witnesses and thereby avoid actual surprise in advance of trial. Defendants were notified of these depositions well in advance of the October 19, 2011 discovery cutoff date.

First, Defendants' objection that these subpoenas are in violation of this Court's Discovery and Preliminary Pre-Trial Order is without merit. By agreement of the parties, the Court revised its initial Discovery and Preliminary Pre-Trial Order to postpone the close of fact depositions to October 19, 2011. But, as Defendants acknowledge (Mot. at 2 n.1), the tight discovery schedule has required both sides to accommodate witnesses as well as lawyers by agreeing to *schedule* fact depositions after the October 19, 2011. Moreover, recently one senior attorney for Defendants informed counsel for the Plaintiffs that he personally had no objection to scheduling fact witnesses past October 19th in the context of discussion about scheduling witnesses the Defendants sought. Likewise, these three depositions were noticed within the discovery period and then proposed at times to accommodate calendar conflicts of the witness or opposing counsel. The timing of these depositions simply is another example of the need for some flexibility and cooperation on all sides, particularly in light of the aggressive discovery

schedule and the unavoidable conflicts with the schedules of the attorneys and deponents, some of whom are United States Congressmen.³

Furthermore, Defendant's objection that these depositions will take place after expert discovery is a red herring. As a preliminary matter, Defendants provide no legal basis to support their request to quash the subpoenas of the witnesses on the grounds that the depositions will occur after the expert depositions. In addition, all three witnesses challenged by Defendants are fact witnesses, *not* expert witnesses and likely will offer facts that are outside the scope of the expert witness testimony from both sides. As is clear from the expert reports already exchanged, the experts in this case are examining data—census data, voting patterns, population movements, and other demographic information. The suggestion that the opinions staked out by these experts will be affected by fact testimony of three current and former public officials about their personal views of and involvement with (or exclusion from) the redistricting process is nonsense. In any event, Defendants' professed concern regarding their experts is pure speculation at this time since they cannot possibly know whether the testimony impacts their expert opinions until *after* it has been given. *See Hall v. Shelter General Ins. Co.*, 2007 WL 2142984, at *2 (S.D. Ill. Jul. 25, 2007).

Finally, the timing of these three fact witness depositions will have no impact upon the rest of the Court's schedule. Tellingly, Defendants make no such allegation.

III. Plaintiffs Should Be Free To Use Evidence From These Witnesses.

Furthermore, even if the Court were to grant the extreme relief of disallowing these depositions, Defendants can have no basis to complain in the future when Plaintiffs offer

³ Indeed, Defendants are well aware of the challenges of the aggressive discovery schedule in this case since they asked to revisit the already decided discovery dates of numerous of the individual plaintiffs in this action shortly after engaging new counsel. For example, Congresswoman Biggert's deposition was cancelled by Defendants the afternoon of the business day before her deposition was originally supposed to take place.

evidence from these witnesses. All three witnesses now have timely been disclosed (before the close of discovery) as individuals likely to have discoverable information in compliance with the deadline set forth in Section 3.3 of the Court's Discovery and Preliminary Pre-Trial Order. Plaintiffs' disclosures are well within the Court's Nov. 7, 2011 cutoff date. The fact that Defendants seek to block depositions of these witnesses now does not change the fact that they have been properly disclosed. Moreover, if Defendants persist in their objections to these depositions, they should be precluded from offering any affirmative evidence from them as it would be inherently unfair for Defendants to move to quash these depositions and then to affirmatively use evidence from these individuals.

WHEREFORE, for the forgoing reasons, Defendants' Motion To Quash Current And Future Subpoenas In Violation Of This Court's Order should be denied.

Dated: October 19, 2011

Respectfully submitted,

/s/ Lori E. Lightfoot

Tyrone C. Fahner
John A. Janicik
Lori E. Lightfoot
Joshua D. Yount
Dana S. Douglas
Thomas V. Panoff
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606
(312) 782-0600
(312) 701-7711 – fax

Attorneys for Plaintiffs

EXHIBIT A

1 IN THE UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

3 COMMITTEE FOR A FAIR AND)
4 BALANCED MAP, JUDY BIGGERT,)
5 ROBERT J. DOLD, RANDY HULTGREN,)
6 ADAM KINZINGER, DONALD)
7 MANZULLO, PETER ROSKAM BOBBY)
8 SCHILLING, AARON SCHOCK, JOHN)
9 M. SHIMKUS, JOE WALSH, RALPH)
10 RANGEL, LOU SANDOVAL, LUIS)
11 SANABRIA, MICHELLE CABALLERO,)
12 EDMUND BREZINSKI, and LAURA)
13 WAXWEILER,)
14)

15 Plaintiffs,)

16) No.
17) 1:11-CV-050065

18 ILLINOIS STATE BOARD OF)
19 ELECTIONS, WILLIAM M.)
20 MCGUFFAGE, JESSE F. SMART,)
21 BRYAN A. SCHNEIDER, BETTY J.)
22 COFFRIN, HARROLD D. BYERS,)
23 JUDITH C. RICE, CHARLES W.)
24 SCHOLZ, and ERNEST L. GOWEN,)
)

 Defendants.)

16 The deposition of DONALD MANZULLO, called
17 by the defendant for examination pursuant to notice
18 and pursuant to the Rules of Civil Procedure for the
19 United States District Courts pertaining to the
20 taking of depositions, taken before Amy M. Spee, a
21 notary public within and for the County of Cook and
22 State of Illinois, at 70 West Madison Street, 55th
23 Floor, Chicago, Illinois, on the 7th day of October
24 2011.

1 APPEARANCES:

2 MAYER BROWN, LLP, by
3 MS. LORI E. LIGHTFOOT
4 71 South Wacker Drive
5 Chicago, Illinois 60606-4673
6 (312) 782-0600
7 lightfoot@mayerbrown.com
8 for the plaintiffs;

9 POWER, ROGERS & SMITH, P.C., by
10 MR. DEVON C. BRUCE
11 70 West Madison Street
12 55th Floor
13 Chicago, Illinois 60602
14 (312) 236-9381
15 dbruce@prslaw.com
16 for the defendants.

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

1 I N D E X

2 Witness: Page

3 DONALD MANZULLO

4 Examination by:

5 Mr. Bruce 4

6

7

8

9 E X H I B I T S

10 Number Page

11

12

13

14

15

16

17

18

19

20

21

22

23

24

1 and it came out just a few hours before it was voted
2 on. How could you comment on something that you
3 can't see.

4 Q Can I have my question --

5 A I had no idea that this would ever happen
6 to my district. It's always been up against the
7 Mississippi river, always gone western to the --
8 always gone to the east and Rockford has never been
9 divided. I had no idea, no inclination anybody would
10 be that cruel and divide that city.

11 Q Have you ever spoken to the mayor much
12 Rockford?

13 A Yes.

14 Q And what has the mayor of Rockford --

15 A Easy absolutely upset over this.

16 Q So mayor more see?

17 A Mayor more see is out raged over it because
18 he knows the work I have done for that city.

19 Q When did Mr. Mayor Morrissey tell you that
20 he was out raged about the division of Rockford into
21 two Congressional districts?

22 A Well, it would have been after the map came
23 out. I can't tell you when and where but I did
24 personally talk to him, he was very upset.

1 Q Tell me his exact words?

2 A I can't remember his exact words.

3 Q Okay.

4 A But he was out raged. He was very upset
5 and so is Scott Christianson, who is the chair of
6 county board.

7 Q Now, I think we digressed. I simply asked
8 you, did you ever send anyone on your behalf to any
9 of the redistricting committee hearings?

10 MS. LIGHTFOOT: And that's been asked and
11 answered.

12 BY MR. BRUCE:

13 Q Go ahead you can answer, congressman?

14 A No.

15 Q Okay. And when did you first retain
16 counsel to represent you in the redistricting
17 process?

18 MS. LIGHTFOOT: Objection. Relevance.

19 THE WITNESS: I don't know.

20 BY MR. BRUCE:

21 Q Well, was it before or after the map was
22 passed?

23 MS. LIGHTFOOT: Objection. Relevance.

24 THE WITNESS: I think it was before, but...

EXHIBIT B

Helfrich, Gretchen

From: Lightfoot, Lori
Sent: Friday, October 14, 2011 8:31 AM
To: 'dbruce@prslaw.com'; 'Bergetz, Carl'; 'Kasper Michael'
Cc: Douglas, Dana S.; Panoff, Thomas
Subject: Deposition of Rockford Mayor Morrissey

Importance: High

Devon: I understand that you have recently renewed acquaintances with your former law school classmate, Mayor Morrissey of Rockford. The good Mayor has agreed to submit himself for a deposition in this matter. I suggest Monday October 24th if his schedule permits. I told him that I would be happy to travel to Rockford for the deposition. Please let me know if that date works so that I can confer with the Mayor's scheduler about his availability. Of course if that date does not work for anyone on your side, please suggest alternative dates. Thanks.

Lori E. Lightfoot
Mayer Brown LLP
71 S. Wacker Drive
Chicago, IL 60606
312-701-8680 ph
312-701-7559 fx