

**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 TO QUASH THE SUBPOENA OF
ILLINOIS SENATE PRESIDENT JOHN CULLERTON**

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*, quashing the subpoena of Illinois Senate President John Cullerton. In support thereof, Defendants state:

1. This case has been pending since July 27, 2011.
2. At no time has Senate President John Cullerton ever been identified as a trial witness in this case by either the plaintiffs or defendants. As of today's date, he has still never been identified as a trial witness.
3. At no time have the plaintiffs made any effort to identify him as a fact witness or take his deposition during the discovery phase of this process.
4. Pursuant to this court's order, all written discovery was required to be completed by September 17, 2011.
5. Furthermore, this court ordered that all oral fact discovery be completed by October 19, 2011. During the allocated time for written and oral discovery, President Cullerton was

never mentioned by the plaintiffs as a individual who would be called as a witness in the hearing of this matter.

6. During the course of discovery in this case, several of the *plaintiffs themselves* testified to alleged conversations with Senate President John Cullerton regarding re-districting. This is knowledge that plaintiffss' counsel had *prior* to filing the lawsuit at issue let alone during the discovery phase of this process. Despite this knowledge, plaintiffs' counsel never identified him as a witness.
7. Pursuant to this court's previous orders, the plaintiffs and the defendants worked together to draft a pre-trial order identifying, *inter alia*, all witnesses who would be called at the trial of this matter. At no time during the pre-trial order discussions was Senate President John Cullerton identified as a fact witness in this matter and the pre-trial order did not list him as a witness.
8. During the late afternoon of November 15th, 2011, approximately 30 hours before the hearing of this matter is scheduled to begin, plaintiffs *issued a subpoena for President John Cullerton* to be a witness at the trial of this matter. Plaintiffs did so without leave of court.
9. Plaintiffs' counsel issued this subpoena in violation of numerous orders of this Court including, but not limited to, the following:
 - A. That all written discovery be completed by September 17, 2011;
 - B. That all oral fact discovery be completed by October 19, 2011; and
 - C. That all witnesses be identified in the pre-trial order by November 7, 2011.
10. Furthermore, this court has already ruled on the legislative immunity issue with respect to Senate President John Cullerton and held that any documents with respect to his

involvement in the map re-districting case are protected and excluded.

11. It should also be noted that *plaintiff's counsel has previously been admonished by this court not to issue subpoenas for additional witnesses without leave of court.*

Specifically, plaintiffs' counsel previously issued subpoenas in violation of this court's deadlines with respect to former Congressman Lipinski, Congressman Jackson, Jr. and Mayor Lawrence J. Morrissey. Defendant filed a motion to quash those subpoenas.

During the oral argument on that motion, this court stated as follows:

- “The ground rule is that *you can't— you can't name new witnesses and just subpoena them for court without a deposition*”. (Ex. A- Report of Proceedings dated October 20, 2011, p. 16)
- “*We have to stop at some point* because this is going to be a huge amount of material”. (Ex. A- Report of Proceedings dated October 20, 2011, p. 16)
- “I don't know what your- I don't know what your plan was when you said disclosed witnesses by November 7th. *I would assume that— I mean, typically that means you have already done the depositions and you have pared down who the people are that you're going to call—from the discovery you have had*”. (Ex. A- Report of Proceedings dated October 20, 2011, p. 17)

12. This court granted the defendants' request that no further subpoenas be issued. Clearly, the eleventh hour subpoena on a non-party who has never been identified as a trial witness is untimely and highly prejudicial.

Wherefore, defendants respectfully request that this court quash the subpoena of Senate President John Cullerton.

Respectfully submitted,

/s/ Devon C. Bruce
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