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

LEAGUE OF WOMEN VOTERS OF ILLINOIS,	)	
Plaintiff,	)	Case No. 11-cv-5569
v.	)	
PAT QUINN, in his official capacity as Governor of the State of Illinois, and WILLIAM M. McGUFFAGE, JUDITH C. RICE, BRYAN A. SCHNEIDER, CHARLES W. SCHOLZ, JESSE R. SMART, HAROLD D. BYERS, ERNEST C. GOWEN AND BETTY J. COFFRIN in their Official capacities as Members of the Illinois State Board of Elections,	)	Hon. Elaine E. Bucklo Hon. Diane S. Sykes Hon. Philip P. Simon
Defendants.	)	

Plaintiff LWV's Motion to Reconsider

Pursuant to Fed. R. Civ. P. 59(e), plaintiff League of Women Voters of Illinois ("LWV"), by its undersigned counsel, moves to reconsider this Court's order and opinion of October 28, 2011 dismissing this action and to alter its judgment. Plaintiff LWV respectfully files this motion because it believes the Court failed to apprehend LWV's three allegations of First Amendment injury: (1) the First Amendment right of LWV members to hear and receive election speech without government control or screening of the speech they are likely to hear and receive; (2) the government's relocation of LWV members and other citizens to other districts to "counter" or offset the speech they are likely to express based on their party registration; and (3) the content-based admission of LWV members into or their exclusion from legislative districts

which are in the nature of public forums. In support of this motion, plaintiff LWV states as follows:

The Right to Hear and Receive Views

1. The Court stated that it was dismissing this action because "the redistricting plan in no way burdens the exercise of the First Amendment rights of LWV or its members…" In its opinion, the Court stated that the "threshold requirement of a content based First Amendment challenge" is a "showing that the redistricting plan is preventing LWV's members from engaging in expressive activities." Opinion, page 1.

2. However, the Court's opinion fails to address whether plaintiff LWV's members and other citizens have a First Amendment right to hear and receive election-related speech without intentional government interference as to the political content of the speech. The case law is overwhelming that even without engaging in speech themselves, LWV members have a right to hear and receive the opinions of citizens who would be "willing speakers" but are relocated to other districts because of the content of their political views. They have a First Amendment right to hear and receive election-related speech without the admitted government attempt here to screen or filter or control the content of the views they are likely to hear and receive.

3. Without specifically addressing this First Amendment right to hear and receive speech, this Court distinguished *Martin v. Struthers*, 319 U.S. 141, 143 (1943) because the Jehovah Witness in that case could claim her own speech was being restricted. Yet that celebrated case also declares a right under the First Amendment to hear and receive the views of others. "The right of freedom of speech and press…embraces the right to distribute literature *and necessarily protects the right to receive it.*" *Id* (emphasis supplied).

4. Since *Martin,* the U.S. Supreme Court has repeatedly declared a right to hear and receive the opinions of others – even when the parties bringing the First Amendment claim are perfectly free to speak for themselves. This right to hear and receive the speech applies in particular to election campaigns. *See, e.g., First National Bank of Boston v. Belotti,* 435 U.S. 765, 783 (1978)("First Amendment…afford[s] the public access to discussion, debate, and the dissemination of information and ideas."). The Supreme Court has recognized that the rights of the listener are distinct from, and at times stronger than, the rights of the speaker. *See Virginia State Board of Pharmacy et al. v. Virginia Citizens Council,* 425 U.S. 748 (1976). Without question, then, there is a First Amendment right of citizens to challenge government efforts to screen or filter the views that they hear and receive. *Kleindienst v. Mandel,* 408 U.S. 753, 762 (1975)(First Amendment encompasses "right to receive information and ideas"); *see Stanley v. Georgia* 394 U.S. 557, 564 (1969) ("the Constitution protects the right to receive information and ideas"); *Griswold v. Connecticut* 381 U.S. 479, 480 (1965) ("The right of freedom of speech… including not only the right to utter or to print, but … the right to receive, the right to read…"); *Lamont v. Postmaster General,* 381 U.S. 301, 308 (1965)("The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them."); *Red Lion Broadcasting Co. v. Federal Communications Commission,* 395 U.S. 367, 390 (1969)("(it) is the right of the viewers and listeners, not the right of the broadcasters which is paramount…").

5. Because this Court's opinion states or implies there is no such right or fails to account for it, the plaintiff LWV respectfully requests that the Court reconsider its decision. In this redistricting plan, the State defendants are relocating "willing speakers" from "District A" to "District B," at least in part to affect the views that plaintiff LWV members hear and receive.

These "willing speakers" are the candidates, or potential candidates of the disfavored party. They are the party activists who canvass, go door to door, and urge their neighbors to vote for one party or the other. They are the ordinary registered Democrats or Republicans who may just give money, which is now deemed by the U.S. Supreme Court to be a form of speech. All of these persons are being relocated at least in part because of the content of their political views.

6. To be clear – LWV's injury is *not* that redistricting makes some "political outcomes" more likely than others. LWV complains that the State defendants are trying to restrict the *speech* that they are likely to hear and receive by "balancing" the speech of the two parties in order to have "competitive" elections.

The Right to Be Free of Government Attempts to "Counter" Election Related Speech

7. By moving LWV members out of one district and into another – all because of their party registration – the State defendants are seeking to "counter" or "balance" their speech with more speech from persons of the opposing party. Plaintiff LWV alleges that this is the same "countering" of speech which the U.S. Supreme Court found to be an unlawful burden on speech of candidates in *Arizona Free Enterprise Club Freedom's Club v. Bennett,* 564 U.S. __ (10-283)(June 27, 2011). First Amended Complaint paragraph 1, Opposition to Motion to Dismiss pp. 6-8, 10-12. Plaintiff LWV relied heavily on this case as the most recent and controlling decision on regulating election speech.

The Right Not to Be Excluded
from a Public Forum Because of the Content of a Citizen's Views

8. Neither did the Court address the allegation in the First Amended Complaint (paragraphs 38 and 39) that a legislative district is in the nature of a public forum. Since that is so, the State defendants may not condition admission in or exclusion from this forum based on their speech or expression. The Court's opinion states that plaintiff LWV members have

suffered no restriction of speech – but the State defendants have restricted or inhibited them from speaking in elections in districts at least in part because of the content of their views.

9. *Gaffney v. Cummings*, 412 U.S. 735 (1973), to which this Court refers, addresses only an equal protection claim under the Fourteenth Amendment. There is not a shred of a First Amendment or speech claim in this 1973 case. It is also unimaginable that after *Buckley v. Valeo*, 424 U.S. 1 (1976) or *Citizens United v FEC,* 558 U.S. 08-205 (2010) this Supreme Court would ever extend a "political fairness" principle as in *Gaffney* to justify a "balancing" of First Amendment speech.

10. Nothing in *Vieth v. Jubelier*, 541 U.S. 267 (2004) precludes the application of the First Amendment to a redistricting plan which is an admitted attempt to "balance" election related speech to have "competitive" campaigns. There was no allegation in *Vieth* of an attempt to control protected First Amendment speech. There is no holding or *stare decisis* principle that should keep this Court from applying the current law as set forth in *Citizens United* and *Arizona Free Enterprise* to the State defendants' "balancing" of speech in this case. This Court should not defer its proper role as the "court of first instance" to apply the law as it now exists in light of these decisions.

WHEREFORE, for all the reasons set forth above, plaintiff LWV respectfully requests that the Court alter the judgment and reconsider its opinion of October 28, 2011, and address in particular whether the plaintiff LWV has a right to hear and receive views of willing speakers moved to other districts because of the content of their views.

Date: November 10, 2011

Respectfully submitted,

s/ Thomas H. Geoghegan
One of the Attorneys for Plaintiff
League of Women Voters of Illinois

Thomas H. Geoghegan
Michael P. Persoon
Sean Morales-Doyle
Despres, Schwartz & Geoghegan, Ltd.
77 W. Washington St.
Suite 711
Chicago, Illinois 60602
(312) 372-2511