COMMONWEALTH OF KENTUCKY

FRANKLIN CIRCUIT COURT

DIVISION I

CIVIL ACTION NO. 12-CI-00109

JOSEPH M. FISCHER, ET AL. **PLAINTIFFS**

VS. **RESPONSE TO MOTION FOR TEMPORARY INJUNCTION**

ALISON LUNDERGAN GRIMES, ET AL **DEFENDANTS**

and

KENTUCKY SPEAKER OF THE HOUSE,

SPEAKER PRO TEM AND HOUSE FLOOR

MAJORITY LEADER **INTERVENING PARTIES**

. . .

Come the Intervening Parties, by counsel, and in RESPONSE to the Plaintiffs' demand for injunctive relief, state as follows:

Plaintiffs have moved this Honorable Court for extraordinary relief, but have utterly failed to meet the high burden of proof imposed upon them by law. Plaintiffs would have this Court disrupt the orderly election process provided for in HB1 by replacing it with a previous redistricting plan which splits an identical number of counties, but completely fails to address the massive population shifts occurring in Kentucky over the last ten years. That plan is plainly improper and deprives all citizens of this Commonwealth of the effective representation mandated by law.

Clearly, the action demanded by Plaintiffs would only compound any alleged infirmity in the redistricting plan by rendering it violative of the Federal Constitutional requirement of "one person one vote." The more prudent and rational course is to allow for an orderly and considered evaluation of the new redistricting plan, as this Court may deem necessary, without taking the regressive and counterproductive actions urged by Plaintiffs. Plaintiffs' argument, at p. 4 of the *Plaintiffs' Motion and Memorandum in Support for* (sic) *Temporary Injunction*, urging that this Court maintain the status quo by forcing the state to return to the redistricting plan from ten years ago, is ill advised and should be summarily rejected, as it would result in a massive increase in population deviation and utterly defeat the paramount goal of protecting "one person, one vote" principles, as is more fully set out herein.

I. PLAINTIFFS IGNORE CASELAW EFFECTIVELY OVERRULING THEIR CITED AUTHORITY

Plaintiffs make the wholly unsubstantiated claim that HB1 is somehow violative of Kentucky law because it splits six counties above the number required to be divided due to excess population. The sole authority cited in support of this assertion is *Fischer v. State Bd. of Elections,* 879 SW 2d 475 (Ky. 1994), which is claimed to stand for the proposition that "HB1 splits six more [counties] than the minimum amount required by law." See: Plaintiffs' *Memo in Support,* at p. 7.

Plaintiffs neglect to inform this Court that *Fischer* does not stand for this proposition at all. In fact, *Fischer* expressly recognizes that the complicated balancing act required to accommodate both Federal and Kentucky Constitutional requirements will invariably involve the splitting of more counties than are divided due to simple population numbers. The redistricting plan produced in the 1990's in response to *Fischer* did so, and so has every plan since then.

Plaintiffs ignore other critical facts differentiating *Fischer* from the present case. In *Fischer,* the redistricting plan passed by the General Assembly divided 48 counties, and the reviewing court was presented with a competing plan which split only 29. In the present case, the new redistricting plan splits only 6 counties in addition to those required to be split due to population, which is exactly the number split in the plan that has been in effect for the past ten years. Therefore, the new redistricting plan is fully compliant with the dictates of *Fischer,* as is the plan which has been in effect for the past decade in this Commonwealth.

Plaintiffs also mistakenly ask this Court to rely on *Fischer* for the proposition that the splitting of counties "among multiple House districts" is somehow improper. *Plaintiffs' Memo* at p. 7. Astonishingly, Plaintiffs fail to apprise this Court that this very point has been addressed and dismissed by the Kentucky Supreme Court in *Jensen v. State Board of Elections*, 959 SW2d 771 (1997), which held:

> Like the delegates to the 1890 convention, we could not envision that a county with sufficient population to support a whole district within its borders might not be awarded such a district, or that a county or remnant thereof might be subjected to multiple divisions. However, we did not hold in footnote 5 that such is constitutionally prohibited. **In fact, what we thought was scarcely conceivable has been proven to be unavoidable.** All three redistricting plans, including Appellant's own House Bill 350, contain numerous so-called "footnote 5 violations." **No one now suggests that any redistricting plan could be drafted without some such multiple divisions.**

959 SW 2d, at 776, emphasis supplied.

It appears that Plaintiffs would have this Court be the sole entity to "now suggest" that multiple divisions are somehow suspect. As the *Jensen* court recognized, such splits are "unavoidable" and multiple single county splits are specifically permitted by the Kentucky

Supreme Court. Plaintiffs' failure to candidly disclose this controlling authority strongly suggests that the extraordinary relief sought should be denied.

II. HB 1 PROPERLY MAKES USE OF MAXIMUM POPULATION DEVIATION

Plaintiffs appropriately acknowledge that the Kentucky Legislature is required to "make full use of the maximum constitutional population variation" of 10%, but ask this Court to summarily enjoin the Legislature's carefully crafted work because the actual population deviation is 10.0013827%, **an overall deviation of less than one half of one person** from the mandatory guideline. (*Plaintiffs' Memo* at pp. 5 and 7.) This Court will no doubt take note that it is mathematically impossible to more fully utilize the mandatory 10% population deviation. Any alternate population division could not possibly be closer to the ideal demanded by Kentucky courts, yet Plaintiffs pretend that this close adherence to the law is somehow a fatal flaw, rather than a startlingly accurate "full use" of the maximum deviation. The plan approved by the General Assembly comes within 1/1000th of perfection, a standard not required even in federal congressional redistricting. This difference is statistically irrelevant and this Court should treat it as such.

Obviously, Plaintiffs rely upon a slender thread to suspend the major disruption they advocate, especially when the relief demanded by Plaintiffs would result in a population deviation far in excess of that presently complained of. **To now revert to the old redistricting map would subject the citizens of this Commonwealth to population deviations exceeding 60%, according to census data.** (Comparing House District 60, which is 42.7% above the population mean, with House District 43, which is 18.1% below the mean.) How this could

possibly be an improvement over the nearly perfect population deviation of HB1 is a mystery known only to Plaintiffs.

Not surprisingly, ample state and Federal authority support a common sense reading of the law and undercuts Plaintiffs' narrow objection. The directive requiring "full use" of the 10% deviation has been repeatedly endorsed by the Kentucky Supreme Court, which strongly suggests that the precision of HB1 is a virtue, not a subject for baseless complaint.

As was recognized by the Supreme Court in *Jensen*, the law does not view such a minor deviation as being indicative of any shortcoming. In summarizing the proffered caselaw, the *Jensen* Court noted:

> Indeed, other state plans with greater deviations have been held not to violate federal constitutional requirements where the deviations were shown to be "based on legitimate considerations incident to the effectuation of a rational state policy." *Reynolds v. Sims,* 377 U.S. 533, 579, 84 S.Ct. 1362, 1391, 12 L.Ed.2d 506 (1964). *See also Brown v. Thomson,* 462 U.S. 835, 103 S.Ct. 2690, 77 L.Ed.2d 214 (1983); *Mahan v. Howell,* 410 U.S. 315, 93 S.Ct. 979, 35 L.Ed.2d 320 (1973).

959 SW2d, at 774.

Similarly, the *Fisher* court recognized that "significant deviations" from population equality are fully expected and permissible in state redistricting, holding:

> It is important to note, however, that while controlling federal decisions require virtual perfection in the apportionment of Congressional districts, no such rule prevails with respect to the apportionment of state legislative districts. *Connor v. Finch,* 431 U.S. 407, 97 S.Ct. 1828, 52 L.Ed.2d 465 (1977); *Gaffney v. Cummings,* 412 U.S. 735, 93 S.Ct. 2321, 37 L.Ed.2d 298 (1973); *White v. Regester,* 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973); and *Reynolds v. Sims,* 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). Federal decisional law has long acknowledged the right of states to allow significant deviation from strict "one man, one vote" principles, absent invidious discrimination, to achieve important state policy. A total deviation of 16.4% was upheld in *Mahan v. Howell,* 410 U.S. 315, 93 S.Ct. 979, 35 L.Ed.2d 320 (1973), on the grounds that the State of Virginia had a substantial interest in preserving the integrity of its political subdivisions. Likewise, a total deviation of 89% was

> upheld in *Brown v. Thomson,* 462 U.S. 835, 103 S.Ct. 2690, 77 L.Ed.2d 214 (1983), "on the basis of Wyoming's long-standing and legitimate policy of preserving county boundaries." While the federal courts have not abdicated their duty to require compliance with the Constitution of the United States in matters of state legislative apportionment, a presumption of validity has emerged and it is safe to say that so long as the maximum population deviation does not exceed −5% to +5%, and provided any such deviation is in furtherance of state policy, no violation of the Constitution of the United States will be found. *Gaffney v. Cummings, supra,* and *Connor v. Finch, supra.*

879 SW2d, at 478.

In the present case, the Legislature strived to meet the conflicting constitutional goals of minimizing the splitting of counties while utilizing the maximum population deviation in a good faith effort to mesh the two directives insofar as possible. Because each of these goals is a valid (and in fact legally mandated) state policy, no adverse implication may be drawn from their implementation.

It is clear that the vast weight of authority is wholly in favor of the Legislature's utilization of the mandatory ten percent population deviation. In light of this extensive caselaw, Plaintiffs have clearly failed to carry the heavy burden of attacking the constitutionality of the redistricting plan, and the extraordinary relief sought must be denied.

III. PLAINTIFFS' "GERRYMANDERING" CLAIMS ARE UNSUPPORTED

The Plaintiffs misconstrue, (or, more precisely, fail to cite or discuss), the relevant caselaw regarding alleged "gerrymandering." Plaintiffs criticize the shapes of selected districts, without admitting that mere allegations of political discrimination are universally recognized as being insufficient to support a court challenge to a redistricting plan. As the standard treatise provided to all state legislatures by the National Conference of State Legislatures (NCSL) explains:

> The issue of whether courts should adjudicate partisan gerrymandering claims remains unsettled more than 20 years after *Bandemer* appeared to resolve that question.... The courts agree that more than discriminatory intent is required. A discriminatory effect also must be demonstrated. The extent of the showing, however, has been the subject of numerous and diverse opinions. In its search for a workable standard for litigating partisan gerrymanders, the Supreme Court has distinguished two separate challenges that plaintiffs must overcome. First, a reliable measure of how much partisan dominance a plan achieves, and second, "a standard for deciding how much partisan dominance is too much." **It is fairly clear that.... incumbent protection, unproportional representation in a single election and pairing minority party incumbents in the same district are not, by themselves, sufficient to support a constitutional claim of partisan gerrymandering.**

See: NCSL's "Redistricting Law 2010," at p. 126, emphasis supplied, summarizing a thorough discussion of existing precedent, (copy available to Court and counsel.)

The Plaintiff's claims of partisan gerrymandering fall far short of the standards required by the courts. Indeed, the controlling United States Supreme Court precedents make clear that the Plaintiffs here have no justiciable complaint at all. Even under the permissive *Bandemer* decision, Plaintiffs claims clearly fail. As the NCSL guidebook characterizes the holding:

> In addition to evidence of an inability to assume control of the legislature, the Court held that the finding of an equal protection violation would have to be based on a history of disproportionate results along with an effective disenfranchisement of the minority. Thus, evidence would have to be presented that demonstrates a lack of political power and denial of fair representation. Those conditions exist where excluded groups have "less opportunity to participate in the political processes and to elect candidates of their choice [cites omitted] and where elected officials are not responsive to concerns of the excluded group. The plurality departed from the body of equal protection cases by demanding more than a *de minimis* (i.e., trifling) effect to prove a *prima facie* partisan gerrymandering case. A plaintiff needs to show "that the challenged legislative plan has had or will have effects that are sufficiently serious to require intervention by the federal courts...."

Id, at p. 119, discussing *Davis v. Bandemer*, 462 US 725 (1983).

It is clear that partisan gerrymandering claims require a higher evidentiary showing than other equal protection claims. In redistricting, where politics is a natural and expected part of the

process, simply complaining that partisan impulse played a role in the final plan is manifestly insufficient pleading. Competent proof of the sort identified by the United States Supreme Court is required before judicial intervention can even be considered. Plaintiffs have not even pretended to meet this threshold showing. Their demand for emergency relief must therefore be denied.

Not surprisingly, Plaintiffs were unable to find Kentucky caselaw supporting their position. The single Kentucky case cited by Plaintiffs, *Ridings v, City of Owensboro*, 383 SW2d 510 (1964), does not relate in any way to redistricting. Rather, it is a municipal corporation case which considers the rules governing annexation by a city. Because the city of Owensboro could not show a legitimate municipal purpose in a specific portion of annexed property, the court ruled that the attempted annexation was flawed. The lack of relevance to the instant case is self-evident.

IV. PLAINTIFFS HAVE FAILED TO SHOW THAT THERE IS ANY ALTERNATIVE PLAN WHICH COULD HAVE BEEN ADOPTED BY THE LEGISLATURE

Plaintiffs demand extraordinary relief without even attempting to show that any alternative redistricting plan presented to the General Assembly would have been more appropriate. The obvious reason for this is that the Republican minority made a conscious decision to engage in political gamesmanship rather than participate in meaningful efforts to fulfill the Constitutional redistricting mandate. It clearly appears that a partisan minority intentionally avoided taking part in any bipartisan efforts to craft a redistricting plan for the sole purpose of attacking whatever was passed by the majority. Indeed, the Republican Leader (and Plaintiff in this suit) ignored verbal and written entreaties to offer a redistricting plan in a timely

manner. See: Letter from House Speaker Greg Stumbo to Representative Jeff Hoover of December 29, 2011, attached hereto as Exhibit A. It would be highly inequitable to reward this purposeful avoidance of duty by entertaining a claim that some theoretical plan would, solely in retrospect, be preferable to HB1.

The Legislative Record makes plain that the minority party had no intention of offering any plan which could have been passed by the Legislature in a timely fashion. In fact, another one of the named Plaintiffs, Representative Joe Fisher, offered a plan by way of a floor amendment at the last possible opportunity, only to have it exposed as being violative of the Voting Rights Act of 1965. See: Speaker Stumbo's Memorandum to House Members of January 18, 2012, (appended hereto as Exhibit B), explaining his vote against the amendment and detailing the egregious violations of federal law contained in Plaintiff Fischer's plan, including the illegal fracturing of minority voting blocks in Fayette county. Such a plan would have immediately been subject to federal attack, and was appropriately voted down by the House.

This Court may well conclude that Plaintiffs have now chosen not to reference their supposed "Constitutionally sound" plan because the severe legal infirmities contained therein have been thoroughly exposed. The Court may also take note that the Plaintiffs attempt at political gamesmanship resulted in the complete absence of any legally tenable alternative plan being offered in a timely manner.

V. PLAINTIFFS HAVE FAILED TO MEET THE STANDARD REQUIRED FOR INJUNCTIVE RELIEF

The standard governing the granting of injunctive relief under CR 65.04 is set out in the seminal case of *Maupin v. Stansbury*, 575 S.W.2d 695 (Ky. 1978). The primary showing to be made is

that the Petitioner will **suffer irreparable harm** if the requested relief is not provided. Injunctive relief is an extraordinary measure that may only be taken under the most severe circumstances, where irreparable injury will clearly result from the denial of a writ. Plaintiffs have utterly failed to meet this burden, requiring denial of their request for relief. As Kentucky courts have consistently stated, Rule 65 "requires that for a temporary injunction to be granted, it must be 'clearly shown ... that the movant ... will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action.' "*Sturgeon Mining Co. v. Whymore Coal Co.*, 892 SW2d 591, 592 (Ky. 1995).). This harm must be **irreparable**, not merely substantial. See Sampson v. Murray, 415 U.S. at 61, 90, 94 S.Ct. 937, 39 L.Ed2d 166 (1974).

To demonstrate irreparable harm, "a party must first allege possible abrogation of a concrete personal right." *Maupin*, 575 S.W.2d 695, 698, citing *Morrow v. City of Louisville, Ky.*, 249 S.W.2d 721 (1952). Plaintiffs argue that the current redistricting plan adversely affects the "constitutional right to vote in districts that are substantially equal in population" due to a statistically irrelevant deviation from the 10% deviation requirement. *Plaintiff's Motion and Memorandum in Support For (sic) Temporary Injunction*, pg. 10. That claim does not show the immediate or irreparable injury required for a grant of temporary injunction. Plaintiffs allege that they "will be irreparably damaged in that they will be deprived of the type of representation in the legislative branch of State Government specifically required by Section 33 of the Kentucky Constitution."

Not surprisingly, no authority is cited for the proposition that a Plaintiff may be "irreparably harmed" if an election in a district allegedly violating the precepts of Section 33 is not enjoined, and the Plaintiffs offer no support for the argument that the alleged harm will occur

immediately. Indeed, the effect of their overall argument in support of injunctive relief is essentially to pre-judge the merits of Plaintiff's case and afford them immediately the whole of any relief to which they may or may not be entitled. Under *Maupin*, this would be an improper result, since temporary injunctive relief in such a case may have the effect of enforcing a mere ***claim*** of right (emphasis supplied), as opposed to reaching judgment on whether any immediate, irreparable harm actually exists. In such instances, "doubtful cases should await trial of the merits." *Maupin* at 698, citing *Oscar Ewing, Inc. v. Melton, Ky.*, 309 S.W.2d 760 (1958).

The legislative Plaintiffs, in particular, have demonstrated no immediate and irreparable harm to be occasioned by allowing the Defendant to perform her office's lawful functions pending resolution of the underlying case. The individual Plaintiffs clearly have a personal right to vote, to have their vote counted, and to have that voted weighted as equally as possible with that of other citizens of the Commonwealth. As the legislature believes that the population deviations in HB 1 are enacted with sufficient mathematical precision to pass constitutional muster, no irreparable injury can be shown.

While some individual Plaintiffs have argued that, if the new plan is ultimately found inappropriate or invalid, they may be found to have run in a district which will change, and have to re-file or run again, this relatively minor inconvenience does not constitute irreparable harm worthy of denying the citizenry of the Commonwealth the right to proceed under a properly voted and required redistricting pursuant to population shift. Those individual Plaintiffs have a right to be heard and to appeal any adverse ruling and to redress any injury suffered. There has been no showing that an invalid filing or a later invalidated election is an "irreparable harm." In fact, Courts across this Commonwealth regularly address such issues in the appropriate judicial

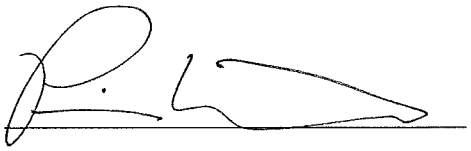
forum. This inconvenience does not outweigh the right of the people to have their votes accorded fair and proper weight under a new and statistically accurate redistricting plan. This Court should therefore rule that no irreparable injury has been shown.

The law holds that a trial court must deny injunctive relief unless it unequivocally finds that (1) that the movant's position presents "a substantial question" on the underlying merits of the case, *i.e.* that there is a substantial possibility that the movant will ultimately prevail; (2) that the movant's remedy will be irreparably impaired absent the extraordinary relief; and (3) that an injunction will not be inequitable, *i.e.* will not unduly harm other parties or disserve the public. *Cyprus Mountain Coal Co. v. Brewer*, 828 SW2d 642 (Ky. 1992).). The Kentucky Supreme Court recently affirmed this standard, stating that "[a]lthough a trial court's ruling granting or denying injunctive relief is reviewed under the abuse of discretion standard, *id.,* our case law is adamant that injunctions generally will not be granted "when the remedy at law is sufficient to furnish the injured party full relief." *Price v. Paintsville Tourism Com'n*, 261 S.W.3d 482, 485 (Ky., 2008).

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Honorable Court DENY the request for injunctive relief and permit the parties to request full review and appropriate resolution of this matter as is required by law.

Respectfully submitted,



Pierce Whites

Scott Jones

J. Patrick Abell

Counsel for Intervenors

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing was this day served upon the following, via hand-delivery:

Hon. Phillip Shepherd, Judge, Franklin Circuit Court, Division I; Hon. Sally Jump, Clerk of Franklin Circuit Court; Hon. Jason Nemes, Hon. Jennifer Stinnett, Hon. Victor Maddox, Hon. John David Dyche, FULTZ, MADDOX, HOVIOUS & DICKENS, PLC; Hon. Anita Britton; Hon. David Tachow, this the 30th day of January, 2012.

Pierce Whites

EXHIBIT A

Commonwealth of Kentucky

HOUSE OF REPRESENTATIVES

GREGORY D. STUMBO
95th Legislative District
PO Box 1473
108 Kassidy Drive
Prestonsburg, Kentucky 41653

STATE CAPITOL
Room 309
Frankfort, Kentucky 40601
(502) 564-3366

SPEAKER OF THE HOUSE

December 29, 2011

The Honorable Jeff Hoover
House of Representatives
P.O. Box 985
Jamestown, KY 42629

Dear Jeff:

I appreciate the hard work that you have put into redistricting efforts through the summer and fall. As we approach the beginning of the session, however, there are still gaps and areas of uncertainty. Chairman Cherry will file a bill to act as a vehicle for our redistricting plan and will, I believe, hold hearings during the first week of the session.

In order to ensure timely action, please submit to my office and/or to Chairman Cherry your final proposed redistricting plan no later than noon Wednesday, January 4th. This will give the caucuses time to meet either after Tuesday's session or on Wednesday morning for final consideration of the plans to be submitted.

Thank you, and I look forward to hearing from you.

Sincerely,

Gregory D. Stumbo

Gregory D. Stumbo
Speaker of the House

GDS:bm

cc: House Leadership

EXHIBIT B

Commonwealth of Kentucky

HOUSE OF REPRESENTATIVES

GREGORY D. STUMBO
95th Legislative District
PO Box 1473
108 Kassidy Drive
Prestonsburg, Kentucky 41653

STATE CAPITOL
Room 309
Frankfort, Kentucky 40601
(502) 564-3366

SPEAKER OF THE HOUSE

MEMORANDUM

To: The Members of the Kentucky House of Representatives

From: Speaker Gregory D. Stumbo

Date: January 18, 2012

RE: Voting Rights Law

My Fellow House Members:

I voted against the Republican redistricting plan because it unconstitutionally deprives minority voters in Lexington of hard won voting rights.

The Minority Leader took the floor yesterday to demand an apology, and accuse me of misrepresenting the facts. It is time that this important debate addressed the hard facts, not political spin.

My dear friend the Gentleman from Fayette 77 (Representative Jesse Crenshaw) has long and proudly represented a vibrant community with a sizable black and Hispanic population.

Black and Hispanic people make up 51% of the people in the 77th. This is what is known as a "majority/minority district", and we as a nation are dedicated to preserving these districts.

The 2000 Census found that 44% of the people in the 77th were black, and 7% were Hispanic, for a total of 51% minority population.

The 2010 Census found that 36% of the people in the 77th were black, and 15% were Hispanic, again resulting in a steady 51% minority population.

The Republican plan makes the district 64% white, cuts black voters down to 23% and Hispanic voters down to 13%.

This practice is known as "fracturing" the minority vote. It has long been declared illegal and unconstitutional.

Even if we ignore the sizable Hispanic population in Fayette County, as the Minority Leader did yesterday, and focus solely on the black voters in the 77th district, the Republican plan is still illegal.

In fact, an identical plan was struck down in Ohio, where a House District containing 35% black voters was fractured, in direct violation of the Voting Rights Act of 1965. See: *Armour v. Ohio*, 775 F Supp 1044 (N. D. Ohio 1991).

The same federal law is applied in Tennessee, where "minority influence" districts of between 25% and 55% are entitled to protection from racial gerrymandering. See: *Rural West Tennessee African-American Affairs Council, Inc. v. Wherter*, 877 F Supp 1096, (W. D. Tennessee 1995).

It does not matter that some minority voting rights are preserved in Jefferson County. The United States Supreme Court has firmly stated that "the vote dilution injuries suffered by these persons are not remedied by creating a safe majority-black district somewhere else in the State." See: *Shaw v. Hunt*, 517 US 899, at 917,(1996).

Our own redistricting manual published for the use of every legislature in the nation, makes plain that "a majority-minority district is a district in which the majority of the population is either African American, Hispanic, Asian or Native American." (See: *Redistricting Law 2010*, National Conference of State Legislatures, at p. 66.)

This same guidebook explains that "more than one minority group, working in a coalition, can form a majority to elect their preferred candidates." (See: *Redistricting Law 2010*, at p. 69.)

When that minority coalition is forcibly broken, as happened here in the Republican plan, courts step in to protect voting rights by striking down the discriminatory act.

When I spoke on the House floor against the measure, I addressed the sponsor of the amendment with respect, and inquired as to whether the Republican plan complied with the voting rights laws. It eventually emerged that the plan had a "problem" which I believe should have been revealed to the members of the House prior to the taking of a vote. I do not regret exposing the shortcomings of the plan. Indeed, I view it as my duty to protect the most fundamental of our political freedoms, the right to an effective vote.

More than a century ago, the U.S. Supreme Court described the right to vote as fundamental because it is "preservative of all rights." (*Yick Wo v Hopkins*, 118 US 356 (1886).

As United States Supreme Court Justice Hugo Black said in 1964, "[o]ther rights are illusory if the right to vote is undermined."

We did the right thing in forcefully rejecting this flawed and unfair plan, and adopting one that preserves the essential basis of our democracy, the right to a meaningful vote.

We should be proud of our efforts, and stand strong together to protect the rights of every Kentuckian, regardless of race, gender or creed.

I am proud of you for doing exactly that.