

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS**

IN RE SPRINGFIELD GRAND JURY
INVESTIGATION.

Case No. 15-mc-3005

**AARON SCHOCK'S MOTION TO STRIKE THE GOVERNMENT'S REPLY
OR IN THE ALTERNATIVE TO FILE A SUR-REPLY**

Respondent Aaron Schock, by and through counsel, respectfully files this Motion to Strike the Government's Reply in support of its Motion to Reconsider, or in the Alternative, for leave to file a Sur-Reply.

INTRODUCTION

The Court held a hearing on July 28, 2015, on the government's Motion for an Order to Show Cause. At the hearing, the Court held that the Collective Entity exception to an individual's right to assert an act of production privilege did not apply because a congressional representative's office is not a collective entity. Upon the government's request, the Court permitted the government to move to reconsider that ruling within seven days, and provided Mr. Schock and the Bipartisan Legal Advisory Group ("BLAG") with seven days to file any response. The Court did not provide for any reply by the government. On August 6, 2015, the government filed a Motion to Reconsider ("Reconsideration Motion") (D.E. 63). On August 12, 2015, Mr. Schock filed his Opposition to the government's Reconsideration Motion. (D.E. 75). That same day, the BLAG filed a Response to the government's Motion. (D.E. 74). On August 20, 2015, without leave of Court, the government filed a Reply, asserting arguments and issues not previously raised. (D.E.

80). Mr. Schock respectfully requests the Court strike the government's Reply for two reasons. First, the government failed to comply with the Court's July 28, 2015 Minute Order establishing the briefing schedule for the Reconsideration Motion or with the Local Rules. Second, the government's Reply raises additional substantive arguments that are not within the scope of the government's Reconsideration Motion, Mr. Schock's Opposition, or the BLAG's Response. In the alternative, Mr. Schock respectfully requests leave of Court to file a sur-reply to the government's Reply to address the new issues and arguments raised by the government.

ARGUMENT

A. The Government Failed to Comply with the Local Rules

Rule 7.1(B)(3) of the Court's Local Rules provides: "No reply to the response is permitted." In the event a party wishes to file a reply, Rule 49.6(B)(5) provides the proper procedure, and requires the party to request and be granted leave of court prior to filing a reply. Here, the government disregarded the Court's Local Rules in filing its Reply without leave of court. Although the Court has permitted the parties in this case to supplement pleadings for the benefit of the Court being fully informed, given the Local Rule prohibiting replies, the government should have requested leave of court prior to filing its Reply. In addition, in its order setting forth the briefing schedule for this matter, the Court did not provide for the government to submit a reply. Because of the government's failure to follow the Local Rules and the Court's order, the government's Reply should be stricken from the record in its entirety.

B. The Government Raises New Issues Not Within the Scope of its Reconsideration Motion

The government uses its Reply to raise new arguments so as to allow the government to have the first and final say on those matters. "[I]t is improper to raise arguments for the first time in a reply because this deprives the other party of an opportunity to respond." *Trading Tech. Int'l*,

Inc. v. Espeed, Inc., 750 F. Supp. 2d 962, 970 (citing *Marie O. v. Edgar*, 131 F.3d 610, 614 n.7 (7th Cir. 1997)). For the first time in its Reply, the government appears to retreat from its “collective entity” argument and raises a new and unprecedented theory that Member office records are “public records” and therefore are not privileged. Even ignoring the government’s failure to comply with the Local Rules, the government’s Reply is improper because it serves as a vehicle to raise new, unanticipated arguments, rather than a response to the arguments raised by Mr. Schock and the BLAG. In fact, the government does nothing to respond to Mr. Shock’s or the BLAG’s points in opposition to the Reconsideration Motion. Despite all of the government’s hyperbole and linguistic histrionics, Mr. Schock’s legal position is simple, straightforward, non-controversial, and amply supported by existing case law: *As a matter of fact*, the records of the 18th District Congressional office created during Mr. Schock’s tenure belong to him personally – the fact being established as a constitutional prerogative of the House pursuant to its rules and practices. As a result of this fact, *as a matter of law*, Mr. Schock enjoys a Fifth Amendment act of production privilege as to those records just as he does – and as the government has admitted – as to any records held by him in his personal capacity. The government apparently felt it necessary to change legal theories in its Reply, although the new theory is likewise deficient because the government cannot change *the fact* of ownership. The government’s Reply should be stricken to the extent it raises new arguments.

CONCLUSION

For the reasons set forth above, Mr. Schock respectfully requests the Court strike the government’s Reply from the record, either in its entirety or only those portions in which the government raises new arguments. In the alternative, Mr. Schock requests leave of this Court to respond to the new and unanticipated arguments the government raised in its Reply.

Dated: August 21, 2015

Respectfully submitted,

/s/ Jeffrey B. Lang

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to counsel

of record at their respective email addresses disclosed on the pleadings on this 21st day of August 2015.

/s/ Jeffrey B. Lang

Jeffrey B. Lang