Exhibit I

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARK A. FAVORS, et al.,

Plaintiffs,

-against-

ANDREW M. CUOMO,
as Governor of the State of New York,
et al.,

Defendants.

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MEMORANDUM AND ORDER

11-CV-5632 (DLI)(RR)(GEL)

ROANNE L. MANN, UNITED STATES MAGISTRATE JUDGE:

Currently before the Court is a motion to compel filed by the Senate Minority defendants (the "Senate Minority").[1] See Motion to Compel (Apr. 10, 2013), Electronic Case Filing ("ECF") Docket Entry ("DE") #581. Among other things, the Senate Minority seeks to compel the Senate Majority to search for and produce any documents that are responsive to the Senate Minority's discovery demands and that were created following the enactment of the 2012 State Senate Plan (the "2012 Senate Plan") in March 2012. See Memorandum in Support of Motion to Compel (Apr. 10, 2013) ("Mem. in Support"), Point II, at 10-12, DE #582. In opposing the Senate Minority's motion, the Senate Majority contends that post-enactment documents are irrelevant to the Senate Minority's equal protection claim, and that, even if relevant, the expense and burden of searching for and producing post-enactment documents

[1] The Senate Minority consists of a group of individual Democratic New York State senators, originally named as defendants in this action, who thereafter filed a cross-claim against certain other named defendants, i.e., Republican state senators who were then members of the majority party in the New York State Senate (the "Senate Majority"). For continuity and consistency with prior judicial decisions in this case, this Court will continue to utilize the terms "Senate Minority" and "Senate Majority," even though the results of the 2012 election have altered the composition of the Senate.

outweighs their utility in this litigation. See Response in Opposition to Motion to Compel (Apr. 24, 2013) ("Response in Opp."), Point II, at 9-14, DE #593.

For the reasons that follow, the Court grants the Senate Minority's motion with respect to Point II of its motion, concerning the above-described discovery dispute.[2]

BACKGROUND

In this Voting Rights Act/Equal Protection challenge to the 2012 Senate Plan, the Senate Minority and several plaintiff-intervenor groups seek information about the motivations that drove decisionmaking behind placement of the district lines contained in the 2012 Senate Plan, and whether that decisionmaking was driven by impermissible considerations such as regionalism or discrimination. See Favors v. Cuomo, 285 F.R.D. 187, 194-95 (E.D.N.Y. 2012). Towards that end, on May 31, 2012, the Senate Minority and the intervenors served consolidated discovery demands on various defendants, including the Senate Majority. See Mem. in Support at 4; Consolidated Initial Discovery Requests (May 31, 2012) (the "Consolidated Demands"), Ex. A to Declaration of Todd Geremia (June 18, 2012), DE #395-1. The Consolidated Demands seek a broad universe of information about the redistricting process and include no temporal limitation. See generally Consolidated Demands.

On June 18, 2012, the Senate Majority responded to the Consolidated Demands, objecting to all of the requests on various grounds, including objections that the responsive

[2] With the Court's assistance, the dispute addressed in Point I of the Senate Minority's four-part motion to compel (regarding the formatting of electronically-stored information) has been resolved by the parties and therefore is denied as moot. See Letter Status Report (Aug. 20, 2013), DE #613. The requests for relief contained in Points III and IV of the Senate Minority's motion to compel will be addressed in a separate opinion.

documents are privileged,[3] that the demands are various combinations of "vague and ambiguous," overbroad, unduly burdensome, not relevant or likely to lead to the discovery of admissible evidence, and/or that some documents are already publicly available. See Objections and Response to Consolidated Demands. The Senate Majority further detailed its reasons for objecting to the Consolidated Demands in submissions supporting its June 18, 2012 motion for a protective order, see Mot. for Protective Order, as well as in opposing a motion to compel that was also filed last year, by the Senate Minority, see Memorandum in Opposition to Senate Minority's Motion to Compel Regarding Waiver of Attorney-Client and Work Product Privileges with Respect to the Senate Size (June 25, 2012), DE #405; see also Memorandum of Law in Support of the Senate Minority's Motion to Compel Regarding Waiver of Attorney-Client and Work Product Privileges with Respect to the Senate Size (June 11, 2012), DE #390. At no time prior to the filing of its opposition to the instant motion to compel did the Senate Majority apprise the Court of any objection to searching for documents created after the enactment of the 2012 Senate Plan.

On August 10, 2012, in a memorandum and order denying without prejudice the Senate Minority's first motion to compel and deferring ruling on the Senate Majority's motion for a

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[3] In particular, the Senate Majority asserted that all non-public documents are protected by the legislative privilege (which defendants contend is an absolute privilege), and that some of those documents are also non-discoverable by virtue of the attorney-client privilege and/or work product protection. See Objections and Response of the Senate Majority Defendants to Intervenors' Consolidated Discovery Requests (Apr. 10, 2012) ("Objections and Response to Consolidated Demands"), Ex. 2 to Declaration of Eric Hecker ("Hecker Decl."), DE #583; Amended Privilege Log (Aug. 29, 2012), DE #508; see also Favors, 285 F.R.D. at 197, 204-05; Memorandum of Law in Support of Senate Majority Defendants' Motion for Protective Order (June 18, 2012) ("Mot. for Protective Order"), DE #397-1.

protective order (the "8/10/12 M&O"), this Court ordered *in camera* review of responsive documents in order to determine whether and how the qualified legislative privilege applies to the withheld documents.[4] See Favors, 285 F.R.D. at 212-13, 220-21, 225. On February 8, 2013, after conducting that review, the Court issued a memorandum and order finding numerous documents withheld by defendants to be discoverable.[5] See 2/8/13 M&O. The parties filed a variety of objections to the 2/8/13 M&O, now pending before the three-judge panel (the "Panel") overseeing this litigation. See DE #562 - DE #577.

On April 10, 2013, the Senate Minority filed the instant motion to compel, wherein it explains that it learned during meet-and-confer sessions with counsel for the Senate Majority that the Senate Majority previously "did not even search for, let alone produce or log, documents that were created after the Senate Plan was enacted in March 2012." Mem. in Support at 10. The Senate Minority argues that because "there may well be post-enactment documents in which redistricting officials made comments that reflect upon why they did what they did before the plan was enacted," id., "it [is] improper for the Senate [Majority] to deem all post-enactment documents categorically irrelevant." Id. at 11. Citing events surrounding enactment and the months that followed, the Senate Minority proffers reasons supporting the

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[4] The 8/10/12 M&O also deferred ruling on motions for protective orders filed by other defendants in this litigation. See generally Favors, 285 F.R.D. at 204-05, 225.

[5] While sustaining the non-production of a large number of documents, the Court held that many of the documents are not protected by the qualified legislative privilege because they are not "legislative" in nature and that the legislative privilege has been overcome as to other documents. See Memorandum and Order (Feb. 8, 2013) (the "2/8/13 M&O"), DE #559. In issuing the 2/8/13 M&O, the Court was unaware that the Senate Majority had not searched for documents postdating the enactment of the 2012 Senate Plan, and therefore its analysis draws no such temporal distinction.

existence of relevant post-enactment documents. See Reply Brief in Further Support of Motion to Compel (May 1, 2013) ("Reply Brief") at 4-5, DE #597; *infra* p. 12 n.8. Accordingly, the Senate Minority asks the Court to "direct [the Senate Majority] to perform appropriate searches, produce relevant post-enactment documents, and, if necessary, provide a supplemental privilege log ([] excluding plainly privileged communications with outside counsel about this litigation)[.]" Mem. in Support at 12.

In an opposition filed on April 24, 2013, the Senate Majority contends that the Senate Minority's request for post-enactment documents is "at best too speculative to justify the burdens that it would impose." See Response in Opp. at 9. First, the Senate Majority argues that "post-enactment subjective intent or purpose" is "categorically irrelevant in this case."[6] Id. at 9. Second, the Senate Majority argues that the Senate Minority's request comes "too late[,]" id. at 13 n.7, and that to "restart" discovery now would add a substantial burden of collection, review, and privilege analysis – leading to another round of privilege disputes before this Court. See id. at 12-13. Finally, according to the Senate Majority, the Senate Minority's assertion that relevant documents might have been created after enactment of the 2012 Senate Plan is too speculative to justify the burden presented by further discovery. See id. at 13. The Senate Majority does not, however, specify the extent of the alleged burden, see generally id. at 13-14, and the Senate Minority counters that any such burden would be

[6] In an argument previously rejected by this Court, see 2/8/13 M&O at 27, 28, 33, the Senate Majority again contends that "even *pre*-enactment subjective intent is irrelevant because the Senate Minority's claim is governed by an objective standard." Response in Opp. at 10. This Court declines to revisit its prior ruling, which is currently being reviewed by the Panel, see DE #562 - DE #577, and, unless and until overturned on review, remains the law of the case.

attributable to the Senate Majority's "unilateral[]" decision not to conduct a simultaneous search for and review of pre- and post-enactment documents. See Reply Br. at 5-6.

DISCUSSION

I. Waiver of Objections to Discovery Demands

Before reaching the merits of this discovery dispute, the Court considers whether the Senate Majority has waived its objection to producing post-enactment documents.

Under Rule 34 of the Federal Rules of Civil Procedure, "[t]he party to whom [a document] request is directed must respond in writing within 30 days after being served," or within such other time "ordered by the court."[7] See Fed. R. Civ. P. 34(b)(2)(A). "For each item or category, the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons." See Fed. R. Civ. P. 34(b)(2)(B). In addition, "[a]n objection to part of a request must specify the part and permit inspection of the rest." Fed. R. Civ. P. 34(b)(2)(C).

Although Rule 34 does not contain the kind of automatic waiver provision for untimely objections that is found in the rule governing interrogatories, see Fed. R. Civ. P. 33(b)(4), "courts have reasoned that a Rule 33(b)(4) type waiver should be implied into all rules involving the use of the various discovery mechanisms," including Rule 34. Horace Mann Ins.

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[7] Pursuant to the Court's Order of May 29, 2012, the plaintiff-intervenors and Senate Minority were directed to serve their Consolidated Demands by May 31, 2012, and defendants were directed to serve their responses and preliminary privilege logs by June 18, 2012, with final privilege logs due by June 25, 2012. See Order (May 29, 2012) ("5/29/12 Order") at 2, DE #377.

Co. v. Nationwide Mut. Ins. Co., 238 F.R.D. 536, 538 (D. Md. 2006); see Pham v. Hartford Fire Ins. Co., 193 F.R.D. 659, 661-62 (D. Colo. 2000); Land Ocean Logistics, Inc. v. Aqua Gulf Corp., 181 F.R.D. 229, 236-37 (W.D.N.Y. 1998); Byrd v. Reno, No. CIV.A.96-2375CKK JMF, 1998 WL 429676, at *6 (D.D.C. Feb. 12, 1998); see also Smith v. Conway Org., Inc., 154 F.R.D. 73, 76 (S.D.N.Y. 1994); Deal v. Lutheran Hosp. & Homes, 127 F.R.D. 166, 168 (D. Alaska 1989). Thus, the "failure to make particularized objections to document requests constitutes a waiver of those objections." Sabol v. Brooks, 469 F.Supp.2d 324, 328-29 (D. Md. 2006); accord Howard v. Segway, Inc., No. 11-CV-688-GFK-PJC, 2013 WL 869955, at *2-3 (N.D. Okla. Mar. 7, 2013) (defendant waived its objections to document demands by "fail[ing] to specify what part of the requests it [was] objecting to"). Waiver extends to "[a]ny ground not stated in a timely objection" unless the responding party's failure to object "is excused by the court for good cause shown." Fed. R. Civ. P. 33(b)(4); Horace Mann Ins. Co., 238 F.R.D. at 538.

In this case, the Senate Majority has waived its objection to discovery of post-enactment documents that are responsive to the Consolidated Demands. Although its Response to the Consolidated Demands raised a series of other objections -- including, but not limited to, boilerplate overbreadth and vagueness objections -- the Senate Majority failed to articulate any objection to the temporal scope of those demands, let alone any "particularized" objection to the production of post-enactment documents. Nor did the Senate Majority present that objection to the Court in its motion for a protective order filed on June 18, 2012. See Mot. for Protective Order. In fact, at no time prior to filing its response in opposition to the pending motion to compel did the Senate Majority disclose to the Court that it had unilaterally decided

not to search for responsive documents created after the enactment of the 2012 Senate Plan. And even now, the Senate Majority makes no attempt to show "good cause" for failing to timely raise, within the period specified in the Court's 5/29/12 Order, its objection to discovery of post-enactment documents.

Having elected not to disclose its self-selected cut-off date in its Objections and Response to the Consolidated Demands or to the Court, the Senate Majority should not now be heard to complain that the Senate Minority's challenge comes "too late." Response in Opp. at 13 n.7. To be sure, the Senate Minority could have alerted the Court to the problem last fall, when this issue first arose in meet-and-confer discussions between the parties. See generally Reply at 5. But the Senate Minority at least has proffered an explanation for its omission -- it was awaiting this Court's ruling on legislative privilege, which, had the privilege been sustained in all respects, would have mooted the issue now before the Court. See id. In contrast, the Senate Majority provides no explanation whatsoever for its strategic decision not to timely object to the production of post-enactment documents, in clear violation of Rule 34(b)(2).

In these circumstances, the Senate Majority's belatedly disclosed objection to the temporal scope of discovery has been waived, and the Court would be entirely justified in disposing of this aspect of the motion on this ground alone. In any event, the Senate Majority's objection is substantively meritless, particularly in view of its tardy assertion.

II. The Merits of the Senate Majority's Objection

A. Legal Standard - Rule 26 of the Federal Rules of Civil Procedure

Under Rule 26 of the Federal Rules of Civil Procedure, "[u]nless otherwise limited by

court order[,] . . . [p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense . . . ." Fed. R. Civ. P. 26(b)(1). "Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Id. While Rule 26 imposes few other constraints on discovery, a court should limit the

> extent of discovery . . . if it determines that . . . the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

Fed. R. Civ. P. 26(b)(2)(C). A party moving for a protective order on the ground of undue burden or expense, see Fed. R. Civ. 26(c)(1), "bears the burden of demonstrating that there is good cause for the order." Uto v. Job Site Servs. Inc., 269 F.R.D. 209, 211 (E.D.N.Y. 2010) (collecting cases). Courts have "broad discretion" under Rule 26(c) "to decide when a protective order is appropriate and what degree of protection is required." Id. (internal quotation and citations omitted).

By its plain language, Rule 26 imposes no temporal limitation on discovery. See generally Fed. R. Civ. P. 26(b). Accordingly, courts routinely hold that it is the relevance of the information contained in the requested documents -- not the timing of events in relation to their creation -- that determines discoverability. See, e.g., Pershing Pac. W., LLC v. MarineMax, Inc., Civil No. 10-cv-1345-L (DHB), 2013 WL 941617, at *5 (S.D. Cal. Mar. 11, 2013) (court rejects defense argument that documents created after filing of complaint are categorically irrelevant: "post-complaint documents may reflect on events or statements that occurred prior to the lawsuit[,] which may bear on Defendants' liability"); Zaloga v. Borough

of Moosic, No. 3:10-CV-2604, 2012 WL 1899665, at *3 (M.D. Pa. May 24, 2012) (same); NLRB v. Greif Bros., Civil Action No. 2:11-CV-112, 2011 WL 2637078, at *4 (S.D. Ohio May 26, 2011) (ordering production of documents created after termination of employment, because "[e]ven documents that post-date . . . discharge . . . may nevertheless shed light on the motivation underlying [the] termination"); Paolo v. Amco Ins. Co., No. 02-02367 JW (HRL), 2003 WL 24027878, at *2 (N.D. Cal. Dec. 16, 2003) ("the filing date of [plaintiff's] lawsuit does not control the relevance of the information sought"); Trzeciak v. Apple Computers, Inc., No. 94 Civ. 1251 (LAK), 1995 WL 20329, at *1-2 (S.D.N.Y Jan. 19, 1995) (rejecting defense relevance challenge to production of documents created after onset of plaintiff's symptoms related to condition at issue, because there was "no reason to assume that documents postdating [the injury] d[id] not contain evidence" relevant to plaintiff's claims); Midland Inv. Co. v. Van Alstyne, Noel & Co., 59 F.R.D. 134, 137-38 (S.D.N.Y. 1973) (ordering production over defense objection that documents created after last act complained of by plaintiff were "*ipso facto* irrelevant": "Merely because the document is dated after the last act complained of . . . does not make it immune from discovery if it relates to relevant discoverable information"); see also First Nat'l Bank of Ariz. v. Cities Serv. Co., 391 U.S. 253, 297-98 (1968) ("In a proper case, . . . a party might well have the right to demand discovery of documents from an opposing party dealing with activities during a period outside that covered by the subject matter of the lawsuit in order [to] provide some indication of the ramifications of the actions forming the basis of the complaint.").

Indeed, in a case involving a challenge to a redistricting plan, the three-judge panel in Baldus v. Members of the Wisconsin Government Accountability Board, Nos. 11-CV-562 JPS-

DPW-RMD, 11-CV-1011 JPS-DPW-RMD, 2013 WL 690496, at *3 (E.D. Wis. Feb. 25, 2013), recently rejected a similar defense argument that post-enactment documents are not discoverable. There the panel granted the plaintiffs *post-trial* access to materials created after enactment of the challenged plan, finding that "[t]here [was] no temporal limit in the [discovery] request, nor is there any logic to an argument that items post-dating [enactment] . . . necessarily lack relevance." Id. The Baldus court concluded: "[I]t is entirely logical to believe that emails and other materials circulated after [enactment] could relate to the objectives or motives of the legislators and others involved" in the process of enactment. Id.

B. Application of Law to Facts

As an initial matter, the Senate Majority's attempt to distinguish Baldus is entirely unpersuasive, see Response in Opp. at 12 n.6, and the holding in that case is consistent with the case law cited above. Here, as in Baldus, the Consolidated Demands do not include any time limitation or otherwise make a pre- versus post-enactment distinction, but instead seek categories of documents relevant to the Senate Minority's claims. So too here, it is "entirely logical to believe" that discussions about the Senate Plan did not suddenly terminate with its enactment, and that post-enactment communications "could relate to the objectives or motives of the legislators and others involved" in the enactment process. See Baldus, 2013 WL 690496, at *3. Consequently, the Senate Majority's contention that post-enactment documents are "categorically irrelevant," Response in Opp. at 9, is contrary to the case law and is rejected by this Court.

The Senate Majority additionally argues that "the existence of any post-enactment document bearing on pre-enactment subjective intent is highly speculative at best," id. at 12,

and it downplays the Senate Minority's explanations as to why it is reasonable to assume that responsive post-enactment documents do exist. See id. at 11.[8] However, it is not the obligation of the requesting party to make an evidentiary showing that the producing party in fact possesses responsive documents from a specific time period -- particularly where, as here, the producing party opted not to interpose an objection that the discovery demands were overbroad in terms of their temporal scope.[9] Simply put, the Senate Majority should have searched for, reviewed, produced and logged post-enactment responsive documents, instead of

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[8] The Senate Minority asserts that (1) "documents created in connection with the Senate [Majority's] preclearance submission [to the United States Department of Justice] . . . could well shed light on why they drew the Senate Plan as they did[,]" Mem. in Support at 12; (2) "[b]ecause there was a real possibility in April and May of 2012 that the Senate Plan would be rejected either by the Department of Justice or the New York Court of Appeals in *Cohen [v. Cuomo*, 19 N.Y.3d 196 (2012)], and because the nominating petition deadline was fast approaching, . . . the drafters of the Senate Plan may have crafted a contingency plan or at least discussed the political ramifications of lower-deviation alternatives[,]" Reply Brief at 4-5; and (3) "documents may have been created relating to the partisan motivation for increasing the size of the Senate" during a recount, in November and December 2012, of votes cast during the November 2012 election to fill the newly created 63rd Senate seat. Id. at 5.

[9] The case on which the Senate Majority relies, National Union Fire Insurance Co. v. Stroh Companies, 265 F.3d 97 (2d Cir. 2001), does not hold otherwise. There the Second Circuit held that the district court had not abused its discretion in disallowing the plaintiff, following eleven months of formal discovery (during which extensive document discovery had taken place) and the expiration of the discovery deadline, from taking a deposition of the defendant's agent when confronted with a defense motion for summary judgment. See id. at 103, 116. Here, in contrast, practically no discovery has taken place and the discovery deadline has not passed. Furthermore, the fact that there inevitably may be some degree of pre-production uncertainty as to the existence and number of responsive documents does not render them undiscoverable. See, e.g., In re Fosamax Prods. Liab. Litig., No. 1:06-md-1789 (JFK), 2008 WL 2345877, at *9 (S.D.N.Y. June 5, 2008) (although scenarios suggested as basis for permitting further discovery might have been "speculative[,]" if documents relating to those scenarios existed they were both "relevant and discoverable"); Trzeciak, 1995 WL 20329, at *1-2 (even where there was uncertainty over whether relevant documents postdating plaintiff's injury existed, court allowed discovery because, if the documents did exist, they would be discoverable).

merely assuming that they might not exist.

Nor has the Senate Majority substantiated its argument that permitting discovery of responsive post-enactment documents would be unduly burdensome to the Senate Majority. The Senate Majority has not, for example, provided any metric for assessing how time-consuming or expensive searching for and producing post-enactment documents might be,[10] and how the time and/or costs associated with any such search should bear on the Court's analysis. Curiously, the Senate Majority does not cite Rule 26(b)(2)(C) or 26(c)(1) of the Federal Rules of Civil Procedure, which govern when a court may limit discovery on the ground of undue burden or expense. See Fed. R. Civ. P. 26(b)(2)(C)(iii), 26(c)(1). Of course, had the Senate Majority moved for a protective order under Rule 26(c)(1), it would then have had to bear the burden of demonstrating good cause for such an order. See Uto, 269 F.R.D. at 211. It has not come close to sustaining its burden of establishing undue burden.[11]

Finally, to the extent that the Senate Majority asserts that it and the Court will be unduly burdened by what it characterizes as the Senate Minority's delay in pursuing disclosure of post-enactment documents, the Court finds that any burden is one largely of the Senate

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[10] Among other things, the Senate Majority could have asked several of its custodians whether they had responsive post-enactment documents and, if so, the approximate number, and then reported the results of its inquiry to the Court.

[11] Rather than performing an analysis under Rule 26, the Senate Majority relies on a rather generous construction of Miller v. Johnson, 515 U.S. 900 (1995), for the proposition that, "[e]ven as to [redistricting] claims where subjective legislative intent potentially is relevant . . . , courts 'must be sensitive' not to overburden legislatures with discovery into that intent[.]" Response in Opp. at 12. In making this argument, the Senate Majority fails to provide any specific ways in which the Court might balance such "sensitivity" against the Senate Minority's need for information in the context of this litigation, wherein legislative intent is squarely at issue.

Majority's own making. Had the Senate Majority initially searched for and reviewed post-enactment documents, then it (and the Court) would not now be faced with the "burden of collection, review and privilege analysis[,]" which the Senate Majority threatens "[will] lead to another round of privilege disputes[.]"[12] Response in Opp. at 13. Furthermore, the Court is prepared to limit this burden to some extent by taking into account the Senate Minority's delay in presenting this dispute for judicial resolution: the Senate Majority will be required to search for and review only those post-enactment documents from the period that would have been encompassed in the Court's ruling had the issue been raised and litigated starting in the fall of 2012.

Accordingly, the Court orders the Senate Majority to do the following by September 26, 2013: search for, and review for privilege, all documents responsive to the Consolidated Demands that were sustained by this Court, see 2/8/13 M&O at 27-35, and that were created during the post-enactment period up through December 31, 2012;[13] produce to the Senate Minority all such nonprivileged documents from that period; file a supplemental privilege log

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[12] The Senate Majority also avers that the burdens presented by requiring them to search for and produce any responsive post-enactment documents will "includ[e] *in camera* review, since the parties agree that qualified privilege rulings . . . need to be made on a document-by-document basis." Response in Opp. at 13. As to the various privilege claims, the Court has already provided sufficient guidance on how the legislative privilege applies, by way of the 2/8/13 M&O, wherein it set forth a variety of categories of documents and provided specific exemplars. See generally 2/8/13 M&O. Should the Panel affirm the 8/10/12 M&O and the 2/8/13 M&O, the Senate Majority is expected to follow the Court's Orders and produce those documents that fall within the categories found to be discoverable.

[13] See also Barkley v. Olympia Mortg. Co., No. 04-CV-875(RJD)(KAM), 2007 WL 656250, at *3 (E.D.N.Y. Feb. 27, 2007) ("Because the transactions at issue all occurred between September 2002 and January 2003, the Court limits the time period of those interrogatories and document requests to the period January 1, 2002 through December 31, 2003.").

with detailed information relating to documents withheld as privileged;[14] and produce for the Court's *in camera* review, in the manner specified in the Court's Orders of August 14 and 15 2012, see DE #488, DE #490, all such documents withheld on the basis of privilege.

CONCLUSION

Having considered the parties' arguments in light of Rule 26, Rule 34, and the applicable case law, the Court rejects the Senate Majority's effort to exempt from the discovery process post-enactment documents responsive to the Consolidated Demands. Therefore, the Court grants in part the Senate Minority's Motion to Compel, DE #581, and directs the Senate Majority to conduct and complete by September 26, 2013, the search, review, production and logging described in the preceding paragraph.

Any objections to the rulings contained in this Memorandum and Order must be filed with the Three-Judge Panel on or before **September 13, 2013**. Failure to file objections in a timely manner may waive a right to appeal the Panel's order. Absent further court order, the filing of an objection will not stay compliance with this Court's directives.

SO ORDERED.

Dated: Brooklyn, New York
August 27, 2013

/s/ *Roanne L. Mann*
ROANNE L. MANN
UNITED STATES MAGISTRATE JUDGE

[14] As per the Senate Minority's concession, the log need not include "plainly privileged communications with outside counsel about this litigation." Mem. in Support at 11, 12.