

**UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF ILLINOIS
 SPRINGFIELD DIVISION**

IN RE SPRINGFIELD GRAND JURY INVESTIGATION.)))))	Case No. 15-MC-3005 UNDER SEAL
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**UNOPPOSED MOTION OF THE BIPARTISAN LEGAL ADVISORY GROUP
 OF THE U.S. HOUSE OF REPRESENTATIVES
 FOR LEAVE TO FILE *AMICUS CURIAE* MEMORANDUM**

Pursuant to Federal Rule of Criminal Procedure 47, the Bipartisan Legal Advisory Group of the U.S. House of Representatives (“Bipartisan Group”) respectfully moves for leave to file the attached *amicus curiae* memorandum.¹

On July 27, 2015, undersigned counsel conferred with George J. Terwilliger, III, counsel for former Congressman Aaron Schock, and Assistant United States Attorney Timothy A. Bass, both of whom advised that they do not oppose the relief requested.

A proposed order is attached, and oral argument on this motion is not requested. (Should the Court wish to hear argument from the Bipartisan Group on issues discussed in the attached *amicus curiae* memorandum, counsel will make themselves available at the Court’s convenience.)

MEMORANDUM OF POINTS AND AUTHORITIES

The Bipartisan Group, “[u]nless otherwise provided by the House, . . . speaks for, and articulates the institutional position of, the House in all litigation matters.” Rule II.8(b), Rules of the U.S. House of Representatives, 114th Cong. (2015) (“House Rules”), *available at*

¹ The Bipartisan Group currently is comprised of the Honorable John A. Boehner, Speaker; the Honorable Kevin McCarthy, Majority Leader; the Honorable Steve Scalise, Majority Whip; the Honorable Nancy Pelosi, Democratic Leader; and the Honorable Steny H. Hoyer, Democratic Whip.

<http://clerk.house.gov/legislative/house-rules.pdf>. As the Court is aware, the Bipartisan Group frequently appears in litigation, principally as *amicus curiae*, in order to articulate the House's institutional interests in matters pending before the federal courts.² Importantly, the Bipartisan Group has done so in past sealed grand jury matters (not cited here because of their confidential nature).

In this case, the attached *amicus curiae* memorandum articulates the House's position that (i) former Congressman Schock is the owner of the records that he and his staff collected and/or generated during the time he served as U.S. Representative for the 18th congressional district of Illinois, and (ii) there exists no "collective entity" that owns or controls those documents.

The Bipartisan Group does not seek to file the attached memorandum to protect or defend former Congressman Schock. Rather, the Bipartisan Group seeks leave to file here because of the House's own substantial institutional interest in the ownership/collective entity issue. That interest is reflected in the following points.

First, "by custom [Member's congressional records] are considered the personal property of the Member" H. Con. Res. 307 (110th Cong.) (2008); *see also* H. Rep. No. 100-1054, at 14 (Oct. 4, 1988) ("Members' papers have been regarded as their personal property"); H. Rep. No. 99-994, at 5 (Oct. 14, 1986) (same).

² *See, e.g.*, Br. of *Amicus Curiae* [House] in Supp. of Pet'r, *Renzi v. United States*, No. 14-1082, 2015 WL 1619417 (S. Ct. Apr. 8, 2015); Br. of *Amicus Curiae* [House] in Supp. of Pet'r, *Renzi v. United States*, No. 11-557, 2011 WL 6019914 (S. Ct. Dec. 2, 2011); Br. of [House] as *Amicus Curiae* Supporting Affirmance, *Council of the Dist. of Columbia v. Gray*, No. 14-7067, 2014 WL 3884208 (D.C. Cir. Aug. 7, 2014); *Cause of Action v. Nat'l Archives & Records Admin.*, 753 F.3d 210, 211 (D.C. Cir. 2014); Br. of [House] as *Amicus Curiae*, *United States v. Renzi*, No. 13-10588, 2014 WL 1664044 (9th Cir. Apr. 15, 2014); Br. of [House] as *Amicus Curiae* Supporting Affirmance . . . , *United States v. Verrusio*, No. 11-3080, 2013 WL 442013 (D.C. Cir. Feb. 5, 2013); *Council of the Dist. of Columbia v. Gray*, 42 F. Supp. 3d 134, 137 n.1 (D.D.C. 2014).

Second, House rules and regulations are predicated on the clear understanding that individual Members – and not any “collective entities” – own their congressional records. *See generally* House Rule VII.6; Office of Art & Archives, Office of the Clerk, U.S. House of Representatives, Records Management Manual for Members, at 3 (Feb. 2014) (“[T]he records generated by the Member’s office belong to the Member.”).³

Third, House rules and regulations are promulgated under the Rulemaking Clause, U.S. Const. art. I, § 5, cl. 2 (“Each House may determine the Rules of its Proceedings . . .”). The Rulemaking Clause constitutes a “broad grant of authority,” *Consumer’s Union v. Periodical Correspondents’ Ass’n*, 515 F.2d 1341, 1343 (D.C. Cir. 1975), *cert. denied*, 423 U.S. 1051 (1976), that sits “[a]t the very core of our constitutional separation of powers,” *Walker v. Jones*, 733 F.2d 923, 938 (D.C. Cir. 1984) (MacKinnon, J., concurring in part and dissenting in part), *cert. denied*, 469 U.S. 1036 (1984). The Supreme Court has held that rules and regulations promulgated pursuant to the Rulemaking Clause, within constitutional limits, are “absolute and beyond the challenge of any other body.” *United States v. Ballin*, 144 U.S. 1, 5 (1892); *see also Marshall Field & Co. v. Clark*, 143 U.S. 649, 672-73 (1892) (declining to look behind House enrollment of bill to determine whether House followed internal rules in doing so).

The Bipartisan Group recognizes that the Court, on June 25, 2015, “[found] that the Congressional offices are more akin to a corporation than a sole proprietorship [and that] [t]he Congressional Records were created and maintained on behalf of the Congressional office as a collective entity.” Sealed Op. at 20 (June 25, 2015) (#22). Nevertheless, the Bipartisan Group also recognizes that the parties did not provide the Court with critical facts and authorities that bear on this important issue. *Cf. id.* at 21 (commenting on “paucity of case law on whether the

³ The Records Management Manual is attached to the proposed *amicus* memorandum.

Congressional offices are collective entities”). The Bipartisan Group, because of its intimate knowledge of the House, its rules and regulations, and its practices and traditions, is in a unique position to provide those facts and authorities, should the Court be inclined to revisit the issue and consider the attached *amicus* memorandum.

CONCLUSION

For all the foregoing reasons, this motion should be granted.

Respectfully submitted,

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July 27, 2015

* Attorneys for the Office of General Counsel are “entitled, for the purpose of performing the counsel’s functions, to enter an appearance in any proceeding before any court of the United States . . . without compliance with any requirements for admission to practice before such court.” 2 U.S.C. § 5571(a).