

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

MICHAEL L. SHAKMAN and PAUL M.)
LURIE, et al.,)
)
Plaintiffs,)
)
vs.) No. 69 C 2145
)
THE DEMOCRATIC ORGANIZATION)
OF COOK COUNTY, et al.,)
)
Defendants.)

**PLAINTIFFS' AMENDED MOTION FOR ENTRY OF SUPPLEMENTAL
RELIEF WITH RESPECT TO THE GOVERNOR OF ILLINOIS**

Plaintiffs respectfully submit this amendment to their prior Motion for Entry of Supplemental Relief With Respect to the Governor of Illinois (Dkt. 1460), and move for entry of further relief as to the Governor of the State of Illinois (the "Governor") as set forth in this Motion. This Motion is based on recently-discovered facts that indicate that in violation of the 1972 consent judgment in this case the current Governor applied prohibited political considerations to reassign numerous State employees from exempt to non-exempt positions. Plaintiffs seek, *inter alia*, discovery to determine the full extent of the violations of the judgment so that an effective remedy can be implemented.

Consistent with this Court's Meeting Requirement on Motions, Plaintiffs sent the Governor's counsel a copy of this Motion on March 13, 2014. A good faith, face-to-face meeting between the parties occurred on April 21, 2014 without resolution.

In support of the Motion, Plaintiffs state as follows:

Relevant Prior Orders of this Court.

1. This Court's Judgment Order of May 5, 1972, attached hereto as Exhibit A ("1972 Order"), enjoined the Governor and other defendants from "conditioning, basing or knowingly prejudicing or affecting any term or aspect of governmental employment, with respect to one who is at the time already a governmental employee, upon or because of any political reason or factor." ¶ E(1).

2. Under the terms of the 1972 Order the Court retained jurisdiction to determine: (i) which employment positions are exempt from the rules prohibiting consideration of political factors in setting conditions of employment, ¶ H(1)(a), and (ii) whether political sponsorship or other political consideration can be taken into account in hiring employees. ¶ H(1)(b). Under the 1972 Order the Court also retained jurisdiction to determine (iii) "[w]hat remedies and implementing procedures ought to be granted and established by the court in connection with the resolution of" the issues over which the Court retained jurisdiction. ¶ H(1)(c). This Motion is brought pursuant to the Court's retained jurisdiction under the 1972 Order and based upon events occurring subsequent to that Order.

3. The Court has previously ruled that the 1972 Order is binding upon the office of Governor and applies, pursuant to Fed. Rule Civ. Proc. 25(d), to successor Governors. Subsequent Governors are automatically substituted as a party to this case by virtue of holding the office of Governor. See Memorandum Opinion of March 11, 1976, attached hereto as Exhibit B.

4. The United States Supreme Court decision in *Rutan vs. Republican Party of Illinois*, 497 U.S. 62 (1990), also held that except with respect to a very limited number of

exempt positions, political sponsorship or other political consideration cannot be taken into account in promoting, transferring or hiring public employees.

5. On December 22, 2009, Plaintiffs filed a Motion for Entry of Supplemental Relief With Respect to the Governor of Illinois (“Prior Motion”) (Dkt. 1460), based upon certain patronage-based hiring practices of Governor Blagojevich. In February 2010, the Governor filed a Response seeking dismissal of the Prior Motion (Dkt. 1551), after which the parties engaged in several months of unsuccessful negotiations in an attempt to fashion an agreed order resolving the Prior Motion. No proceedings have occurred regarding the Prior Motion since that time although the parties have had inconclusive exchanges.

6. Many of the illegal practices that are the subject of this Motion are directed to politically-based reassignments of current State employees in violation of the 1972 Order. While the Prior Motion concerned hiring decisions made by the prior Governor, this Motion primarily concerns recent violations of the 1972 Order by the current Governor.

Background.

7. The illegal practices that occurred under the Blagojevich administration are relevant background to the more recent events under the Quinn administration, as they illustrate the embedded culture of patronage practices in State government.

8. Governor Rod Blagojevich, who was impeached and removed from office in early 2009, maintained and operated an illegal patronage employment system that violated the 1972 Order with respect to persons who were already government employees, and violated the principles established in the *Rutan* case with respect to hiring persons for positions under the jurisdiction of the Governor. Governor Blagojevich’s misdeeds were not limited to his personal acts, but grew out of a pervasive disregard of applicable court orders and law by personnel

administrators and others operating under the jurisdiction of the Governor. Upon information and belief, some of the individuals who operated the illegal Blagojevich patronage system continue to hold positions of responsibility for employment decisions in State government today. Discovery is needed to determine whether the vestiges of that patronage system played a role in the violations of the 1972 Order under the Quinn administration that are discussed below.

**The Collins Commission Report
Recommended Much of the Relief Sought Here.**

9. While serving as Lieutenant Governor, the present Governor, Patrick Quinn, appointed a special task force on reforming Illinois government known as the “Illinois Reform Commission” or “Collins Commission.” That task force’s report of April 28, 2009, confirmed the pervasive nature of patronage abuses in Illinois government and the need for relief as sought in this Motion.

10. The Collins Commission report stated, in part, as follows (at 73-74, Exhibit C hereto)(emphasis added):

Altering Illinois’ culture of patronage and cronyism requires multi-faceted reform. In addressing this broad challenge, the Commission heard testimony and reviewed research regarding widespread abuse of patronage hiring, manipulation of the personnel system, and weaknesses in the State’s ethics training. To combat the culture of corruption and its crushing effects on employee morale, structural and ethical reforms are required. Accordingly, the Commission recommends:

1) combating patronage by reforming the personnel system to better protect non-political positions and the employees who hold them, revising the hiring process, and potentially reducing the number of political positions not subject to the protections of the personnel system,

* * * * *

4) more clearly defining whistleblower protections to ensure and expand coverage for state employees, and

- 5) creating additional safeguards to protect against ethical violations by those exiting state employment.

The Prior Governor's Clout Lists.

11. Violations of this Court's 1972 Order and the other applicable legal rules were confirmed by a series of articles in the Chicago *Sun-Times* appearing in October 2009. Those articles, and the documents upon which they are based, disclosed the existence of several hundred "clout lists" maintained by the Governor's office under the Blagojevich administration, involving thousands of State jobs. A *Sun-Times* article dated October 16, 2009 (Exhibit D hereto) stated:

Behind the scenes, . . . Blagojevich aides flouted the supposed [hiring] freeze, forging a patronage machine that . . . eventually would provide state jobs or promotions to nearly 2,500 people with enough clout to have political sponsors, a secret trove of Blagojevich hiring records obtained by the Chicago Sun-Times shows.

Among those who sponsored candidates to the Blagojevich administration for jobs and promotions between 2003 and 2005 were members of Chicago's City Council and members of Congress. Lobbyists and Blagojevich's own top fund-raisers asked for and got people state jobs, too.

* * * * *

In all, the Blagojevich hiring database lists 386 political sponsors and 5,700 candidates for jobs or promotions controlled by Blagojevich's administration. Beyond the nearly 2,500 people who got hired or promoted, dozens more were appointed by the governor to paid and unpaid state board positions.

12. A *Sun-Times* article appearing on October 17, 2009 (Exhibit E hereto) stated that Governor Patrick Quinn had sponsored four people on one of the Blagojevich Clout Lists. It also stated that "Quinn spokesman Bob Reed acknowledged the governor recommended the four

people on his list. ‘Three of them had working relationships with Quinn when he held various public offices,’ Reed said.”

13. Attached hereto as Group Exhibit F are ten Clout Lists obtained by the *Sun-Times*, listing sponsors, the names of individuals who were sponsored and the individuals who received jobs, promotions or other employment benefits by virtue of such sponsorship. It is apparent from a review of the job positions listed, that many are clearly non-exempt, non-policymaking governmental jobs for which political sponsorship could have no lawful role. Some of the employment actions referred to in the Clout Lists involved providing benefits to persons who then held government jobs under the jurisdiction of the Governor. Such action violated the injunction contained in the 1972 Order.

Recently Discovered Violations by the Current Governor.

14. The facts set forth in paragraphs 14-22 are based on information and belief derived from, *inter alia*, an investigation and report by the Better Government Association (“BGA”) and Freedom of Information Act requests. The BGA’s report, dated August 14, 2013, is attached as Exhibit G. Discovery is needed to investigate the circumstances revealed by these sources of information.

15. Based upon the BGA report, FOIA responses and other information, it appears that the Governor’s office and personnel of the Illinois Department of Transportation (“IDOT”) under the direction of the Governor were involved in systematic evasion and violation of both *Rutan* and the 1972 Order in connection with hiring and later reassigning within IDOT numerous individuals, perhaps over 200, based on political considerations. These practices began in or about 2003 under Governor Blagojevich and continued until the end of 2011 or early 2012 under Governor Quinn. The practices appear to have ended in early 2012 only when the State’s Office

of Executive Inspector General began an investigation (as yet not complete so far as Plaintiffs are aware) into the practices.

16. The scheme worked as follows: IDOT created or re-designated numerous “staff assistant” or “executive secretary” positions, which it designated as *Rutan*-exempt even though the jobs performed by those placed in the positions did not in actuality require the sort of policy-making tasks that would qualify the positions as exempt. These *faux*-exempt positions were filled with employees based on political considerations rather than qualifications. Many of these hires were “dumped” on IDOT managers who did not ask for or want to manage the employees. Later, and in many cases after the OEIG investigation began, the politically-hired employees were promoted or transferred into non-exempt, often unionized positions in order to make it harder to terminate the employees. These promotions or transfers were motivated by political considerations, in violation of both *Rutan* and the 1972 Order.

17. According to a document produced by the Department of Central Management Services (“CMS”), attached hereto as Exhibit H, as of October 3, 2013, IDOT has 68 positions designated as *Rutan*-exempt, the vast majority of which are labeled “Executive Secretary,” “Administrative Assistant” or “Public Service Administrator.” Many of these positions are listed as “vacant” as of October 3, 2013, perhaps due to the reassignments discussed above.

18. CMS’s list of *Rutan*-exempt positions is incomplete, as CMS has stated in response to a FOIA request, attached hereto as Exhibit I, because CMS only maintains records on positions designated as exempt under the personnel code. Many other IDOT positions also purport to be *Rutan*-exempt according to information provided by IDOT in response to a FOIA request. See Exhibit J, purporting to be a “Listing of All Employees in Positions Exempt from

Rutan as of September 30, 2013.” According to this 34-page IDOT spreadsheet, IDOT has a total of 516 *Rutan*-exempt positions, of which 374 were filled as of September 30, 2013.

19. The total number of “assistant” and similar non-policymaking, non-confidential employment positions improperly claimed to be *Rutan*-exempt by IDOT is extraordinary, and far greater than justifiable under applicable law. It is inconceivable that there are 374 policymaking employees at IDOT. This reflects a wholesale disregard of the legal principles that determine the relatively small number of positions that are entitled to be exempted from the *Rutan* and *Shakman* rules against political factors affecting employment. This Court’s retained jurisdiction under the 1972 Decree encompasses this issue. The 1972 Decree retains jurisdiction expressly to determine “which employment positions are exempt from the rules prohibiting consideration of political factors in setting conditions of employment.” ¶ H(1)(a).

20. Reassignments or promotions into non-exempt positions based upon political considerations violate the 1972 Order, since each individual was a current State employee at the time of the transfer.

21. As part of their investigation into these practices, on September 27, 2013, Plaintiffs sent a FOIA request to the Office of the Governor. One of the requests was for “[a]ny memorandum, correspondence or electronically stored data created between January 1, 2009 and December 31, 2011 between Sean O’Shea [Deputy Chief of Staff to the Governor] and Matthew Hughes [formerly Personnel Director of IDOT] that discusses or refers to hiring, transfer or reclassification of staff assistants or technical advisors by IDOT.” The Office of the Governor replied that it found “approximately 47 documents responsive” to the request, but it withheld them pursuant to 5 ILCS 1407(1)(f), a deliberative process exemption that exempts from the Illinois FOIA “[p]reliminary drafts, notes, recommendations, memoranda and other records in

which opinions are expressed, or policies or actions are formulated. . .” See the Office of the Governor’s response dated October 21, 2013, attached hereto as Exhibit K. The Office also stated that the “documents constitute correspondence containing preliminary discussions regarding hiring policies and procedures.”

22. The 47 documents the Governor withheld from its FOIA response are believed to be at the heart of the allegations described above regarding the politically-based reassignments of current State employees into non-exempt IDOT positions. Whatever the scope of the deliberative process exemption under the Illinois FOIA statute, an objection to federal civil discovery based upon the deliberative process privilege would be meritless in these circumstances, in part because the documents concern whether the government engaged in misconduct in violation of a federal court order. The Court should direct production of the 47 documents and should allow Plaintiffs to initiate other discovery germane to the allegations set forth in this Motion.

Summary of Relief Sought.

23. The foregoing establishes the need for supplemental relief with respect to the 1972 Order similar to the supplemental relief orders entered by this Court in the last several years with respect to the City of Chicago, Cook County, Sheriff of Cook County, Forest Preserve District of Cook County, Cook County Assessor and Cook County Recorder of Deeds. In summary, Plaintiffs seek authority to take discovery and seek the following relief:

A. Additional injunctive relief rescinding the unlawful reassignments of employees based on political considerations in violation of the 1972 Order, and requiring that such positions be filled through appropriate, non-political processes.

B. The appointment of a special master, monitor or compliance administrator (“Special Master”) to investigate and recommend appropriate reforms in the employment practices for non-exempt jobs under the jurisdiction of the Governor within the Northern District of Illinois.

C. Development, with input from the Special Master, of a hiring, promotion, reassignment and employment plan for non-exempt positions.

D. Development, with input from the Special Master, of a list of employment positions that are properly exempt from the rules against political sponsorship or conditioning employment upon political factors or considerations.

E. For such other relief as the Court deems appropriate.

Dated: April 22, 2014

Respectfully submitted,

PLAINTIFFS,

By: /s Edward W. Feldman
One of the Attorneys for Plaintiffs

Roger R. Fross
Brian I. Hays
Katherine Heid Harris
Locke Lord LLP
111 South Wacker Drive, Suite 4400
Chicago, Illinois 60606
(312) 443-1707

Michael L. Shakman (ARDC #02558823)
Edward W. Feldman (ARDC #06187541)
Kay L. Dawson (ARDC #06312631)
Miller Shakman & Beem LLP
180 North LaSalle Street, Suite 3600
Chicago, Illinois 60601
(312) 263-3700