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

MICHAEL L. SHAKMAN, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 69 C 2145
	)	
THE DEMOCRATIC ORGANIZATION OF COOK COUNTY, et al.,	)	Hon. Sidney Schenkier
	)	
Defendants.	)	

GOVERNOR QUINN'S RESPONSE TO PLAINTIFFS' AMENDED MOTION FOR ENTRY OF SUPPLEMENTAL RELIEF

NOW COMES Pat Quinn, in his official capacity as Governor of the State of Illinois, by and through his attorney, Lisa Madigan, Attorney General of Illinois, and in Response to Plaintiffs' Amended Motion for Entry of Supplemental Relief states as follows:

INTRODUCTION

In 1972, Plaintiffs and former Governor Richard B. Ogilvie entered into a consent decree that barred political considerations in the conditions of employment for current government workers. Now, 42 years later, based on various media reports and speculation, Plaintiffs seek broad and invasive relief for claims that are untimely, claims that Plaintiffs have previously abandoned and claims that Plaintiffs have no standing to pursue. To allow Plaintiffs such relief would deprive Governor Quinn of his authority and responsibility to manage the affairs of state hiring and employment practices. For these reasons, Plaintiffs' motion must be denied.

BACKGROUND

The Office of the Governor[1] assumes that the Court is familiar with the previous proceedings in this matter and as such will only detail the information pertaining to the current motion.[2] On December 22, 2009, Plaintiffs filed a Motion for Entry of Supplemental Relief (hereinafter "Plaintiff's 2009 Motion" or "2009 Motion") (Dkt. 1460) seeking relief for many of the same allegations included in Plaintiffs' present motion. The Office of the Governor filed a response asking the Court to dismiss Plaintiffs' motion. (Dkt. 1551). The parties engaged in discussions for a short time but ultimately did not agree to a resolution of the issues raised in Plaintiffs' motion. Plaintiffs did not file a reply to the Governor's response, either before or after the parties' discussions.

Plaintiffs' current allegations fall into two categories, those that concern the Blagojevich administration and those that concern the Quinn administration. With respect to the Blagojevich administration, Plaintiffs allege that Blagojevich "maintained and operated an illegal patronage employment system that violated the 1972 Order." (Pls.' Mot. ¶ 8). More specifically, through a Chicago *Sun-Times* article, Plaintiffs allege:

> 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 record obtained by the Chicago Sun-Times shows. Among those 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.

[1] References to officeholders of the Governor of Illinois are made by name where appropriate, or, when referring generally to the office itself, to the "Governor of Illinois," or the "Office of the Governor," or the "Governor's Office."

[2] For a more detailed description of the procedural history of this lengthy litigation, the Office of the Governor refers the Court to its Response to Plaintiffs' motion for Entry of Supplemental Relief previously filed in this matter. (Dkt. 1551)

(Pls.' Mot. ¶ 11). Plaintiffs allege that the positions included on the clout lists were non-exempt, non-policymaking governmental jobs for which political sponsorship could have no lawful role. (Pls.' Mot. ¶ 13).

Plaintiffs then allege, based on information and belief derived from a report by the Better Government Association ("BGA") and Freedom of Information Act requests, 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." (Pls.' Mot. ¶ 15). Plaintiffs further allege that:

> 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.

(Pls.' Mot. ¶ 16). Plaintiffs further allege that 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. (Pls.' Mot. ¶ 19).

On March 13, 2014, Plaintiff sent a draft of the current motion to the Office of the Governor requesting to meet and explore a resolution regarding the matters of the 2009 Motion and the additional allegations included in the present motion. The parties met on April 21, 2014

but were unable to resolve the issues raised in the draft motion. Plaintiffs filed the current motion on April 22, 2014 and issued discovery to Defendant on May 8, 2014.

ARGUMENT

Plaintiffs' Amended Motion for Entry of Supplemental Relief should be denied in its entirety. First, Plaintiffs' have no right to the relief requested. Second, the relief Plaintiffs seek is unwarranted given the circumstances. Therefore, for all of these reasons, Plaintiff's Amended Motion for Entry of Supplemental Relief should be denied. Further, the Office of the Governor respectfully requests that this court stay any discovery until the court rules on the merits of Plaintiffs' present motion.

I. Plaintiffs have no right to the requested relief

Plaintiffs seek extraordinary relief with respect to hiring and reassignments of positions under the jurisdiction of the Office of the Governor. Before Plaintiffs may seek such remedies; however, they must show they are entitled to any relief. Plaintiffs cannot show a right to relief because their claims are untimely, they have abandoned their claims, and they have no standing to pursue such claims.

A. Plaintiffs' claims are untimely

Plaintiffs' request for relief is barred by the statute of limitations. In *Smith v. City of Chicago*, 769 F.2d 408, 413 (7th Cir. 1985), the court of appeals analogized the rights conveyed by the decree to Title VII of the Civil Rights Act of 1964, and held that the 180-day period of limitations established by Title VII applies to actions alleging violations of the decree. Plaintiffs' current motion describes alleged violations by the administrations of Governor Blagojevich and Governor Quinn. The alleged violations under either administration are untimely.

1. Allegations pertaining to the Blagojevich administration are untimely.

The allegations pertaining to the Blagojevich administration are based primarily on a Chicago *Sun-Times* article from October 16 and 17, 2009 which detailed violations from 2003-2005. As Blagojevich was removed from office on January 29, 2009, any claims pertaining to violations under his administration would have needed to have been brought by July 29, 2009 at the very latest.

Assuming, without conceding, that an equitable exception to the limitations period would apply, Plaintiffs certainly should have known there might have been non-compliance with the decree well before October 2009. For a number of years, public reports have suggested that the Blagojevich administration was involved in conduct that possibly violated the 1972 Consent Decree. Governor Blagojevich's "clout lists" were disclosed as long ago as 2006, *see, e.g.*, Chris Fusco & Dave McKinney, *Governor's office kept clout list*, Chicago Sun-Times, May 17, 2006, *available at* 2006 WLNR 25932121, and it was widely reported at that time that federal authorities were investigating Governor Blagojevich's role in questionable patronage practices, *see, e.g.*, Rick Pearson & John Chase, *Feds hot on state jobs trail*, Chicago Tribune, July 1, 2006, *available at* 2006 WLNR 11395943. Plaintiffs have known about Governor Blagojevich's practices for years; in fact, they attach to their previous discovery requests an August 11, 2006, Associated Press article describing a "special applications" database of 2,103 names used to make employment decisions by agencies within the Blagojevich administration. Indeed, Governor Blagojevich was impeached and removed from office in January 2009. There is no doubt Plaintiffs have long been on notice of Governor Blagojevich's possible non-compliance with the 1972 Consent Decree. Thus, their request for relief as to the prior administration is untimely and is barred.

2. Allegations pertaining to the Quinn administration are untimely.

Plaintiffs allege that the violations pertaining to the Quinn administration arise out conduct that ended in "early 2012." (Pls.' Mot. ¶ 15). To timely recover for such conduct, Plaintiffs would have had to bring a claim by June 29, 2013 at the very latest. Plaintiffs did not file their motion until April 22, 2014. Even assuming Plaintiffs were unaware of such conduct until the BGA report came out on August 14, 2013, Plaintiffs had until February 10, 2014 to seek relief for such claims. Plaintiffs did not contact Defendant until March 13, 2014 and did not file the most recent motion until April 22, 2014. Thus, their request for relief as to the current administration is untimely and is barred.

B. Plaintiffs have abandoned the allegations in their 2009 motion.

Plaintiffs' request for relief with respect to those allegations in the 2009 motion has been abandoned by Plaintiffs. *See Naylor v. Streamwood Behavioral Health Sys.*, 11 C 50375, 2012 WL 5499441 (N.D. Ill. Nov. 13, 2012) (stating that "plaintiff's failure to respond to defendant's motion acts as an abandonment or waiver of that claim and a forfeiture of any arguments against defendants' motion to dismiss the claim for failure to state a claim"); *Alioto v. Town of Lisbon,* 651 F.3d 715, 719 n. 1, 721 (7th Cir. 2011) (holding that forfeiture occurs where the "litigant effectively abandons the litigation by not responding to alleged deficiencies in a motion to dismiss"); *Bonte v. U.S. Bank, N.A.,* 624 F.3d 461, 466 (7th Cir. 2010) ("Failure to respond to an argument ... results in waiver.").) Plaintiffs filed a strikingly similar motion in 2009 to which the Governor's Office filed a response requesting the court dismiss such request for relief. Despite the Governor's Office filing a response requesting dismissal, Plaintiffs failed to respond, either before or after the parties' settlement discussions, but rather let the Governor's response linger on the docket for more than four years without taking any action. Plaintiffs now attempt to

resurrect those same claims. Because Plaintiffs never responded to the Office of the Governor's response, to the extent Plaintiffs now seek relief based on the allegations contained in their 2009 motion, such relief must be denied.

C. Plaintiffs cannot pursue relief concerning hiring practices.

Plaintiffs have never secured a judgment against any Governor with respect to hiring practices. The 1972 Consent Decree does not govern outside candidates for employment. *See United States v. Armour & Co.*, 402 U.S. 673, 681 (1971) ("Consent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms."). Further, the decree explicitly reserved the question of whether "political sponsorship or other political considerations [can] be taken into account in *hiring* employees," and, unlike the orders entered into with the City and several County defendants, Plaintiffs never sought—much less secured—a judgment against any Governor of Illinois on this issue. (Pls.' Exhibit A, ¶ H(1)(b)) (emphasis added). Without an existing consent decree or judgment, there is simply no term to enforce. *See O'Sullivan v. City of Chicago*, 396 F.3d 843, 863 (7th Cir. 2005) ("[E]ntry and continued enforcement of a consent decree regulating the operation of a governmental body depend on the existence of a substantial claim under federal law.") (quoting *Evans v. City of Chicago*, 10 F.3d 474, 480 (7th Cir. 1993) (*en banc*)). In addition, because no previous Governor was a signatory to any of the other Shakman decrees, Governor Quinn is not bound by any of their terms.[3] *See E.E.O.C. v. Waffle House, Inc*., 534 U.S. 279, 294 (2002) ("It goes without saying that a contract cannot bind a nonparty."); *see also Taylor v. Sturgell*, 128 S. Ct. 2161, 2166-67 (2008) ("[O]ne is not bound by a judgment . . . in which he is not designated as a party or to which he has not been made a party.").

[3] While the Governor's Office reached a settlement with respect to hiring with the plaintiffs in *Rutan* following the Supreme Court's decision, Plaintiffs here are not a party to *Rutan* and as such cannot seek relief for any alleged breach of that agreement.

Plaintiffs essentially concede this point by basing their claim for relief on a decision in a separate case, *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990). As Plaintiffs allege:

> Governor Rod Blagojevich . . . 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.

(Pls.' Mot. ¶8.) It is true that *Rutan* answered the question of whether most hiring based on political considerations violates the First Amendment, and that there is no question that the State is bound by this decision. *See Rutan*, 497 U.S. 62. While *Rutan* clarified the law upon which Plaintiffs' claims rest; it is not a judgment in their favor on the merits of their suit.

Plaintiffs attempt to equate their request for relief to the "supplemental relief orders entered by this Court in the last several years with respect to the City of Chicago, Cook County and other governmental offices." (Pls.' Mot. ¶23.) Each of these supplemental relief orders, however, was based on a separate consent decree that previously adjudicated the rights of the parties to the order with respect to hiring. (See Supplemental Relief Order for Cook County, Docket No. 587; City of Chicago's Agreed Settlement Order and Accord, Docket No. 601; Supplemental Relief Order for the Sheriff of Cook County, Docket No. 957; Supplemental Relief Order for the Forest Preserve District of Cook County, Docket No. 1010.) There is no such decree with respect to the Office of the Governor. Thus, these orders cannot serve as precedent for the extraordinary relief Plaintiffs now seek.

In sum, Plaintiffs are not seeking to enforce an existing judgment between themselves and the Governor in their plea for injunctive relief with respect to allegations about hiring practices. Instead, they attempt to avoid ever litigating this issue by bootstrapping their claim to the terms of the 1972 Consent Decree via the Court's decision in *Rutan*. There is no judgment in

this case that binds the parties on the issue of hiring—only as to the treatment of current employees. Consequently, this Court may not grant Plaintiffs' request for relief in this litigation.

D. Plaintiffs have no standing with respect to hiring.

Plaintiffs have failed to demonstrate a pre-existing right to relief under the 1972 Consent Decree. Plaintiffs also cannot establish a new right to injunctive relief through a more traditional invocation of this Court's equitable authority. "According to well-established principles of equity," to obtain injunctive relief, Plaintiffs must first show they have suffered an irreparable injury; that legal remedies are inadequate; that the balance of hardships favors a remedy in equity; and that the public interest would not be disserved by such relief. *See eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). But the fundamental problem with invoking this Court's equity jurisdiction at this point is the same problem that has plagued Plaintiffs since *Shakman II*: a lack of standing to pursue hiring claims.

1. *Shakman II* resolved the issue of standing against Plaintiffs.

Over 25 years ago, the court of appeals unequivocally held that Plaintiffs lacked standing to pursue a claim against the defendants with respect to hiring practices. *See Shakman v. Dunne*, 829 F.2d 1387 (7th Cir. 1987). The court described the "heart of the plaintiffs' case" as "the[] contention that the hiring practices of the defendants violate the speech and associational rights of candidates and voters." *Id.* at 1395. The court found that the injury claimed by Plaintiffs—inequality in the treatment of speech as a result of political acts by incumbent officials—was based on "countless individual decisions" that are in turn based on "countless individual political assessments that those who are in power will stay in power." *Id.* at 1397. As a result, the court deemed the causal connection between defendants' conduct and Plaintiffs' asserted injury to be "particularly attenuated," and held that Plaintiffs did not suffer an injury "'fairly traceable' to the

actions of the defendants" as required by Article III. *Id.* Therefore the court dismissed for lack of standing "[t]hose aspects of the complaint which challenge the patronage hiring practice of the defendants." *Id.* at 1399. After *Shakman II*, Plaintiffs have no standing to seek hiring relief against Governor Quinn.

Even if the dismissal of Plaintiffs' complaint is deemed operative only as to those specific defendants on appeal in *Shakman II*, collateral estoppel would prevent Plaintiffs from litigating this issue now against Governor Quinn. "The doctrine of issue preclusion [collateral estoppel] applies when: (1) the issue that one party seeks to preclude is identical to an issue involved in the prior action; (2) the issue must have been actually litigated in the prior action; (3) the determination of the issue must have been essential to the final judgment in the prior action; and (4) the party precluded from relitigating the issue must have been represented in the prior action." *Shakman v. Democratic Org. of Cook County*, No. 03-4819, 2004 WL 407015, *7 (N.D. Ill. Jan. 28, 2004). This test is easily met with respect to Plaintiffs' hiring claim: there is an identity of issues between Plaintiffs and each of the defendants with respect to political hiring; the standing issue with respect to hiring was litigated in *Shakman II* and was subject to a final judgment (both in the district court and in the court of appeals); the court of appeals "ruled directly on the issue, thus making its determination 'essential,'" *see id.* at *8; and Plaintiffs were represented fully in the previous action. Thus, even if Plaintiffs' hiring claim remains in the case following *Shakman II*, it is clear that collateral estoppel would prevent Plaintiffs from securing a judgment against Governor Quinn—and therefore injunctive relief—with respect to this issue.

2. Even if *Shakman II* is not preclusive, Plaintiffs still do not have standing to seek injunctive relief with respect to hiring practices.

Regardless of the preclusive effect of *Shakman II*, Plaintiffs do not have standing to pursue relief against Governor Quinn for political hiring. To meet the "irreducible constitutional

minimum" requirements of standing, Plaintiffs must show that they personally have suffered an actual (or imminent) injury, that there is a causal connection between the injury and the complained of conduct, and that it is likely that the injury will be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Plaintiffs cannot meet this test.

First, the significant concerns with causation discussed in *Shakman II* are just as relevant today as they were over 25 years ago. As the court of appeals noted then, Plaintiffs have not shown "with the certainty required by the case-and-controversy requirement[] that the injury they assert is 'fairly traceable' to the actions of the defendants that form the basis of their complaint." *See Shakman II*, 829 F.2d at 1397. Plaintiffs have not amended their pleading against the Office of the Governor in the years between that decision and their current request for relief; thus, there is no basis for this Court to conclude that Plaintiffs can now establish this element of standing.

In addition, Plaintiffs cannot establish either of the remaining elements of the standing triumvirate—injury and redressability—with respect to hiring practices:

Injury. The Complaint against the Office of the Governor is now more than 40 years old. There is no allegation Plaintiffs have suffered any injury between 1969 (the date of the original complaint upon which the 1972 amendments were based) and April 22, 2014 (when the instant motion was filed). There is no basis to conclude that Plaintiffs are suffering a "continuing, present" harm that is "sufficiently real and immediate" to justify the extraordinary injunctive relief they now seek. *See O'Shea v. Littleton*, 414 U.S. 488, 494-96 (1974). As the Supreme Court has made clear, "'[p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects.'" *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 109 (1998) (quoting

O'Shea, 414 U.S. at 495-96); *see also Friends of the Earth, Inc. v. Laidlaw Envtl. Svcs., Inc.*, 528 U.S. 167, 187 (2000) ("Steel Co. established that citizen suitors lack standing to seek civil penalties for violations that have abated by the time of suit.").

Redressability. Further, Plaintiffs cannot meet the redressability requirement of standing. Plaintiffs seek: an injunction rescinding the unlawful reassignments of employees based on political considerations and requiring that such positions be filled through appropriate, non-political processes; the appointment of a special master, monitor or compliance administrator to investigate and recommend appropriate reforms in the employment practices for non-exempt jobs under the jurisdiction of the Governor; development, with input from the Special Master, of a hiring, promotion, reassignment and employment plan for non-exempt positions; and 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. (Pls.' Mot. ¶23.) As the Supreme Court has admonished, "[r]elief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement." *See id.* at 107. There is simply insufficient support to find a redressable injury that would justify Plaintiffs' request for relief.

Standing clearly has been a critical issue throughout the 40-year history of this litigation. *See, e.g., Shakman*, 435 F.2d 267; *Shakman II*, 829 F.2d 1387. Recently, the issue has once again been a subject of dispute. *See Shakman v. City of Chicago*, 426 F.3d 925 (7th Cir. 2005) (motion to vacate 1983 Consent Decree); *O'Sullivan*, 396 F.3d at 853-59 (discussing motion to dismiss complaints alleging violations of 1983 Consent Decree); Cook County's Mot. to Vacate 1994 Consent Decree, Docket No. 513. There is a critical difference, however, between the procedural posture of Governor Quinn and that of defendants who have tried unsuccessfully to

raise lack of standing as a basis for relief. Unlike the City of Chicago or Cook County, Plaintiffs have never obtained, through litigation or by consent, a judgment against a Governor of Illinois that can now serve as the basis for subject matter jurisdiction with respect to hiring practices. *See O'Sullivan*, 396 F.3d at 857-59; *Shakman v. Democratic Org. of Cook County*, No. 69-2145, 2004 WL 691782 (N.D. Ill. March 30, 2004). Thus, the reasons for rejecting standing arguments brought by other parties do not apply here.

There is no basis to grant Plaintiffs' requests for an injunction and the appointment of a special master to oversee the State's employment practices. Plaintiffs do not have a judgment—by consent or otherwise—to enforce, and they may not now secure injunctive relief against Governor Quinn given their lack of standing to do so. Therefore, this portion of Plaintiffs' Motion must be denied.

II. The relief requested is inappropriate

Plaintiffs also request supplemental relief for alleged non-compliance with the parties' existing consent decree. Specifically, Plaintiffs request: (1) "[a]dditional 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;" (2) "[t]he 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;" (3) "[d]evelopment, with input from the Special Master, of a hiring, promotion, reassignment and employment plan for non-exempt positions;" and (4) "[d]evelopment, 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." Plaintiffs fail to demonstrate that their proposed relief is appropriate.

Although the "power of a district court to formulate an equitable remedy for an adjudicated violation of law is broad," its "equitable discretion is not unlimited." *People Who Care v. Rockford Bd. of Educ., Sch. Dist. No. 205*, 111 F.3d 528, 533 (7th Cir. 1997). "[W]hen the decree is addressed to a branch of government rather than to private persons, it must be formulated with sensitivity to the separation of powers and the dignity of the states as quasi-sovereigns." *Id.* In "reform[ing] important public institutions . . . the court must be sensitive not only to the concerns of comity but also to the practical limitations of the federal judiciary as an administrative body." *Id.* In addition, when fashioning equitable relief, remedies that "prohibit specified conduct are generally preferable to those that impose affirmative duties." *Id.* at 534. Moreover, any "equitable remediation must be guided by norms of proportionality. That is, the remedy must be tailored to the violation, rather than the violation's being a pretext for the remedy." *Id.* (citations omitted). It is clear that Plaintiffs' requested relief for non-compliance with the 1972 Consent Decree must be denied.

A. Plaintiffs have not shown a need for a special master.

Plaintiffs ask this Court to appoint a special master to "investigate and recommend reforms in the employment practices for non-exempt jobs under the jurisdiction of the Governor within the Northern District of Illinois." (Pls.' Mot. ¶23.) "[A]ppointment of a master must be the exception and not the rule." Advisory Committee's Notes on 2003 Amendments to Fed. R. Civ. P. 53. As a leading federal treatise cautions: "If there is an overarching principle regarding the utilization of masters in contemporary federal practice it is restraint." *See* Charles Alan Wright & Arthur R. Miller, *et al.*, 9C Federal Practice & Procedure § 2605 (3d ed. 2009 Supp.).

Indeed, there are "limited circumstances" in which a court may appoint a special master, only two of which are even arguably relevant here: (1) by consent of the parties; and (2) to address "posttrial matters that cannot be effectively and timely addressed by an available district judge or magistrate judge of the district." *See* Fed. R. Civ. P. 53(a)(1)(A) & (C).

Neither circumstance is present here. The parties have not consented to the appointment of a special master, nor have Plaintiffs argued, much less demonstrated, that any remaining issues between the parties with respect to the 1972 Consent Decree cannot be effectively addressed by a judge of this court. *See id.* More importantly, Plaintiffs have not alleged much less demonstrated such extensive and on-going violations of the 1972 Consent Decree that would compel such intrusive oversight of state government. *See People Who Care,* 111 F.3d at 534 ("Violations of law must be dealt with firmly, but not used to launch the federal courts on ambitious schemes of social engineering.").

The Supreme Court has repeatedly urged caution in crafting remedies in the area of government reform:

> [T]he public interest and considerations based on the allocation of powers within our federal system require that the district court defer to local government administrators, who have the primary responsibility for elucidating, assessing, and solving the problems of institutional reform.

Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 392 (1992) (citations and internal quotation marks omitted); *see also Frew v. Hawkins*, 540 U.S. 431, 442 (2004) (state officials should be given "latitude and substantial discretion" in modification of consent decree). This concern is particularly relevant in this case, as Plaintiffs seek to bind future Governors based on the alleged misconduct of one former Governor.

Indeed, appointing a special master to manage Governor Quinn's employment practices would deprive State officials of their responsibility. *See Horne v. Flores,* 129 S. Ct. 2579, 2594

(2009) ("States and localities depend upon successor officials, both appointed and elected, to bring new insights and solutions to problems."). Governor Quinn has already taken concrete and meaningful steps to abolish any prohibited use of political considerations in State employment—and he did so before Plaintiffs filed their Motion. For example, in August 2009 Governor Quinn signed legislation expanding the Office of the Executive Inspector General's ("OEIG") jurisdiction to cover *Rutan* hiring and directing the OEIG to investigate allegations of prohibited employment practices. *See* 5 ILCS 430/20-20(9) (adding power to "review hiring and employment files of each State agency within the Executive Inspector General's jurisdiction to ensure compliance with *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), and with all applicable employment laws."). Further, in early December 2009, Governor Quinn issued an administrative order to all State agencies to clarify and improve guidelines for compliance with *Rutan*. *See* Admin. Order No. 2, "Directive to State Agencies, Updating Guidelines for Compliance with the *Rutan* Decision" (Dec. 10, 2009), *available at* http://www.illinois.gov/publicincludes/statehome/gov/documents/AO-2009-2.pdf. Wresting responsibility from an elected official by appointing a costly special master would be an unwarranted intrusion into a State executive's core authority. *See Horne*, 129 S. Ct. at 2594 (cautioning courts not to "improperly deprive officials of their designated legislative and executive powers"); *People Who Care*, 111 F.3d at 540 ("[W]e are mindful of the criticisms that have been made of the use of special masters in institutional reform litigation—a use that involves endowing a private individual with powers over state government."). Further, following the August 2013 BGA report, the Governor and IDOT took steps to correct any perceived wrongdoing by initiating an audit to ensure that all position descriptions matched the

employees' actual job duties and confirmed with CMS that each position was correctly classified as *Rutan*-exempt or non-exempt.

Additionally, Plaintiffs' allegations, which are based on information and belief derived primarily from media sources, only allege violations pertaining to IDOT. Yet Plaintiffs seek a Special Master to cover all employment under the Governor within the Northern District of Illinois. (Pls.' Mot. ¶ 23). The Governor oversees the vast majority of the State's agencies and as a result, state employees. There is no basis for a Special Master to monitor all of the employment under the Governor when the allegations relate only to IDOT.

Further, as Plaintiffs allege, the OEIG commenced an investigation into the alleged wrongful practices. (Pls.' Mot. ¶ 15). The OEIG has not issued its report and recommendations. To appoint a Special Master is unwarranted and, in advance of the OEIG concluding its investigation and issuing its report and recommendations, is premature.

B. Plaintiffs' request for an employment plan and a list of exempt positions is unnecessary.

Finally, this Court should deny Plaintiffs' request to appoint a special master to develop a hiring, promotion, reassignment and employment plan for non-exempt positions and a list of employment positions that are properly exempt from the rules against political sponsorship or conditioning employment upon political factors or considerations. (Pls.' Mot. ¶23.) Plaintiffs overstate the authority contained within the 1972 Decree with respect to determining non-exempt positions. Plaintiffs claim that 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.'" (Pls.' Mot. ¶ 19) (emphasis added). However, the 1972 Decree states that the court retains jurisdiction to allow the parties to continue to *litigate* which employment positions are exempt. (Pls.' Exhibit A, ¶ H(1)(a)). Plaintiffs are not seeking

to litigate the issue now (and if they were, such request would be untimely), but rather conflate the jurisdiction retained by the court in order to seek the relief requested.[4] Such relief is not contained within the Decree and as such, is inappropriately requested.

Additionally, Plaintiffs presumably request a list of exempt positions in order to identify those positions not subject to the strictures of *Rutan*—which, in addition to hiring, encompasses transfer, promotion, and other employment actions—so as to more easily identify incidents of allegedly impermissible political sponsorship. *See Rutan*, 497 U.S. at 79 ("We hold that the rule of *Elrod* and *Branti* extends to promotion, transfer, recall, and hiring decision based on party affiliation and support."). But the agencies under the jurisdiction of Governor Quinn already explicitly designate all of their positions as either "*Rutan* exempt" or "non-exempt" in each job description generated and maintained by the agencies' personnel division, the Department of Central Management Services. Such designations were mandated by administrative orders issued by Governors Thompson and Edgar in 1990 and 1991. See Admin. Order No. 1, "Directive to State Agencies Regarding Personnel Practices" (July 17, 1990); Admin. Order No. 2, "Directive to State Agencies, Guidelines for Interviewing Job Candidates" (Oct. 1, 1990); Admin. Order No. 1, "Personnel Policies Directives" (Jan. 31, 1991) (all attached hereto as Group Exhibit 1). And these position descriptions have been relied on as authoritative with respect to political exemptions by courts in this circuit. *See Riley v. Blagojevich*, 425 F.3d 357, 365 (7th Cir. 2005). The Administrative Orders already set out a plan for the hiring, promotion, reassignment and employment of non-exempt positions. Thus, Plaintiffs' request for the development of an employment plan and an "exempt employment list" is therefore unnecessary and should be rejected. *See United States v. W. T. Grant Co*., 345 U.S. 629, 633 (1953) ("[T]he

[4] Further, to the extent Plaintiffs are seeking to set a limit on the number of *Rutan*-exempt positions, such relief is not contemplated by the Decree nor has the issue been litigated.

moving party must satisfy the court that [injunctive] relief is needed."); *Wernsing v. Thompson*, 423 F.3d 732, 744-45 (7th Cir. 2005) (same).

III. This court should address Defendant's response prior to permitting Plaintiffs to engage in discovery

As it argues that Plaintiffs' Motion should be denied, the Office of the Governor objects to the issuing of discovery in advance of any ruling.[5] A stay of discovery is generally appropriate where a party raises a potentially dispositive threshold issue such as a challenge to a plaintiff's standing. *See U.S. Catholic Conference v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 79-80 (1988). Plaintiffs issued discovery to the Office of the Governor shortly after the filing of the present motion. The requests included a Rule 30(b)(6) Deposition Notice and a request for documents. Although the allegations included in Plaintiffs' motion, which are based primarily on information and belief, refer only to the Office of the Governor and the Illinois Department of Transportation, Plaintiffs' discovery requests seek documents from every agency in the State of Illinois that reports to the Governor. Such broad discovery is intrusive, burdensome, and beyond the scope of the already speculative allegations contained in Plaintiffs' Motion. Additionally, Plaintiffs' Motion refers to 47 documents that Plaintiffs allege are "at the heart of the allegations described above." (Pls.' Mot. ¶ 22). The Governor's Office has since produced the 47 documents to Plaintiffs thus obviating the need for additional discovery. Further, because the arguments in this response would be dispositive of Plaintiffs' allegations, to allow Plaintiffs to engage in such broad and burdensome discovery would be inappropriate.

[5] The Office of the Governor reserves the right to object to specific requests if it is ever ordered by this Court to respond to Plaintiffs' discovery requests.

CONCLUSION

Plaintiffs have not shown that they are entitled to the relief requested or that the relief requested is appropriate. Plaintiffs' claims are untimely, they have previously abandoned them and they have no standing to pursue any claims pertaining to hiring. Further, the relief requested is invasive, deprives Governor Quinn of his authority and responsibility with respect to state employment, and is premature in advance of the currently pending OEIG investigation. As such, Plaintiffs' motion must be denied in its entirety.

WHEREFORE, for the foregoing reasons, Defendant Pat Quinn respectfully requests that this Court deny Plaintiffs' Amended Motion for Entry of Supplemental Relief in its entirety.

Respectfully Submitted,

LISA MADIGAN
Illinois Attorney General

PAT QUINN, in his official capacity
as the Governor of the State of Illinois

By: /s/ Brent D. Stratton

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