

**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)	Hon. Sidney Schenkier
OF COOK COUNTY, et al.,)	
)	
Defendants.)	

**GOVERNOR PAT QUINN’S SUR-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 Sur-Response to Plaintiffs’ Reply in Support of their Amended Motion for Entry of Supplemental Relief states as follows:

INTRODUCTION

Governor Pat Quinn’s response to the allegations of improper political considerations in employment at the Illinois Department of Transportation (“IDOT”) has been prompt, appropriate and aimed at a long term solution to preventing any such improprieties in the future. In 2011, the Office of the Executive Inspector General for the Agencies of the Illinois Governor (“OEIG”), using the expanded authority granted to it by the Illinois General Assembly and as approved by Governor Quinn, began investigating IDOT’s use of “Staff Assistant” positions. After a lengthy and meticulous investigation, the OEIG reported its findings and recommendations to the Office of the Governor. The Governor’s Office acted swiftly to implement the OEIG’s

recommendations, as well as additional measures to continue compliance with the 1972 Shakman Decree (“Decree”) and all other employment laws. The measures taken in response to the OEIG’s report and recommendations obviate the need for the relief Plaintiffs seek. For these reasons, Plaintiffs’ Amended Motion for Entry of Supplemental Relief must be denied.

BACKGROUND AND RECENT DEVELOPMENTS

Office of the Executive Inspector General: With the enactment of the State Officials and Employees Ethics Act (“Ethics Act”) in 2003, the OEIG was created to ensure accountability in state government. 5 ILCS 430/1 *et seq.* The OEIG’s primary role is to investigate allegations of misconduct and to make reports of its findings to affected public agencies and officials. The OEIG is a “fully independent office with separate appropriations.” 5 ILCS 430/20-10(a).

In 2009, Governor Quinn signed into law an amendment to the Ethics Act to expand the duties and responsibilities of the OEIG with respect to *Rutan* employment practices. 5 ILCS 430/1-1 *et seq.* Specifically, the 2009 Amendment empowered the OEIG “[t]o 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.*” 5 ILCS 430/20-20(9) (effective August 18, 2009) (emphasis added). The OEIG has taken the expansion of its duties seriously. It recently stated that the “monitoring of state agency hiring practices continues to be one of the OEIG’s primary duties and we will continue to devote resources to evaluating those practices, identifying potential improprieties, and performing investigations when necessary.” (OEIG Newsletter, August 19, 2014, attached as Exhibit A).

OEIG's IDOT Investigation: In April 2011, the OEIG received two complaints alleging improper hiring practices at IDOT. (OEIG Report p. 1 Exhibit B).¹ During the course of its investigation, the OEIG learned that the complained of employees were both hired into "Staff Assistant" positions. (Ex. B, OEIG Report p. 1). Based on information uncovered during its investigation of these two complaints, the OEIG self-initiated a broader investigation. (Ex. B, OEIG Report p. 1). The OEIG completed an internal self-initiated case form, which stated in part:

Because of the potential for hiring abuses and information that relatives of senior IDOT managers are being hired as 'staff assistants,' the OEIG will open a wider investigation on the staff assistant positions within IDOT. The investigation will seek information on the staff assistant positions statewide. The focus of the investigation will be on how these positions are being created, whether position descriptions are being manipulated to have the positions exempted from *Rutan*, what the qualifications of the employees filling the positions are, and the relationships between these employees and senior IDOT managers or others with influence within IDOT.

(Ex. B, OEIG Report p. 2). In September 2011, the OEIG began a broad investigation into IDOT's use of staff assistants. (Ex. B, OEIG Report p. 2).

During the course of its investigation, the OEIG reviewed thousands of documents and interviewed more than 100 current and former employees of IDOT, including staff assistants, supervisors of staff assistants and IDOT leadership, including individuals in the Bureau of Finance and Administration and the Bureau of Personnel Management.² (Ex. B, OEIG Report p. 8, 34-40). Following its document review, interviews, and in some instances second interviews, the OEIG assembled its findings into a report. (Ex. B, OEIG Report *generally*). The report

¹ The OEIG report can be found at http://www2.illinois.gov/oeig/Documents/11-01567_%20Schneider_%20Hannig_%20Hughes_%20Woods,%20Jr_08.20.14%20Part%201.pdf and http://www2.illinois.gov/oeig/Documents/11-01567_%20Schneider_%20Hannig_%20Hughes_%20Woods,%20Jr_08.20.14%20Part%202.pdf. Due to the size of the report, it is not attached but the Governor's Office will provide a copy to the Court with its courtesy copy.

² The OEIG also interviewed current and former Chiefs of Staff and current Deputy Chief of Staff for Governor Quinn to determine what role, if any, the Governor's Office had in the hiring of IDOT staff assistants. (Ex. B, OEIG Report p. 40).

³ An Electronic Personnel Action Request ("ePar") is an electronic record used to authorize the filling of any

contains a thorough description of the OEIG's investigative method, a summary of its factual findings and a lengthy analysis of what problems the OEIG uncovered, why such problems occurred and its recommendations to solve the problem. (Ex B, OEIG Report *generally*).

Ultimately, the OEIG found that certain allegations against IDOT senior staff were founded with respect to hiring employees into *Rutan*-exempt staff assistant positions. (Ex. B, OEIG Report p. 237).

The overwhelming majority of the OEIG investigation focused on hiring, which by Plaintiffs' own admission is not covered by the Decree. (Plaintiff's Reply p. 1) With respect to transfers, the OEIG uncovered only thirteen instances where IDOT hired an employee into a *Rutan*-exempt position, and after some time, transferred that employee to a *Rutan*-covered position without going through the *Rutan*-hiring process. (OEIG Report p. 189). The OEIG concluded that these actions violated Governor Quinn's Administrative Order No. 2 (2009) and IDOT's own personnel policies. (Ex. B, OEIG Report p. iv). While the OEIG concluded that some individuals were *hired* based on political affiliation, they did not conclude that individuals were *transferred* to *Rutan*-covered positions based on political affiliation.

As a result of the OEIG's investigation, the OEIG recommended that the Governor's Office direct IDOT to:

- (1) Require its employees who are responsible for employee personnel action(s), including the Secretary, to complete Central Management Services' *Rutan* training;
- (2) Review all prior internal and external audits to make certain that all recommendations related to *Rutan* and which IDOT previously agreed to comply with, have been either implemented or will be implemented within a reasonable time;
- (3) Determine a working definition of the term "technical," such that IDOT positions currently classified as "technical" have been appropriately classified as technical;

- (4) Work with CMS and/or any other appropriate agencies, to ensure that IDOT positions currently classified as “technical” have been appropriately classified as technical;
- (5) Require IDOT’s Office of Internal Audit to regularly review non-code positions to ensure that they are properly classified and that proper hiring practices are being following;
- (6) Update organizational charts periodically and review IDOT’s reporting structure to ensure that *Rutan*-exempt employees report to *Rutan*-exempt supervisors;
- (7) Codify the manner in which position levels are assigned to non-code Position Titles so that differences in level reflect differences in the responsibilities of the position;
- (8) Ensure that employee performance evaluations are performed annually and are consistent with IDOT policies, and ensure that performance standards used in evaluations are related to the accountabilities of the employee’s position description;
- (9) Determine what, if any, *Rutan*-exempt duties existing Staff Assistants are performing, and if in fact they are performing *Rutan*-exempt duties, identify what IDOT position duties the person is performing, and re-classify them into that position;
- (10) Abolish the Staff Assistant position; and
- (11) Conduct regular audits or review of *Rutan*-exempt positions approved in order to ensure that agencies do not circumvent the *Rutan* hiring process.

(Ex. B, OEIG Report p. 243-44). In addition, the OEIG recommended that the Governor’s Office take action with respect to individual employees, remind all agency heads under its jurisdiction of Administrative Order No. 2 (2009), take immediate steps to develop additional protocols to make certain every State agency and every State agency head is aware of their obligations under *Rutan*; and establish and create additional measures that would include random reviews of approved ePARs³ signed by Office of the Governor staff in order to make certain the *Rutan* hiring process is followed. (Ex. B, OEIG Report p. 244-45).

On June 12, 2014, the OEIG issued its report to the Governor’s Office. (Ex. B, OEIG Report p. 245). On July 3, 2014, the Governor’s Office provided its statutory response to the OEIG stating that it had or would implement all of the OEIG’s recommendations. 5 ILCS 430/20-50(a). (Ex. C, Governor’s Response to OEIG Report.) The Governor’s Office Response

³ An Electronic Personnel Action Request (“ePar”) is an electronic record used to authorize the filling of any vacancy. (Ex. B, OEIG Report p. v).

detailed the corrective action taken, as outlined in its July 3, 2014 Memorandum to IDOT and its July 3, 2014 Memorandum to all Agency Heads. (July 3, 2014 Memorandum to IDOT attached as Exhibit D; July 3, 2014 Memorandum to All Agencies attached as Exhibit E). The steps outlined in the July 3rd memoranda include extensive *Rutan* training, annual employee evaluations and job description reviews, ePar verification that the employee will be working within their job description, an audit of all *Rutan*-exempt positions, a moratorium on new or additional *Rutan*-exempt positions, the creation of a Technical Code Merit Board, and verification that transfers from exempt to covered positions follow the *Rutan* process. (Exhibits D and E).

To ensure future compliance with the Decree, *Rutan*, and the previously issued Administrative Orders, on August 21, 2014, IDOT revealed that in addition to the July 3 reforms, it would also be undergoing a material re-organization to eliminate the Staff Assistant position entirely, including laying off the 58 current staff assistants. (August 21, 2014 Press Release, attached as Exhibit F). Governor Quinn signed the executive order creating the Technical Merit Board (August 21, 2014 Executive Order, attached as Exhibit G), and Acting Secretary Erica Borggren announced that IDOT would maintain the freeze on any new *Rutan*-exempt positions indefinitely. (Ex. F, August 21, 2014 press release). Governor Quinn and IDOT's responses complied with the OEIG's recommendations.

ARGUMENT

The relief Plaintiffs seek is not warranted as the Governor's Office has already implemented many new measures that make Plaintiffs' requests moot.⁴ In addition, discovery is

⁴ For the reasons stated in its Response, the Governor's Office maintains its argument that Plaintiffs claims are untimely. There is no support for Plaintiffs' position that *Smith v. City of Chicago*, 769 F.2d 408 (7th Cir. 1985), only applies to individual enforcement. In light of Plaintiffs' primary argument that the issues remaining are what the appropriate relief is and what discovery should be allowed, the Governor's Office will focus its sur-response on

not appropriate as the information Plaintiffs need has become publicly available and there is no support for Plaintiffs' position that they are entitled to extraordinarily broad discovery directed to all agencies under the Governor.

There is overlap in the conduct covered by the 1972 Decree ("Decree"), *Rutan* and the Administrative Orders, but not all violations of *Rutan* or the Administrative Orders are a violation of the Decree. Specifically, the Decree prohibits, among other things, "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 political reason or factor." (1972 Decree, ¶ E(1)). The Administrative Orders place a much greater burden on the agencies to ensure that not only is political affiliation not being considered in State employment, but that the most qualified person is being hired for *Rutan*-covered positions. Neither the Decree nor *Rutan* impose such a requirement on the State. Thus, any measures taken to ensure compliance with *Rutan* or the Administrative Orders will ultimately ensure compliance with the Decree as well.

I. The Governor's Office Has Already Taken Appropriate Corrective Action.

The Governor's Office has taken action with respect to alleged violations of the Decree, *Rutan*, and/or any of its Administrative Orders. In September 2013, the Governor's Office initiated an internal audit of IDOT's use of staff assistants conducting interviews of more than half of the individual staff assistants to gauge whether actual job duties were accurately represented by the particular position's job description. (Audit Questionnaire attached as Exhibit I). Based on this sample, the Governor's Office instructed IDOT to undergo a position review of

the new events that have occurred since the Governor's Office last addressed the Court. Additionally, although Plaintiffs make the conclusory argument they have not waived their claims originally brought in their 2009 motion, Plaintiffs' motion makes no mention of those allegations, instead focusing on the staff assistant reassignments at IDOT. As such, the Governor's Office will only focus on those new allegations brought in Plaintiffs' 2014 Motion, while maintaining that Plaintiffs have waived its 2009 allegations.

the job duties of each staff assistant and the duties performed in those positions. (December 30, 2014 Memorandum to IDOT attached as Exhibit J).

Following receipt of the OEIG's recommendations in June 2014, the Governor's Office began implementation of its recommendations. On July 3, 2014, the Governor's Office reported to the OEIG that it had or would implement all of the OEIG's recommendations. (Ex. C, Governor's Office Response to OEIG). Included in its response to the OEIG were the July 3 Memorandum to IDOT and the July 3 Memorandum to all agencies regarding continued compliance with *Rutan*. Both documents detail the plans to be undertaken in response to the OEIG's recommendations, including *Rutan* training, annual employee evaluation requirements, job description reviews, elimination of the staff assistant title, actions against individual employees and officers, ePar verification, and creation of a merit board and a moratorium on new *Rutan*-exempt positions.

Executive Rutan Training: Pursuant to the OEIG's recommendation number one, the July 3 Memo ordered executive *Rutan* training. (Ex. D; Ex. E). All executive level staff members, including, but not limited to, the Secretary and all Bureau and Office Heads are required to attend a *Rutan* training course conducted by personnel experts at the Department of Central Management Services ("CMS"). (Ex. D; Ex. E). The Governor's Office hosted cabinet level training on August 19, 2014. This training, conducted by CMS, provided cabinet members a thorough overview of the *Rutan*-exempt and *Rutan*-covered hiring processes and the rules surrounding those positions.

The July 3 memorandum to IDOT also ordered that every member of the Department's Bureau of Finance and Administration who works on personnel matters and every *Rutan* interviewer within IDOT will be required to receive *Rutan* training from CMS (regardless of

whether that individual has received training in the past). (Ex. D). On August 12, 2014, at the direction of the Governor's Office, the Department of Central Management Services hosted a six-hour training session for over 100 IDOT employees who handle personnel matters.

Annual Employee Evaluations and Job Description Reviews: Pursuant to the OEIG's recommendation number eight, the July 3 IDOT memo ordered that IDOT comply with their Personnel Policies Manual and that all employees must receive a written performance evaluation on an annual basis. (Ex. D). As part of the annual performance evaluations, supervisors must compare the employee's actual job duties and responsibilities to those listed on the employee's job description. (Ex. D). This will help to ensure that employees are doing the work that they were hired to do. (Ex. D).

Abolishing Staff Assistant Title: Pursuant to the OEIG's recommendations numbers nine and ten, the Governor's Office instructed IDOT to abolish the staff assistant title. (Ex. D). IDOT initially worked to reclassify the staff assistant positions as a result of an internal audit which revealed some staff assistants were not performing the duties contained within their job descriptions. (Ex. F, August 21, 2014 press release). Ultimately IDOT concluded that it no longer needed the staff assistant position. It began the process to eliminate the position entirely and lay off the 58 employees currently holding that position. (Ex. F, August 21, 2014 press release). The layoff is scheduled to become effective September 30, 2014.

Individual Employees and Officers: The OEIG also recommended that IDOT take steps with respect to current and former IDOT employees, specifically, Matt Hughes, Mike Woods Jr., Ann Schneider and Gary Hannig. (Ex. C). Hughes left State employment prior to the completion of the OEIG report, and as directed, a copy of the OEIG report was placed in his personnel file.

Woods and Schneider resigned from their positions with IDOT in July 2014. (Ex. C). Hannig's contract expired and, as of July 2014, he is no longer doing work for the State. (Ex. C).

ePar Verification that Employees will be Working within Job Description: For *Rutan*-covered positions, an ePar requires approval from the relevant members of IDOT senior management and the Governor's Office of Management and Budget. *Id.* For *Rutan*-exempt positions, the Office of the Governor must also provide approval. *Id.* The ePar system is undergoing updates to require all agency, board and commission personnel staff and all agency, board, and commission heads who approve ePars to verify that an employee filling a position will be carrying out the duties and responsibilities contained in the employee's job description. (Ex. E, July 3, 2014 All Agency Memo). This update will apply to both *Rutan*-exempt and *Rutan*-covered positions. *Id.* If an agency cannot verify that the employee will be working within the job description, then a job description review should be undertaken to reflect the employee's actual duties and responsibilities. *Id.*

Creation of Merit Board: On August 21, 2014, Governor Quinn signed an executive order creating a Department of Transportation Technical Merit Board to ensure the integrity of all personnel matters involving employees covered by IDOT's technical code. (Ex. G Executive Order; Ex. F, August 21, 2014 press release). This external, independent body will help to oversee the technical code process and provide greater accountability and transparency. *Id.*

Indefinite Moratorium on Creation of New Rutan-Exempt Positions: On July 3, 2014, the Governor's Office ordered that IDOT not create any new or additional *Rutan*-exempt positions until the Governor's Office determines that the corrective actions in the July 3 memo have been implemented satisfactorily. (Ex. D, July 3, 2014 IDOT Memo). On August 21, 2014, Acting

Secretary Erica Borggren announced that she ordered that the moratorium would be continued indefinitely. (Ex. F, August 21, 2014 press release).

II. The Relief Plaintiffs Seek is Not Necessary

The relief that Plaintiffs ultimately seek, compliance with the Decree by ensuring that political affiliation is not a consideration for current *Rutan*-covered employees, has been reached by the Governor's newest reforms. In light of the actions taken by the Governor's Office, the specific measures that Plaintiffs request -- (1) appointment of a monitor; (2) rescission of the unlawful transfers; (3) creation of a hiring plan; and (4) creation of an exemption list -- have either been instituted by the Governor's Office in some form, or are not necessary due to a separate measure taken by the Governor's Office.

A monitor is not warranted because the OEIG already performs the tasks Plaintiffs seek from an appointed monitor and Plaintiffs have not shown a need for a monitor otherwise. Plaintiffs seek the immediate appointment of a monitor, an extreme, intrusive and costly remedy. Despite Plaintiffs' contention, the Governor's Office does not contest that this Court has the authority to appoint a monitor; rather Plaintiffs have not shown a *need* for the Court to appoint a monitor. Plaintiffs ask that the Court appoint a monitor to determine why the admitted conduct occurred and what needs to be done systematically to prevent future violations. (Plaintiffs' Reply, p. 3). Plaintiffs claim that "[t]he role of the monitor is not to dictate, but to investigate, observe and report on whether government used improper political considerations in employment decision." (Plaintiffs' Reply, p. 3).

The OEIG is a fully-funded, independent agency currently in place that is already tasked with monitoring "all employment laws." The OEIG has the authority to "review hiring and employment files of each State agency within the Executive Inspector General's jurisdiction [*i.e.*,

all agencies under the Governor] to ensure compliance with *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), and with all applicable employment laws.” 5 ILCS 430/20-20(9). (effective August 18, 2009). The OEIG has already done (at no extra cost to the taxpayers) exactly what Plaintiffs want a monitor to do. The OEIG already investigated, observed and reported on whether IDOT used improper political considerations in employment decisions. The OEIG already determined why the conduct occurred and the OEIG already determined what needs to be done to prevent future violations. The role of an appointed monitor is duplicative of the role of the OEIG and ultimately may come in conflict with the statutory authority of the OEIG.

Plaintiffs argue that a monitor is warranted because there are remaining issues that cannot be effectively addressed by a judge of this Court but fail to identify any such issues. (Reply, pp. 12-13). Here, the OEIG received a complaint, investigated, issued a report with its findings and recommendations, and the Governor’s Office implemented those recommendations. The OEIG exercised its authority before Plaintiffs were aware of any problem,⁵ and took the appropriate steps to investigate, understand, and recommend how to correct the problem. Appointing a monitor is unnecessary when there is a fully-funded independent state agency, which has demonstrated its ability to investigate and correct employment issues, and which, as described above, has the ability to initiate, without a complaint, a review of any agency’s hiring practices. (Ex. A, OEIG Newsletter August 19, 2014).

Plaintiffs further request that any “unlawful reassignments” be rescinded. The OEIG was “unable to conclude that IDOT senior staff knowingly created *Rutan*-exempt positions descriptions for the purpose of intentionally circumventing State *Rutan* hiring rules solely to

⁵ In fact, the BGA would not have started investigating in 2013 had individuals not reported to the BGA that the OEIG was investigating IDOT’s use of the staff assistant positions.

select persons with political affiliation.” (Ex. B, OEIG Report p. 200). The OEIG further concluded that the Governor’s Office was not aware of IDOT’s misuse of the staff assistant position. (Ex. B, OEIG Report p. 232). While the OEIG concluded that IDOT staff did circumvent *Rutan* hiring rules as set forth in Administrative Orders, they did not conclude that political affiliation was a factor in transferring employees to *Rutan*-covered positions. (Ex. B, OEIG Report p. 200).⁶

It is Plaintiffs’ contention that, while the initial hiring was outside the scope of the Decree, if the initial hiring was political *and* the non-competitive transfers were based on the politically-favored status of the employee, that is a violation of the Decree. (Plaintiffs’ Reply p.1-2). There is nothing to support Plaintiffs’ assertion that the *transfer* of these employees was based on an improper motivation.⁷ While the *Rutan*-hiring process was not followed for every employee transfer (which itself is not a violation of the Decree), there was no finding by the OEIG that political affiliation was improperly considered in the transfers. IDOT already eliminated the staff assistant position resulting in the scheduled layoff of 58 IDOT employees. This remedial action is now being contested. (Exhibit H, *Teamsters Local 916 v. Quinn*). To

⁶ Plaintiffs argue in their Reply that it is not appropriate to rely on IDOT to police its own employment activities when Former Secretary Schneider will not consider a remedy with respect to 48 individuals who she admits were improperly transferred to non-exempt jobs outside of the normal competitive process. That is an inaccurate summary of Schneider’s statements as reported by the BGA. First, Schneider was asked about violations of *Rutan*, not the Decree. Further, Schneider did not admit that there were 48 individuals who were improperly transferred to non-exempt jobs outside of the competitive process. Schneider said that there were 48 of 60 Staff Assistants who were found to be performing non-exempt work—not that had been transferred to non-exempt positions. Additionally, since Schneider’s interview, IDOT underwent a material reorganization where the “Staff Assistant” position is being eliminated and all employees currently holding those positions will be laid off on September 30, 2014. Finally, while IDOT has implemented additional checks on *Rutan*-exempt positions, it is not charged with policing itself. Rather, the OEIG has the authority and responsibility to monitor state employment practices. The OEIG has emphasized not only that it has taken its authority seriously, but that it has been successful in discovering and remedying any employment improprieties. (Ex. A, OEIG Newsletter August 19, 2014).

⁷ The OEIG report identifies that one of the reasons IDOT used the *Rutan*-exempt staff assistant position was to speed up the hiring process. For many of the individuals hired through the *Rutan*-exempt process, there was no suggestion that political affiliation was a factor in hiring these people. Rather, the *Rutan*-exempt hiring process was an avenue to get a new employee more quickly, but not necessarily because of political affiliation. Again, where such process may be a violation of the Administrative Orders, such hiring is not in violation of the Decree.

rescind transfers could result in additional litigation. Plaintiff has not shown a need for the Court to order such relief or how rescinding such transfers would remedy any alleged problem.

Additionally, after conducting a thorough investigation, the OEIG did not recommend that any of the transfers from *Rutan*-exempt to *Rutan*-covered positions be rescinded.

The additional remedies Plaintiffs seek are not necessary in light of the Governor's Office's new checks on *Rutan*-covered and exempt work, such as the *Rutan* training, the annual job description review, the ePar verification, the creation of the Merit Board and the OEIG's authority to ensure compliance with these measures. The new measures resolve the need for a so-called employment plan for non-exempt positions. Additionally, there is no requirement under the Decree (or *Rutan*, the Administrative Orders or any other employment law) that an agency be limited to a list of exempt positions. The continued auditing of *Rutan*-exempt positions will ensure that only those positions for which political considerations are appropriate will be exempt. The combination of these rules and the new verifications provides ample guidance in determining the correct course of action with respect to personnel transactions and ensuring that non-exempt positions are properly treated as such

III. The Discovery Requested is Not Warranted.

Plaintiffs argue that the facts presently known warrant extensive discovery to “determine where else violations of the Decree have recently occurred, or are occurring, and whether the actions proposed by the Governor . . . are adequate to address the recurring problem.” (Plaintiffs' Reply, Dkt. 3869, p. 6). Despite Plaintiffs' contentions, the uncontested facts do not demonstrate a widespread patronage problem. As described in detail in the OEIG report, there was a narrow issue at IDOT regarding the Staff Assistant position. Since Plaintiffs first filed their amended motion and discovery requests, much of the information Plaintiffs requested has been made

publicly available. The OEIG report and the actions taken by the Governor's Office since then provide the information Plaintiffs seek. The OEIG report contains more than 300 pages detailing its thorough investigation, the attachments in support and the results of that investigation.⁸

To the extent this Court finds that discovery is appropriate, it should be strictly limited to IDOT. Plaintiff seeks expansive discovery of the employment practices of all agencies under the Governor's control despite no suggestion that similar conduct occurred at agencies other than IDOT. Discovery should be limited to information in the same department or office absent a showing of a more particularized need for, and the likely relevance of, broader information. *See e.g. Chavez v. DaimlerChrysler, Corp.*, 206 F.R.D. 615, 620 (S.D. Ill. Mar. 25, 2002) (permitting discovery of information outside of plaintiff's department is irrelevant, not reasonably calculated to lead to the discovery of admissible evidence and would allow plaintiff to engage in an impermissible fishing expedition). Plaintiffs argue that the discovery sought is no broader than the issues raised in the BGA report and Schneider's interview, yet Plaintiffs propounded discovery requests seeking documents and information from all agencies under the Governor. Plaintiffs' amended motion in 2014 alleged violations by IDOT only; the BGA report that Plaintiffs' claims were initially based on alleged violations by IDOT only; and, the OEIG report cited violations by IDOT only. There is nothing to support allowing discovery related to information concerning other state agencies. To the extent the Court is inclined to permit discovery as to other agencies, it should first permit the OEIG time to carry out its duties with respect to investigating employment practices at the agencies under its jurisdiction.

⁸ The OEIG has already done Plaintiffs' work for them by investigating allegations of wrongdoing, compiling the factual data, analyzing whether a problem occurred and recommending remedies. To allow discovery when the work has already been completed would be duplicative and unnecessary.

WHEREFORE, for the foregoing reasons, Defendant Governor 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
BRENT D. STRATTON
ANDREW DRYJANSKI
RACHEL L. TIDWELL-NEAL
Office of the Attorney General
100 W. Randolph Street, 12th Floor
Chicago, Illinois 60601
(312) 814-2560