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IN THE SUPREME COURT OF ILLINOIS

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THOMAS CROSS, in his official )  
capacity as Minority Leader of the Illinois House )  
and individually as a registered voter, CHRISTINE )  
RADOGNO, in her official capacity as Minority Leader )  
of the Illinois Senate, JAMES ORLANDO, individually )  
as a registered voter, and CHRISTINE DOLGOPOL )  
individually as a registered voter, )

Movants, )

vs. )

) Original Action Under  
) Article IV, Section 3(b) of  
) the Illinois Constitution of  
) 1970

ILLINOIS STATE BOARD OF ELECTIONS, )  
RUPERT BORGSMILLER, Executive )  
Director of the Illinois State Board of Elections, )  
HAROLD BYERS, BRYAN A. SCHNEIDER, )  
BETTY J. COFFRIN, ERNEST GOWEN, WILLIAM F. )  
MCGUFFAGE, JESSE R. SMART, JUDITH C. RICE, )  
and CHARLES W. SCHOLZ, all named in their official )  
capacities as members of the Illinois State Board )  
of Elections and LISA MADIGAN, in her official )  
capacity as Attorney General of the State of Illinois )

Respondents. )

**MOVANTS' REPLY BRIEF ON THE ISSUE OF WHETHER THE MOVANTS'  
MOTION FOR LEAVE TO FILE COMPLAINT UNDER ILLINOIS SUPREME COURT  
RULE 382 IS TIMELY**

**FILED**

APR 18 2012

SUPREME COURT  
CLERK

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## INTRODUCTION

The Movants' Proposed Complaint alleges that a quarter of the Legislative and Representative Districts fail to comply with the requirements of the Illinois Constitution and the Plan as a whole is not politically fair. The potential effect of this non-compact political gerrymander will limit voters' choices for state senator and state representative in future elections for the remainder of the decade and possibly future decades. Rather than hear the case on the merits, Respondents press this Court to freeze in place this unconstitutional Redistricting Plan because the potential relief that Movants seek may, or may not, prejudice some state senators. To do so would contravene the established precedent in this Court and others that ensuring that future elections are not held under unconstitutional redistricting plans outweighs the potential prejudice to future candidates for office.

## ARGUMENT

### **THE MOVANTS' CLAIMS FOR INJUNCTIVE AND DECLARATORY RELIEF ARE TIMELY AS APPLIED TO FUTURE ELECTIONS.**

#### **I. Respondents Have Failed to Establish Prejudice**

In their Response Brief, Respondents urge this Court to forego reviewing the Movants' challenge to the clearly unconstitutional Redistricting Plan because some of the potential remedies may affect the political decisions of two-thirds of the state Senate. However, Respondents fail to cite one case in this jurisdiction or any other in which the potential effect on the staggered terms of state senators was the deciding factor against constitutional review of a redistricting plan.

In fact, as the Respondents correctly note, this Court drew its own redistricting plan and ordered all state senators to stand for reelection in 1966 because the

configuration of legislative districts violated the “one-man, one-vote” principle established by the U.S. Supreme Court in *Reynolds v. Sims*. *People ex rel. Engle v. Kerner*, 33 Ill.2d 11, 12-15 (1965). While this Court in *Kerner II* did not implement new staggered terms for senators, it did reset the length of terms for the current state senators. *Kerner II*, 33 Ill.2d at 14.

In 1974, this Court again noted that it may set aside the constitutional scheme for staggered terms of state senators if it finds that a redistricting plan violates the federal or state constitutions. *People ex rel. Pierce v. LaVelle*, 56 Ill.2d 278, 283 (1974). The holdings in these cases reflect the U.S. Supreme Court’s guidance in *Reynolds v. Sims* which urged courts to act and fashion remedies “to insure that no further elections are conducted under an invalid plan.” *Reynolds v. Sims*, 377 U.S. 533, 585 (1964) (noting that it would be unusual for a court not to take appropriate action).

Respondents attempt to distinguish the cases cited by Movants in their opening brief by only noting the cases from states which do not feature staggered terms. (Respondents’ Brief, Page 13). However, Respondents failed to distinguish two cases cited by the Movants in which the courts denied application of the doctrine of *laches* to redistricting challenges despite the potential effect on the staggered terms of the elected officials. In *Martin v. Soucie*, the Third District court reversed the circuit court’s application of *laches* to future elections despite the fact that the potential relief would affect the staggered terms of the Kankakee County board members that had just been elected. *Martin v. Soucie*, 109 Ill.App.3d 732, 732-736 (3rd Dist. 1982); See also Exhibit 1, Ill.Rev.Stat., ch. 34, ¶ 839 (1981). In *Wilson v. Kasich*, the Supreme Court of Ohio allowed a constitutional challenge to a redistricting plan to proceed after the primary

election even though state senators in Ohio serve staggered terms and would necessarily be affected by any future remedial measures. *Wilson v. Kasich*, 2012 WL 592541, at \*1, \*1-\*3 (Ohio, February 17, 2012); OHIO CONST. art. 2, § 2.02; art. 11, § 12. None of the courts in the above cases even mentioned the potential effect to the staggered terms of elected officials as a prejudice that bars judicial review of the redistricting plans. In both *Martin* and *Wilson*, the courts noted that the need to ensure that future elections were not held under an unconstitutional redistricting plan far outweighed the potential prejudice, if any, to the electoral expectations of officeholders. *Martin*, 109 Ill.App.3d at 736; *Wilson*, 2012 WL 592541 at \*1-\*3. Respondents have not cited one case where a court has declined to enjoin future election because the staggered terms of future candidates may be affected. Further, Respondents have not cited one case where a court has held that elected officials have a right to a particular length of term of office, especially where the term of office has not yet been set.

Respondents have failed to offer any evidence or argument as to how the timing of the Movants' petition would prejudice the candidates for state senator who were nominated in the March 20, 2012 primary. As Respondents concede, despite the statutory requirement that the Secretary of State draw the Senate terms by lot immediately after the redistricting map has been passed, the process for determining the staggered terms of Illinois senators has not yet occurred. 10 ILCS 5/29C-15; (Respondents' Brief, Page 5). No candidate for the Illinois Senate knew at the time of filing his or her Petitions for Candidacy in December, 2011 (or even knows today for that matter) whether or not the district they chose to run in would be up for re-election in 2014 or 2016. Accordingly no Senate candidate could have made any decisions based upon which term was going to

expire in 2 or 4 years. That statement is as true today as it was back on June 3, 2011 when the Redistricting Plan became law. Any prejudicial effect a potential remedy may have on a candidate for the Illinois Senate would be due to the unconstitutionality of the Redistricting Plan, not the Movants' timing.

The cases relied upon by the Respondents in which the courts discuss the potential prejudice against candidates and voters only concern the effect of a delayed lawsuit on the immediate election, not future elections. (Respondents' Brief, pages 14-15). In fact, the court in *Dobson* dismissed the plaintiffs' election-eve challenge to the city council map without prejudice so that the case could be re-filed and heard on the merits as to future elections. *Dobson v. Mayor and City Council of Baltimore City*, 330 F.Supp. 1290, 1303 (D. Md. 1971). In the instant case, this Court's March 14, 2012 order mooted any relief as to the March 20, 2012 primary and focused the potential relief on future elections. Hence, this Court should follow the reasoning in *Dobson*, *Martin* and *Wilson* and hold that Movants are not barred from challenging future unconstitutional elections.

Furthermore, given the myriad forms of relief that could be implemented based on the outcome of the case, Respondents' concerns of prejudice to state senators are purely speculative. For example, Counts III and IV of the Proposed Complaint challenge the constitutionality of Representative District 35. (Prop. Compl. Counts III, IV). Like the plaintiffs in *Schrage*, the Movants have crafted a remedy that fixes the unconstitutional shape of Representative District 35 while not disturbing the boundaries of Legislative District 18. *Schrage v. State Bd. of Elections*, 88 Ill.2d 87, 104-108 (1981). This potential relief would have zero prejudicial effect on the state senator elected to Legislative District

18. Likewise, this Court or a special master could develop remedies for any one of the 27 Representative Districts that Movants allege violate the constitutional requirements for compactness and political fairness without affecting the staggered term of any state senator. (Prop. Complt, para. 68, page 11).

## **II. Movants Have Not Waived Their Request For Post-2014 Relief**

Respondents incorrectly claim that the Movants have waived any request for relief beyond the 2014 primary election. (Respondents' Brief, page 12). While the Movants seek to enjoin any future elections under this unconstitutional Redistricting Plan as soon as possible, the Movants have not limited this request to 2014. The relief requested in the Proposed Complaint sought to enjoin the Respondents from conducting any future elections under the Redistricting Plan. (Prop. Complt., Counts I-VIII). In the Movants' opening brief, the Movants noted that while this Court's March 14, 2012 order rendered moot any relief as to the March 20, 2012 primary election, it did not foreclose relief as applied to 2014 "or any subsequent election." (Movants' Brief, page 12). Therefore, the Movants' requested relief has not been waived. *People v. Wendt*, 163 Ill.2d 346, 351 (1994).

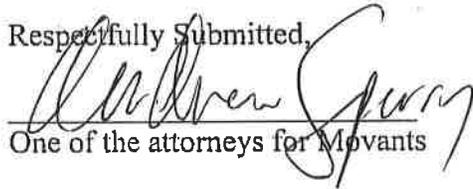
## **CONCLUSION**

The Respondents have placed the potential electoral convenience of some state senators ahead of the rights of the Movants and the voters in the entire state of Illinois to participate in elections under a Redistricting Plan that comports with requirements of the Illinois Constitution. The fact that some of the Movants here chose to vindicate their rights under federal law and the U.S. Constitution prior to asserting their rights in this forum should not bar the review of the Movants' meritorious claim as it relates to future

elections. Had the Movants asserted their rights under the Illinois Constitution in October of 2011, when the state claims were dismissed with prejudice, it would have set off dual-track litigation that would have certainly caused the very prejudice that Respondents bemoaned in the Joint Opposition to Movants' Petition. Moreover, the passage of time cannot legalize an unconstitutional act. *Harms v. City of Peoria*, 373 Ill. 594, 602-603 (1940). For the foregoing reasons, Movants claims are not barred by the doctrine of *laches* as to future elections. Accordingly, Movants respectfully request that this Court grant them leave to file their complaint for declaratory judgment and injunctive relief.

Dated: \_\_\_\_\_

Respectfully Submitted,

  
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## CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(h)(1) cover, the 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 6 pages.

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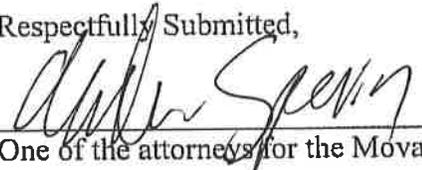
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**CERTIFICATE OF SERVICE**

The undersigned, an attorney certifies that a copy of the foregoing notice of filing and reply brief was served upon all parties on the attached service list on April 18, 2012, by either depositing the same in the U.S. Mail at the U.S. Post Office, 411 E. Monroe Street, Springfield, IL 62701, with proper postage prepaid.

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that event, provision shall be made for the election throughout the county of the chairman of the county board, but in counties over 3,000,000 population no person may be elected to serve as such chairman who has not been elected as a county board member to serve during the same period as the term of office as chairman of the county board to which he seeks election. In counties over 450,000 population and under 3,000,000 population, the chairman shall be elected as chairman without having been first elected to the county board. Such chairman shall not vote on any question except to break a tie vote. In all other counties the chairman may either be elected as a county board member or elected as the chairman without having been first elected to the board. Except in counties over 450,000 population and under 3,000,000 population, whether the chairman of the county board is elected by the voters of the county or by the members of the board, he shall be elected to a 2 year term. In counties over 450,000 population and under 3,000,000 population, the chairman of the county board shall be elected to serve a 4 year term, except that at the election of county board members in the year of a federal decennial census the chairmen of the county boards of such counties shall be elected to serve a 2 year term. The term of each chairman of a county board shall commence on the first Monday of the month following the month in which members of the county board are elected. Amended by P.A. 81-1116, § 2, eff. July 1, 1980; P.A. 82-599, § 1, eff. Sept. 24, 1981.

*For text of paragraph as amended by P.A. 82-*

*371, § 1, see ¶ 837, ante.*

Final legislative action, 82nd General Assembly:

P.A. 82-371—June 17, 1981

P.A. 82-599—June 29, 1981

See Ill.Rev.Stat. ch. 1. ¶ 1105 as to the effect of (1) more than one amendment of a section at the same session of the General Assembly or (2) two or more acts relating to the same subject matter enacted by the same General Assembly.

#### 838. Determination of method of compensation of members of county board

§ 8. At the time it reapportions its county under this Act, the county board shall determine whether the salary to be paid the members to be elected shall be computed on a per diem basis or on an annual basis and shall fix the amount of that salary. If the county board desires to change the basis of payment or amount of compensation after fixing such items and before the next reapportionment, it may do so by ordinance or by resolution provided that such changes shall not take effect during the term for which an incumbent county board member has been elected. In addition, the county board shall determine the amount of any additional compensation for the chairman of the county board. The county board may adjust this amount of additional compensation at any time that adjustments in the salary of board members may be made provided that such adjustments shall not take effect during the term for which the incumbent chairman of the county board has been elected.

Amended by P.A. 79-1454, § 14, eff. Aug. 31, 1976.

#### 839. Terms of board members—Vacancies—Elections

§ 9. The members elected in 1972 and every 10 years thereafter to a county board in a county to which this Act applies shall determine by lot which members shall serve for 2 years and which for 4 years. Their successors shall be elected to a 4 year term. All terms shall commence on the first Monday of the month following the month of election.

If a vacancy occurs in the office of chairman of the county board, the remaining members of the board shall elect one of the members of the board to serve for the balance of the unexpired term of the chairman.

The time for the election of county board members shall be as provided by the general election law for the election of such members.

Amended by P.A. 81-1490, § 6, eff. Dec. 1, 1980.

#### 839.1. Multi-member districts—Drawing of lots for terms

§ 9.1. In making the determination by lot, pursuant to Section 9,<sup>1</sup> as to which members shall serve for 2 years and which for 4 years, the county board of a county having multi-member districts may provide for the drawing of lots in such manner as to insure that in each district the number of members drawing 2 year and 4 year terms, respectively, shall be equal, or as nearly equal as possible.

Any such determination by lot made before the effective date of this amendatory Act of 1973 is validated.

Added by P.A. 78-766, § 1, eff. Oct. 1, 1973.

<sup>1</sup> Paragraph 839 of this chapter.

#### 840. Severability of invalid provision or clause

§ 10. If any provision or clause of this Act or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision, clause or application, and to this end the provisions of this Act are declared to be severable.

#### BOARD OF SUPERVISORS IN COUNTIES UNDER TOWNSHIP ORGANIZATION

Act of March 31, 1874, resumed

#### 851. Regular meetings

§ 49. Regular meetings of the county board shall be held at the county seat, and if the court house is convenient, such meetings shall be held there. Regular meetings of the board shall be held in June and September, and at such other times as may be determined by the board. Amended by P.A. 79-701, § 1, eff. Oct. 1, 1975.

#### 852. Special meetings

§ 50. Special meetings of the board shall be held only when requested by at least one-third of the members of the board, or when requested by the chairman of the board in counties where such chairman is elected by the voters of the county, which request shall be in writing, addressed to the clerk of the board, and specifying the time and place of such meeting, upon reception of which the clerk shall immediately transmit notice, in writing, of such meeting, to each of the members of the board. The clerk shall also cause notice of such meeting to be published in some newspaper printed in the county, if any there be. In case a vacancy arises in the office of clerk, because of death or other reason, then the request shall be addressed to the circuit clerk who shall perform the duties of the clerk pursuant to this Section.

Amended by P.A. 81-516, § 1, eff. Jan. 1, 1980.

