

IN THE SUPREME COURT OF ILLINOIS

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.

ILLINOIS STATE BOARD OF ELECTIONS,)
RUPERT BORGS MILLER, 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)

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

FILED

FEB 8 - 2012

SUPREME COURT
CLERK

**MOTION FOR LEAVE TO FILE COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF PURSUANT TO SUPREME COURT
RULE 382**

NOW COME Plaintiffs THOMAS CROSS, in his official capacity as Minority
Leader of the Illinois House, CHRISTINE RADOGNO, in her official capacity as
Minority Leader of the Illinois Senate, JAMES ORLANDO, and CHRISTINE
DOLGOPOL (hereinafter "Movants"), by and through their undersigned counsel, and
pursuant to Supreme Court Rule 382, move this Court for leave to file the attached
complaint for declaratory judgment and injunctive relief as an original action in the

Supreme Court pursuant to Article IV, Section 3 of the Illinois Constitution of 1970 and in support thereof state as follows:

1. This motion seeks leave to file a complaint for declaratory judgment and injunctive relief pursuant to Article IV, Section 3 of the Illinois Constitution of the 1970, as amended, to declare unconstitutional Public Act 97-006, which is the redistricting plan for election of members to the Illinois General Assembly signed into law by Governor Patrick Quinn on June 3, 2011 (hereinafter “Redistricting Plan”).
2. The Movant, THOMAS CROSS, is a state representative from the 84th Representative District, a citizen of the United States resident and a duly registered voter residing in Kendall County, Illinois. Mr. Cross is also the Minority Leader of the Illinois House of Representatives, vested by Article IV, Section 6(c) of the Illinois Constitution of 1970 with the duty to promote and express the views, ideas and principles of the House Minority Republican Caucus in the 97th General Assembly and of Republicans in every Legislative and Representative District throughout the state of Illinois.
3. The Movant, CHRISTINE RADOGNO, is a state senator from the 41st Legislative District, a citizen of the United States, and a duly registered voter residing in Cook County, Illinois. Ms. Radogno is also the Minority Leader of the Illinois Senate, vested by Article IV, Section 6(c) of the Illinois Constitution of 1970 with the duty to promote and express the views, ideas and principles of the Senate Minority Republican Caucus in the 97th General Assembly and of

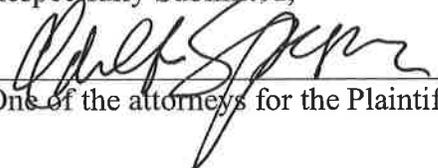
Republicans in every Legislative and Representative District throughout the state of Illinois.

4. The Movant, JAMES ORLANDO, is a Republican registered voter residing in the state of Illinois in Cook County within the boundaries of Representative District 35 of the Redistricting Plan.
5. The Movant, CHRISTINE DOLGOPOL is a Republican registered voter residing in the state of Illinois in Cook County within the boundaries of Representative District 59 and Legislative District 30 of the Redistricting Plan.
6. The proposed complaint asserts that the Redistricting Plan as a whole violates the requirements under the Illinois Constitution of 1970 that all Legislative and Representative District be “compact” and meet all legal requirements for “political fairness.”
7. The proposed complaint also asserts that Representative Districts 35 and 59 and Legislative District 30 violate the requirements under the Illinois Constitution of 1970 that all Legislative and Representative Districts be “compact” and meet all legal requirements for “political fairness.”
8. For reasons set forth more fully in the attached brief in support of this motion, the Movants assert that the failure of the Redistricting Plan to adhere to the constitutional requirements for compactness and “political fairness” adversely affects their rights and the rights of all voters in the state of Illinois to fair and equal representation in the General Assembly.
9. Movants respectfully request that this Court consider this motion and the complaint for declaratory judgment and injunctive relief on an expedited basis.

10. In accordance with Supreme Court 382(a), a brief in support of this motion and a complaint for declaratory judgment is attached herewith.

WHEREFORE, Movants respectfully request that this Court grant them leave to proceed as plaintiffs in this original action and that the Court establish an expedited schedule for the service of process, the submission of evidence, the presentation of the briefs on the merits and any oral argument if requested.

Respectfully Submitted,



One of the attorneys for the Plaintiffs

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No.

IN THE SUPREME COURT OF ILLINOIS

THOMAS CROSS, in his official
capacity as Minority Leader of the Illinois House
and individually as a registered voter, et al

Movants,

vs.

ILLINOIS STATE BOARD OF ELECTIONS,
RUPERT BORGSMILLER, Executive
Director of the Illinois State Board of Elections, et al

Respondents.

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) Original Action Under
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ORDER

This matter coming to be heard on the Petitioners' Motion for Leave to File a
Complaint for Declaratory Relief and Injunctive Relief regarding the redistricting plans
for the Illinois House and Illinois Senate pursuant to Supreme Court Rule 382, the Court
being fully advised in the premises and having jurisdiction over the subject matter,

IT IS HEREBY ORDERED

_____ Petitioners' Motion is Granted

_____ Petitioners' Motion is Denied

JUSTICE

DATE

IN THE SUPREME COURT OF ILLINOIS

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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

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Director of the Illinois State Board of Elections,)
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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.)

BRIEF IN SUPPORT OF MOTION FOR LEAVE
TO FILE COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF

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FILED

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SUPREME COURT
CLERK

IN THE SUPREME COURT OF ILLINOIS

THOMAS CROSS, in his official)
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Movants,) Original Action Under)
) Article IV, Section 3(b) of)
vs.) 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,)
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))
Respondents.)

**BRIEF IN SUPPORT OF MOTION FOR LEAVE
TO FILE COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF**

POINTS AND AUTHORITIES

**THIS COURT SHOULD GRANT LEAVE TO FILE A COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF WHERE THE PROPOSED
COMPLAINT CHALLENGES THE CONSTITUTIONALITY OF
A REDISTRICTING PLAN FOR THE ILLINOIS HOUSE OF
REPRESENTATIVES AND SENATE..... 6**

Ill. Const. Art. IV, Section 3 (1970)..... 6

Cole-Randazzo. v. Ryan, 198 Ill.2d. 233, 762 N.E.2d 485 (Ill. 2001)..... 6

People ex rel. Burris v. Ryan, 147 Ill.2d 270, 588 N.E.2d 1023 (Ill. 1991)..... 6

Schrage v. State Board of Elections, 88 Ill.2d 87, 430 N.E.2d 483 (Ill. 1981)..... 6

People ex rel. Scott v. Grivetti, 50 Ill.2d 156, 277 N.E.2d 881 (Ill. 1971)..... 6

I. This matter is ripe for adjudication.

735 ILCS 5/2-701(a) (2000)..... 6

Beahringer v. Page, 204 Ill.2d 363, 789 N.E.2d 1216 (Ill. 2003)..... 7

II. Individuals, other than the Attorney General, may bring original actions concerning redistricting of the House and Senate before this Court.

Ill. Const. Art. IV, Section 3 (1970)..... 7

Schrage v. State Board of Elections, 88 Ill.2d 87, 430 N.E.2d 483 (Ill. 1981)..... 7

4 Record of Proceedings, Sixth Constitutional Convention (1970)..... 7

5 Record of Proceedings, Sixth Constitutional Convention (1970)..... 7

Ill. Const. Art. IV, Section 6(c) (1970)..... 8

NATURE OF THE ACTION

This matter comes before the Court on plaintiffs' motion for leave to file a complaint for declaratory and injunctive relief, pursuant to Article IV, Section 3 of the Illinois Constitution of 1970, to declare the Public Act 97-0006, which is the redistricting plan for election of members to the Illinois General Assembly signed into law by Governor Patrick Quinn on June 3, 2011, (hereinafter "Redistricting Plan") unconstitutional.

ISSUES PRESENTED

Whether leave to file a complaint for declaratory and injunctive relief should be granted where the proposed complaint raises the following issues:

1. Whether the Redistricting Plan violates the requirement of Article IV, Section 3 of the Illinois Constitution of 1970 that all Representative and Legislative Districts be "compact."
2. Whether the Redistricting Plan violates the constitutional requirement of "political fairness."
3. Whether Representative Districts 35 and 59 and Legislative District 30 violate the requirement of Article IV, Section 3 of the Illinois Constitution of 1970 that all Representative and Legislative Districts be "compact."
4. Whether Representative Districts 35 and 59 and Legislative District 30 violate for the constitutional requirement of "political fairness."

CONSTITUTIONAL PROVISIONS INVOLVED

Illinois Constitution, Art. IV, Section 3 (1970), as amended:

- (a) Legislative Districts shall be compact, contiguous and substantially equal in population. Representative Districts shall be compact, contiguous, and substantially equal in population.
- (b) In the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts and the Representative Districts .

* * *

The Supreme Court shall have original and exclusive jurisdiction over actions concerning redistricting the House and Senate, which shall be initiated in the name of the People of the State by the Attorney General.

STATEMENT OF FACTS

A. Legislative Proceedings

In 2010, the United States Census Bureau conducted its federal decennial census. The Illinois Constitution provides that “in the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative and the Representative Districts.” IL CONST., Art. IV, Sec. 3(b). The Senate formed the Senate Redistricting Committee (hereinafter “SRC”) which was composed of 17 state senators: 11 from the Democratic majority and six from the Republican minority. The House of Representatives formed the House Redistricting Committee (hereinafter “HRC”) which was composed of 11 state representatives: six from the Democratic majority and five from the Republican minority.

From March 28, 2011 to April 30, 2011, the SRC conducted public hearings for the purpose of gathering public input. Over nine days in April, 2011, the HRC conducted public hearings for the purpose of gathering public input.

On May 26, 2011, state representative Barbara Flynn Currie filed House Amendment #2 to Senate Bill 1177 which purported to be a new redistricting plan for the Legislative and Representative Districts.

House Amendment #2 to Senate Bill 1177 stated: “For purposes of legislative intent, the General Assembly adopts and incorporates herein, as if fully set forth, the provisions of House Resolution 385 of the Ninety-Seventh General Assembly and Senate Resolution 249 of the Ninety-Seventh General Assembly.”

On May 27, 2011, the Democratic majority in the Illinois House of Representatives passed House Amendment #2 to Senate Bill 1177 by a vote of 64-52. After the passage of House Amendment #2 to Senate Bill 1177, House Resolution 385 was called for a vote before the Illinois House of Representatives. The Democratic majority in the Illinois House of Representatives passed House Resolution 385 by a vote of 64-52.

On May 27, 2011, the Democratic majority in the Illinois Senate voted to concur with House Amendment #2 to Senate Bill 1177 by a margin of 35-22. Shortly after passage of the House Amendment #2 to Senate Bill 1177, the Democratic majority adopted Senate Amendment #1 to Senate Resolution 249 by a vote of 35-22. On June 3, 2011, Governor Pat Quinn signed House Amendment #2 to Senate 1177 into law. Public Act 97-0006 became effective on June 3, 2011.

B. Federal Litigation

Radogno, et al v. Illinois State Board of Elections, et al., No. 11C4884 (N.D.Ill. 2011)

On July 20, 2011, a lawsuit was filed in federal court by Christine Radogno, in her official capacity as Minority Leader of the Illinois Senate, Thomas Cross, in his

official capacity as Minority Leader of the Illinois House of Representatives, Adam Brown, in his official capacity as a state representative from the 101st Representative District and individually as registered voters, Veronica Vera, Chole Moore, Joe Trevino and Angel Garcia (“Radogno Plaintiffs”) challenging the constitutionality of the Redistricting Plan. On December 7, 2011, the case was dismissed when summary judgment was granted in favor of the defendants. The matter is currently being appealed to the United States Supreme Court. All state law claims raised in this lawsuit were previously dismissed without prejudice to being raised in this Court.

ARGUMENT

THIS COURT SHOULD GRANT LEAVE TO FILE A COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF WHERE THE PROPOSED COMPLAINT CHALLENGES THE CONSTITUTIONALITY OF A REDISTRICTING PLAN FOR THE ILLINOIS HOUSE OF REPRESENTATIVES AND SENATE

This Court has original and exclusive jurisdiction over actions concerning redistricting of the Illinois House and Senate. Ill. Const. Art. IV, Section 3 (1970), as amended. See Cole-Randazzo v. Ryan, 198 Ill.2d. 233, 762 N.E.2d 485 (Ill. 2001); People ex rel. Burris v. Ryan, 147 Ill.2d 270, 588 N.E.2d 1023 (Ill. 1991); Schrage v. State Board of Elections, 88 Ill.2d 87, 430 N.E.2d 483 (Ill. 1981); People ex rel. Scott v. Grivetti, 50 Ill.2d 156, 277 N.E.2d 881 (Ill. 1971).

I. This matter is ripe for adjudication.

A declaratory judgment may be entered only in cases where an actual controversy exists. 735 ILCS 5/2-701(a) (2000). Furthermore, this Court requires a “showing that the underlying facts and issue . . . are not moot or premature with the result that a court passes judgment upon a more abstract proposition of law, renders an advisory opinion, or

gives legal advice concerning future events.” Beahringer v. Page, 204 Ill.2d 363, 374-375, 789 N.E.2d 1216 , 1224 (Ill. 2003).

The Redistricting Plan became effective on June 3, 2011. Primary elections for state representative and state senator to the General Assembly are scheduled to occur on March 20, 2012. Movants contend that the Redistricting Plan and specific Representative and Legislative District within are unconstitutional because they fail to comport with the mandates of the Illinois Constitution of 1970 regarding compactness and political fairness. Given the imminent primary elections and the granting of summary judgment in the federal litigation, these matters are now ripe for adjudication.

II. Individuals, other than the Attorney General, may bring original actions concerning redistricting of the House and Senate before this Court.

It is well-established that an individual registered voter or a public official within the state of Illinois may initiate actions concerning redistricting before this Court. See Cole-Randazzo, 198 Ill.2d at 235 (entertaining a challenge to the 2001 redistricting plan brought by three voters); Schrage, 88 Ill.2d at 91 (entertaining a challenge to the 1981 redistricting plan brought by the clerk of Adams County and a candidate for the General Assembly). This understanding is reflected in the legislative history of the 1970 Constitution: the drafters of the Constitution emphasized that individuals, as well as the Attorney General, would be allowed to bring claims before this Court in matters concerning redistricting. See 4 Record of Proceedings, Sixth Constitutional Convention 2976 (remarks of Delegate Netsch); 5 Record of Proceedings, Sixth Constitutional Convention 4337 (remarks of Delegate Lewis).

Movant Thomas Cross is an individual citizen of the State of Illinois as well as a state representative from the 84th Representative District, a citizen of the United States

and of the State of Illinois and a duly registered voter residing in Kendall County, Illinois. Mr. Cross is also the Minority Leader of the Illinois House of Representatives, vested by Article IV, Section 6(c) of the Illinois Constitution of 1970 with the duty to promote and express the views, ideas and principles of the House Minority Republican caucus in the 97th General Assembly and of Republicans in every Legislative and Representative District throughout the state of Illinois.

Movant Christine Radogno is an individual citizen of the State of Illinois as well as a state senator from the 41st Legislative District, a citizen of the United States and of the State of Illinois, and a duly registered voter residing in Cook County, Illinois. Ms. Radogno is also the Minority Leader of the Illinois Senate, vested by Article IV, Section 6(c) of the Illinois Constitution of 1970 with the duty to promote and express the views, ideas and principles of the Senate Minority Republican caucus in the 97th General Assembly and of Republicans in every Representative and Legislative District throughout the state of Illinois.

Movant James Orlando is a citizen of the state of Illinois and a duly registered voter residing in Cook County, Illinois within the boundaries of Representative District 35 of the Redistricting Plan.

Movant Christine Dolgopol is a citizen of the state of Illinois and a duly registered voter residing in Cook County, Illinois within the boundaries of Representative District 59 and Legislative District 30 of the Redistricting Plan.

All Movants are proper parties to seek leave to file a complaint with this Court. Each of the Movants has a legal tangible interest that is affected by the failure of the

Redistricting Plan to comply with the constitutional requirements that all Representative and Legislative Districts be compact and politically fair.

III. The Redistricting Plan Fails to Comply with the Constitutional Requirements that Representative and Legislative Districts be Compact and Politically Fair.

This original action challenges the constitutionality of the Redistricting Plan passed by the Democratic majority in the General Assembly and signed into law by the Democratic Governor Patrick J. Quinn. (See Proposed Complaint). Movants allege that the entire Redistricting Plan violates the Illinois Constitution of 1970 regarding compactness and political fairness. (Prop. Compl., Counts I and II). Movants also allege that Representative Districts 35 and 59 and Legislative District 30 violate the Illinois Constitution of 1970 regarding compactness and political fairness. (Prop. Compl. Counts III-VIII).

With regard to the compactness, Movants allege the Redistricting Plan passed by the General Assembly in 2011 is far less compact on the whole than the maps of Legislative and Representative Districts for the General Assembly enacted in 2001 and 1991. (Prop. Compl., Count I, ¶67). In fact, Movants allege that 27 Representative Districts and 14 Legislative Districts within the Redistricting Plan fail to comply with the constitutional requirement that all Representative Districts be “compact.” (Prop. Compl., Count I, ¶68, 69). Many of these non-compact districts needlessly fracture a significant amount of counties, municipalities and townships throughout the state. (Prop. Compl., Count I, ¶70). This systematic and pervasive lack of compactness burdens Movants Radogno’s and Cross’ ability to carry out their constitutionally prescribed duty of representing the interests of their caucuses and Republican voters throughout the state of

Illinois. (Prop. Compl., Count, ¶73). It also unduly affects Movants Orlando and Dolgopol's ability to communicate effectively with their elected state representatives and state senators. (Prop. Compl., Count I, ¶74).

Movant James Orlando, who is a duly registered voter within the boundaries of Representative District 35 ("RD 35") specifically alleges that RD 35 is a particularly egregious example of the Plan's failure to adhere to the constitutional requirement that all districts be "compact." (Prop. Compl., Count III, ¶¶93,94). RD 35 stretches 13 miles from the City of Chicago to westward to suburban Cook County fracturing six different municipalities and other recognizable communities of interest. (Prop. Compl., Count III, ¶¶95-97). Movant Orlando also alleges that tortured, elongated shape of RD 35 dilutes his ability to elect Republican candidates of his choice. (Prop. Compl., Count IV, ¶104).

Movant Christine Dolgopol, who is a duly registered voter within the boundaries of Representative District 59 and Legislative District 30 of the Redistricting Plan, also alleges that these Districts fail to meet the constitutional requirements for compactness and political fairness. (Prop. Compl., Counts V-VIII). Movant Dolgopol alleges that Representative District 59 is a bizarrely shaped district that expands from the northern edge of Cook County 16 miles into Lake County. (Prop. Compl., Count V, ¶107-109). At its narrowest point, Representative District 59 is only one-half mile. (Prop. Compl., Count V, ¶110). Movant Dolgopol also alleges that Legislative District 30, which encompasses Representative District 59 and 60, is shaped like an hourglass and fractures 12 different municipalities and other recognizable communities of interest. (Prop. Compl., Count VII, ¶121-125). Due to their bizarre shapes, Movant Dolgopol alleges, both Representative District 59 and Legislative District 30 inhibit her ability to elect

Republican candidates of choice to the General Assembly. (Prop. Compl., Counts VI, VIII).

Lastly, all Movants allege that the Redistricting Plan as a whole fails to meet all legal requirements for political fairness by deliberately enhancing the partisan advantage of Democratic candidates to the General Assembly at the expense of Republican voters. (Prop. Compl., Count II). Movants allege the Redistricting Plan, which was drawn by and passed by the Democratic majorities in the Illinois House and Senate creates as many as 82 out of 118 Representative Districts in which likely Democratic voters consist of 50% or more of the voters. (Prop. Compl., Count II, ¶¶19-64, 82). By contrast, Plaintiffs allege that only 36 of the 118 Representative Districts contain 50% or more likely Republican voters. (Prop. Compl., Count II, ¶83). The Democratic incumbent legislators who crafted the Redistricting Plan also protected their districts by retaining on average nearly two-thirds of the constituency from their previous district whereas Republican incumbents retained on average only 55% of their previous constituents. (Prop. Compl., Count II, ¶80, 81). The systematic and pervasive lack of political fairness of the Representative and Legislative Districts in Redistricting Plan unfairly burdens Movants Cross' and Radogno's ability to carry out their constitutionally prescribed duties as Minority Leaders of their respective caucuses. (Prop. Compl., Count II, ¶89). It also impermissibly affects Movants Orlando's and Dolgopol's ability to elect Republican candidates to the General Assembly. (Prop. Compl., Count II, ¶90).

For relief, the Movants request that this Court declare all or some of the Redistricting Plan unconstitutional, enjoin the Illinois Board of Elections from conducting elections under this Plan and either adopt the Movants' alternative plans or

appoint a Special Master to develop of alternative plan. (Prop. Complt., Counts I-VIII).
Movants are cognizant of the logistical and financial hardship that could result from enjoining the approaching March 20, 2012 primary for candidates in the General Assembly. If this Court finds all or some of the Redistricting Plan unconstitutional, but deems it an impossibility to enjoin the March 20, 2012 primary, Movants suggest that a remedy could be provided in time for implementation for the March 2014 primary.

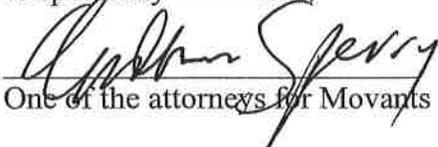
If this Court grants the Movants' motion for leave to file this original action, it will support each of the allegations within the Complaint with expert affidavits and other supporting material as well as alternative configurations of the challenged plan and specific districts that comply with the constitutional requirements for compactness and political fairness.

CONCLUSION

For the foregoing reasons, Movants respectfully request that this Court grant them leave to file their complaint for declaratory judgment and injunctive relief.

Dated: 2/8/12

Respectfully Submitted,


One of the attorneys for Movants

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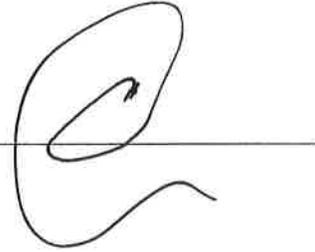
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CERTIFICATE OF COMPLIANCE

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 10 pages.

By One of the Attorneys

A handwritten signature in black ink, appearing to be a stylized 'A' or similar character, written over a horizontal line.

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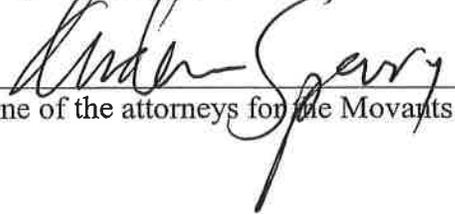
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CERTIFICATE OF SERVICE

The undersigned, an attorney certifies that a copy of the foregoing notice of filing, motion, proposed complaint and brief in support was served upon all parties on the attached service list on February ___, 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 or by personal service.

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