

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

**MICHAEL L. SHAKMAN and
PAUL M. LURIE, et al.,
Plaintiffs,**

v.

**DEMOCRATIC ORGANIZATION OF
COOK COUNTY, et al.,
Defendants.**

)
)
) **Case No. 69 C 2145**
)
)

)
)
) **District Judge Edward E. Chang**
) **Magistrate Judge Gabriel A. Fuentes**
)

**SPECIAL MASTER’S RESPONSE TO STATE’S MOTION TO VACATE THE 1972
DECREE AND UPDATED REPORT ON STATUS OF WORK**

The State’s Motion to Vacate the 1972 Shakman Decree, focuses on the absence of substantial violations of the Decree or instances of patronage in the period of the Special Master’s monitoring. Not only is it incorrect to characterize the last several years as void of substantial Decree violations, the State’s focus is misplaced. It misapprehends the nature of the Special Master’s work over the past few years, which has been primarily focused on *prospective* measures to prevent *future* violations—not investigations into current or past violations (with some exceptions). Until 2019, the Special Master, CMS Officials, HEM, and the Governor’s Office prioritized fixing the current system over investigating violations. The group determined that limiting patronage abuses in the future required an entirely new employment system based on objective and auditable standards, appropriate checks and balances, and a comprehensive oversight component. In February of 2018, the Governor’s Office described recently revealed patronage violations as “a symptom of broader cultural and systemic challenges, and they reiterate the need to improve personnel and compliance supports.” *See* Exhibit A, 2/23/18, Governor’s Office Letter

to M. Hickey at 7. Responding to those same patronage violations, the former Director of Central Management Services candidly stated in an April 18, 2018 letter:

For decades, the state hiring and personnel system has been a mess. Previous administrations have put politically connected individuals into positions with civil service and/or union protection. We stopped that practice. For the first time, we are tackling the entire, convoluted, and ineffective personnel system. I have said from the start that it would be a messy process and would expose some warts. I'm proud that this administration has had the guts to do this.

See Exhibit B, 4/18/18, Michael Hoffman Letter to M. Hickey.

CMS's Senior Policy Advisor, who has spearheaded many of the recommended reforms to the State's employment practices, in October of 2019, noted that the State's current practices resulted in an "inability to hire from outside government," a "lack of collaboration between CMS & Agencies," and, "*Shakman* non-compliance." *See* Exhibit C, 10/22/19 CMS Memorandum to Special Master's office and HEM. That Policy Advisor, along with the Special Master, the Governor's Office, HEM, and the parties, devoted numerous hours over several months focused on identifying deficiencies, proposing remedies, attempting to codify those remedies, and monitoring their effectiveness. It was a collaborative process. *See, e.g.*, Exhibit D, 5/14/18, Email from B. Stratton to M. Shakman ("My clients continue to be invested in working together to create meaningful change in the State of Illinois. They look forward to working with you and the Special Master to pursue these shared goals.").

The State's current focus on a purported lack of substantiated patronage violations, as a basis to be relieved from the 1972 *Shakman* Decree, after years of jointly focusing on prospective

relief to *prevent* such violations in the future, is a departure from past practices that cuts short the progress made.¹ The State’s approach ignores the systemic deficiencies that allowed the well documented historical patronage violations to flourish. Put simply, although many reforms have been implemented, the process is far from complete.

I. BACKGROUND AND INVESTIGATIONS PRECEEDING NOVEMBER 2014 APPOINTMENT ORDER

Over the past sixteen years, various public reports have shed light on illegal employment practices in the State of Illinois.

A. Early OEIG Reports Identify Patronage Violations

A 2004 OEIG investigation found “the HR Department of [Illinois Department of Employment Security], in conjunction with individuals in the Governor’s Office of Intergovernmental Affairs (‘GOIA’), manipulated titles, credentials, positions, position location, or other criteria to fit candidates sponsored by GOIA into positions at IDES without following State law or normal State hiring protocol.” *See* Exhibit E, 2004 OEIG investigation report.² IDES created positions, titles, and responsibilities to accommodate sponsored candidates. The Governor’s office sent unqualified candidates to IDES, pressured or insisted those candidates be hired over better qualified non-political candidates, and hired politically connected candidates to work outside their job descriptions, some of whom were hired through a “temporary” process and then transferred into covered positions.³ The OEIG noted: “There can be little dispute that the Governor’s Office improperly

¹ The State’s assertion that the Special Master has not identified “a single patronage violation” during the course of her appointment is no accurate. *See, e.g.*, Exhibit F, 5/18/18 Governor’s Office Involvement in Job Protected Selection Process, Memo from Special Master’s office to the State (discussing wide-spread violations).

² This report became publicly available during the impeachment of Governor Blagojevich.

³ Notably, one of the persons from GOIA who sent resumes to IDES of politically connected candidates was State of Illinois Representative Michael J. Zalewski. *See* Exhibit. E at 9.

exercised a great deal, if not all, control over the hiring at IDES.” See Exhibit E at 2, 4, 7-9, 17-18, 20.

In another 2004 Report, the OEIG reported that the Department of Corrections received calls directly from Illinois House Speaker Mike Madigan urging the agency to hire a politically connected candidate, former State Representative James Phelan, who had been terminated from the City of Chicago for poor performance.⁴ Another politically connected candidate, Manuel Acevedo, brother of State Representative Edward Acevedo, was hired as an “intern” to bypass the competitive Rutan process.

In OEIG’s 2006 Annual Report, it noted:

An OEIG investigation found that politically-sponsored job applications received special treatment from a State personnel bureau and, therefore, they obtained unfair advantage over other applications. The applications were scored in a separate room from ordinary applications, were repeatedly returned to applicants for changes, and grades were not entered into the state database until an “A” grade was attained. The investigation uncovered evidence that after the special applications received an “A,” agencies opened job titles that previously had been closed.

Office of the Executive Inspector General 2006 Annual Report, at 19.⁵

B. Governor Blagojevich Era Reveals Corruption and Patronage Practices Continue

Investigations into former Governor Blagojevich revealed corruption in hiring/employment practices during Governor Blagojevich’s term, including the existence of various hiring “clout lists” and evidence regarding awarding appointments to Boards and Commissions in exchange for campaign donations. These investigations identified patronage as an ongoing problem in the State of Illinois. In 2009, Governor Quinn established the Illinois

⁴ This OEIG report is not publicly available and therefore we rely on newspaper articles that described the nature of the violations.

⁵ The OEIG Annual Reports are available on the OEIG’s website.

Reform Commission to help identify needed reforms following the arrest and impeachment of Governor Blagojevich. The Reform Commission made a series of recommendations regarding hiring and employment practices necessary to eliminate manipulation of state hiring in the future. Those reforms were never fully implemented.

C. The BGA Reveals Patronage Violations Under Governor Quinn's Administration

In August 2013, the Better Government Association published the results of a four-month investigation into patronage employment practices in the State of Illinois and issued a report concluding that patronage employment practices occurred at IDOT under both the Blagojevich and Quinn Administrations ("BGA Report"). *See* Exhibit G, BGA Report. The BGA Report also revealed that the OEIG was currently investigating employment practices at IDOT, or, more specifically the *Rutan*-exempt "Staff Assistant" position.

D. OEIG Staff Assistant Report Reveals Scope of Patronage Violations

On August 22, 2014, the Executive Ethics Commission published an OEIG Report No. 14-1431, detailing its investigation into IDOT's use of the "Staff Assistant" position. The OEIG Report found that from 2003 to 2013, IDOT improperly hired hundreds of individuals, many with political connections, as *Rutan*-exempt Staff Assistants. *See* OEIG Report, Dkt. 3944-2, at iii, iv.

The OEIG Report found that IDOT circumvented the Administrative Orders and anti-patronage rules by:

- creating Staff Assistant positions that it deemed exempt from the Personnel Code without any apparent rationale for doing so, and thus permitting IDOT to craft the position descriptions without oversight;
- crafting Staff Assistant position descriptions to ensure a *Rutan*-exempt designation;
- hiring people into Staff Assistant positions to perform work not covered by their position descriptions and that would not support a *Rutan*-exempt determination; and,

- in some cases, transferring Staff Assistants into *Rutan*-covered positions, without following the *Rutan* hiring process.

Id. at iv.

Each of these investigations concluded with recommendations designed to avoid future violations. However, despite the repeated identification of patronage violations and recommendations to avoid future violations, the violations continued.

II. APPOINTMENT OF SPECIAL MASTER AND SPECIAL MASTER'S INITIAL RECOMMENDATIONS

On November 18, 2014, the Court appointed the Special Master to, among other things: (1) investigate the scope and reasons for violations of the 1972 Decree at IDOT; (2) recommend measures that may be necessary or appropriate to prevent any recurrence; (3) assess implementation of those efforts to ensure they are effective; and (4) make recommendations for how to remedy the violations. *See* Dkt. 4020. The Court later expanded the Special Master's duties on November 28, 2016. *See* Dkt. 4798.

During the first year of her appointment, the Special Master made significant recommendations, some of which have not yet been implemented and others which were implemented years after the recommendations were made. Specifically, the Initial Report of the Special Master, filed on March 4, 2015 included the following recommendations:

1. Review/audit all Job Descriptions to ensure accuracy and minimum job requirements ("MRQs").
2. Review/audit all *Rutan*-exempt positions to ensure properly designated and create a finite list of exempt titles consistent with the *Branti* standard.
3. Narrowly define positions that are appropriately "technical" and convert those that are not truly technical to personnel-code titles.
4. Address and remedy the unregulated and misuse of "emergency" and "temporary" hires.

5. Eliminate the overuse and improper promotions/transfers through the Temporary Assignment process.

Dkt. 4128 at 18-21, 27-28.

The Second Report of the Special Master, filed on August 20, 2015, substantially repeated these same recommendations but also highlighted the inherent conflict between union-covered/ personnel-code covered positions that were improperly designated *Rutan*-exempt. Positions with job protection (such as union and personnel code covered positions) cannot be exempt—*Rutan*-exempt positions must be at-will. Dkt. 4292 at 10-12, 14. Thus, as early as August of 2015, the Special Master recommended that both IDOT and the State create a finite list of properly exempt at-will positions (discussed further below). And although progress has been made with respect to recommendations listed above in numbers 1 and 3-6, those recommendations are not fully implemented.

We note that the State has raised concerns about the cost of having and continuing to have a Special Master overseeing certain of its employment practices. We are extremely mindful of that concern and, when appropriate, defer to State employees to conduct a significant share of work that can be completed internally. We have assigned a limited staff that varies between 3-4 attorneys and 2-3 administrative employees, all of whom work part time on this matter. Thus, although IDOT and the State employ approximately 5,200 and 45,000 individuals respectively, the Special Master's office has made a concerted effort to limit time spent and costs incurred as a result of their duties.⁶ It is worth noting, however, that if the State and IDOT had implemented early recommendations for reforms in a timely manner, significant costs could have been avoided.

⁶ In addition, the State has hired multiple outside consultants to investigate, design and help implement revised employment practices. In 2014, IDOT hired CGN, a consulting company, to investigate and make recommendations regarding the Staff Assistant abuses. Despite issuing several reports and recommendations, those recommendations were not implemented. More recently, CMS hired a consulting firm to design and implement an electronic hiring system, among other things. In the past year, CMS has also hired additional consultants to create an entirely new integrated personnel system.

III. COURT'S NOVEMBER 2016 ORDER AND AGREED MAY 2017 ORDER

As of November of 2016, neither the State nor IDOT had completed an audit of its *Rutan*-exempt titles, ensured that each title was properly designated, or eliminated titles that had job protection through a union or personnel code coverage. At the request of the Plaintiffs, and because the State had delayed implementing this recommendation, the Court entered a new Order on November 28, 2016, directing the Special Master to, among other things, “review all positions under the jurisdiction of the Governor that are identified as *Rutan*-exempt to determine whether the Governor has adequately demonstrated that the positions meet the *Branti* standard.”

Once that process began, we encountered numerous delays because the State repeatedly: (1) failed to verify that the information presented to the Special Master and HEM regarding the proposed exempt positions was accurate; (2) provided inaccurate job descriptions; (3) provided outdated organizational charts; and (4) provided false or inaccurate verifications that information was up-to-date and complete (for example, reviewers asserted they had personally reviewed the job description with the incumbent when the position was vacant). *See* Dkt. 5134, 5822, 52707. During this review process, OEIG issued a report detailing that CMS—the agency tasked with assisting with the review process—was itself housing politically connected individuals in faux-exempt positions. *See* OEIG Report 15-2180.⁷ Because of these missteps by the State, this process took substantially more time and effort, which translated to additional costs to the State. Ultimately, the State filed its finite exempt list on January 18, 2019 Dkt. 6177 and IDOT filed its comprehensive finite exempt list on April 11, 2019. Dkt. 6288.

⁷ A copy of this OEIG Report is publicly available on the OEIG's website.

IV. HIGH LEVEL OVERVIEW OF STATUS OF RECOMMENDATIONS TO PREVENT FUTURE RECURRENCES AND IMPLEMENTATION OF SAME

Notwithstanding the delays, the State and IDOT have made significant progress in implementing reforms, both on their own initiative, and as a result of recommendations made by the Special Master. Beginning with the Special Master’s Initial IDOT Report in March 2015 Dkt. 4128, “First IDOT Report”, and in each of her subsequent reports, the Special Master encouraged the State to “implement comprehensive reforms that address serious systemic personnel problems,” (emphasis in original), to prevent the recurrence of prior violations. The recommendations were made to help facilitate progress toward the goal of achieving substantial compliance with the 1972 *Shakman* Decree. The following chart reflects the more significant recommendations and the status of implementation.⁸

	RECOMMENDATIONS	STATUS
1.	Review previously designated <i>Rutan</i> -exempt titles and identify a finite Exempt List of positions that meet the <i>Branti</i> standard at IDOT (and later statewide). (Dkt. 4128 at 27).	Complete
2.	Establish a narrow definition of “technical” and determine which positions meet that definition. (Dkt. 4128 at 28).	Complete ⁹
3.	Eliminate CMS’s position-by-position <i>Rutan</i> review process. (Dkt. 4292, “Second IDOT Report,” at 12)	Complete
4.	Review and revise internal posting procedures at IDOT. (Dkt. 5696 at 9).	Complete
5.	Remove job protection from all appropriately exempt positions. (Dkt. 5696 at 9).	Complete
6.	Submit positions on the Exempt List that are proposed to become 4d(3) to the Civil Service Commission. (Dkt. 6222 at 11).	Complete
7.	Convert the IDOT positions determined to be no longer exempt to non-exempt. (Dkt. 6458, “Tenth IDOT Report,” at 3).	Complete

⁸ The chart includes IDOT-specific recommendations and statewide recommendations. As a general matter, most of the recommendations the Special Master initially made to IDOT were later recommended statewide, either in a statewide report to the court or in discussions with the parties. For each recommendation, in most cases, the citation is to the first time the recommendation was made. The chart does not include citations to each time the Special Master renewed a recommendation or expanded a recommendation statewide.

⁹ This recommendation is complete at IDOT, but the technical definition and list has not been finalized for other agencies with technical positions. The Special Master recommended identifying those titles and adding them to the “technical” definition as IDOT did.

8.	Convert all job protected previously exempt positions to non-exempt statewide.	Complete
9.	Create uniform hiring processes for seasonal positions at IDOT (e.g., Snowbirds, Engineering Technicians, Technician Trainees, Co-op Program, GPSI Program). (Dkt. 4631 at 19).	Complete ¹⁰
10.	Finalize and file the technical definition with a list of all IDOT titles covered by the technical code. (Dkt. 6458 at 13).	Complete
11.	Finalize minimum required qualifications for technical position classifications that meet the technical definition. (Dkt. 6458 at 13).	Complete ¹¹
12.	Determine whether any provisions specific to technical positions should be included in the Statewide CEP. (Dkt. 6458 at 13).	Complete ¹²
13.	Finalize and file the Statewide Exempt List and the Exempt Employment Plan, which required minimum qualifications to be applied to exempt appointments and a request to change process for adding or removing Exempt List positions. (See generally, Dkt. 6306, “Fourth Statewide Report”) (discussing filing those documents).	Complete
14.	File the General Principles and Commitments Applicable to Hiring. (See generally, Dkt. 6306, “Fourth Statewide Report”) (discussing filing the document).	Complete
15.	Convert previously exempt positions with incumbents to non-exempt through the Exempt Employment Plan’s 90-Day notice process. (See Dkt. 6306 at 7) (discussing conversion was underway).	Complete ¹³
16.	Make a recommendation for how to treat employees who were hired into job protected positions through the exempt process going forward when they apply for other positions statewide. (Dkt. 6565 at 11).	Complete
17.	Update guidance and training regarding <i>Rutan/Shakman</i> compliance. (Dkt. 4128 at 28).	In Progress
18.	Create an electronic hiring process for accepting applications, screening, scoring and maintaining data regarding entire hire sequence. (2015-2020).	In Progress
19.	Create and maintain accurate position descriptions for <u>all</u> titles and include objective minimum requirements at IDOT. (Dkt. 4128 at 27).	In Progress

¹⁰ Although IDOT has made significant reforms in their seasonal employment practices, as discussed *infra* at Section VI.C.1, additional efforts to attract a wider candidate pool are needed.

¹¹ *But see* Section VI.E.1 discussing the continuing need to refine certain minimum qualifications that can be objectively measured and applied.

¹² *But see* Section V.E discussing how CMS reported its oversight functions with respect to technical positions are limited.

¹³ Although the selection process of converting previously exempt position into covered positions is completed, many of those sequences raised concerns about improper application and vetting of conflicts of interest, improper application of minimum qualifications and scoring anomalies. *See* Dkt. 6900, at 7-12.

20.	Implement various improvements to IDOT's covered hiring process, such as improving conflicts of interest policies and the screening process and creating a mechanism for interviewers to report observations. (Dkt. 5069 at 5).	In Progress
21.	Enforce the conflict of interest vetting process to address issues such as missing, incomplete, and inaccurate forms with the goal of greater transparency. (Dkt. 6222 at 9).	In Progress
22.	Differentiate between levels within a classification based on the complexity of duties that justifies different position levels. (Dkt. 4631 at 19)	In Progress
23.	Create a process that minimizes the ongoing impact of previous violations with respect to Staff Assistants. (Dkt. 5696, "Seventh IDOT Report," at 2). ¹⁴	In Progress
24.	Enhance the Bureau of Investigation and Compliance's overall investigation process to ensure thorough and sound investigations of complaints. (Dkt. 5696 at 9).	In Progress
25.	Continue to improve the covered hiring process by, among other things, refining minimum qualifications and ensuring their uniform application and providing guidance and training on same. (Dkt. 6900, "Eleventh IDOT Report," at 22).	In Progress
26.	Empower CMS to have meaningful oversight of employment practices statewide. (Dkt. 5134, "Initial Statewide Report," at 10).	In Progress
27.	Address all categories of employees and contractors statewide under the CEP, including those that are not currently under CMS's purview, and empower CMS to oversee and enforce guidelines and policies regarding those employees. These categories include, but are not limited to emergency appointments, temporary employees, personal services contracts, term appointments, and technical employees. (Dkt. 5134 at 10-11).	In Progress
28.	Create and implement an <u>agreed upon</u> Statewide CEP. (Dkt. 5822 at 13). Continue to work with parties to reach agreement on all components of the CEP and to implement and enforce all components of the CEP.	In Progress ¹⁵
29.	Monitor compliance with the CEP through the creation of the CMS Office of Compliance and hire a Chief Compliance Officer. (Dkt. 6306, "Fourth Statewide Report," at 10).	In Progress
30.	Convert positions that do not meet the "technical" definition to the Personnel Code. (Dkt. 4128 at 28).	In Progress

¹⁴ The Court directed IDOT and the Plaintiffs to work with the Special Master's office to develop a procedure for determining, in specific cases, what consideration IDOT should give to experience gained as the result of being a Staff Assistant when applying for non-exempt positions ("John Doe Process"). The John Doe process has been implemented but is currently under review for modification.

¹⁵ The State filed a CEP on November 25, 2019. Dkt. 6612. However, as discussed in the Sixth Statewide Report and *infra*, the parties have significant disagreements about specific portions of that proposed CEP and many agreed provisions have not been implemented.

31.	Implement the Special Master’s specific recommendations regarding the temporary assignment selection and renewal process, including identifying a pool of qualified candidate, developing a fair and impartial means of selecting candidates, enforcing duration limits, and rotating other employees into the position if need for temporary assignment continues. (Dkt. 4631, “Fourth IDOT Report,” at 15). (Dkt. 5696 at 9).	Not Complete
32.	Complete a comprehensive internal audit of all existing <i>Rutan</i> -covered positions descriptions at IDOT. (Dkt. 5069 at 14).	Not Complete
33.	Amend the Personnel Code (or its regulations) to align 4d(3) exclusion from the Personnel Code with the <i>Branti</i> standard. (Dkt. 5134 at 9).	Not Complete

V. IDOT AND STATE HAVE MADE SIGNFICIENT PROGRESS IN CERTAIN AREAS

As reflected above, IDOT and the State have adopted numerous reforms over the years. This section highlights the more significant accomplishments and progress toward these reforms.

A. Identification of Finite Exempt List for IDOT

After the Court appointed the Special Master in November 2014, the Special Master recommended identifying a finite list of properly exempt positions at IDOT as one of the measures to prevent recurrence of the type of *Shakman* violations that necessitated her appointment. Dkt. 4128 at 27. Early on, after some discussion, the parties agreed that in order to be properly exempt a position must be at-will and meet the *Branti* standard. Although the process took several years to finalize, IDOT ultimately filed its complete finite list of exempt positions with the Court on April 11, 2019. IDOT reduced the number of exempt positions from 350 positions in June 2015, down to approximately 130 as of the filing of the finite list. Dkt. 5069 at 7. Notably, through lengthy collaborations, the parties reached unanimous agreement on the list of positions.

B. Identification of Finite Exempt List Statewide

After the Court expanded the Special Master’s duties to include reviewing existing exempt positions Statewide to establish a finite list of exempt titles at all agencies under the jurisdiction of the Governor, the Special Master’s office began working with HEM and the parties to achieve

that end. As outlined in earlier statewide reports of the Special Master, the process of reviewing then existing exempt positions went through several iterations largely due to issues regarding inaccurate information submitted to the Special Master. After extensive review and collaboration, the Statewide Exempt List was filed with the Court in January 2019 with the agreement of all parties.¹⁶ Through the process of developing the Exempt List, the total number of exempt positions statewide was reduced from approximately 3500 to 1100. The Exempt List is a significant achievement that will help safeguard against future *Shakman* violations provided the State uniformly follows non-exempt hiring practices for positions that are not on the Exempt List.

C. Application of Minimum Qualifications for Exempt Positions

Historically, the State's failure to maintain and apply minimum qualifications to fill exempt positions led to repeated *Shakman* violations. Before the Special Master was appointed, most IDOT position descriptions did not include any required qualifications. Thus, any politically connected person could be appointed into an exempt job without regard to their qualifications to perform the job. As a result, unqualified individuals were hired into faux exempt titles to perform non-exempt jobs that should have been filled competitively. *See generally*, Fifth IDOT Report, Dkt. 5012; OEIG Report No. 14-1431, Dkt. 3944-2 (both discussing Staff Assistant violations).

During the Special Master's investigation regarding Staff Assistants, it became clear that this problem was not limited to IDOT. While other state agencies had job descriptions that included some required qualifications, individuals appointed into exempt positions were not sufficiently vetted and determined to be qualified. *See generally*, Fifth IDOT Report, Dkt. 5012. After

¹⁶ After the Exempt List was filed, certain positions needed to be submitted to CSC to obtain 4d(3) status or have 4d(3) status rescinded. Completing that submission process was also a significant accomplishment in itself.

significant discussion, the Governor's Office agreed to an interim process in which it and agencies were responsible for ensuring the qualifications of proposed candidates for exempt positions.

The Exempt Employment Plan, filed with the Court in January 2019, codified the agreed upon permanent process that requires exempt positions to have minimum requirements, agencies to confirm the qualifications of proposed candidates for exempt positions and for the Governor's Office to review and approve each appointment, as further discussed below.

D. Adoption of Exempt Employment Plan

As discussed in prior reports to the Court, the Exempt Employment Plan details the process by which: (a) the Governor's Office proposes candidates for appointment into titles on the Exempt List; (b) the agencies confirm that the candidates are qualified for the jobs based on the minimum required qualifications in the position description; and (c) the Governor's Office is required to review that information before approving the appointment. Each appointment is fully documented. The Exempt Employment Plan also includes a process by which the Governor's Office or OEIG can add or remove titles on the Exempt List. One of the primary purposes of developing a finite Exempt List was to prohibit the State from creating an unlimited number of nominally exempt titles. IDOT's ability to create numerous Staff Assistant positions without oversight was a key factor in the hiring scheme. *See generally* 2014 OEIG Report. Dkt. 3944-2; Fifth IDOT Report, Dkt. 5012. The Exempt Employment Plan is a significant accomplishment that will help prevent further recurrence of *Shakman* violations. The overall impact of the Exempt Employment Plan will be dependent upon a compliant covered process.

E. Creation of Technical Definition and Technical List

Historically, technical positions have not been subject to oversight by CMS. The lack of oversight regarding technical positions contributed significantly to Staff Assistant *Shakman* violations at IDOT. One of the Special Master's first recommendations was to narrowly define the term "technical" and apply the definition to identify truly technical positions at IDOT in order to eliminate the over-designation of technical titles. Dkt. 4128 at 28. After several years' delay, and extensive collaboration between IDOT, the Special Master's office, and HEM, the Technical Definition and Technical List were filed with the Court on September 20, 2019. Dkt. 6501. Establishing the Technical List significantly reduced the number of technical positions at IDOT. The positions that will no longer be technical positions are in the process of being converted to positions that are covered by the Personnel Code.

Establishing the Technical Definition and Technical List at IDOT is a substantial accomplishment. However, several other agencies have technical positions under Section 4c(12) of the Personnel Code. It is important to have a complete list of technical titles statewide in order to prevent agencies from creating an excessive number of nominally technical titles to avoid CMS oversight. CMS and the Governor's Office have provided lists of technical positions at other agencies to the Special Master's office during the *Shakman* exempt review process. It is unclear whether all of the technical and non-code jobs statewide were on those lists. The parties need to reach final agreement on whether all existing technical positions meet the technical definition and amend the Technical Definition and Technical List to include those positions. If the positions do not meet the technical definition, they should convert to Personnel Code titles.

F. Converting IDOT's Formerly Technical Positions on the Exempt List to 4d(3)/4d(1) under the Personnel Code

After the parties agreed on which positions at IDOT belonged on the Exempt List, some of those positions were slated to convert from technical to non-technical because their duties did not meet the Technical Definition. It was necessary for those positions to obtain 4d(3)/4d(1) status to be excluded from Personnel Code job protection in order to remain at-will. The Civil Service Commission is responsible for determining 4d(3) status.¹⁷ Therefore, the positions proposed to become 4d(3) were submitted to the CSC for a decision.¹⁸ As previously reported, all proposed 4d(3) positions at IDOT were submitted to the CSC by September 2019. CSC finished making its determinations in January 2020.

G. Drafting Minimum Required Qualifications for Technical Positions at IDOT

As previously reported, IDOT and HEM, with some involvement by the Special Master's office, worked to create MRQs for each classification that is remaining technical under the Technical Definition. IDOT presented MRQs for each classification and the MRQs were finalized in October 2019. That is a substantial step in ensuring that positions are filled fairly pursuant to objective qualifications. IDOT is in the process of implementing the MRQs as individual positions within the technical classifications become vacant and are posted. The position specific MRQs

¹⁷ "The Civil Service Commission, upon written recommendation of the Director of Central Management Services, shall exempt from jurisdiction B other positions which, in the judgment of the Commission, involve either principal administrative responsibility for the determination of policy or principal administrative responsibility for the way in which policies are carried out, except positions in agencies which receive federal funds if such exemption is inconsistent with federal requirements, and except positions in agencies supported in whole by federal funds." 20 ILCS 415/4d(3).

¹⁸ Positions that were proposed to become 4d(1) are not required to go before the CSC for a decision because they are statutorily determined. Each agency's 4d(1) positions generally consist of one to two private secretaries (two only if the agency head has Springfield and Chicago offices) and one confidential assistant to the head of each agency, board, or commission. 20 ILCS 415/4d(1). In rare circumstances, an agency may have more than the maximum three 4d(1) positions due to the agency previously being multiple separate agencies that subsequently combined into one.

must follow the basic format of the classification MRQs. However, the substance and wording of the MRQs vary. As discussed in earlier reports, IDOT and HEM devoted a significant amount of work developing the MRQs and the results are a dramatic improvement over the previous process. After observing the application of the MRQs, however, it appears that some refinement and/or definition is warranted. As discussed in the Eleventh Report, the Special Master observed a limited number of issues regarding the application of MRQs (as opposed to the requirements themselves) to determine the eligibility of candidates to interview. *See* Dkt. 6900 at 9-10. Since the Eleventh Report, the Special Master has continued to voice concerns about how MRQs are being applied and has recommended training and additional monitoring, which is scheduled to occur in the next weeks.

H. Creation of the John Doe Process

The John Doe Process has been described in numerous previous reports. To date, fourteen former Staff Assistants have proceeded through the John Doe Process. Implementing the John Doe Process is designed to help minimize the impact of prior *Shakman* violations with respect to the Staff Assistant position. It assesses whether individuals who were improperly hired into the Staff Assistant title should have the advantage of that experience when competing for a non-exempt job against other candidates who do not have that advantage.

Recent events illustrated defects in the John Doe process. First, the lack of deadlines for invoking and proceeding through the John Doe process can defeat the entire process. For instance, months' long delays between the selection process and the John Doe hearing have resulted in the newly selected candidate (the non-Staff Assistant) waiving the position because his or her circumstances have changed, and the Staff Assistant, as the next highest scoring candidate, ultimately receives the job. In another instance, [REDACTED]

the list of reachable current/former state employees and then decides whether to increase the candidate pool by requesting the open-competitive list. Thus, the hiring agency can preview the potential candidates before deciding whether to open the process to external candidates. And, even when the promotional list contains only one or two reachable current or former State employees, the agency may nonetheless proceed with interviewing and hiring from this limited pool, although current CMS guidance and the CEP now instruct the agency to first obtain CMS permission.

Over the course of numerous conversations regarding the restrictions imposed by the concept of reachability, the State explained that agencies are reluctant to pull OC lists. First, the OC includes candidates who have not applied for the vacant position. Second, the OC list of candidates will include individuals that are not qualified for the vacant position. Third, the State must comply with an absolute Veteran's Preference for veterans with an "A" grade on the OC list, notwithstanding qualifications of the veteran or other applicants. Fourth, individuals that did apply for the position may not be included on the OC list or might not be selected for interview.²¹ Fifth, because the agency chooses candidates to interview from the OC list on a "blind" basis, it cannot select only qualified candidates or recent candidates. As a result, agencies instead choose to fill vacancies through the other methods that strongly favor current or former certified State employees or by finding other "work arounds," such as using personal services contracts, temporary hires, temporary assignments or other methods.

The State recognized that this system is archaic and results in "the inability to hire from outside government." *See* Exhibit C, 10/22/19 CMS Memorandum to Special Master's office and HEM. To resolve this, and other employment deficiencies, the State proposed a "future state" for

²¹ On October 1, 2019, CMS issued an Updated Grading Procedures Memorandum to agency personnel officers and HR staff that changes the procedures for grading promotional applications but does not impact the issue reachability.

hiring that would result in a system where “99%” of sequences will be processed electronically. (*Id.*) As explained elsewhere, implementation of that system is extremely limited, and this systemic deficiency has not been addressed. The current system continues to significantly favor current and former State employees to the exclusion of external candidates. Given the State’s historic patronage abuses discussed above, the current system operates to perpetuate those abuses.

B. Use of Temporary and Interim Assignments Creates Complete Manager Discretion for Promotions and Lacks a Competitive Selection Process

The use of temporary assignments has been reported by the Special Master in numerous reports, including the Special Master’s Initial Report Dkt. 4128 at 23. The Special Master’s Initial Report identified that IDOT abused the “temporary assignment” and “interim assignment” process which resulted in pre-selected, non-competitive promotions of individuals without oversight, time limitations, or mandatory consideration of all candidates eligible for temporary assignment. In addition to the promotion and pay benefits, the selected candidate receives an advantage when the position is permanently filled. Prior analyses by the Special Master’s office show that from 2017 to 2018, approximately 80% of individuals temporarily assigned at IDOT were selected to permanently fill the jobs.

1. Documented Official Temporary Assignments

As reported in the Special Master’s Initial Report in March of 2015:

Data provided by IDOT during our investigation shows that between 2010 and 2014, **more than 1600 employees were Temporarily Assigned into higher paying positions.** That practice allows managers to unilaterally promote employees without any CMS or central office personnel oversight and without any competitive process.

We have explained, in numerous filings, that the use of temporary assignments results in unofficial/non-competitive promotions, increased pay, and unfair advantage over non-selected employees. Many assignments are not “temporary” at all--lasting months and even years. Notably,

IDOT has significantly reduced its use of official temporary assignments over the last several years.

Data recently produced by the State regarding temporary assignments in the Department of Human Services demonstrates TAs have been overused in DHS. For 2018 and 2019, DHS had **more than 3000 temporary assignments** many of which exceeded the purported 90-day minimum assignment. The chart below reflects DHS's TA assignments for 2018 and 2019.

a. DHS Temporary Assignments for 2018 and 2019

Total Number of TAs	3263
TAs in excess of 400 days	8
TAs in excess of 300 days	38
TAs lasting 200 days or more	99
TAs lasting 100 days or more	414
TAs lasting 90 days or more	617
TAs with no names on chart	227

The positions into which individuals were temporarily assigned to span a large number of titles. Temporary Assignments were used most frequently in the following positions:

b. Position Classifications with Highest Number of Temporary Assignments at DHS

Number	Position Classification
39	Account Tech I and II
99	Admin Asst I and II
101	Cook I and II
125	Executive I and II
38	Executive Secretary I and II
30	Human Resources Rep
141	Human Services Caseworker Manager
40	Mental Health Administrator I and II

975	Mental Health Tech I – IV
58	Office Assistant and Office Associate
26	Office Coordinator
328	PSAs
169	RN I and II
79	Residential Service Supervisor
26	Security Officer Sergeant
173	SEC Therapy Aide I – IV
39	SEC Therapy Aide Tr
69	SPSA
25	Soc Serv Pro Planner III and IV
39	Social Worker I-IV
34	Staff Dev Specialist I
44	Storekeeper I – III
115	Support Service Coordinator I and II
28	Support Service Lead
33	Support Service Worker

There were a number of candidates who were appointed to multiple temporary assignments. The data is not clear if these were successive appointments. Many candidates were temporarily assigned into the same higher position classification, while others were assigned into different positions. In addition to the sheer numbers of temporarily assigned individuals in DHS, we also identified a number of individuals who were temporarily assigned into positions that require state licensure/certification, such as RN, who did not appear to have the required licenses/certificates according to the Illinois Department of Financial and Professional Regulation (IDFPR).

2. Unofficial Temporary Assignments

Since at least as early as December 2019, we have requested that IDOT produce a list of individuals who are “unofficially” temporarily assigned to other positions. We recently discovered that, although IDOT has decreased its use of formal temporary assignments, it now has increased use of “informal temporary assignments.” Specially, a number of interview sequences monitored by the Special Master’s office revealed that numerous employees were engaging in “unofficial” temporary assignments. In other words, although the employee was not reported as being temporarily assigned, and thus not showing up on the reports produced by IDOT to the Special Master’s office, these individuals were nonetheless working in a different position and gaining the necessary experience and qualifications to fill the assignment at a later date.

On July 29, 2020, IDOT produced information relating to its use of unofficial temporary assignments. IDOT disclosed 154 individuals who were working in “non-promotional” job assignments outside their official positions, and 17 individuals who were working in “promotional” job assignments outside their official positions. IDOT explained that none of the individuals received a pay increase as a result of their assignments. The “promotional” temporary assignments were assignments to a higher position classification, but the individuals did not receive the promotional pay. In some instances, individuals have been working in the unofficial temporary assignments for 10+ years. IDOT provided updated lists on August 24, 2020 and is continuing to gather more information about the circumstances of these assignments. To date, it is not clear that we have discovered the full use of the “unofficial temporary assignments” at IDOT, the reasons why these assignments have been used, or whether this practice is occurring outside of IDOT.

IDOT recently created a form for documenting “unofficial” temporary assignments/job assignments and has provided training on the form. The new process will apply *prospectively* but does not address the 160+ individuals at IDOT currently working outside their assigned positions. The Special Master recommended revisions to the form, including a requirement that the agency verify the individual meets the minimum requirements of the job. IDOT did not adopt all the recommended revisions. The Special Master is continuing to confer with IDOT and CMS on the new process and how to address the existing universe of individuals working outside their assigned positions.

Although the State has held out the proposed CEP provision regarding Temporary Assignments as addressing this systemic deficiency, the provision fails to do so. First, there is no definition of “temporary” and therefore leaves open the possibility of long-term appointments. Second, there is no requirement to consider all qualified candidates for the temporary assignment or to rotate individuals. Third, the AFSCME Collective Bargaining Agreement (which covers the vast majority of State union employees) actually credits an employee’s time in a temporary assignment toward their ability to qualify for future positions. Thus, the CEP provision does not address the systemic problem of using temporary assignments to select favored candidates for promotion outside of a competitive process. *See* Sixth Report Regarding Statewide Compliance II.B (Dkt. 6710) (discussing the CEP failure to address temporary assignments).

C. Lack of Oversight for Seasonal, Temporary and Emergency Hires

Many of the Staff Assistants improperly hired into faux-exempt positions were hired through an unregulated “emergency” “temporary” or “seasonal” hires process, often for political reasons. *See* OEIG Report Dkt. 3944-2; Fifth Report of the Special Master Dkt. 5012. As previously reported, Governor Quinn’s Office and IDOT “[m]isused the emergency and temporary

employee classifications to circumvent the hiring protocols and to quickly onboard politically connected candidates.” Dkt. 5012 at 5. In the Fifth Report of the Special Master (IDOT), we described how IDOT hired politically connected temporary summer employees into “Staff Assistant” positions to perform covered work for low hourly wages. *Id.* at 33-36. We have repeatedly recommended that IDOT and the State implement protocols to prevent these types of abuses going forward.

Over several years, the Special Master reported on manipulation of hires for several of IDOT’s seasonal/temporary hires, including temporary winter hires, and summer Technical Trainees and Engineering Technicians, among others. In the Initial Report of the Special Master, we reported that individuals with political connections to former Chicago Alderman Richard Mell were hired into seasonal IDOT winter positions. Dkt. 4128 at 22-23. In the Fourth Report specific to IDOT, filed in July of 2016, we reported that the Technical Trainee and Engineering Technicians programs were hindered by a lack of a uniform job descriptions, over thirteen different working titles, and inconsistent and questionable candidate screening processes. Dkt. 4631 at 4-11.

1. IDOT’S Seasonal Programs Result in Hiring IDOT Relatives/Former Employees

With respect to IDOT temporary/seasonal Technical Trainees, IDOT’s processes resulted in selecting candidates from an insular and discreet population of candidates—those with relatives working at IDOT and/or those who had previously worked at IDOT—and excluded almost all other candidates. The overwhelming number of selected candidates for these summer positions in 2016 had a relative employed by IDOT and/or previous IDOT employment. The percentage of candidates selected from this insular group were as follows: 73% of selected candidates in District 1; 85% of selected candidates in District 2; 83% of selected candidates in District 3; 83% of selected candidates in District 4; 40% of selected candidates in District 5; 78% of selected

candidates in District 6; 83% of selected candidates in District 7; 90% of selected candidates in District 8; and 83% of selected candidates in District 9.²² Although IDOT has recently abolished its Technical Trainee program and has implemented reforms in the Engineering Technician program, seasonal, temporary and emergency hire processes are not subject to uniform controls and adequate oversight sufficient to prevent future violations of the type described above.

2. OEIG Identifies *Rutan* Violations in Hiring Seasonal State Fair Workers

Every summer, the Illinois and DuQuoin State Fairs hire temporary State Fair Workers to perform covered duties related to the fairs. On December 24, 2018, the Executive Ethics Commission published OEIG Report No. 14-01678 regarding its review of the Department of Agriculture’s hiring of seasonal State Fair Workers covering the years 2013 through 2017.²³ The OEIG found that Agriculture “hired State Fair Workers without conducting *Rutan* interviews as required by Administrative Order No. 2 (2009).” *Id.* at 23. The OEIG Report explained that in 2013 CMS specifically instructed Agriculture’s Human Resources Manager that hiring for all seasonal State Fair Workers must follow *Rutan* hiring rules for competitive selection. Rather than adhere to those instructions, and to avoid the competitive selection process, Agriculture improperly designated all State Fair Workers as *Rutan*-exempt. *Id.* at 18. In an interview conducted on May 12, 2016, the same Agriculture Human Resources Manager reported that, despite the instruction from CMS that it must follow *Rutan* procedures to hire State Fair Workers, Agriculture “did not conduct interviews for State Fair Worker positions, and that the positions had been classified as

²² The Special Master’s office did not have information about whether or to what extent these individuals may have had political connections. Rather than investigating any political connections, we made recommendations to streamline the job descriptions, advertise to a wider candidate pool, and implement stricter candidate assessment tools.

²³ A copy of the report can be found on the OEIG’s website. *See also* Dkt. 6919.

Rutan-exempt.” *Id.* at 18. Agriculture’s Human Resources Manager further stated, “Agriculture still treated State Fair Worker positions as *Rutan*-exempt based on past practices and that *Rutan* interviews had *never* been conducted for those positions.” *Id.* at 18 (emphasis added).

3. CEP Provision is Similar to Former Provisions Ignored by Agencies

In an effort to address the violations that result from the misuse of temporary, seasonal and intern positions, the State’s proposed CEP provides:

Seasonal Hires and Intern Positions. Positions filled seasonally or through an internship program shall be posted and competitively selected. CMS shall provide hiring plans relating to seasonal hires and intern positions to HEM. Agencies may seek approval from CMS to establish a re-hire initiative, whereby competitively selected employees who performed satisfactorily are eligible for re-hire the following season. *See* CEP VIII.C.

This provision, however, does not address the systemic deficiencies identified above and it fails to address the facts that: (1) agencies have ignored prior dictates from CMS; and (2) CMS lacks an enforcement mechanism to require agencies to comply with this and other CEP provisions. For example, the Department of Agriculture simply ignored CMS’s requirement that seasonal hires be subject to a competitive selection, and simply mis-designated the positions as exempt to avoid interviews.

The proposed CEP does not address emergency hires. According to existing CMS guidance, emergency hires required an actual emergency condition (*i.e.*, to avoid threat to health and safety; prevent damage to property; or maintain essential programs), are limited to 60 days and were not renewable in any calendar year. *See* CMS Personnel Transactions Manual, Section II, “Emergency Appointments,” at 17. IDOT, however, regularly used the emergency appointment process to quickly hire politically connected individuals into routine (non-emergency) positions, and then reappointed the same individuals into subsequent emergency hires, despite the prohibition against doing so. Fifth Report of the Special Master Dkt. 5012; OIEG Report Dkt. 3944-2.

Inadequate measures have been taken to prevent a recurrence at IDOT, and we do not know if other agencies have similarly ignored CMS guidance.

D. Continued Use of Personal Services Contracts to Avoid Hiring Oversight

As explained in the Sixth Report Regarding Statewide Compliance with the *Shakman* Decree, the use of Personal Services Contracts (“PSC”) and similar contracts allows agencies to manipulate hiring sequences and avoid oversight by CMS. *See* Sixth Report at 11-14 Dkt. 6710 (describing how DHS “cancelled” a hiring sequence after non-preferred candidate was selected and entered into PSC with preferred candidate to perform exact same work.); *id.* at 14 (describing how DNR cancelled hiring sequence where preferred candidate was non-reachable and subsequently entered into PSC with preferred candidate). According to the Illinois Comptroller’s Office, in 2019, the State employed more than 1700 “Contractual Workers” ranging in pay from \$13 to \$103 per hour.

As reported in the Supplement to the Sixth Report, the OEIG found that between 2007 and 2015, the Department of Agriculture repeatedly violated existing *Rutan* requirements to hire hundreds of individuals through PSCs. Dkt. 6919. The investigation found that Agriculture failed to comply with *Rutan* requirements of Administrative Order No. 2 (2009) and the PSC Hiring Procedures between 2007 and 2015 for both initial hires and rehires. (*Id.*, Exhibit 1 at 20).

The OEIG found that between January 1, 2007 and September 1, 2015, Agriculture had entered into **633** PSCs with 269 separate individuals (many PSCs were re-hires). (*Id.*, Exhibit 1 at 6). In more than 90% of the hires reviewed, Agriculture could not demonstrate that it adhered to

the *Rutan* hiring guidance or Administrative Order No. 2. (*Id.*, Exhibit 1 at 7-9).²⁴ Moreover, Appendix B to the OEIG Report identifies individuals who were rehired (sometimes on multiple contracts) through PSCs without going through proper *Rutan* protocols and some individuals worked through a PSC for years. For example, one individual was employed through a PSC continuously for two-and-one-half years; another was employed continuously for three years. (*Id.*, Exhibit 1, Appendix B at 30-33). OEIG Report Appendix C lists more than 50 individuals employed through PSCs in excess of six months and their job titles. The job titles reflect that the positions filled are *Rutan*-covered and include titles such as Temporary Carpenter, Temporary Plumber, Temporary Painter, Temporary Laborer, Security Officer, Storeroom Helper, Campground Superintendent, Heavy Machinery Equipment Officer, Campground Office Manager, Staff Attorney, Administrative Assistant, Equine Investigator and Apiary Inspector. (*Id.*, Exhibit 1, Appendix C at 34-37).

In addition, the OEIG reviewed PSCs used in four other agencies between 2013 and 2016. The OEIG included the following graph reflecting the number of PSCs entered by agency:

Agency	PSCs Awarded 2013-2016
CMS	58
Department of Healthcare and Family Services	50
Department of Human Services	803
Historic Preservation Agency	66

Although the OEIG recommended that CMS follow up to determine whether these agencies were adhering to *Rutan* protocols with respect to PSCs, the Special Master's office has not received information related to any follow up by CMS or any other agency. As mentioned in other reports,

²⁴ In reviewing initial PSC hires between 1/07 and 9/15, OEIG found Agriculture failed to demonstrate adherence to the *Rutan* protocol/documentation guidance for 127 of 132 hires. Similarly, for rehires between 1/13 and 9/15, Agriculture failed to demonstrate adherence to the *Rutan* protocols in 133 of 148 PSCs entered.

the Special Master's office has raised concerns about the misuse of PSCs in DHS previously. *See* Exhibit I 10/31/19 Memorandum from the Special Master to Governor's Office (detailing manipulation of a sequence through use of PSC).

The State's proposed CEP filed with the Court includes a provision regarding Personal Services Contracts which states, in part:

State agencies shall not use Personal Services Contracts in lieu of hiring an individual into an employment position, and may enter these contracts only in exceptional circumstances, and pursuant to the procedures below. A Personal Services Contract shall not be utilized to circumvent the competitive hiring process for non-exempt positions set out in this Comprehensive Employment Plan. Personal Services Contract shall be only for the length of time reasonably necessary to complete the described project and must not extend beyond one year. ...

This new policy (which is almost identical to the previous policies on this subject) fails to address manipulation of PSCs, builds in exceptions for individuals previously hired through PSCs outside the *Rutan* requirements and does not include any *meaningful* enforcement or oversight mechanism. Notably, PSC policies issued in 2006, 2009, and 2012 also required they be filled through a competitive process, yet those policies were ignored. Even after OEIG issued its lengthy report detailing various violations of PSC usage in Agriculture in December of 2018, it discovered that Agriculture was still failing to adhere to State policy regarding PSCs. In a September 23, 2019 letter to Agriculture, OEIG noted in part:

AGR does not track or appropriately document the dates and results of attempted and completed contacts with CHPW applicants, making it impossible to determine whether AGR is complying with its policy requiring all new hire applicants to be interviewed.

Dkt. 6919, Exhibit 2. Moreover, the proposed CEP also requires agencies to submit quarterly reports to CMS regarding their use of PSCs. As of September 4, 2020, CMS reported that agencies have not yet submitted any quarterly reports. In short, the State has failed to adequately address this systemic deficiency in its employment practices.

E. Other Employment Practices Create Opportunities for Political Manipulation

Other components of the State's current employment practices create opportunities for political manipulation. In some instances, the problems result from the lack of a uniform policy. In other instances, the State has a written policy in the CEP designed to address the issue, but the policy has not been implemented or is not being followed. Some of these problematic areas are discussed below.

1. Inconsistent Application of Minimum Qualifications and Inaccurate Position Descriptions.

The Special Master's Initial Report identified IDOT's failure to maintain objective minimum qualifications and accurate job descriptions as both a reason for the Staff Assistant manipulation and an obstacle to future compliance with the 1972 Decree. Dkt. 4128 at 12, 20. Accordingly, we recommended IDOT create and maintain accurate job descriptions, with concrete minimum qualifications, as early as August of 2015. IDOT agreed to do so. Second Report (IDOT), Dkt. 4292 at 10. We have similarly recommended that the State update its job descriptions and include meaningful and objective minimum qualifications. The State agreed to do so and incorporated requirements in its proposed CEP requiring minimum requirements for all positions and accurate job descriptions. To date, however, these requirements have not been fully implemented and/or followed.

Although IDOT has made significant process in reviewing and creating minimum qualifications for its technical titles, recent hiring sequences reveal that problems continue to persist. For example, some minimum qualifications are not objective and clearly defined and minimum qualifications are not always uniformly applied. These problems leave significant room for manipulation. The Special Master's Eleventh IDOT Report discussed several examples of

questionable application of minimum requirements and eligibility criteria Dkt. 6900, Section I.E.1, pp. 9-10.

The following example illustrates the problem. In 2015, IDOT made an exempt political appointment into a Sign Shop Chief position (a faux-exempt position) over the Special Master's objection. The Special Master's objection was twofold: (1) the position was not exempt and should not be filled through an exempt appointment; and (2) the candidate appointed did not appear to be qualified to perform the exempt duties stated in the position description. IDOT appointed the candidate over the Special Master's objection and the candidate remained in the appointed position until 2019. When IDOT created its Exempt List, IDOT acknowledged that the Sign Shop Chief position was not properly designated exempt, and the Sign Shop Chief position was posted and filled. The incumbent appointee failed to meet the newly agreed minimum requirements. Notwithstanding that failure, he was the selected candidate. IDOT personnel officials and CMS flagged the fact that the incumbent did not meet the minimum qualifications and IDOT reposted the position.

After the reposting, the incumbent was again selected although his experience and the minimum requirements were the same. Again, IDOT personnel flagged concerns that the incumbent failed to meet the minimum qualifications, but those concerns were overruled by senior IDOT and CMS officials. The incumbent did not meet the minimum requirement of twelve years' experience in "process management." When the Special Master objected to the selection, CMS and IDOT asserted that, notwithstanding their earlier assessment that the candidate did not meet the minimum qualifications, the incumbent's prior work experience listed as a "labor foreman" and "laborer/labor foreman" was now to be counted as "process management" and/or "highway fabrication." The Special Master issued a memorandum to IDOT, CMS, the Governor's Office,

OEIG HEM and the Plaintiffs discussing her concerns and objecting to the incumbent's selection for the position. Despite the Special Master's objection, the incumbent remains in the position. This example illustrates that the combination of poorly defined minimum qualifications, with a willingness to afford certain candidates multiple levels of review by senior officials, can result in questionable selections. The unknown candidate off of the street is unlikely to receive multiple levels of review or consideration.

Similarly, in the Eleventh IDOT Report, the Special Master highlighted another instance of apparent misapplication of MRQs with respect to the TMIV Labor Relations Specialist position. Dkt. 6900. One of the MRQs for that position (and many other IDOT positions) is a required number of years of "progressively responsible administrative experience in a public or private organization." In that example IDOT credited the applicant's home lawn care business as "progressively responsible administrative experience." This lack of specificity allows too much discretion to determine who actually meets the minimum qualifications, who is eligible to interview and how to score candidates. The lack of specificity also makes post-hiring auditing very difficult, especially given the lack of uniform documentation by agencies discussed below. In sum, minimum qualifications need to be narrowly and objectively defined or else they are subject to varying interpretations and manipulation.

Another recent example of misapplication of MRQs was the subject of HEM Advisory 19-HEM-0066. On November 4, 2019, HEM received a complaint referral which led to a review of the hiring paperwork for the TMIII District Safety Representative position. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The MRQs for the position were:

- Completion of 120 hours of college majoring in occupational or industrial safety, environmental safety/health, industrial hygiene, chemistry, biology, communications or public administration; OR
- Completion of 60 hours of college plus two years of occupational safety and health program implementation (inspections, record keeping, training) experience; OR
- Six years of occupational safety and health program implementation experience.

IDOT created a pre-screening tool based on these MRQs and screened out 17 applicants, including the candidate who was ultimately selected for the position. In response to a letter from IDOT informing her that she did not meet the requirements of the position, the selected candidate emailed IDOT BPM appealing its determination. IDOT then reassessed her qualifications and determined she met the MRQs, finding that she had the 60 hours of college plus two years of required experience, which included her experience at Southern Illinois University as a Catalog Publications & Desk Supervisor and as a Triage Desk Supervisor. IDOT invited her to interview for the position and she was the selected candidate. IDOT did not reconsider its application of the MRQs for any of the other screened out candidates. HEM reviewed their application materials and determined four other external candidates were improperly screened out. As a result, HEM issued an advisory (19-HEM-0066) on February 20, 2020, requesting that IDOT re-post the position.

IDOT did not repost the position, nor did IDOT provide a response to HEM until the Special Master asked about the reposting in August 2020. On August 6, 2020, IDOT informed the Special Master and HEM that it did not repost the position because the selected candidate had already served her six month probationary period and was certified in the TMIII District Safety Representative position by the time HEM issued its Advisory on February 20, 2020. In follow up emails with the Special Master and HEM, IDOT stated that it revised its policies to include contact information in the rejection letters so that both internal and external candidates have a point of contact to challenge qualification decisions. IDOT also stated that it revised its policies to require a reassessment of all excluded candidates if any candidate is reassessed.

Numerous other HEM Advisories have identified problems with the accuracy of position description duties and/or application of MRQs. Through August 2020, at least 24 HEM Advisories have touched on issues involving accuracy of position descriptions and/or application of MRQs. (See Section VI.C for a summary of HEM Advisories). For example, one recurring issue noted in HEM Advisories is a lack of consistency between Box 19 of the position description (where the MRQs should be listed) and the hiring questions and criteria (“Q&Cs”). In other words, the defined minimum qualifications do not match the interview and assessment criteria. HEM has repeatedly found inconsistencies and recommended that agencies review and update the position descriptions prior to posting to ensure the duties listed are accurate and align with the Q&Cs. These requirements are contained in the CEP to ensure that candidates are selected for a position based on the actual duties of the job. These measures were designed to prevent manipulative selection of unqualified candidates, such as occurred with the Staff Assistants at IDOT.

2. Bypass Process Is Subject to Misuse

The Special Master previously reported her concerns regarding the State’s misuse of the bypass process. Sixth Report, Dkt. 6710. Under the AFSCME contract, certain bargaining unit positions are to be filled through promotion based on seniority. The bypass process allows for a more senior candidate to be “bypassed” in favor of a less senior candidate if the less senior candidate has “demonstrably more superior skill and ability to perform the work required in the position classification.” AFSCME Contract, Article XVIII, §2(b).²⁵ In response to a series of Memoranda issued by the Special Master’s office, CMS explained that the State uses the bypass process in two scenarios: (1) when a position requires “specialized” skills identified in the position

²⁵ All positions subject to collective bargaining agreements are non-Exempt and the selection process cannot be influenced by political factors or reasons. According to CMS, the State’s workforce is approximately 93% unionized with AFSCME being by far the largest labor organization.

descriptions, the State can bypass a more senior candidate who lacks the specialized skills of the particular job; or (2) when a less senior employee has “demonstrably superior” skills than a more senior employee. CMS explained that the Department of Information Technology (DoIT) also uses the bypass process to exclude candidates who do not receive a minimum interview score of 2 on a 4 scale. We do not know if other state agencies use the bypass process in the same manner.

The terms “specialized skills” and “demonstrably superior skills” are undefined. Moreover, the terms are so vague that they could conceivably be used to justify bypassing almost any candidate.

In response to a complaint received by the Special Master’s office, we requested to review hiring packets and other information related to DoIT’s use of the bypass process. In 2018 and 2019 (through October 1, 2019), DoIT used the bypass process in 65 positions. Nearly half of those instances involved the “bypass” of a single candidate, where a single candidate was eliminated from a hiring sequence rather than bypassed in favor of a less senior candidate. Our review noted significant concerns over inconsistent and incomprehensible scoring. For example, in many instances, it appeared that candidates’ scores were artificially deflated to “justify” a bypass. In another instance, we found candidates who scored above a 2.0 on their Candidate Evaluation Forms only to have their scores later changed to below a 2.0; the lowered scores were then used as a basis to “bypass” them in favor of less senior candidates. Scores were also changed after the initial scoring by non-interviewers. There was no justification for those changes. We also determined there was a lack of consistent process, oversight and review of bypass requests. CMS is not involved in reviewing bypass requests; only the agency reviews them.

As a result, we issued three memoranda to CMS, the Governor’s Office, OEIG HEM and the Plaintiffs, in which we reported our findings and made numerous recommendations. (*See*

Group Exhibit J, 4/3/19, 10/31/19 and 3/11/20 Special Master Memoranda re: Bypass Process). Our recommendations included that CMS establish and circulate guidance on a uniform process and level of review for all agencies under the Governor's jurisdiction. We recommended that the bypass process include a level of CMS review and be incorporated into the proposed CEP. We also requested the opportunity to review any guidance before it is circulated. To date, the recommendations have not been adopted. We remain concerned that the bypass process has been used and will continue to be used to manipulate hiring sequences.

3. Lack of Uniform and Consistent Scoring and Screening

In addition to concerns about scoring anomalies in the bypass process, the Special Master has reported her concerns about lack of consistent scoring and screening of candidates in the selection process and those concerns remain. *See, e.g.*, Eleventh IDOT Report, Dkt. 6900; Sixth State Report, Dkt. 6710. The CEP contains general hiring processes for all non-exempt positions and requires uniform documentation for all hiring sequences to allow for adequate monitoring and review. (CEP, Section IV). That uniform documentation applies to scoring and screening of candidates, but agencies have been slow to adopt these provisions.

As detailed in Section VI.C, HEM has issued numerous advisories relating to agencies' lack of clear scoring and screening of candidates.²⁶ In many instances, HEM noted that the scoring and/or screening documentation did not allow for adequate monitoring and review but did not challenge the agencies' selection. (*See, e.g.*, 19-HEM-0073, 20-HEM-0033). For example, on June 11, 2020, HEM issued Advisory 19-HEM-0073 relating to its review of the TMIV Traffic

²⁶ HEM began issuing written advisories in November 2019. On October 30, 2019, pursuant to the Court's request, HEM issued a report on its monitoring activities from January 1, 2018 through October 2019. (Dkt. 6936-1, at 4-16). HEM reported issues relating to how candidates were screened or scored in 10 out of the 31 hiring sequences it reported monitoring during this time period. In other words, 32% of the hiring sequences monitored by HEM during this time period had problematic scoring or screening.

Services Manager position at IDOT. HEM conducted its review in response to two complaint referrals. HEM found the conflict of interest forms (which disclosed several potential conflicts) were only signed by the disclosers and not by staff responsible for vetting the conflicts. With respect to the hiring documentation, HEM stated “it was sometimes difficult to ascertain why one candidate scored higher in one criterion than another.” The candidate received the promotion.

[REDACTED]

By way of further example of scoring anomalies, we reviewed a hiring sequence for a Civil Engineering Technician position at IDOT that was the subject of a June 2018 BIC Investigation Report.²⁸ [REDACTED]

²⁷ [REDACTED]

²⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Canceled Sequences Create Opportunities for Manipulation.

The Special Master’s office has repeatedly raised concerns about agencies’ discretion to deem a hiring sequence “failed” without applying uniform objective standards. The Special Master’s Sixth Report provided detailed information on several examples. Sixth Report, Dkt. 6710; *see also* Exhibit I, 10/31/19 Special Master Memorandum re: Employment First Coordinator. To address this concern, the CEP incorporated the following provision:

L. Requests to Cancel a Hiring Sequence without Making a Hire. If, at the conclusion of a hiring sequence, the agency intends to not select any of the Candidates, the agency must submit a justification to CMS for review and approval. The agency must include in its justification requesting to cancel the hiring sequence without making a hire its plan to have the duties of the position performed until such time as the position is filled. If following a sequence that did not result in a hire, an agency later decides to (a) assign existing staff either temporarily or on an interim basis or (b) contract for the work of that position to be performed, the agency must promptly notify CMS Chief Compliance Officer of this decision.

(CEP, Section V.L.)

Despite including this provision in the CEP, it is apparent that problems with failed sequences persist. For example, at least five HEM Advisories issued to date involve agencies canceling hiring sequences. One very recent example, 20-HEM-0068, is instructive. On August 27, 2020, HEM issued an Advisory based on its review of a term renewal at DCFS. The agency

posted an SPSA, Option 8 position in late 2019 and, after interviewing four candidates, the incumbent was the selected candidate. Without prior CMS notice or approval, however, the agency canceled the sequence. The agency reported that the sequence was canceled due to various errors, including that the position description and posting inaccurately stated that a Master's Degree in Social Work ("MSW") was required. The incumbent did not have an MSW and should not have been invited to interview or selected for the position based on the stated MRQs.

The sequence was canceled and the position was reposted in spring 2020 with an updated position description requiring an MSW *or* a Master's in a related human services field. This amendment favored the incumbent because she did not have an MSW but had a Master's in a related field. HEM raised these concerns and also noted issues with consensus scoring and a failure to vet conflicts of interest, although the sequence was allowed to proceed.

In another recent Advisory, 19-HEM-0081, HEM reviewed three canceled hiring sequences at the Kiley Development Center operated by DHS in response to three referred complaints. HEM noted that DHS posted three separate positions in Fall 2019 and conducted interviews for all three positions. DHS reported that none of the interviewed candidates met the minimum scoring threshold of 2.5 on a 5.0 scale, so all three sequences were canceled. DHS did not notify CMS or seek its approval to cancel the sequences. DHS reported to HEM that it did not know it needed to notify CMS or obtain its approval to cancel a sequence when no candidate met the minimum scoring threshold.²⁹ HEM requested to be notified when the positions were reposted so it could monitor those sequences. DHS failed to notify HEM when one of the positions was reposted.

²⁹ Under the CEP, CMS is required to review and approve agency hiring plans before positions are posted. The hiring plan should identify a minimum scoring threshold if one is to be used. CMS has reported that it is not yet conducting pre-posting reviews and approvals.

As these examples reveal, failed sequences continue to occur without prior CMS notice or approval and provide significant opportunity for manipulation of the hiring process to favor a preferred candidate.³⁰

5. Lack of Consistent Disclosure and Vetting of Conflicts of Interest

Over the years, the Special Master has made recommendations related to IDOT's conflicts of interest vetting process on several different occasions. *See e.g.*, IDOT Sixth Report at 5, Dkt. 5069; IDOT Ninth Report at 9, Dkt. 6222; IDOT Eleventh Report at 11, Dkt. 6900. The Special Master recommended that IDOT accurately document the disclosure of conflicts of interest and the vetting of those conflicts of interest. IDOT has made some recent improvements to its conflict of interest disclosure form and vetting process, but it is apparent that additional work is required at IDOT and other state agencies.

Notably, approximately 25 HEM Advisories relate to the improper documentation and/or vetting of conflicts of interest. For example, 19-HEM-0073 involved a hiring sequence at IDOT (TMIV Traffic Services Manager) where conflicts of interest were not vetted and not all the staff who participated in the hiring sequence completed a conflict of interest disclosure form. This same hiring sequence involved questionable scoring, raising concerns that the selected candidate was the favored candidate. Many of HEM's Advisories noted repeated recommendations to the same agency about conflict disclosure and vetting, suggesting that agencies are not taking prompt remedial action in response to HEM's recommendations.

³⁰ Relatedly, the Special Master uncovered instances where the timing of postings appeared to be manipulated to favor certain candidates at IDOT. Those instances were addressed in a July 23, 2020 Memorandum to IDOT, the Governor's Office, OEIG HEM and the Plaintiffs. *See* Exhibit L.

Accurate disclosure and vetting of conflicts of interest is an essential component of the State's employment plan to prevent future manipulation. To date, there is a lack of consistent and uniform practice for disclosing and vetting conflicts.

F. Complaints Received from Governor's Office Suggest Continuing Problems

Complaints received by the Governor's Office are also suggestive of continuing problems in the State's employment policies and practices. The Governor's Office periodically submits information to the Special Master's office about some of the complaints received by OEIG and referred back to agencies for investigation.³¹ For example, the data the Governor's Office provided shows 45 separate complaints regarding the improper use of temporary assignments since May of 2017. The complaints include allegations of using temporary assignments as preselection for promotion and favoritism regarding which employees are temporarily assigned. Several complaints allege that unqualified favored employees are selected for temporary assignments, including in violation of the seniority rules in the collective bargaining agreement. Nonetheless, the State continues to resist the Special Master's recommendation to create a standard and uniform written temporary assignment policy that includes an objective selection process that considers all qualified employees, limiting the duration of temporary assignments, and rotating different employees into jobs if a temporary assignment is still operationally necessary after the time limit.

Of the complaints we received from the Governor's Office, the largest number of complaints relate to allegations of conflicts of interest. The data reflects 98³² complaints regarding

³¹ The data the Special Master receives from the Governor's Office does not include all complaints submitted to the OEIG. The information pertains to complaints that OEIG refers back to the agencies, not those that OEIG reviews further, investigates, or closes.

³² This number includes some of the same complaints discussed above about temporary assignments because a number of complaints relate to both issues.

conflicts of interest since May of 2017. The alleged conflicts include some related to political connections, as well as favoritism based on nepotism and other relationships. The State implemented a statewide conflict disclosure form in 2019 and conducted training for Personnel Officers and Labor Relations Managers. Additionally, CMS recently revised the disclosure form and conducted training on the revised form at IDOT. The Special Master is not aware whether other agency staff have been trained on the revised form statewide.³³ As further discussed below, the Special Master does not get notice of whether these complaints were founded (except with respect to IDOT) or how they were resolved.

In sum, there are a number of structural and systemic deficiencies in the State's employment practices that increase the likelihood of manipulation of the process. These deficiencies have been used in the past to favor politically connected candidates and exclude large swathes of Illinois residents from consideration for State employment. Although the State is seeking to rectify some of these deficiencies, many of the proposed reforms have not been fully implemented. In other instances, the proposed reforms are not sufficient to address the breadth and scope of the problems or have not been in place long enough to fully assess their effectiveness.

VII. COMPREHENSIVE EMPLOYMENT PLAN PROPOSED TO DETER FUTURE VIOLATIONS

Although the State's Motion to Vacate focuses on the proposition that it need not adopt a Comprehensive Employment Plan to comply with its constitutional obligations, that focus is misplaced. It was in *response* to actual or potential violations that the State proposed a CEP as a remedy. Most of the deficiencies described in Section VI have been acknowledged by CMS, HEM and IDOT. As recently as October 2019, CMS listed a series of significant "easily identified

³³ The IDOT manager training described above about temporary assignments was a combined training that included information about the updated disclosure form. The Special Master has not been informed whether CMS conducted similar trainings at non-IDOT agencies.

numerous problems with the current hiring process.” (See Exhibit C, 10/22/19 CMS Memorandum to Special Master’s office and HEM, “High Level Overview on Test Track”). In order to remedy those problems, the State proposed, and the parties agreed that a Comprehensive Employment Plan was necessary. Since at least early 2018, the parties have been discussing a statewide CEP, including at each Court status hearing since that time.

After lengthy negotiations, the parties reached agreement on a significant number of provisions included in the State’s proposed CEP. Although significant disputes remained regarding certain key aspects of the CEP (*e.g.*, temporary assignments, transparency), the State filed the proposed CEP with the Court. As discussed below, major portions of the CEP have not been rolled out or implemented. Moreover, those sections that are in effect are not regularly followed, as explained in the numerous HEM Advisories issued to date.³⁴ Recently, the State committed to provide additional training throughout the months of September through October 2020.

A. Maximizing Success of New CEP Requires Specific Steps

In other monitoring contexts, and in the implementation of new programs generally, success requires more than simply issuing a policy. There are specific steps that must be taken to ensure the highest level of success. First, the organization must identify the problems it seeks to remedy and create a new system designed to address those problems. Second, the new system must be rolled out and tested to identify what works, what does not work, and gaps in the new system. Third, appropriate amendments are rolled out and tested again. Fourth, there must be a robust

³⁴ As the HEM Advisories indicate, many State of Illinois employees have not been sufficiently trained to understand or know what is expected under the CEP and the hiring managers are often unaware of the CEP requirements.

enforcement mechanism—which requires proactive assessment and audits to make sure all agencies are complying with the new programs. Finally, there must be consequences for failing to adhere to the policies. These steps take time. The State filed its CEP in November of 2019. Many key provisions have not yet been rolled out.

B. Significant Portions of the CEP Have Not Been Implemented

1. Electronic Hiring Process

Since 2015, the Special Master has recommended that IDOT adopt an electronic application system to limit manipulation in the selection process. In 2018, the State indicated to the Special Master, Plaintiffs and the Court that it would replace its existing hiring process with an electronic hiring process. Electronic hiring is a proven measure for helping to reform employment systems. For the State in particular, the electronic hiring process would eliminate the issue of reachability, increase objective evaluation of candidates, track and document the selection process and create an auditable “paper” trail to test compliance.

The State has represented that the electronic hiring process is “designed to ensure that any mistakes and/or attempted manipulation is corrected prior to the completion of the hiring sequence and can be reversed and corrected.” (*See* Exhibit C, 10/22/19 CMS Memorandum to Special Master’s office and HEM). The electronic hiring process would include heightened oversight by CMS at various touchpoints in the hiring process, including pre-posting approval of position description updates, hiring criteria, application questions, and interview questions; and, approval of the posting, minimum qualifications, and preferred qualifications. Additionally, CMS approval would review the sequence post-interviews and post-offer before the selected candidates’ start dates.

To date, the electronic hiring process has been used in only a small percentage of sequences. As of August 4, 2020, only 113 positions had been posted through the electronic hiring process at 13 agencies, resulting in 77 individuals being selected. Eleven additional positions were slated for offers; seven positions were at the interview stage; eleven positions were at a pre-interview stage; and, seven sequences were unsuccessful (no candidate selected).

As of July 2020, several large agencies have not used the electronic hiring process, including IDOT, Department of Children & Family Services (DCFS), and Department of Employment Security (IDES). The number of postings that have gone through the electronic hiring process represent a tiny fraction of the State's hiring. There are more than 500 State of Illinois jobs currently posted. The vast majority of those jobs will go through the State's existing system.

2. Specific Sections of the CEP Not In Effect

The State has not implemented crucial sections of the CEP that were designed to prevent future recurrent manipulation. (*See, e.g.*, Exhibit M, 9/4/20 email response from S. Kerley). Major components that have not been implemented to date include the following:

a. CMS review and approval of pre-posting documents

Section IV.M.2 requires CMS to conduct a pre-posting review and approval of agency hiring plans prior to posting a position. That provision is not currently in effect.

b. CMS review and approval of documents after interviews and before an offer is made

Section IV.M.4 requires CMS to approve the hiring sequence and documentation before an offer of employment is extended. That provision is not currently in full effect.

c. Agency submission of quarterly reports regarding Personal Services Contracts

Section IX.C. requires agencies to submit quarterly reports to CMS regarding the use of Personal Services Contracts. No agencies have submitted quarterly reports to date.

d. Minimal Oversight of IDOT technical titles

Currently, CMS exercises minimal oversight regarding IDOT's (and other agency) technical positions. Moreover, even once the CEP is fully implemented, as written, CMS reported that it will not have oversight over IDOT's technical positions that remain technical. According to CMS, it will serve limited compliance functions such as reviewing screening materials and granting approval or denial to proceed when less than three candidates were interviewed. However, CMS has reported that it will not perform key oversight functions for technical positions such as pre-posting reviews of hiring plans and approvals before offers are made.

e. Creating compliance office within CMS

The CEP includes the creation of a compliance office within CMS, including a Chief Compliance Officer. CMS has reported that the office will also include several compliance officials. CMS just recently hired a Chief Compliance Officer in July 2020. Since the Chief Compliance Officer's hire, he has been involved in conference calls and trainings. Although hiring the Chief Compliance Officer is an important step, the CEP contemplates a fully operational Chief Compliance Office and CMS has not yet filled all key compliance roles and many of the CMS compliance functions are not being performed.

f. Issuance of CMS Compliance Reports

As part of the compliance reporting and transparency section of the CEP, CMS is required to issue semi-annual compliance reports describing its compliance activities. The semi-annual reports are to be posted on CMS' website. To the Special Master's knowledge, CMS has not issued any such reports and none have been posted on CMS' website.

g. Seasonal Hires and Intern Positions.

Section VII.C of the CEP requires that all seasonable and intern program positions to be posted and competitively selected. Agencies must submit hiring plans relating to seasonal and intern positions to CMS. To our knowledge, this provision is not currently in effect.

C. HEM's Monitoring Under CEP Reveals Non-Compliance With CEP Provisions.

Pursuant to Section XI.B.2 of the CEP and, as explained in the OEIG's July 7, 2020 filing regarding the State's Motion to Vacate, HEM monitors employment actions and issues Advisories. HEM has been issuing Advisories since November 2019. The Advisories identify issues of concern and direct agencies to existing CMS guidance and the CEP sections that govern the identified issues. Nonetheless, agencies often continue to make the same errors in later sequences that HEM reviews. This suggests that agencies need specific training on the CEP.

The following table shows the most common issues identified in HEM Advisories. We discuss these figures in more detail below.

Common Issues Identified in HEM Advisories			
Conflicts of Interest Vetting	Inconsistent Position Descriptions and Interview Criteria	Developing Interview Pool (including reachability issues)	Insufficient Documentation of Hiring Process
Approx. 27 Advisories	Approx. 24 Advisories	Approx. 51 Advisories	Approx. 38 Advisories

As of September 14, 2020, HEM has issued 80 Advisories regarding 53 term appointment renewal hiring sequences; 15 complaint referrals;³⁵ and 12 non-term appointment hiring sequences (including review of files and monitoring of interviews). The Advisories demonstrate that agencies are unfamiliar with the CEP's requirements and CMS Guidance. HEM routinely identifies violations of the CEP or current CMS guidance, including, but not limited to: (a) failure to properly complete and vet conflict of interest disclosure forms (approx. 27 Advisories); (b) inconsistencies between the position description requirements and the interview questions and criteria (approx. 24 Advisories); (c) issues regarding developing a pool of eligible candidates to interview due to non-reachability, small applicant numbers, or screening issues (approx. 51 Advisories); and, (d) failure to consistently document all aspects of the hiring process, including how minimum requirements and screening were applied and how candidates were scored (approx. 38 Advisories).³⁶ In a

³⁵ The OEIG's July 7, 2020 filing (Dkt. 6936) stated that, as of that date, "[f]ifty-five complaint referrals have either been reviewed or are under active review by HEM. Here too, at the completion of each review, HEM issues an Advisory containing its recommendation for compliance." (Dkt. 6936, at 16-17). HEM's First Quarter 2020 Report and Second Quarter 2020 Report reflect that as of July 2020, 16 complaints had been referred to HEM. The number 15 is based on the Special Master's office's review of the Advisories and which ones are identified as complaint referrals or appear to relate to complaint referrals on their faces.

³⁶ The number of issues identified exceeds the total number of Advisories because some Advisories involved multiple issues. Additionally, the numbers are stated as approximations because in a small number

number of instances, HEM addressed the same agencies, at times, regarding the same issues repeatedly. For example, HEM issued 19 Advisories to DHS, several of which addressed the improper completion and lack of vetting of conflicts of interest and inconsistencies between the job duties in the position description and the criteria used to evaluate candidates.

1. The Advisories demonstrate that agencies frequently fail to properly complete and vet conflict of interest disclosure forms.

Approximately 27 Advisories identify improper completion of conflict of interest disclosure forms or vetting of potential conflicts. The conflict of interest form was implemented statewide in 2019 through a CMS Guidance Memorandum. The form was recently revised and CMS trained certain IDOT staff on the revised form. All participants in the hiring process must complete a disclosure form. Agencies must submit disclosure forms at least three days before the date of interviews. The CEP and guidance require agency personnel officers, not the person disclosing, to evaluate potential conflicts of interests and determine whether an interviewer may proceed or should be removed from the panel of interviewers. The Advisories reveal that agencies frequently: 1) do not complete the forms timely, and in some cases, not at all; 2) fail to fully and properly complete the forms; and 3) fail to vet and clear potential conflicts before interviews proceed.

2. The Advisories demonstrate inconsistencies between the position description requirements and the interview questions and criteria.

Approximately 24 Advisories revealed inconsistencies between the job requirements included in the position description and the interview questions and criteria used to assess and rank

of instances, these numbers include issues that the Special Master's office observed in the Advisories but that were not the focus of the Advisories.

candidates. For example, approximately 10 Advisories pertain to inconsistencies between the Education & Training interview criterion and the requirements of the position descriptions. The CEP and CMS Guidance require agencies to review the position description for accuracy and to develop interview questions and criteria based on the position's requirements prior to posting a vacancy. Failure to do so allows the interviewers or hiring authority to tailor the job requirements to the preferred candidate. The Advisories demonstrate that agencies are not consistently or properly completing the pre-posting steps. These pre-posting steps are essential to minimize the opportunity to manipulate the hiring process by drafting interview criteria to fit the qualifications of a favored candidate. HEM's findings are consistent with the Special Master's observations in its monitoring work at IDOT.

3. The Advisories demonstrate that current employment practices do not promote a truly competitive process and largely exclude candidates not already employed by the State.

Approximately 51 Advisories reveal agencies' failure or inability to develop a sufficient or ideal number of candidates to interview, including issues relating to reachability.³⁷ The Special Master addressed issues regarding the eligibility of candidates for interview as well as concerns about the lack of competitive hiring because of very small interview pools in the Sixth Report. Dkt. 6710.

The current practice of excluding external candidates from competing for State jobs because they do not have a grade from CMS or certified status affects agencies' ability to develop large and diverse candidate pools. Eight of the 51 Advisories pertained to single candidate

³⁷ Current guidance requires at least three candidates to be interviewed for a single vacancy, absent approval from CMS to proceed with fewer candidates. However, the CEP states that 10 candidates is the ideal number per vacancy.

interviews. Additionally, in eight Advisories, HEM recommended that the agency consider posting through the electronic hiring process to develop a competitive interview pool that would include non-State employees. The electronic hiring process eliminates the issue of excluding candidates because they are not “reachable.” An August 27, 2020 Advisory includes a statement from CMS that the Department of Child and Family Services has not been invited to utilize the electronic hiring process yet.³⁸

The Advisories regarding agencies’ failure or inability to obtain a large and diverse pool of eligible candidates to interview demonstrate that the State’s current employment practices continue to largely exclude candidates who are not already employed by the State. Given the State’s history of patronage hiring, it is imperative that the State implement the electronic hiring process, which gives “outsiders” the opportunity to compete for jobs.

4. The Advisories demonstrate that agencies are not consistently documenting all aspects of the hiring process, including how minimum requirements and screening were applied and how candidates were scored.

Approximately 38 Advisories involve issues regarding documenting the hiring process, including documenting screening, interview scores, and hiring decisions. The Advisories reveal that multiple agencies are not consistently documenting how minimum requirements and screening criteria were applied to determine the interview pool and/or not including adequate explanations to justify candidate scoring at interviews. Approximately 24 Advisories revealed deficiencies in how agencies perform and document screening of candidates to determine the interview pool. Approximately 22 Advisories identified insufficient documentation of interview scores or other

³⁸ As reported in the Sixth Report, the State projected that the electronic hiring process would be fully implemented statewide for merit compensation positions by the end of the first quarter of 2020. Dkt. 6710, at 21. The Special Master acknowledges that the COVID-19 pandemic may have affected the projected timeline.

scoring issues. The CEP and CMS guidance require each step of the hiring process to be documented and maintained in the hiring file.

Several of the Special Master's reports to the Court and memoranda to the parties have discussed establishing objective minimum requirements and those requirements and screening criteria to determine the interview pool, as well as ensuring that interview scores are justified based on the documentation in the file. Implementing the electronic hiring process, which includes a screening mechanism that is not performed by humans, would minimize these types of issues. Based on data provided to the Special Master, the State is far from fully implementing the electronic hiring process statewide.

VIII. COMPLIANCE REPORTING AND TRANSPARENCY

A robust compliance program is essential to identifying, investigating and rooting out manipulation in employment practices. As a result, over the years, the Special Master has made numerous recommendations designed to strengthen IDOT's and the State's compliance functions. Prompt and thorough reviews and transparent reporting of employment related violations serve to deter future misconduct and allow for prompt remedial action to be taken, if necessary. IDOT and the State have taken certain measures to strengthen their compliance functions but, as set forth below, the Special Master would recommend more transparency in compliance and reporting.

A. Relevant Background Information

To understand the Special Master's concerns, some background context is helpful.

1. Information Reviewed by the Special Master and Recommendations Made.

The Special Master has received and reviewed documents relating to employment related complaints and investigations from various sources. First, the Special Master has received complaints and investigation reports relating to employment related matters from IDOT's Bureau

of Investigations and Compliance (“BIC”). Second, in response to court-enforced subpoenas, the Special Master received documents from OEIG relating to IDOT employment related complaints. Third, the Special Master received information and documents from the Governor’s Office relating to employment related complaints that were referred by OEIG to agencies for investigation. This information included complaints relating to all state agencies under the jurisdiction of the Governor’s Office.³⁹

The Special Master issued a series of Memoranda to IDOT relating to deficiencies in BIC’s investigation process and noting other concerns. (See Group Exhibit K, L and N, 7/23/20 Memo re: to Governor’s Office). IDOT made some improvements to the BIC investigation process, such as involving IDOT’s General Counsel to determine the scope of the investigation. However, the Special Master has continued to identify deficiencies in BIC’s investigations. The Special Master also issued a series of Memoranda to the parties and OEIG raising various concerns relating to transparency in OEIG’s investigation process; some of those issues are discussed below.

2. The Compliance Structures Included in the Proposed CEP.

In collaborating on the creation of the proposed CEP, the Special Master, OEIG and the parties discussed Section XI, which addresses compliance and governance, and in which the State committed to the “ongoing development of robust compliance structures” and acknowledged that an effective compliance structure must “involve multiple levels of governance,” including CMS, OEIG, agency personnel officers and state employees. (CEP, Section XI.A, pp. 20-23).

³⁹ A significant number of complaints referred from OEIG to IDOT that were produced by OEIG were not included in the information produced by the Governor’s Office. The Special Master has been unable to determine the reason for the discrepancy.

According to specific provisions under the CEP, CMS is responsible for compliance with the CEP and has authority to reverse hiring unit actions, and render sanctions against errant hiring units, up to and including recommendation disciplinary action. To date, CMS is not conducting all of its assigned compliance activities under the CEP (e.g., reviews and audits of personnel policies and practices necessary for ensuring compliance with CEP).

OEIG has authority for ensuring compliance with *Rutan*, and all employment laws, including the *Shakman* decree. In 2015, OEIG created a new Hiring & Employment Monitoring Unit (“HEM”) to review and monitor State hiring and processes. HEM is an integral part of the compliance structure and is tasked with overseeing compliance with the CEP and working collaboratively with CMS and other agencies to identify and redress issues regarding State hiring. HEM is also tasked with identifying lack of compliance with governing authorities; ensuring the integrity of hiring decisions; and advising on best practices, as well as corrective action when problems arise. Section XI.B.2 of the CEP allows HEM to coordinate with the Special Master (while acting), the CMS Compliance Officer, or the Agency Personnel Officer in conjunction with its compliance review activities.⁴⁰ HEM’s authority is limited--it is not authorized to review allegations of Political Discrimination and Political Contacts. (CEP Section XI.B.2.b). State employees are required to report allegations of Political Discrimination and Political Contacts to the CMS Chief Compliance Officers or HEM. (CEP Section XI.A.4.a.b). CMS is required to report such allegations to OEIG, which has discretion whether to investigate the matter. (*Id.*).

⁴⁰ Agency Personnel Officers are responsible for reviewing the hiring sequence paperwork and ensuring that the documentation is accurate, and state employees are required to report potential violations of the CEP to the CMS Chief Compliance Officer and OEIG.

Section XI.A.2 of the CEP states that OEIG may refer complaints of non-compliance to CMS, the agency, HEM or OEIG Investigations. Section XI.B addresses transparency and reporting of violations. CMS is required to issue semi-annual reports every March 15 and September 15 to the Governor's Office and the OEIG, describing its compliance activities. The semi-annual report must be posted on the CMS website. (CEP Section XI.B.1). To date, CMS has not issued or posted any compliance reports. The CEP includes a provision requiring HEM to issue an Advisory at the conclusion of its compliance reviews. The agency is required to respond in writing when requested by HEM. HEM Advisories and the Agency Responses are publicly available upon request. HEM is also required to issue quarterly and annual reports relating to its monitoring activities, which are publicly available. These provisions were included in the proposed CEP to strengthen transparency when violations and non-compliance are found.

3. The State Relies on the Compliance Structures in the CEP as Part of the Durable Remedy that Warrants Vacation of the Consent Decree.

In the State's Motion to Vacate the Consent Decree, the State argues that the "second dispositive aspect of the State's durable remedy is the existence of [HEM]." The State cites the OEIG's July 7, 2020 Memorandum, (Dkt. 6936), and quarterly reports detailing OEIG's activities as evidence of the durable remedy. In the OEIG's July 7 Memorandum, it explained that OEIG refers hiring-related complaints to HEM if there is an allegation of a CEP violation or breach of a policy or procedure related to hiring. Dkt. 6936, OEIG Memorandum, p. 16. The Memorandum states that HEM is best suited to respond quickly to the allegation and can potentially intervene before, during or immediately after a hiring-related violation has occurred. It also states that the six-month probationary period for new hires offers a window in which HEM can take stronger corrective action. HEM issues an Advisory containing its recommendation for compliance at the

end of each complaint referral review. (*Id.* at 17). The Memorandum states that if HEM identifies issues of possible hiring-related deficiencies or violations that reveal misconduct or may involve political manipulation, HEM refers the matter to OEIG Investigations. (*Id.*).

While the creation of the proposed CEP and HEM are significant improvements, the Special Master has identified concerns in the compliance structures which are detailed below. The Special Master is not criticizing the compliance activities of HEM or CMS, but rather, the processes or status of implementation that limit HEM's and CMS's activities.

B. Concerns Regarding Compliance Reporting and Transparency.

As set forth above, CMS, OEIG and agency personnel have responsibility for compliance activities and reporting. The CEP addresses compliance reporting and transparency for CMS, OEIG HEM and OEIG Investigations. However, it does not address compliance reporting and transparency for agency investigations. This fundamental gap should be addressed. In addition, based on our review of documents produced in response to the OEIG subpoena and other documents, we have the following concerns about the current state of compliance reporting and transparency.

1. Transparency Concerns Relating to HEM Advisories

We are concerned that the current compliance framework does not always allow for transparent reporting in HEM Advisories. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This flaw

in the transparency of reporting needs to be addressed.

2. Limitations on HEM’s Reviews and Reporting.

As OEIG reports in its Memorandum (Dkt. 6936), HEM refers issues of possible hiring-related deficiencies or violations that reveal misconduct to OEIG Investigations. It is OEIG’s position that HEM cannot disclose these matters in its Advisories or to the Special Master (absent a subpoena) because they relate to ongoing investigations. Based on this interpretation, HEM’s oversight and reporting functions are significantly more limited than what the Special Master understood them to be when the parties collaborated on the CEP. Issues relating to hiring-related deficiencies or violations that reveal misconduct will not be timely flagged by HEM. As noted in

⁴¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

OEIG's Memorandum, one main goal of HEM is to be able to intervene in a sequence to take corrective action before the expiration of the six-month probationary period. This purpose is frustrated if HEM cannot intervene in instances where hiring-related misconduct is suspected.

Moreover, OEIG's position prevents HEM from timely disclosing information it discovers in a compliance review if the information relates to an ongoing OEIG investigation (absent a subpoena). This impedes the Special Master's ability to perform her duties. One specific example is discussed below.

In response to a court-enforced subpoena, the Special Master received and reviewed HEM's compliance review materials for IDOT. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

We are concerned that the restrictions placed on HEM’s ability to review and report on allegations of hiring related misconduct frustrate the goals of timely discovery, remediation and transparent reporting. Moreover, the limitations placed on HEM’s ability to share information with the Special Master impede her ability to conduct her court appointed duties.

3. Lack of Information and Transparency with Respect to Agency Investigations.

OEIG may refer complaints to an agency with or without an agency response required. Some of the complaints referred to IDOT by OEIG alleged the same types of employment practices that led to the Staff Assistant abuse (*e.g.*, inaccurate position descriptions, employees not performing the duties stated in their position descriptions). Some other complaints alleged political considerations and/or favoritism in employment actions. Regardless of whether a response is required, it appears that findings made by an agency’s investigative body are not publicly reported. For example, BIC is the department that investigates complaints for IDOT. BIC’s investigation reports state, “investigations conducted by [BIC] are confidential. This report, and any information contained herein, should only be divulged on a need-to-know basis as set forth in Chapter 10-3(K) of the Department’s Personnel Policies Manual which states in part, ‘Revealing the existence of an investigation or its contents could result in discipline up to and including discharge, with the

exception of disclosures made to those on a need-to-know basis during the course of a subsequent disciplinary proceeding, or as otherwise required by law.” We are concerned that there is no forum for these complaints and investigations to be made public—even when there are findings by the agency. One specific example is described below.

[REDACTED]

This example demonstrates the lack of transparency in reporting of employment related issues that are discovered by an agency and a structural deficiency in compliance reviews. The Special Master recommends the State create and implement uniform policies to require thorough and transparent reporting of agency investigation findings and open communication between the investigating authorities.

Further, we lack information on how agencies other than IDOT investigate complaints referred by OEIG.

4. Inability to Follow Up on Complaints Referred to Agencies with No Response Required.

For complaints referred to agencies with no response required, the Special Master is concerned with the lack of any mechanism to determine if the agency investigated, made any adverse findings or took any remedial actions, if necessary. Further, to our knowledge, there is no central tracking mechanism for agency investigations.

IX. INSUFFICIENT OPPORTUNITY TO ASSESS EFFECTIVENESS OF MEASURES DESIGNED TO PREVENT FUTURE MANIPULATION.

The Special Master was directed to recommend measures designed to prevent future violations and to assess implementation of those measures to ensure they are effective. The Special Master has recommended numerous measures and, as set forth above, some of those measures have not been implemented yet. Accordingly, the Special Master has been unable to assess their effectiveness. Further, other measures have been fully or partially implemented but the Special Master has not had sufficient opportunity to assess their effectiveness. For example, the CEP was created by the State as a measure designed to prevent future violations at IDOT and Statewide. IDOT and the State have not fully implemented the CEP and CMS has not provided comprehensive training and education on all aspects of the CEP. As a result, the Special Master has not had an opportunity to assess the effectiveness of these measures designed to prevent future manipulation.

X. OPPORTUNITY TO ASSESS NEW MEASURES IS PARTICULARLY IMPORTANT GIVEN THE STATE'S HISTORY OF FAILING TO IMPLEMENT REFORM RECOMMENDATIONS

Over the years numerous recommendations to reform employment practices have been made and agreed to by the State. In many instances, however, those recommendations were never

implemented; and some were implemented only after this Court's Orders of November 18, 2014, November 28, 2016 and May 1, 2017. Below is a sample of reform recommendations that the State refused to implement or implemented years following the recommendations. Based on this history, it is particularly important that there is sufficient opportunity to (1) ensure the promised reforms are implemented; and (2) assess the success of such reforms.

A. Illinois Office of Internal Audit Findings and Recommendations

In 2005, an audit by the Illinois Office of Internal Audit (IOIA) reviewed IDOT's use of the technical code positions. It found that (1) more than 90% of the titles sampled were consistent with (non-technical) personnel code titles; (2) a significant percentage of job descriptions were outdated; and (3) individuals in *Rutan*-exempt titles were transferred without competitive selection to *Rutan*-covered titles. The IOIA recommended IDOT eliminate the over-designation of "technical" positions, prohibit the transfer of *Rutan*-exempt into *Rutan*-covered positions, and update its job descriptions. Although IDOT agreed to these recommendations, it failed to implement them until 2019, and only after years of subsequent recommendations by both the OEIG and the Special Master.

B. 2009 Illinois Reform Commission Report Recommendations

In April 2009, after a lengthy investigation, the Illinois Reform Commission recommended changes to *Rutan*-exempt hiring in its "100-Day Report." To address State patronage abuses, the Reform Commission recommended changes to "more clearly expose ongoing patronage practices while protecting against similar future corruption." (*See Reform Commission Report at 78*).⁴³

⁴³ The Reform Commission Report is publicly available at https://pols.uic.edu/wp-content/uploads/sites/273/2018/10/ac_irc100dayreport.pdf.

Among many recommendations, the Reform Commission identified the need to: (1) create and regularly update a list of *Rutan*-exempt positions (as well as *Rutan*-covered and Personnel Code positions); and (2) reconcile *Rutan*-exempt positions with the Personnel Code, so that *Rutan*-exempt positions lack job protection and are at-will. (See Reform Commission Report at 78-79). Thus, although the State was on notice as early as 2009⁴⁴ that it was violating *Rutan* principles by affording job protection to *Rutan*-exempt positions, it failed to remedy these violations until after this Court's expansion Order in May of 2017. Not only did it fail to remedy these violations, but it continued to violate *Rutan* principles by making hundreds of political appointments into job protected positions.⁴⁵

C. OEIG 2014 Recommendations

In 2014 the OEIG Staff Assistant report recommended, among other things, that the Governor's Office and IDOT: (1) define and appropriately classify "technical" positions; (2) work with CMS to ensure proper use of "technical" positions; (3) ensure that annual performance reviews are conducted; and (4) conduct regular reviews of *Rutan*-exempt positions in all agencies to ensure compliance with the *Rutan* hiring processes. See OEIG Report, Dkt.3944-2 at 243-245. The Governor's office agreed to implement these recommendations and on July 3, 2014, instructed IDOT to, among other things, (1) create a narrowly tailored definition of "technical"; (2) create and implement personnel policies and procedures for the technical code; (3) review all current Technical Code positions against that "technical" definition to determine whether they are appropriately classified, and 4) if they are not appropriately classified, take the necessary steps to

⁴⁴ Of course, the State knew much earlier that it was violating the *Rutan* principals by providing job protection to "exempt" positions, however by 2009, no one could reasonably deny such knowledge.

⁴⁵ Even after the November 2016 appointment order and the State's agreement not to fill job protected positions through the political appointee process, it continued to do so. (See Exhibit F, 5/18/18 "Rutan-like" Memoranda from Special Master).

move those positions to the State's personnel code. *See* Exhibit O at 2-3, 7/3/14 Letter from Governor's General Counsel, John Schomberg to IDOT Secretary and IDOT General Counsel,. In addition, the Governor's Office instructed IDOT and all other agencies to: 1) audit all current *Rutan*-exempt positions to ensure accurate job descriptions and appropriate designation as exempt; 2) update job descriptions where appropriate; and 3) re-designate as *Rutan*-covered those positions that do not qualify for exempt status. *See* Exhibit P at 2-3, 7/3/14 Letter from Governor's General Counsel, John Schomberg to all Agency, Board, and Commission Heads. As noted elsewhere, many of the recommendations were delayed or not implemented at all.

CONCLUSION

Historical improper patronage practices in the State of Illinois are well documented. Internal auditors, the OEIG and the Reform Commission reported on such abuses, and time after time, made recommendations to the State that were ignored. All the while, the Ethics Act and other state laws and policies were in place prohibiting the patronage practices. The mere existence of these laws and policies did not prevent the illegal behavior and there is no reason to believe these same laws and policies will prevent future recurrences. Although IDOT and the State have made significant strides towards reforming their employment practices, there is more work to be done.

Creation of the Exempt List and the Exempt Employment Plan is a significant achievement. But this alone will not prevent future abuses. If the State does not implement strong policies governing selection of candidates for non-exempt positions, then the Exempt List has limited value. Creation of the proposed CEP is a significant achievement. But many parts of the CEP that were designed to prevent future recurrences have not been implemented. Other problematic issues are not effectively addressed in the CEP.

Regardless of whether the Court continues to utilize a Special Master to oversee IDOT's or the State's employment processes, we believe that vacating the 1972 Decree in its entirety is not warranted and that the State's self-described "ineffective personnel system" that resulted in "*Shakman* non-compliance" will remain in effect.

Dated: September 15, 2020

Respectfully submitted,

/s/ Noelle C. Brennan

Noelle C. Brennan
Kristin H. Carter
NOELLE BRENNAN & ASSOCIATES, LTD.
20 S. Clark St., Suite 1530
Chicago, IL 60603
(312) 422-0001
nbrennan@nbrennan-associates.com
kcarter@nbrennan-associates.com

Kristi Nelson
GAIR EBERHARD NELSON DEDINAS, LTD.
1 East Wacker Drive, Suite 2600
Chicago, IL 60601
(312) 647-2733
knelson@gairlawgroup.com

CERTIFICATE OF SERVICE

I hereby certify that on September 15, 2020, I electronically filed the foregoing **SPECIAL MASTER'S RESPONSE TO STATE'S MOTION TO VACATE THE 1972 DECREE AND UPDATED REPORT ON STATUS OF WORK** with the Clerk of the Court using the CM/ECF system. All counsel of record are registered CM/ECF users and service will be accomplished by the CM/ECF system.

Date: September 15, 2020

Respectfully submitted,

/s/ Noelle Brennan

One of Plaintiffs' Attorneys