

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

MICHAEL L. SHAKMAN, <i>et al.</i>)	
)	No. 69 C 2145
Plaintiffs,)	
)	Hon. Edmond E. Chang
v.)	District Judge
)	
DEMOCRATIC ORGANIZATION OF COOK)	Hon. Gabriel A. Fuentes
COUNTY, <i>et al.</i> ,)	Magistrate Judge
)	
Defendants.)	

**PLAINTIFFS' SUR-REPLY
REGARDING GOVERNOR'S REPLY BRIEF (DKT. 7140)**

INTRODUCTION

Plaintiffs submit this Sur-reply to address several new arguments and a host of newly-cited cases the Governor proffers in his Reply (Dkt. 7140). The new arguments are wrong, and the newly-cited cases do not support vacating the 1972 Decree or discharging the Special Master.

I. Paragraph E(1) of the 1972 Decree Means What it Says: It is Not Limited to “Coercion.”

According to the Governor, the broad language of Paragraph E(1) of the Decree – plainly prohibiting “conditioning, basing or knowingly prejudicing or affecting any term or aspect of governmental employment” of current employees – does not mean what it says. The Governor contends that it is limited to a “coerced political work scheme,” and the “most straightforward interpretation of this language is that it reinforces the prohibition in paragraph E(2) of ‘knowingly causing or permitting any employee to do partisan political work’ by adding that ‘no term or aspect’ of State employment may be conditioned on coerced work.” (Dkt. 7140, Reply at 5-6.) Only now has the Governor fully developed this erroneous argument, and therefore, we address it.

A consent decree is both a court order and a form of a contract. *See McCoy v. Chicago Heights Election Comm’n*, 880 F.3d 411, 414 (7th Cir. 2018); *Kindred v. Duckworth*, 9 F.3d 638, 641 (7th Cir. 1993). Thus, principles of contract interpretation apply. Here, the language is unambiguous, and, therefore, controlling. *See United States v. Armour & Co.*, 402 U.S. 673, 681-82 (1971) (“Consent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms. . . . [T]he scope of a consent decree must be discerned within its four corners, and not by reference to what might satisfy the purposes of one of the parties to it.”); *see also Goluba v. Sch. Dist. of Ripon*, 45 F.3d 1035, 1038 (7th Cir. 1995) (citing *Armour* and holding that the explicit terms of a consent decree control unless the terms are facially

ambiguous). Section D of the Decree contains the general declaration that a coerced political work scheme is prohibited. Section E(1) sweeps more broadly, enjoining the Governor and other defendants from “directly or indirectly, in whole or in part: (1) conditioning, basing or knowingly prejudicing or affecting *any term or aspect* of governmental employment, with respect to one who is at the time already a governmental employee, upon or because of any political reason or factor.” (Dkt. 6943-2 at 4 (emphasis added).) This unambiguous language controls and precludes the Governor’s crabbed new reading. The Governor’s complete acquiescence until now in the application of Section E(1) buttresses its plain meaning. *See, e.g., Stone v. Signode Indus. Group LLC*, 943 F.3d 381, 389-90 (7th Cir. 2019) (“How the parties to a contract actually perform their contractual undertakings is often . . . persuasive evidence of what the parties understood the contract to require.”). Until this round of briefing neither this Governor nor his predecessors have asserted that Section E(1) is so limited that it is essentially of no effect.

The Governor’s reliance on Judge Marovitz’s 1972 opinion does not hold up. (Dkt. 7140, Reply at 3-4 (citing, 356 F. Supp. 1241 (N.D. Ill. 1972).) Notably, that opinion was issued *after* entry of the Decree. Certain non-settling defendants, not including the Governor, had refused to sign the Decree precisely because Paragraph E(1) swept more broadly than coerced political work. 356 F. Supp. at 1247-48. Judge Marovitz interpreted *Shakman I* and the law at that time to prohibit coerced political work by governmental employees, but to allow patronage hiring and firing, except where such doing so impacted voter-candidate-taxpayer rights. He wrote:

We therefore hold that *Shakman [I]* prohibits only political considerations *which effect [sic] voter and candidate rights*. The firing of Republicans by incoming Democrats and vice versa is permitted so long as retention is not conditioned on coerced political activity or contributions.

Id. at 1248. Based on this view of the law (clearly wrong, as discussed below), Judge Marovitz, granted in part the motion of the Chicago Park District and other non-settling defendants. He

struck that portion of the prayer for relief seeking to enjoin “*all* and *any* political considerations in public employment.” *Id.* He even stated in *dictum* that “Section E(1) of the [1972 Decree] is totally unnecessary under *Shakman*, *Alomar* and *Burns* [district court decisions] and we will entertain motions to eliminate that clause from the consent decree.” *Id.* at 1248-49. Needless to say, neither the Governor nor any other defendant filed such a motion.¹

The import of Judge Marovitz’s ruling is twofold. First, it makes clear that in 1972 the parties and Judge Marovitz viewed Paragraph E(1) as sweeping far more broadly than prohibiting coerced political work. Judge Marovitz struck the prayer for relief to enjoin “all and any political considerations in public employment” because he interpreted the law at that time as not supporting such relief. His *dictum* regarding whether the language was “unnecessary” was based on his view of the law. Otherwise he would have had no reason to invite a motion to modify the Decree to eliminate Paragraph E(1).

Second, the Governor’s reliance on this ruling undermines one of the major themes in his Reply. He argues at length that a decree should be vacated if the substantive federal law underlying a decree at the time of its entry later erodes or disappears. (*See* Dkt. 7140, Reply at 6, 25-26, 51.) Judge Marovitz’s opinion highlights the fact that while he believed in 1972 that federal law did not support Paragraph E(1), it is beyond dispute that the Supreme Court clarified in the *Elrod-Branti-Rutan* trilogy that Paragraph E(1) *is* the law. This is the opposite of what occurred in *Evans v. City of Chicago*, 10 F.3d 474 (7th Cir. 1993) (*en banc*), the plurality opinion that the Governor cites extensively (without acknowledging that it is only a plurality ruling). (*Id.*) In *Evans* (fully discussed in Section IV below) the Seventh Circuit overruled an earlier opinion in that case, which

¹ Judge Marovitz withdrew from the case shortly thereafter, following Plaintiffs’ motion asking that he do so.

provided the basis for the consent decree, rendering the decree wholly unmoored from any federal underpinning. In contrast, here the Seventh Circuit has never overruled *Shakman I*, which supported the Decree, and the Supreme Court’s patronage trilogy has established firm federal bedrock under the Decree, including the critical Paragraph E(1). *See Shakman v. Democratic Org. of Cook Cty.*, 829 F.2d 1387, 1398-99 (7th Cir. 1987) (“*Shakman II*”) (1972 Decree remains in effect).

When Judge Marovitz wrote in 1972 it was an open question whether a broad claim could be stated for patronage hiring and firing, as well as political discrimination in terms and conditions of employment. Among the cases that Judge Marovitz cited in finding that such a claim could not be stated was the district court’s opinion in *Burns v. Elrod*, which, of course, made its way to the Supreme Court, which reversed it. The Supreme Court squarely rejected Judge Marovitz’s view that Democrats are free to fire Republicans and vice versa. Read together, the plurality and concurring opinions in that case hold that a non-policymaking, non-confidential government employee cannot be discharged or threatened with discharge based on political beliefs. *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion); 427 U.S. at 375 (concurring opinion).

Branti v. Finkel, 445 U.S. 507 (1980), expanded upon *Elrod*, and rejected the argument, which mirrored Judge Marovitz’s view, that the Constitution prohibits only “coerced” political fealty, but not retention of employees based on political sponsorship. The Court held that “[s]uch an interpretation would surely emasculate the principles set forth in *Elrod*,” and “there is no requirement that dismissed employees prove that they, or other employees, have been coerced into changing, either actually or ostensibly, their political allegiance.” *Id.* at 516-7. A discharge based on political affiliation alone suffices to state a claim. *Id.*

Finally, *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), laid to rest any vestiges of Judge Marovitz’s view, and completed the foundation of federal law underpinning Paragraph E(1). There, the Court held that *Elrod* and *Branti* are not limited to patronage dismissals of non-policymaking government employees, but also extend to “promotions, transfers, and recalls after layoffs based on political affiliation or support.” *Id.* at 75. Although it goes beyond the 1972 Decree, *Rutan* also forbade patronage hiring of government employees for non-exempt positions. *Id.* at 77-79.

The fact that such federal law was not yet established in 1972 does not undermine the sweep of Paragraph E(1). To the contrary, even the cases the Governor cites acknowledge that a consent decree can extend beyond the precise contours of federal law, as well as include provisions as to which the law is unsettled: “It is well established that consent decrees may embody conditions beyond those imposed directly by the Constitution itself.” *Komyatti v. Bayh*, 96 F.3d 955, 959 (7th Cir. 1996) (“The condition must, of course, be one that is related to elimination of the condition that is alleged to offend the Constitution.”); *see also Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 389 (1992) (“we have no doubt that . . . petitioners could settle the dispute over the proper remedy for the constitutional violations that had been found by undertaking to do more than the Constitution itself requires . . . , but also more than what a court would have ordered absent the settlement”); *Evans v. City of Chicago*, 10 F.3d 474, 476 (7th Cir. 1993) (plurality opinion) (“Governments may undertake to do more than the Constitution requires,” and an unclear but arguable federal claim “would leave room for settlement”); *Local No. 93, Int’l Ass’n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 525 (1986) (“[I]n addition to the law which forms the basis of the claim, the parties’ consent animates the legal force of a consent decree. . . . Therefore, a federal court is not necessarily barred from entering a consent decree

merely because the decree provides broader relief than the court could have awarded after a trial.”); *Kindred*, 9 F.3d at 641 (“Indeed, it is a rare case when a consent decree establishes only the bare minimum required by the Constitution. Often, it is precisely because parties are unsure of the current posture of the law that they are willing to compromise their positions.”).

Finally, the Governor’s “coercion-only” theory suffers from a flaw in logic. The focus of this case in 1972 was a pervasive, entrenched patronage system throughout state and local government that operated in part through coercion of governmental workers. It is, therefore, not surprising that the Decree enjoins coercion. But the case was also about less extreme but no less pervasive forms of political discrimination. The Decree clearly and purposefully went well beyond prohibiting coerced political work – and the Supreme Court trilogy of cases cited above hold that to be proper. The broadly-worded prohibition in the Decree of any political manipulation of state employment was necessary then, and is necessary now, to address the harms that flow from the patronage system. Since 1972, the Supreme Court has squarely adopted that view.

Accordingly, the measure of whether the Governor has complied with the Decree for purposes of the Governor’s motion to terminate extends to any means that can reasonably be used to affect the terms of employment of any existing State employees, including through devices the Special Master identified such as temporary appointments, lack of job standards, personal service contracts and others. They are properly considered in evaluating the Governor’s claim to have eliminated patronage practices and created a durable remedy against the unlawful practices prohibited in the Decree and by *Elrod* and *Branti*. The Governor’s motion to terminate the 1972 Decree should not be measured by whether the Governor can prove that there is no continuing coerced political work (a burden the Governor has not attempted to carry, incorrectly claiming that it is the Plaintiffs’ burden) but by the broader standards of the Decree.

II. The Decree Applies to Hiring from Within.

In a new argument, the Governor asserts that Paragraph E(1) does not apply when a State employee moves to a different state job. (Dkt. 7140, Reply at 7.) The Governor does not even attempt to square this assertion with clear language of Paragraph E(1), which applies to any “current employee.” Nor does the Governor acknowledge that it has never before contested the applicability of this Paragraph to hiring from within, or that Judge Schenkier plainly recognized its application in his ruling appointing the Special Master. (*See* Dkt. 6789-1 at 141 (10/22/14 Tr. at 14:11-15) (IDOT’s hiring and transfers of Staff Assistants gave court “jurisdiction under the [1972] decree to determine the extent to which political considerations may have improperly affected the terms and conditions of existing employees”).) Likewise, Judge Schenkier’s later entry of the order establishing the “John Doe” procedure and his rulings regarding two contested John Doe applicants were grounded on Paragraph E(1) and its applicability to current State employee transfers from one job to another. (*See* Dkt. 5644, 12/4/17 Order, Dkt. 6181, 1/22/19 Order, and Dkt. 6375, 6/18/19 Order; Tr. 1/22/19 at 9, 11.) This interpretation and application of Paragraph E(1) is the law of the case. It has not been challenged until now, without recognition of the law of the case doctrine.

The Governor’s reliance on the Seventh Circuit’s reversed decision in *Rutan* is misleading. (Dkt. 7140, Reply at 7.) The Governor ignores that the Supreme Court, in reversing the Seventh Circuit, expressly held that political considerations may not condition promotion, transfer, and rehiring decisions. *Rutan*, 497 U.S. 62, 75. Thus, his argument that the Decree “does not and cannot apply” to existing employees who are promoted or transferred to a new position is wrong. *Id.* That is likely why he pivots, converting an argument about what the plain language of the Decree means into an argument on whether the Plaintiffs have standing to enforce the Decree.

This is a device that the Governor deploys repeatedly. Time and again he conflates the merits regarding the unlawfulness of patronage practices with Plaintiffs’ alleged lack of standing regarding such practices. This sleight-of-hand is most extreme in his assertion that the blatant misconduct regarding Staff Assistants was a “problem” but “not a *Shakman* problem,” although he grudgingly nods to the notion that the Decree might apply to “post-hiring transfer of existing employees and the subset of former Staff Assistants involved.” (Dkt. 7140, Reply at 21-22.) In so arguing, he claims Plaintiffs lack standing. But there and elsewhere in the Reply, the Governor ignores the critical distinction the Seventh Circuit has drawn *in this very case* between the existence of standing at the complaint stage and at the post-judgment enforcement or sunset stage. (See Dkt. No. 7104, Plaintiffs’ Combined Response/Reply at 27-28, citing *O’Sullivan v. City of Chicago*, 396 F.3d 843, 868 (7th Cir. 2005) (“*Shakman III*”) (holding that on a motion to vacate a decree, “the focus of the district court shall be not on the law of standing as a jurisdictional concept but on the equitable standards embodied in Rule 60(b)(5)”; *Shakman v. City of Chicago*, 426 F.3d 925, 936 (7th Cir. 2005) (“*Shakman IV*”) (same).

In violation of the directive of *Shakman III* and *IV*, the Governor now cites cases concerning a plaintiff’s standing *at the pleading or pre-judgment stage*. Only one involved a motion to vacate a decree, and that case does not help the Governor. See *Arizona Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 133 (2011) (affirming dismissal of complaint on motion to dismiss where taxpayers lacked standing to challenge Arizona tuition tax credit); *Aslin v. Fin. Indus. Regulatory Auth., Inc.*, 704 F.3d 475, 477 (7th Cir. 2013) (affirming dismissal of complaint where action was moot because the plaintiff broker was no longer counted as a member of a disciplined firm under the challenged rule); *Local No. 93, Int’l Ass’n of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 525 (1986) (affirming entry of consent decree over

objection of intervening labor union); *Lopez-Aguilar v. Marion Cty. Sheriff's Dep't*, 924 F.3d 375, 396–97 (7th Cir. 2019) (on appeal of entry of a consent decree brought by intervening state, holding that the district court erred in entering the consent decree where plaintiff lacked standing to seek equitable relief); *Perkins v. City of Chicago Heights*, 47 F.3d 212, 218 (7th Cir. 1995) (on appeal of entry of consent decree brought by two class members, holding that “the district court approved a consent decree that modified a form of government without the state-mandated voter approval and without making the requisite findings of violations of federal law necessitating such changes” and remanding for a new agreement or a trial).²

The only newly-cited case involving vacating a decree is *David B. v. McDonald*, 156 F.3d 780 (7th Cir. 1998). There the Seventh Circuit vacated a decree because the Eleventh Amendment deprived the court of jurisdiction after the plaintiffs’ claim changed, thus changing the identity of the appropriate defendants. Here, there is no such change in claims or defendants. *David B.* did not address the Rule 60(b)(5) standards. But *David B.* was discussed and considered in *Shakman III*, which held that the Rule 60(b)(5) analysis differs from standing principles applicable at the beginning of a case.

III. The Governor Improperly Flips the Burden.

Incorrectly applying pre-judgment standing rather than the Rule 60(b)(5) standards required by *Shakman III*, and conflating standing with the interpretation of the Decree, are not the only elements of note in the Governor’s Reply. He also repeatedly tries to shunt his burden onto

² Contrary to the Governor’s assertions, the consent decree in *Perkins* was not “an old decree” and the court’s statement regarding invalidating the decree “sooner rather than later” was in response to arguments that the appealing plaintiffs had waived an argument. (Dkt. 7140, Reply at 52.) The full quote is “Perkins and McCoy have standing to appeal the decree and we refuse to ‘prolong the injury caused by [the] consent decree arrived at through an unfair process by failing to invalidate it sooner rather than later,’ when a different aggrieved party may make the argument.” *Perkins*, 47 F.3d at 218.

Plaintiffs. The Governor must prove the absence of such violations and the existence of a durable remedy. (*See* Dkt. 7104, Plaintiffs’ Response/Reply at 6-9.) Rather than present such evidence, he relies on the existence of systems and processes, some of which, like the Comprehensive Employment Plan, have not yet been implemented, much less monitored by the Special Master or reviewed by the Court for effectiveness; others, like electronic hiring, are not fully implemented and functioning. Creation of processes is necessary, but not sufficient. They must work in practice. That has not happened. A period of monitoring the implementation of the new policies is needed before the Governor can carry his burden under Rule 60(b).

The Special Master has identified reasons to have concerns about whether there are continuing violations and whether the processes and policies proffered by the Governor as a “durable remedy” are susceptible to political manipulation. The Governor bears the burden of showing the absence of such violations and the implementation of a durable remedy. He does not do so through a critique of the Special Master’s concerns, since a critique is not affirmative evidence. Nor is it reasonable for the Governor to assign the burden to Plaintiffs when Plaintiffs have not been afforded the right to pursue discovery; or to chide the Special Master for not overcoming a burden she does not bear, particularly when all participants in this case agreed with the shift of her focus from past violations to development of a durable remedy.

Cases the Governor cites support Plaintiffs’ showing that a far more well-developed evidentiary record is needed to justify sunset. *Jackson v. Los Lunas Cmty. Program*, 880 F.3d 1176, 1206 (10th Cir. 2018) (a case Plaintiffs cite) says, citing *Horne*, that the “district court should have ‘ascertain[ed] whether ongoing enforcement of the [decrees] was supported by an ongoing violation of federal law.’” But it also added that “[t]he burden of showing compliance with federal law is, of course, on the Defendants.” The Governor ignores this part of *Jackson*, flipping the

burden on Plaintiffs. (*See, e.g.*, Dkt. 7140, Reply at 2 (“Nothing in Plaintiffs’ filing, the Special Master’s Response, or the factual record in this case allows the Court to determine that there is an ongoing violation of federal law, or that there has been a violation of federal law in the past six years. That fact should compel the outcome.”).)

Other cases the Governor newly cites underscore his failure to meet his burden and the type of showing needed to do so. For example, in *John B. v. Emkes*, “the district court held an 18–day evidentiary hearing, during which it heard testimony from 31 witnesses and admitted 260 exhibits. The court also received 345 pages of proposed findings of fact and conclusions of law from the parties. Additionally, the district court had heard credible testimony during the 18-day hearing of [defendant] TennCare’s director regarding its progress and abilities to comply with federal law after the end of judicial supervision.”³ 710 F.3d 394, 413 (6th Cir. 2013); *see* Dkt. 7140, Reply at 27. This undermines the Governor’s position that adoption of policies and systems is enough, without presentation of evidence of how those systems operated in practice. Here, the Governor has not even offered a conclusory, self-serving affidavit making such promises – a tacit admission that if he cannot persuade the Court as a matter of law to terminate the Decree, he cannot make the factual showing that is required.

IV. The Governor Misapplies the “Ongoing Violation” Consideration.

The Governor repeatedly quotes from Judge Easterbrook’s plurality opinion in *Evans*. But *Evans* does not apply here for several reasons, as the details of that case show: In the 1980s, when interest rates soared far higher than the statutory judgment rate, the City of Chicago played an

³ The Court continued: “The court later issued a 38-page opinion that included a thorough examination of defendant TennCare’s compliance with the decree and the Medicaid Act.” *Id.* at 399. In upholding vacatur, the Sixth Circuit noted that TennCare had not merely “adopted certain policies and procedures” but had implemented them and the district court had “examined how TennCare provided those services ‘[i]n practice[.]’” *Id.* at 408.

arbitrage game in which it sat on judgments larger than \$1,000 for as much as four years while paying the smaller judgments. A panel of the Seventh Circuit (*Evans I*) affirmed a lower court ruling that this scheme violated equal protection, while vacating as premature a ruling that the scheme violated due process. On remand the district court leaned on the City to enter into a consent decree, which it did, requiring the City to pay judgments in the order they are entered. But the parties disagreed over whether the City owed damages for the prior delays. The district court concluded the City was liable under the equal protection theory, and did not decide the due process issue. The City appealed and a Seventh Circuit panel reversed and overruled *Evans I* (“*Evans II*”), holding that the City had a rational basis to pay small judgments ahead of large ones. On remand from *Evans II*, the City moved to vacate the consent decree under Rule 60(b)(5), asserting that language in the rule that a “prior judgment upon which it is based has been reversed or otherwise vacated,” and also citing the “no longer equitable” ground of Rule 60(b)(5). The district court denied the motion on the basis that the undecided due process theory provided support for the decree. That led to *Evans III*, upon which the Governor relies.

Evans III is an *en banc* ruling that vacated the decree. The decisive vote for reversal was Judge Ripple’s concurrence, which did so on the basis that the *Evans II* reversal changed the law, thereby satisfying the *Rufo* standard, and the due process claim was too weak and would not have survived *Evans II* had it been presented then. Section II of Judge Easterbrook’s plurality opinion essentially does the same regarding equal protection. It holds that the overruling of *Evans I* eliminated the judgment on which the decree was “based.”

Critical distinctions from this case are apparent. Unlike *Evans*, in which the court in the same case eliminated the basis for the decree, there has been no ruling undermining the bases for the 1972 Decree. Quite the opposite, in *Shakman II* the Seventh Circuit expressly stated that the

Decree remained unaffected. And, as shown above, the Supreme Court trilogy clearly validated the legal underpinnings of the Decree. *Evans* says nothing about standing, even though the Governor cites it when he conflates standing with merits issues. *Evans* concerned whether a substantive violation of federal law underlay the decree. The key difference between this case and *Evans* is that the decree in *Evans* had lost all mooring in federal law. 10 F.3d at 476. Here, political discrimination against government employees is still unlawful.

Much of the language from *Evans* that the Governor quotes is characteristically forceful statements by Judge Easterbrook from Part III of the plurality regarding federalism and the restraints on judicial interference with the workings of government. That begs the question here, however. Plaintiffs have acknowledged that the objective of appointing the Special Master to monitor compliance with the Decree and report to the Court is to end judicial supervision and restore full control to the State. The question is not “whether,” but “when.” The fatal flaw of the decree in *Evans*, which mandated decree sunset, was that it lost all federal underpinning and rested on nothing more than naked consent by municipal officials binding future officials.

The Governor omits the following key language from its many quotations: “A state official’s promise to follow a rule of federal law retains its force because of the continuing effect of the law, which the state cannot alter. *And a settlement of a dispute about the meaning of that law may be enforced if the agreement compromises genuine uncertainties, for then the public official actually may be enhancing or preserving the powers of the democratic branch (by avoiding a worse outcome after trial) rather than ceding the powers of the government.*” *Id.* at 478-79 (emphasis added). The language immediately following, which the State does quote, is this: “This method of justifying the implementation of consent decrees implies, however, that the court must ensure that there is a substantial federal claim, *not only when the decree is entered but also when*

it is enforced, and that the obligations imposed by the decree rest on this rule of federal law rather than the bare consent of the officeholder.” *Id.* at 479 (emphasis added). Read in full, the *Evans* plurality stated that bare consent is not enough to support a decree; some “genuine uncertainty” regarding a viable federal claim must exist. The 1972 Decree easily passes that test, because the Decree’s provisions rest on well-established Supreme Court law. Moreover, the Court in *Shakman III* was well aware of *Evans*, which it cited. 396 F.3d at 862-65.

The Seventh Circuit has read Judge Easterbrook’s plurality opinion in *Evans* as stating that a consent decree that does not serve any federal purpose may be set aside: “Judge Easterbrook, writing for the plurality, indicated that the consent decree had to be set aside because a district court may not require a unit of state or local government to abide by a consent decree that does not serve *any* federal interest.” *Komyatti*, 96 F.3d at 962. The Seventh Circuit added: “Although the consent decree was valid when entered, this court ordered it vacated after it concluded that the plaintiffs’ underlying claims were not supported by the United States Constitution. In the absence of a live federal claim, therefore, the consent decree in *Evans* no longer served any federal purpose.” *Id.* at 963. Here, there can be no doubt that the Decree serves an important federal purpose – eliminating patronage practices affecting thousands of State employees, voters, and candidates for office.

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Respectfully submitted,

/s/Edward W. Feldman

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Certificate of Service

I, Edward W. Feldman, an attorney, state that on October 29, 2020, I caused a true and correct copy of the foregoing to be served upon counsel of record through the Court's CM/ECF system.

_____/s/Edward W. Feldman