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SUCCESSFUL REFORM LITIGATION: THE *SHAKMAN* PATRONAGE CASE

C. RICHARD JOHNSON*

The history of the long-running *Shakman* federal patronage litigation[1] demonstrates two important points about litigation that seeks systemic changes in governmental structures or policies. On the one hand, the success of the case in reducing the impact of coercive patronage practices on the electoral system in Chicago and Cook County, Illinois, demonstrates that well-constructed judicial relief can be exceptionally effective in dealing even with long-standing and deeply ingrained governmental abuses. Indeed, the relief obtained in *Shakman* has led to a dramatic opening of opportunity in electoral politics in Cook County, resulting in a significant increase in the vigor of local political competition. Defendants themselves have acknowledged that the case has brought about a "revolution" in local political life.

On the other hand, however, the case further demonstrates that courts which are reluctant to interfere with historic and systemic practices have a ready array of procedural reasons to exclude such claims from review. The Seventh Circuit, which in 1970 upheld the standing of plaintiff independent candidates and voters in *Shakman* to challenge patronage practices generally, in 1987 changed course and ruled that the same plaintiffs lacked standing to challenge defendants' patronage *hiring* practices. Ironically, the court's change of course may well have resulted in part from the very success of the relief granted in the case in prohibiting patronage *firings*. That relief made the injury from patronage hiring seem less substantial.

The change in outcome on the standing issue at successive stages of the *Shakman* case demonstrates the bellwether nature of the standing doctrine on the willingness of the judiciary to consider challenges to governmental policies. The outcome of the standing issue is especially important in so-called reform litigation, which focuses on practices with a broad public impact. In some cases that public impact is more obvious than any individualized injury.

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1. The history of the case is set forth at 829 F.2d 1387 (7th Cir. 1987), *rev'g* 310 F. Supp. 1398 (N.D. Ill. 1969).

I. LEGAL AND HISTORICAL BACKGROUND FOR THE *SHAKMAN* PATRONAGE CASE

The *Shakman* case was filed in 1969. It followed a series of major decisions by the United States Supreme Court which evidenced the Court's determination to eliminate state impediments to a free and fair electoral process. For instance, in *Baker v. Carr*[2] the Supreme Court ruled that challenges to state legislative apportionment were justiciable. The Court held that voters who allege facts showing disadvantage to themselves as individuals from malapportionment have standing to sue.[3] The Court set forth the test for standing as whether plaintiffs allege

> such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions[.] This is the gist of the question of standing.[4]

Baker was followed by *Reynolds v. Sims*[5] which adopted the one person, one vote rule. As the Court ruled in *Reynolds*,

> each and every citizen has an inalienable right to full and effective participation in the political processes of his State's legislative bodies.[6]

In a further set of cases in the 1960s, the Supreme Court also held that the fourteenth amendment forbids states from unfairly inhibiting political competition through methods such as establishing onerous ballot access requirements. In *Williams v. Rhodes*,[7] the Court stated that overly difficult ballot access restraints violated both equal protection and first amendment rights:

> In the present situation the state laws place burdens on two different, although overlapping, kinds of rights—the rights of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms. We have repeatedly held that the freedom of association is protected by the First Amendment. And of course this freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States.[8]

And in *Moore v. Ogilvie*,[9] the Court struck down an Illinois law that required independent candidates to secure petition signatures from citi-

2. 369 U.S. 186 (1962).
3. *Id.* at 206.
4. *Id.* at 204.
5. 377 U.S. 533 (1964).
6. *Id.* at 565.
7. 393 U.S. 23 (1969).
8. *Id.* at 30-31.
9. 394 U.S. 814 (1969).

zens in at least half the counties of the state, again on the basis of the equal protection clause. In so doing, the Court stated that

> all procedures used by a state as an integral part of the election process must pass muster against the charges of discrimination or of abridgement of the right to vote.
>
> It [the Illinois statute], therefore, lacks the equality to which the exercise of political rights is entitled under the Fourteenth Amendment.[10]

During the late 1960s, Chicago and Cook County were hardly examples of a competitive political system in which all candidates and voters had rights to "full and effective participation in the political process." Power was intensely concentrated in the regular Democratic party organization. There was no effective political opposition or competition. There was only one opposition alderman in the fifty member City Council, and candidates of the regular Democratic organization won virtually every election conducted county-wide or in the city of Chicago. There were a variety of reasons for this unusual concentration of governance, including the political skill of Mayor Daley. One of the most important tools used to maintain such a noncompetitive political system was, however, the massive Democratic patronage employment system.

II. THE PATRONAGE CASE

Patronage control of public employment has been a chief characteristic of Chicago and Cook County politics for at least half a century. The *Shakman* case involves a comprehensive constitutional challenge to those patronage practices. The case was brought in 1969 in the United States District Court for the Northern District of Illinois by Michael L. Shakman, a candidate for Illinois' Constitutional Convention of 1970, and by Paul M. Lurie, one of his voter-supporters. They brought their case individually and on behalf of the classes of independent candidates for public office in Cook County (that is, candidates who were not the candidates of the "regular" organization of a political party) and their voter-supporters. They alleged that the patronage employment system that prevailed in Cook County unfairly tilted the electoral scales in favor of the regular Democratic organization and its candidates and thus abridged the constitutional rights of independent candidates and their voter-supporters to equal protection of the law in the electoral process and to first amendment freedoms of speech and association.

The defendants in the case included many of the major public em-

10. *Id.* at 818-19.

ployers in Cook County, including the City of Chicago and its Mayor, the Chicago Park District, and the various other elected officers of Cook County. The Democratic Party County Central Committee for Cook County a party organization, was also a defendant.

The complaint alleged that obtaining and maintaining jobs with the defendant public employers was based on active political support for a single favored political faction, the Cook County regular Democratic organization. Usually, it was necessary for an applicant to obtain the recommendation, called "sponsorship," of a ward or township party committeeman, in order to get one of these Democratic patronage jobs. Sponsorship, in turn, required the applicant to perform precinct work or to make financial contributions (typically a percentage of the worker's governmental salary) to the ward or township organization and its candidates for public office. Similarly, in order to be sure to keep the job, the employee had to stay in the good graces of the political sponsor.

Failure to provide continuing political support for the sponsoring official—in some cases measured by the actual vote total in the precinct—could cost the patronage worker the job.[11] In the special patois of the patronage system, politically discharged workers were said to be "viced"; this term apparently derived from the form of the letter used to sponsor replacement patronage appointees who were sponsored *vice* (instead of) the fired employee. Conversely, it was common for employees to avoid being fired for poor job performance because of the support of their political sponsor. Public employment was thus maintained for the benefit of the political party, rather than for the benefit of the public.

The scale of the system was massive. There were up to 40,000 Democratic patronage jobs in Cook County. The patronage employment system was alleged to have resulted in a substantial disadvantage to independent candidates and voters. The system produced a large political treasury, as well as a virtual army of precinct workers, for the benefit of candidates of the Cook County regular Democratic political organization. Typically, patronage employees had to return two percent of their salaries to the sponsoring regular Democratic organization, as well as to provide precinct political work.

Precinct work and financial contributions are very important factors in electoral outcomes. Precinct work is especially significant in low-visi-

11. Strikingly, a case called just before *Shakman* at one of the many court calls in the patronage litigation involved the sentencing of a precinct worker for vote fraud. He testified that he committed the fraud because he was afraid that otherwise he would lose his patronage job. The patronage system is a major factor in vote fraud. Vote fraud is, of course, more understandable as the result of political workers wanting to obtain or retain jobs, than as a result of an excess of ideological zeal.

bility elections. Accordingly, the patronage system gave officially favored candidates a massive, government-funded electioneering advantage over independent candidates and voters who did not have the benefit of that coerced political support. The particular election in which Mr. Shakman was a candidate, for delegate to Illinois' 1970 Constitutional Convention, illustrated the effect of the patronage system on electoral outcomes. Out of over 40,000 votes cast, Mr. Shakman lost the election by about 500 votes, a number of votes considerably fewer than the number of patronage employees in his district. Patronage workers reported that they could not support Mr. Shakman because it would jeopardize their jobs. This extensive patronage system was alleged to have been instrumental in producing the overwhelming and self-perpetuating dominance of the regular Democratic organization.

Plaintiffs also alleged that the patronage system abridged their first amendment rights of speech and association. Because the system utilized the coercive power of the state to dissuade those persons who had or who might want patronage jobs from supporting independent candidates, those candidates' and voters' rights of political association and speech were abridged.

The case was initially assigned to Judge Abraham Marovitz, a former Illinois state senator who had been active in the Chicago regular Democratic organization. Judge Marovitz dismissed the case on the ground that plaintiffs lacked standing as candidates and voters to challenge the patronage employment system, and that standing lay only with the affected employees themselves.[12]

A. The Initial Decision of the Court of Appeals

On appeal, the United States Court of Appeals for the Seventh Circuit reversed.[13] Judge Thomas E. Fairchild of Wisconsin (a state without a tradition of patronage) wrote the majority opinion. The Seventh Circuit's decision had three basic holdings. First, it held that plaintiffs had standing to bring the case, since the patronage employment system allegedly resulted in a massive electioneering advantage for the regular Democratic organization, with a corresponding disadvantage to competing candidates and their voter-supporters.[14]

Second, the court held that plaintiffs had stated a claim upon which relief could be granted. Analyzing the case principally from the perspec-

12. Shakman v. Democratic Org., 310 F. Supp. 1398 (N.D. Ill. 1969).
13. 435 F.2d 267 (7th Cir. 1970), *cert. denied*, 402 U.S. 909 (1971).
14. *Id.* at 269 (citing Baker v. Carr, 369 U.S. 186, 204 (1962)).

tive of the equal protection clause, the court held that candidates and voters have a right to an equal chance and an equal voice in elections, free from substantial state-created inequalities. In this regard, the court relied on the Supreme Court precedents of the 1960s discussed above, and applied the equal protection clause to the campaign aspects of the electoral process.[15]

Finally, the court observed that public employees have the same right as anybody else to engage or not to engage in lawful political activity, absent any Hatch Act-type statute applicable equally to all political factions. This holding was especially significant, for while numerous Supreme Court cases had indicated that the states may not constitutionally condition public employment upon political orthodoxy,[16] *Shakman* was the first case that applied this basic principle to the long-standing and far more prevalent practice of conditioning public jobs upon support of a favored political party or faction.[17]

B. The 1972 Consent Decree

Upon remand to the district court, plaintiffs filed extensive discovery requests concerning the operation of the Cook County Democratic patronage system. These included a subpoena for the deposition of Mayor Daley's secretary at the Democratic Party County Central Committee (of which Mayor Daley was Chairman). The day before the secretary's deposition was scheduled, counsel for the Central Committee indicated to plaintiffs that it would be desirable for the parties to discuss the case with a view towards a less adversarial posture. There then began an extraordinarily intense period of negotiations aimed towards a settlement of the case. It appeared that Mayor Daley and other key defendants did not believe that a defense of the practice of political firings was tenable. Some, including Mayor Daley, may even have thought the practice politically troublesome or, in some cases, unjust. However, the practice of tying *hiring* to political support was too important to the party

15. *See* Moore v. Ogilvie, 394 U.S. 814 (1969); Williams v. Rhodes, 393 U.S. 23 (1968); Reynolds v. Sims, 377 U.S. 533 (1964); Baker v. Carr, 369 U.S. 186, 204 (1962). Since 1970, the United States Supreme Court has also applied the equal protection analysis to electioneering activities. *See* Buckley v. Valeo, 424 U.S. 1 (1976).

16. *See* Keyishian v. Board of Regents, 383 U.S. 589 (1967); United Pub. Workers v. Mitchell, 330 U.S. 100 (1949); *see also* Wieman v. Updegraff, 344 U.S. 183, 191-92 (1952) ("Congress could not enact a regulation providing that no Republican, Jew or Negro shall be appointed to public office.").

17. Subsequently, in Illinois State Employee's Union v. Lewis, 473 F.2d 561 (7th Cir. 1972), *cert. denied*, 410 U.S. 928 (1973), the Seventh Circuit held that patronage firings violate the constitutional rights of the discharged employees. In 1976, the United States Supreme Court similarly ruled that political firings were unconstitutional. Elrod v. Burns, 427 U.S. 347 (1976).

organization to give up by agreement. So only a partial settlement of the case was able to be reached.

A set of basic principles was drafted which stated that *once hired*, an employee would be free from political coercion, and that no political work would take place on public time. The practice of political hiring was left for continued litigation in the case. A meeting of the Democratic Party County Central Committee was held and the short statement of principles was approved.[18] A consent decree was prepared to embody this agreement. The decree provided for a permanent injunction forbidding "conditioning, basing or knowingly 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."[19]

The injunction applies to all nonfederal public employment within the territory of the Federal District Court for the Northern District of Illinois. The injunction is binding on the City of Chicago, most elective officers of Cook County, the Democratic County Central Committee, and on any of their successors, present or future members, officers, agents, employees, and anyone with notice of the decree who acts in active concert with anyone named or referred to in it.[20]

The decree is not limited to political firings. Rather, it applies to any kind of employment decision with respect to a person once hired. The decree thus applies to firings, demotions, transfers, suspensions, harassment and failures to give or consider employees for promotions. And it adopts a clear rule: politics is simply not to be taken into account with regard to any of the actions. The consent decree provides that any registered voter may apply to the district court to enforce or seek relief for violation of the injunction. The decree is thus to be enforced through individual actions brought by affected persons themselves. By establishing a "bright line" rule forbidding all political factors from affecting employment, public officials are given clear guidance as to compliance with the decree.

The consent decree did not, however, settle all of the issues in the case. It specifically provided that the court would retain jurisdiction to determine:

a) What employment positions should be exempt from the provisions of the decree;

18. The fact that this action was taken by the Central Committee illustrated that it was the party organization which essentially ran the governmental employment system.

19. Judgment at para. E, *Shakman* (No. 69 C 2145).

20. *See* FED. R. CIV. P. 65(1).

b) Whether defendants' political hiring practices violated plaintiffs' rights; and

c) What further orders and direction would be necessary to carry out the judgment.[21]

The original Democratic defendants, wishing to avoid unilateral disarmament, conditioned their agreement to entry of the decree upon plaintiffs obtaining similar injunctive relief against the Governor and Secretary of State of Illinois. Plaintiffs accordingly modified their complaint to include these statewide offices, then held by Republicans, who, after further negotiations, also agreed to be bound by the decree.

The district court approved this partial settlement of the case and on May 5, 1972, entered the consent decree. Subsequently, additional defendants, including the patronage-rich Chicago Park District, added when the state offices were brought into the case, also joined in the consent decree. The decree thus now binds nearly all state, Cook County and City of Chicago public employers within the territory of the District Court for the Northern District of Illinois. It protects over 100,000 public employees.

C. *Enforcement and Effectiveness of the 1972 Consent Decree*

It is undisputed that the 1972 consent decree has been quite effective in reducing the degree of political coercion on patronage employees, and in opening the political process to vigorous competition. These results did not come without considerable effort, however. For example, in 1975 Congressman Ralph Metcalfe (the Democratic Ward Committeeman for Chicago's Third Ward and the sponsor for the ward's patronage workers) refused to endorse Mayor Daley for reelection and declined to organize the circulation of his petitions for candidacy. City officials then promptly summoned many of Representative Metcalfe's sponsored patronage employees to City Hall and told them that they were to support Mayor Daley, forcefully directing them to circulate petitions in support of his candidacy.

Plaintiffs, with Congressman Metcalfe's support, brought the matter before the court. A hearing was held during which the coercive conduct of the City was described. The City and one of its officials, Michael Cardilli (later Chairman of the Chicago Transit Authority) were held in contempt. This holding was affirmed on appeal.[22]

21. Judgment at para. H.

22. Shakman v. Democratic Org., 533 F.2d 344 (7th Cir. 1976), *cert. denied*, 429 U.S. 858 (1976).

Several other systemic violations of the decree involving political coercion of employees by work supervisors have similarly resulted in contempt findings. Over 100 individual enforcement actions have been filed with the district court by employees claiming that they were fired for political reasons. More individual complaints have been settled before reaching court. These numerous enforcement actions, and the potential for findings of contempt, have now substantially reduced the number of political firings of employees whose positions are covered by the decree.

The 1972 decree has effectively prevented overtly political firings because the discharged worker has a strong incentive to enforce the decree. Where the firing is overtly political in nature, there is a good chance that the fired worker can be successful. Similarly, public employers know that political firing is forbidden and generally no longer fire employees in substantial numbers for overtly political reasons.

It also seems clear, however, that the 1972 decree has not eliminated coercion of employees altogether. When political hiring remains the rule, governmental employers have incentive to make patronage jobs available for new hires. Thus, governmental "reorganizations" may result in letting existing employees go, with the way being made open to hire new and politically sponsored employees. Discovering and proving political motivation in these situations may be difficult. And, when patronage employees are exempt from procedural protections against arbitrary discharge, as they often are in Cook County, employees are necessarily less apt to assert political independence, regardless of the consent decree.

The decree, with its reliance on individual action for enforcement also is less effective against employment decisions other than firings. A firing situation is likely to involve facts concerning a single employee. Promotions, on the other hand (which, under the decree, also cannot be politically affected), may well involve preferences among employees or between present employees and job applicants. An enforcement action challenging politically motivated promotions might well require exploration of facts relating to many persons.

An employee who is appointed through the sponsorship of a party official and who wishes to get ahead in the job may well conclude that the better part of wisdom is to continue to contribute—financial support or precinct work—to the party organization. Indeed, as the late Mayor Harold Washington testified:

> As you know, the system provides to a great extent that those who do political work will be given favoritism in terms of appointments to City positions from the lowest kind of occupation on up to Superintendents,

> Commissioners, et cetera, and so forth. And, in turn, obviously and clearly, it is well known, visited upon those City employees are certain pressures that they contribute to the political campaigns of Democratic politicians, and that they also work within the vineyards of politics in the precincts, wards and so forth. This is known; this is the glue that, in a sense, ties the Party together, and this is the anachronism which has made the City of Chicago a distinct political entity throughout the world, good or bad.[23]

While the 1972 consent decree does not fully eliminate coercion of patronage employees, its political effect is substantial. The most potent aspect of state power, the power openly to compel political support, is forbidden. Defendant Cook County officers have, in various court papers, referred to the 1972 decree as causing a "revolution" in politics in Illinois and Cook County. While this characterization may be hyperbole, there is no doubt that the decree has had a significant impact on the electoral process. The decree has loosened or undone the control of party organizations over public employees. This added freedom has been most noticeable in areas where party, ward or township organizations were less strongly organized. In a number of black wards, the regular Democratic organization is not a dominant force.

However, the decree has by no means completely eliminated the political effect of the patronage employment system. A significant political advantage obviously accrues to the officially favored party organization when *hiring* continues to be based on active political support for its candidates. That is, after all, the principal purpose of such a system. The favored party organization's ability to grant jobs to those who actively support it provides a political advantage to that organization's candidates with a corresponding disadvantage to competing candidates whose supporters have no opportunity for such employment. As one Democratic Ward Committeeman put it, if we can't hire on the basis of patronage, "we might as well move to Florida."

D. Case Law Development

After the entry of the 1972 decree and before the conclusion of the litigation on the "reserved" hiring issue, two important Supreme Court decisions gave additional support to plaintiffs' case. In *Buckley v. Valeo*,[24] which upheld federal funding for presidential elections, the Court held that the government may not show favoritism in the sphere of

23. Record at 25.
24. 424 U.S. 1 (1976).

electoral campaigning.[25] And in *Elrod v. Burns*,[26] the Court not only held that patronage firing abridges the constitutional rights of employees, but that the practice also impairs equal protection in the political process. The Court, closely following the amicus brief filed on Mr. Shakman's behalf, stated:

> It is not only belief and association which are restricted where political patronage is the practice. The free functioning of the electoral process also suffers. Conditioning public employment on partisan support prevents support of competing political interests. Existing employees are deterred from such support, as well as the multitude seeking jobs. As government employment, state or federal, becomes more pervasive, the greater the dependence on it becomes, and therefore the greater becomes the power to starve political opposition by commanding partisan support, financial and otherwise. Patronage thus tips the electoral process in favor of the incumbent party, and where the practice's scope is substantial relative to the size of the electorate, the impact on the process can be significant.[27]

III. The Hiring Case

After the consent decree was entered in 1972, plaintiffs sought relief with respect to the remaining key issue—the lawfulness of defendants' practice of conditioning hiring for patronage jobs upon political support of the officially favored party organization. Plaintiffs also sought injunctive relief with regard to the patronage practices of various other defendants, such as Sheriff Elrod and the Chicago Park District, that had not entered into the consent decree. The basic facts of the matter were not disputed. In a series of extensive stipulations and responses to requests to admit facts, defendants described in detail the patronage system by which hiring for many thousands of jobs was conditioned upon regular Democratic political sponsorship. Defendants admitted what was commonplace knowledge in Chicago (but would be remarkable in most cities), that hiring for most jobs in Cook County government and for most civilian jobs with the City of Chicago was based on active political support for candidates of the regular Democratic party organization. In most cases, persons who had in any open way actively supported competing candidates were excluded from consideration for those patronage jobs. Defendants admitted that in many cases even the existence of job openings was kept secret, except from party officials who provided the job applicants.

25. *Id.* at 33-35, 98-99.
26. 427 U.S. 347 (1976).
27. *Id.* at 356.

Overall, defendants admitted that there were over 20,000 Democratic patronage jobs in Cook County. Defendants also admitted that the purpose and effect of the patronage employment system was to give candidates for public office of the regular Democratic organization an electoral advantage over competing candidates and voters. Plaintiffs submitted affidavits of leading political scientists and political organizers attesting to the fact that the precinct work produced by patronage provides a significant electioneering advantage. Indeed, it was stated that in many local elections, especially party primary elections, where no racial factors are involved and where there is no great media attention (such as elections for alderman or state legislator), precinct work is the most significant factor in determining electoral outcomes.

On the basis of these admissions and affidavits, plaintiffs moved for partial summary judgment on defendants' liability with respect to patronage hiring practices, and for injunctive relief on the firing issue as to nonconsenting defendants. Defendants did not contend that politically conditioned hiring was lawful. Rather, they argued that the 1972 decree had effectively ended the overwhelming political dominance of the regular Democratic organization. They contended that relief was thus not needed for the remaining patronage hiring practices, and it was suggested that such relief would overly intrude into local governmental operations.

In an extensive opinion, Judge Nicholas Bua (to whom the case had been reassigned) granted plaintiffs' motion as to liability.[28] His scholarly opinion described in detail the workings of the patronage hiring system. He concluded that the system at issue was so extensive that it put independent candidates and voters at a substantial electoral disadvantage to the officially favored candidates of the regular Democratic party organization. He concluded that this denied plaintiffs the equal protection of the law in that the power of the state was used to grant one political faction an electoral advantage over competing candidates and voters. Judge Bua further concluded that the system deprived plaintiffs of their first amendment rights of speech and association. The patronage system created a classification based on the content of political speech, he held, and used the power of the state to disadvantage candidates and voters with disfavored views and exclude those who would associate with plaintiffs from doing so if they wished to retain their opportunity for employment.

After the court of appeals denied defendants' leave to appeal the district court's decision on an interlocutory basis, and after attempts to

28. 481 F. Supp. 1315 (N.D. Ill. 1979).

settle the case were unsuccessful, Judge Bua held an evidentiary hearing on the nature of relief to be entered. Plaintiffs submitted that simple injunctive relief, similar to the 1972 decree, would be insufficient. Because individual enforcement actions on hiring claims would be less likely than actions on discharge claims, plaintiffs submitted that an enforcement mechanism was needed which did not depend on individual claims. At the same time, plaintiffs and the court did not wish to supplant the management discretion of the defendant governmental employers with judicial supervision.

A. The Nature of the Hiring Relief

In early 1983, the district court entered final judgment on the hiring issue. The court's judgment had an interesting structure. Like the 1972 decree, the 1983 hiring judgment contained a concisely worded injunction against "conditioning, basing or knowingly prejudicing or affecting the hiring of any person as a Government Employee upon or because of any political reason or factor," except with respect to the exempted positions. Unlike the 1972 consent decree, however, the 1983 hiring decree was not dependent on individual enforcement actions by affected voters (although such enforcement actions were specifically allowed).[29] With respect to hiring matters, defendants were required to take various affirmative steps to bring themselves into compliance with the basic injunctive requirement. These affirmative steps carefully avoided judicial intrusion into local governmental management.

Each defendant public employer bound by the decree was required to develop and implement a plan of compliance.[30] The plan had to describe in detail the method of hiring to be followed by the employer, and state the hiring criteria for various positions as well as a selection method which excludes all political factors. The decree gave the defendant employers complete discretion to adopt any hiring plan they wished, and to change plans, as long as the hiring method prevented political factors from influencing hiring decisions. No court approval of a plan or plan amendment was required. A plan was to be presented to the court for ruling only if a party asked the court to find that the plan failed to com-

29. It appears that, as of this writing, only one individual has brought a hiring enforcement action.

30. The concept of a compliance plan was made common in desegregation litigation. It is a device by which a public defendant, which is presumed to be willing to change its behavior, is delegated the power in the first instance to conform its activity to judicial requirements. In some cases defendant public officers may have a right to suggest a plan of compliance before any relief is ordered by the court. *See, e.g.*, United States v. Board of Educ., 717 F.2d 378 (7th Cir. 1983), *on appeal from remand*, 744 F.2d 1300 (7th Cir. 1984).

ply with the provisions of the decree. Thus, the decree allows complete management control over employment to remain in the hands of the defendant public employers. Defendants are also required to give public notice of the availability of job openings.[31]

Shortly after Judge Bua entered final judgment in 1983, a number of important public employers entered into consent decrees concerning political hiring. These defendants included the City of Chicago, the Chicago Park District, and the Sheriff, the Treasurer and the Clerk of the Circuit Court of Cook County. (The Cook County State's Attorney had entered into a hiring consent decree before the entry of the 1983 judgment.) Together, these consenting defendants employ about 55,000 employees. The various consent judgments state that they are entered into for two independent reasons: to provide plaintiffs with relief for their claims that the patronage hiring system violated their constitutional rights, and also to enforce and carry out the 1972 decree.

B. Plans of Compliance

The consent decrees followed the pattern of the court's judgment in that they required the defendant governmental employers to adopt a plan of compliance. The final plans (adopted after considerable delay) are interesting in their approaches. Most of the defendant public employers avoided adopting or expanding civil service-type procedures with competitive examinations. The City of Chicago, for example, adopted a detailed plan in which hiring is bifurcated between the personnel department and the various hiring departments. This method was selected both because of its administrative advantage to the City and because it meant that collusion between two departments would be necessary to violate the injunction. The City's plan also contains an interesting device for judicial relief. The plan calls for an annual audit by an independent auditor to determine whether the City is in compliance both with the substantive provisions of the decree and with the requirements of its plan.

On the whole, the City's system (which, it may be emphasized, was its choice and was not developed by the court) appears to have worked well. The City believes that it has improved the overall quality of its workforce with no appreciable administrative burden. It also reports that the decree has eliminated racial discrimination which was part and

31. The history of enforcement under the hiring decree has been one of very limited court involvement. The most dramatic involvement came in 1985 when the court, frustrated with lengthy delays in the City's development of a plan, ordered a freeze on nonemergency city hiring until principles governing a plan were adopted.

parcel of the patronage-based employment system. The first independent audit report of the City's compliance concluded that, although record-keeping in various respects needed to be improved, there was no substantial evidence of patronage hiring.[32]

These achievements are no minor matter. Defendants' implementation of the decree has reduced dramatically the degree of coercion placed on new hires; it has improved the overall quality of hiring, and has dramatically reduced the extent to which city employment practices give an improper electioneering advantage to a favored political faction. Indeed, as the City's long-time Personnel Director has stated:

> At the time I left my position as Commissioner of Personnel in 1985, the City was hiring, in general, more highly qualified employees than it was prior to the hiring consent decree. Among the reasons for this are:
>
> (i) The decree requires broader public notice of jobs to be given. This results in a larger pool of applicants and consequently allows a better choice for selection.
>
> (ii) Many qualified persons, who otherwise would not have been interested in City jobs, were interested in and applied for those jobs because they believed that the jobs would not be conditioned on political support and other non-merit factors.[33]

C. *Electoral Effect*

The effects of the two decrees in opening up the electoral system are, of course, difficult to measure with precision. There have been numerous independent trends in Chicago politics since the time the case was brought. Mayor Daley is gone from the scene and his political successors have not all been as politically skilled. Television has become a more important campaign factor in elections for visible offices. And the development of the black vote as a potent political force has had a dramatic influence on elections. Indeed, city politics has begun to revolve around race.[34]

Nonetheless, it seems clear that the decrees in *Shakman* have been especially influential in opening up the political process in Cook County. The new freedom of public employees from political coercion has been instrumental in allowing black voters to elect Mayor Washington and to

32. Plans adopted by other consenting defendants utilize a variety of hiring methods, ranging from competitive examinations to systems similar to that of the City. Independent audits are also required.

33. Affidavit of Dr. Charles A. Pounion.

34. The fact that politics has to an extent begun to revolve around race has meant that the use of patronage now has strong racial overtones. For example, white ethnic or Republican candidates, whose political constituencies do not generally include blacks, are extremely unlikely to use patronage to hire black employees.

secure an independent political identity. It may also give them freedom not to elect Acting Mayor Sawyer. Indeed, mayoral elections are now widely competitive.

The best evidence of the effect of the case, however, may be seen in elections where there is not much television attention and where race is not a dividing line. Here, there has been a dramatic increase in political competition. For example, elections for the Chicago City Council are now vigorously contested and there are strong minority factions in the City Council. The members of the County Board elected from the city of Chicago no longer are automatically those slated by the party organization. Of the ten city members on the County Board, at least three are independent candidates (not endorsed by a party organization in the primary). Ward committee elections have become much more competitive. And elections for judges, which party organization candidates never lost in the 1960s, have been won by many nonorganization candidates.

In short, Cook County politics has been transformed from the province of a single centralized party apparatus to a hearty, competitive, sometimes chaotic and swirling process—Chicago's version of *glasnost*. In short, the decrees in *Shakman* have been dramatically successful. Patronage hiring, where it continues to be allowed, remains a forceful element of political advantage. But it is no longer so substantial an advantage that politics is made wholly uncompetitive. Thus, the *Shakman* case is one of the best examples available of systemic reform litigation, having achieved dramatic success with a minimum of judicial intervention in local political processes.

IV. THE SECOND DECISION OF THE COURT OF APPEALS

Various defendant public employers—the President of the Cook County Board, the County Clerk, the County Assessor and the County's alter ego, its Forest Preserve District, did not agree to end patronage hiring but instead appealed the decision of the district court. The Democratic Party County Central Committee joined in that appeal.

The general context in which the appeal was presented for consideration was, of course, much different than when the case was first heard by the court of appeals in 1970. The 1972 consent decree had been sufficiently successful in making Chicago and Cook County politics competitive, so that the urgency of judicial relief with respect to patronage hiring may have seemed less apparent. Moreover, although through the history of the litigation the court had not interfered with local governmental activities, such interference was plainly more of a possibility in the hiring

context. The Seventh Circuit, which had become markedly more conservative since 1970, was not inclined toward judicial action that would involve the regulation of local government activities.

Also, the legal framework with regard to standing had been expressed by the United States Supreme Court in cases after 1970 in a somewhat more elaborate fashion. In 1970, the leading authority on standing was *Baker v. Carr*.[35] The Court in *Baker* described standing as the requirement that served to ensure that there be a case or controversy by focusing on whether the parties had alleged a sufficient personal stake in the outcome so as to present a concretely adversarial case. More recently, the Supreme Court has generally applied the standing doctrine to constrain the role of the judiciary. In *Allen v. Wright*,[36] the Court elaborated on the formulation of standing by expressing the additional requirement that the complained of injury must be fairly traceable to defendant's conduct and be able to be redressed by the requested relief.

The difference between the formulations in *Baker v. Carr* and in *Allen v. Wright* is not entirely evident. If there is no causality or availability of effective relief, there is no real personal stake in the outcome. However, the Court's emphasis on the traceability of injury seems to have been utilized by lower courts seeking to limit the scope of their review by concluding that an injury is not sufficiently traceable to allow judicial action.

In August, 1987, a new panel of the Seventh Circuit, relying on the Supreme Court's decision in *Allen*, reversed the 1983 hiring judgment against the nonconsenting defendants.[37] Despite the court's 1970 ruling which upheld plaintiffs' standing, the 1987 panel held that plaintiffs had no standing to pursue the hiring claim by itself. The court emphasized, however, that the district court did have jurisdiction to enforce the 1972 consent decree.

The court of appeals concluded that the 1970 standing decision was no longer binding because of the Supreme Court's subsequent modification of the requirements for standing, and because the 1970 decision did not consider the patronage *hiring* practices alone. The panel essentially held that, regardless of the allegations of the complaint, electoral injury to officially disfavored candidates could not be traced with sufficient certainty to patronage hiring as a matter of law. The decision noted that jobs could be promised equally to supporters of any contender for office,

35. 369 U.S. 186 (1962).

36. 468 U.S. 737 (1984). *See also* Valley Forge Christian College v. Americans United for Separation of Church and State, 454 U.S. 464, 472 (1982).

37. 829 F.2d 1387 (7th Cir. 1987).

should he win. This, of course, is of little significance in a patronage system where many elections are for positions which have no jobs to dispense, and where the system involves hiring by numerous public employers. The court's argument seems to give little weight to the effect the system may have in reducing support for disfavored candidates.

The court found allegations of the political effect of patronage hiring to be speculative. It also found that the patronage employees' decisions to support the incumbent party faction were independent decisions (even though required to get a job). In short, the court chose to avoid a decision on the substantive constitutional issues by concluding that plaintiffs did not have standing even though it must be observed that it is precisely candidates and voters who are the largest victims of patronage systems and not the employees who are merely the pawns of the game. Plainly, the court used the discretion implied in the standing doctrine to avoid expanding judicial authority over local governmental operations.

The Supreme Court denied certiorari in the case on February 22, 1988.[38] The City of Chicago subsequently filed a motion to vacate the hiring consent decree but has agreed now to withdraw that motion. Thus, the hiring consent decree remains in place as to the most significant defendant.

V. CONCLUSION

Consent decrees remain in place which forbid defendants from placing political pressure on persons once hired as public employees. These decrees cover well over 100,000 employees. Consent decrees also remain in place which forbid political hiring and cover about 60,000 employees. As a result, the case thus constitutes one of the most far reaching and significant uses of the courts to achieve effective relief from a long-standing constitutional violation.

38. 108 S. Ct. 1026 (1988).