IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

In Re: ANN SCHNEIDER,	)	
GARY HANNIG,	)	
MATTHEW HUGHES, and	)	
MICHAEL WOODS, JR.	)	OEIG Case #11-01567

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and "any other information it believes should not be made public." 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report's factual allegations or legal conclusions before the Commission.

The Commission received a final report from the Governor's Office of Executive Inspector General ("OEIG") in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report. In carrying out its redaction responsibilities, the Commission has substituted identifiers "Employee 1" through "Employee 315" and "Union Official 1" for the names of certain individuals appearing in the original report.

Copies of the redacted version and responses were mailed to the Attorney General, the Executive Inspector General for Agencies of the Governor, and to Ann Schneider, Gary Hannig, Matthew Hughes and Michael Woods, Jr. at their last known addresses.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

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Executive Summary

The First Amendment to the United States Constitution prohibits government agencies from hiring people based on political affiliation. The United States Supreme Court held in *Rutan v. Republican Party of Illinois* (1990) that public officials generally cannot use political affiliation as a basis for employment decisions. The Court recognized a very narrow exception for positions in which the government has a compelling interest in political loyalty. This investigation involves allegations that IDOT officials hired persons into a position IDOT created called "Staff Assistant." This position was used multiple times to hire individuals for which political affiliation could be a valid requirement but then assigned them job duties for which political affiliation could *not* be a legitimate consideration.

These allegations arose despite the fact that the *Rutan* decision and three Illinois Governors, including Governor Pat Quinn, issued Administrative Orders seeking to ensure that political loyalty would *not* be a basis for hiring people into most State positions. The Administrative Orders impose upon State agencies specific hiring procedures that must be followed to ensure that *merit* is the basis for hiring candidates into positions for which political affiliation is *not* a valid requirement. Those positions are commonly known as "*Rutan*-covered" positions. The narrow group of positions for which political loyalty *is* a valid consideration are known as "*Rutan*-exempt" positions.

The Illinois Department of Central Management Services (CMS) is the State agency responsible for determining whether jobs are classified as *Rutan*-covered or *Rutan*-exempt. Tasking CMS with making *Rutan* determinations is a safeguard against State agencies self-servingly designating positions as *Rutan*-exempt in order to avoid the *Rutan* hiring process, whether for political reasons, or any other non merit-based reasons. As a further safeguard, in 2009, the Illinois General Assembly expanded the jurisdiction of Executive Inspectors General to review agency hiring practices to assure compliance with the *Rutan* decision. This investigation was conducted by Office of the Executive Inspector General pursuant to its expanded jurisdiction.

The investigation began in April 2011 in response to a series of anonymous allegations involving IDOT's Staff Assistant position and the alleged misuse of that position by IDOT Secretary Ann Schneider and IDOT's former Chief Counsel Ellen Schanzle-Haskins. The investigation expanded in September 2011 when the OEIG self-initiated an investigation into whether IDOT's use of the Staff Assistant position generally violated the *Rutan* decision or the Governors' Administrative Orders. Those interviewed included two IDOT Secretaries, the heads of IDOT's personnel staff, and more than one hundred persons, including numerous Staff Assistants and their supervisors.

Based on its investigation, the OEIG concludes that, in defiance of the Administrative Orders and other intended safeguards, IDOT and its staff circumvented various of the Administrative Orders during a ten-year period, starting in late 2003 and continuing through at least July 1, 2013. Specifically, former Secretary Gary Hannig, current Secretary Ann Schneider, a former IDOT Director of Finance and Administration, and a former IDOT Bureau Chief of Personnel Management (and others) approved the hiring of persons into the nominally *Rutan*-exempt Staff Assistant positions to perform duties of *Rutan*-covered positions or duties that would *not* support *Rutan*-exempt status.

The OEIG concludes that IDOT officials circumvented the Administrative Orders by, among other things:

- 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.

The actions of IDOT officials violated Administrative Order No. 2 (2009) and IDOT's own personnel policies. As a result, hundreds of individuals were hired without having to go through the *Rutan* hiring process even though they performed *Rutan*-covered duties. The investigation further revealed that some Staff Assistants were hired based on political affiliation.

Former Secretary Hannig and current Secretary Schneider said they were unaware of the systematic circumvention of the *Rutan* process, despite their management responsibilities as agency heads. In the case of Secretary Schneider, she readily admitted that when she started in 2005 (as Director of Finance and Administration with responsibility for overseeing personnel matters) she did not know the difference between the *Rutan*-covered and *Rutan*-exempt hiring process. Other senior staff, including IDOT's former Bureau Chiefs of Personnel Management Matt Hughes and Mike Woods, Jr., said they thought the practice of hiring Staff Assistants to perform *Rutan*-covered duties was acceptable for a variety of reasons. Their stated reasons included various operational needs and because it took less time to hire *Rutan*-exempt Staff Assistants than via the *Rutan* hiring process. Violating the Administrative Orders because it ostensibly helped IDOT operate more efficiently or for expedience is nevertheless a violation. IDOT's actions may not have violated *Rutan's* proscription of *political* hiring, but they did violate the Administrative Orders' requirement that *Rutan*-covered hiring be based on merit.

While the full extent and impact of IDOT's misuse of the Staff Assistant position may never be known, the duration and pervasiveness of IDOT's improper acts have undoubtedly denied countless qualified candidates the opportunity to lawfully obtain State employment on the basis of merit. After having conducted its investigation, the OEIG recommends the Office of the Governor take appropriate action, as set forth in greater detail in this report, including that it:

- require all employees in IDOT's personnel division to receive *Rutan* training; and

- determine what, if any, *Rutan*-exempt duties remaining incumbent Staff Assistants are performing, reclassify those positions, and abolish the Staff Assistant position.

The OEIG also recommends that IDOT terminate Mike Woods, Jr., that a copy of this report be placed in the personnel file of Matt Hughes and that Office of the Governor take whatever action it deems appropriate with regard to Secretary Ann Schneider and Gary Hannig.

Glossary of Relevant Terms

***Rutan* decision:**	United States Supreme Court case *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), which held that public officials cannot use political affiliation and support as a basis for employment decisions for non-policymaking positions.
***Rutan*-covered position:**	Positions that do not have duties or responsibilities relating to policymaking, being a spokesperson, or handling confidential information. These positions must be filled through the *Rutan* hiring process.
***Rutan*-exempt position:**	Positions with duties relating to policymaking, being a spokesperson, or confidential information. These positions need not be filled through the *Rutan* hiring process.
***Rutan* hiring process:**	Process by which *Rutan*-covered positions must be filled. It includes developing hiring criteria for the position, developing and utilizing standardized interview questions, conducting interviews, evaluating candidates, and documenting the hiring decision.
***Rutan* determination:**	Classification of a position as either *Rutan*-covered or *Rutan*-exempt based on a review of the duties and responsibilities of a position as detailed in the official position description.
Illinois Department of Central Management Services (CMS):	Illinois State agency responsible for, among other things, making *Rutan* determinations. The CMS division responsible for reviewing and approving position descriptions for the purpose of rendering *Rutan* determinations (*Rutan*-covered or *Rutan*-exempt) is the Bureau of Personnel – Technical Services and Agency Training Division.
Electronic Personnel Action Request ("ePAR"):	Electronic record used to authorize the filling of any vacancy. For *Rutan*-covered positions, this record requires approval from relevant members of IDOT senior management and the Governor's Office of Management and Budget. For *Rutan*-exempt postions, the Office of the Governor must also provide approval.
Internal Personnel Request ("IPR"):	IDOT form used to identify any vacant position and justify the need to fill that vacancy. IPRs contain places for the signatures of the supervisor of the IDOT hiring unit, the Bureau Chief of IDOT's Bureau of Personnel Management, and the Director of IDOT's Office of Finance and Administration.

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I. Allegations

A. Allegations Initially Received by the Office of Executive Inspector General

1. Anonymous Complaint No. 11-00553

On April 11, 2011, the OEIG received an anonymous complaint alleging, among other things, that Employee 1, the sister-in-law of former Illinois Department of Transportation Chief Counsel Ellen Schanzle-Haskins, was hired into a Technical Manager II position without an interview and without being qualified for the position.

It was also alleged that the position should have been filled by someone with a secretarial job title, not a Technical Manager title, and that Ms. Schanzle-Haskins was responsible for getting her sister-in-law the position. The OEIG opened an investigation, which was assigned unique case number 11-00553.

2. Anonymous Complaint No. 11-00713

On April 29, 2011, the OEIG received a second anonymous complaint alleging, among other things, that a different high-ranking IDOT official, Michael Stout, used his position to secure employment for his daughter, Employee 2. The OEIG opened a corresponding investigation, which was assigned unique case number 11-00713.

B. Investigation Initiated by the OEIG

1. OEIG Investigation Uncovers Evidence that Leads to Self-Initiated Complaints.

During the course of investigating OEIG cases 11-00553 and 11-00713, the OEIG learned that both Employee 1 and Employee 2 were hired into Technical Manager II Staff Assistant positions. According to the information obtained, the Staff Assistant positions purportedly included policymaking duties, and were *Rutan*-exempt positions. It appeared, however, that the women were not performing any duties that would warrant that *Rutan* exemption.

2. Newspaper Article and Self-Initiated OEIG Complaint

An article in the September 1, 2011 edition of the *State Journal-Register* reported the hiring of Employee 3 at IDOT. Employee 3 was reported to be the step-daughter of then Acting IDOT Secretary Ann Schneider. According to the article, Employee 3 was hired into the position of Technical Manager II in 2007.

On September 19, 2011, in light of the information reported in the *State Journal-Register* news article, the OEIG self-initiated its own broader investigation. In justification of opening the investigation, the OEIG completed an internal OEIG self-initiated case form, which stated, in part, the following:

An article in the September 1, 2011 edition of the *Springfield Journal-Register*[1] reported the hiring of Employee 3 at the Illinois Department of Transportation (IDOT). Employee 3 is reported to be the step-daughter of Acting IDOT Secretary Ann Schneider. According to the article, Employee 3 was hired into the position of technical manager II in 2007.

* * *

Because of the potential for hiring abuses and information that relatives of senior IDOT managers are being hired as 'staff assistants,' the OEIG will open a wider investigation on the staff assistant positions within IDOT. The investigation will seek information on the staff assistant positions statewide. The focus of the investigation will be on how these positions are being created, whether position descriptions are being manipulated to have the positions exempted from *Rutan*, what the qualifications of the employees filling the positions are, and the relationships between these employees and senior IDOT managers or others with influence within IDOT.[2]

The OEIG's self-initiated investigation was assigned unique case number 11-01567. As set forth in the OEIG's internal self-initiated case form, beginning in September 2011, investigators began a more extensive investigation into IDOT's use of Staff Assistants.

C. Additional Complaints Relating to Staff Assistants

1. Division of Aeronautics Complaints

In December 2011 and January 2012, the OEIG received six complaints alleging that IDOT's Division of Aeronautics had added at least 10 Technical Manager II Staff Assistant positions to its division, that none of the individuals filling the positions were interviewed for those positions, and that the Staff Assistants assumed duties of vacant positions, which were subject to State interview and hiring rules.[3]

Five of the six complaints received were also addressed to IDOT Secretary Ann Schneider. One of those complaints was received by the OEIG from IDOT Office of Quality Compliance and Review Investigations Coordination Manager Todd Hummert.[4] IDOT's Office of Quality Compliance and Review Investigations is responsible for, among other things, receiving, recording, and analyzing allegations of wrongdoing and ensuring such allegations are handled professionally.[5] Mr. Hummert forwarded to the OEIG an anonymous letter dated December 21, 2011.[6] The letter was addressed to IDOT Secretary Ann Schneider and contained an "Office of the Secretary" stamp with a December 27, 2011 date. In the letter, the anonymous complainant stated in part:

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[1] The self-initiation form incorrectly identified the *State Journal-Register* as the *Springfield Journal-Register*.
[2] *See* Appendix to Report at Exhibit 1.
[3] These six cases were each assigned unique case numbers. Those case numbers are 11-02227, 11-02299, 11-02300, 11-02301, 12-00025, and 12-00031.
[4] Mr. Hummert consented to being revealed as the source of this complaint.
[5] https://www.dot.il.gov/oqcr/who.html.
[6] *See* Appendix to Report at Exhibit 2.

I wish to relate to you the ethical and professional misconduct going on at the Illinois Department of Transportation – Division of Aeronautics regarding the addition of individuals to the staff under the title of Staff Assistant. These people are being added under the pay title of a Technical Manager II without in any way being interviewed for any position. They are then assuming duties that would normally be done by positions that are currently vacant on the Division organization chart, but would need to be interviewed and filled by qualified individuals.

Currently the amount of staff personnel that are not part of Operations (mechanics & pilots) comprises 40 people at Aeronautics. As of this date, there are 10 staff assistants at Aero, or 25% of the staff. None of these individuals interviewed for their current job at Aero. Considering there is upwards of 20-30 open positions on the organizational chart that need to be filled the in [sic] Safety, Engineering, and Administrative Sections, I find this constant stream of new, unqualified, and sometimes useless individuals offensive as both a taxpayer and a professional employee. Even as I write this letter, another cubical is being cleaned up and prepared for someone new, yet the Division has conducted 1 interview in the last year for an open position, which was filled by an in-house person 2 months ago. Combine that with the fact that, for some of these individuals, the current staff is being told to "train" them or find things for them to do, thus taking time away from the duties they should be doing, and you have the recipe for both low morale as well as contractual violations with Teamsters and AFSCME.

2. Anonymous Complaint No. 12-00305

On February 23, 2012, the OEIG received another anonymous complaint alleging, among other things, that Employee 4, the son of high-ranking Union Official 1, was hired into a position that was not posted, and for which he did not interview. It was alleged that two other employees were hired in the same manner. The OEIG opened a corresponding investigation, which was assigned unique case number 12-00305.

3. Complaint No. 13-00411

On February 21, 2013, the OEIG received yet another complaint alleging, among other things, that the complainant had been removed from a high-level position at IDOT and relegated to a lesser job title because she had reported improper hiring practices. The corresponding investigation was assigned unique case number 13-00411.

4. Complaint No. 13-01787

On August 21, 2013, the OEIG received another complaint alleging that IDOT Administrative Manager Employee 5 hired individuals who were not subject to the application and interview process. As an example, the complainant identified Employee 6, stating Employee 6 was given a Staff Assistant position that was specifically created for her.

D. OEIG Consolidation of Complaints

In light of the similar nature of the allegations relating to the above-referenced complaints and the OEIG's self-initiated complaint, the allegations have been jointly investigated

under OEIG case number 11-01567. This Final Report addresses the hiring-impropriety allegations raised in each of those cases.[7]

II. Background

A. OEIG Jurisdiction

The jurisdiction of the OEIG is to investigate "mismanagement, nonfeasance, misfeasance, malfeasance," among other things.

In 2009, the General Assembly amended the State Officials and Employees Ethics Act[8] ("Ethics Act") by, among other things, expanding the duties of Executive Inspectors General to include:

> To review hiring and employment files of each State agency within the Executive Inspector General's jurisdiction to ensure compliance with *Rutan v Republican Party of Illinois*, 497 U.S. 62 (1990), and with all applicable employment laws.[9]

As a result of the amendment, the OEIG has reviewed and conducted investigations involving various State agency hiring practices, including practices and allegations discussed in this report. In light of its limited resources, the OEIG has focused its efforts on investigations that reveal patterns of misconduct or practices that circumvent State hiring laws. The more extensive investigation relating to this matter was self-initiated and conducted pursuant to the above-referenced Ethics Act provisions and consistent with the mandate that the OEIG ensure State agency compliance with *Rutan v. Republican Party of Illinois*.

B. History of Supreme Court Decision in *Rutan v. Republican Party of Illinois*

The United States Constitution generally prohibits public entities from using political affiliation and support as a basis for hiring decisions and other employment decisions.[10] In *Elrod v. Burns*,[11] the Supreme Court recognized, however, that an elected government possesses a vital interest in securing loyal employees who will implement the policies of the government. Accordingly, the Court held that the Constitution permits a government to engage in politically based dismissals of persons holding policymaking positions.

Subsequently, in *Rutan v. Republican Party of Illinois*,[12] the Supreme Court held that the Constitution prohibited the Illinois State government from using party affiliation and support as a basis for promotion, transfer, recall, and hiring decisions of persons who do not occupy policymaking or confidential positions or positions for which "party affiliation is an appropriate requirement for the effective performance of the public office involved."[13] The Court held that unless patronage practices are narrowly tailored to further vital government interests, patronage

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[7] The other allegations in 11-00553, 11-00713, 12-00305 and 13-00411 were investigated and closed under those investigative case numbers. The other cases were closed down to 11-01567.
[8] 5 ILCS 430/1-1, *et seq.*
[9] 5 ILCS 430/20-20(9).
[10] *E.g.*, *Rutan v Republican Party of Illinois*, 497 U.S. 62 (1990); *Elrod v. Burns*, 427 U.S. 347 (1976).
[11] 427 U.S. 347 (1976).
[12] 497 U.S. 62 (1990).
[13] *Id.* at 71, n.5 (*citing Elrod*, 427 U.S. at 367 and *Branti v. Finkel*, 445 U.S. 507 (1980)).

practices are prohibited, because they encroach upon freedom of association protected by the First Amendment.[14] The Court reasoned that a government's interest in securing employees who will loyally implement its policies can be adequately served by choosing or dismissing certain high-level employees on the basis of their political views.[15]

C. Administrative Orders Relating to *Rutan*-Covered Positions

In the wake of the *Rutan* decision, Illinois Governors James Thompson and Jim Edgar each issued Administrative Orders regarding the interview and selection process for the hiring of persons in accordance with the *Rutan* decision.[16] The Administrative Orders established a policy of merit hiring: "All hiring and other personnel decisions shall be based on the merit and qualifications of the candidates."[17]

The Administrative Orders classified State of Illinois employee positions as *Rutan*-covered or *Rutan*-exempt for hiring purposes.

> ***Rutan*-covered** – Positions that do not have policymaking, spokesperson, or confidential duties and responsibilities. These positions must be filled through the *Rutan* hiring process because consideration of political affiliation is not permitted in the hiring process.[18]
>
> ***Rutan*-exempt** – Positions with duties relating to policymaking, spokesperson responsibilities, or confidential information. These positions need not be filled through the *Rutan* hiring process because consideration of political affiliation is permitted in the hiring process.

Pursuant to the Administrative Orders, State agencies under the jurisdiction of the Governor are required to follow certain steps and guidelines before they can fill a *Rutan*-covered position. These steps and guidelines include documenting and filing hiring criteria for each position to be filled prior to conducting the interview; defining and documenting major position responsibilities; defining required knowledge, skills, abilities, and personal characteristics essential for competent performance in the job; and determining the relative weight of each hiring criterion.

In addition, State agencies are required to develop a standardized interview questionnaire, conduct a standardized interview, evaluate each candidate by scoring candidate responses against the hiring criteria previously developed, and rank the candidates by overall score. The interview process is to be documented along with the employment decision.

On January 29, 2009, Pat Quinn was sworn in as Governor. On December 10, 2009, Governor Quinn issued Administrative Order No. 2 (2009), which reaffirmed the principles of the prior Administrative Orders and promulgated additional guidelines for filling *Rutan*-covered positions "to ensure that applicable decision-making processes comply with *Rutan* and rely upon

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[14] *Id.* at 74 (citations omitted).
[15] *Id.*
[16] Administrative Order No. 2 (1990) and Administrative Order No. 1 (1991), respectively.
[17] Administrative Order No. 1 (1990). *See* Appendix to Report at Exhibit 3.
[18] Administrative Order No. 2 (2009).

politically neutral, merit-based criteria." Specifically, Administrative Order No. 2 (2009) stated that the Quinn Administration was, among other things:

> [F]irmly committed to adhering to the principles articulated in the United States Supreme Court decision, *Rutan v Republican Party of Illinois*, 497 U.S. 62 (1990) ("*Rutan*"), and its progeny, as well as Administrative Order No. 1 (1990), No. 2 (1990), and No. 1 (1991) (collectively, the "Prior Administrative Orders"), all of which prohibit consideration of political affiliation or support (or lack thereof) in connection with hiring, promotion, transfer, or recall from layoff, with respect to employment positions covered by the *Rutan* decision ("*Rutan*–covered positions").

In addition, Administrative Order No. 2 (2009) applied to:

> [A]ll personnel transactions relating to *Rutan*–covered positions of State agencies, boards, and commissions under the jurisdiction of the Office of the Governor ("OOG"), whether or not the positions affected by the personnel transactions in question are under the jurisdiction of the Personnel Code and Rules. That is, this Directive applies to both "code" and "non–code" positions under the jurisdiction of the OOG.

A few of these additional guidelines require that vacancies for *Rutan*-covered positions be posted on the State's Work 4 Illinois website, interviewers for *Rutan*-covered positions be certified through *Rutan* training and be re-certified every three years, interviews be conducted by multi-member panels, and job descriptions be reviewed and updated prior to the position being posted.[19]

The various Administrative Orders apply to all personnel transactions relating to *Rutan*-covered positions of State agencies under the jurisdiction of the Governor.[20]

D. Illinois Personnel Code

Separate from the *Rutan* principles and Administrative Orders described above, the Illinois Personnel Code, which is administered by CMS, also applies to hiring and personnel decisions. Specifically, the purpose of the Personnel Code is to "establish for the government of the State of Illinois a system of personnel administration ... based on merit principles and scientific methods."[21] As such, the Personnel Code directs the following:

- State positions must generally be filled based on the principles of merit and fitness.[22]
- CMS must prepare, maintain, and revise a position-classification plan based upon similarity of duties performed, responsibilities assigned, and conditions of employment[23] and prepare a pay plan after consultation with operating agency heads and the Director of Governor's Office of Management and Budget (GOMB).[24]

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[19] Administrative Order No. 2 (2009). *See* Appendix to Report at Exhibit 4.
[20] *Id.*
[21] 20 ILCS 415/2.
[22] 20 ILCS 415/2, 4, 4a(2).
[23] 20 ILCS 415/8a(1); 80 Ill. Admin. Code § 301.10.
[24] 20 ILCS 415/8a(2); 80 Ill. Admin. Code § 301.160.

- Certain State positions are exempt from the Personnel Code.[25] Specifically, the Personnel Code exempts from its provisions, "[t]he technical and engineering staffs of the Department of Transportation [.]"[26]

E. IDOT Staff Seeks Meeting with OEIG

Beginning in October 2012, IDOT staff sought to meet with the OEIG. In light of confidentiality provisions of the Ethics Act, the OEIG does not generally comment on the existence or status of ongoing investigations.[27] In addition, since the OEIG is statutorily tasked with investigating allegations of wrongdoing and is neither an advisory body nor serves in a general counsel capacity for State agencies, the OEIG generally declines meeting invitations to discuss ongoing investigations and declines agency invitations to meet to discuss how an agency can "assist" the OEIG in its investigation.[28]

During the course of this investigation, it became clear to senior IDOT staff that the OEIG was conducting an investigation involving *Rutan*-related matters. On October 18, 2012, the OEIG's General Counsel received an email from IDOT's Office of Quality Compliance and Review Director Jeff Heck, in which IDOT sought to schedule a meeting with the OEIG. In his email, Mr. Heck wrote, verbatim:

> Thanks for getting back to me. As far as from IDOT, we would like to have the following individuals:
>
> 1. Ellen Schanzle-Haskins, Ethics Officer and Chief Counsel
> 2. Matt Hughes, Director of Finance and Administration
> 3. Me
>
> As far as who we would like from your shop, I suggested to Matt and Ellen that you would be the best person in my mind. If you have others, that is fine with us.
>
> In regards to an agenda, I guess I would go with something like this:
>
> - Discuss IDOT's personnel policies - primarily pertaining to *Rutan*-Exempt hiring and the basis for our policies.
>
> We appreciate your professional consideration. We will make sure we don't waste your time and we will keep it short.

In response to Mr. Heck's invitation to meet, the OEIG wrote back on October 22, 2012 and informed IDOT that the OEIG would have to decline its meeting invitation.[29] In the same letter, however, the OEIG recommended that IDOT contact Office of the Governor General Counsel John Schomberg or CMS regarding IDOT's personnel policies.[30]

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[25] 20 ILCS 415/4, 4a(2), 4d(3).

[26] 20 ILCS 415/4c(12).

[27] At various times during the course of this investigation, the OEIG also received requests to discuss the OEIG's investigation from various news reporters. However, in light of confidentiality provisions, the OEIG declined to comment on its investigation.

[28] The OEIG also declines agency invitations aimed at directing the course of its investigations, for obvious reasons.

[29] *See* Appendix to Report at Exhibit 5.

[30] As noted below, during this investigation, senior IDOT staff were interviewed, including its former Chief Counsel Ellen Schanzle-Haskins. During her interview, Ms. Schanzle-Haskins commented on the meeting request referenced above. Specifically, after Ms. Schanzle-Haskins was asked if anyone had "raised this concern about Staff

III. Investigation

A. Methodology of Investigation

In order to conduct this investigation, the OEIG undertook a significant amount of investigatory activity, including reviewing thousands of documents, conducting over 100 interviews with various individuals employed at IDOT locations throughout the State of Illinois as well as former State employees and others, and creating over 65 requests for documents and more than 300 investigative reports.

Below is a summarized timeline describing the methodology employed and the investigatory activities undertaken in this case.

September 2011: In September 2011, the OEIG planned its broader investigation and learned that in addition to IDOT, the Illinois Department of Central Management Services played a role in State agency hiring and thus the OEIG sought to determine the extent of CMS' involvement in the hiring process regarding IDOT Staff Assistant positions.

October 2011 to at least February 2012: Between about October 2011 and at least February 2012, investigators began requesting and gathering a substantial number of IDOT documents related to the Technical Manager II Staff Assistant position.[31] Multiple requests for documents were made, including requests for approximately 136 IDOT employee personnel files.

January 2012 to at least April 2012: Between about January 2012 to at least April 2012, investigators began receiving and analyzing a number of personnel documents,[32] including employee evaluations and Staff Assistant position descriptions. Investigators specifically sought to identify any commonalities in IDOT's use of the Technical Manager II Staff Assistant position. Investigators also began preparing for interviews.

March 2012 to at least July 2012: Between about March 2012 and at least July 2012, and after having analyzed the above-referenced documents, investigators began conducting interviews, including initial interviews of 33 IDOT personnel who held Technical Manager II Staff Assistant positions. The interviews were held at locations throughout the State.[33]

Assistants," she noted that she became aware of an OEIG "apparent investigation of [] Staff Assistants" and that there had been "discussions, [] about our conjecture about what your concerns are." Ms. Schanzle-Haskins then stated that "[w]e actually asked to come and talk to you and we were turned down." She also stated, "...we wanted to see if there was some, [], light that we could shed. We wanted to explain what we were doing, what our, [], policies were and find out if there was, you know if we can be of some assistance..." Thereafter, she was asked if she believed she had an opportunity during her OEIG interview to shed light on IDOT policies or practices. In response, Ms. Schanzle-Haskins stated she had.

[31] Documents were received after this date and through the end of this investigation.

[32] Documents were received after this date and through the end of this investigation.

[33] Interviews were conducted after this date and through the end of this investigation.

June 2012 to at least September 2012: Between about June 2012 and at least September 2012, following a number of the initial interviews and based on information gathered, investigators requested and reviewed additional IDOT documents and began to further expand its investigation beyond Technical Manager II Staff Assistants. Investigators began to request and review documents relating to *all* Staff Assistants, regardless of Technical Manager level. In light of the expanded focus, additional personnel files were also requested.

October 2012 to December 2012: From about October to December 2012, investigators interviewed senior IDOT officials, including IDOT Secretary Ann Schneider, Director of Finance and Administration Matt Hughes, Bureau Chief of the Bureau of Personnel Management Mike Woods, Jr., and former Chief Counsel Ellen Schanzle-Haskins.

August 2012 to at least December 2013: Between about August 2012 and at least December 2013, investigators interviewed another 72 individuals at locations throughout the State.[34] These interviews were of IDOT employees hired into Technical Manager Staff Assistant positions, including those hired at levels other than Technical Manager II, as well as their supervisors. During this same time period and because investigators learned that Staff Assistants were employed in the Secretary's office, investigators requested and obtained the personnel files of all Staff Assistants employed in the Secretary's office between 2003 and 2012. Investigators also requested and reviewed additional position descriptions, *Rutan* determination documents, and hiring files.[35]

September 2013 to at least June 2014: Between about September 2013 and at least June 2014, the OEIG prepared summary documents for final interviews, including charts shown to witnesses, some of which are set forth below. In addition, investigators began preparing the Final Summary Report.

B. State Agencies Involved (IDOT and CMS)

1. IDOT

Below we discuss: (a) IDOT's mission and organizational structure; (b) its four Divisions; (c) its eight Offices; and (d) its nine Division of Highways districts.

a. Mission and Its Organizational Structure

The mission of the Illinois Department of Transportation is to "provide safe, cost-effective transportation for Illinois in ways that enhance quality of life, promote economic prosperity, and demonstrate respect for our environment."[36]

In order to fulfill its mission, IDOT has organized its operations into Divisions, Offices, and Districts. Below is a summary.

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[34] Interviews were conducted after this date and through the end of this investigation.
[35] Documents were received after this date and through the end of this investigation.
[36] http://www.dot.state.il.us/techapp/mission.html

b. IDOT's Four Divisions

IDOT's operations are divided into four Divisions:

Division of Aeronautics	Division of Public and Intermodal Transportation
Division of Traffic Safety	Division of Highways

c. IDOT's Eight Offices

IDOT has eight Offices, which support the four Divisions. The Offices perform all administrative functions and comprise what is referred to as IDOT's Central Office. The Offices are as follows:

Office of the Secretary	Office of Business & Workforce Diversity
Office of Chief Counsel	Office of Communications
Office of Finance and Administration	Office of Legislative Affairs
Office of Planning & Programming	Office of Quality Compliance and Review

d. IDOT's Nine Division of Highway Districts

IDOT's Division of Highways is divided into nine Districts located throughout Illinois:

District 1 Schaumburg	District 2 Dixon	District 3 Ottawa	District 4 Peoria	District 5 Paris
District 6 Springfield	District 7 Effingham	District 8 Collinsville	District 9 Carbondale	

2. Illinois Department of Central Management Services

a. Role in Administering the Personnel Code

As administrator of the Personnel Code, CMS performs certain personnel functions for positions subject to the Personnel Code, regardless of the agency to which those positions belong. Some of these functions include:

- reviewing and approving position descriptions for proper classification;
- establishing the Pay Plan, which determines compensation levels;[37]
- creating tests and/or grading applications;
- compiling lists of applicants who meet the standardized requirements of a position who are then eligible to be interviewed; and
- reviewing and processing personnel transactions.

[37] 20 ILCS 415/8a(2).

CMS ***does not*** perform these personnel functions for positions that are exempt from the Personnel Code. IDOT has created "technical positions," some of which are classified as Technical Managers that are fully exempt from the Personnel Code.[38]

In light of the Personnel Code exception, CMS ***does not*** do any of the following with respect to IDOT's technical positions:

- review, approve, or classify any IDOT technical positions;
- determine the compensation level a technical position should be created or filled; or
- administer or review the hiring process or transactions for any of IDOT's technical positions.

b. Role in Making *Rutan* Determinations and Forms Used

i. Role in Making Rutan Determinations

Pursuant to the Administrative Orders discussed above, CMS is the State agency responsible for determining whether IDOT positions are *Rutan*-covered or *Rutan*-exempt.

The OEIG interviewed Senior Public Service Administrator Employee 7 regarding how CMS makes *Rutan* determinations; that is, how CMS decides whether a position is either *Rutan*-covered or *Rutan*-exempt. Employee 7 serves as the Division Manager in the Technical Services and Agency Training Division of CMS, which is the Division that makes *Rutan* determinations.

According to Employee 7, any time an agency establishes a new position, or clarifies an existing one; it sends a position description to CMS for a *Rutan* determination. Employee 7 stated that CMS relies solely on the position description sent by the agency when making this determination. Employee 7 informed OEIG investigators that the position description undergoes two stages of evaluation before a final *Rutan* determination is made; it is first reviewed by a subordinate and then reviewed by Employee 7.

In describing the procedure she follows, Employee 7 stated that as part of the *Rutan* calculus, the duties of a position are analyzed along three axes.[39]

> ***First,*** the duties of a position are assessed for the degree to which they confer policymaking authority on the incumbent, which includes the authority to develop, implement, and carry out the policies of an agency. According to Employee 7, these policymaking duties typically belong to positions in upper management.
>
> ***Second,*** the duties of a position are assessed for the degree to which they permit the incumbent access to confidential information, which could include labor-related or budgetary information. Employee 7 said that if a position is excluded from the bargaining unit because of its access to confidential labor information, it would most likely be deemed *Rutan*-exempt.

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[38] 20 ILCS 415/4c(12).

[39] In light of the fact that much of the analysis CMS performs relating to its *Rutan*-exempt determination is not fully known by agency personnel and in an effort to minimize manipulation of position descriptions, the OEIG will not disclose certain internal CMS documents which identify the formula CMS uses to make *Rutan* determinations.

Third, the duties of a position are assessed for the degree to which they confer on the incumbent the authority to speak on behalf of the agency or commit the agency to a course of action. The higher the degree to which the position entrusts the incumbent with these types of duties, the higher the likelihood that the position will be *Rutan*-exempt; otherwise, the position will be *Rutan*-covered.

The nature of a position's duties is not the only factor that CMS considers when making a *Rutan* determination. Employee 7 stated that whenever a subordinate position reports to a *Rutan*-covered supervisor, the subordinate position will be *Rutan*-covered. According to Employee 7, if a supervisor is not instilled with sufficient authority to be *Rutan*-exempt, then neither could the subordinate be instilled with such authority.

Employee 7 explained that CMS also analyzes the location of the position within the agency's organization. If the position is at a low level, CMS may question the degree to which it confers on the incumbent the authority to make policy, access confidential information, or speak on behalf of the agency.

ii. (Non Code) Position Review/Determination Form

When State agencies create a new position, they are required to complete the top portion of a CMS "(Non Code) Position Review/Determination Form." The requesting agency is required to, among other things, list the position title and position number, and attach a current job description. The form contains a place for the agency Director's signature.

Upon receipt of the form and job description, CMS reviews the position description along its three axes as described above and determines whether the position is exempt from *Rutan* (*Rutan*-exempt position) or non-exempt from *Rutan* (*Rutan*-covered position). The form is then returned to the requesting agency.[40]

C. IDOT'S Personnel Classification System

1. IDOT's Categorization of Positions

IDOT's Personnel Policies Manual generally categorizes IDOT positions as:

- Code – positions subject to the Personnel Code;
- non-code – positions exempted from the Personnel Code; or[41]
- contractual.

As discussed below, IDOT Technical Manager positions are considered non-code, which means they are exempted from the Personnel Code.

2. Non-Code Technical Classification

One classification of non-code positions at IDOT is the "technical" classification. Within the technical classification is the so-called Technical Manager position.

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[40] *See* Appendix to Report at Exhibit 6.

[41] IDOT contractual employees may be either Code or non-Code positions.

Each IDOT technical position, including the Technical Manager position, is assigned a classification and pay level, as well as a working title, which usually describes the function of the position. For Technical Managers, levels range from Technical Manager I (TM I) to Technical Manger X (TM X). The technical position classification and level correspond to a salary range for the position. In other words, the higher the level, the higher the pay because of increased duties and responsibilities.

As noted above, IDOT's "technical and engineering staffs"[42] are exempt from the Personnel Code. The Personnel Code, however, does not define "technical staff." The OEIG sought to determine how IDOT defined "technical" but was unable to find any policy, rule, or procedure that defined the term. Moreover, as discussed more fully below, IDOT personnel, including those in the Bureau of Personnel Management, and Secretary Schneider were unable to define the term or identify a written definition of the term "technical."

D. IDOT's Hiring Procedures, Related Forms, and Internal Personnel Policies

State law grants IDOT the authority "to establish the administrative organization within the Department that is required to carry out the powers, duties, and functions of the Department and best utilize the personnel, skills, facilities, and resources of the Department and its offices, divisions, and agencies."[43]

According to IDOT's Personnel Policies manual, the:

- *Office of the Secretary* is responsible for administration of IDOT's personnel policies;
- *Director of Finance and Administration* is responsible for personnel activities; and
- *Bureau of Personnel Management* is responsible for the development and application of the agency's recruitment, interview, selection, and placement programs of all employees as well as for all employment functions.

E. Comparison of Procedures Required for Hiring Employees into *Rutan*-Covered Positions with Procedures Hiring into *Rutan*-Exempt Positions

IDOT must follow different steps when it hires for a *Rutan*-covered as opposed to *Rutan*-exempt position. The following charts summarize the 10-step *Rutan*-covered hiring process and the 2-step *Rutan*-exempt hiring process:

***Rutan*-Covered Hiring Process**	***Rutan*-Exempt Hiring Process**
1. Review the position description for the position being filled and update if necessary to reflect current duties, responsibilities, and requirements.[44]	1. Create an IPR and submit it to Bureau of Personnel Management for approval by Bureau Chief and Director of Finance and Administration.
2. Create an Internal Personnel Request and submit to Bureau of Personnel Management for approval by Bureau Chief and Director of Finance and	2. Submit ePAR and obtain approval of Secretary of Transportation, GOMB, and the Governor's Office.

[42] 20 ILCS 415/4c(12).
[43] 20 ILCS 2705/2705-15(b).
[44] Administrative Order No. 2 (2009).

Administration.

3. Develop hiring criteria for the position.[45]

4. Develop a standardized interview questionnaire.[46]

5. Post the position to the www.work.illinois.gov website for 10 days.[47]

6. Contact all reachable candidates for an interview, if practicable, or develop a standardized selection method, which must be justified in writing if the selection method is other than random selection.[48]

7. Conduct structured interviews using multi-member interview panels, composed of interviewers who have been *Rutan* certified upon completion of *Rutan* training, and who are re-certified every three years.[49]

8. Evaluate and score each candidate interviewed by weighing qualifications against hiring criteria.[50]

9. Preserve a *Rutan* hiring file for the position, maintained separately from employee personnel files and ordered chronologically, which includes the Hiring Criteria, Interview Questionnaire, Candidate Evaluation Form, and the Employment Decision Form.[51]

10. Submit an Electronic Personnel Action Request[52] and obtain approval of Secretary of Transportation and GOMB.[53]

At times, IDOT conducts an informal interview with a candidate who is being considered for a *Rutan*-exempt position. IDOT, however, does not post *Rutan*-exempt positions on the

[45] Administrative Order No. 2 (1990).
[46] Administrative Order No. 2 (1990).
[47] Administrative Order No. 2 (2009).
[48] Administrative Order No. 2 (2009).
[49] Administrative Order No. 2 (2009).
[50] Administrative Order No. 2 (1990); Administrative Order No. 2 (2009).
[51] Administrative Order No. 2 (2009); Administrative Order No. 2 (2009).
[52] Executive Order No. 10 (2010) was issued by the Quinn Administration as a cost-cutting measure. One provision of that Order mandates that all personnel transactions require Electronic Personnel Action Request (ePAR) approval by the Governor's Office of Management and Budget (GOMB) before they are executed. An ePAR is defined by Executive Order No. 10 (2010) as, "[A]n electronic document that provides essential details of positions of employment in State government, and a mechanism for effectuating a personnel transaction." ePAR approval is required of all positions, whether they are *Rutan*-covered or *Rutan*-exempt.
[53] GOMB is the subdivision of the Office of the Governor responsible for, among other things, authorizing hiring. Until mid-2012, GOMB approval was required both to post a job and to hire the selected candidate for a *Rutan*-covered position. Since that time, the Secretary has been able to provide the final approval to hire a candidate selected through the *Rutan* hiring process.

www.work4illinois.gov website, or have a structured, standardized interview process for *Rutan*-exempt positions.

As indicated above, regardless of whether a position is *Rutan*-covered or *Rutan*-exempt, ultimately IDOT's Secretary must approve an ePAR before the selected candidate can be hired.[54] Secretary Ann Schneider was questioned by OEIG investigators about the approval required to fill *Rutan*-exempt positions. Ms. Schneider explained that as Secretary, she must give approval for all pending ePARs before personnel actions may proceed to the Governor's Office for subsequent approval.

F. Relevant IDOT and CMS Forms Used in Hiring Process and Relevant Policies

1. Internal Personnel Request

Any time IDOT wishes to execute a personnel transaction (this can include, among other actions, appointments, promotions, lateral transfers, reallocations, or establishing a position), an Internal Personnel Request (IPR) form,[55] which includes various types of information related to the personnel transaction being sought, must first be generated and filled out.

Information in the IPR includes both a position and working title, the IDOT Office or Division to which the position belongs, whether the position is *Rutan*-covered or *Rutan*-exempt, the personnel action being requested, the name and salary of the incumbent who previously held the position, and the justification for requesting the personnel action. The IPR has a signature line for the Director making the request and the Director of Finance and Administration, and is signed by the Bureau Chief of Personnel Management.

a. Bureau Chief of Personnel Management's Statements regarding the IPR

Former Bureau Chief of Personnel Management and current Deputy Director of Finance and Administration Mike Woods, Jr. was also questioned by OEIG investigators regarding the significance of his signature on Internal Personnel Requests as the Director of Finance and Administration. Mr. Woods agreed that his signature on an IPR, when he was the Bureau Chief of Personnel Management, indicated that he approved of the request to bring on a new employee at IDOT. Mr. Woods said that his signature did not signify approval to hire a person, because he did not have such authority. He characterized his signature as representing approval to process the paperwork so that the request to hire a person could then proceed to the next level of approval. When asked if he could recall an instance in which he would have not approved an Internal Personnel Request as the Bureau Chief of Personnel Management, Mr. Woods responded, "I can't think of a particular instance, at this point." Mr. Woods added that IPRs should have included the signature of the Director making the request, ideally should have originated from the Director making the request, and that his signature was an indication of another level of "checks and balances." Mr. Woods stated that he did not track the number of IPRs he signed.

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[54] *See* Appendix to Report at Exhibit 7 for a sample.
[55] *See* Appendix to Report at Exhibit 8 for a sample.

Former Director of Finance and Administration Matt Hughes was also questioned by OEIG investigators regarding the significance of his signature on Internal Personnel Requests when he was the Bureau Chief of Personnel Management. Mr. Hughes said that his signature represented his willingness, as the Bureau Chief of Personnel Management, to present the requested personnel action to the Director of Finance and Administration as an option, based on the request submitted by the originating entity.[56]

b. Director of Finance and Administration's statements regarding the IPR

Former Director of Finance and Administration Matt Hughes was questioned by OEIG investigators regarding the significance of his signature on Internal Personnel Requests. Mr. Hughes said that his signature as Director of Finance and Administration reflects that the position exists, there is a budget for the position in the Division, Office, Bureau, or District where the position is located, and that the personnel request can be entered into the ePAR system for ePAR approval.

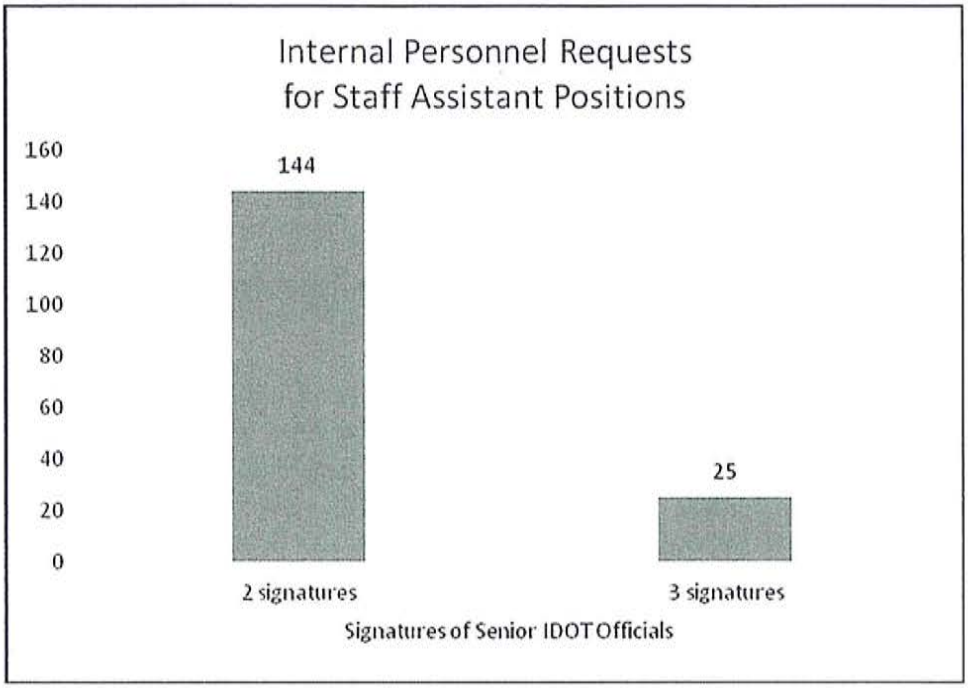
When asked if his signature also represented his approval that there was a need in the agency for the position, Mr. Hughes responded, "I'm approving the commitment that the budget will allow the hiring, yes. And that the Director is requesting help, that we can afford it, and I'm willing to put it in the ePAR to seek approval."

c. Chart of IPR Signatures

Investigators reviewed over 150 Internal Personnel Requests that allowed for the filling of Staff Assistant positions. As indicated above, IPRs contain a place for the signature of the following: 1) the Requesting Director, 2) the Director of Finance and Administration, and 3) the Bureau Chief of Personnel Management. Of the Staff Assistant IPRs investigators reviewed, 25 contained all three signatures, while 144 IPRs only contained two signatures (the Director of Finance and Administration and the Bureau Chief of Personnel Management). The chart below reflects those numbers.

As will later be discussed, this is consistent with statements given by supervisors who told investigators they were sent Staff Assistants by the Central Office without having ever requested Staff Assistant help.

[56] A review of Internal Personnel Requests reveals that the date of the Bureau Chief of Personnel Management's signature often came after the signature date of the Director of Finance and Administration. When asked about this, Mr. Hughes said, "Well, yeah, it's signed last meaning that the ePAR had been approved in the ePAR system . . . If the last box [of the Internal Personnel Request] is Bureau Chief of Personnel Management's signature saying we have a completed request here. We have an approved request. And that the, individual will start . . ." Ultimately, investigators were unable to clarify IDOT's signature order protocol.



2. Notice of Personnel Action Form

Once a personnel action is complete, a Notice of Personnel Action form is generated, memorializing the completion of the personnel action.[57] The form identifies, among other information, the name of the affected employee, the nature of the personnel action, and any "remarks" made in connection with the action. The form contains signature lines for "District/Bureau Chief Approval," "Personnel Clearance," and "Director and Secretary Approval."

3. Position Descriptions and Position Numbers

IDOT maintains position descriptions for the positions it staffs. Each position description indicates the position's title, location in the agency, reporting structure, purpose, nature and scope, and principal accountabilities. Each IDOT position is assigned a unique position number. The IDOT position numbers may consist of a series of letters and numbers that indicate, among other things, the position's technical level and where at IDOT the position is located.

For example, a typical IDOT position number for a Staff Assistant may read: PW416-23-40-306-10-01. That letter and number series of this particular position number represents the following:

PW416- According to a "Position Numbering Scheme" IDOT produced to investigators, positions that begin with the "PW" designation are not covered by the personnel code. The "PW" along with the series of three numbers that follow "416," represent the unique Position Code assigned to Technical Managers, and the last of the three numbers reflects the Technical Manager Level. In this case, this would be a position that is a Technical Manager Level VI.

[57] *See* Appendix to Report at Exhibit 9 for a sample.

-23- The next two series of numbers represent the State agency, which in this case is the Illinois Department of Transportation.

-40- The next two series of numbers represent the Office or Division where the position is located. The various IDOT Offices or Divisions have their own two digit numbers assigned to them. For example, the Office of Finance and Administration is designated numbers 40, the Division of Aeronautics is designated numbers 60.

-306- The next three series of numbers represent the Bureau and Section where the position is located.

-10- The next two series of numbers represent the Unit and Sub-unit where the position is located.

-01 The last two series of numbers represent the Position Designation.

Relevant to this investigation are the Staff Assistant position descriptions and position numbers.

4. Performance Evaluation Form

IDOT maintains various mechanisms by which it evaluates employees. Technical employees, including Technical Manager Staff Assistants, are evaluated through IDOT's performance management system, as articulated in IDOT's Personnel Policies Manual.

The evaluation form for technical employees includes, among other information, the following:

- name of the employee being evaluated
- position title and working title
- period of report
- location of the position
- performance standards
- summary of actual achievements
- overall performance level of employee
- comments and employee comments

In addition, the forms include signature lines for the employee, the supervisor, the next level supervisor, and the Director.

5. Hiring Related Policies and Illinois Fiscal Control and Internal Auditing Act

There are a number of internal and external policies that IDOT employees are required to adhere to as IDOT employees. Some of these policies are set forth below.

a. IDOT Performance Evaluations

According to IDOT policy, technical employees should be evaluated at least once every 12 months, utilizing the performance management system identified above. When developing the performance standards to be included on the performance evaluation, IDOT's personnel policy requires that the "[P]erformance standards are to be developed within the following constraints. Each must be: a) related to the job accountabilities and/or additional direction..."[58] As earlier noted, the accountabilities of a given position are found on the position description.

[58] IDOT Personnel Policies Manual 5-7 A.1.

b. IDOT Employment of Relatives

According to IDOT policy, IDOT "...considers it improper for a supervisor to oversee a relative,"[59] including a spouse, child, stepchild, sister-in-law, or brother-in-law. IDOT policy states that employees are prohibited from holding a superior or subordinate position to their relative and "...are also prohibited from holding a position which involves a 'check and balance' function; i.e., the review and approval of said employee's work."[60]

G. The Role of the Office of the Governor in State Hiring

The Office of the Illinois Governor includes a number of personnel whose duties and responsibilities include the oversight of State agencies, among other things. Among the personnel employed within the Office of the Governor are the Chief of Staff and Deputy Chiefs of Staff, some of whom serve as liaisons to particular agencies, including IDOT.

1. Interview of Current Chief of Staff Ryan Croke

On May 14, 2014, investigators interviewed current Chief of Staff Ryan Croke, who began serving in that position in October 2013. Mr. Croke explained to investigators the involvement of the Office of the Governor in an agency's hiring of a candidate into a *Rutan*-exempt position. According to Mr. Croke, if the agency has already identified a candidate that it wishes to hire into a *Rutan*-exempt position:

- the agency submits an ePAR to the Office of the Governor for approval;
- the ePAR is approved by the Governor's Office of Management and Budget;
- the ePAR is approved by both the Deputy Chief of Staff and the Chief of Staff; and
- the agency fills the vacancy with the desired candidate.

If the agency has not identified a candidate for a *Rutan*-exempt position that it wishes to fill, Mr. Croke stated the agency might contact the Office of the Governor, or colleagues inside or outside the agency, for help in finding a suitable candidate, prior to submitting an ePAR to the Office of the Governor for approval.

Mr. Croke told investigators that, in general, when considering ePAR approval for a *Rutan*-exempt position, the Governor's Office of Management and Budget takes into account considerations that differ from those that the Deputy Chief of Staff and the Chief of Staff take into account. Mr. Croke said that the Governor's Office of Management and Budget is focused on whether there are sufficient resources available to fill the given position. The Governor's Office of Management and Budget is also sensitive to headcount and will consider a candidate's résumé to ensure that the candidate has the appropriate credentials. On the other hand, the Deputy Chief of Staff and the Chief of Staff ensure that the candidate shares the policy views of the Governor, in addition to ensuring that the candidate has credentials that are suited for the *Rutan*-exempt position. Mr. Croke further noted, "You don't want to have a manager in a

[59] IDOT Personnel Policies Manual 3-8 B.1.
[60] IDOT Personnel Policies Manual 3-8 B.2.

sensitive policymaking position who has views that are totally at odds with the views of the agency Director."

2. Interview of Former Chief of Staff Jerry Stermer

On May 16, 2014, investigators interviewed former Chief of Staff Jerry Stermer, who served in that position from February 2009 until September 2010. Mr. Stermer explained to investigators the involvement of the Office of the Governor in an agency's hiring of a candidate into a *Rutan*-covered position during his tenure. Mr. Stermer said that in order to fill a *Rutan*-covered position, an agency needed to obtain approval from the Governor's Office of Management and Budget. The Governor's Office of Management and Budget would consider whether there were appropriations for the proposed hire and whether the work that would be performed by the proposed hire was needed. Mr. Stermer pointed out that for *Rutan*-covered hires, there could be no discussion regarding who might be a candidate.

Mr. Stermer also explained the role of the Office of the Governor with respect to *Rutan*-exempt hires while he was the Chief of Staff. Mr. Stermer's account of how a *Rutan*-exempt position was filled was similar to Mr. Croke's explanation. According to Mr. Stermer, an ePAR would be initiated by an agency and sent to the Governor's Office of Management and Budget, where approval of the ePAR was based on whether there were sufficient resources available to properly fund the position. Once approved by the Governor's Office of Management and Budget, the ePAR would then require approval from the Chief of Staff before the position could be filled. Mr. Stermer stated that approval from the Deputy Chiefs of Staff was not required, but he would consult with them prior to granting ePAR approval.

Mr. Stermer said that candidate names for *Rutan*-exempt positions could be obtained from the agency, politicians, the Office of the Governor, or from people who presented themselves. According to Mr. Stermer, the Office of the Governor made three considerations when determining whether to grant ePAR approval for a *Rutan*-exempt hire:

- Was this position available within the budget?
- Was there a need at the agency to have a *Rutan*-exempt position filled?
- Was the candidate capable of performing the position and of supporting the approach of the agency?

H. IDOT Staff Assistants

1. Classification of Staff Assistant as Technical Managers

The OEIG examined positions with the same classification, namely the Technical Manager classification,[61] and the same working title, namely that of an IDOT Staff Assistant.

Although the majority of IDOT *Rutan*-exempt Staff Assistants were Technical Manager II pay grade positions, other Staff Assistants were assigned Technical Manager pay grade levels of I, III, IV, V, or VI. Because the Staff Assistant position is classified as a Technical Manager, the position is exempt from the Personnel Code. Thus, as indicated above, CMS has no role in

[61] Technical Manager positions are also referred as "TM" positions. Accordingly, a Technical Manager title with the accompanying pay grade level II, is referred to as a TM II position.

the hiring of or establishing a compensation scale for IDOT's Staff Assistant position. Instead, CMS' only role with respect to the Staff Assistant position is determining whether it is *Rutan*-covered or *Rutan*-exempt.

2. IDOT's Staff Assistant Position Description

As part of its investigation to determine whether the Staff Assistant position descriptions were manipulated so they would be exempt from State hiring laws and regulations, the OEIG requested and obtained a copy of the position description for every IDOT Staff Assistant position.

The OEIG reviewed numerous Staff Assistant position descriptions in classifications ranging from Technical Manager I to Technical Manager VI, which were located in various Divisions, Offices, and Districts of IDOT. The OEIG found that there is minimal differentiation between the various position descriptions; for example, the language of the position description for a Staff Assistant classified as a Technical Manager I in the Office of Chief Counsel[62] differed in no significant way from that of a Staff Assistant classified as a Technical Manager VI in the Division of Public and Intermodal Transportation.[63]

The similarity in the position description's language was consistent for Staff Assistants throughout IDOT, with the exception of Staff Assistant positions located in IDOT's Bureau of Personnel Management. The language of the position descriptions for Staff Assistants in the Bureau of Personnel Management sets forth a different purpose, nature and scope, and principal accountabilities than those that belong to the position descriptions of Staff Assistants in other agency locations.

As set forth below, the position description identifies the position as one that requires the employee holding that position to be involved in policymaking, to deal with sensitive and confidential issues, or to serve as a spokesperson for IDOT.

a. Staff Assistant Position Description Used Throughout the Agency Except in the Bureau of Personnel Management

The Staff Assistant position description included the following sections: purpose, nature and scope, and principal accountabilities.

i. Purpose

For Staff Assistant positions that are in various locations of IDOT other than the Bureau of Personnel Management, the section of the description that describes the position's purpose states the following:

> This position is accountable for assisting in the overall development and coordination of policy and directives regarding [the relevant District/Office/Bureau/Division] programs. This position monitors conformance to existing policies and conducts reviews or studies issues that are of special interest. S/He provides policy interpretation and analysis of

[62] *See* Appendix to Report at Exhibit 10.
[63] *See* Appendix to Report at Exhibit 11.

policies. In addition, this position provides assistance to the local agencies, elected officials, and the general public.

ii. Nature and Scope

The Nature and Scope section of the Staff Assistant position descriptions outlines the duties expected of the incumbent and the challenges that he or she may confront while in the position. The Nature and Scope section of the position description for Staff Assistants in locations other than the Bureau of Personnel Management indicates that the position resolves problems involving policy that are sometimes of a confidential nature. The position also develops policy and makes policy recommendations to management. Where issues or problems cross departmental office/division lines, s/he serves as a liaison to ensure proper communication of goals and objectives throughout the process. The position description states, "The greatest challenge of this position is to ensure the development of the best possible solutions to policy issues within the constraints of budgetary and socioeconomic factors."

In addition to these policy-related duties, the position also serves as a spokesperson for divisional programs and as a liaison between the Director, the Office of the Governor, the legislature, other State agencies, and the general public. In this regard, the position assists the Director in responding to inquiries from the Office of the Governor, the legislature, or the general public related to policies and procedures. The position is also in frequent contact with the legislators and the general public regarding proposed legislation and programs.

The Nature and Scope section concludes by stating, "The effectiveness of this position is measurable by the timely production of policy reports and documents; by the validity, thoroughness and accuracy of information provided to bureau management; and by the degree of reliance management demonstrates in the incumbent."

iii. Principal Accountabilities

The Principal Accountabilities section of the position description describes the so-called essential duties of the position. According to IDOT's Personnel Policies Manual, the principal accountabilities are to be used for the purpose of developing performance standards when evaluating the incumbent. The Principal Accountabilities of Staff Assistant positions that are in various locations of IDOT other than the Bureau of Personnel Management include, verbatim, the following:

1. Serves as confidential assistant to the director in all matters regarding employees.
2. Serves as liaison between the director and the Governor's Office, the legislature, other State agencies and the general public to ensure effective and efficient communication.
3. Serves as departmental spokesperson for [the relevant District/Bureau/Office/Division] programs conducting presentations to departmental management, elected officials and the general public.
4. Coordinates and assists in implementing policy initiatives. Reports on the process to management.
5. Develops informational documents accurately presenting background and options for addressing issues of policy concern. Develops appropriate policy recommendations to provide maximum

benefits to IDOT and the State of Illinois.

6. Provides analysis and recommendations on policy issues for management.
7. Coordinates information on relevant policy issues to ensure that decisions are consistent with past policies and current goals and objectives of [the relevant District/Bureau/Office/Division].
8. Ensures compliance with departmental safety rules and practices. Performs all duties in a manner conducive to the fair and equitable treatment of all employees.

c. Staff Assistant Position in the Bureau of Personnel Management

The language of the position description is different for Staff Assistants located in the Bureau of Personnel Management. Below is a summary of the purpose, nature and scope, and principal accountabilities set forth in the position description for Staff Assistants the Bureau of Personnel Management.

i. Purpose

For those Staff Assistants, the section of the description that describes the position's purpose states:

> This position serves as departmental *Rutan* coordinator, as staff assistant to the Bureau Chief of Personnel Management in accomplishing administrative tasks as well as a liaison with the Governor's Office, the Legislature, other State agencies and the general public and as employment counselor for applicants.

ii. Nature and Scope

The Nature and Scope section of the position description for Staff Assistants in the Bureau of Personnel Management indicates that the position provides essential staff support to the Bureau Chief in accomplishing matters that are confidential and is viewed as the representative of the Bureau. The position description states, "The greatest challenge of this position is to provide staff assistance to the Bureau Chief in the tactical aspects of developing and/or positions to be taken by the Bureau on policies and procedures affecting the Department. Typical problems involve gathering information in a timely manner to allow for the proper responses to inquiries."

As departmental *Rutan* coordinator, the incumbent determines which positions within the department "should be submitted for exclusion status," and the incumbent serves as liaison with CMS to coordinate *Rutan*-related concerns. The incumbent is also a liaison between the Bureau Chief, the Governor's Office, the legislature, other State agencies, and the general public.

The incumbent serves as a departmental spokesperson regarding personnel problems for the purpose of creating departmental awareness and developing a climate suitable for initiating corrective actions. As a departmental spokesperson, the incumbent makes presentations to management, explains applicable rules and laws of the personnel program, is a reference point for all Bureau of Budget and Fiscal Management inquiries, and gathers information for the Bureau Chief on confidential issues dealing with Bureau policies and procedures. Moreover, the incumbent serves as Employee Assistance Program (EAP) Coordinator for the Bureau, which

involves directing employees to the appropriate source of assistance to resolve problems as well as dealing with confidential issues related to these problems.

The Nature and Scope section concludes by stating, "The effectiveness of this position is measured by the accuracy and timeliness of information gathered to respond to confidential issues."

iii. Principal Accountabilities

The Principal Accountabilities of Staff Assistant positions that are in the Bureau of Personnel Management include, verbatim, the following:

1. Serves as departmental coordinator for all *Rutan* exclusion/inclusion related issues; advises departmental management on this matters [sic].
2. Serves as employment counselor to departmental employees and outside applicants.
3. Serves as confidential assistant to the Bureau Chief in all matters regarding technical employees and polices governing those employees.
4. Serves as liaison between the Bureau Chief and the Governor's Office, the Legislature, other State agencies and the general public to ensure effective and efficient communication.
5. Serves as a reference point for all Bureau of Budget and Fiscal Management inquiries.
6. Serves as departmental spokesperson for bureau programs conducting presentations to departmental management, elected officials and the general public.
7. Responds to written and verbal inquiries from various sources on issues pertaining to bureau policies and procedures.
8. Serves as bureau EAP Coordinator.
9. Conducts special studies and prepares ad hoc reports at the request of the Bureau Chief.
10. Ensures compliance with departmental safety rules and practices. Performs all duties in a manner conducive to the fair and equitable treatment of all employees.

3. CMS Determines Staff Assistant Position to be *Rutan*-Exempt

OEIG investigators discovered that of the more than sixty separate Staff Assistant position descriptions submitted by IDOT to CMS for a *Rutan* determination between 2003 and 2012, all but two were determined to be *Rutan*-exempt. The two instances in which investigators discovered that CMS determined Staff Assistant positions to be *Rutan*-covered are described further below.

In the first instance, IDOT sent a position description to CMS for a Staff Assistant located in the Bureau of Maintenance in District 1. IDOT's Acting Section Manager of the Organizational Analysis and Compensation Section, Employee 8, stated it was her understanding that CMS determined the position to be *Rutan*-covered because the Staff Assistant position reported to a *Rutan*-covered position. It was Employee 8's belief that the position was never filled because nobody was interested in filling the position after it was deemed to be *Rutan*-covered. The position description reveals that the position was slated to report to the Bureau Chief of Maintenance.[64]

[64] *See* Appendix to Report at Exhibit 12.

In the second instance, in December 2009 according to Employee 8, IDOT sent a position description to CMS for a Staff Assistant located in the Division of Traffic Safety, which reported to the Commercial Vehicle Section Chief.[65] In this instance, IDOT filled the position with an employee named Employee 9 *prior* to the date CMS issued its determination, which in this case turned out to be a *Rutan*-covered determination. This position was not filled pursuant to the *Rutan* hiring process.

I. Documents Reviewed and Individuals Interviewed

As discussed above, in conducting its investigation, the OEIG obtained and reviewed thousands of documents and conducted over 100 interviews of various individuals employed in IDOT locations throughout the entire State of Illinois. The following is a more detailed description of the type of IDOT documents reviewed and the names of the individuals interviewed during the course of this investigation.

1. Documents

a. In General

During the course of this investigation, the OEIG reviewed the scope of work performed by numerous Staff Assistants and the circumstances surrounding IDOT's employment of Staff Assistants. In order to determine the facts concerning the allegations of hiring impropriety, OEIG investigators sought and obtained:

- personnel files for persons employed as Staff Assistants;
- Staff Assistant position descriptions;
- position descriptions for other IDOT positions;
- communications involving hiring and assignment of Staff Assistants;
- IDOT Technical Pay Plans,
- organizational charts for IDOT's Offices, Divisions, and Districts;
- IDOT's internal tracking list of Staff Assistants;
- IDOT's tracking list of all *Rutan*-exempt positions and employees; and
- other documents related to IDOT's hiring processes and procedures for the creation and filling of Staff Assistant positions.

Investigators also obtained and reviewed documents relating to *Rutan* determinations from CMS's Division of Technical Services and Agency Training.

b. Organizational Charts

As explained above, CMS not only considers a position's duties as set forth in the position description when making a *Rutan* determination, it also considers the position's placement in the organization as well as whether the position's supervisor is *Rutan*-covered or *Rutan*-exempt. As part of its investigation, the OEIG sought to determine the organizational

[65] *See* Appendix to Report at Exhibit 13.

placement of certain Staff Assistant positions, as well as the supervisor of those Staff Assistants. Subsequently, investigators requested and obtained IDOT organizational charts. Below is a timeline chronicling those requests.

On September 20, 2011, investigators received an organizational chart for IDOT's District 7 in Effingham, Illinois. On February 28, 2012, investigators issued a request for documents to IDOT in which they sought organizational charts for numerous divisions. On March 27, 2012, IDOT provided organizational charts responsive to the request for documents. On February 6, 2013, in light of the expanded investigation, investigators issued a request for documents to IDOT in which they sought a copy of all IDOT organizational charts. In response to the request, IDOT produced 21 organizational charts relating to various divisions, including:

- Office of the Secretary
- Office of Business and Workforce Diversity
- Office of Chief Counsel
- Office of Communications
- Office of Finance and Administration
- Office of Internal Audit
- Office of Legislative Affairs
- Office of Planning and Programming
- Office of Compliance and Review
- Division of Aeronautics
- Division of Traffic Safety
- Division of Public and Intermodal Transportation
- District 1
- District 2
- District 3
- District 4
- District 5
- District 6
- District 7
- District 8
- District 9

c. Performance Evaluations

As noted above, IDOT maintains a performance management system, through which it evaluates its technical employees. According to IDOT policies, evaluations are to be conducted on a regular basis and at least once every twelve months.[66]

Investigators obtained and reviewed numerous Staff Assistant performance evaluation forms for the purpose of determining whether the duties for which Staff Assistants were evaluated actually corresponded with the duties described in the applicable position description. Investigators also sought to identify who was supervising each Staff Assistant, and whether that individual was the supervisor identified on the Staff Assistant position description. In addition, investigators reviewed the personnel files and performance evaluations for the purpose of determining the dates upon which the performance evaluations for the particular Staff Assistants were conducted, or if evaluations were conducted at all.

d. Employment Decision Form

IDOT uses a so-called "Employment Decision Form" to justify employment decisions.[67] This form is only used when IDOT hires someone through the *Rutan* hiring process. The

[66] IDOT Personnel Policies Manual 5-7.

[67] *See* Appendix to Report at Exhibit 14 for a sample.

Employment Decision Form contains a place that identifies the candidate's name, agency, division, evaluation, location, and the Secretary's signature. In the "justification" section, the Director is required to:

> Explain the reasons for hiring the selected candidate and provide a general statement comparing the selected candidate with others who were interviewed. If selection is out of rank order, include rationale.

e. 2005 Illinois Office of Internal Audit of IDOT Non-Code Personnel

Investigators discovered that in 2005, the Illinois Office of Internal Audit conducted an audit of IDOT non-code personnel, including certain Technical Manager positions.[68] According to audit documents, the objectives of the audit were to:

- analyze risks and control structures by obtaining an understanding of the governing rules, statutes, policies, procedures and contractual requirements processes;
- ensure non-code employees were properly classified;
- ensure proper hiring practices were followed for non-code employees in positions determined to be covered by the *Rutan* decision.

The audit, which was issued to IDOT in May 2005 and signed by Audit Manager Employee 10, made six material findings and corresponding recommendations,[69] which have been summarized as follows:

Finding	Auditor's Recommendation	IDOT's Response to Auditor's Recommendation
1) Non-Code employees performing duties covered by the Personnel Code[70]	Illinois Department of Transportation and CMS work in conjunction to review all positions classified as technical or engineering in the Technical Manager and Management Technician job classifications to ensure that the positions are sufficiently technical to be classified as non-code. Positions that are not considered exempt should be reclassified as coded employees and remedial corrective action should be taken to ensure compliance with the Personnel Code.	The Department agrees with the finding.
2) Specific job duties not consistent with	The Bureau of Personnel Management reviews all position descriptions to ensure their comparability to the generic job	The Department agrees with the finding....The Department agrees to review job specifications to ensure that generic

[68] In 2003, pursuant to Executive Order 10 (2003), the Illinois Office of Internal Audit was created in order to consolidate the internal auditing functions of all state agencies, boards, and commissions that report to the Office of the Governor into a single statewide unit. The office was disbanded in 2010, and the internal auditing functions were returned to each state agency.

[69] *See* Appendix to Report at Exhibit 15.

[70] The audit noted that of the 65 positions reviewed in the Technical Manager, Management Technician, Realty Specialist and Urban Planner title groups, 60 (92.31%) of the positions were comparable to Personnel Code positions.

general job duties[71]	descriptions. Policies and procedures need to be written and followed to ensure individual job descriptions conform to the requirements of the generic job descriptions.	functions reflect general levels of responsibilities for that classification.
3) *Rutan*-exempt employees reporting to non-*Rutan*-exempt employees[72]	IDOT review the individuals found to be at issue to determine and correct *Rutan* status. A review process should also be developed to ensure consistency in line responsibility.	The Department agrees with the finding....In addition, the Department agrees to ensure that any newly created positions will meet the appropriate guidelines for reporting relations due to *Rutan* exemptions.
4) Employees in *Rutan*-exempt positions transferred into *Rutan*-covered positions[73]	IDOT contact CMS to address and correct the ten *Rutan*-exempt to *Rutan*-covered transfers cited. IDOT review all future requests for lateral transfers and promotions to ensure that positions that have been determined to be non-exempt from the *Rutan* decision are filled as a result of candidate interviews as required by the Supreme Court decision and the Administrative Orders.	The Department disagrees with the finding. The Department is entitled to make management-directed as well as employee-requested lateral transfers. The Department has complied with the *Rutan* decision by completing the Lateral Transfer Form, wherein employees certify that the hiring decision documented in the form has not been decided on the basis of political party affiliation. It appears from legal interpretations in the past and currently, at both IDOT and other State agencies, that these types of transfers, without interviews, do not violate the tenets of the *Rutan* decision. Frankly, the Department is surprised by this new found interpretation and does not agree.
5) Outdated position descriptions[74]	IDOT review and update the position descriptions for the 34 individuals cited. IDOT should implement a procedure that ensures all position descriptions are reviewed and updated at least every five years.	The Department agrees with the finding.
6) Incomplete interview files[75]	IDOT establish and enforce procedures to ensure that interview files are completed, maintained, and secured in a consistent manner.	The Department agrees with the finding.

[71] The audit found that four of the 65 (6.15%) sampled from the Technical Management, Management Technician, Technical Advisor and Urban Planner job descriptions were not consistent with the generic job descriptions.
[72] The audit identified 86 employees that were in *Rutan*-exempt positions where there was a *Rutan*-covered position with a higher position title. Of those 86, the audit found 12 (13.95%) employees that were directly supervised by managers in a *Rutan*-covered position.
[73] The audit found that there were ten employees that were transferred from *Rutan*-exempt positions to *Rutan*-covered positions without going through the interview processes as required by State Executive Order #2.
[74] The audit found that of 108 position descriptions reviewed, 34 (31.48%) had not been updated for at least 5 years.
[75] The audit found that of the 20 interview files reviewed, 8 (40%) did not have all required documents.

f. IDOT's *Rutan*-Exempt Position List and Staff Assistant History List

During the course of this investigation, OEIG investigators asked IDOT to produce documents relating to persons who held one or more of the Staff Assistant positions since 2003, as well as a list of all *Rutan*-exempt positions and employees at IDOT. In response to this request, IDOT produced various sets of documents.

One set of documents IDOT produced was various lists of all existing IDOT *Rutan*-exempt positions, which bear the heading "State of Illinois Department of Transportation listing of all employees in Positions Exempt from *Rutan*."[76] In a July 2013 interview, investigators asked Acting Section Chief – Bureau of Personnel Management, Organizational Analysis and Compensation Section Employee 8 about the *Rutan*-exempt lists and learned the following:

- the *Rutan*-exempt list is a report run from IDOT's Human Resources Information database (HRI system);
- when a new position is created or amended and the position description is submitted to CMS for a *Rutan* determination, the information is input into the HRI system by Bureau of Personnel Management staff;
- Bureau of Personnel Management staff continually update the HRI system, and the *Rutan*-exempt lists are run from that system weekly and archived monthly; and
- CMS does not have access to IDOT's HRI system or employment information for IDOT's technical employees; thus, IDOT provides CMS with a copy of the *Rutan*-exempt list as a record of all *Rutan*-exempt positions at IDOT.

IDOT also produced an internal document maintained by Employee 8 bearing the heading "Staff Assistant History."[77] The Staff Assistant History is a spreadsheet that contains the names of IDOT employees who filled Staff Assistant positions. The document also includes the employees start dates as well as dates when the employees transferred to other positions or separated from IDOT employment.

During her interview, Employee 8 informed investigators that:

- the Staff Assistant History list has existed since 2006;
- she generated the list in order to respond to inquiries about where certain employees were located or what positions they held;
- she updates the list monthly; and
- the list is 90-95% accurate.[78]

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[76] *See* Appendix to Report at Exhibit 16. The OEIG obtained 16 separate versions of this list, ran on specific and varying dates of each year, usually toward the end of the year for each year from 2002 through 2013. The December 2, 2013 version is attached as the exhibit.

[77] *See* Appendix to Report at Exhibit 17. IDOT provided two versions of this list, one run on January 3, 2013, and the other on May 7, 2014. The May 7, 2014 version is titled "Staff Assistant Positions/Employees," but purports to be an updated version of the Staff Assistant History list. The May 7, 2014 list is attached as the exhibit.

[78] Employee 8 explained that a typical inaccuracy on the list might include an error in the date of transfer from one position to another.

g. Former Bureau Chief of the Bureau of Personnel Management Matt Hughes' October 2009 Staffing Memo to Secretary Ann Schneider

During the investigation, investigators discovered that in 2009, then newly-appointed Bureau Chief of the Bureau of Personnel Management Matt Hughes and his supervisor, former Director of Finance and Administration and current IDOT Secretary Ann Schneider, communicated with each other regarding IDOT staffing issues.

Specifically, in an October 14, 2009 email, Mr. Hughes provided Secretary Schneider information about the Bureau of Personnel Management's staffing needs for the upcoming year.[79] In a document attached to an email to Secretary Schneider titled "Staffing Needs in the Bureau of Personnel Management," (hereinafter referred to as the "October 2009 staffing memo") Mr. Hughes reported that he intended to hire three *Rutan*-exempt Staff Assistants to meet the needs of the Bureau of Personnel Management. Mr. Hughes stated that he intended to make three new Staff Assistant hires in the upcoming year for the following three positions:

- TM II (Interviewer)
- TM II (Training)
- TM III (Interviewer)

The October 2009 staffing memo contained no indication and did not mention that the Interviewer or Training Specialist positions for which Mr. Hughes sought to hire *Rutan*-exempt Staff Assistants were actually IDOT *Rutan*-covered positions.[80] As set forth below, Mr. Hughes did in fact hire *Rutan*-exempt Staff Assistants to perform *Rutan*-covered position duties.

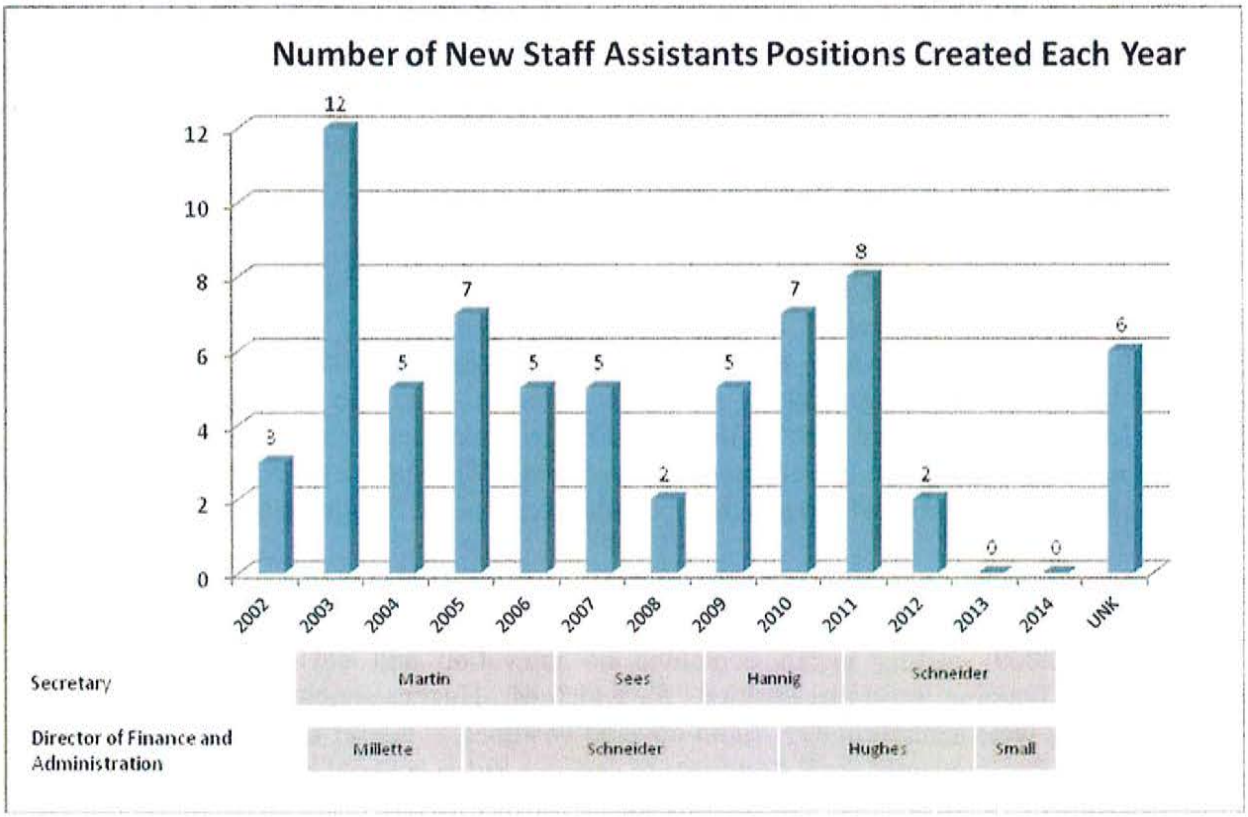
h. Staff Assistant Growth Charts

Investigators reviewed numerous IDOT documents used to track Staff Assistant positions, to determine how many Staff Assistant positions IDOT created beginning in 2002.

The chart below reflects the number of new Staff Assistant positions created each year between 2002 and 2014 and identifies who held the positions of IDOT Secretary and Director of Finance and Administration during this time period.

[79] *See* Appendix to Report at Exhibit 18.

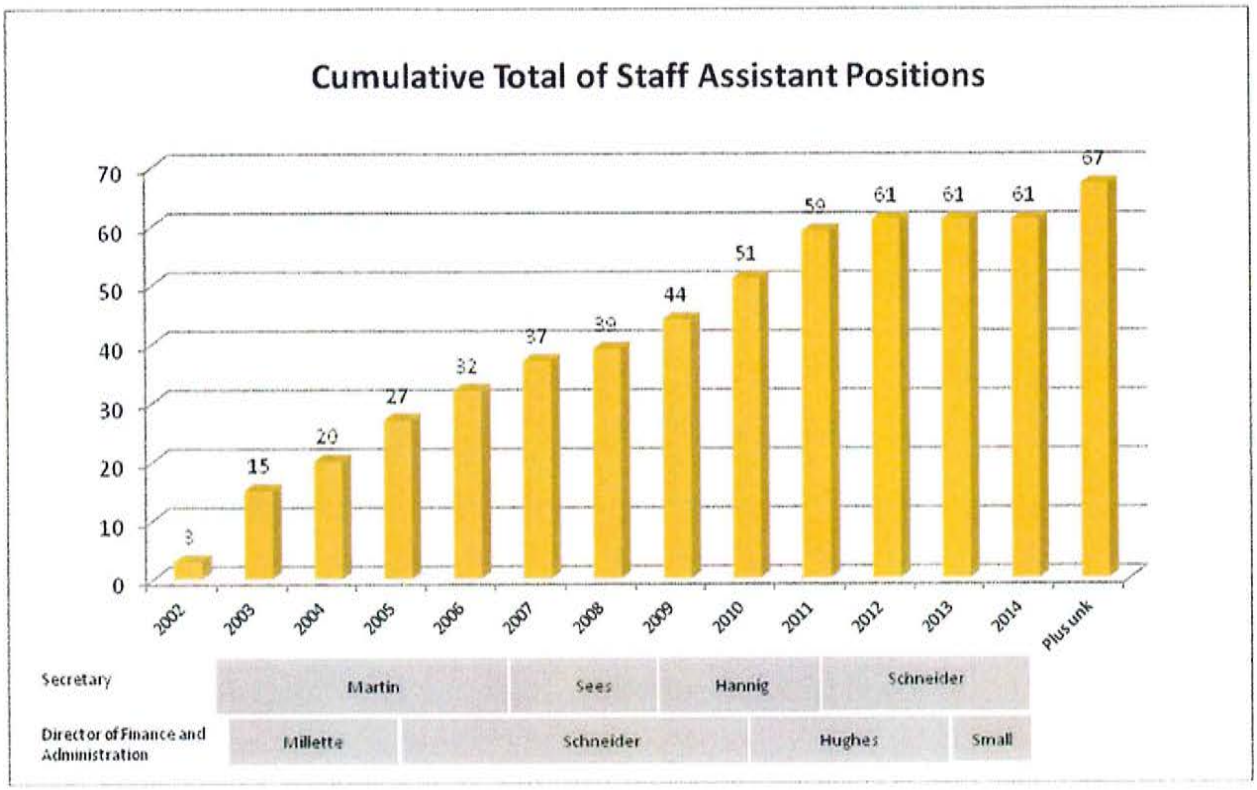
[80] Both Secretary Ann Schneider and Matt Hughes were asked about the October 2009 staffing memo. Their responses to investigators' questions are set forth below.



As reflected in the above chart, in 2002, there existed three Staff Assistant positions in the entire agency.

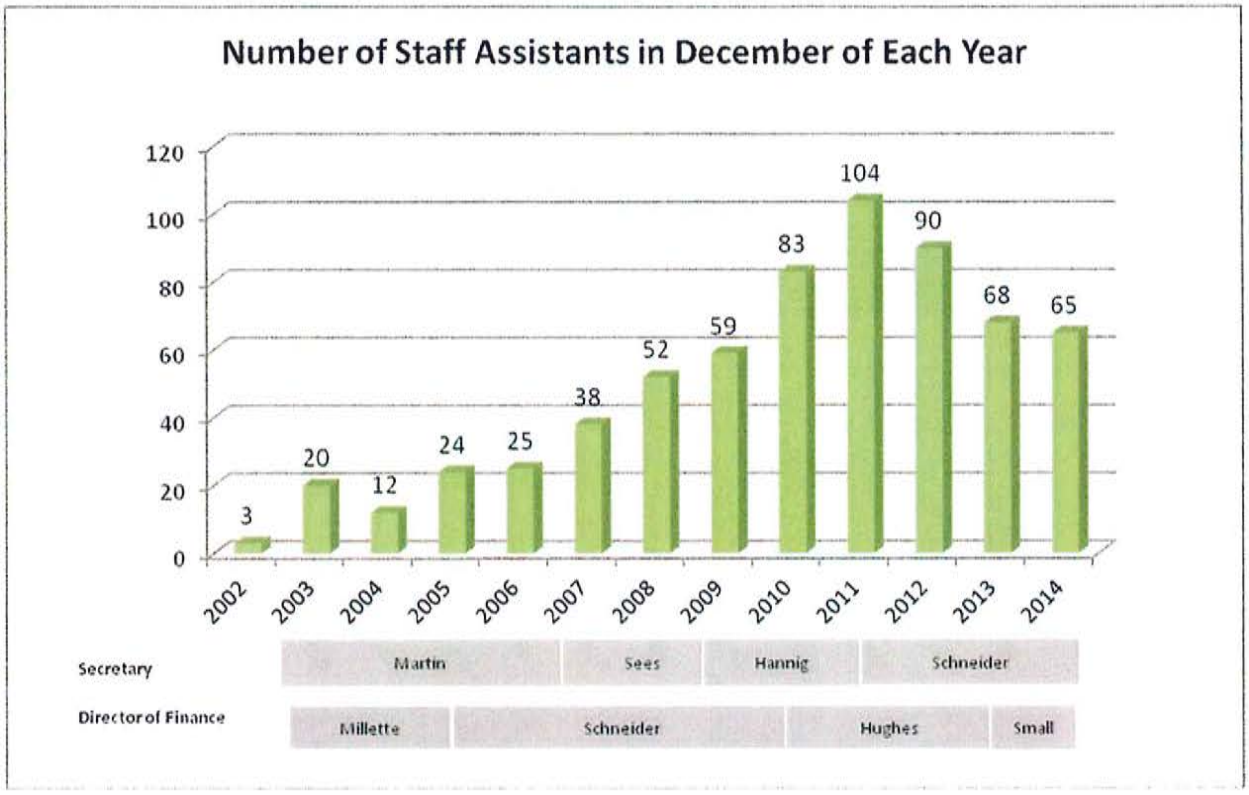
The chart below identifies the total number of Staff Assistant positions that existed at IDOT in each year, after taking into consideration the number of new or additional Staff Assistant positions created in previous years, for a period spanning from 2002 through 2014. The last column in the above chart is labeled "unk," which represents unknown. In other words, investigators were unable to identify, based upon IDOT documents, in what year(s) six Staff Assistant positions were created. In any event, as reflected in the chart below, at its height, IDOT had 67 Staff Assistant positions.

In light of the fact that OEIG investigators were unable to determine the year in which IDOT created six of its Staff Assistant positions, the six additional Staff Assistant positions are reflected in the last column as "plus unk[own]" for a total of 67 Staff Assistant positions.

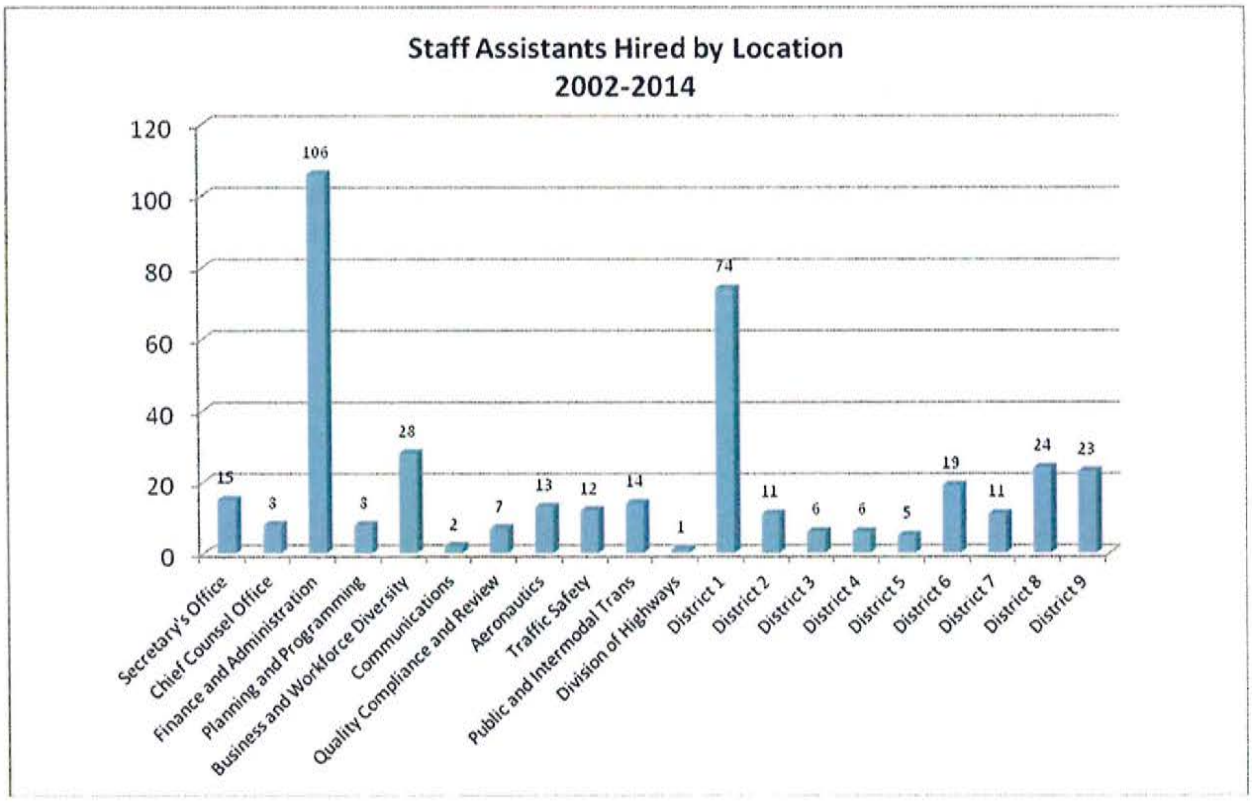


Investigators learned that one Staff Assistant position can have multiple authorized employees. This allows IDOT to fill one Staff Assistant position with multiple employees at any given time. Although the majority of Staff Assistant positions only had one authorized employee, IDOT did create several Staff Assistant positions with as many as five authorized positions and in one case created one with 11 authorized employees.

The chart below identifies the total number of Staff Assistants IDOT employed in December of each year from 2002 through 2014. When compared with the previous chart, this chart shows that although there were 59 Staff Assistant positions in 2011, there were at least 104 persons occupying Staff Assistant positions as of December of that year.



As reflected in the chart below, documents revealed that Staff Assistants were employed in every IDOT Office, Division and District, except for IDOT's Office of Legislative Affairs.



2. Individuals Interviewed

Investigators interviewed over 100 current and former IDOT employees who were either employed as *Rutan*-exempt Staff Assistants or who supervised *Rutan*-exempt Staff Assistants. The following chart identifies *all* individuals interviewed as part of this investigation, the date of the person's interview, the individual's position, and the location of the interview.[81]

a. List of Individuals Interviewed

Interview Date[82]	Name	Position	Illinois Location
August 2011			
August 30, 2011	Employee 11	Staff Assistant	Effingham
August 30, 2011	Employee 12	Supervisor	Effingham
October 2011			
October 11, 2011	Employee 13	Supervisor[83]	Springfield
November 2011			
November 3, 2011	Michael Stout	Former Director	Springfield
March 2012			
March 6, 2012	Employee 12	Supervisor	Effingham
March 12, 2012	Employee 14	Supervisor	Effingham
March 12, 2012	Employee 15	Supervisor	Effingham
April 2012			
April 10, 2012	Employee 5	Supervisor	Ottawa
April 10, 2012	Employee 16	Supervisor	Dixon
April 11, 2012	Employee 17	Supervisor	Peoria
April 16, 2012	Employee 18	Supervisor	Paris
April 25, 2012	Employee 19	Supervisor	Schaumburg
April 27, 2012	Employee 20	Staff Assistant/ Supervisor[84]	Hume
April 27, 2012	Employee 21	Staff Assistant	Paris
April 27, 2012	Employee 22	Staff Assistant	Paris
May 2012			
May 1, 2012	Employee 23	Supervisor	Collinsville
May 1, 2012	Employee 24	Supervisor	Carbondale

[81] The titles and former titles listed in the table are accurate as of the date of the individual's interview.
[82] Some individuals were interviewed on more than one occasion. This chart reflects all interview dates.
[83] "Supervisor" indicates an individual who had one or more Staff Assistants working in their division, section, or as a direct report.
[84] "Staff Assistant/Supervisor" indicates an individual who held a Staff Assistant position and supervised Staff Assistants.

May 2, 2012	Employee 25	Staff Assistant	Peoria
May 2, 2012	Employee 26	Staff Assistant	Peoria
May 2, 2012	Employee 27	Staff Assistant	Peoria
May 14, 2012	Employee 28	Supervisor	Springfield
May 16, 2012	Employee 29	Supervisor	Chicago
May 16, 2012	Employee 30	Supervisor	Chicago
May 16, 2012	Employee 31	Supervisor	Schaumburg
May 16, 2012	Employee 32	Supervisor	Chicago
May 16, 2012	Employee 33	Supervisor	Chicago
May 16, 2012	Employee 34	Staff Assistant	Schaumburg
May 23, 2012	Employee 35	Staff Assistant	McCook
June 2012			
June 5, 2012	Employee 36	Staff Assistant	Benton
June 5, 2012	Employee 37	Staff Assistant	Carbondale
June 5, 2012	Employee 38	Staff Assistant	Carbondale
June 5, 2012	Michael Barone	Supervisor	Carbondale
June 13, 2012	Employee 39	Staff Assistant/Supervisor	Dixon
June 13, 2012	Employee 40	Staff Assistant	Moline
June 14-15, 2012	Employee 41	Supervisor	Springfield
July 2012			
July 6, 2012	Employee 42	Supervisor	Springfield
July 12, 2012	Employee 43	Supervisor	Springfield
August 2012			
August 23, 2012	Employee 44	Supervisor	Schaumburg
August 23, 2012	Employee 45	Supervisor	Schaumburg
August 23, 2012	Employee 46	Supervisor	Schaumburg
August 28, 2012	Employee 19	Supervisor	Schaumburg
August 28, 2012	Employee 47	Supervisor	Schaumburg
August 28, 2012	Employee 48	Staff Assistant	Schaumburg
August 28, 2012	Employee 49	Staff Assistant	Schaumburg
August 28, 2012	Employee 50	Supervisor	Schaumburg
September 2012			
September 5, 2012	Employee 51	Staff Assistant	Effingham
September 11, 2012	Employee 52	Staff Assistant	Peotone
September 11, 2012	Employee 53	Staff Assistant	Chicago
September 18, 2012	Employee 54	Staff Assistant	Benton
September 18, 2012	Employee 55	Staff Assistant	Carbondale
September 26, 2012	Employee 56	Staff Assistant	East St. Louis

October 2012

October 1, 2012	Employee 13	Supervisor	Springfield
October 1, 2012	Employee 57	Staff Assistant	Springfield
October 2, 2012	Employee 58	Supervisor	Springfield
October 2, 2012	Employee 59	Staff Assistant	Springfield
October 3, 2012	Employee 60	Staff Assistant	Springfield
October 3, 2012	Employee 61	Staff Assistant	Springfield
October 3, 2012	Employee 62	Supervisor	Springfield
October 3, 2012	Employee 63	Staff Assistant	Springfield
October 4, 2012	Employee 1	Staff Assistant	Effingham
October 10, 2012	Employee 64	Staff Assistant	Springfield
October 10, 2012	Employee 65	Staff Assistant	Springfield
October 11, 2012	Employee 66	Supervisor	Springfield
October 11, 2012	Employee 67	Supervisor	Springfield
October 11, 2012	Employee 68	Staff Assistant	Springfield
October 11, 2012	Employee 69	Staff Assistant	Springfield
October 15, 2012	Employee 64	Staff Assistant	Springfield
October 24, 2012	Employee 70	Staff Assistant	Springfield
October 30, 2012	Employee 71	Staff Assistant	Springfield

November 2012

November 5, 2012	Employee 3	Staff Assistant	Springfield
November 7, 2012	Employee 72	Staff Assistant	Springfield
November 7, 2012	Employee 73	Staff Assistant	Springfield
November 7, 2012	Employee 74	Staff Assistant	Springfield
November 7, 2012	Employee 75	Staff Assistant	Springfield
November 7, 2012	Employee 76	Staff Assistant	Springfield
November 7, 2012	Employee 77	Staff Assistant	Springfield
November 8, 2012	Employee 78	Staff Assistant	Springfield
November 8, 2012	Employee 79	Staff Assistant	Springfield
November 9, 2012	Employee 8	Section Manager	Springfield
November 9, 2012	Employee 80	Staff Assistant	Springfield
November 9, 2012	Employee 81	Staff Assistant	Springfield
November 9, 2012	Employee 32	Supervisor	Springfield
November 13, 2012	Employee 82	Staff Assistant	Springfield
November 13, 2012	Employee 83	Staff Assistant	Springfield
November 13, 2012	Employee 84	Staff Assistant	Springfield
November 13, 2012	Employee 85	Staff Assistant	Springfield
November 13, 2012	Jeff Heck	Supervisor	Springfield
November 13, 2012	Employee 86	Staff Assistant	Springfield
November 14, 2012	Employee 87	Staff Assistant	Springfield

November 14, 2012	Employee 88	Staff Assistant	Springfield
November 14, 2012	Employee 89	Staff Assistant	Springfield
November 16, 2012	Employee 90	Staff Assistant	Springfield
November 16, 2012	Employee 91	Staff Assistant	Springfield
November 20, 2012	Employee 92	Staff Assistant	Springfield
November 20, 2012	Employee 93	Staff Assistant	Springfield
November 20, 2012	Employee 94	Staff Assistant	Springfield
November 20, 2012	Employee 95	Staff Assistant	Chicago
November 26, 2012	Employee 96	Supervisor	Springfield
November 27, 2012	Employee 2	Staff Assistant	Springfield
December 2012			
December 4, 2012	Ellen Schanzle-Haskins	Legal Counsel	Springfield
Dec. 6 &11, 2012	Mike Woods, Jr.	Bureau Chief	Springfield
December 10, 2012	Matt Hughes	Director	Springfield
December 12, 2012	Susan Shea	Supervisor	Springfield
December 14, 2012	Ann Schneider	IDOT Secretary	Springfield
December 20, 2012	Employee 7	CMS Manager	Springfield
December 21, 2012	Employee 97	retired Section Manager	Springfield
December 27, 2012	Union Official 1	Union Official	Springfield
June 2013			
June 4, 2013	Employee 98	Staff Assistant	Springfield
June 13, 2013	Employeė 99	Supervisor	Schaumburg
June 18, 2013	Employee 100	Supervisor	Schaumburg
July 2013			
July 1, 2013	Employee 62	Supervisor	Springfield
July 2, 2013	Employee 44	Supervisor	Schaumburg
July 5, 2013	Employee 8	Section Manager	Springfield
September 2013			
September 11, 2013	Matt Hughes	Director	Springfield
September 26, 2013	Employee 101	Staff Assistant	Springfield
October 2013			
October 1, 2013	Employee 4	Staff Assistant	Springfield
October 3, 2013	Employee 102	Staff Assistant	Springfield
December 2013			
December 18, 2013	Mike Woods, Jr.	Bureau Chief	Springfield

May 2014			
May 8, 2014	Jacob Miller	former Bureau Chief	Springfield
May 14, 2014	Ryan Croke	Governor Chief of Staff	Springfield
May 16, 2014	Jerry Stermer	former Governor Chief of Staff	Chicago
May 19, 2014	Ann Schneider	Secretary	Chicago
May 27, 2014	Sean O'Shea	Deputy Chief of Staff	Chicago
June 2, 2014	Gary Hannig	former Secretary	Chicago

b. IDOT Leadership and Background Information of Key IDOT Officials Interviewed

As noted above, the number of IDOT Staff Assistant positions increased from 3 in 2002 to a maximum of 67 by 2013. Below, the OEIG has identified the individuals who held various IDOT leadership positions during this time period. In addition, below each position summary is a description of the general duties and responsibilities of the person (incumbent) who holds the position.

i. IDOT Secretary

The person who holds the position of Secretary of the Illinois Department of Transportation is responsible for the overall operations of the agency. In addition, according to IDOT's Personnel Policies Manual, §1-2 titled "Responsibilities," the "Office of the Secretary of Transportation is responsible for administration of the Illinois Department of Transportation's personnel policies." From January 2003 to the present, the person who served as IDOT Secretaries were the following:

Timothy Martin:	Jan. 2003 to Jan. 2007	Milton Sees:	Jan. 2007 to Feb. 2009
Gary Hannig:[85]	Feb. 2009 to July 2011[86]	Ann Schneider:	July 2011 to present[87]

ii. IDOT Director of Finance and Administration

According to IDOT's job description for the position of Director of Finance and Administration, the Director is responsible for, among other things, the following:

[85] Since February 2012, Mr. Hannig has served in the Office of the Governor as a Senior Legislative Liaison.
[86] Mr. Hannig served as acting Secretary from February 2009 to March 2009.
[87] Ms. Schneider served as acting Secretary from July 2011 to October 2011. In addition, from August 2010 to July 2011, or just prior to serving as acting Secretary, Secretary Schneider held the position of Chief Operating Officer, where she stated she facilitated solutions when disagreements arose between divisions and offices, and managed projects that involved multiple divisions or offices.

- "Within guidelines set by the Secretary of Transportation, this position develops and directs programs to meet the fiscal, *personnel*, and business needs of the Department statewide."
- "[T]his position manages all business, financial, *personnel*, and information technology services statewide." (emphasis added).

In addition, the Director's job description includes various accountabilities such as the following two:

- Accountability 3: "Attracts, obtains, retains, trains, and compensates an adequate and competent staff to ensure efficient and cost-effective operations statewide."
- Accountability 4: "Exercises discretion and control over highway user taxes, revenues, and transportation bond proceeds and the general revenue fund appropriations through the maintenance of sound fiscal policy to ensure the proper allocation of limited resources as well as maintain fiscal integrity."

From January 2003 to the present, IDOT Directors of Finance and Administration were:

Robert Millette:	Jun. 2003 to Aug. 2005	Ann Schneider:	Nov. 2005 to Aug. 2010[88]
Matt Hughes:	Aug. 2010 to Sept. 2013[89]	Walter Small:	Sept. 2013 to present[90]

iii. IDOT Bureau Chief of Personnel Management

According to IDOT's job description for the position of Bureau Chief for the Bureau of Personnel Management of the Illinois Department of Transportation, the Bureau Chief is responsible for, among other things, the following:

- "This position reports to the Deputy Director of Finance and Administration . . ."
- "The incumbent is personally responsible for the development of technical personnel policies and programs for employment classification and compensation programs."
- "The incumbent is also responsible for the development and administration of the technical classification program for the Department and administers the rules/regulations of the Personnel Code in conjunction with the Department of Central Management Services."
- "S/He also directs the development of programs and policies for employment programs to attract and retain qualified candidates."

From January 2003 to the present, IDOT Bureau Chiefs were:

Jacob Miller:	July 2003 to Feb. 2004	Scott Doubet:	Feb. 2004 to April 2009

[88] Ms. Schneider served as acting Chief Operating Officer from August 2010 to April 2011, while maintaining the title of Director of Finance and Administration.
[89] Mr. Hughes served as Acting Director of Finance and Administration from August 2010 to April 2011 during the same time Director of Finance and Administration Ann Schneider, was serving as Acting Chief Operating Officer.
[90] Mr. Small served as acting Director of Finance and Administration from September 2013 to January 2014.

Matt Hughes:	Apr. 2009 to Aug. 2010[91]	Employee 5:	Aug. 2010 to Nov. 2010[92]
Mike Woods, Jr.:	Dec. 2010 to Oct. 2013[93]	James Kirk:	Oct. 2013 to present[94]

c. Office of the Governor Chiefs of Staff and Deputy Chief of Staff Interviewed

The OEIG also sought to determine the role of the Office of Governor in the hiring of IDOT Staff Assistants. To that end, the OEIG sought to interview former Chief of Staff Jerry Stermer, former Chief of Staff Jack Lavin, current Chief of Staff Ryan Croke, and current Deputy Chief of Staff Sean O'Shea.[95] The below chart identifies the time period during which those individuals held their positions.

Jerry Stermer:	February 2009 to August 2010
Jack Lavin:	December 2010 to September 2013
Ryan Croke:	September 2013 to present
Sean O'Shea:	July 2011 to present

J. Select Interviews of IDOT Employees Relating to the Creation and Historical Use of Staff Assistant Positions

1. IDOT Acting Section Manager Employee 8

Investigators interviewed Employee 8. As noted, Employee 8 is the Acting Section Manager of IDOT's Bureau of Personnel Management – Organizational Analysis and Compensation Section. Employee 8 has worked in the Section for approximately 27 years, and as of the time of her interview, served as Acting Section Manager.

a. Position Descriptions Generally

Employee 8 said that her staff assists the various IDOT Offices and Divisions write position descriptions and verifies they are formatted correctly and meet the classification guidelines. At times, she or her staff will take the lead in drafting position descriptions, but, typically, that is reserved for when a Bureau Chief requests that a position be written, or when a

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[91] IDOT records indicated Mr. Hughes served as Acting Bureau Chief of Personnel Management from April 2009 to September 2010. According to IDOT personnel, however, the records were in error and Mr. Hughes served as Acting Bureau Chief of Personnel Management from April 2009 to October 2009. Mr. Hughes held the title of Bureau Chief of Personnel Management until April 2011. However, from August 2010 until April 2011, he served as Acting Director of the Division of Finance and Administration.

[92] Employee 5 served in an Acting capacity during his entire tenure.

[93] Mr. Woods served in an Acting capacity from December 2010 to April 2011, and again from April 2013 to October 2013. Although it appears Mr. Hughes, Employee 5, and Mr. Woods simultaneously held the position, at times the men were serving in other positions in acting capacities while maintaining their Bureau Chief titles. Mr. Woods is currently the Deputy Director of Finance and Administration.

[94] Mr. Kirk is serving in an acting capacity.

[95] Jack Lavin was the Chief of Staff from December 2010 to September 2013. In light of the information OEIG investigators obtained from Office of the Governor Chiefs of Staff Jerry Stermer and Ryan Croke relating to the involvement and process by which the Office of the Governor approved or was aware of the manner or method in which IDOT employed *Rutan*-exempt Staff Assistants, OEIG staff did not interview Mr. Lavin.

very generic position description that could be tailored to each district is being drafted. Employee 8 stated that the completed position descriptions are officially approved by the Organizational Analysis Section, which should be the final point of approval.

When asked whether she would know if people are actually performing the duties listed in their position descriptions, Employee 8 responded by stating she would have no way of knowing. Employee 8 stated that she assumes that the job duties submitted to Personnel by each Division or Office accurately reflect the job duties the individual performs.

b. Staff Assistant Position Descriptions

According to Employee 8, the process for creating Staff Assistant positions is different from that of other positions. Employee 8 stated that in 2003, former Bureau Chief of Personnel Management Jacob Miller directed the Organizational Analysis and Compensation Section to create boilerplate Staff Assistant positions for each District. Employee 8 indicated that ever since being directed to create boilerplate job descriptions, when establishing Staff Assistant positions (unlike with most other positions), the hiring Office, Division, or District does not provide duties the position is to perform; rather, the boilerplate language is used.

c. Employee 8's Suspicions about Staff Assistant Position Descriptions

Employee 8 stated that, when writing Staff Assistant position descriptions, she suspected that the individuals would not be performing the duties listed, specifically the duties that make the position *Rutan*-exempt. Her suspicion was based on her observation that the Staff Assistants working in Personnel Management were not performing *Rutan*-exempt work and not performing the duties listed in their position descriptions.

Employee 8 said she has brought her concerns about Staff Assistants not performing the exempt duties listed in their position descriptions to various individuals, including:

- Secretary Ann Schneider;
- former Director of Finance and Administration Matt Hughes;
- former Bureau Chief of Personnel Management Mike Woods, Jr.;
- former Ethics Officer Employee 103; and
- retired Section Manager Employee 97.

Employee 8 said the reaction she received each time she brought up concerns about Staff Assistants was something to the effect of, "that's not really what we are working on right now."

d. *Rutan*-Exempt Positions and Politically Connected Individuals

Employee 8 said she felt that prior to 2003, the Bureau of Personnel Management staff was not involved in the hiring of politically connected people. Since then, Employee 8 said she feels the Bureau of Personnel Management has been used to create *Rutan*-exempt positions in order to hire politically connected people into those positions.

According to Employee 8, in the last ten years or so, the classification, and therefore the pay level at which people are paid, seems to be based more on who the person is rather than the duties the person will be performing.

2. Former IDOT Section Manager Employee 97

Investigators interviewed retired IDOT Employee 97. Employee 97 retired from his position as Section Manager of IDOT Bureau of Personnel Management's Organizational Analysis and Compensation Section on December 31, 2004, a position he had held for approximately 24 years. Employee 97 said that following his retirement, he returned to work at IDOT on a number of 75-day appointments, explaining that IDOT values his role as a historian and the keeper of considerable institutional knowledge.

Employee 97 said that though his assignments during each appointment have been different, the duties all related in some way to personnel management, which is his area of expertise. For example, he stated he has been involved in writing and rewriting the Personnel Policies Manual, and, during the summer of 2012, assisted with labor negotiations with the Teamsters and American Federation of State, County, and Municipal Employees (AFSCME) contracts.

a. Staff Assistant Position Descriptions

When asked about his general understanding of the IDOT Staff Assistant position, Employee 97 said that the position descriptions:

- were initially written to be *Rutan*-exempt,
- are currently written at different classification levels, and
- have been used to bring political appointees on board at IDOT for years.

As background, Employee 97 said that he believed that there was at least one Staff Assistant position in the Bureau of Personnel Management prior to 2003.[96] Employee 97 believed that the original Staff Assistant position may have been an assistant to the Bureau Chief of Personnel Management, and that CMS determined the position was *Rutan*-exempt based on the duties in the description.

Employee 97 said that in 2003, the newly-appointed Bureau Chief of Personnel Management Jacob Miller immediately obtained IDOT's list of *Rutan*-exempt positions and employees. According to Employee 97, during a meeting, Mr. Miller suggested firing everyone on the list in order to hire people the Office of the Governor wanted hired. Employee 97 said he convinced Mr. Miller this was a bad idea, not only because a number of the people on the list were engineers who were not political at all, but also because it would be bad for the agency. Instead, Employee 97 stated that Mr. Miller moved to fill any exempt vacancies with people the Office of the Governor wanted employed.

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[96] Employee 97 was shown a TM IIStaff Assistant position created in 1999. Employee 97 presumed that the original Staff Assistant positon may have been an assistant to the Bureau Chief of Personnel Management that CMS determined was exempt based on the duties of the description. He believed there was one Staff Assistant in the Bureau of Personnel Management prior to the Blagojevich administration.

According to Employee 97, Mr. Miller decided that IDOT needed some lower-level positions that could be filled by political appointment. Employee 97 said he was directed by Mr. Miller and former Director of Finance and Administration Robert Millette to establish Staff Assistant positions in every District office and other places, using an existing Staff Assistant position that had been deemed *Rutan*-exempt as the boilerplate language for the new positions. Employee 97 said he was also often directed to increase the "additional identical" for the position, so that more than one person could be hired under one Staff Assistant position number.[97]

After 2003, Employee 97 said that the use of Staff Assistants "exploded," and the Section was directed to process paperwork to get political people hired.

b. Employee 97's Suspicions about Staff Assistant Position Descriptions

Employee 97 was asked about concerns that Staff Assistants were not doing the work contained in the position description. In response, Employee 97 said that it was understood at IDOT that there was "another game in town" with different rules. Specifically, Employee 97 stated that the positions filled by political people were not expected to play by the same rules as those who "came in the front door." Employee 97 said that it was understood that people who were employed because of their political connections may be doing less or different duties for the same pay as others employed in the same title and who had to compete for their jobs.

Employee 97 said that the Organizational Analysis and Compensation Section had no responsibility for the accuracy of the duties within the Staff Assistant position descriptions. The Section conducted no review of the duties and no examination for classification level. The Section never knew what the Staff Assistants were going to be doing, whether the position was going to be filled or by whom, or whether the preferred candidate was even going to show up to work.

Employee 97 said he did not know what duties Staff Assistants actually performed, but was aware that, at times, Staff Assistants were hired without the organizational unit having any real idea what to do with them.

c. Classification and Pay Levels for Staff Assistant Positions

Employee 97 was asked whether duties of a Technical Manager I and a Technical Manager V position with the same working title should be different, and specifically whether there should be a noticeable difference between position descriptions with such a large difference in technical level. Employee 97 said that there should be a difference in duties, especially between a Technical Manager I and a Technical Manager V, which would result in at least a $30,000 difference in salary.

According to Employee 97, from 2003 forward, the classification level for Staff Assistant positions meant nothing. If a Bureau Chief or the Director of Finance and Administration needed a position to pay a certain level, they would ask that a position be created at a certain

[97] It is unclear what Employee 97 was referring to; however, IDOT position descriptions do have a space (Box 11) allowing IDOT to identify more than one "authorized position," for each job position description.

Technical Manager level (level I through VI), without a discussion of duties supporting the pay level. Employee 97 said that he understood that the classification level was used to match the pay a candidate was making elsewhere. With respect to Staff Assistants, Employee 97 said that the section was never asked to determine the appropriate classification level. Instead, he was often approached with the question, "what level do we need to create to bring someone in at [a certain salary amount]?"[98]

Employee 97 was asked whether any entity ever evaluated the Technical Manager series to determine whether the positions were actually technical in nature, such that they are appropriately exempted from the Personnel Code. In response, he said he had concerns that these positions were not technical, but that to his knowledge no other entity evaluated the Technical Manager series. According to Employee 97, on a couple occasions, he believed that the technical nature of the Technical Manager series was challenged. Employee 97 said that he responded to questions from CMS, the Civil Service Commission, or somewhere else, but for whatever reason, the challenges never got to the point of having to defend the classification to the Civil Service Commission. Employee 97 said that most of the Technical Manager positions are not defensible to a challenge that they are not technical in nature, and that most of the duties are being performed at other agencies by employees in positions covered by the Personnel Code. Employee 97 assumed that IDOT was able to fend off the potential challenge, because it has "road fund money" and its own classification system and pay structure. Therefore, according to Employee 97, IDOT can use that money "pretty much how it likes."

d. Staff Assistant Positions and Politically Connected Individuals

Employee 97 said he understands that using a position description to get a *Rutan*-exemption, then using those employees to do *Rutan*-covered work was a circumvention of the *Rutan* hiring procedures. Early on, Employee 97 said IDOT probably did not think of the Staff Assistant positions as a way to "beat the [*Rutan* hiring] system." Instead, Employee 97 stated IDOT senior managers were only concerned with getting political people on board, and once they were hired, supervisors found work for them to do. Sometimes, the Staff Assistant ended up being a valuable employee; other times, the appointment of a Staff Assistant really hurt office morale. Employee 97 said that, in his experience and through his observations, it has never been about having so much work to do that the hiring unit will take anybody to help get the work done; rather, it has always been about getting the political person on IDOT's payroll. Employee 97 said that no matter the explanation, in his opinion, ultimately, the practice still circumvents the *Rutan* hiring procedures.

Employee 97 said that he understood that IDOT's explanation for the use of Staff Assistants would be that it takes too long to get people hired, because that is arguably the only justifiable reason for using political people to do *Rutan*-covered work. However, Employee 97 noted that there are other ways to meet short-term needs while filling positions through the appropriate process, namely emergency appointments and temporary appointments. Employee 97 said that during each of his 75-day appointments, he always encounters new faces, sometimes just standing around, and he consistently learns that these new faces are Staff Assistants.

[98] A review of personnel records indicates that in most cases, Staff Assistants were hired as Technical Manager IIs and paid at the bottom of the salary range.

3. Former Bureau Chief of Bureau of Personnel Management Jacob Miller

a. Interview of Jacob Miller

Investigators interviewed IDOT's former Bureau Chief for the Bureau of Personnel Management, Jacob Miller.[99] Although Mr. Miller was unable to recall very much information, he did confirm that he had worked at IDOT sometime in late 2003 through 2004.[100]

Mr. Miller was asked whether he recalled there being an IDOT position referred to as "Staff Assistant" and, if so, if he recalled how many Staff Assistant positions existed when he started at IDOT. In response, Mr. Miller stated he could not recall. During his interview, Mr. Miller was shown a copy of IDOT's *Rutan*-exempt position list and was asked if he recalled seeing a document similar to it and titled:

> STATE OF ILLINOIS DEPARTMENT OF TRANSPORTATION LISTING OF ALL EMPLOYEES IN POSITIONS EXEMPT FROM *RUTAN*.[101]

In response, Mr. Miller stated he was aware that a *Rutan*-exempt list did exist, but was unable to confirm whether the document shown to him was in fact the list he had seen when he was at IDOT.

Mr. Miller was also shown a series of Internal Personnel Requests relating to Staff Assistants hired while he was the Bureau Chief of Personnel Management. In addition, Mr. Miller was shown ePARs and Notices of Personnel Action, which were also associated with Staff Assistants hired during the time period he served as IDOT Bureau Chief of Personnel Management. The Internal Personnel Requests contained the initials "JM" and a date. Mr. Miller was asked if he recognized the "JM" initials as being his writing. Although Mr. Miller stated that the initials looked like his, he was unable to recall if he placed his initials on the documents or if the initials on the documents were in fact his initials, and repeated he could not recall what occurred 10 or 11 years ago.

Finally, Mr. Miller was asked about statements Employee 8 and Employee 97 had attributed to him relating to Staff Assistants. Specifically, Mr. Miller was asked if he ever informed Employee 97 that IDOT should fire all persons on the *Rutan*-exempt list, to which he stated he could not recall. Mr. Miller was also asked whether he asked Employee 8 to create additional Staff Assistant positions so that they would be *Rutan*-exempt, to which he stated he could not recall. Mr. Miller was further asked if he recalled anything in particular regarding the increase in Staff Assistants during his tenure as Bureau Chief, to which he again stated he could not recall.

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[99] Mr. Miller appeared with private counsel and current Illinois State Representative John Fritchey.
[100] Investigators determined that Mr. Miller worked at IDOT from about July 2003 to about February 2004.
[101] *See* Appendix to Report at Exhibit 19 (for a copy of the December 2003 document Mr. Miller was shown).

b. Review of Documents Relating to Staff Assistant Positions Created during the Time Jacob Miller Served as Chief of the Bureau of Personnel Management

Investigators reviewed various IDOT personnel documents and discovered that during his approximately 7-month stint as Bureau Chief, Mr. Miller's signature or initials appeared on at least 12 Staff Assistant position descriptions. Prior to Mr. Miller's arrival at IDOT, investigators identified three Staff Assistant positions in existence throughout the entire agency. In other words, the number of Staff Assistant positions increased from three to fifteen while Mr. Miller served as Bureau Chief.

K. IDOT's Use of Persons in *Rutan*-Exempt Staff Assistant Positions to Perform Duties of Persons in *Rutan*-Covered Positions

During the course of this investigation, investigators traveled to multiple IDOT locations throughout Illinois for the purpose of interviewing Staff Assistants, present and former. Investigators generally questioned the Staff Assistants about what duties they performed in their positions, and whether they performed any duty set forth in the Staff Assistant position description.

The OEIG investigation revealed numerous instances of employees in the *Rutan*-exempt Staff Assistant position who performed duties entirely divorced from those delineated in Staff Assistant position descriptions.

The OEIG confirmed that employees were not performing the duties of the Staff Assistant position, not only from interviews of current and former Staff Assistants and their supervisors who said that they did not perform the relevant duties, but from instances in which:

1) *Rutan*-exempt Staff Assistants performed the duties of former employees who held positions previously filled through the *Rutan* hiring process;

2) *Rutan*-exempt Staff Assistants were evaluated for the performance of duties that were not related to those set forth in Staff Assistant position descriptions; and

3) employees were hired into *Rutan*-covered positions based, in part, on similar or identical work that they did while holding the *Rutan*-exempt Staff Assistant position.

These practices often overlapped with one another and any or all three could apply to a single employee holding the position of Staff Assistant. We discuss specific detailed examples of these practices below.

1. *Rutan*-Exempt Staff Assistants Performed the Duties of Persons Who Held Positions That Were Previously Filled through the *Rutan* Hiring Process

The following examples relate to IDOT employees hired as *Rutan*-exempt Staff Assistants, who performed the same duties of former IDOT employees who held IDOT *Rutan*-covered positions. While the former employees holding *Rutan*-covered positions were hired

pursuant to the *Rutan* hiring process, the employees hired as Staff Assistants were not, even though they were tasked with the same responsibilities.

a. Example 1: Reproduction Services Supervisor – Division of Highways, District 1

IDOT's District 1, Division of Highways, includes a Business Services Section, which is responsible for, among other things, operating the District's Copy Center.

i. *Rutan*-Covered Position

For years leading up to his retirement in August 2007, Employee 104 worked as a Reproduction Services Supervisor and ran the District 1 Copy Center. Personnel records confirmed that the Reproduction Services Supervisor position was a *Rutan*-covered position. After Employee 104 retired, IDOT did not immediately fill the Reproduction Services Supervisor position. Instead, according to IDOT personnel, other staff in the Business Services Section filled in by performing those duties.

ii. Staff Assistant Employee 105 Hired and the Corresponding Internal Personnel Request

Employee 105 was hired into a *Rutan*-exempt Staff Assistant position on May 17, 2010. Employee 105 was assigned to District 1's Copy Center.

The Internal Personnel Request that authorized Employee 105's hire was signed by Ann Schneider as Director of Finance and Administration and Matt Hughes as Bureau Chief of Personnel Management.[102] The justification section of that Internal Personnel Request did not mention a need in District 1 for additional help in the Copy Center, but reflected the generic language used to justify most Staff Assistant hires:

> This position is accountable for assisting in the overall development and coordination of policy and directives regarding programs for Region 1. This position monitors conformance to existing policies and conducts reviews or studies issues that are of special interest. S/He provides policy interpretation and analysis of policies. In addition, this position provides assistance to the local agencies, elected agencies, and the general public.[103]

iii. Employee 105's Staff Assistant Duties As Identified by His Supervisor

On August 23, 2012, investigators interviewed Employee 44. Employee 44 was the Business Services Manager for District 1, and was responsible for supervising District 1's Copy

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[102] In many instances it was clear someone other than Secretary Schneider signed a particular document on Secretary Schneider's behalf. The OEIG does not find there was anything inappropriate with Secretary Schneider delegating her signature authority. The OEIG will assume that signatures made on behalf of Secretary Schneider were done with her full authority.

[103] The justification section of this IPR is similar or identical to the language of other IPRs referenced throughout this report as having generic language used to justify most Staff Assistant hires.

Center. Employee 44 stated that Employee 105 assumed the duties of the Reproduction Services Supervisor position that was previously held by Employee 104. In this role, according to Employee 44, Employee 105 was responsible for overseeing the functions of the Copy Center, planning for the copying of documents, performing print jobs, and directing other Copy Center staff regarding the completion of copy jobs.

Employee 44 informed the OEIG that Employee 105 reported to Administrative Services Manager, Employee 106, who was in a *Rutan*-covered position. In turn, Employee 106 reported to Employee 44, who also held a *Rutan*-covered position as Business Services Manager of District 1.

OEIG investigators presented Employee 44 with a copy of Employee 105's Internal Personnel Request and ePAR, and showed him the position description for the Staff Assistant position that Employee 105 held during his employment. Upon review of the Staff Assistant position description, Employee 44 informed the OEIG that no position under his supervision was responsible for any of the eight principal accountabilities listed thereon. Employee 44 also confirmed that no position under his supervision was responsible for performing the duties articulated in the justification section of the Internal Personnel Request that authorized Employee 105's hire. When asked whether the Internal Personnel Request, ePAR, and Staff Assistant position description accurately reflected the position to which Employee 105 was assigned, Employee 44 responded, "No."

b. Example 2: Support Services Technician – Division of Highways, District 9

i. *Rutan*-Covered Position

In the Bureau of Business Services in District 9 of IDOT's Division of Highways, there exists a Support Services Technician position. The Support Services Technician position is a *Rutan*-covered position that reports to the Business Services Manager, which is also a *Rutan*-covered position.

According to the Support Services Technician position description, an employee filling this position is responsible for, among other functions, "providing assistance in the operation of the district motor pool, district supply stockroom, district duplication services, and annual physical inventory of all district equipment."

Personnel records indicate that on January 5, 2004, eight candidates were interviewed for the Support Services Technician position, pursuant to the *Rutan* hiring process, and Employee 107 was chosen as the most successful candidate. She began employment as a Support Services Technician in the Bureau of Business Services in District 9 in February 2004, and retired in September 2006.

ii. Staff Assistant Employee 38 Hired and the Corresponding Internal Personnel Request

Employee 38 was hired as a Staff Assistant in November 2007. During his OEIG interview, Employee 38 stated that he ran into his friend and former IDOT-District 9 Administrative Services Manager Michael Barone at the DuQuoin State Fair and informed Mr.

Barone that he was seeking a job closer to his residence. Employee 38 stated that Mr. Barone later called him and stated that a Staff Assistant position had opened up at the District 9 Office because Staff Assistant Employee 36 was taking a different position at IDOT.

The Internal Personnel Request that authorized Employee 38's hire as a Staff Assistant was signed by Ann Schneider as Director of Finance and Administration and the justification section of the Internal Personnel Request reflected the generic language used to justify most Staff Assistant hires. The Internal Personnel Request's justification section did not identify a need in District 9's Bureau of Business Services for an employee to perform the duties of a Support Services Technician, which as noted above was a *Rutan*-covered position.

iii. Staff Assistant Employee 38 Transfers to the *Rutan*-Covered Support Services Technician Position

Less than a year after his hire as a Staff Assistant, Employee 38 was laterally transferred to the *Rutan*-covered Support Services Technician position previously held by Employee 107. Employee 38 did not go through the *Rutan* hiring process to obtain the Support Services Technician position.

iv. Employee 38's Staff Assistant Duties

According to Employee 38, the duties he performed as a Staff Assistant prior to his lateral transfer into the Support Services Technician position, were no different than the duties he performed after the lateral transfer.

A review of Employee 38's personnel file confirmed that he was performing the same duties before and after the lateral transfer. For instance, a Lateral Transfer Decision form signed by District 9's Regional Engineer, Employee 108, indicates that as a Staff Assistant, Employee 38 had already been covering the Support Services Technician position and was familiar with the job requirements. Employee 108 further noted that the transfer would require zero training time.

Moreover, the justification section of the Internal Personnel Request that authorized the lateral transfer, explained that Employee 38 had been filling the Support Services Technician position temporarily. It also stated that allowing the transfer "would reflect the correct reporting responsibilities and position duties." This same Internal Personnel Request was signed by Ann Schneider as the Director of Finance and Administration.

v. Staff Assistant Employee 109 Hired after Employee 38's Transfer and the Corresponding Internal Personnel Request

In May 2010, Employee 109 filled the *Rutan*-exempt Staff Assistant position left vacant after Employee 38 transferred into the *Rutan*-covered Support Services Technician position.

The Internal Personnel Request that authorized Employee 109's hire was signed by Ann Schneider in her role as Director of Finance and Administration, and Matt Hughes as Bureau Chief of Personnel Management. The justification section of the IPR reflected the generic language used to justify most Staff Assistant hires, which was identical to the language used to justify Employee 38's hire as a Staff Assistant. It did not indicate a need in District 9's Bureau

of Business Services for an additional employee to perform the duties of a Support Services Technician, which again, as noted above was a *Rutan*-covered position.

vi. Employee 109's Staff Assistant Duties

Personnel records indicate that Employee 109 performed the same duties that Employee 38 performed when Employee 38 held the *Rutan*-exempt Staff Assistant position, which were the same duties that Employee 107 performed when she held the *Rutan*-covered Support Services Technician position. For example, two performance evaluations reflected the following.

First Performance Evaluation covering period June 30, 2010 to July 1, 2011

According to this performance evaluation, Employee 109 was evaluated as a Support Services Technician, even though he was a Staff Assistant during this period of time. Moreover, the summary of actual achievements on Employee 109's performance evaluation was nearly identical to the summary of actual achievements on Employee 38's performance evaluation, which he received while holding the position of Support Services Technician.

Second Performance Evaluation covering the period July 1, 2011 to July 1, 2012

According to this performance evaluation, Employee 109 was evaluated as a Support Services Technician, even though he was a Staff Assistant. Again, the summary of Employee 109's actual achievements for this performance evaluation was identical to the summary of actual achievements appearing on a performance evaluation of Employee 38 as a Support Services Technician.

2. *Rutan*-Exempt Staff Assistants Evaluated for the Performance of Duties That Were Not Related to Those Set Forth in Staff Assistant Position Descriptions

Investigators examined over 170 personnel files of IDOT employees who worked as Staff Assistants. Of the more than 170 employees whose personnel files were reviewed, 96 had been employed as Staff Assistants for at least 12 months (as of the time that the OEIG requested the personnel file), and according to IDOT policy, should have by then had a performance evaluation. Investigators, however, were unable to locate the performance evaluations for 36 of the 96 employees who had been Staff Assistants for at least 12 months. Through various interviews, the OEIG learned that a number of Staff Assistants had never been evaluated and, in at least one case, an employee worked as a Staff Assistant for five years without ever receiving a performance evaluation.

Moreover, the examination revealed that Staff Assistants were rarely evaluated for the performance of the duties set forth in their official Staff Assistant position descriptions and were often evaluated in working titles other than that of Staff Assistant. The examples below illustrate employees in the Staff Assistant position whose performance evaluations reveal they did not perform Staff Assistant duties and were evaluated in working titles other than "Staff Assistant."

a. Example 1: Property Maintenance Specialist – Division of Aeronautics

i. Staff Assistant Employee 52 Hired and Corresponding Internal Personnel Request

On August 4, 2008, Employee 52 began employment as a Staff Assistant in the Division of Aeronautics. The Internal Personnel Request authorizing his hire was signed by Ann Schneider as Director of Finance and Administration. The justification section of the Internal Personnel Request reflected the generic language used to justify most Staff Assistant hires. The justification section did not indicate that the Division of Aeronautics was in need of a Property Maintenance Specialist for the South Suburban Airport Office.

ii. Employee 52's Staff Assistant Duties

Employee 52 was assigned to the South Suburban Airport Office. During his OEIG interview, Employee 52 produced his IDOT business card that identified his position as "Property Maintenance Specialist," and not as Staff Assistant. When asked about the duties he performed, Employee 52 stated that he supervised employees who cut grass, completed inspections of homes purchased by IDOT for purposes of airport expansion, and signed invoices when maintenance was completed. Employee 52 informed the OEIG that these duties did not change throughout his employment.

iii. Employee 52's Performance Evaluations

Employee 52's personnel file contained four performance evaluations completed while he held the Staff Assistant position.

<u>First performance evaluation covering the period of August 1, 2008 to January 1, 2009</u>

On the evaluation, Employee 52's working title was listed as "Technical Manager II," although that is his position title rather than his working title. His Staff Assistant working title does not appear on the performance evaluation. The summary of his actual achievements, taken from the first performance evaluation, is written as follows:

- Assist property management team in ensuring that State-owned property is maintained.
- Meets with security firm and lawn/snow maintenance firms as needed.
- Receives billing from subcontractors.
- Performs minor repairs on State-owned houses.

This evaluation was signed by Employee 52's supervisor on February 11, 2009.

<u>Second performance evaluation covering the period July 1, 2009 to June 30, 2010</u>

On this second evaluation, Employee 52's working title is listed as "Property Maintenance Specialist." The working title "Staff Assistant" does not appear on the performance evaluation. The summary of Employee 52's actual achievements, taken from his second performance evaluation, is written as follows:

- Assist Property management team in maintaining State-owned property.
- On site observer during demolitions and major repairs are [sic] being done to State-owned facilities.
- Reviews bids and billing from contractors prior to submittal for awarding jobs or for payment when job is completed.

This evaluation was signed by Employee 52's supervisor on June 29, 2010.

Third performance evaluation covering the period July 1, 2010 to June 30, 2011

On this third evaluation, Employee 52's working title is listed as "Property Maintenance Specialist." The working title "Staff Assistant" does not appear on the performance evaluation. The summary of Employee 52's actual achievements, taken from his third performance evaluation, is written as follows:

- Performs inspections on State-owned properties and arranges for any repairs that are needed.
- Reviews bids from contractors for work that is needed to be done on State-owned Houses/Land.
- Reviews Security Schedule and invoices.
- Is a contact person for Rental Tenants.
- Performs routine Maintenance at the Project office.

This evaluation was signed by Employee 52's supervisor on July 26, 2011.

Fourth performance evaluation covering the period of July 1, 2011 to June 30, 2012

On this fourth evaluation, Employee 52's working title is listed as "Property Maintenance Specialist." The working title "Staff Assistant" does not appear on the performance evaluation. The summary of Employee 52's actual achievements, taken from his fourth performance evaluation, is written as follows:

- Performs property inspections on State-owned properties.
- Reviews bills from contractors for work that is done on State-owned Houses/Land.
- Interfaces with subcontractors on mowing, security, and maintenance.
- Is a contact person for Rental Tenants.

This evaluation was signed by Employee 52's supervisor on July 10, 2012.

iv. Request for Property Maintenance Specialist Position

When investigators requested from IDOT the position description of the Property Maintenance Specialist position, IDOT responded, "the Department does not have a position description for a Property Maintenance Specialist in the Division of Aeronautics." In other words, no IDOT Property Manager Specialist position existed in the Division of Aeronautics.

v. Interview of the Director of Aeronautics

On December 12, 2012, investigators interviewed Director of Aeronautics Susan Shea. When asked about Employee 52's hire, Ms. Shea stated that in 2008, she received an unsolicited phone call from the Chief of Staff for Governor Blagojevich, John Harris. Mr. Harris asked if she could use an employee by the name of Employee 52 at the South Suburban Airport Office. After Mr. Harris told Ms. Shea of Employee 52's work experience—which included being a pilot and managing facilities for the county—Ms. Shea agreed to meet with Employee 52. After their meeting, Ms. Shea stated she called Mr. Harris and informed him that she could use Employee 52 in her Division.

When asked about the duties he performed, Ms. Shea stated some of the duties Employee 52 performed included:

- mowing;
- security;
- picking up debris and garbage left on IDOT property;
- acting as a spokesperson (for example, he liaised with road commissioners about gravel needed for washed-out roads and potholes); and
- working with contractors hired to do work on homes purchased by IDOT.

The work duties Ms. Shea provided investigators appeared consistent with the work duties Employee 52 was evaluated on between 2008 and 2012.

b. Example 2: Motor Pool Coordinator – Division of Highways, District 6

i. Staff Assistant Employee 110 Hired and Corresponding Internal Personnel Request

Employee 110 was first employed by IDOT via a temporary appointment in the position of Security Guard. In February 2004, when the term of his temporary appointment expired, Employee 110 was hired into a full-time position as a *Rutan*-exempt Staff Assistant in the District 6 Office of the Division of Highways.

The justification section of the Internal Personnel Request that authorized Employee 110's hire into the Staff Assistant position reflected the generic language used to justify most Staff Assistant hires. The justification section did not indicate that the District 6 Office was in need of assistance in the coordination of its motor fleet.

ii. Employee 110's Staff Assistant Duties

According to the Administrative Services Manager of District 6, Employee 13, the duties Employee 110 performed as a Staff Assistant included serving as the motor pool coordinator and overseeing the repair, maintenance, and servicing of vehicles.

iii. Employee 110's Performance Evaluations

A review of Employee 110's personnel file indicates that he was evaluated four times while he held the Staff Assistant position.

First performance evaluation covering the period of December 31, 2007 to December 31, 2008

On the first evaluation, Employee 110's working title is listed as "Motor Pool/Fleet Coordinator." The working title "Staff Assistant" is nowhere mentioned. The summary of his actual achievements, taken from the first performance evaluation, is written as follows:

- In January 2008 I took over as the District 6 Fleet Coordinator, which consists of approx. 150 trucks, cars and mini vans. Within the first five months I successfully located all the vehicles [sic] location and who was assigned a vehicle. I effectively used MMI which is a system used to track and keep updates on vehicles location [sic] and what vehicles are assigned to certain employees. The system was not entirely accurate making it harder to track vehicles [sic] locations. In midsummer [sic]

This performance evaluation was signed by Employee 110's supervisor on January 28, 2009.

Second performance evaluation covering the period of July 1, 2009 to June 30, 2010

On the second evaluation, Employee 110's working title is listed as "Motor Pool/Fleet Coordinator." The working title "Staff Assistant" is nowhere mentioned. The summary of Employee 110's actual achievements, taken from his second performance evaluation, is written as follows:

- Managed District 6 fleet including assignments, monitoring location/usage, repairs, maintenance, cleaning and record keeping for approximately 150 vehicles in District 6 Bureaus [sic] of Administration, Development and Implementation.
- Maintains accurate and timely records of fuel usage, repairs and maintenance on MMI.
- Provides input on replacement vehicle decisions.
- Provides Regional Engineer, Admin Manager, IDOT State Vehicle Manager and others with reports as requested.

This performance evaluation was signed by Employee 110's supervisor on June 28, 2010.

Third performance evaluation covering the period July 1, 2010 to June 30, 2011

On the third evaluation, Employee 110's working title is listed as "Motor Pool/Fleet Coordinator." The working title "Staff Assistant" is nowhere mentioned. The summary of Employee 110's actual achievements, taken from his third performance evaluation, repeats verbatim the summary of actual achievements reported on his second performance evaluation. This performance evaluation was signed by Employee 110's supervisor on July 29, 2011.

Fourth performance evaluation covering the period of July 1, 2011 to June 30, 2012

On the fourth performance evaluation, Employee 110's working title is listed as "Motor Pool/Fleet Coordinator." The working title "Staff Assistant" is nowhere mentioned. Finally, the summary of Employee 110's actual achievements, taken from his fourth performance evaluation, is written as follows:

- Instrumental in the purchasing/pickup of GSA Auction Vehicles.
- Participates in the Annual Audits for all fuel and repairs for the life of the vehicle.
- Prepares the Fleet Card Twice Annual Report.
- Security Review and Analysis regarding Gas Verification of State Credit Cards and Security of Vehicles for D-6.
- Prepared and installed new Insurance Cards for all D-6 vehicles.
- Maintains accurate and timely records of fuel usage, repairs and maintenance on MMI.
- Manages D-6 fleet, assignments, location usage, repairs, maintenance, cleaning and record keeping.

This performance evaluation was signed by Employee 110's supervisor on July 26, 2012.

iv. Motor Pool Coordinator Position Formally Established

During the time period Employee 110 had been evaluated as a Motor Pool Coordinator, the position did not formally exist in the District 6 Office of the Division of Highways. In early 2012, however, IDOT sought to formally establish the position.

The Internal Personnel Request establishing the position was signed by Mike Woods, Jr. as the Bureau Chief of Personnel Management. The justification section of the IPR reflected language tailored to the Motor Pool Coordinator position:

> This position is accountable for overseeing the direction of District 6's motor pool activities and its vehicle inventory control at the district campus.
>
> S/He oversees the accurate and timely collection and recording of each vehicle's related expenditures; analysis of vehicles cost data; identification of trends and discrepancies which need to be brought to the attention of management; determination of candidate for vehicle replacement; and coordination of purchase and/or disposal of vehicles. This position oversees the scheduling of vehicle usage and maintains required usage documentation.

v. CMS Determination: Motor Pool Coordinator Position Is to Be *Rutan*-Covered

A position description for the Motor Pool Coordinator position was generated and sent to CMS for a *Rutan* determination. On March 20, 2012, CMS sent its determination to IDOT, deeming the position *Rutan*-covered. The principal accountabilities enumerated on the Motor Pool Coordinator position description included:

- Serves as motor pool coordinator for District 6 overseeing the accurate and timely collection and recording of vehicle related expenditures; analysis cost data; and identification of trends and discrepancies.
- Determines candidates for vehicle replacement and coordinates purchase and/or disposal of vehicles.
- Oversees the scheduling of vehicle usage and maintains required usage documentation.
- Maintains documentation of driver's license records for assigned vehicles.
- Oversees vehicle maintenance for the fleet; schedules subsequent services; delivers vehicles to services location; maintains services documentation; and maintains preventative services/maintenance records.
- Performs duties in compliance with departmental safety rules.
- Performs all duties in a manner conducive to the fair and equitable treatment of all employees.

vi. Employee 110 Is Hired into *Rutan*-Covered Motor Pool Coordinator Position

On October 2, 2012, Employee 110 interviewed for the *Rutan*-covered Motor Pool Coordinator position along with four other candidates, pursuant to the *Rutan*-covered hiring process. Employee 110 was determined to be the most qualified candidate, in part, because as noted on the Employment Decision Form: "Employee 110 has eight years of experience coordinating motor pool activities, schedules, and assignments. Employee 110 has experience dealing with inventory control records and reports. Employee 110 has experience in the use of Microsoft Office applications as well as MMIS." He was formally hired into the *Rutan*-covered Motor Pool Coordinator position on November 16, 2012.

c. Additional Examples

In addition to the examples of Employee 52 and Employee 110, the OEIG uncovered multiple other instances of employees in the position of Staff Assistant who were evaluated in working titles other than Staff Assistant.

At a minimum, the following 21 employees were evaluated in an IDOT working title different than their Staff Assistant working title. The following chart identifies the 21 Staff Assistants by Name, the Evaluation Working Title/IDOT Location at which the employee was

evaluated, and the Date(s) evaluations were signed by the supervisor. All dates Staff Assistants were evaluated in another Working Title are also identified in the chart below.

Staff Assistant	Evaluation Working Title/ IDOT Location	Date(s) Signed
Employee 111:	Administrative Developer (Office of Finance & Administration – Bureau of Information Processing)	10/31/2007, 12/1/2009 09/27/2011
Employee 112:	Maintenance Contracts Unit Supervisor (District 1)	01/03/2008
Employee 113:	Business Analyst (Office of Finance & Administration – Bureau of Information Processing)	05/02/2008, 12/01/2009 12/10/2010, 06/30/2011
Employee 114:	Property Control Specialist (District 1)	08/06/2008
Employee 115:	Reproduction Technician (District 1)	01/07/2009
Employee 116:	Acting Negotiator (District 6)	01/08/2009, 11/17/2009 06/22/2010, 06/16/2011
Employee 109:	Support Services Technician (District 9)	01/28/2009, 06/28/2010 07/29/2011, 07/26/2012
Employee 56:	Compliance Representative (District 8)	01/28/2009, 08/25/2008 12/24/2008, 02/02/2009 06/30/2011
Employee 59:	Preventative Maintenance Advisor; Services and Development Assistant (District 6)	01/28/2009, 06/17/2010 07/13/2011
Employee 117:	Pump Station Technician (District 1)	03/30/2009
Employee 118:	Roadside Specialist (District 7)	06/09/2009, 06/16/2010 06/27/2011
Employee 119:	Maintenance Field Technician (District 7)	06/23/2009
Employee 120:	Project Manager (Office of Business and Workforce Development)	07/12/2010
Employee 121:	Project Manager (Office of Business and Workforce Development)	07/13/2010
Employee 122:	Special Projects Coordinator (Division of Public and Intermodal Transportation)	07/13/2010
Employee 123:	Payroll Administrative Specialist (Office of Finance & Administration – Bureau of Personnel Management)	02/10/2011, 06/30/2011
Employee 124:	Computer Support Technician (District 4)	06/30/2011, 06/28/2012
Employee 125:	Financial Specialist	06/30/2011

	(Office of Quality Compliance and Review)	
Employee 126:	Emergency Patrol Supervisor (District 8)	07/15/2011
Employee 127:	Administrative Assistant (District 9)	07/29/2011
Employee 101:	Acting Unit Chief – Supplies and Services Unit (Secretary's Office)	06/29/2012

3. Employees Hired into *Rutan*-Covered Positions Based, in Part, on Similar or Identical Work That They Did While Holding the *Rutan*-Exempt Staff Assistant Position

The following examples relate to employees who were hired into *Rutan*-covered positions at IDOT based on experience they acquired while performing the duties of those *Rutan*-covered positions during their tenure as *Rutan*-exempt Staff Assistants. Not only do these examples show that employees in the Staff Assistant position were performing duties unrelated to the Staff Assistant position description, these examples demonstrate that employees in *Rutan*-exempt positions were in fact performing the duties of *Rutan*-covered positions.[104]

a. Example 1: Senior IT Procurement Analyst – Office of Finance and Administration

i. Staff Assistant Employee 128 Hired and Corresponding Internal Personnel Request

On March 23, 2011, following two emergency 60-day appointments, Employee 128 was hired into a *Rutan*-exempt Staff Assistant position on a permanent, full-time basis.[105]

The Internal Personnel Request that authorized Employee 128's full-time hire as a Staff Assistant was signed by Matt Hughes as Director of Finance and Administration and Mike Woods, Jr., as Bureau Chief of Personnel Management. The justification section of the Internal Personnel Request noted that this Staff Assistant position would be involved in the formulation of policy related to procurement programs in the Bureau of Business Services:

> This position is accountable for assisting in the overall development and coordination of policy and directives regarding procurement programs for the Bureau of Business Services. This position monitors conformance to existing policies and conducts reviews or studies issues that are of special interest. S/He provides policy interpretation and analysis of policies. In addition, this position provides assistance to the local agencies, elected agencies, and the general public.

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[104] The Employee 110 example set forth above is also an example of an employee hired into a *Rutan*-covered position based, in part, on similar or identical work he performed while holding a *Rutan*-exempt Staff Assistant position.

[105] On January 18, 2011, Employee 128 was hired via an emergency 60-day appointment as a Staff Assistant in the Office of Finance and Administration. The IPR that authorized his hire was signed by Matt Hughes as Director of Finance and Administration and Mike Woods, Jr. as the Bureau Chief of Personnel Management. Employee 128's emergency appointment expired on March 18, 2011, but he was retained on March 21, 2011 via a second emergency 60-day appointment in the position of Procurement Assistant.

ii. Employee 128's Staff Assistant Duties

Investigators interviewed IT Procurement Manager Employee 62, who supervised Employee 128 during his time as a Staff Assistant. Employee 62 stated that Employee 128 did not coordinate or develop policy for procurement programs in the Bureau of Business Services, nor did he perform any of the duties set forth in the Staff Assistant position description. Instead, Employee 62 stated that Employee 128 prepared Invitations for Bids, Requests for Proposals, and Basic Ordering Agreements related to procurement.

iii. Employee 128's Staff Assistant Performance Evaluation

A review of Employee 128's personnel file reveals that he was evaluated in the working title "Procurement Assistant" for the period covering January 18, 2011 to December 31, 2011. The working title "Staff Assistant" does not appear on the performance evaluation. The summary of Employee 128's actual achievements for that time period is written as follows:

- He has been responsible for handling several invitations for Bids (IFB) and has been trained in Basic Ordering Agreements (BOA). Most recently Employee 128 has been responsible for copier repairs and counts in Central Office. Employee 128 is always willing to accept additional responsibility.

iv. *Rutan*-Covered Position

In early 2012, IDOT sought to fill the *Rutan*-covered position of Senior IT Procurement Analyst in the Office of Finance and Administration.[106] The Internal Personnel Request to fill the position was signed by both Matt Hughes as Director of Finance and Administration, and Mike Woods, Jr., as Bureau Chief of Personnel Management. The justification section of the Internal Personnel Request stated:

> This position is accountable for managing complex Information Technology (IT) related procurements from the determination of a specific need, through final contract/agreement execution by upper management. This position also oversees small purchase contracts covering such items as duplication services and typewriter services, for the Springfield area department offices.

On March 22, 2012, the Senior IT Procurement Analyst position was posted in accordance with the *Rutan* hiring process for *Rutan*-covered positions.

v. Employee 128 Applies for *Rutan*-Covered Position

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[106] According to the Senior IT Procurement Analyst position description: "The incumbent is personally responsible for the preparation of complex Requests for Proposal (RFPs), Invitation for Bids (IFB), Requests for Information (RFI), Renewal Agreements, and Sole Source Contracts. Specific responsibilities include: frequent communication with the originating office; conducting public opening for proposals received in response to an RFP/IFB/RFI; managing complex procurement by planning and organizing activities of management personal [sic] assigned to the selection committee; preparing recommendations for upper management regarding procurement awards and contract terms for multifaceted procurement; and preparing contract documents in conjunction with the originating office."

Employee 128 submitted an employment application for the Senior IT Procurement Analyst position. On the application, Employee 128 stated that from January 2011 to April 2012 he worked as a "Procurement Assistant" for IDOT, even though he had worked as a *Rutan*-exempt Staff Assistant during this period of time. On that same application he described his duties and responsibilities as follows:

- Setup and process Invitation for Bids (IFB).
- I have been given the Temporary Assignment of overseeing the Maintenance and Contract Development of all Central Office (and surrounding areas) Multifunction Copy Machines.
- Help Section Chief Employee 129 with time sensitive tasks, which are presented unexpectedly, and which have a critical nature.
- Assist Unit Chief Employee 62 with any other I.T. Procurement needs.

A résumé submitted along with the employment application identified Employee 128's current position as that of a Procurement Assistant, not Staff Assistant, and listed duties similar in nature to those stated on Employee 128's employment application.

vi. Employee 128 Hired into *Rutan*-Covered Position

On May 4, 2012, two candidates, including Employee 128, were interviewed for the Senior IT Procurement Analyst position pursuant to the *Rutan*-covered hiring process. Employee 128 was chosen as the most qualified and he transferred from the Staff Assistant position into the Senior IT Procurement Analyst position on June 1, 2012.

The Employment Decision Form naming Employee 128 as the top-ranked candidate for the Senior IT Procurement Analyst position justified his selection, in part, because: "He currently works for IDOT and has dealt with RFP's, BOA's, RFI's, and IFB's.[107] He is familiar with Senate Bill 51 and how it will impact procurement." It also noted, "He has extensive experience with other procurement documents, as well as sole-source and renewal contracts."

Employee 62 not only supervised Employee 128 in his position as Staff Assistant, but she also sat on the panel of interviewers who interviewed and scored candidates for the Senior IT Procurement Analyst position. Employee 62 told investigators that the experience Employee 128 gained doing procurement duties while in the *Rutan*-exempt position of Staff Assistant, absolutely helped him obtain the *Rutan*-covered Senior IT Procurement Analyst position. She further stated that she highly doubted that Employee 128 would have received the Senior IT Procurement position if not for the procurement work he performed as a Staff Assistant.

b. Example 2: Interviewers – Office of Finance and Administration

i. October 2009 Staffing Memo

As discussed above, on October 14, 2009, former Bureau Chief of Personnel Management Matt Hughes sent an email to former Director of Finance and Administration Ann

[107] These acronyms represent the following: Requests for Proposal, Basic Ordering Agreements, Requests for Information, and Invitations for Bid.

Schneider identifying staffing needs in the Bureau of Personnel Management. In the October 2009 staffing memo attached to the email, Mr. Hughes discussed the need to fill an Interviewer position through the use of the Staff Assistant position, saying, "The Bureau is in need of two Staff Assistants to serve as *Rutan* Certified interviewers in our Recruiting and Interviewing Unit. BPM [Bureau of Personnel Management] has been asked to process a higher than typical number of transactions this year and the help is greatly needed in order to meet our hiring goals this year."[108]

ii. Staff Assistant Employee 130 Hired and Corresponding Internal Personnel Request

In 2008, Employee 130 began his IDOT employment as a Legislative Liaison with a Technical Manager IV classification in the Office of Communications. On February 16, 2010, four months after Mr. Hughes sent the October 2009 staffing memo to Ms. Schneider, Employee 130 took a voluntary reduction into a Technical Manager II Staff Assistant position in the Office of Finance and Administration.

The Internal Personnel Request that authorized the voluntary reduction was signed by Matt Hughes as Bureau Chief of Personnel Management and Ann Schneider as the Director of Finance and Administration. The justification section of the IPR reflected the generic language used to justify most Staff Assistant hires; it did not identify a need to have an employee fulfill the functions of a *Rutan*-covered Interviewer.

iii. Employee 130's Staff Assistant Performance Evaluation

A review of Employee 130's personnel file reveals that he received a performance evaluation, which covered the period of July 10, 2010 to June 30, 2011. Employee 130 was a Staff Assistant for approximately eleven months of that period. According to the performance evaluation, a summary of Employee 130's actual achievements included the following:

- Conducted numerous interviews for the CET Program in Springfield, Carbondale (SIU), Champaign (University of Illinois) and Chicago (University of Illinois-Chicago).
- Conducted numerous interviews for internal positions.
- Conducted interview for a Spanish-speaking required position. Responsible for determining the candidate's ability to effectively communicate in Spanish.
- Selected for one of the "TM II, Interviewer" positions.
- Translated extensive brochures into Spanish for the "Office of Business and Workforce Diversity."

Nothing in the performance evaluation indicated that Employee 130 performed any of the duties reflected in the Staff Assistant position description.

iv. *Rutan*-Covered Position

[108] The October 2009 staffing memo also identified a need for a third Staff Assistant position, a Technical Manager II in training.

In the spring of 2011, IDOT posted for a *Rutan*-covered Interviewer position. According to the position description, the principal accountabilities of an Interviewer included:

- Coordinates the departmental open competitive job interview program for technical positions to ensure the integrity of the program.
- Evaluates of [sic] selection criteria and participates as a panel member of the interview team.
- Coordinates the interview process for code employees by ensuring compliance with applicable regulations and practices.
- Participates in special studies as requested.
- Maintains and responsible [sic] for all interview files.
- Performs duties in compliance with departmental safety rules.
- Performs all duties in a manner conducive to the fair and equitable treatment of all employees.

v. Employee 130 Applies for *Rutan*-Covered Interviewer Position

Employee 130 submitted his application for the *Rutan*-covered Interviewer position. Along with his application, Employee 130 submitted his résumé wherein he listed the duties he performed as a Staff Assistant, including:

- Reviews and screens candidate résumé and set up interview schedules.
- Conducts interviews for a range of positions under the *Rutan* guidelines.
- Extends verbal and written contingent offers to applicants.
- Performs other recruiting duties and special projects as required.

vi. Employee 130 Hired into *Rutan*-Covered Interviewer Position

On May 16, 2011, after going through the *Rutan*-covered hiring process, Employee 130 obtained the *Rutan*-covered Interviewer position. Employee 130's hire into the *Rutan*-covered Interviewer position was justified on the Employment Decision Form, in part, because he had worked in personnel for a year and because, "He demonstrated above average experience in conducting interviews." Notes taken by interviewers who scored Employee 130's interview and who recommended his hire into the position, reflect that Employee 130 had conducted many interviews on various campuses, and that Employee 130 told interviewers that he had been conducting interviews for a year for numerous positions.

vii. Staff Assistant Employee 131 Hired and Corresponding Internal Personnel Request

On October 26, 2009, twelve days after Mr. Hughes sent the October 2009 staffing memo to Ms. Schneider, Employee 131 was hired as a *Rutan*-exempt Staff Assistant in the Bureau of Personnel Management via a 60-day emergency appointment. On June 16, 2010, following three additional 60-day emergency appointments in various titles, Employee 131 was hired as a full-time *Rutan*-exempt Staff Assistant in the Bureau of Personnel Management.

The Internal Personnel Request authorizing his hire into this full-time position was signed by Ann Schneider as the Director of Finance and Administration and Matt Hughes as Bureau Chief of Personnel Management. The Internal Personnel Request's justification section reflected the generic language used to justify most Staff Assistant hires. The justification did not indicate that the position was needed to perform the duties of a *Rutan*-covered Interviewer.

viii. Employee 131's Staff Assistant Performance Evaluation

Employee 131 received a performance evaluation which covered the period of July 1, 2010 to June 30, 2011. For almost eleven months of this period Employee 131 was in the position of Staff Assistant. According to the performance evaluation, a summary of Employee 131's actual achievements included the following:

- Conducted large amount of External and Internal Position Interviews in Springfield, Collinsville, Carbondale, Traffic Safety, Aeronautics, and District 6
- Written [sic] Candidate evaluations for all interviews I have conducted
- Finalized interview packets to pass on to Bureau Chief for approval
- Selected for one of the TM II Interviewer positions for BPM [Bureau of Personnel Management]
- Selected as the State Health Improvement Program (SHIP) council member for IDOT
- Attended SHIP meetings

Nothing in the performance evaluation indicated that Employee 131 performed any of the duties embodied in the Staff Assistant position description.

ix. *Rutan*-Covered Position

As indicated above, in the spring of 2011, IDOT posted for a *Rutan*-covered Interviewer position.

x. Employee 131 Hired into the *Rutan*-Covered Interviewer Position

Employee 131 was hired as a *Rutan*-covered Interviewer in May 2011 after going through the *Rutan* hiring process. His hire into this position was justified on the Employment Decision Form, in part, because:

> He indicated that he was *Rutan* Certified in December of 2009 and has been conducting interviews since 2010. He indicated that he conducts interviews in compliance with *Rutan* for code, technical and recruitment positions. He indicated that he has done the entire process from start to finish in regard to interviewing and selection. He demonstrated excellent experience in conducting interviews.

4. Discovery of Staff Assistants Who Reported to Employees Who Did Not Hold the Supervising Position Set Forth in the Applicable Staff Assistant Position Description

As discussed earlier, the various duties and responsibilities of a position are laid out in a position description, which contains information related to the position's purpose, nature and

scope, and principal accountabilities. In addition, a position description identifies where in the agency a position is located and the supervising position to which the position reports. As earlier discussed, the only information that CMS reviews when making a *Rutan* determination is that which is contained in the position description. As part of its determination, CMS will consider whether the position reports to a *Rutan*-covered supervising position. According to Employee 7, a supervisor's *Rutan* status influences the analysis because if the supervisor is not instilled with sufficient authority to be *Rutan*-exempt, then neither could the subordinate position.

The OEIG investigation revealed that many *Rutan*-exempt Staff Assistants reported to employees in positions that were inconsistent with the reporting structure set forth in the Staff Assistant position description. In other words, they reported to *Rutan*-covered rather than *Rutan*-exempt supervisors. Below are two examples.

a. Example 1: Staff Assistant Reports to Roadside Development Architect – Division of Highways, Dist. 1

i. Staff Assistant Employee 132 Hired and Corresponding Internal Personnel Request

On June 16, 2010, Employee 132 was hired into the first of two consecutive 60-day emergency appointments as a Staff Assistant at District 1. Each Internal Personnel Request that authorized these emergency appointments bore a signature made on behalf of Ann Schneider as Director of Finance and Administration and was signed by Matt Hughes as Bureau Chief of Personnel Management. The justification section of both Internal Personnel Requests simply stated, "This position will perform a variety of support services associated with the district."

On September 16, 2010, Employee 132 was hired into a permanent, full-time *Rutan*-exempt Staff Assistant position in District 1. The Internal Personnel Request authorizing the full-time hire bore a signature made on behalf of Ann Schneider. The Internal Personnel Request's justification section reflected the generic language used to justify most Staff Assistant hires, but did not indicate that District 1 needed help fulfilling forestry duties.

ii. Reporting Structure per the Staff Assistant Position Description

According to the relevant position description, the Staff Assistant position that Employee 132 held reports to the Bureau Chief of Administrative Services. The Bureau Chief of Administrative Services is a *Rutan*-exempt position. At the time Employee 132 held the Staff Assistant position, Employee 19 was the Bureau Chief of Administrative Services.

iii. Reporting Structure per the Performance Evaluations

Employee 132's personnel file contained three performance evaluations. Each of those three was signed by Employee 99 as supervisor in the position of Roadside Development Architect. Employee 19's signature did not appear on the performance evaluations.[109]

[109] Employee 99's evaluation of Employee 132 while serving as a permanent Staff Assistant reflected the working title: "Roadside Mechanical Technical Manager." Achievements state: Worked with bureau of construction staff on I-80 W/O Rt. 30 west to Minooka Rd. marking trees for removal for resurfacing contract; worked with numerous

iv. Employee 99's Position is *Rutan*-Covered

Employee 99 holds the position of Roadside Development Architect in the Bureau of Maintenance at the District 1 Office of the Division of Highways. Employee 99's position is *Rutan*-covered.

v. Interviews Regarding Reporting Structure

Investigators interviewed Employee 99 who said that in 2010, a tree fell on Cumberland Avenue causing a man's death. According to Employee 99, District 1 was in need of a forester to prevent future incidents. In addition, Employee 99 stated that the Assistant to the Regional Engineer, Employee 133, brought Employee 132 on and assigned him to his section.

Employee 99 stated that he, not Employee 19, supervised Employee 132.[110] In other words, Employee 132 was supervised by a *Rutan*-covered supervisor not a *Rutan*-exempt supervisor.

b. Example 2: Staff Assistant Reports to Business Services Manager - District 1

i. Staff Assistant Employee 105 Hired and Corresponding Internal Personnel Request

As discussed above, Employee 105 was hired into a *Rutan*-exempt Staff Assistant position on May 17, 2010. Employee 105 was assigned to District 1's Copy Center.

The Internal Personnel Request that authorized Employee 105's hire was signed by Ann Schneider as Director of Finance and Administration and Matt Hughes as Bureau Chief of Personnel Management.

ii. Reporting Structure per the Staff Assistant Position Description

According to the relevant position description, the Staff Assistant position that Employee 105 held reports to a Regional Engineer.

iii. Interview Regarding Reporting Structure

On August 23, 2012, investigators interviewed Employee 44. Employee 44 is IDOT's Business Services Manager, and is responsible for supervising District 1's Copy Center.

Employee 44 informed the OEIG that Employee 105 reported to Administrative Support Manager Employee 106, who was in a *Rutan*-covered position. In turn, Employee 106 reported

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Maintenance Team Sections to develop skills to remove dead or hazardous trees; reviewed Com Ed tree trimming work and assured that trees that were one sided and posed a hazard to motorists were removed; and field reviewed permit applications for tree trimming and removal for advertising signs.

[110] Employee 99 said he came up with the "Roadside Mechanical Technical Manager" title used on Employee 132's evaluation.

to Employee 44, who also held a *Rutan*-covered position as Business Services Manager of District 1. In other words, according to Employee 44, Employee 105 was supervised by a *Rutan*-covered supervisor, not a *Rutan*-exempt supervisor.

L. Discovery of the Transfer of Employees in *Rutan*-Exempt Staff Assistant Positions Into *Rutan*-Covered Positions without Having Them Go through the *Rutan* Hiring Process

The OEIG investigation revealed that IDOT hired employees into a *Rutan*-exempt position and subsequently transferred them into a *Rutan*-covered position without posting the position, having candidates interview for it, or following any of the *Rutan* requirements as promulgated in the various Administrative Orders.

1. September 2003 Email Prohibiting the Practice

In an interview conducted in December 2012, former Chief Counsel Ellen Schanzle-Haskins told investigators that prior to Milton Sees becoming Secretary of IDOT in 2007, various members of management did not believe that the practice of summarily transferring employees from *Rutan*-exempt positions into *Rutan*-covered positions constituted a *Rutan* violation. However, Ms. Schanzle-Haskins stated that after January 2007, IDOT altered its policy to require that all employees undergo the *Rutan* hiring process if they wished to transfer from a *Rutan*-exempt position to a *Rutan*-covered position.[111]

Based on this information, the OEIG requested from IDOT any document that memorialized this change in policy. In response, IDOT provided the OEIG with an email sent in September 2003 at the request of Bureau Chief of Personnel Management Jacob Miller to various members of management.[112] The email stated in relevant part:

> "[P]lease be reminded that transfers from *Rutan*-Exempt positions to Rutan-Covered positions will not be approved. . . ."

This September 2003 email was the only document that IDOT was able to produce to show that it had a formal policy prohibiting transfers of employees from *Rutan*-exempt positions to *Rutan*-covered positions without going through the *Rutan* hiring process. However, as noted below, it appeared as though the purportedly prohibited practice continued after 2003.

2. Matt Hughes States Practice Has Ceased

Former Office of Finance and Administration Director Matt Hughes informed the OEIG that the transfer of a *Rutan*-exempt employee into a *Rutan*-covered position should not occur without an interview. He acknowledged that this practice occurred at IDOT prior to when he became Bureau Chief of Personnel Management and Director of Finance and Administration, but said it had since ceased.

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[111] *See* Appendix to Report at Exhibit 20, "Timetable for Legal Positions Taken by IDOT over the Years with Respect to Voluntary Reductions, Lateral Transfers and Rutan Application."
[112] *See* Appendix to Report at Exhibit 21.

Mr. Hughes told investigators that he would be "unpleasantly surprised" if the practice had occurred while he oversaw the Bureau of Personnel Management or the Office of Finance and Administration. However, as reflected below, the practice did continue.

Similarly, former Bureau Chief of Personnel Management and current Deputy Director of Finance and Administration Mike Woods, Jr. stated that he knew IDOT could not transfer persons from *Rutan*-exempt to *Rutan*-covered positions without going through the *Rutan* hiring process.

3. Four Examples Illustrating the Practice Continued

The following examples, while non-exhaustive, illustrate a few instances in which employees were transferred from *Rutan*-exempt positions into *Rutan*-covered positions without going through the *Rutan* hiring process. Four instances occur within a little over a year of the September 2003 email being sent, and one occurred after Matt Hughes began overseeing the Bureau of Personnel Management in April 2009, despite his statement that the practice no longer occurred after that time.

a. From *Rutan*-Exempt Staff Assistant to *Rutan*-Covered Lead Interviewer

On April 23, 2003, Employee 85 was hired as a *Rutan*-exempt Staff Assistant. When asked about her hire, Employee 85 stated that after graduating from college, she sought employment with the State. Employee 85 provided her résumé to family and friends, including IDOT's former Chief of Operations Brice Sheriff, who told her to expect a call from someone at IDOT. In early 2003, Employee 85 was called in for an interview with former Director of Finance and Administration Robert Millette and Jim Reinhart. According to Employee 85, no specific position was discussed during the interview, but she did discuss her education, experience, and skills. Employee 85 stated that she did not know what she would be doing at IDOT until the first day that she reported to work in the Bureau of Personnel Management. Employee 85 stated that her duties as a Staff Assistant consisted of reviewing and filing personnel files.

On December 1, 2003, Employee 85 was transferred into the position of Lead Interviewer. The Internal Personnel Request and the ePAR that authorized her transfer into the Lead Interviewer position indicate that the position is *Rutan*-covered. Employee 85 told the OEIG that the Lead Interviewer position was not posted and she did not interview for it.

b. From *Rutan*-Exempt Staff Assistant to *Rutan*-Covered Employment Support Assistant

On May 24, 2004, Employee 88 began employment as a *Rutan*-exempt Staff Assistant.[113] When asked about this hire, Employee 88 stated that she contacted Sam Flood, who worked at the Office of the Governor, to find out if she could submit a late application for a Dunn

[113] Employee 88 at the time was not married to Matt Hughes. The two were later married.

Fellowship.[114] Employee 88 knew Mr. Flood because they were both from Belleville. Mr. Flood told Employee 88 to send in her résumé.

According to Employee 88, she was later contacted by IDOT's former Bureau Chief of Personnel Management, Scott Doubet, regarding an interview. At the time, Employee 88 understood that she was being interviewed for a job assisting in the Bureau of Personnel Management. Employee 88 told the OEIG that her duties as a Staff Assistant included doing projects for Mr. Doubet and providing the Office of the Governor with information concerning the status of ePARs she was processing.

On November 1, 2004, Employee 88 was transferred into the position of Employment Support Assistant. The IPR and ePAR that authorized this transfer indicate that the Employment Support Assistant position is *Rutan*-covered. Employee 88 said that she did not apply or interview for the position, but instead was told by Mr. Doubet that she would be transferred into the position.

c. From *Rutan*-Exempt Staff Assistant to *Rutan*-Covered Support Services Technician

As earlier discussed, on November 26, 2007, Employee 38 was hired as a Staff Assistant. He was assigned to the District 9 Office of the Division of Highways.

On September 1, 2008, Employee 38 laterally transferred from the Staff Assistant position into a Support Services Technician position. The Internal Personnel Request that authorized this transfer indicates that the Support Services Technician position is *Rutan*-covered. The justification section of the IPR noted that a lateral transfer of Employee 38 into the Support Services Technician position was necessary because it would eliminate the need for additional temporary assignments and overtime to cover duties of an understaffed Business Services Section. The justification section further noted that Employee 38 had been filling the Support Services Technician position temporarily and "the lateral move would reflect the correct reporting responsibilities and position duties."

According to Employee 38, he did not interview for the Support Services Technician position or submit an application for it. Moreover, the OEIG was unable to locate an Employment Selection and Notification Memorandum in his personnel file indicating that he obtained his *Rutan*-covered job after qualifying for it through the *Rutan* hiring process. On February 14, 2014, the OEIG requested that IDOT produce any documents reflecting that Employee 38 had gone through the *Rutan* hiring process prior to being placed into the *Rutan*-covered position of Support Services Manager. In response, IDOT acknowledged, "It appears that there were no interviews in connection with this transfer." IDOT was unable to produce any relevant documentation.

d. From *Rutan*-Exempt Labor Relations Assistant to *Rutan*-Covered Staff Assistant

[114] A Dunn Fellowship affords college graduates the opportunity to work at a State agency under the Governor's jurisdiction for a year, where they attain experience in the operation of State government. See *James H. Dunn, Jr. Memorial Fellowship and VITO Marzullo Internship Program,* http://www2.illinois.gov/gov/pages/ opportunities. aspx (last visited March 2014).

On July 1, 2007, following two 60-day emergency appointments, Employee 9 was hired into a permanent, full-time position as a Labor Relations Assistant in the Office of Finance and Administration. According to the Internal Personnel Request and ePAR authorizing her hire, the position was *Rutan*-exempt position.

According to Employee 9, after working in Labor Relations for over two years, she and the Labor Relations Manager requested that she be transferred to another unit. IDOT sought to accomplish Employee 9's transfer by establishing a Staff Assistant position for her to fill in the Division of Traffic Safety. The Internal Personnel Request that authorized Employee 9's transfer into a newly created Staff Assistant position was signed by Ann Schneider as the Director of Finance and Administration and Matt Hughes as the Bureau Chief of Personnel Management. The justification section of the Internal Personnel Request used the generic language used to justify most Staff Assistant hires, but also indicated that IDOT was specifically requesting a lateral transfer for Employee 9:

> This position is accountable for assisting in the overall development and coordination of policy and directives regarding section programs. This position monitors conformance to existing policies and conducts reviews or studies issues that are of special interest. S/He provides policy interpretation and analysis of policies. In addition, this position provides assistance to the local agencies, elected officials, and the general public.
>
> The Department is requesting the lateral transfer of Employee 9 who is currently a TM II[.] The candidate's salary will remain $3635/month.

Since this Staff Assistant position was newly established, IDOT was required to send the position description to CMS for a *Rutan* determination. The position description was received by CMS on December 7, 2009 for review. Although the Internal Personnel Request did not indicate whether this newly established position was *Rutan*-covered or *Rutan*-exempt (neither box on the form was checked), the ePAR that IDOT sent to the Office of the Governor stated that the position was *Rutan*-exempt and would not be posted, even though CMS had yet to issue a *Rutan* determination. On February 1, 2010, Employee 9 was transferred into the newly established Staff Assistant position in the Division of Traffic Safety without applying or interviewing for the position.

However, in relation to this particular transaction, investigators discovered that:

- *prior* to February 23, 2010, Employee 9 was transferred to a Staff Assistant position; and
- *on* February 23, 2010, CMS issued its *Rutan* determination for the newly created Staff Assistant position.

Specifically, on February 23, 2010, CMS determined the IDOT Staff Assistant position to be a *Rutan*-covered rather than a *Rutan*-exempt position. In other words, IDOT filled a Staff Assistant position before CMS even issued its *Rutan* determination and when it did issue its determination, CMS concluded the Staff Assistant position was *Rutan*-covered. Employee 9, however, continued to serve as a Staff Assistant.

e. Additional Examples

iv. Employee 11

Investigators interviewed former Staff Assistant Employee 11 regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 7-Division of Highways, Effingham, IL. During her interview, Employee 11 stated that she was hired as a Staff Assistant in May 2004, where she worked in Financial Services, before transferring to a Resource Analyst position in 2006. Employee 11 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- processed invoices,
- dealt with vendors, and
- helped Administrative Services Manager Employee 14 with filing and typing.

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 11 stated she:

- did not do any community outreach that involved meeting with State representatives or local officials, but
- did help Legislative Liaison Employee 12 with running a school bus safety event.

v. OEIG Review of Employee 11's Personnel Documents

In light of the fact that Employee 11 stated that she had been "transferred" into a Resource Analyst position, investigators reviewed her personnel file and discovered:

- on May 5, 2004, Employee 11 was hired as a *Rutan*-exempt Staff Assistant; and
- on April 1, 2006, Employee 11 was transferred from a *Rutan*-exempt Staff Assistant to a *Rutan*-covered position as a Resource Analyst.

Investigators requested the *Rutan* hiring file that related to Employee 11's transfer to the Resource Analyst position. IDOT responded that it had no *Rutan* hiring file. In other words, Employee 11 was transferred into a *Rutan*-covered position without going through the *Rutan* hiring process.

vi. Examples of Nine Others

Based on the above information, investigators reviewed Staff Assistant personnel files to determine how many Staff Assistants were transferred into *Rutan*-covered positions, and then requested and reviewed *Rutan* hiring files to determine whether they went through the *Rutan* hiring process in order to obtain the new *Rutan*-covered positions. Below is a chart that identifies the Staff Assistants who transferred into *Rutan*-covered positions for whom IDOT had no documentation showing the transferred employee went through the *Rutan* hiring process.

Date of Transfer	Staff Assistant	*Rutan*-Covered Position Transferred To

December 1, 2003	Employee 82[115]	Interviewer
April 1, 2004	Employee 134	Interview Scheduler
May 1, 2004	Employee 20	Safety and Claims Investigator
October 16, 2004	Employee 83	Internet/Intranet Support Specialist
November 1, 2004	Employee 87	Teamsters/Seasonal Employment Specialist
March 16, 2005	Employee 135	Engineering Applications Technician
June 16, 2006	Employee 64	Property Control Manager
September 16, 2007	Employee 136	Resource Analyst
October 1, 2008	Employee 22	Office Services Supervisor

M. Staff Assistants Assigned to Varying Technical Manager Levels Even Though the Position Description is the Same for All of them

IDOT has a classification system for its "technical" non-code employees. That classification system is set forth in a Technical Pay Plan (Pay Plan) that is updated periodically. The pay plan referenced in this section became effective on January 1, 2010. The Pay Plan classifies "technical" positions into a number of "Position Title[s]," including, for example, Chemist, Civil Engineer, Geologist, Land Surveyor, Technical Advisor and Technical Manager. Each classification is subdivided into several levels, *e.g.*, Technical Manager I, Technical Manager II, through Technical Manager X. The significance of the different Technical Manager levels is, among other things, that each Technical Manager level has a different pay range. The following chart sets forth the pay ranges that the Pay Plan establishes for some of the Technical Manager levels that are at issue in this matter:

Technical Manager Level	Minimum Annual Pay	Maximum Annual Pay
Technical Manager I	$38,580	$68,520
Technical Manager II	$43,920	$78,360
Technical Manager VI	$70,020	$118,080

All Staff Assistant positions have been classified as Technical Manager. Although a majority of Staff Assistants were hired at the Technical Manager II level, a review of Staff Assistant position descriptions establishes that some Staff Assistants were assigned to different Technical Manager levels, including Technical Manager I and Technical Manager VI, even though the Staff Assistant job descriptions are virtually identical. In other words, some Staff Assistants were placed in higher Technical Manager levels than other Staff Assistants, meaning that they were entitled to higher pay, even though their duties and responsibilities were virtually identical.

As the Pay Plan establishes, differences in pay *within each Technical Manager level* can be justified by "Marketplace (external competitiveness)," "Quality and amount of experience," "Departmental needs," and "Existing salaries of on-board personnel (internal equity)." However, the Pay Plan does not appear to provide a basis for a variance in Technical Manager levels where the prescribed duties and responsibilities are the same.

[115] Employee 82 would go on to be transferred into another two *Rutan*-covered positions without going through the *Rutan* hiring process.

In an effort to resolve that apparent anomaly, the OEIG conducted interviews of: Employee 8, IDOT's then-Acting Section Manager in the Bureau of Personnel Management; Matt Hughes, former Director of the Office of Finance and Administration; Ann Schneider, former Director of the Office of Finance and Administration and current Secretary of Transportation; and Mike Woods, Jr., current Director of the Office of Finance and Administration. The overarching inquiry was whether IDOT had any established guidelines or criteria for determining which level to assign to an employee in a Technical Manager position, and whether there was any justification for assigning different Technical Manager levels to Staff Assistant positions where the duties and responsibilities of the positions are virtually identical.

Employee 8 stated that IDOT at one time used the "HAY classification system," whereby each paragraph in a position description would be assigned a number of points, which were then added together to determine the appropriate classification. (By "classification," we presume that Employee 8 was speaking of the different levels within a Position Title such as Technical Manager.) She stated that IDOT still uses the same position-description format, but that there is no calculation of points used for classification. Employee 8 did not provide any information regarding how, in the absence of the 'HAY classification system," IDOT determines an appropriate classification, *i.e.*, an appropriate Technical Manager level.

Mr. Hughes opined that there should be a difference in position descriptions that correspond, to the differences in Technical Manager levels. He could not explain how IDOT is able to determine appropriate classification levels if the position descriptions are nearly identical. He speculated that differences in education or experience, or in prior compensation levels, or in who an employee reports to, could explain variances in pay level even where the job responsibilities are the same. But he was not aware of how IDOT assigns or assigned Staff Assistants to different Technical Manager levels.

Ms. Schneider agreed that she would expect the position descriptions for a Technical Manager II and a Technical Manager IV to "look different [,]" and that the duties outlined in the position description should justify a difference in Technical Manager level. She agreed that it would be a problem if the position descriptions were nearly identical across the Technical Manger I through Technical Manager VI levels. She stated that "there should be varying degrees of ... responsibility based on classification and pay."

Mr. Woods also agreed that the different Technical Manager levels should have different levels of duties in the job descriptions.

The Pay Plan does not set forth any criteria for determining the level to which a position should be assigned within a particular Position Title. It provides criteria for determining starting salary (presumably within the pay range for each level), but does not provide any criteria to be used in determining the level to which a position should be assigned.

Below is an example of an instance where IDOT created a Technical Manager VI Staff Assistant position in the Division of Public and Intermodal Transportation, and hired Staff Assistant Employee 137 to fill the position. It appears Employee 137 performed the same grant

monitoring duties performed by *Rutan*-covered Technical Manager III co-workers but was paid approximately $28,000 more than what the Technical Manager III co-workers were being paid.

1. Staff Assistant Employee 137 Hired and Corresponding Internal Personnel Request

On August 16, 2010, Employee 137 was hired as a Staff Assistant at a Technical Manager VI level in the Division of Public and Intermodal Transportation. The Internal Personnel Request that authorized his hire as a Staff Assistant was signed on behalf of Ann Schneider as the Director of Finance and Administration.

As a Technical Manager VI, Employee 137's starting annual salary was $92,004. On January 1, 2011, his salary increased to $93,840.

2. Interview of Bureau Chief of Transit Capital Employee 100 Regarding Employee 137's Duties

On June 18, 2013, investigators interviewed the Bureau Chief of Transit Capital Employee 100. Employee 100 told the OEIG that Employee 137 was assigned to him without any direction as to what his duties would be. Consequently, Employee 100 stated he had Employee 137 perform the duties of a Project Manager, because according to Employee 100, everyone that reports to him is a Project Manager.

As a *Rutan*-exempt Staff Assistant, Employee 137 performed the duties of a Statewide Project Manager, which were identical to duties performed by *Rutan*-covered Project Manager Employee 138. These duties included managing grantees, working on capital improvements, monitoring scheduling, and overseeing the disbursement of funds and the compliance of agreements.[116] Employee 100 said that Employee 138 held the position of Statewide Project Manager in an acting capacity, but formally held the position of Northeastern Illinois Project Manager.

3. *Rutan*-Covered Technical Manager III Pay

Investigators sent a Request for Documents to IDOT for the Status Action form for Mass Updates for the salary adjustment for Employee 138, the *Rutan*-covered Technical Manager III employee who, according to Employee 100, performed the same duties as Technical Manager VI Staff Assistant Employee 137. As of January 2011, Employee 138 was paid $65,568,[117] or about $28,000 less than Employee 137's January 2011 salary.

N. Discovery of Staffers of U.S. Congressman Phil Hare Hired by IDOT Following the Loss of Congressman Hare's 2010 Bid for Re-Election.

[116] IT is additionally significant that, as Technical Manager VI, Employee 137 not only performed the same duties as a Technical Manager III, but did not perform the duties set forth in the Staff Assistant position description, but, instead, performed the duties of a Project Manager, which is a *Rutan*-covered position.
[117] TM III Project Manager Employee 138 was paid per year as of January 2011.

Investigators discovered an instance in which IDOT hired several persons whose immediate prior positions were as staffers for Congressman Phil Hare. These hires occurred around the same time that Congressman Hare left office after losing his 2010 bid for re-election. These examples are discussed in further detail below.

Former U.S. Congressman Phil Hare first took office in the House of Representatives in January 2007, representing the 17th Congressional District of Illinois. He won a second term in 2008, but lost his 2010 bid for re-election. Mr. Hare formally left office on January 3, 2011. During his tenure in Congress, Mr. Hare served on the House Transportation and Infrastructure Committee, the same committee on which Dan Lipinski currently sits. The OEIG investigation discovered that at around the time Mr. Hare left office, IDOT absorbed several staffers who had previously worked for him.[118]

First, Employee 128—who was earlier discussed in the section titled, "Employees hired into *Rutan*-covered positions based, in part, on similar or identical work that they did while holding the *Rutan*-exempt Staff Assistant position"—was hired as a *Rutan*-exempt Staff Assistant on January 18, 2011, two weeks after Congressman Hare left office.

Second, Employee 139 was hired as a *Rutan*-exempt Staff Assistant on January 26, 2011, approximately three weeks after Congressman Phil Hare left office.

Third, Employee 140 was hired as a *Rutan*-exempt Staff Assistant in March 2010, just prior to Mr. Hare's unsuccessful bid for re-election.

1. Staff Assistant Employee 128 Hired

Employee 128's employment application indicates that, prior to joining IDOT, he worked as a Regional Field Organizer for Congressman Phil Hare and that he left that position as a result of Mr. Hare losing the 2010 election. As discussed earlier in the report, once in the Staff Assistant position, Employee 128 performed the duties of the *Rutan*-covered Procurement Assistant position. The experience that he gained in procurement later helped him obtain a *Rutan*-covered job as a Senior IT Procurement Analyst.

2. Staff Assistant Employee 139 Hired

Employee 139's employment application indicates he began work for Congressman Hare as a District Scheduler in March 2010 and left that position because of Mr. Hare's 2010 election loss.

Employee 139 began employment with IDOT in the Bureau of Personnel Management, but transferred to District 2 of the Division of Highways on March 28, 2011. The Internal Personnel Request authorizing his hire into the Staff Assistant position was signed by former Director of Finance and Administration Matt Hughes and former Bureau Chief of Personnel Management Mike Woods, Jr.

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[118] A fourth former Congressman Hare employee, Employee 141, was also hired by IDOT in early 2011. Employee 141, however, was not hired into a Staff Assistant position but rather as an Assistant to the Regional Engineer in District 2 of the Division of Highways.

Investigators questioned Administrative Services Manager for District 2 Employee 16 about the duties Employee 139 performed in Safety and Training after his transfer. Employee 16 stated Employee 139's duties included developing and implementing training classes. According to Employee 16, Employee 139 did not perform duties reflected on the Staff Assistant position description.

3. Staff Assistant Employee 140 Hired

In addition to the examples discussed above, the OEIG investigation uncovered another *Rutan*-exempt Staff Assistant, Employee 140, who worked for Congressman Hare immediately prior to joining IDOT. Employee 140 began employment with Mr. Hare in 2007 as a District Scheduler and held that position until March 2010.

Employee 140 joined IDOT as a *Rutan*-exempt Staff Assistant in March 2010. As with Employee 139, Employee 140 worked at District 2 of the Division of Highways. The Internal Personnel Request authorizing Employee 140's hire as a Staff Assistant was signed by both former Bureau Chief of Personnel Matt Hughes and former Director of Finance and Administration Ann Schneider.

Employee 16 told the OEIG that as a Staff Assistant, Employee 140's duties included producing spreadsheets and other computer-generated documents and assisting in the Services Development area. In that capacity, Employee 140 planted trees and performed other preventative maintenance tasks.

4. Interviews of Former Bureau Chief of Personnel Management and Current Deputy Director of Finance and Administration Mike Woods, Jr. and Former Director of Finance and Administration and Former Bureau Chief of Personnel Management Matt Hughes

Investigators interviewed former Bureau Chief of Personnel Management and current Deputy Director of Finance and Administration Mike Woods, Jr., and former Director of Finance and Administration and former Bureau Chief of Personnel Management Matt Hughes regarding IDOT's hiring of persons associated with former Congressman Phil Hare. Below is the information they provided investigators.

Former Bureau Chief of Personnel Management and current Deputy Director of Finance and Administration Mike Woods, Jr. was asked about the hiring of employees who appeared to have political affiliations, including persons associated with former United States Congressman Phil Hare. Mr. Woods was asked about three Staff Assistants, namely: Employee 128, Employee 140 and Employee 139. When asked if any of these employees were hired because of their connection to Congressman Hare, Mr. Woods responded that he did not know Mr. Hare personally and had never been privy to any conversation regarding the hiring of former Hare employees. Mr. Woods was asked if there was a connection between the employment of several individuals who worked for Congressman Hare and the timing of their hiring with IDOT. Mr. Woods answered, "I would say it's a coincidence." Mr. Woods said that he did not base his decision on political affiliation and that Employee 139 was hired on the recommendation of former Director of Finance and Administration Matt Hughes.

Mr. Hughes was asked about Staff Assistant Employee 128 performing duties of a Procurement Assistant. According to Mr. Hughes, he met Employee 128 through his (Employee 128's) work on Congressman Phil Hare's campaign. Mr. Hughes stated that he recommended Employee 128 for IDOT employment, and said he was responsible for Employee 128 being hired. Mr. Hughes stated that Employee 128 "was probably the best hire I've ever made."

Mr. Hughes said that Employee 128 completed the employment application and secondary employment request himself. When asked why Employee 128 would have identified the position in which he was working as "Procurement Assistant," Mr. Hughes said that Employee 128's description was a "mischaracterization," because he was a Staff Assistant in the Bureau of Business Services doing procurement work.

O. OEIG Interviews of IDOT *Rutan*-exempt Staff Assistants and Staff Assistant Supervisors Regarding Staff Assistant Duties and Responsibilities

During the course of this investigation, investigators traveled to multiple IDOT locations throughout Illinois for the purpose of interviewing a number of IDOT Staff Assistants, present and former. Investigators generally questioned the Staff Assistants about what duties they performed or were performing as Staff Assistants. Investigators sought to determine whether the Staff Assistants performed any duties set forth in the Staff Assistant position description. In addition, investigators also interviewed some Staff Assistant supervisors regarding duties Staff Assistants under their supervision performed or were performing, and whether the Staff Assistants performed any duties set forth in the Staff Assistant position description.

Below are summaries of information investigators obtained from Staff Assistants and/or their supervisors regarding duties Staff Assistants performed or were performing.[119] The statement summaries have been categorized as follows:

Category A: The OEIG identified 85 Staff Assistants whose duties, as reported to investigators, did not appear to match duties identified on the Staff Assistant position description.

Category B: The OEIG identified 29 Staff Assistants whose duties, as reported to investigators, appeared to correspond, in part, to duties identified on the Staff Assistant position description.

Category C: The OEIG identified 6 Staff Assistants whose duties, as reported to investigators, appeared to match duties on the Staff Assistant position description.

Category A: Staff Assistants Whose Duties Did Not Appear to Match Duties Identified on the Staff Assistant Position Description

1. Employee 53: Office of Business and Workforce Diversity, Chicago

[119] Investigators did not interview every Staff Assistant whom the OEIG identified as having served in a Staff Assistant position, nor did investigators interview every Staff Assistant supervisor. However, the OEIG compiled a summary list of Staff Assistants employed by IDOT between 2002 and 2014. To review the list, *see* Appendix to Report at Exhibit 22.

Staff Assistant Employee 53 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Business and Workforce Diversity, Chicago, IL. During her interview, Employee 53 stated that she was hired as a Staff Assistant in 2004 in a temporary capacity and was hired as a Staff Assistant permanently in June 2008. Employee 53 was asked about the duties she performed as a Staff Assistant and in response stated she:

- took care of the facility
- made sure people signed in and out
- did general housekeeping

When asked about the Staff Assistant position description and the duties and responsibilities set forth therein, Employee 53 stated she:

- did not perform liaison or legislative work
- did not create policy
- did not act as a spokesperson
- did not work as a confidential assistant

As a follow-up to her interview, Employee 53 emailed investigators additional duties she performed as a Staff Assistant, which included:

- managing the front office of the IDOT Resource Center for all management, consultants, and other IDOT staff
- maintaining office supplies
- monitoring building maintenance issues
- writing letters and articles
- maintaining records
- inputting contracting and payroll data into the IDOT network
- providing a clean and pleasant office environment (watering plants, purchasing coffee supplies and kitchen supplies)
- keeping office equipment functional
- dealing with conference room reservations
- creating documents
- performing research
- doing anything else as needed

Investigators discovered that Staff Assistant Employee 53's position description states that the incumbent reports to the Director of the Office of Business and Workforce Diversity. However, Employee 53 told investigators that she was "kind of given" to Employee 142, who is a Compliance Officer for the Division of Highways *not* the Office of Business and Workforce Diversity.

2. Employee 22: District 5 - Division of Highways, Paris

Former Staff Assistant Employee 22 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 5 - Division of Highways, Paris, Illinois. During her interview, Employee 22 stated that she was hired as a Staff Assistant in 2007, but transferred into the position of Office Services Supervisor in 2009. Employee 22 was asked about the duties that she performed as a Staff Assistant and in response stated that she:

- filed paperwork
- processed timesheets and leave slips for payroll

When asked about the Staff Assistant position description and the duties and responsibilities set forth therein, Employee 22 stated she:

- did not perform any duties relating to policymaking or involving confidential duties

3. Employee 25: District 4 - Division of Highways, Peoria

Former Staff Assistant Employee 25 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 4 - Division of Highways, Peoria, Illinois. During her interview, Employee 25 stated she was hired as a Staff Assistant in April 2010, but transferred into the position of Safety and Claims Specialist in 2011. Employee 25 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- created the District 4 website
- helped Safety and Claims employees with various safety concerns that arose in the District
- primarily helped out and assisted various office staff

When asked about the Staff Assistant position description and the duties and responsibilities set forth therein, Employee 25 stated she:

- did not perform any duties relating to policy creation, confidential information, or outreach with other agencies or organizations

Interview of Employee 25's Supervisor: Employee 17

Personnel Services Manager Employee 17 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistant Employee 25. In this regard, Employee 17 stated that Staff Assistant Employee 25 performed the following:

- performed duties related to a *Rutan*-covered Claims Specialist position
- provided other general assistance
- processed paperwork related to insurance claims made against District 4
- did not perform the duties of the Staff Assistant position

4. Employee 4: Office of Finance and Administration, Springfield

Staff Assistant Employee 4 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Finance and Administration, Springfield. During his interview Employee 4 stated he was hired as a Staff Assistant in

February 2012. Employee 4 was asked about the duties he performed as a Staff Assistant and in response stated he:

- provided SharePoint support
- helped end users get accustomed to Office 2010
- set up the Active Data Calendar software
- completed a printer consolidation project

When shown the Staff Assistant position description and Internal Personnel Request and asked to review portions setting forth the position duties and responsibilities, Employee 4 stated he:

- did not perform any of the duties described on the IPR associated with his hire into the Staff Assistant position
- thinks maybe his research and recommendations regarding IDOT moving toward a Cloud backup could be considered "developing policy recommendations"
- did not perform six of eight Principal Accountabilities listed on the Staff Assistant position description
- follows safety policies and treats employees fairly and equitably

Investigators discovered that Staff Assistant Employee 4's position description indicates that the position he holds reports to the *Deputy Director of Finance and Administration.* However, Employee 4 told investigators that he was supervised by Section Manager Employee 143, who in turn was supervised by Bureau Chief of Information Processing Employee 41, *not* the *Deputy Director of Finance and Administration.* In any event, investigators discovered that Bureau Chief of Information Processing Employee 41 and Project Manager Employee 43 each had knowledge regarding the duties and responsibilities of Employee 4 and supervised him. Both individuals were interviewed.

Interview of Employee 4's Supervisor: Employee 41

Bureau Chief of Information Processing Employee 41 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistant Employee 4. In this regard, Employee 41 stated that Staff Assistant Employee 4 performed the following:

- set up new computers
- provided end-user support
- helped with software installation

Interview of Employee 4's Supervisor: Employee 43

Project Manager Employee 43 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistant Employee 4. In this regard, Employee 43 stated that Staff Assistant Employee 4 performed the following:

- worked on an Enterprise calendar application
- worked on developing software to allow IDOT to store electronic information in

the Cloud

5. Employee 82: Office of Finance and Administration, Springfield

Former Staff Assistant Employee 82 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Finance and Administration, Springfield, IL. During her interview Employee 82 stated that she was hired as a Staff Assistant in April 2003. Employee 82 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- performed interviews for Highway Maintainer positions

When asked about the Staff Assistant position description and the duties and responsibilities set forth therein, Employee 82 stated she:

- did not have contact with the Office of the Governor or the legislature as a liaison

6. Employee 56: District 8 - Division of Highways, Collinsville

Staff Assistant Employee 56 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 8 - Division of Highways, Collinsville, IL. During his interview Employee 56 stated that he was hired as a Staff Assistant in May 2008. Employee 56 was asked about the duties that he performed as a Staff Assistant and in response stated he:

- was the contact person for the DBE Resource Center
- attended pre-con meetings
- updated DBE listing
- reviewed and approved DBE sub-requests for contract work
- performed site inspections on IDOT projects to monitor workforce for minority/female and DBE participation
- handled walk-ins and scheduling of appointments
- logged and dated certified payroll
- manned the DBE Resource Center
- conducted site visits to monitor DBE/Labor Compliance on IDOT construction projects
- worked with supportive services on scheduling workshops and set informational sharing meetings for DBEs on upcoming lettings

When asked about the Staff Assistant position description and the duties and responsibilities set forth therein, Employee 56 stated he:

- did not perform any of the duties associated with his hire into the Staff Assistant position

Investigators discovered that Staff Assistant Employee 56's position states that the incumbent reports to the *Regional Engineer of District 8*. However, Employee 56 told investigators that he reported to Equal Employment Opportunity Compliance Officer Employee 144 and had always worked as a Labor Compliance Representative for IDOT not the *Regional Engineer of District 8*.

7. Employee 70: Division of Traffic Safety, Springfield

Former Staff Assistant Employee 70 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Division of Traffic Safety, Springfield, IL. The OEIG's review of her personnel records reveals that she was transferred into the Staff Assistant position in December 2006. Employee 70 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- served as co-chair of the Highway Safety Planning Committee
- served on the National Lifesavers Planning Committee in preparation for the 2007 National Lifesavers Conference
- assisted with the analysis of safety-related legislation and prepared responses for recommended departmental positions
- served as grant manager on safety-related grant projects
- served as lead in creating the Division's quarterly publication called *Illinois Biggest Offenders*
- assisted in the development of HSP grant timeline
- assisted the Director and Deputy Director of Traffic Safety with PowerPoint presentations
- served on several Division of Traffic Safety planning committees
- served as lead in planning the 2009 Illinois Staying Alive Conference

When shown the position description and asked to review portions of the position description and duties and responsibilities set forth therein, Employee 70 stated she:

- did not perform any legislative liaison duties and did not maintain confidential information

8. Employee 80: Office of Chief Counsel, Springfield

Former Staff Assistant Employee 80 was interviewed regarding, among other things, her duties and responsibilities as *Rutan*-exempt Staff Assistant in the Office of Chief Counsel, Springfield, IL. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 80's hire date was September 16, 2010. During her interview, Employee 80 stated that she currently operates under the title of "Technical Manager I" and has never heard of or applied for a "Staff Assistant" title. Employee 80 was asked about the duties she performed as a Staff Assistant and in response stated she:

- developed programs
- kept participants on task
- temporarily scanned for the Division of Traffic Safety due to a conflict with one
- developed curriculum
- worked with participants of the Student Professionals with Disabilities Program
- did not deal with Internal Personnel Request forms

of the participants

9. Employee 36: District 9 - Division of Highways, Carbondale

Former Staff Assistant Employee 36 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 9 - Division of Highways, Carbondale, IL. The OEIG's review of his personnel records reveals that he was hired as a Staff Assistant in June 2007. When Employee 36 was asked about the duties he performed as a Staff Assistant, he stated his duties included:

- yard maintenance
- mowing
- heating/air conditioning repair

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 36 stated he:

- did not perform any of the duties

Interview of Employee 36's Supervisor: Michael Barone

Former Administrative Services Manager Michael Barone was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised. During his interview, Mr. Barone stated that he supervised Staff Assistant Employee 36 who performed the following:

- maintenance work

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Mr. Barone stated that Employee 36:

- maybe served as a liaison to the legislature because Employee 36's brother was a state Senator

10. Employee 77: Office of Planning and Programming, Springfield

Former Staff Assistant Employee 77 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Planning and Programming, Springfield, IL. During her interview Employee 77 stated that she was hired into the Staff Assistant position in June 2007. Employee 77 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- reviewed the State Transportation Plan and the associated Special Reports
- developed the Planning and Programming website
- coordinated the final review and publication of the State Transportation Plan to meet State and federal completion dates
- assisted with the CSS Steering Team work and refined the CSS website

- provided assistance to the Planning research group by summarizing ongoing research efforts and coordinating the research needs, proposals, and ideas for research
- assisted with the AASHTO Capacity Building evaluation

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 77 stated she:

- did not speak to the general public on behalf of IDOT

11. Employee 87: Office of Finance and Administration, Springfield

Former Staff Assistant Employee 87 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Finance and Administration, Springfield, IL. The OEIG's review of her personnel documents reveals that she was hired as a Staff Assistant in June 2004. Employee 87 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- did not act as an employment counselor or as a liaison to the legislature, other agencies, or the general public
- might have been a liaison to the Office of the Governor because she once dropped off paperwork at the Office of the Governor

12. Employee 72: Office of Finance and Administration, Springfield

Former Staff Assistant Employee 72 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Finance and Administration, Springfield, IL. The OEIG's review of her personnel records reveals that she was hired as a Staff Assistant in September 2003. Employee 72 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- answered phones
- typed documents such as meeting minutes
- scheduled appointments
- manned a State Fair tent

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 72 stated she:

- did not perform any of the duties listed on the IPR associated with her hire into the Staff Assistant position
- only had contact with the Governor's Office when she was submitting travel vouchers to that office

13. Employee 85: Office of Finance and Administration, Springfield

Former Staff Assistant Employee 85 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Finance and

Administration, Springfield, IL. During her interview Employee 85 stated that she was hired into the Staff Assistant position in April 2003. Employee 85 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- reviewed hiring files and ensured that all paperwork was included in personnel/hiring files

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 85 stated she:

- did not perform the duties of a *Rutan* coordinator or an employment counselor
- had contact with the general public, which was limited to her role in answering phones and serving as a receptionist
- did not work with the Office of the Governor, the General Assembly, or other State agencies as a Staff Assistant

14. Employee 60: District 6 - Division of Highways, Springfield

Former Staff Assistant Employee 60 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 6 - Division of Highways, Springfield, IL. During his interview Employee 60 stated that he was hired into the Staff Assistant position in September 2003. Employee 60 was asked about the duties that he performed as a Staff Assistant and in response stated he:

- reconciled fax and copy machine logs
- assisted the District 6 Motor Pool Coordinator with deliveries
- inventoried IDOT's furniture

When shown the Staff Assistant position description and Internal Personnel Request and asked to review portions setting forth the position duties and responsibilities, Employee 60 stated he:

- monitored conformance to existing policies by conducting safety demonstrations at winter meetings in accordance with existing policies
- did not perform any other duties indicated on the IPR
- provided assistance to local agencies, elected officials, and the general public by responding to local officials' requests for road maps

15. Employee 92: Division of Aeronautics, Springfield

Staff Assistant Employee 92 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Division of Aeronautics, Springfield, IL. During his interview, Employee 92 stated that he was hired into the Staff Assistant position in March 2005. Employee 92 was asked about the duties that he performed as a Staff Assistant and in response stated he:

- served as the building manager for the Division of Aeronautics
- placed service calls when building issues arose
- oversaw the motor pool
- served as the point of contact for five contractual security guards
- scheduled and managed hazardous waste disposal pick-up
- served as capital improvement liaison

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 92 stated he:

- did not develop or coordinate policy, interpret policy or provide policy analysis, monitor conformance to existing policy, conduct reviews, study issues that are of a special interest, or provide assistance to elected officials or the general public

16. Employee 48: Office of Quality Compliance and Review, Schaumburg

Former Staff Assistant Employee 48 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Quality Compliance and Review, Schaumburg, IL. During her interview Employee 48 stated that she was hired as a Staff Assistant in January 2010. Employee 48 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- assisted with ethics training
- secured speakers for trainings
- conducted interviews
- monitored conformance to existing policy by ensuring that staff signed in and out of the office properly
- typed dictated correspondence
- gathered timesheets
- did not perform any policy interpretation or analysis, or provide assistance to elected officials and the general public

17. Employee 21: District 5 - Division of Highways, Paris

Former Staff Assistant Employee 21 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 5 - Division of Highways, Paris, IL. During his interview, Employee 21 stated that he was hired as a Staff Assistant in May 2006. Employee 21 was asked about the duties that he performed as a Staff Assistant and in response stated he:

- filed paperwork and processed timesheets and leave slips for Payroll

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 21 stated he:

- did not perform any duties related to policy-making or confidential issues

18. Employee 54: District 9 - Division of Highways, Carbondale

Former Staff Assistant Employee 54 was interviewed on September 18, 2012. The OEIG's review of her personnel records reveals that Employee 54 was hired into the Staff Assistant position in September 2003. Employee 54 was asked about the duties that she performed as a Staff Assistant in District 9 - Division of Highways, Carbondale, IL and in response stated she:

- performed duties that were primarily clerical
- assisted with typing, photocopying, and faxing
- assisted Mr. Barone with Snowbird hiring

When shown the Staff Assistant position description and Internal Personnel Request and asked to review portions setting forth the position duties and responsibilities, Employee 54 stated she:

- did not complete any of the duties listed in the justification section of the IPR associated with her hire into the Staff Assistant position

19. Employee 40: District 2 - Division of Highways, Dixon

Former Staff Assistant Employee 40 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 2 - Division of Highways, Dixon, IL. The OEIG's review of her personnel records reveals that she was hired as a Staff Assistant in October 2003. Employee 40 was asked about the duties that she performed as a Staff Assistant and in response stated that she:

- assisted with payroll
- prepared PowerPoint presentations for workshops that included ethics training

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 40 stated she:

- provided assistance to local agencies, elected officials, and the general public by training new personnel who would work with different organizations
- coordinated policy with new personnel when she presented employees with personnel, harassment, and ethics PowerPoint training
- did not make policy

20. Employee 57: District 6 - Division of Highways, Springfield

Former Staff Assistant Employee 57 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 6 - Division of Highways, Springfield, IL. During her interview, Employee 57 stated that she worked as a Staff Assistant from June 2008 until August 2009. Employee 57 was asked about the duties she performed as a Staff Assistant and in response stated she:

- researched and entered records into Jurisdictional Transfers Database
- updated and edited Excel spreadsheets

- researched data on PPS, IRIS, ISIS, and GIS systems
- assisted Programming Engineer with program additions and revisions
- assembled and organized TIP files
- conducted office inventory
- created and maintained a SharePoint site for programming staff
- assisted staff with presentation maps and documents
- provided assistance with IDOT Career Day
- assisted with recordkeeping

When asked about the Staff Assistant position description and the duties and responsibilities set forth therein, Employee 57 stated she:

- conducted reviews on the Jurisdictional Transaction Database
- had no person-to-person contact with the public or with legislators
- assisted the general public by entering information into a database that was used to assist the public

21. Employee 34: District 1 - Division of Highways, Schaumburg

Staff Assistant Employee 34 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 1 - Division of Highways, Schaumburg, IL. The OEIG's review of his personnel records reveals that he was hired as a Staff Assistant in March 2008. Employee 34 was asked about the duties that he performed as a Staff Assistant and in response stated he:

- performed the duties of an Equipment Coordinator
- assigned and accounted for all equipment used by IDOT at District 1

When shown the Staff Assistant position description and Internal Personnel Request, Employee 34 stated that he:

- did not perform the duties described on the IPR associated with his hire into the Staff Assistant position and he did not perform any legislative or policy-related duties

Investigators discovered that Staff Assistant Employee 34's position states the incumbent reports to the *Assistant to the Regional Engineer*. However, Employee 34 told investigators that he reports to the District 1 Equipment Manager Employee 145 not the *Assistant to the Regional Engineer*.

Interview of Employee 34's Supervisor: Employee 46

Bureau Chief of Maintenance Employee 46 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 46 stated that he

supervises Staff Assistant Employee 34. Employee 46 was asked about the duties that Staff Assistant Employee 34 performed and in response stated Employee 34:

- worked in the Equipment section
- did not perform any policy or liaison duties or duties of a *Rutan*-exempt position
- scheduled and coordinated equipment assigned to District 1

22. Employee 55: District 9 - Division of Highways, Carbondale

Staff Assistant Employee 55 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 9 - Division of Highways, Carbondale, IL. During her interview Employee 55 stated that she was hired into the Staff Assistant position in July 2004. Employee 55 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- operated the District 9 switchboard
- greeted people at the front door
- coordinated blood drives
- performed the duties of a secretary and receptionist for her former supervisor, David Phelps
- answered the phone
- took messages
- interacted with grade school superintendents regarding a tree event
- oversaw an employee committee to raise money for office items

When asked about the Staff Assistant position description and the duties and responsibilities set forth therein, Employee 55 stated she:

- was responsible for correspondence
- made travel arrangements
- worked weekend and holiday hours during emergencies or to represent the state as a contact point for a rushed time table
- served as a liaison but did not perform any policy-related duties
- scheduled meetings and press conferences
- worked with citizens and monitored status of constituent concerns
- assisted other agencies, mayors, and representatives by answering their calls, documenting problems and complaints, and following up after discussing complaints with Mr. David Phelps

23. Employee 79: Office of Finance and Administration, Springfield

Former Staff Assistant Employee 79 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Finance and Administration, Springfield, IL. During his interview Employee 79 stated that he was hired as a

Staff Assistant in July 2007 and held this position until October 2008. Employee 79 was asked about the duties that he performed as a Staff Assistant and in response stated he:

- researched goods to be purchased such as cement, office supplies, or trucks, and recommended which brands of goods to purchase based on price and quality

When shown the Staff Assistant position description and Internal Personnel Request and asked to review portions setting forth the position duties and responsibilities, Employee 79 stated he:

- did not complete any duties listed on the IPR associated with his hire into the Staff Assistant position

Investigators discovered that Staff Assistant Employee 79's position description states that the proper supervisor for this incumbent was the *Bureau Chief of Business Services*. However, according to Employee 79, he reported to the Section Chief of Supplies and Services in the Bureau of Business Services not the *Bureau Chief of Business Services*.

24. Employee 83: Office of Finance and Administration, Springfield

Former Staff Assistant Employee 83 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Finance and Administration, Springfield, IL. The OEIG's review of his personnel records reveals that he was hired as a Staff Assistant in April 2004. Employee 83 was asked about the duties that he performed as a Staff Assistant and in response stated he:

- updated organizational charts within the Bureau of Personnel Management
- had other duties but could not remember them

When asked about the Staff Assistant position description and the duties and responsibilities set forth therein, Employee 83 stated he:

- did not have any contact with the Governor's Office, the legislature, the public, or other State agencies
- did not serve a *Rutan* coordinator as a Staff Assistant

Investigators discovered that former Staff Assistant Employee 83's position description stated that the supervisor should have been the *Bureau Chief of Personnel Management*, who at the time was Scott Doubet. However, according to Employee 83 he reported to Employee 8, not the *Bureau Chief of Personnel Management*.

25. Employee 69: Division of Traffic Safety, Springfield

Staff Assistant Employee 69 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Division of Traffic Safety, Springfield, IL. During his interview, Employee 69 stated that he was hired into the Staff Assistant position in November 2011. When asked about the duties that he performed as a Staff Assistant, Employee 69 stated he:

- reviewed safety audits at IDOT's Schaumburg Office
- monitored GPS motor vehicle compliance
- performed vehicle inspections
- monitored, located, and updated information for 30 drivers in the Motor Carrier Safety Program

Investigators discovered that the position description associated with Staff Assistant Employee 69's position stated that the incumbent reports to the *Deputy Director of Traffic Safety*. However, according to Employee 69 he reports to Section Chief Employee 146, not the *Deputy Director of Traffic Safety*.

26. Employee 74: Division of Aeronautics, Springfield

Staff Assistant Employee 74 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Division of Aeronautics, Springfield, IL. During her interview Employee 74 stated that she was hired as a Staff Assistant in April 2007. Employee 74 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- was responsible for timekeeping, forms management, and record retention
- served as the point of contact for correspondence from the Secretary's Office
- scheduled flight safety seminars
- coordinated pilots' flight times and holiday schedules
- ensured that contract and subcontract documentation is in order as a pre-audit function
- attended staff meetings with the Director and Bureau Chiefs
- assisted with travel vouchers and invoices for the Director
- assisted with reports, spreadsheets, and other documents using Excel and Word

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 74 stated she:

- had no responsibilities related to developing or coordinating policy, monitoring conformance to policy, or analysis of policy
- did not interact with elected officials or the general public on IDOT's behalf

Investigators discovered that Staff Assistant Employee 74's position description states that the incumbent reports to the *Director of Aeronautics*. However, according to Employee 74 although she initially reported to Director of Aeronautics Susan Shea, in July 2009 she began reporting to Bureau Chief Employee 147 and in August 2010 she began reporting to Bureau Chief of Aviation Safety Employee 148, neither of which are the *Director of Aeronautics*.

27. Employee 51: District 7 - Division of Highways, Effingham

Former Staff Assistant Employee 51 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 7 - Division of Highways, Effingham, IL. During his interview he stated that he was hired as a Staff Assistant in October 2003. Employee 51 was asked about the duties that he performed as a Staff Assistant and in response stated that he:

- picked up supplies for District 7 inventory items
- completed safety inspections for IDOT yards
- estimated repair costs for the Claims Department
- taught safety programs at grade schools

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 51 stated he:

- did not perform any of the duties listed on the IPR associated with his hire into the Staff Assistant position

28. Employee 91: Office of Chief Counsel, Springfield

Staff Assistant Employee 91 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Chief Counsel, Springfield, IL. During her interview, Employee 91 stated that she was hired as a Staff Assistant permanently in May 2012. Prior to that time she held 18 emergency 60-day appointments at IDOT beginning in August 2008. Employee 91 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- pulled interview-rating sheets prior to a position being posted
- acted as Spanish-speaking translator when needed
- coordinated speakers for departmental diversity/multicultural event
- compiled demographic information related to a position and sent IPRs to human resources

29. Employee 20: District 5 - Division of Highways, Paris

Former Staff Assistant Employee 20 was interviewed on April 27, 2012. Personnel records reveal that she was hired as a Staff Assistant in October 2003 in District 5 - Division of Highways, Paris, IL. Employee 20 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- filed paperwork
- processed payroll documents
- assisted in areas of the District that had vacancies

When asked about the Staff Assistant position description and the duties and responsibilities set forth therein, Employee 20 stated she:

- did not perform any policymaking-type work or multi-agency projects.

30. Employee 26: District 4 - Division of Highways, Peoria

Former Staff Assistant Employee 26 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 4 - Division of Highways, Peoria, IL. During that interview, Employee 26 stated that she was hired as a Staff Assistant in October 2003. Employee 26 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- processed payroll documents, including employee contracts and new employee policy manuals
- examined insurance claims, worker's compensation documentation, and other paperwork

Interview of Employee 26's Supervisor: Employee 17

Personnel Services Manager Employee 17 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistant Employee 26. In this regard, Employee 17 stated that Staff Assistant Employee 26:

- did not conduct policy-related work
- did not handle confidential information
- did not act as a District 4 liaison with other State agencies

31. Employee 89: Office of Finance and Administration, Springfield

Former Staff Assistant Employee 89 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in Office of Finance and Administration, Springfield, IL. During her interview Employee 89 stated that she was hired as a Staff Assistant in November 2004. Employee 89 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- was responsible for administrative duties such as answering phones and scheduling meetings

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 89 stated she:

- did not serve as a *Rutan* coordinator or an employment counselor
- did not have any contact with the Governor's Office, the legislature, or other State agencies
- had contact with the general public limited to her receptionist duties

32. Employee 65: Division of Traffic Safety, Springfield

Staff Assistant Employee 65 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Division of Traffic Safety, Springfield, IL. During her interview, Employee 65 stated that she was hired as a Staff Assistant in July 2011. Employee 65 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- answered the phones
- did general filing
- scheduled safety audits and compliance reviews for Compliance Officers
- reviewed timecards for accuracy
- typed letters to businesses regarding their IDOT number

33. Employee 78: Division of Aeronautics, Springfield

Staff Assistant Employee 78 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Division of Aeronautics, Springfield, IL. The OEIG's review of his personnel records reveals that he had several temporary appointments before being hired permanently as a Staff Assistant on May 3, 2010. Employee 78 was asked about the duties that he performed as a Staff Assistant and in response stated he:

- assisted with audits
- assembled Material Correspondence files
- examined documents to make sure all paperwork from the Regional Engineer is in order for each construction project
- drafted spreadsheets
- entered data for materials database and Mistic contracts

Investigators discovered that Staff Assistant Employee 78's position description states the incumbent reports to the *Director of Aeronautics*. However, according to Employee 78, he reports to Construction Section Chief Employee 149, not the *Director of Aeronautics*.

34. Employee 150: District 7 - Division of Highways, Effingham

Administrative Services Manager Employee 12 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who she supervised in District 7 - Division of Highways, Effingham, IL. During her interview Employee 12 stated that she supervised Staff Assistant Employee 150. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 150 was hired as a Staff Assistant in a temporary capacity on December 1, 2009 and in a permanent capacity on April 1, 2010. Employee 12 was asked about the duties performed by Staff Assistant Employee 150 and in response stated the following:

- oversaw insurance benefits
- explained personnel policies to new employees
- did timekeeping
- assisted Employee 12, and interpreted policy when she explained the

personnel manual to new employees

Employee 150 was sent to District 7 by the Central Office in response to a request received from Employee 12 stating that District 7 was in need of an employee for a *Rutan*-covered Benefits Choice position.

35. Employee 119: District 7 - Division of Highways, Effingham

Personnel Services Manager Employee 14 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 7 - Division of Highways, Effingham, IL. During his interview Employee 14 stated that he supervised Staff Assistant Employee 119. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 119's hire date was November 1, 2005. Employee 14 was asked about the duties performed by the Staff Assistant Employee 119 and in response stated he:

- assisted Employee 14
- assisted local agencies and spoke with legislators regarding the private access permits
- fielded general inquiries from the public and legislators regarding IDOT private access permits

did not complete any policymaking duties or serve as a liaison

36. Employee 151: District 7 - Division of Highways, Effingham

Program Development Engineer Employee 15 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 7 - Division of Highways, Effingham, IL. During his interview Employee 15 stated that he supervised Staff Assistants, including, Employee 151. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 151's hire date was March 1, 2010. Employee 15 was asked about the duties performed by Staff Assistant Employee 151 and in response stated he:

- conducted minor rest area maintenance in Services and Development
- entered inventory data for the Traffic Operations sign shop
- did not perform legislative, policy, or liaison duties while working as a Staff Assistant in Services and Development or Traffic Operations

37. Employee 152: District 7 - Division of Highways, Effingham

As indicated above, Program Development Engineer Employee 15 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 7 - Division of Highways, Effingham, IL. During his interview Employee 15 stated that he supervised Staff Assistant Employee 152. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 152's hire date was March 1, 2010. Employee 15 was asked about the duties performed by Staff Assistant Employee 152 and in response stated he:

- conducted safety inspections on equipment
- did not perform any legislative, policy,

and inventory in Services and Development

- performed duties that were not consistent with those of the Staff Assistant position description

or liaison related duties while working as a Staff Assistant

38. Employee 118: District 7 - Division of Highways, Effingham

As indicated above, Program Development Engineer Employee 15 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 7 - Division of Highways, Effingham, IL. During his interview Employee 15 stated that he supervised Staff Assistant Employee 118. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 118 was hired as a Staff Assistant in a temporary capacity in December 2008 and in a permanent capacity on March 2, 2009. Employee 15 was asked about the duties performed by Staff Assistant Employee 118 and in response stated he:

- planted trees
- did tree removal
- planted sod and seed
- performed the duties of a Landscape Technician position
- did not perform any legislative, policy, or liaison duties
- assisted the rest area road crew
- did have contact with the general public when he would inform them of IDOT's policy regarding tree removal on private property

39. Employee 153: District 3 - Division of Highways, Ottawa

Administrative Services Manager Employee 5 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 3 - Division of Highways, Ottawa, IL. During his interview, Employee 5 stated that he supervised Staff Assistants, including Employee 153. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 153's hire date was October 16, 2003. Employee 5 was asked about the duties performed by Staff Assistant Employee 153 and in response stated she:

- did truck and vehicle inspections
- put together and conducted Safety and Claims training for employees
- produced an employee newsletter
- responded to constituent service letters and inquiries from legislators and the general public regarding road conditions that needed repair
- assisted with the transition of IDOT identification cards to having scanning abilities
- assisted with updating a policy training manual and provided assistance to local agencies and officials
- did not directly perform any of the duties listed in the justification section of the IPR associated with her hire into

the Staff Assistant position directly

40. Employee 124: District 3 - Division of Highways, Ottawa

As indicated above, Administrative Services Manager Employee 5 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 3 - Division of Highways, Ottawa, IL. During his interview, Employee 5 stated that he supervised Staff Assistants, including Employee 124. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 124 was hired as a Staff Assistant in District 3 on December 20, 2004 and was a Staff Assistant in District 4 starting January 16, 2007. Employee 5 was asked about the duties performed by the Staff Assistant Employee 124 and in response stated she:

- worked in Operations as a road sign marker
- did not perform any of the duties listed in the justification section

41. Employee 6: District 3 - Division of Highways, Ottawa

As indicated above, Administrative Services Manager Employee 5 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 3 - Division of Highways, Ottawa, IL. During his interview, Employee 5 stated that he supervised Staff Assistant Employee 6. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 6's hire date was in August 2010. Employee 5 was asked about the duties performed by the Staff Assistant Employee 6 and in response stated that Employee 6:

- made spreadsheets
- completed financial reports
- did not perform duties of a *Rutan*-exempt position
- assembled personnel paperwork
- did not perform any legislative or policy- related duties

42. Employee 154: District 2 - Division of Highways, Dixon

Administrative Services Manager Employee 16 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 2 - Division of Highways, Dixon, IL. During his interview Employee 16 stated that he supervised Staff Assistants, including Employee 154. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 154 was hired as a Staff Assistant in a temporary capacity on March 1, 2011 and in a permanent capacity on June 24, 2011. Employee 16 was asked about the duties performed by the Staff Assistant Employee 154 and in response stated she:

- performed the duties of a Roadside Maintenance employee including preventative maintenance such as tree planting
- did not perform any of the duties listed on the IPR associated with his hire into the Staff Assistant position

43. Employee 155 District 5 - Division of Highways, Paris

Administrative Services Manager Employee 18 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 5 - Division of Highways, Paris, IL. During his interview Employee 18 stated that he supervised Staff Assistant Employee 155. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 155's hire date was July 25, 2011. Employee 18 was asked about the duties performed by Staff Assistant Employee 155 and in response stated she:

- assisted with safety inspections
- performed the duties of a *Rutan*-covered Safety Tech position and a *Rutan*-covered Account Tech Specialist position
- performed policy interpretation and analysis by entering data in the correct budget line
- input financial data
- coordinated policy and monitored conformance to policy by conducting safety inspections
- did not work on projects with IDOT's senior management, conduct liaison work with other agencies, or act as a spokesperson

44. Employee 115: District 1 - Division of Highways, Schaumburg

Administrative Services Manager Employee 19 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 1 - Division of Highways, Schaumburg, IL. During his interview, Employee 19 stated that he supervised Staff Assistants, including Employee 115. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 115's hire date was May 12, 2008. Employee 19 was asked about the duties performed by the Staff Assistant Employee 115 and in response stated he:

- performed the duties of a Maintenance Worker such as power washing trucks and filling sandbags
- worked in the mailroom in Business Services
- did not perform the duties described on the IPR and did not perform any legislative, policymaking, or liaison duties

45. Employee 114: District 1 - Division of Highways, Schaumburg

As indicated above, Administrative Services Manager Employee 19 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 19 stated that he supervised Staff Assistant Employee 114. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 114's hire date was May 5, 2008. Employee 19 was asked about the duties performed by Staff Assistant Employee 114 and in response stated he:

- worked in the Bureau of Maintenance
- supervised staff
- did not perform any legislative, policymaking, or liaison related duties
- oversaw special projects
- ran the IDOT facility at Harlem and Irving in Chicago

As indicated above, Bureau Chief of Maintenance Employee 46 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 46 stated that he supervises Staff Assistant Employee 114. Employee 46 was asked about the duties that Staff Assistant Employee 114 performed and in response stated he:

- temporarily ran the IDOT maintenance yards and mobile bridge maintenance units
- was promoted to the position of Maintenance Yard Technician

46. Employee 156: District 1 - Division of Highways, Schaumburg

As indicated above, Administrative Services Manager Employee 19 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 19 stated that he supervised Staff Assistant Employee 156. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 156's hire date was January 16, 2008. Employee 19 was asked about the duties performed by Staff Assistant Employee 156 and in response stated he:

- worked in the Bureau of Maintenance
- did not perform any legislative, policy-making, or liaison duties
- was involved with the Sheriff's Work Alternative Program, which allows low-level offenders to clean expressways and greenways
- did not perform the duties of the Staff Assistant position description

Bureau Chief of Maintenance Employee 46 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 46 stated that he supervises Staff Assistant Employee 156. Employee 46 was asked about the duties that Staff Assistant Employee 156 performed and in response stated the following:

- coordinated a Sheriff's Work Alternative Community Service Program through which litter is removed along highways
- did not perform any policy or liaison duties or duties of a *Rutan*-exempt position

47. Employee 157: District 1 - Division of Highways, Schaumburg

As indicated above, Administrative Services Manager Employee 19 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 19 stated that he supervised Employee 157. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 157's hire date was March 28, 2011. Employee 19 was asked about the duties performed by Staff Assistant Employee 157 and in response stated he:

- oversaw the motor pool and the mailroom
- did not perform the duties of the Staff Assistant position description

48. Employee 158: District 1 - Division of Highways, Schaumburg

As indicated above, Administrative Services Manager Employee 19 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 1 - Division of Highways, Schaumburg, IL. During his interview, Employee 19 stated that he supervised Employee 158. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 158's hire date was April 4, 2011. Employee 19 was asked about the duties performed by Staff Assistant Employee 158 and in response stated he:

- performed preventative maintenance on cars
- did not perform the duties of the Staff Assistant position description
- delivered the mail
- did not perform duties that are legislative, policymaking, or liaison related

49. Employee 159: District 1 - Division of Highways, Schaumburg

As indicated above, Administrative Services Manager Employee 19 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 19 stated that he supervised Employee 159. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 159's hire date was August 2, 2010. Employee 19 was asked about the duties performed by Staff Assistant Employee 159 and in response stated he:

- worked with the Emergency Traffic Patrol
- did not perform the duties of the Staff Assistant position description
- did not perform legislative, policymaking, or liaison related duties

50. Employee 160: District 1 - Division of Highways, Schaumburg

As indicated above, Administrative Services Manager Employee 19 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 19 stated that he supervised Employee 160. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 160's hire date was July 18, 2011.

Employee 19 was asked about the duties performed by Staff Assistant Employee 160 and in response stated he:

- worked in the Bureau of Maintenance
- did not perform duties described in the IPR associated with hiring a Staff Assistant
- did not perform legislative, policymaking, or liaison type duties

Bureau Chief of Maintenance Employee 46 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 1 - Division of Highways, Schaumburg, IL. During his interview, Employee 46 stated that he supervises Staff Assistant Employee 160. Employee 46 was asked about the duties that Staff Assistant Employee 160 performed and in response stated he:

- performed primarily administrative duties
- accumulated timecards
- responded to email complaints regarding road conditions and snow removal
- sent headcount reports to Central Office
- answered phones
- did not perform any policy or liaison duties or duties of a *Rutan*-exempt position

51. Employee 161: District 1 - Division of Highways, Schaumburg

As indicated above, Administrative Services Manager Employee 19 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 19 stated that he supervised Staff Assistant Employee 161. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 161's hire date was January 31, 2011. Employee 19 was asked about the duties performed by Staff Assistant Employee 161 and in response stated he:

- helped implement a new software program in Financial Services
- did not perform duties described in the IPR associated with hiring a Staff Assistant
- did not perform legislative, policymaking, or liaison related duties

52. Employee 162: District 9 - Division of Highways, Carbondale

Administrative Services Manager Employee 24 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants that he supervised in District 9 - Division of Highways, Carbondale, IL. During his interview Employee 24 stated that he supervised Staff Assistants, including Employee 162. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 162's hire date was September 3, 2008. Employee 24 was asked about the duties performed by Staff Assistant Employee 162 and in response stated he:

- managed workers' compensation cases
- assisted with safety training

- handled 3rd party claims
- assisted with winter hiring program
- assisted with property control and inventory issues
- worked in Business Services performing duties related to procurement and the motor pool
- scheduled drug screenings
- processed personnel paperwork
- provided training for the Supplement to the Work Site Protection Manual
- did not perform any of the duties described on the IPR associated with his hire into the Staff Assistant position

53. Employee 127: District 9 - Division of Highways, Carbondale

As indicated above, Administrative Services Manager Employee 24 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants that he supervised in District 9 - Division of Highways, Carbondale, IL. During his interview Employee 24 stated that he supervised Staff Assistant Employee 127. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 127 held a number of temporary Staff Assistant position appointments starting on July 14, 2008 and was hired into a permanent Staff Assistant position on September 16, 2009. Employee 24 was asked about the duties performed by Staff Assistant Employee 127 and in response stated she:

- answered phones
- reviewed summaries and proofread
- handled insurance and benefits issues
- did not develop policy, but provided assistance to local agencies
- did timekeeping
- assisted with wording regarding labor relations disciplinary issues

54. Employee 163: District 9-Division of Highways, Carbondale

As indicated above, Administrative Services Manager Employee 24 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants that he supervised in District 9 - Division of Highways, Carbondale, IL. During his interview Employee 24 stated that he supervised Staff Assistant Employee 163. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 163's hire date was September 16, 2011. Employee 24 was asked about the duties performed by Staff Assistant Employee 163 and in response stated she:

- performed mostly clerical work
- posted information
- assisted other agencies by setting up conference rooms and press conferences on behalf of Employee 24
- answered phones
- did timekeeping

55. Employee 164: District 9 - Division of Highways, Carbondale

As indicated above, Administrative Services Manager Employee 24 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants that he supervised in District 9 - Division of Highways, Carbondale, IL. During his interview Employee 24 stated that he supervised Staff Assistant Employee 164. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 164 held two temporary Staff Assistant appointments, one starting June 8, 2009 and the other on February 16, 2010. Employee 24 was asked about the duties performed by Staff Assistant Employee 164 and in response stated she:

- monitored the supply room
- tracked supplies
- did not perform any policy or Staff Assistant related duties

56. Employee 165: Division of Public and Intermodal Transportation, Chicago

Fiscal Services Manager Employee 30 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under her supervision in the Division of Public and Intermodal Transportation, Chicago, IL. During her interview Employee 30 stated that she supervised Staff Assistants, including Employee 165. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 165's hire date was September 08, 2005. Employee 30 was asked about the duties performed by Staff Assistant Employee 165 and in response stated she:

- performed the duties of an Office Coordinator position
- did human resources related tasks
- worked as a receptionist
- might have acted as a liaison because she prepared correspondence to the Director of DPIT and others within DPIT
- did not perform legislative or policymaking duties

57. Employee 166: Division of Public and Intermodal Transportation, Chicago

As indicated above, Fiscal Services Manager Employee 30 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants that she supervised in the Division of Public and Intermodal Transportation, Chicago, IL. During her interview, Employee 30 stated that she supervised Staff Assistant Employee 166. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 166's hire date was November 28, 2011. Employee 30 was asked about the duties performed by Staff Assistant Employee 166 and in response stated he:

- processed payments for the Railroad side of DPIT
- entered information into the mainframe system
- did not perform legislative, policymaking, or liaison duties

58. Employee 167: Division of Public and Intermodal Transportation, Chicago

As indicated above, Fiscal Services Manager Employee 30 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants that she supervised in the Division of Public and Intermodal Transportation, Chicago, IL. During her interview Employee 30 stated that she supervised Staff Assistant Employee 167. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 167 was hired as a Staff Assistant in a temporary capacity in July 2010 and in a permanent capacity on August 2, 2010. Employee 30 was asked about the duties performed by Staff Assistant Employee 167 and in response stated she:

- assisted with human resources work
- reviewed timekeeping documents
- helped with IPRs and EPARs
- monitored the sign-in sheet

When asked, Employee 30 stated that she was unaware of Employee 167 performing any legislative, policymaking, or liaison duties as described in the IPR and EPAR associated with Employee 167's hire into the Staff Assistant position

Director of the Office of Quality Compliance and Review Jeff Heck was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Office of Quality Compliance and Review, Springfield, IL. During his interview Mr. Heck stated that he supervised Staff Assistant Employee 167. Mr. Heck was asked about the duties performed by the Staff Assistant Employee 167 and in response stated she:

- answered phones
- worked on special assignments such as a time review project
- organized and coordinated the work of former Director of Quality Compliance and Review Employee 168

59. Employee 169: District 1 - Division of Highways, Schaumburg

Assistant Chief Counsel and Acting Motor Carrier Safety Assistance Program Supervisor for District 1 Employee 31 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 31 stated that he supervised Staff Assistant Employee 169. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 169's hire date was September 14, 2011. Employee 31 was asked about the duties performed by Staff Assistant Employee 169 and in response stated he:

- was performing the duties of an Office Assistant or an Office Coordinator
- completed scheduling for five of ten officers
- scheduled training for new trucking companies
- did not perform any legislative, policymaking, or liaison duties

60. Employee 113: Bureau of Information Processing, Springfield

Bureau Chief of Information Processing Employee 41 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Bureau of Information Processing, Springfield, IL. During his interview Employee 41 stated that he supervised Staff Assistants, including Employee 113. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 113's hire date was November 16, 2007. Employee 41 was asked about the duties that Staff Assistant Employee 113 performed and in response stated she:

- worked with CMS to ensure necessary documents were in order to obtain IT infrastructure needed
- did not act as a spokesperson for the Bureau or Department

61. Employee 111: Bureau of Information Processing, Springfield

As indicated above, Bureau Chief of Information Processing Employee 41 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Bureau of Information Processing, Springfield, IL. During his interview Employee 41 stated that he supervised Staff Assistant Employee 111. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 111's hire date was March 19, 2007. Employee 41 was asked about the duties that Staff Assistant Employee 111 performed and in response stated she:

- helped the mainframe team
- assisted with bill payment
- did not perform spokesperson duties

62. Employee 170: District 1 - Division of Highways, Schaumburg

Business Services Manager Employee 44 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 1 - Division of Highways, Schaumburg, IL. During his interview, Employee 44 stated that he supervised Staff Assistants, including Employee 170. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 170's hire date was November 19, 2007. Employee 44 was asked about the duties that Staff Assistant Employee 170 performed and in response stated she:

- performed procurement-related jobs
- obtained bids
- assisted with invoicing
- did not perform any of the duties listed on the IPR associated with her hire into the Staff Assistant position

63. Employee 171: District 1 - Division of Highways, Schaumburg

As indicated above, Business Services Manager Employee 44 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 44 stated that he supervised Staff Assistant Employee 171. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 171 was hired as a Staff Assistant in a

temporary capacity in November 2003 and in a permanent capacity on January 1, 2005. Employee 44 was asked about the duties that Staff Assistant Employee 171 performed and in response stated she:

- performed inventory-related jobs
- did not perform any policy, liaison, or duties of a *Rutan*-exempt position

64. Employee 172: District 1 - Division of Highways, Schaumburg

As indicated above, Bureau Chief of Maintenance Employee 46 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 46 stated that he supervises Staff Assistants, including Employee 172. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 172's hire date was January 5, 2011. Employee 46 was asked about the duties that Staff Assistant Employee 172 performed and in response stated he:

- worked in Equipment Unit under the Support section
- did preventative maintenance
- did inspections
- acquired data for vehicle logs
- monitored equipment
- performed equipment inventory
- did not perform any of the duties listed on the IPR associated with his hire into the Staff Assistant position

65. Employee 173: District 1 - Division of Highways, Schaumburg

As indicated above, Bureau Chief of Maintenance Employee 46 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 46 stated that he supervises Staff Assistant Employee 173. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 173 was hired as a Staff Assistant in a temporary capacity on April 1, 2010 and in a permanent capacity on August 2, 2010. Employee 46 was asked about the duties that Staff Assistant Employee 173 performed and in response stated he:

- performed the duties of a Maintenance Yard Technician position
- did preventative equipment maintenance
- scheduled teams for highway repair
- did not perform any policy or liaison duties or duties of a *Rutan*-exempt position

66. Employee 112: District 1 - Division of Highways, Schaumburg

As indicated above, Bureau Chief of Maintenance Employee 46 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 1 - Division of Highways, Schaumburg, IL. During his interview

Employee 46 stated that he supervises Staff Assistant Employee 112. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 112's hire date was May 15, 2006. Employee 46 was asked about the duties that Staff Assistant Employee 112 performed and in response stated he:

- was assigned to night maintenance
- cleaned storm sewers
- assisted in the Contracts section
- did not perform any of the duties listed on the IPR associated with his hire into the Staff Assistant position
- performed construction duties
- patched pavements
- completed guard rail and fence repairs

67. Employee 174: District 1 - Division of Highways, Schaumburg

Regional Information Technology Manager Employee 50 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 50 stated that he supervised Staff Assistant Employee 174. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 174's hire date was October 11, 2011.

Employee 50 told the OEIG that Employee 174 was only employed at IDOT for a month before transferring to another agency. During that month, Employee 174 received training from senior staff but had no other functions. Employee 50 stated that Employee 174 would not have performed any of the duties listed on the IPR associated with his hire into the Staff Assistant position.

68. Employee 59: District 6 - Division of Highways, Springfield

Administrative Services Manager Employee 13 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under her supervision in District 6 - Division of Highways, Springfield, IL. During her interview Employee 13 stated that she supervised Staff Assistants, including Employee 59. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 59's hire date was April 30, 2007. Employee 13 was asked about the duties performed by Staff Assistant Employee 59 and in response stated he:

- oversaw heavy equipment usage
- did not perform legislative or liaison-related duties
- compiled information pertaining to maintenance records and inventory

69. Employee 116: District 6 - Division of Highways, Springfield

As indicated above, Administrative Services Manager Employee 13 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under her supervision in District 6 - Division of Highways, Springfield, IL. During her interview Employee 13 stated that she supervised Staff Assistant Employee 116. The OEIG's review of

IDOT's Staff Assistant History, dated May 2014, revealed that Employee 116's hire date was October 16, 2007. Employee 13 was asked about the duties performed by Staff Assistant Employee 116 and in response stated he:

- worked in Land Acquisition helping to file land permits
- opened and negotiated parcels files
- performed title searches at various courthouses
- assisted local agencies by participating in meetings to review plans and search for parcels of land, which was a duty done by others in *Rutan*-covered positions

70. Employee 175: Office of Finance and Administration, Springfield

IT Procurement Unit Manager Employee 62 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under her supervision in the Office of Finance and Administration, Springfield, IL. During her interview Employee 62 stated that she supervised Staff Assistants, including Employee 175. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 175 held two temporary appointments as Staff Assistant, one starting February 1, 2010 and the other on May 3, 2010. Employee 62 was asked about the duties performed by Staff Assistant Employee 175 and in response stated he:

- performed the duties of a *Rutan*-covered Procurement Assistant position
- prepared contract agreement for procurement
- prepared Requests for Proposals
- did not perform policy or liaison-related duties

71. Employee 176: Office of Business and Workforce Diversity, Springfield

Director of the Office of Business and Workforce Diversity Employee 67 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Office of Business and Workforce Diversity, Springfield, IL. During his interview Employee 67 stated that he supervised Staff Assistants, including Employee 176. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 176's hire date was July 16, 2011. Employee 67 was asked about the duties performed by Staff Assistant Employee 176 and in response stated he:

- processed DBE No Change Affidavits
- responded to emails
- answered phones
- worked on a project to identify the target DBE market population

72. Employee 177: Office of Business and Workforce Diversity, Springfield

As indicated above, Director of the Office of Business and Workforce Diversity Employee 67 was interviewed regarding, among other things, the duties and responsibilities of

Staff Assistants under his supervision in the Office of Business and Workforce Diversity, Springfield, IL. During his interview, Employee 67 stated that he supervised Staff Assistant Employee 177. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 177 held two temporary Staff Assistant appointments, the first starting January 8, 2011, and was hired as a permanent Staff Assistant on June 24, 2011. Employee 67 was asked about the duties performed by Staff Assistant Employee 177 and in response stated she:

- performed secretarial work for the Certification and Compliance Units
- filed documents
- made copies of documents
- maintained registered mail
- attended meetings on behalf of IDOT's compliance manager

73. Employee 178: Office of Business and Workforce Diversity, Springfield

As indicated above, Director of the Office of Business and Workforce Diversity Employee 67 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Office of Business and Workforce Diversity, Springfield, IL. During his interview, Employee 67 stated that he supervised Staff Assistant Employee 178. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 178's hire date was August 1, 2008. Employee 67 was asked about the duties performed by Staff Assistant Employee 178 and in response stated the following:

- processed personnel documents
- helped within the Certification and Compliance Units as needed
- worked with SharePoint data

74. Employee 179: Office of Quality Compliance and Review, Springfield

Director of the Office of Quality Compliance and Review Jeff Heck was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Office of Quality Compliance and Review, Springfield, IL. During his interview, Mr. Heck stated that he supervised Staff Assistants, including Employee 179. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 179's hire date was August 16, 2011. Mr. Heck was asked about the duties performed by the Staff Assistant Employee 179 and in response stated he:

- conducted safety reviews
- conducted surveillance of DBE programs in the East St. Louis area
- did not interact with the general public other than IDOT contractors
- reviewed crash sites for investigations
- did not develop policy, coordinate policy, or interact with elected officials, but monitored conformance to existing policy, completed projects of special interest, and did some policy interpretation

75. Employee 125: Office of Quality Compliance and Review, Springfield

As indicated above, Director of the Office of Quality Compliance and Review Jeff Heck was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Office of Quality Compliance and Review, Springfield, IL. During his interview Mr. Heck stated that he supervised Staff Assistant Employee 125. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 125 was hired as a Staff Assistant on a temporary basis in June 2010 and on a permanent basis on September 16, 2010. Mr. Heck was asked about the duties performed by the Staff Assistant Employee 125 and in response stated he:

- conducted financial, forensic investigations
- reviewed bills received by the Department and other financial reporting aspects
- did not develop policy, coordinate policy, interpret policy, or interact with elected officials and the general public; however, he monitored existing policy and performed projects that were of special interest
- conducted investigations involving motor fuel tax payments
- did interviews for Motor Field Technicians
- monitored the Chicago Regional Environmental and Transportation Efficiency Program

76. Employee 180: Office of Quality Compliance and Review, Springfield

As indicated above, Director of the Office of Quality Compliance and Review Jeff Heck was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Office of Quality Compliance and Review, Springfield, IL. During his interview, Mr. Heck stated that he supervised Staff Assistant Employee 180. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 180's hire date was March 1, 2010. Mr. Heck was asked about the duties performed by the Staff Assistant Employee 180 and in response stated he:

- performed IT-based duties
- acted as liaison with CMS for resolving computer issues
- functioned as contact person for computer-related issues
- was assigned to a project involving time review and analyzing data for a high-speed rail project
- did not develop policy, coordinate policy, interpret policy, monitor existing policy, or interact with elected officials and the general public; however, he performed projects that were of special interest

77. Employee 181: Division of Public and Intermodal Transportation, Chicago

Bureau Chief of Transit Capital Employee 100 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Division of Public and Intermodal Transportation, Chicago, IL. During his interview Employee 100 stated that he supervised Staff Assistants, including Employee 137, and knew Staff Assistant Employee 181. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 181 held a number of temporary Staff Assistant appointments, with the first beginning on September 6, 2011, and was hired as a permanent Staff Assistant on August 16, 2012. Employee 100 was asked about the duties performed by Staff Assistant Employee 181 and in response stated she:

- performed the duties of Chicago (CTA) Project Manager position
- worked with other departments to develop a website

78. Employee 182: District 8 - Division of Highways, Collinsville

Administrative Services Manager Employee 23 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 8 – Division of Highways, Collinsville, IL. During his interview Employee 23 stated that he supervised Staff Assistants, including Employee 182. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 182 was hired as a Staff Assistant in a temporary capacity on October 16, 2003 and in a permanent capacity on July 1, 2007. Employee 23 was asked about the duties performed by Staff Assistant Employee 182 and in response stated she:

- as a TM II Staff Assistant, performed clerical duties
- assisted with payroll
- transferred into a TM IV Staff Assistant position
- drafted letters to city, county, and State officials regarding the Federal Highway Program
- answered phones
- did not review policy or perform any policy or legislative duties
- assisted with personnel projects
- transferred into the *Rutan*-covered Resource Analyst position without going through *Rutan* hiring process
- as a TM IV Staff Assistant, performed the duties of an Executive Secretary position
- scheduled appointments
- did duties described in IPR associated with her hire into the Staff Assistant position such as providing assistance to local agencies and interacting with the Federal Highway Group

79. Employee 135: District 8 - Division of Highways, Collinsville

As indicated above, Administrative Services Manager Employee 23 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 8 – Division of Highways, Collinsville, IL. During his interview

Employee 23 stated that he supervised Staff Assistants, including Employee 135. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 135's hire date was May 10, 2004. Employee 23 was asked about the duties performed by Staff Assistant Employee 135 and in response stated he:

- performed general data entry for Administrative Services
- did not perform any duties belonging to a *Rutan*-exempt position
- performed functions outside of Administrative Services such as working in construction
- transferred into the *Rutan*-covered position Engineering Technician II without going through the *Rutan* hiring process

80. Employee 136: District 8 – Division of Highways, Collinsville

As indicated above, Administrative Services Manager Employee 23 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 8 – Division of Highways, Collinsville, IL. During his interview Employee 23 stated that he supervised Staff Assistant Employee 136. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 136's hire date was April 18, 2005. Employee 23 was asked about the duties performed by Staff Assistant Employee 136 and in response, stated she:

- invoiced project funding
- accumulated information regarding safety or workers' compensation issues
- transferred into the Resource Analyst position without going through the *Rutan* hiring process
- dealt with expenses/reimbursements
- did not perform any policy-related duties

81. Employee 126: District 8 - Division of Highways, Collinsville

As indicated above, Administrative Services Manager Employee 23 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 8 – Division of Highways, Collinsville, IL. During his interview Employee 23 stated that he supervised Staff Assistant Employee 126. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 126's hire date was October 15, 2007. Employee 23 was asked about the duties performed by Staff Assistant Employee 126 and in response stated he:

- performed data entry
- conducted traffic patrols
- performed the duties of a *Rutan*-covered Emergency Patrol Supervisor
- conducted interviews
- managed motor fleet
- scheduled and oversaw 18 to 20 employees

- conducted surveillance on employees at Employee 23's request
- monitored compliance with existing policy and handled confidential issues by providing Employee 23 with recommendations for grievance and discipline-related issues

82. Employee 183: District 8 - Division of Highways, Collinsville

As indicated above, Administrative Services Manager Employee 23 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 8 – Division of Highways, Collinsville, IL. During his interview Employee 23 stated that he supervised Staff Assistant Employee 183. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 183's hire date was August 9, 2010. Employee 23 was asked about the duties performed by Staff Assistant Employee 183 and in response stated he:

- was temporarily assigned to the survey crew
- researched plots and purchased property
- worked in Land Acquisition
- did not complete any Staff Assistant duties

83. Employee 184: District 8 - Division of Highways, Collinsville

As indicated above, Administrative Services Manager Employee 23 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 8 – Division of Highways, Collinsville, IL. During his interview Employee 23 stated that he supervised Staff Assistant Employee 184. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 184's hire date was July 27, 2011. Employee 23 was asked about the duties performed by Staff Assistant Employee 184 and in response stated she:

- worked as an Executive Secretary in Materials
- did payroll
- contacted plant inspectors to coordinate scheduling
- stamped and organized files for inbound Mistic reports
- generated Mississippi River Bridge report for tracking payroll hours used
- distributed vehicle logs and gas receipts
- created and maintained filing for contracts and maps
- documented concrete pour calls
- distributed mail and faxes
- did external mailings
- tracked and distributed circulation plans
- created approval letters following

Mistic test results

- did not perform any Staff Assistant duties

84. Employee 185: District 8 - Division of Highways, Collinsville

As indicated above, Administrative Services Manager Employee 23 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 8 – Division of Highways, Collinsville, IL. During his interview Employee 23 stated that he supervised Staff Assistant Employee 185. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 185's hire date was December 30, 2010. Employee 23 was asked about the duties performed by Staff Assistant Employee 185 and in response stated she:

- worked in Construction Support Services
- input data regarding manpower hours, equipment, and material
- consulted in contract agreements
- performed duties of *Rutan*-covered Engineering Technician position
- reviewed contracts
- did not complete any Staff Assistant duties

85. Employee 117: District 1 - Division of Highways, Schaumburg

Electrical Engineer III Employee 47 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 47 stated that he supervised Staff Assistant Employee 117. The OEIG's review of IDOT's Staff Assistant History, dated May 2014, revealed that Employee 117's hire date was October 16, 2008. Employee 47 was asked about the duties performed by Staff Assistant Employee 117 and in response stated he:

- inspected pump rebuilds
- inspected pump stations and made recommendations for improvement
- did not perform any policy or liaison type duties
- inspected flood conditions at certain pump stations
- inspected a contractor's performance of preventative maintenance programs at pump stations

Category B: Staff Assistants Whose Duties Appeared to Correspond, in part, to Duties Identified on the Staff Assistant Position Description

1. Employee 49: Office of Quality Compliance and Review, Schaumburg

Staff Assistant Employee 49 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Quality Compliance and Review, Schaumburg, IL. During his interview, Employee 49 stated that he was hired in November 2011 and that his working title was Northern Special Assistant. Employee 49 was asked about the duties that he performed as a Staff Assistant and in response stated that he:

- gathered documents
- compiled reports
- conducted interviews
- performed fact-finding duties for Director of Quality Compliance and Review Jeff Heck

When asked about the Staff Assistant position description and the duties and responsibilities set forth therein, Employee 49 stated he:

- was not familiar with any of the duties described in the IPR associated with his hire into the Staff Assistant position.

Employee 49 also told the OEIG that he had been working under the Northern Special Assistant title since he began working for IDOT. His actual working title, as reflected in personnel documents related to Employee 49, is Staff Assistant.

Interview of Employee 49's Supervisor: Jeff Heck

Director of the Office of Quality Compliance and Review Jeff Heck was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Office of Quality Compliance and Review, Springfield, IL. During his interview Mr. Heck stated that he supervised Staff Assistants Employee 179, Employee 125, Employee 167, as well as Employee 49. Mr. Heck was asked about the duties performed by Employee 49[120] and in response stated that he:

- completed compliance reviews at IDOT maintenance yards
- monitored conformance to existing policy
- did not make policy, interpret policy, or coordinate policy
- did not have contact with elected officials and his contact with the public was limited to intake functions

2. Employee 37: District 9-Division of Highways, Carbondale

Former Staff Assistant Employee 37 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 9-Division of Highways, Carbondale, IL. During her interview Employee 37 stated that she was hired as a Staff Assistant in 2004, but transferred into her current position in 2007. Employee 37 was asked about the duties that she performed as a Staff Assistant, and in response stated she:

[120] Mr. Heck was also asked about the duties and responsibilities of the other Staff Assistants working under his direction. The information he provided investigators is set forth below.

- typed letters and memoranda to other Departments, the public, and IDOT staff
- conducted *Rutan* interviews for hiring summer program staff

When asked about the Staff Assistant position description and the duties and responsibilities set forth therein, Employee 37 stated she:

- did not complete any policy or legislative work because her duties consisted of more clerical-type work
- might have provided assistance to local agencies, elected officials, and the general public through correspondence that she typed and sent to other agencies and officials

OEIG Review of Employee 37's Personnel Documents

In light of the fact that Employee 37 stated that she had been "transferred" into her current position, investigators reviewed her personnel file and discovered the following:

- On May 5, 2004, Employee 37 was hired as a *Rutan*-exempt Staff Assistant
- On April 1, 2006, Employee 37 was transferred from a *Rutan*-exempt Staff Assistant to a *Rutan* covered position as a Resource Analyst

Employee 37's personnel file did not reveal that the *Rutan* hiring process was followed during the above-referenced transfer.

Interview of Employee 37's Supervisor: Michael Barone

Former Administrative Services Manager Michael Barone was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision. During his interview Mr. Barone stated that he supervised Staff Assistant Employee 37. Mr. Barone was asked about the duties that Employee 37 performed as a Staff Assistant and in response stated that she completed the same clerical duties as Staff Assistant Employee 186. These duties included:

- answering phones
- writing memoranda
- acting as Mr. Barone's personal assistant

When asked about the Staff Assistant position description the duties and responsibilities set forth therein, Mr. Barone stated that Employee 37:

- did not establish policy
- might have acted as a liaison because of her political background and connection to Congressman Glenn Poshard
- might have been involved in ensuring compliance with departmental safety rules and practices

3. Employee 76: Division of Aeronautics, Springfield

Staff Assistant Employee 76 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Division of Aeronautics, Springfield, IL. During her interview Employee 76 stated that she was hired as a Staff Assistant in September 2011. Employee 76 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- sent supplies to surplus
- helped with airport inspections
- rewrote and maintained the Airport Directory in Microsoft Access
- formatted Excel spreadsheets
- assisted staff when they forget passwords
- assisted with the basic maintenance of printers and computers

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 76 stated she:

- helped write internal procedures such as how to use scanners and also attended Federal Aviation Administration seminars held for pilots

4. Employee 71: Office of Planning and Programming, Springfield

Former Staff Assistant Employee 71 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Planning and Programming, Springfield, IL. During her interview she stated that she was hired as a Staff Assistant permanently in June 2005. Employee 71 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- handled program development projects
- assisted her supervisor with any other projects
- contacted various IDOT district offices for information relating to highway plans

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 71 stated she:

- interpreted policies as they related to highway projects because she had a Master's degree in legal studies
- did not provide assistance to elected officials, reply to correspondence from the general public, or conduct any legislative or policy-making duties

5. Employee 84: Office of Finance and Administration, Springfield

Former Staff Assistant Employee 84 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Finance and Administration, Springfield, IL. During her interview Employee 84 stated that she was hired as a

Staff Assistant in 2003. Employee 84 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- verified salaries for new employees
- worked with an employee at the Governor's Office on the EPAR approval process
- tracked ePARs for *Rutan*-exempt hires

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 84 stated she:

- felt her duties were *Rutan*-exempt because she handled confidential work for Personnel, but did not have any dealings with the legislature and did not act as an employment counselor.

6. Employee 90: Office of Finance and Administration, Springfield

Staff Assistant Employee 90 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Finance and Administration, Springfield, IL. During her interview Employee 90 stated that she was hired as a Staff Assistant permanently in February 2011. Employee 90 was asked about the duties she performed as a Staff Assistant and in response stated she:

- assisted with the implementation of policies related to Senate Bill 51
- co-wrote departmental orders involving social media communications
- developed the Division website
- was involved with a pre-qualification enhancement committee and various diversity initiatives

7. Employee 39: District 2-Division of Highways, Dixon

Former Staff Assistant Employee 39 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 2-Division of Highways, Dixon, IL. During that interview Employee 39 stated that he was hired as a Staff Assistant in September 2005 and held that position until January 2008. Employee 39 was asked about the duties that he performed as a Staff Assistant and in response stated he:

- assisted with hiring personnel
- processed paperwork
- conducted interviews
- was the confidential assistant of Mr. Hughes and attended meetings with Bureau Chiefs concerning confidential matters

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 39 stated he:

- did not implement any policy but he would provide Mr. Hughes with input involving personnel and dress code policies
- participated in policy interpretation and analysis when he would explain policy to other employees and he monitored policy by ensuring summer employees abided by the dress code policy
- did not develop informational documents to address issues of policy concern, but might have assisted in policy development by speaking with Bureau Chiefs and offering his point of view

OEIG Review of Employee 39's Personnel Documents

In light of the fact that Employee 39 stated that he only held the Staff Assistant position until about 2008, investigators reviewed his personnel file and discovered:

- September 1, 2005, Employee 39 was hired as a *Rutan*-exempt Staff Assistant;
- December 4, 2007, according to a memo from former Bureau Chief of Personnel Management Scott Doubet, Employee 39 was the only person interviewed for a TM IV Business Services Manager, a *Rutan*-covered position; and
- January 16, 2008, Employee 39 was hired into the *Rutan*-covered position for which he was the only person interviewed, namely the TM IV Business Services Manager.

Employee 39's personnel file does not reveal that the *Rutan* hiring process was followed in connection with his promotion.

8. Employee 95: Office of the Secretary, Springfield

Staff Assistant Employee 95 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of the Secretary, Springfield, IL. During that interview he stated that he began working as a Staff Assistant in January 2012, but transferred to the Office of Chief Counsel in August 2012. Employee 95 was asked about the duties that he performed as a Staff Assistant and in response stated he:

- prepared reports
- assisted with presentations
- interacted with SharePoint
- gathered statistics for IDOT's annual report
- created a briefing paper on various IDOT projects
- edited a response to an audit finding that was submitted to the General Assembly
- attended meetings
- analyzed and summarized various reports
- updated Diversity Matters website
- assisted with editing IDOT's Diversity Progress Report
- interacted with the community as needed
- acted as the liaison between various State agencies

When asked about the Staff Assistant position description and the duties and responsibilities set forth therein, Employee 95 stated he:

- created a graph of Illinois Amtrak ridership
- conducted research
- completed inventory of highway agreement
- offered solutions for how IDOT can deliver reports in a timely manner to the COO
- provided administrative support to the Office of Chief Counsel
- compiled lists of reports IDOT is required to submit to external entities and commissions that IDOT is required to have a representative on
- previewed land acquisition files
- attended Transportation Industry Safety Advisory Council meetings
- developed a SharePoint intranet website for all documents and information pertaining to executed and outstanding highway land acquisition agreements

9. Employee 63: District 6-Division of Highways, Springfield

Former Staff Assistant Employee 63 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 6-Division of Highways, Springfield, IL. During his interview Employee 63 stated that he was permanently hired into the Staff Assistant position in August 2009; he held two emergency appointments as a Staff Assistant prior to his permanent hire. Employee 63 was asked about the duties that he performed as a Staff Assistant and in response stated he:

- learned the Financial Services position
- performed other financial related tasks

When shown the Staff Assistant position description and asked to review portions of the description setting forth the position duties and responsibilities, Employee 63 stated he:

- developed and coordinated policy by verifying proper signature authority to ensure that policies were implemented.

10. Employee 86: Division of Aeronautics, Springfield

Former Staff Assistant Employee 86 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Division of Aeronautics, Springfield, IL. During his interview Employee 86 stated that he worked as a Staff Assistant from February 2011 until December 2012. Employee 86 was asked about the duties that he performed as a Staff Assistant and in response stated he:

- assisted supervisors in daily tasks, Division communications, and scheduling

When asked about the Staff Assistant position description and the duties and responsibilities set forth therein, Employee 86 stated he:

- did not develop policy, coordinate policy/directives, monitor compliance to existing policy, or interpret policy
- was not assigned special projects
- dealt with the general public in a limited capacity
- did not communicate with elected officials or other state agencies

11. Employee 93: Office of the Secretary, Springfield

Staff Assistant Employee 93 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of the Secretary, Springfield, IL. During her interview Employee 93 stated she was hired as a Staff Assistant in June 2011. Employee 93 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- performed contract work
- worked on the diversity hiring plan
- was responsible for basic office operating procedures
- attended recruitment events to get minorities to apply for entry level jobs at IDOT
- dealt with auditors
- assisted with the diversity newsletter
- supervised graduate student interns occupational technicians, and sometimes 60-day temporary employees

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 93 stated she:

- acted as a confidential assistant under Employee 96's supervision, but not when she was under the supervision of Employee 187
- was not a liaison to elected officials
- was a liaison to other agencies because other agencies such as CMS and the Secretary of State would attend these recruitment fairs
- helped develop policies at the Office of Business and Workforce Diversity
- was a liaison to the general public because she held recruitment fairs
- was a liaison to other agencies because she dealt with CMS, the Department of Veterans' Affairs, and the Department of Commerce and Economic Opportunity when coordinating commercial driver's license training for veterans

12. Employee 94: Office of the Secretary, Springfield

Staff Assistant Employee 94 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of the Secretary, Springfield, IL. During her interview she stated that she was hired into the Staff Assistant position in February 2012. Employee 94 was asked about the duties that she performed as a Staff Assistant and in response stated that she:

- did budget work
- created new internal forms
- conducted process reviews by formulating work flow plans
- completed process review documentation
- completed paperwork related to Disadvantaged Business Enterprises
- assisted the Bureau of Personnel Management with IPRs, EPARs, and reviewing position descriptions for *Rutan*-covered positions

When asked about the Staff Assistant position description and the duties and responsibilities set forth therein, Employee 94 stated she:

- did not act as a liaison to the Governor's Office or the general public
- did not act as a spokesperson for the Department or the Bureau

13. Employee 81: Office of Finance and Administration, Springfield

Former Staff Assistant Employee 81 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Finance and Administration, Springfield, IL. During her interview Employee 81 stated that she was hired as a Staff Assistant in March 2005. Employee 81 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- performed the duties of a Title VI Specialist position which position she later transferred into
- prepared compliance reports
- participated in a national Title VI teleconference to share information with Title VI Specialists in other states
- made sure federal money is not being used to discriminate
- worked with the limited English proficiency program

When asked about the Staff Assistant position description and the duties and responsibilities set forth therein, Employee 81 stated she:

- did not develop policy or coordinate policy for the Office of Finance and Administration
- did not have contact with elected officials
- did monitor conformance with policies related to the Bureau of Civil Rights
- did not recall ever working on any

or the general public

projects or studying any issues of special interest

14. Employee 188: District 1 - Division of Highways, Schaumburg

As indicated above, Administrative Services Manager Employee 19 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 1 - Division of Highways, Schaumburg, IL. During his interview Employee 19 stated that he supervised Employee 188. Employee 19 was asked about the duties performed by Staff Assistant Employee 188 and in response stated Employee 188:

- answered phones
- handled confidential information
- performed the duties of a Personnel Coded Office Coordinator position
- routed legislative inquiries
- fielded questions from the general public
- did not draft or interpret policy

15. Employee 189: District 2-Division of Highways, Dixon

As indicated above, Administrative Services Manager Employee 16 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 2-Division of Highways, Dixon, IL. During his interview Employee 16 stated that he supervised Staff Assistant Employee 189. Employee 16 was asked about the duties performed by Staff Assistant Employee 189 and in response stated Employee 189:

- put together reports as requested by Employee 16
- assisted in providing insurance for drivers of State vehicles as required by policy
- implemented policy and directives by providing insurance to drivers
- worked with the Summer and Snowbird programs
- fielded calls from the general public and assisted agency employees with the interview and selection process
- did not conduct policy interpretation or analysis

16. Employee 190: District 4-Division of Highways, Peoria

As indicated above, Personnel Services Manager Employee 17 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 4-Division of Highways, Peoria, IL. During his interview Employee 17 stated that he supervised Staff Assistant Employee 190. Employee 17 was asked about the duties performed by Staff Assistant Employee 190 and in response stated Employee 190:

- represented District 4 in meetings with Illinois State Police, Illinois Emergency Management Agency, and other State agencies regarding the implications of various construction projects, the
- arranged and conducted meetings with local agencies to discuss District 4 projects

likelihood of success of pending insurance claims against IDOT, and the evaluation of other IDOT related safety issues

17. Employee 191: Division of Public and Intermodal Transportation, Chicago

Deputy Director of Public and Intermodal Transportation Employee 29 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Division of Public and Intermodal Transportation, Chicago, IL. During his interview Employee 29 stated that no Staff Assistant reported directly to him but he was aware that Staff Assistant Employee 191 reported to the Bureau Chief of Capital Employee 100. Employee 29 was asked about the duties performed by the Staff Assistant Employee 191 and in response stated Employee 191:

- worked on Chicago Transit Authority projects in Northern Illinois and Regional Transit Authority operating assistance programs
- did not perform any legislative duties
- interpreted policy as it relates to grants and conformance to what is in the grants
- conducted policy-related research, sometimes

18. Employee 192: Office of Business and Workforce Diversity, Chicago

Deputy Director of the Office of Business and Workforce Diversity Employee 32 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Office of Business and Workforce Diversity, Chicago, IL. During his interview Employee 32 stated that no Staff Assistants reported directly to him but he was familiar with Staff Assistants Employee 192, Employee 120, and Employee 121. Employee 32 was asked about the duties performed by Staff Assistant Employee 192 and in response stated Employee 192:

- was responsible for Diverse Business Enterprises (DBE) outreach on the South side of Chicago and in the South Suburbs
- acted as a liaison between the DBE program and the community
- did not develop policy or act as a liaison with elected officials
- provided information to businesses on how to become DBE certified
- acted as a liaison to the general public in the performance of his duties

19. Employee 120: Office of Business and Workforce Diversity, Chicago

As indicated above, Deputy Director of the Office of Business and Workforce Diversity Employee 32 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Office of Business and Workforce Diversity, Chicago, IL. During his interview Employee 32 stated that no Staff Assistants reported directly to him but he was familiar with Staff Assistant Employee 120. Employee 32 was asked about the duties performed by Staff Assistant Employee 120 and in response stated Employee 120:

- did community outreach in areas that have a high number of potential DBEs
- acted as a liaison to the general public and to the legislature when a legislator wanted to know when a DBE outreach event would be held in his or her district
- ran information sessions on how business could become DBE certified
- did not act as a liaison to the Governor's Office
- was a spokesperson for the Department because he would bring problems arising with DBEs to the attention of IDOT management

20. Employee 121: Office of Business and Workforce Diversity, Chicago

As indicated above, Deputy Director of the Office of Business and Workforce Diversity Employee 32 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Office of Business and Workforce Diversity, Chicago, IL. During his interview Employee 32 stated that no Staff Assistants reported directly to him but he was familiar with Staff Assistant Employee 121. Employee 32 was asked about the duties performed by Staff Assistant Employee 121 and in response stated Employee 121:

- did duties that were similar to Employee 120
- took the team to outreach events
- did not handle personnel matters unless vendors were considered personnel
- dealt with requests from legislators
- worked with the Black Caucus
- did not serve as a liaison to the Governor's Office, or to the Director, or to other State agencies

21. Employee 122: Division of Public and Intermodal Transportation, Chicago

Deputy Director of Railroads Employee 33 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Division of Public and Intermodal Transportation, Chicago, IL. During his interview Employee 33 stated that he supervised Staff Assistant Employee 122. Employee 33 was asked about the duties that Employee 122 performed as a Staff Assistant and in response stated Employee 122:

- helped administer projects by working with consultants and Amtrak
- completed mandatory Federal reports
- did not perform legislative, policy-making, or liaison duties to the knowledge of Employee 33

22. Employee 186: District 9-Division of Highways, Carbondale

As indicated above, retired Administrative Services Manager Michael Barone was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in District 9-Division of Highways, Carbondale, IL. During his interview Mr. Barone stated that he supervised Staff Assistant Employee 186. Mr. Barone was asked about the duties performed by Staff Assistant Employee 186 and in response he stated Employee 186:

- answered phones
- acted as Mr. Barone's personal assistant
- might have served as a confidential secretary, but Mr. Barone was not sure
- wrote memoranda
- did not complete any policy-making or legislative duties

23. Employee 193: Office of Finance and Administration, Springfield

Audit Coordinator Employee 61 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under her supervision in the Office of Finance and Administration, Springfield, IL. During her interview Employee 61 stated that she supervised Staff Assistants Employee 193, Employee 194, and Employee 195. Employee 61 was asked about the duties performed by Staff Assistant Employee 193 whom she supervised and in response stated Employee 193:

- gathered information for audits
- identified contracts for the District

24. Employee 194: Office of Finance and Administration, Springfield

As indicated above, Audit Coordinator Employee 61 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under her supervision in the Office of Finance and Administration, Springfield, IL. During her interview Employee 61 stated that she supervised Staff Assistant Employee 194. Employee 61 was asked about the duties performed by Staff Assistant Employee 194 that and in response stated Employee 194:

- reconciled expenditures on single audit reviews
- assisted with complex audit requests
- produced annual fiscal certifications
- performed policy interpretation and analysis duties by locating relevant policies and departmental orders and ensuring reconciled audit information was properly incorporated in the audit report

25. Employee 195: Office of Finance and Administration, Springfield

As indicated above, Audit Coordinator Employee 61 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under her supervision in the Office of Finance and Administration, Springfield, IL. During her interview Employee 61 stated that she supervised Staff Assistant Employee 195. Employee 61 was asked about the duties performed by Staff Assistant Employee 195 and in response stated Employee 195:

- conducted single audit reviews
- followed up with sub-recipients
- monitored conformance to existing policy by conducting audits and ensuring audit requirements were met
- ensured proper documentation was received
- monitored the SharePoint site used to track audit requests
- assisted local agencies by conducting audits and discussing required paperwork with those agencies

26. Employee 196: Office of Planning and Programming, Springfield

Director of the Office of Planning and Programming Employee 66 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Office of Planning and Programming, Springfield, IL. During his interview Employee 66 stated that he supervised Staff Assistants Employee 196, Employee 197, and Employee 198. Employee 66 was asked about the duties performed by Staff Assistant Employee 196 and in response stated Employee 196:

- performed special projects
- set up outreach meetings
- wrote speeches for Employee 66
- analyzed issues

27. Employee 198: Office of Planning and Programming, Springfield

As indicated above, Director of the Office of Planning and Programming Employee 66 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Office of Planning and Programming, Springfield, IL. During his interview Employee 66 stated that he supervised Staff Assistant Employee 198. Employee 66 was asked about the duties performed by Staff Assistant Employee 198 and in response stated Employee 198:

- was assigned to Bureau of Statewide Programming

28. Employee 199: Office of Business and Workforce Diversity, Springfield

As indicated above, Director of the Office of Business and Workforce Diversity Employee 67 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Office of Business and Workforce Diversity, Springfield, IL. During his interview Employee 67 stated that he supervised Staff Assistant Employee 199. Employee 67 was asked about the duties performed by Staff Assistant Employee 199 and in response stated she:

- prepared compliance reports in the Compliance Unit
- completed secretarial tasks
- evaluated DBEs

29. Employee 200: Office of Business and Workforce Diversity, Springfield

As indicated above, Director of the Office of Business and Workforce Diversity Employee 67 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants under his supervision in the Office of Business and Workforce Diversity, Springfield, IL. During his interview Employee 67 stated that he supervised Staff Assistant Employee 200. Employee 67 was asked about the duties performed by Staff Assistant Employee 200 and in response stated Employee 200:

- worked in an outreach position
- facilitated workshops
- interfaced with community organizations
- created brochures

Category C: Staff Assistants Whose Duties Appeared to Match Duties on the Staff Assistant Position Description

1. Employee 73: Division of Aeronautics, Springfield

Staff Assistant Employee 73 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Division of Aeronautics, Springfield, IL. During his interview he stated he was hired as a Staff Assistant in July 2011. Employee 73 was asked about the duties that he performed as a Staff Assistant and in response stated he:

- performed the duties of a legislative liaison for Aeronautics

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 73 stated he:

- did the duties described in the IPR associated with his hire into the Staff Assistant position

2. Employee 68: Office of Communications, Springfield

Staff Assistant Employee 68 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Communications, Springfield, IL. During her interview she stated that she was hired into the Staff Assistant position in June 2011. Employee 68 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- developed talking points for the Director of Communications
- coordinated special projects involving brochures and newsletters for marketing
- managed the Diversity Matters newsletter which is distributed to vendors and legislators
- updated websites

- wrote and developed policy

3. Employee 27: District 4-Division of Highways, Peoria

Former Staff Assistant Employee 27 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in District 4-Division of Highways, Peoria, IL. The OEIG's review of personnel records reveals that Employee 27 was hired as a Staff Assistant in February 2005. Employee 27 was asked about the duties that she performed as a Staff Assistant and in response stated she:

- performed duties primarily related to communications and public outreach
- drafted memoranda reflecting talking points for news conferences regarding IDOT projects
- made contacts with local business with regard to IDOT projects
- scheduled and hosted meetings with representatives from other State agencies regarding safety initiatives
- handled requests for information regarding the "Upgrade 74" project in District 4

4. Employee 101: Office of Finance and Administration, Springfield

Former Staff Assistant Employee 101 was interviewed regarding, among other things, his duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Office of Finance and Administration, Springfield, IL. During his interview Employee 101 stated he was hired as a Staff Assistant in March 2011. Employee 101 was asked about the duties that he performed as a Staff Assistant and in response stated he:

- prepared Excel spreadsheets and other presentation materials for the purpose of reviewing the effectiveness of certain programs at IDOT

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 101 stated he:

- monitored conformance to existing policies and conducted reviews or studies issues that were of special interest
- developed informational documents for the purpose of addressing issues of policy concern because as part of his duties he would conduct analysis of problems and compile reports and tables
- served as a departmental spokesperson for Office of Finance and Administration programs in his capacity as Acting Unit Chief of the Procurement Section
- ensured compliance with departmental safety rules and practices and performed all duties in a manner conducive to the fair and equitable treatment of all employees

5. Employee 75: Division of Aeronautics, Springfield

Former Staff Assistant Employee 75 was interviewed regarding, among other things, her duties and responsibilities as a *Rutan*-exempt Staff Assistant in the Division of Aeronautics, Springfield, IL.[121] During that interview Employee 75 stated that she was hired as a Staff Assistant in December 2009. Employee 75 was asked about the duties that she performed as a Staff Assistant and in response stated that she:

- performed legislative reviews
- reviewed over four hundred pieces of legislation for Personnel
- handled special requests from the Governor's Office and other State agencies
- helped maintain the ePAR system for Personnel

When shown the Staff Assistant position description and asked to review portions of the position description setting forth the position duties and responsibilities, Employee 75 stated she:

- updated contract policies that had not been updated since the 1970s

6. Employee 201: District 1-Division of Highways, Schaumburg

As indicated above, Administrative Services Manager Employee 19 was interviewed regarding, among other things, the duties and responsibilities of Staff Assistants who he supervised in District 1-Division of Highways, Schaumburg, IL. During his interview Employee 19 stated that he supervised Employee 201. Employee 19 was asked about the duties performed by Staff Assistant Employee 201 and in response stated Employee 201:

- performed the duties of an Executive Secretary II position for the engineers
- performed duties described on IPR associated with her hire as a Staff Assistant position because she helped write policies
- assisted Engineer Employee 202 write procedures and policies for his division

P. Review of Staff Assistant Duties by CMS Manager of Technical Services and Agency Training

In light of the foregoing, on December 20, 2012, investigators interviewed CMS Division Manager of Technical Services and Agency Training Employee 7. During the interview, Employee 7 was provided with a seven-page document that contained six columns, including columns with specific position numbers and Staff Assistant duties investigators obtained from either Staff Assistant evaluations, Staff Assistant interviews, or Staff Assistant supervisor interviews.[122]

The purpose of this request was to ask Employee 7 if the information contained in the duties set forth in the evaluation or interview column was sufficient for her to make a

[121] Upon employment by the OEIG, it was discovered that Deputy Inspector General & Chief of Springfield Division, Laura Bautista had an association with Staff Assistant Employee 75. In response, the OEIG put into place a formal mechanism to recuse her from any involvement in this matter.
[122] *See* Appendix to Report at Exhibit 23.

determination as to whether the duties reflect those of either a *Rutan*-covered or *Rutan*-exempt position.

Below is a modified version of the document shown to Employee 7 with:

1. names of Staff Assistants (names were not provided to Employee 7);
2. duties from Staff Assistant evaluations and interviews (this was provided to Employee 7); and
3. exempt column (this column was blank when shown to Employee 7 but as set forth below is the determination that Employee 7 inserted in this column).

Staff Assistant	**Duties from Staff Assistant Evaluation or Interview**	**Exempt** (N = non-exempt)
Employee 158:	Performed preventative maintenance on cars and delivered the mail.	N
Employee 114:	Assisted maintenance in internal inventory records system to account for D1 assigned property. Evaluation listed his title as "Property Control Specialist."	N
Employee 35:	Completed storekeeping and inventory tasks, cleaned up the shop, filed paperwork, and answered complaints from the public involving graffiti and dead animals on the roadway.	N
Employee 132:	Performed electrical work in the Bureau of Maintenance.	N
Employee 154:	Fulfilled roadside maintenance duties, including planting trees.	N
Employee 6:	Filled in "here and there"; and was responsible for making spreadsheets, completing financial reports, and assembling personnel paperwork. Acted as Administrative Manager's personal assistant, would respond to constituent service inquiries at Administrative Manager's direction.	more info
Employee 124:	Fulfilled IDOT mandate of verifying that local roads were still in place, and assisted the Operations Division with tool and road sign marker allocation.	N
Employee 25:	Processed paperwork related to insurance claims made against the District, created/maintained the District intranet site, and assisted with employee benefits	N

selection.

Employee 124 (separate position):	Completed yard inventory at District 4 team sections; learned to use MMI and MCBA software systems; conducted inventory and reorganization of the Operations Warehouse; assisted with respirator training classes; worked with Program Development in updating their information regarding road inventory and intersection on state highways.	N
Employee 22:	Filed paperwork and processed payroll documents. Maintained the storeroom.	N
Employee 3:	Handled schedules; re-did D6's SharePoint site; handled all incoming calls; coordinated meetings and conferences; completed special projects; distributed mail; coordinated tuition reimbursement program; conducted ethics training seminar; copied paperwork; assisted with budget analysis, maintaining agency vehicles, and filing labor relations paperwork; and attended *Rutan* interview training.	N
Employee 110:	Identified as "Motor Pool/Fleet Coordinator.," Managed District 6 fleet, including assignments, monitoring location/usage, repairs, maintenance, cleaning and recordkeeping for approximately 150 vehicles; maintained accurate and timely records of fuel usage, repairs and maintenance on MMI; provided input on replacement vehicle decisions; and provided Regional Engineer, Admin Manager, IDOT State Vehicle Manager and others with reports as requested.	N
Employee 60:	Reconciled fax and copy machine logs, assisted motor pool with deliveries, conducted inventory of IDOT furniture, conducted IDOT safety demonstrations at meetings, and responded to local official's requests for road maps.	N
Employee 118:	Conducted landscaping-related activities; worked closely with the Rest Area Technician in planning, scheduling and overseeing the maintenance and repairs at the District 7 rest area buildings; investigated complaints and inquiries from the public relating to landscaping, pruning, and permit requests; acted as Erosion Control Coordinator; worked with field staff to make them aware of the mowing, seeding, and spraying	N

	initiative, and monitored their work performance for compliance; and worked with the Snow Duty Officer team.	
Employee 1:	Performed receptionist duties, verified credentials, operated multi-line telephone, transferred calls, relayed messages to staff, and opened/stamped/sorted/ distributed mail.	N
Employee 152:	Completed intermittent yard inspections for OSHA and Safety Compliance; conducted annual field equipment inventory; and assisted the Equipment Technician in mower and truck inspections.	N
Employee 184:	Performed payroll duties, created and maintained contracts and maps, coordinated scheduling, answered phones, completed monthly reports and supply requisition, distributed vehicle logs and approval letters.	N
Employee 163:	Answered phones, posted information, and performed timekeeping tasks.	N
Employee 109	Made Common System entries for equipment transactions; acted as locksmith; assisted with use of security system, handled property control and inventory issues; handled orders, issued and maintained engineering equipment; washed and maintained motor pool vehicles; reconciled vehicle records; monitored maintenance at District Headquarters. Evaluation listed his title as "Support Services Technician."	N
Employee 38:	Performed groundskeeping and building maintenance.	N
Employee 92:	Worked as the Building Manager for the Division of Aeronautics' Langhorne Bond property. Worked on Capital Development projects, oversaw vehicles in motor pool, scheduled HAZMAT pickup, handled identification badge and building issues, retrieved State archive documents, and ensured that service calls are placed.	N based on understanding there was no involvement in budget projections
Employee 52:	Assisted property management team to ensure property is maintained, met with security and lawn maintenance firms, received billing, performed repairs, reviewed bids and billing from contractors, served as the on-site	N

	observer, supervised the people who cut the grass, completed inspections of the homes IDOT purchases, and signed invoices when maintenance is completed.	
Employee 170:	Executed training, investigated/analyzed employment discrimination/harassment, provided counseling/ mediation, supervised staff, monitored progress/ compliance with State laws, and affirmative action related duties. Performed grant administration for the Division of Public and Intermodal Transportation. Sought information from grantees and reports on the status of projects.	Most likely exempt
Employee 80:	Worked with the Student Professionals with Disabilities program assisting students obtain general job-related skills, such as computer skills, arriving on time, and being responsible. Also assisted an employee who is blind and another employee who has physical disabilities complete their work scanning documents.	N
Employee 137:	Supervised state and federal grant programs, monitored and reported on grants.	N
Employee 4:	Provided "end-user support", such as setting up new computers and helping with software installation; worked on a calendar application and developing electronic information storage software.	N
Employee 193:	Generated and distributed reports, ran tapes against daily deposits, approved payroll, posted information to ARM system, gathered information for auditors, tracked DUNS numbers and login/passwords for grants.gov, and coordinated GAAP reporting.	N
Employee 203:	Scheduled and conducted training, and assisted new and current employees with career development.	N
Employee 98:	Conducted interviews for *Rutan*-covered positions.	N
Employee 204:	Served as the personal assistant to the Bureau Chief of Personnel and was responsible for basic executive secretary duties, i.e. answering phones, scheduling, and correspondence, as well as some data entry into the ePAR system.	N
Employee 205:	Processed pre-employment screenings, had contact	N

	with the vendor that conducts the Department's pre-employment and random drug and alcohol testing, and assisted with processing paperwork for the Department's large seasonal program.	
Employee 206:	Worked with record retention in F&A's Bureau of Business Services Records Center, similar to the duties of Records Center Liaison position.	N
Employee 116:	Evaluations identify working title as "Acting Negotiator." Opened, negotiated, and completed parcel files; prepared offer packets, including conveyance documents; performed title searches, and processed and warrant requests for payment to the property owner.	Probably exempt depending on negotiating responsibility
Employee 53:	Performed general filing and data entry duties; acted as receptionist at the Resource Center; answered phones; scheduled conference room; took care of the facility, made sure people signed in and out; and performed general housekeeping duties.	N
Employee 198:	Processed and entered award notices, entered obligations to PPS System, updated letter information, and ran Crystal reports.	N
Employee 49:	Identified as "Northern Special Assistant." Performed fact-finding duties, such as gathering documents, conducting interviews, and compiling reports.	N
Employee 48:	Composed correspondence regarding Ethics Seminar, compiled Excel spreadsheets, assisted with soil sample testing and Independent Weight Check program, and organized files. Assisted with Ethics Training, typed dictated correspondences, secured speakers for training, and gathered timesheets.	N
Employee 94:	Coordinated and supported budget for Secretary's Office, managed contracts, obligations, and invoice payments. Provided support for several Safety and Diversity Initiatives. Tried to get new forms created. Processed review documentation, and processed DBE paperwork.	N
Employee 9:	Updated website, ran Windshield Washing Program, and conducted outreach events.	N

Q. IDOT's Staff Assistants – May 2014 Proposed Position Chart

On May 9, 2014, in response to an OEIG Request for Documents, IDOT provided investigators with a chart titled "Staff Assistants – Proposed Positions."[123] The chart contained 15 columns of information for 60 IDOT Staff Assistants.[124] Those columns included: the Staff Assistant's name, the person's beginning position number, proposed position number, current *Rutan* determination reflected by the letter "e" for *Rutan*-exempt or "c" for *Rutan*-covered, and proposed *Rutan* determination, also represented by the letter "e" for *Rutan*-exempt or "c" for *Rutan*-covered.

During her OEIG interview, investigators asked Secretary Schneider about the Staff Assistants – Proposed Positions chart. In response, Secretary Schneider stated that IDOT contracted with a company called CGN Global to perform a "desk audit." Secretary Schneider stated that CGN Global interviewed Staff Assistants, Staff Assistant supervisors, and reviewed documents in order to rewrite the job descriptions of certain Staff Assistants. The Staff Assistants – Proposed Positions chart reflects a recommendation that:

- ***48 of the 60*** existing Staff Assistants be given new position numbers and *Rutan* status of *Rutan*-covered;
- ***4 of the 60*** Staff Assistants retain their original Staff Assistant position numbers and *Rutan*-exempt status; and
- ***8 of the 60*** Staff Assistants be given new *Rutan*-exempt position numbers.

Below is a modified version of the Staff Assistants - Proposed Positions chart that identifies the 60 Staff Assistants reviewed and their current and proposed *Rutan* status.

IDOT Employee	Their Current *Rutan* Status	Proposed *Rutan* Status	IDOT Employee	Their Current *Rutan* Status	Proposed *Rutan* Status
Employee 53	E	C	***Employee 209***	E	C
Employee 49	E	C	***Employee 185***[125]	E	C
Employee 182	E	C	***Employee 165***	E	C
Employee 115	E	C	***Employee 34***	E	C
Employee 166	E	C	***Employee 2***	E	C
Employee 163	E	C	***Employee 177***[126]	E	C
Employee 109	E	C	***Employee 55***	E	C
Employee 207	E	C	***Employee 183***	E	C

[123] *See* Appendix to Report at Exhibit 24.
[124] The chart includes a 61st Staff Assistant, Employee 125. Employee 125's information on the chart was incomplete as it appears he was on leave or had vacated the position at the time of the desk audit. Therefore, the OEIG will refer only to the 60 Staff Assistants evaluated.
[125] On the chart provided by IDOT, Employee 185's name was stricken with no explanation.
[126] On the chart provided by IDOT, Employee 177's name was stricken with no explanation.

Employee 208	E	C	*Employee 161*	E	C
Employee 4	E	C	*Employee 69*	E	C
Employee 210	E	C	*Employee 211*	E	C
Employee 52	E	C	*Employee 91*	E	C
Employee 56	E	C	*Employee 117*	E	C
Employee 9[127]	C	C	*Employee 205*	E	C
Employee 76	E	C	*Employee 132*	E	C
Employee 176	E	C	*Employee 212*	E	C
Employee 80	E	C	*Employee 213*	E	C
Employee 195	E	C	*Employee 65*	E	C
Employee 35	E	C	*Employee 188*	E	E
Employee 184	E	C	*Employee 120*	E	E
Employee 95	E	C	*Employee 179*	E	E
Employee 1	E	C	*Employee 73*	E	E
Employee 181	E	C	*Employee 167*	E	E
Employee 127	E	C	*Employee 178*	E	E
Employee 193	E	C	*Employee 68*	E	E
Employee 194	E	C	*Employee 196*	E	E
Employee 156	E	C	*Employee 121*	E	E
Employee 169	E	C	*Employee 200*	E	E
Employee 92	E	C	*Employee 101*	E	E
Employee 59	E	C	*Employee 214*	E	E

R. Statements and Documents Reflecting Staff Assistants' Association with Elected Officials.

The OEIG discovered that some IDOT Staff Assistants were hired after they sought the assistance of elected officials or others. In addition, some Staff Assistant personnel files revealed associations between certain Staff Assistants and elected officials. Below are statements and documents reflecting certain Staff Assistants' associations with elected officials.

1. Staff Assistant Statements Reflecting They Sought the Assistance of Elected Officials or Others

a. Staff Assistant Employee 56

During his interview, Staff Assistant Employee 56 told investigators that after he submitted an open application and résumé to IDOT, he contacted Senator Clayborne,[128] whom he has known since grade school, and spoke to him about obtaining State employment. Sometime

[127] Employee 9 is the employee hired into a *Rutan*-exempt Staff Assistant position prior to CMS making the determination, that the position was *Rutan*-covered. Employee 9 filled one of the only two Staff Assistant positions CMS determined to be *Rutan*-covered referenced in Section H, 3 above. Despite the fact that Employee 9's position was *Rutan*-covered, IDOT allowed her to remain in the position without going through the *Rutan* hiring process.

[128] James Clayborne, Jr. is an Illinois State Senator.

after speaking to Senator Clayborne, he was interviewed by IDOT and hired as a Labor Compliance Representative. When asked, Employee 56 said he was not aware that he had been hired into a Staff Assistant position.

b. Staff Assistant Employee 40

Former Staff Assistant Employee 40 told investigators that she first learned that IDOT was looking to hire a Staff Assistant in 2003, when former Rock Island County Chairman John Gianulis told her that IDOT employee Matt Hughes needed an assistant. Employee 40 said that she applied and was interviewed for the position.

c. Staff Assistant Employee 64

Staff Assistant Employee 64 told investigators that he first learned that IDOT may be hiring from his brother-in-law, Anthony Rossi, who at that time was Deputy Chief of Staff for Governor Rod Blagojevich. As directed by Mr. Rossi, in January of 2005, Employee 64 delivered a résumé to IDOT's personnel office; the résumé did not identify a position.

Employee 64 said that he had two subsequent meetings with former Bureau Chief of IDOT's Bureau of Personnel Management Scott Doubet. During the second meeting, in late March or early April 2005, Mr. Doubet offered Employee 64 a Staff Assistant position in District 6 Business Services. Employee 64 was told he would be conducting inventory, assisting with the motor pool and performing other duties as needed. Employee 64 accepted the position and began working for IDOT on April 25, 2005. Employee 64 said he later transferred to a TM II Property Control Specialist position in District 6, but that his duties remained the same.

d. Staff Assistant Employee 20

Former Staff Assistant Employee 20 told investigators that in early 2003, while she was working as a County Coordinator for Rod Blagojevich's gubernatorial campaign, she met Sam Flood at a campaign event. Investigators discovered that Mr. Flood was a St. Clair County Clerk and downstate liaison for Mr. Blagojevich. After meeting and discussing State employment with Mr. Flood, and after the election, she was contacted by him and was offered a Staff Assistant position at IDOT. Employee 20 said she did not apply or interview for the Staff Assistant position.

e. Staff Assistant Employee 36

Staff Assistant Employee 36 told investigators that he worked as a temporary Highway Maintainer for IDOT for over four years prior to being hired as a Staff Assistant. He said that prior to his permanent hire by IDOT, his brother, former State Senator Gary Forby, informed him of a Staff Assistant position. Employee 36 then contacted IDOT employee Michael Barone, completed an application and was later interviewed. Employee 36 said that six months after being hired as a Staff Assistant, he received his current position of Highway Maintainer.

f. Staff Assistant Employee 39

During his interview, IDOT Business Services Manager Employee 39 told Investigators that after learning about a Staff Assistant position, he contacted his grandfather, former Director of Personnel for the Office of the Governor John Gianulis, who arranged for an interview with the IDOT Secretary. Employee 39 said that after his interview he was called by Mr. Hughes and offered a position as a Staff Assistant. He said that his duties as a Staff Assistant included hiring personnel, conducting interviews, and processing paperwork.

g. Staff Assistant Employee 2

Investigators interviewed Staff Assistant Employee 2 concerning her employment at IDOT. Employee 2 said that she wanted to leave her previous employer, the Office of the Governor, because she needed to make more money. She told her father, former Director of the Division of Traffic Safety Michael Stout, that she wanted a job at IDOT, and at a later point he told her of a position at District 6. Employee 2 said that she:

- did not see the Staff Assistant position posted at IDOT,
- did not apply for the position,
- did not interview for the position, and
- did not speak to anyone about the position prior to starting.

Employee 2 confirmed that the duties reported on her performance evaluations were accurate, but she had taken on additional duties since returning from maternity leave in April 2012.[129]

Former Director of the Division of Traffic Safety Michael Stout was interviewed regarding his daughter's hiring at IDOT. Mr. Stout recalled asking former IDOT Secretary Gary Hannig to find a position for his daughter at IDOT on at least two occasions. According to Mr. Stout, Secretary Hannig did not have any problems with his (Mr. Stout's) request to find Employee 2 IDOT employment. Mr. Stout said he did not know who ultimately authorized Employee 2's hiring or what steps were taken to facilitate her hiring; rather, Mr. Stout said he only knew she received an IDOT position.

In addition to asking for Secretary Hannig's assistance in finding his daughter a job, Mr. Stout said he contacted persons at the Office of the Governor and also contacted the Chief of Staff to U.S. Senator Dick Durbin, Patrick Souders. Mr. Stout stated that his requests were permissible because Employee 2 had worked on Governor Quinn's campaign and therefore, deserved a job at IDOT.

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[129] Performance evaluations indicate that as a Staff Assistant, Employee 2's duties included upkeep of the District 6 telephone directory, ordering office supplies, and assisting management. In addition, her duties also included maintaining tuition reimbursement files, copying vehicle maintenance bills, preparing interview packets, scheduling interviews, grading employment applications, conducting *Rutan* interviews, booking conference rooms, answering phones, documenting overtime, updating the SharePoint site for Administrative Services, and serving as liaison between District 6 Administrative Manager and Central Office Personnel.

Mr. Stout said he knew that once his daughter was hired at IDOT she could not work in the Division of Traffic Safety because he was the Director, and she could not work in the Bureau of Personnel Management because his wife, Employee 215, worked there. Mr. Stout told investigators that there was nothing wrong with him trying to help his family members obtain a *Rutan*-exempt position and remarked that if the OEIG was going to investigate every instance of an official at IDOT hiring friends and family members, it would take a great deal of time and energy.

2. Staff Assistant Personnel Documents Reflecting Staff Assistants with Relationships/Associations with Elected Officials

The OEIG's investigation also revealed that multiple Staff Assistants shared relationships or associations with elected officials.[130] The below chart identifies these Staff Assistants, sets forth the dates when they were first hired, and the relationship/association they shared with the elected official.

Staff Assistant	Year Hired 2003	Relationship/ Association with Elected Officials
Employee 84:	04/28/03	• Worked as a Legislative Secretary for State House of Representatives • Worked as a Legislative Secretary for State Senate
Employee 55:	05/08/03	• Worked as a Staff Assistant for Congressman David Phelps • Worked as a Staff Assistant for State Representative David Phelps
Employee 40:	10/06/03	• Learned of the position from Rock Island County Democratic Central Committee Chairman/Gov. Rod Blagojevich's Deputy Director of Intergovernmental Affairs and Personnel John Gianulis
Employee 182:	10/06/03	• Worked as a Legislative Liaison for State Representative Jay Hoffman
Employee 153:	10/16/03	• Worked as Legislative Liaison for State Senator Patrick Welch • State Representative Frank Mautino was listed as a reference • State Senator Patrick Welch was listed as a reference
Employee 20:	10/20/03	• Served as Shiloh Township Precinct Committeeman

[130] Unless indicated otherwise, all information included in this section was obtained via a review of Staff Assistant personnel documents, including, but not limited to, résumés, reference letters, and employment applications.

		• Served as County Coordinator for Rod Blagojevich's gubernatorial campaign
	2004	
Employee 11:	05/03/04	• Worked for Congressman David Phelps
Employee 87:	06/01/04	• Worked as the receptionist at the Governor's Office • Interned with U.S. Senator Dick Durbin's Office
Employee 37:	11/01/04	• Worked for Congressman David Phelps • Worked for Congressman Glenn Poshard • Worked for U.S. Senator Paul Simon
Employee 89:	11/01/04	• Worked as an Administrative Assistant in the Governor's Office/Executive Mansion
	2005	
Employee 64:	04/25/05	• Brother-in-law is Tony Rossi, former Deputy Chief of Staff for Governor Rod Blagojevich
Employee 216:	06/20/05	• Worked as clerical support for Speaker Madigan's Office
Employee 39:	09/01/05	• Grandson of Rock Island County Democratic Central Committee Chairman/Gov. Rod Blagojevich's Deputy Director of Intergovernmental Affairs and Personnel
	2006	
Employee 70:	12/01/06	• Worked as a Committee Clerk for State House of Representatives • Worked for Daley for Mayor campaign
	2007	
Employee 74:	04/16/07	• Granddaughter of former Chairman of Sangamon County Democratic Central Committee Todd Renfrow
Employee 59:	04/30/07	• Obtained position through Gov. Rod Blagojevich's Deputy Chief of Staff Tony Rossi
Employee 36:	06/11/07	• Brother of State Senator Gary Forby
Employee 206:	09/10/07	• Son of Montgomery County Democratic Central Committee Chairman Steve White

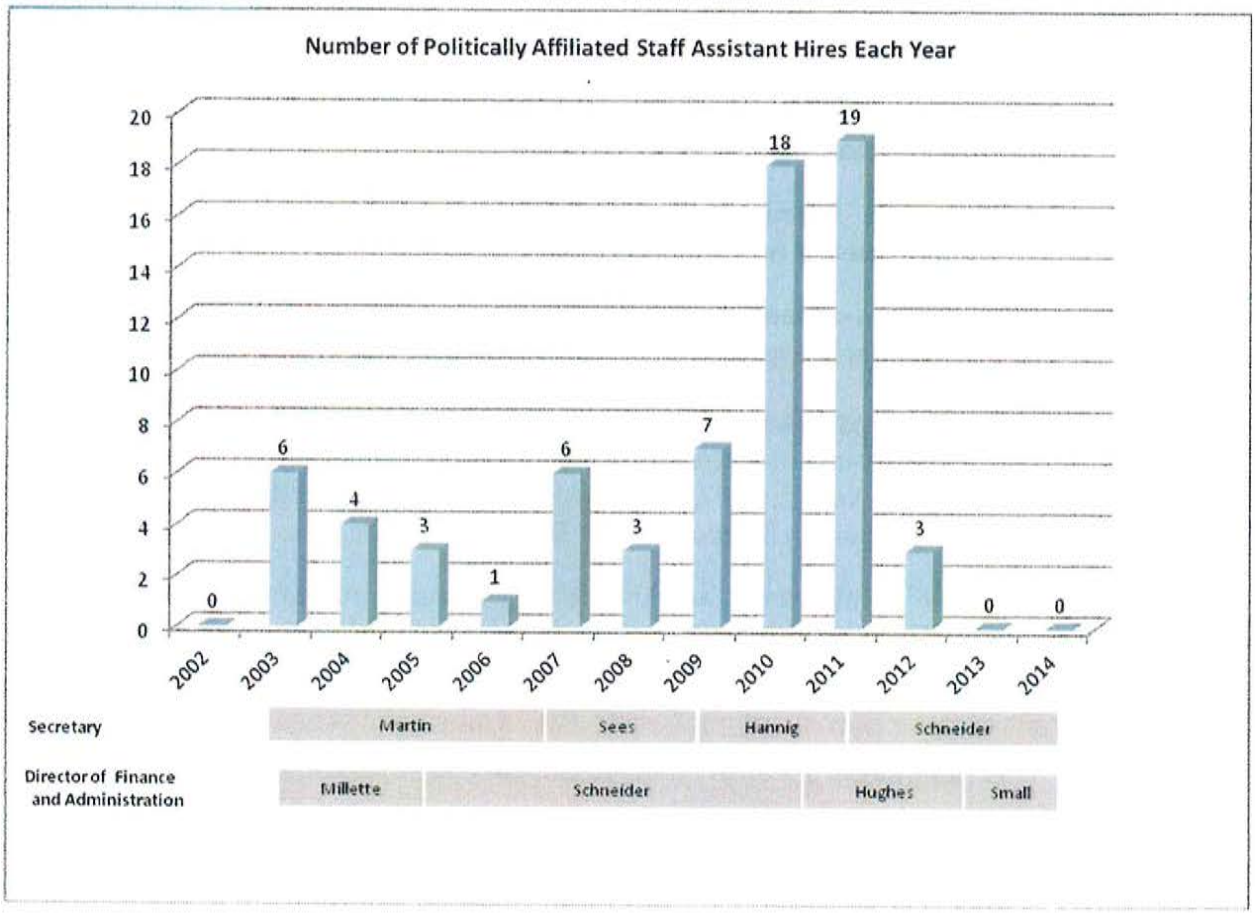
Employee 217:	10/09/07	• Worked as a Legislative Assistant for State Representative Deborah Graham • Worked as a Legislative Assistant for State Representative Milton Patterson
Employee 38:	11/26/07	• Personal friend of Chairman of Jackson County Democratic Central Committee Michael Barone
	2008	
Employee 156:	01/16/08	• Worked as a Community Liaison for Congressman William Lipinski
Employee 56:	05/19/08	• Listed State Senator James Clayborne as a reference • Contacted Senator Clayborne, whom he has known since childhood, about a position at IDOT
Employee 118:	12/26/08	• Personal friend of State Representative Bill Grunloh
	2009	
Employee 218:	04/01/09	• Worked as the Director of Boards & Commissions for Governor's Office • Interned with the Illinois Democratic Coordinated Campaign for Senator Dick Durbin's 2002 senatorial campaign • Representative Jay Hoffman listed as a reference
Employee 121	06/08/09	• Husband of State Senator Kimberly Lightford
Employee 193:	08/03/09	• Worked as Legislative Aide for State Senator Vince Demuzio • State Senator Deanna Demuzio listed as a reference • State Representative Gary Hannig listed as a reference • Montgomery County Democratic Party Chair Steve White listed as a reference • Montgomery County Board Chairman Mike Plunkett listed as a reference
Employee 219:	08/03/09	• Worked as a Technology Coordinator for the Office of Governor
Employee 150:	12/01/09	• Worked as District Office Manager for State Representative Bill Grunloh
	2010	
Employee 220:	03/08/10	• Worked as Legislative Assistant for State Senator Ira Silverstein

		• Worked as a Legislative Assistant for State Representative Bill Grunloh • Worked as a Legislative Assistant for State Representative Pat Verschoore • Worked as a Legislative Assistant for State Representative Sara Feigenholtz • Worked as a Personnel Assistant to Mason County Board Chairman Paul V. Martinie • Pat Verschoore, Joel Brunsvold, Denny Jacobs, Sara Feigenholtz, Judy Erwin, Louis Viverito listed as references
Employee 140:	03/16/10	• Worked as District Scheduler for Congressman Phil Hare • Interned for Congressman Lane Evans
Employee 221:	04/23/10	• Grandson of former Chairman of Sangamon County Democratic Central Committee Todd Renfrow
Employee 125:	06/02/10	• Son-in-law of former Chairman of Sangamon County Democratic Central Committee Todd Renfrow
Employee 132:	06/16/10	• Nephew of State Senator Louis Viverito
Employee 123:	08/02/10	• Wife of Montgomery County Democratic Central Committee Chairman Steve White
Employee 137:	08/16/10	• Worked as Chief of Staff for Congressman Dan Lipinski • Worked as Chief of Staff for Congressman William Lipinski • Elected as a Trustee for the Village of Oak Lawn • Congressman Glenn Poshard listed as a reference • Chicago Alderman Michael Zalewski listed as a reference • Chicago Ridge Mayor Gene Siegel listed as a reference • State Representative Robert Molaro listed as reference
Employee 222:	09/28/10	• Worked as Executive Assistant to Chief of Staff of the State Senate • Worked as Sergeant-at-Arms for State Senate • Senator Cullerton listed as a reference

Employee 201:	10/04/10	• Daughter of Chicago Alderman Gene Schulter • Worked as a Legislative Aide/Community Outreach Coordinator for Alderman Schulter
Employee 205:	12/29/10	• Daughter of former Chairman of Sangamon County Democratic Central Committee Todd Renfrow
Employee 185:	12/30/10	• Worked for State Representative Jay Hoffman
	2011	
Employee 128:	01/18/11	• Worked as regional field organizer for Congressman Phil Hare
Employee 139:	02/07/11	• Worked as staff assistant for Congressman Phil Hare • Interned for Congressman Lane Evans
Employee 204:	03/28/11	• Worked as a Legislative Assistant for Illinois House of Representatives • Worked as Executive Assistant to State Treasurer Alexi Giannoulis • Robin Kelly and Judy Erwin listed as references
Employee 176:	07/16/11	• Worked as a State Service Representative in the Illinois Governor's Office of Citizen Action
Employee 184:	07/27/11	• Monroe County Democratic Precinct Committeeman
Employee 102:	08/18/11	• Worked in Employee Services for the Office of the Governor
Employee 163:	09/06/11	• Sister-in-law of Christopher, Illinois mayor • Worked for State Senator Gary Forby
Employee 212:	10/16/11	• Worked as a Legislative Assistant for State Representative Jay Hoffman • Worked as a Legislative Assistant for the Office of the Senate President • Calendared events for Toi Hutchinson
	2012	
Employee 223:	02/16/12	• Former Legislative Secretary for State House of Representatives
Employee 95:	09/01/12	• Worked as a Policy Analyst in the Office of the Lt. Governor

- Interned in the Governor's Office of Civil Action

The chart below summarizes the year in which the above-referenced Staff Assistants (who had a political relationship or association with an elected official) were hired.



Moreover, a review of documents revealed that in nine instances in which IDOT created new Staff Assistant positions, the positions were filled by persons with associations with elected officials. Below is a chart that reflects: 1) the date the position was created (Date Established), 2) date it was filled by a person with a political affiliation (Date Filled), 3) number of days between when the position was created and filled (Days Between Established and Filled), and 4) the name of the person hired as a Staff Assistant (Name of Staff Assistant). The person's political affiliation is set forth in the chart above.

Date Established	Date Filled	Days Between Established and Filled	Name of Staff Assistant
11/04/03	11/18/03	14	Employee 84[131]
09/17/03	10/06/03	19	Employee 40
09/17/03	10/06/03	19	Employee 182
09/17/03	10/16/03	19	Employee 153

[131] There was no Notice of Personnel Action in Employee 84's personnel file as it related to her re-allocation into this position. However, there was a memo wherein approval for the re-allocation was noted. The date of that memo has been used as the Date Filled.

10/08/03	10/20/03	12	Employee 20
11/22/06	12/01/06	10	Employee 70
04/12/07	04/16/07	4	Employee 74
03/23/09	04/01/09	9	Employee 218
07/30/09	08/03/09	4	Employee 193

S. Staff Assistants Related to IDOT Senior Staff

Investigators discovered that a number of Staff Assistants were associated with IDOT senior staff. Those Staff Assistants are discussed below.

1. Review of Circumstances Relating to Staff Assistant Employee 3: Stepdaughter of Secretary Ann Schneider

a. Staff Assistant Employee 3 Hired and Corresponding Internal Personnel Request

Employee 3 is the stepdaughter of Ann Schneider.[132] On October 2, 2006, Employee 3 was hired by IDOT into a six-month temporary appointment as an Executive Secretary I in the Division of Aeronautics. On April 2, 2007, Employee 3 began a 60-day emergency appointment as a *Rutan*-exempt Staff Assistant in District 6 of the Division of Highways.

On April 23, 2007, Employee 3 was hired as a permanent, full-time Staff Assistant in District 6. The Internal Personnel Request that authorized Employee 3's hire into the permanent, full-time Staff Assistant position was signed by Ann Schneider as the Director of Finance and Administration.

b. Employee 3's Staff Assistant Performance Evaluations

During her time as a Staff Assistant in District 6, Employee 3 received two performance evaluations.

First performance evaluation covering period December 31, 2007 to December 31, 2008

The summary of Employee 3's actual achievements for this period indicates that she provided assistance to the Regional Engineer. In addition, it reflected that she made a SharePoint website more user-friendly, coordinated the third annual Ethics in the Workplace seminar, assisted several Administrative Services Managers, conducted interviews for summer technical positions, set up Excel spreadsheets for Financial Services, and led a school tour at the Central Office on Career Day.

Second performance evaluation covering the period July 1, 2009 to June 30, 2010

The summary of Employee 3's actual achievements for this period indicates that she assisted the Regional Engineer, Business Services, and Administrative Services Managers with various administrative tasks. Employee 3 also coordinated the tuition reimbursement program

[132] Employee 3 will be referred to as Employee 3 throughout for consistency, even though she had not yet changed her surname when she first joined IDOT.

for the District, coordinated an Ethics Training Seminar, helped with Career Day at the Central Office, and conducted interviews for District 6 and for Central Office Personnel.

c. Employee 3's Transfer and Corresponding Internal Personnel Request

On August 1, 2010, Employee 3 transferred into the Division of Traffic Safety as a *Rutan*-exempt Staff Assistant. The Internal Personnel Request authorizing this transaction identified the position as that of a Safety Issues Analyst. The Internal Personnel Request was signed by former Bureau Chief of Personnel Management Matt Hughes. While at the Division of Traffic Safety, Employee 3 performed the duties of an Outreach Coordinator, which meant that she served as a point of contact for organizations that had questions concerning outreach programs.

2. Review of Circumstances Relating to Staff Assistant Employee 88: Wife of Matt Hughes

a. Staff Assistant Employee 88 Hired and Corresponding Internal Personnel Request

As discussed above in section (3)(b), Employee 88 was hired as a *Rutan*-exempt Staff Assistant in May 2004 in the Bureau of Personnel Management. On November 1, 2004, she transferred into the *Rutan*-covered Employment Support Assistant position in the Office of Finance and Administration without interviewing or competing for the job. Employee 88 was promoted into a *Rutan*-exempt Staff Assistant position in the Bureau of Personnel Management at a Technical Manager V level on July 16, 2007.

The Internal Personnel Request authorizing this promotion was signed by former Director of Finance and Administration Ann Schneider.

b. Employee 88's Staff Assistant Performance Evaluation

A performance evaluation covering the year 2007 indicates that as a Staff Assistant, Employee 88 assisted former Bureau Chief of Personnel Management Scott Doubet, coordinated seasonal programs, and provided personnel reports to the Chief of Staff and the Director of Finance and Administration.

c. Employee 88's Transfer

On June 16, 2010, Employee 88 transferred out of the Bureau of Personnel Management into a *Rutan*-exempt position as a Policy Analysis Section Chief in the Office of Planning and Programming. According to Employee 88, she made this transfer out of the Bureau of Personnel Management when she started dating Matt Hughes who became the Director of Finance and Administration in August 2010 or about two months after her transfer.

d. Employee 88 Becomes Personnel Manager for District 6

Employee 88 married Matt Hughes in August 2011.[133] In that same month, after going through the *Rutan* hiring process, Employee 88 began her current position of Personnel Manager for District 6 of the Division of Highways.

According to the Internal Personnel Request that authorized her hire into the position of Personnel Manager at District 6, Employee 88 is responsible for managing the personnel functions for employees residing in District 6, determining staffing needs, selecting employees, handling labor relations, managing payrolls, processing employee transactions, and overseeing employee benefits, safety, claims, training, and affirmative action activities.

3. Employee 224: Sister-in-Law of Matt Hughes

Employee 224 is the sister of Employee 88 and the sister-in-law of Matt Hughes. She was hired by IDOT as a *Rutan*-exempt Staff Assistant on January 31, 2005 in District 1 of the Division of Highways, or prior to the time Employee 88 and Matt Hughes were married (August 2011). On August 1, 2007, she transferred into the position of Administrative Organizational Manager after going through the *Rutan* hiring process. According to Administrative Services Manager Employee 19, the duties Employee 224 performed while in the Staff Assistant position were the same as those she performed while in the *Rutan*-covered Administrative Organizational Manager position.

The Internal Personnel Request which authorized Employee 224's hire as an Administrative Organizational Manager indicates that the position is "accountable for devising and executing comprehensive projects and analyses to ensure effective utilization of District One's fiscal and human resources; improving operational performance and productivity; technical/code position description preparation; conducting exit interviews; and instructing district personnel."

4. Employee 225: Wife of Mike Woods, Jr.

Employee 225 was first hired by IDOT into a 60-day emergency appointment as an Employment Support Assistant on May 12, 2008. She was then brought on as a permanent, full-time, *Rutan*-exempt Staff Assistant in the Bureau of Personnel Management on July 1, 2008.[134]

A performance evaluation covering the latter half of 2008 indicated that her duties as a Staff Assistant included overseeing the timekeeping system and sick bank, performing various payroll duties, processing transactions for Districts 1 through 6, managing all paperwork sent to Personnel, and assisting the Director of Finance and Administration.

In July 2010, Employee 225 and Mike Woods, Jr. were married.

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[133] Employee 88 will be referred to as Employee 88 throughout for consistency, even though she had not yet changed her surname when she came to work for IDOT.

[134] She left employment with IDOT on August 15, 2011.

5. Employee 1: Sister-in-Law of Former IDOT Chief Counsel Ellen Schanzle-Haskins

Employee 1 is the sister-in-law of former IDOT Chief Counsel Ellen Schanzle-Haskins. Employee 1 was first offered a *Rutan*-exempt Staff Assistant position in the summer of 2007. Employee 1 told investigators she did not take the position because she was caring for her ailing mother.

On October 20, 2008, Employee 1 was hired as a *Rutan*-exempt Staff Assistant, on a part-time basis. The Internal Personnel Request that authorized her hire was signed by Ann Schneider as Director of Finance and Administration.

Employee 1 received two performance evaluations over the course of two years. The summary of her actual achievements was the same in both evaluations. These achievements included performing the duties of a receptionist for District 7, verifying credentials, ensuring visitors sign in, operating the telephone, and managing the mail.

T. Interviews of the Office of the Governor Chiefs of Staff and Deputy Chief of Staff

The OEIG also interviewed current and former Office of the Governor Chiefs of Staff and Deputy Chief of Staffs about IDOT's hiring practices as they related to Staff Assistants. Interviewed were Deputy Chief of Staff Sean O'Shea, Chief of Staff Ryan Croke, and former Chief of Staff Jerry Stermer.[135]

1. Chief of Staff Jerry Stermer

Former Chief of Staff Jerry Stermer discussed with OEIG investigators the role of the Office of the Governor in relation to IDOT's practice of hiring candidates as *Rutan*-exempt Staff Assistants, but assigning them the duties of *Rutan*-covered positions. As discussed earlier, Mr. Stermer served as Chief of Staff from February 2009 until September 2010. Mr. Stermer said that he was generally aware of the position at IDOT known as Staff Assistant, but did not know the duties of the position in any detail. He was shown a Staff Assistant position description but did not recall ever seeing one when he was Chief of Staff.

Investigators asked Mr. Stermer if he was aware that IDOT increased the number of Staff Assistant positions over time, from twenty Staff Assistant position in 2004 to sixty-seven Staff Assistant positions by 2014. Mr. Stermer replied that he was not aware. Investigators asked Mr. Stermer if he was aware of the increase in Staff Assistant positions that occurred specifically

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[135] Investigators also obtained documents from the Office of the Governor. Included were multiple versions of a document maintained by IDOT Titled "Rutan-Exempt ePARs for IDOT...Lavin List..." (Lavin List). The Lavin List is a list of all IDOT *Rutan*-Exempt ePARs IDOT maintained reflecting *Rutan*-exempt candidates for hire that were pending approval by former Chief of Staff Jack Lavin or a Deputy Chief of Staff. A review of the Lavin List summary description of the IDOT position of "Project Manager," appears very similar to the "Staff Assistant" position description. Also included with the documents was an e-mail from Better Government Association Investigator Patrick McCraney sent to an IDOT employee on June 19, 2013 seeking certain IDOT documents that read in part: "The BGA wants me to wrap the story this week. I still need answers to the following questions...Thanks. I really need answers to this stuff today. Otherwise, we'll find these people with a camera rolling."

while he was the Chief of Staff. Mr. Stermer responded that he was not specifically aware of the increase, but that he had a conversation with the Secretary of IDOT during that time and was supportive of the agency creating additional positions because of increased responsibilities imposed on the agency by federal stimulus funding and an Illinois capital bill. However, he did not recall having conversations about Staff Assistants specifically.

Mr. Stermer was asked if he was ever aware that IDOT hired candidates as *Rutan*-exempt Staff Assistants, but had them perform the duties and responsibilities of a *Rutan*-covered position. Mr. Stermer replied, "No." Mr. Stermer was asked if he was aware that IDOT hired *Rutan*-exempt Staff Assistants and transferred them into *Rutan*-covered positions without going through the *Rutan* hiring process. Mr. Stermer replied, "No."

Mr. Stermer confirmed that an agency is responsible for ensuring that employees in *Rutan*-exempt positions perform the duties of the position and not those of a *Rutan*-covered position. When asked who at the agency would be responsible, Mr. Stermer replied that he did not know who exactly was responsible, but assumed it would include the district managers and the human resources or personnel departments. Mr. Stermer was asked if the agency bore responsibility for transferring a *Rutan*-exempt Staff Assistant into a *Rutan*-covered position without going through the *Rutan* hiring process. Mr. Stermer replied, "Yes," but said he did not know what the process should be when he was asked if such a practice was appropriate.

2. Chief of Staff Ryan Croke

Chief of Staff Ryan Croke was interviewed regarding the role of the Office of the Governor in relation to IDOT's practice of hiring candidates as *Rutan*-exempt Staff Assistants. As earlier discussed, Mr. Croke is the current Chief of Staff, a position he has held since October 2013. Mr. Croke explained that the Office of the Governor plays no role in the initial drafting of agency position descriptions. He also noted that the Office of the Governor is not involved in determining whether a given position is *Rutan*-covered or *Rutan*-exempt, as this is a function belonging to CMS.

After being shown an IDOT position description for a Staff Assistant position, Mr. Croke informed investigators he had never seen a Staff Assistant position description before. When asked if he had to approve all *Rutan*-exempt hires, Mr. Croke agreed and said that his understanding of the function of a given position typically comes from the position's title and the short description of the position provided on an ePAR. He further explained that he reviews résumés and relies heavily on the agency Director and the Deputy Chiefs of Staff to review a candidate's credentials.

Mr. Croke was asked if he approved ePARs with an understanding that the candidate being hired for the particular position would perform the duties of the position as set forth in the ePAR description. Mr. Croke confirmed that this was his understanding. He was then asked if he ever approved an ePAR for a *Rutan*-exempt hire knowing that the candidate would not perform any of the duties of the position. Mr. Croke responded, "No," and explained, "[I]f what you mean is, have I ever knowingly approved an ePAR or approved the hiring of somebody into a position that would not cover any of the duties that the agency described, of course not."

Mr. Croke was asked if he ever directed IDOT to create Staff Assistant positions. He responded, "No." In addition, Mr. Croke stated that he was not aware that IDOT had transferred *Rutan*-exempt Staff Assistants into *Rutan*-covered positions without going through the *Rutan* hiring process. He was also not aware that IDOT transferred Employee 9 into a newly established Staff Assistant position prior to IDOT receiving a *Rutan* determination from CMS. He was similarly not aware that Employee 9 remained in that position after CMS determined the position to be *Rutan*-covered.

When asked who had the responsibility to ensure that a candidate hired into a *Rutan*-exempt position, upon approval from the Office of the Governor, was actually performing the duties of the position, Mr. Croke replied, "[t]o me, ultimately, that's the responsibility of the agency that's presenting the information to the next levels of approval that are required." Mr. Croke stated that he was not sure which specific person was responsible for ensuring that *Rutan*-exempt Staff Assistants performed the duties of their position descriptions, but said that there was a Human Resources apparatus, a legal apparatus, and an upper management apparatus that would be responsible for these types of problems.

Finally, Mr. Croke verified that during his tenure as Chief of Staff, he was not aware that he was approving the hire of *Rutan*-exempt Staff Assistants who would then perform duties unrelated to their position descriptions. He confirmed that if the Office of the Governor had known that this was occurring, the facts would be reviewed and appropriate action would be taken. Mr. Croke asserted, "You know, if there's any meddling in the *Rutan* process, not just in the Office of the Governor, but in any of the agencies that are accountable to the Governor, you know, we take that very seriously."

3. Deputy Chief of Staff Sean O'Shea

On May 27, 2014, OEIG investigators interviewed Deputy Chief of Staff Sean O'Shea. Mr. O'Shea, who has held his Deputy Chief of Staff position since approximately July 2011, and reports to the Chief of Staff. One of the agencies that Mr. O'Shea is assigned to work with is IDOT; therefore, investigators questioned Mr. O'Shea about IDOT's practice of hiring candidates as *Rutan*-exempt Staff Assistants, but assigning them the duties of *Rutan*-covered positions.

Mr. O'Shea was aware of the role of the Office of the Governor in assisting an agency fill a *Rutan*-exempt position, stating that the Office of the Governor has to approve all *Rutan*-exempt hires and that approval of a *Rutan*-exempt hire starts with an agency, goes to the Office of the Governor of Management and Budget, and ends with the Governor's Chief of Staff. According to Mr. O'Shea, as of 2013, the Deputy Chief of Staff also has to authorize a *Rutan*-exempt hire by clicking an "approve" or "deny" button in the ePAR system.

When asked if the Office of the Governor takes any steps to ensure that once a candidate is hired he or she will perform the duties of the *Rutan*-exempt position, Mr. O'Shea replied, "I can't recall anything I would do to make sure that they were doing their jobs. I just - -, once they were approved, I just assumed they were doing those duties that were in the job description." In response to questions about how the Office of the Governor determines whether a candidate is qualified for a *Rutan*-exempt position, Mr. O'Shea said that the Office of the Governor accepts

the agency's representation as to whether the candidate is qualified for the *Rutan*-exempt position.

With respect to IDOT's practice of hiring candidates as *Rutan*-exempt Staff Assistants but assigning them the duties of *Rutan*-covered positions, Mr. O'Shea informed OEIG investigators that the Office of the Governor initiated an internal investigation of the Staff Assistant positions, near the end of 2013, following the receipt of a FOIA request from the Better Government Association. According to Mr. O'Shea, lawyers with the Office of the Governor interviewed employees in the Staff Assistant position, determined what duties they were actually performing, and resubmitted their positions to CMS for a *Rutan* determination based on the actual duties being performed. Mr. O'Shea said that the investigation revealed that some Staff Assistants were not doing the duties of the original Staff Assistant position descriptions.

Investigators then asked Mr. O'Shea about specific IDOT practices related to Staff Assistants. Asked if he was aware that *Rutan*-exempt Staff Assistants were reporting to *Rutan*-covered supervisors, Mr. O'Shea replied, "I'm not sure." Asked if he was aware that *Rutan*-exempt Staff Assistants had been transferred into *Rutan*-covered positions without going through the *Rutan* hiring process, Mr. O'Shea replied that he became aware that this practice occurred after the internal investigation was done, but did not recall knowing about the practice prior to the internal investigation.

Mr. O'Shea was asked who was responsible if it was determined that: IDOT employees in the Staff Assistant position were performing duties unrelated to the position descriptions, IDOT employees were being transferred from *Rutan*-exempt positions into *Rutan*-covered positions without going through the *Rutan* hiring process, and IDOT *Rutan*-exempt employees were reporting to *Rutan*-covered supervisors. Mr. O'Shea responded, "The agency [], ultimately the Directors and the supervisors that are in charge of personnel and running the agency."

U. Senior Personnel Interviews Related to Investigative Results

IDOT's former Director of Finance and Administration and former Bureau Chief of Personnel Management, Matt Hughes, as well as former Bureau Chief of Personnel Management and current Deputy Director of Finance and Administration Mike Woods, Jr. were interviewed regarding a variety of matters under investigation, including:

1. their understanding or definition of the term "technical";
2. their reason(s) or explanation(s) for use of Staff Assistants;
3. their knowledge involving relatives hired as Staff Assistants;
4. their knowledge of how Staff Assistants were evaluated; and
5. their legal basis for use of Staff Assistant.

Below are statements provided to investigators.

1. Understanding or Definition of the Term "Technical"

As noted above, investigators discovered that in 2005, the Illinois Office of Internal Audit had performed an audit for "Non-Code Personnel" of the Illinois Department of Transportation. Specifically, as set forth above, in 2005, auditors had found that 60 out of 65

positions in Technical Manager, Management Technician, Realty Specialist, and Urban Planner title groups, or 92.31%, were comparable to Personnel Code positions. In other words, individuals in an IDOT technical position were discovered performing duties similar to persons in positions covered by Personnel Code. The auditor recommended the following:

> [T]he Illinois Department of Transportation and CMS work in conjunction to review all positions classified as technical or engineering in the Technical Manager and Management Technician job classifications to ensure that the positions are sufficiently technical to be classified as non-code. Positions that are not considered exempt should be reclassified as coded employees and remedial corrective action should be taken to ensure compliance with the Personnel Code.

IDOT agreed with the auditor's recommendation. Thus, in light of the fact that *all* Staff Assistants were classified as Technical Manager positions and because in 2005, auditors had recommended that Technical Manager positions be reviewed, investigators asked Mike Woods, Jr., and Matt Hughes how IDOT defined the term "technical."

a. Former Bureau Chief of Personnel Management and Current Deputy Director of Finance and Administration Mike Woods, Jr.

During his interview, former Bureau Chief of Personnel Management and current Deputy Director of Finance and Administration Mike Woods, Jr. was asked whether all employees who filled "technical" positions performed work he would consider technical in nature.[136] In response, he said, "I would say no." When asked if IDOT defines "technical," Mr. Woods stated, "I believe it probably does," but also said, "I don't know the definition. I'm not quite sure."

Mr. Woods was asked how IDOT determines whether a position is deemed technical (not covered by the Personnel Code) or covered by the Personnel Code. Although Mr. Woods did not directly respond to the question, he did say he thought it was easier to distinguish between a technical position and a Code-covered position as the position level goes up (increases), stating:

> "Well, [], there is probably some on the, [] higher level of positions, as the positions go up, it's easier to distinguish between a technical and a personnel or a CMS code title. Just because the level of, [], whether it's technical expertise or professionalism as far as like, for example, like CE's[137] [], that's clearly distinguishable."

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[136] A review of IPRs, ePARs, and Notices of Personnel Action reveal that Mr. Woods' signature as Bureau Chief of Personnel Management appeared on a number of executed personnel documents relating to multiple Staff Assistants, including: Employee 166, Employee 163, Employee 4, Employee 179, Employee 214, Employee 176, Employee 160, Employee 184, Employee 181, Employee 139, Employee 169, Employee 157, Employee 185, Employee 204, Employee 172, Employee 174, Employee 177, Employee 161, Employee 212, Employee 155, Employee 205, Employee 128, and Employee 207.

[137] A CE is a reference to a Civil Engineer.

In light of his explanation, Mr. Woods was asked whether he knew how lower-level IDOT technical positions are determined. In response, Mr. Woods said IDOT has not created many "code titles."

Mr. Woods stated he was responsible for determining the proper classification for technical manager positions and added that when classifying a position, he would "err on the side of using a technical title versus a CMS code title." When asked whether he kept track of the number of Technical Position Classification Requests that he approved to create the position of Staff Assistant, Mr. Woods told investigators that he did not kept track of it "until the last couple of years." Mr. Woods was shown the 2005 Office of Internal Audit findings relating to the "Non-Code Personnel" of the Department of Transportation. The cover letter to the audit revealed that a copy of the audit report had been given to a number of senior IDOT staff, including former Bureau Chief of Personnel Management Scott Doubet (Mr. Woods' predecessor), as well as former IDOT Secretary Timothy Martin and former Director of Finance and Administration Robert Millette, who was Secretary Schneider's predecessor when she held the same position. The OEIG directed Mr. Woods' attention to the internal auditor's recommendation that:

> [T]he Illinois Department of Transportation and CMS work in conjunction to review *all* position classifications as *technical* or engineering in the Technical Manager or Manager Technician job classifications to ensure that the positions are *sufficiently technical* to be classified as non-code (emphasis added). Mr. Woods also was also shown IDOT's response to the internal auditor's recommendation, in which IDOT stated:

Mr. Woods was then directed to IDOT's response to the internal auditor's recommendation, in which IDOT stated:

> The Department agrees with the finding. . . . [T]he Department agrees to review each new establishment to verify that functions fall within the correct classification.

After reviewing the recommendation, and IDOT's response, Mr. Woods informed investigators that he was not aware of IDOT ever having implemented that recommendation.

Mr. Woods was then shown Staff Assistant position descriptions that had the exact same duties and responsibilities but differing technical levels. In response, Mr. Woods stated he was aware that the technical manager Staff Assistants had basically the same position description but stated he should have looked "closer" at the technical levels. He added that it "should have been a requirement."

Similarly, Mr. Woods was asked about the reallocation of two Staff Assistants Employee 121 and Employee 120, who were reallocated from Technical Manager III positions to Technical Manager V positions. Mr. Woods stated there was "no justification" for the reallocation. Mr. Woods added that he did not know Employee 121 was Illinois State Senator Kimberly Lightford's husband at the time of the reallocation.

b. Former Director of Finance and Administration and Former Bureau Chief of Personnel Management Matt Hughes

During his interview, IDOT's former Director of Finance and Administration and former Bureau Chief of Personnel Management Matt Hughes was also asked about IDOT's use of the term technical.[138] Mr. Hughes confirmed that IDOT technical positions are fully exempt from the Personnel Code (non-code). When asked where or how IDOT defined a technical position, Mr. Hughes said it was defined by IDOT's Organization Analysis and Compensation Section, but also said he was not aware of the existence of any IDOT document that defined a technical position. Mr. Hughes also informed investigators that he was unaware if IDOT's Personnel Policies Manual or any other policy which stated a technical position required the employee in the technical position to have specialized knowledge, skill or the like.

Investigators asked Mr. Hughes if he was able to explain what made IDOT Staff Assistant positions technical in nature. According to Mr. Hughes, to his knowledge, Staff Assistant positions were technical because of policy and confidentiality issues set forth in their job description. Mr. Hughes, however, told investigators he was not aware of who at IDOT made the determination to classify Staff Assistant positions as technical positions.

2. Reason(s) or Explanation(s) for Use of Staff Assistants

Investigators also discovered that after 2003, the number of IDOT Staff Assistants increased over time. Investigators asked Mike Woods, Jr. and Matt Hughes questions relating to the reasons for IDOT's use of Staff Assistants.

a. Former Bureau Chief of Personnel Management and Current Deputy Director of Finance and Administration Mike Woods, Jr.

When asked about IDOT's use of Staff Assistants, former Bureau Chief of Personnel Management and current Deputy Director of Finance and Administration Mike Woods, Jr. told investigators that: 1) almost all Staff Assistants were performing administrative, ministerial, or other duties that were not consistent with those belonging to a *Rutan*-exempt position; 2) Staff Assistants were hired into *Rutan*-exempt positions because they could be hired without going through the *Rutan* hiring process, and therefore could be hired more quickly; and 3) the practice of hiring *Rutan*-exempt Staff Assistants to perform *Rutan*-covered duties was not a "best practice."

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[138] A review of IPRs, ePARs, and Notices of Personnel Action reveal that Mr. Hughes' signature as Bureau Chief of Personnel Management appeared on a number of executed personnel documents relating to multiple Staff Assistants, including: Employee 152, Employee 105, Employee 109, Employee 25, Employee 125, Employee 78, Employee 9, Employee 203, Employee 164, Employee 180, Employee 167, Employee 35, Employee 175, Employee 137, Employee 173, Employee 48, Employee 150, Employee 159, Employee 2, Employee 183, Employee 151, Employee 211, Employee 140, Employee 98, Employee 130, and Employee 131. As Director of Finance and Administration, Mr. Hughes signed a number of documents relating to the hire of multiple Staff Assistants, including: Employee 166, Employee 163, Employee 4, Employee 179, Employee 214, Employee 176, Employee 160, Employee 184, Employee 181, Employee 139, Employee 169, Employee 157, Employee 185, Employee 204, Employee 172, Employee 174, Employee 177, Employee 161, Employee 128, Employee 207, Employee 155, Employee 212, and Employee 205.

i. Staff Assistants Performed Duties Not Consistent with those belonging to a *Rutan*-Exempt Position

Mr. Woods stated that almost all Staff Assistants were performing administrative, ministerial, or other duties that were not consistent with those belonging to a *Rutan*-exempt position or that constituted "technical work" and explained that a large number of *Rutan*-exempt Staff Assistants do not perform the duties outlined in the *Rutan*-exempt Staff Assistant position description; rather, they perform only "other duties as assigned." As a result, Mr. Woods stated "a lot" of the *Rutan*-exempt Staff Assistant position descriptions are probably inaccurate as to the duties the Staff Assistant is actually performing.

ii. Staff Assistants were Hired into *Rutan*-exempt Positions because they could be Hired More Quickly

Mr. Woods attributed this practice of hiring *Rutan*-exempt Staff Assistants to perform duties not consistent with the position to the fact that it took eight months to hire someone into a *Rutan*-covered position, that IDOT had been actively hiring people into positions to keep up with attrition, and agreed that *Rutan*-exempt Staff Assistants were hired to "fill holes." Mr. Woods said that in the four years prior to 2012, IDOT hired 1,500 employees but in 2011, IDOT lost 600 employees while hiring 500. Mr. Woods also said that if the *Rutan* hiring process could be completed in three to four months, as opposed to eight, he would require the requesting Office or Bureau to wait, rather than send a *Rutan*-exempt Staff Assistant to meet the desired staffing need. According to Mr. Woods, the OEIG investigation caused IDOT's hiring of Staff Assistants to slow down.

Similarly, Mr. Woods was asked whether IDOT's decision to classify Staff Assistants as Technical Managers had anything to do with IDOT's growing use of the position. In response, Mr. Woods stated that using the Technical Manager classification made the process much easier and more efficient than having a "CMS code title." Mr. Woods was shown a Technical Position Classification Request with a corresponding Staff Assistant position description that allowed for the hire of five Staff Assistants in the Office of Finance and Administration. In response, Mr. Woods stated he could not recall why IDOT needed five Staff Assistants in performing the same duties in the Office of Finance and Administration. Mr. Woods stated it may have been a situation where IDOT could bring Staff Assistants on quicker than they could fill other positions.

iii. The practice of Hiring *Rutan*-Exempt Staff Assistants to Perform *Rutan*-Covered Duties was not a "Best Practice"

Mr. Woods also told investigators that the use of Staff Assistants to fill *Rutan*-covered positions was not a long-term solution and added that IDOT thought it was an acceptable practice to hire so many Staff Assistants. He stated that having *Rutan*-exempt employees performing the work of a *Rutan*-covered position was more problematic if done to address staffing needs permanently, as opposed to temporarily. Although Mr. Woods said that having employees performing duties outside of their position descriptions was not a "best practice," he did not regard the practice as inappropriate because the work was based on operational need rooted in IDOT's staffing shortage. Moreover, Mr. Woods agreed that persons hired by IDOT, including Staff Assistants, had to be qualified for the position and could not be placed into the position simply based on a political connection.

Investigators asked Mr. Woods about an email he sent to Matt Hughes and Secretary Schneider in early 2012 in which he wrote that using a Staff Assistant position to hire an employee to temporarily do the duties of another position was doable, but not ideal. Specifically, Mr. Woods was asked why he did not believe this was an ideal use of a Staff Assistant position, and he responded by stating:

> "[I]t's knowing that the job - - the job functions that he'd be performing are not the job duties of a - - of - - while I don't think it - - while I didn't feel it was inappropriate, I didn't think it was, [], ideal."

Mr. Woods further elaborated that at least two reasons made this practice non-ideal; namely, the reporting structure would not be correct *and* the job duties of the position description would be different than the duties that the employee would actually perform.

b. Former Director of Finance and Administration and Former Bureau Chief of Personnel Management Matt Hughes

Former Director of Finance and Administration and former Bureau Chief of Personnel Management Matt Hughes was also questioned about IDOT's use of Staff Assistants. In response, Mr. Hughes explained: 1) Staff Assistants performed duties other than those contained in the Staff Assistant position description; 2) Staff Assistants were hired into *Rutan*-exempt positions because they could be hired more quickly; and 3) the practice of hiring *Rutan*-exempt employees to perform *Rutan*-covered duties was not a best practice. He also provided details concerning hiring of specific instances of Staff Assistants.

i. Staff Assistants Performed Duties other than those Contained in the Staff Assistant Position Description

Mr. Hughes stated that he knew Staff Assistants were performing duties other than those contained in the Staff Assistant position descriptions. When asked who at IDOT was responsible for ensuring that position descriptions are accurate, Mr. Hughes responded "the Bureau Chief, the supervisor of the area." When asked if he, as Director of Finance and Administration, bore any responsibility for ensuring that position descriptions were accurate, Mr. Hughes responded "yes." Investigators asked if he had specifically assigned any individual under his control to ensure position descriptions are accurate, Mr. Hughes responded "Personnel management...by expectation." Mr. Hughes then stated, "I haven't assigned necessarily [...] that's the expectation of the Bureau of Personnel Management that job descriptions are being updated and maintained properly."

ii. Staff Assistants were Hired into *Rutan*-Exempt Positions because they could be Hired More Quickly

When asked about the October 2009 staffing memo, Mr. Hughes told investigators that when the October 2009 staffing memo was sent, IDOT had received stimulus funding from the American Recovery and Reinvestment Act (ARRA) and funding from a capital bill. As a result, there was a need to increase administrative support in order to hire additional capital program delivery employees and highway maintainers (about 500). Mr. Hughes said he sought to hire *Rutan*-exempt Staff Assistants to conduct interviews because the hiring turn-around time was

much less for *Rutan*-exempt positions than it was for *Rutan*-covered positions. According to Mr. Hughes, it took about eight months to fill an entry-level *Rutan*-covered position, while he could fill a *Rutan*-exempt position in roughly half the time. Mr. Hughes stated that two persons (Employee 130 and Employee 131) were hired to assist with IDOT's hiring needs until the Interviewer position could be filled permanently through the *Rutan* hiring process. However, although IDOT could have hired persons on an emergency temporary basis, they did not, choosing instead to use the *Rutan*-exempt Staff Assistant position to meet the needs of the agency.

During his interview, Mr. Hughes stated that he wanted to briefly discuss the status of things at IDOT when he arrived in the Bureau of Personnel Management and informed investigators that when he became Bureau Chief of Personnel Management, the agency's headcount had dipped below 5,000 although IDOT had an authorized headcount of about 5,500. According to Mr. Hughes, as a result of the capital bill in the ARRA Stimulus Package which was delivered by the federal government to IDOT in approximately 2009, the agency was under a huge amount of strain as far as administrative support was concerned. Mr. Hughes also stated that he was under a deadline to get 179 Highway Maintainers hired, which meant almost double that number because of the attrition rate. According to Mr. Hughes, since that time IDOT has probably made over 4,000 personnel transactions and explained that all the while, the turn-around time on *Rutan*-covered hires was about eight months, from interview to offer. Mr. Hughes said in sum:

> "[W]e were operating under a huge demand in a very stressful environment, and needed to deliver some results on, on the hiring side on all fronts; procurement we needed equipment to support the people. It's been a very busy time at the Department. [], and I'd also say that with regards to the - - some of the matters you've discussed with me today, [], I was acting on advice of counsel at the time. We now have a new counsel."

Mr. Hughes told investigators that things had since improved on the hiring front.

Mr. Hughes was asked if he thought it was perfectly acceptable to hire and assign a *Rutan*-exempt Staff Assistant to perform *Rutan*-covered work in an area where IDOT needed help. In response, he stated:

> I agree that in cases in which we are short staffed and struggling to get staffing that [Staff Assistants] had helped out in certain other roles. Provided assistance.

Nevertheless, Mr. Hughes also stated that Staff Assistants could not be hired without Director of Finance and Administration and Bureau Chief of Personnel Management approval. However, when shown 48 IPRs he signed, in which individuals were hired into Staff Assistant positions, and asked whether he was aware that each of the 48 IPRs had the same justification, Mr. Hughes said he was not. In fact, Mr. Hughes was shown an email he sent in August 2010 to Administrative Support Section Manager Employee 215 regarding an employee who had been hired as a Staff Assistant in which he wrote:

> "She is in a staff assistant position because it's Rutan-Exempt. It's perfectly acceptable to hire and assign this type of title to an area in which we need help."

After being shown the email, Mr. Hughes told investigators that the email statement was based on advice he received from IDOT General Counsel Ellen Schanzle-Haskins.

iii. The Practice of Hiring *Rutan*-Exempt Employees to Perform *Rutan*-Covered Duties was not a Best Practice

With respect to hiring *Rutan*-exempt Staff Assistants and having them perform duties unrelated to those of the position description, Mr. Hughes told investigators, "Well, I don't think it's the best practice, and I would like to be better at what we do." Mr. Hughes was asked why he had not fixed the problem of Staff Assistants working outside their title in his own division if he perceived the issue to not be a "best practice." In response, he stated, "Well, I actually believe that - - I don't have a good answer for that." Mr. Hughes was asked if he ever had concern that this practice violated State law or the requirements of *Rutan*. Mr. Hughes replied, "No, I didn't have that concern."

iv. Specific Staff Assistants Hired

Mr. Hughes was also asked about the Staff Assistants detailed below:

Staff Assistant Employee 105

Mr. Hughes was asked if he was aware of the circumstances involving Staff Assistant Employee 105. Specifically, Mr. Hughes was asked if he was aware that Employee 105 had performed the duties of a *Rutan*-covered Reproduction Services Manager for the entirety of his employment at IDOT, despite being a *Rutan*-exempt Staff Assistant.

Mr. Hughes said he was not specifically aware of the duties that Employee 105 actually performed at the District 1 Copy Center, but was not surprised to learn that these duties belonged to a *Rutan*-covered position. When asked why this practice did not surprise him, Mr. Hughes responded, "because it happens in these cases."

Staff Assistant Employee 52

Mr. Hughes was also asked about Staff Assistant Employee 52 working in a position title that did not exist at IDOT, namely Property Maintenance Specialist. In response, Mr. Hughes said he was "not real happy about this particular case" and said that it reflected "poorly on the Department." Mr. Hughes said that the Office of Finance and Administration struggled with overseeing all that occurs at administrative bureaus in other offices because those administrative bureaus do not report directly to the Office of Finance and Administration.

Mr. Hughes also stated entities in the Department that have been, sort of allowed over the course of 30 years to operate as sort of entities "in and of their own." To resolve these types of issues, Mr. Hughes said he initiated the hiring of a consulting firm to make recommendations on consolidating administrative, business, procurement, and personnel services into a single office, the Office of Finance and Administration.

Staff Assistant Employee 137

Mr. Hughes was asked questions concerning Staff Assistant Employee 137's employment. Mr. Hughes said he did not know why Employee 137 received such a large salary, but reasoned, "in most cases it's justified by their previous employment or their W-2 that they've given to us."

Mr. Hughes said that he assumed the W-2 from Employee 137's former employer drove the pay level up to a Technical Manager VI. Investigators could not locate a W-2 from a previous employer in Employee 137's personnel file.[139]

Staff Assistant Employee 123

Mr. Hughes was also asked about Staff Assistant Employee 123. A review of Employee 123's IDOT personnel file revealed that she was a Staff Assistant in the Office of Finance and Administration from August 2010 until November 2011. According to Mr. Hughes, Employee 123 was assigned to the payroll area due to staffing shortages created because payroll "is a tough position to fill."

3. Knowledge Involving Relatives Hired as Staff Assistants

During the course of this investigation, investigators discovered that a number of Staff Assistants had affiliations with senior IDOT staff including Secretary Schneider, Matt Hughes, Mike Woods, Jr., and former General Counsel Ellen Schanzle-Haskins. Below is a summary of information Mr. Woods and Mr. Hughes provided investigators. Information Ms. Schanzle-Haskins and Secretary Schneider provided investigators about their relatives is set forth in subsections that follow.

a. Former Bureau Chief of Personnel Management and Current Deputy Director of Finance and Administration Mike Woods, Jr.

Former Bureau Chief of Personnel Management and current Deputy Director of Finance and Administration Mike Woods, Jr. stated that he and Staff Assistant Employee 225 began dating in December 2007. At that time, he worked in the Office of the Governor and she was already a *Rutan*-exempt Staff Assistant and was Matt Hughes' personal assistant in the Bureau of Personnel Management. Mr. Woods said he and Employee 225 were married in July 2010 and on December 1, 2010, he became IDOT's Bureau Chief of Personnel Management after which his wife was moved out of the Bureau of Personnel Management and into the Division of Aeronautics.

According to Mr. Woods, while at the Division of Aeronautics, his wife worked in Administrative Services where she completed payroll duties, monitored employee timekeeping, and helped with labor relations issues. In that position, his wife acted as the Division of

[139] On February 21, 2014, investigators submitted a Request for Document to IDOT for proof of income Employee 137 may have submitted to IDOT. The only document IDOT produced was the ePAR that authorized his hire as a Staff Assistant. No W-2, pay stub, tax return, or other document reflecting income was produced.

Aeronautics' *Rutan*-covered Personnel Manager.[140] Mr. Woods said his wife did not directly report to him even though an OEIG review of personnel documents and organization charts indicated that she remained on the payroll of the Bureau of Personnel Management throughout her IDOT employment. Mr. Woods was asked why nothing in his wife's personnel file reflected that she had been moved to the Division of Aeronautics. In response, he stated that while it was not a great practice, not every lateral assignment is documented.

Investigators showed Mr. Woods a copy of IDOT's conflict of interest and nepotism policies and asked if the circumstances of his wife's employment violated those policies. In response, Mr. Woods informed investigators that:

- being the Bureau Chief of Personnel Management while his wife was a Staff Assistant in the Division of Aeronautics performing the duties of a Personnel Manager could be perceived as a conflict, but he did not deal with her directly while she worked in Aeronautics;
- his position could be viewed as a check on the Division of Aeronautics' administrative work;
- his wife continued to be paid by the Bureau of Personnel Management because IDOT would have had to go through the entire ePAR process to transfer her to Aeronautics;
- because IDOT did not transfer his wife to Aeronautics, on paper it appeared that she directly reported to him; and
- he recused himself from the IPR and hiring process any time that his wife applied for a transfer or promotion to a *Rutan*-covered position.

Finally, Mr. Woods stated that he did not recall having a conversation with the Office of Chief Counsel about any conflict of interest regarding his wife's employment.

b. Former Director of Finance and Administration and Former Bureau Chief of Personnel Management Matt Hughes

Former Director of Finance and Administration and former Bureau Chief of Personnel Management Matt Hughes was asked about his wife and Staff Assistant Employee 88's employment and his sister-in-law and Staff Assistant Employee 224's employment.

i. Wife Employee 88

Mr. Hughes told investigators he did not believe that his wife's employment ever created a real or perceived conflict of interest because they did not work in the same division. He further stated that he required the Deputy Director of Finance and Administration Tony Small to handle any personnel transactions from District 6 that came through the central office.

Mr. Hughes was shown copies of IDOT's conflict of interest and nepotism policies and asked if the circumstances of Employee 88's hiring or employment violated those policies. In response, Mr. Hughes said that:

[140] Employee 225 continued in this position until August 2011 when she accepted a position with the Illinois Department of Labor.

- he and Employee 88 began dating sometime after 2005 and were married in August 2011;
- Employee 88 never reported to him;
- he was not involved in Employee 88's transfer to a position in the Office of Planning and Programming;
- he did not report his relationship with Employee 88 to the Chief Counsel's Office, submit a recusal letter, or take any steps to insulate himself from real or apparent conflicts of interest relating to her employment because by transferring to another Office, they had separated their interaction at work;
- he did not believe that his or Employee 88's current positions created a real or apparent conflict of interest because "we're in different Divisions";
- because of Employee 88's role in personnel matters in District 6, he has asked his Deputy Director to handle District 6 personnel transactions, but he still sees District 6 ePARs; and
- he believes that he may have emailed the Chief Counsel about the District 6 personnel matters arrangement and that these steps alleviate any potential violation of IDOT policy.

ii. Sister-In-Law Employee 224

Mr. Hughes also confirmed that Staff Assistant Employee 224 is his sister-in-law. Mr. Hughes said that as an Administrative Organizational Manager for District 1, she is responsible for personnel functions, which is comparable to the position his wife holds in District 6. When asked if he had taken any steps to insulate himself from review and approval of Employee 224's work, Mr. Hughes said that:

- he has not because Employee 224 is "at a lower level of the organization;" and
- he has never reported his relationship with Employee 224 to the Office of Chief Counsel, has not completed a recusal letter, and has not taken any other steps to separate his work from Employee 224's.

Mr. Hughes also stated that he has not notified or sought the advice of the Office of Chief Counsel or the Secretary as it relates to his relationship with Employee 224.

4. Knowledge of How Staff Assistants were Evaluated

During the course of this investigation, investigators discovered that a number of staff assistants had been evaluated in working titles other than their Staff Assistant working titles during time periods when they served as Staff Assistants. Below is a summary of information Mike Woods, Jr. and Matt Hughes provided investigators regarding this subject matter.

a. Former Bureau Chief of Personnel Management and Current Deputy Director of Finance and Administration Mike Woods, Jr.

Former Bureau Chief of Personnel Management and current Deputy Director of Finance and Administration Mike Woods, Jr. was provided a copy of Chapter 5 of the IDOT Personnel Policy Manual and was directed to Section 5-7, and asked if that Section required evaluations to

be annually completed and reference the employee's position description. In response, Mr. Woods said employees should be evaluated annually, but could be evaluated on accomplishments, such as work ethic, that are not specifically included in their position description.

Investigators then provided Mr. Woods with a copy of a blank IDOT performance evaluation and directed him to the statement "performance goals and objectives based on assigned job description accountabilities were discussed for the next reporting period." Investigators asked Mr. Woods if that statement indicated that the performance standards outlined in the evaluated employee's position description should relate to the content of the evaluation. Mr. Woods responded that performance standards and evaluations could be related and the employee's core duties should be reflected in his or her performance evaluation. However, Mr. Woods reiterated that an employee could be evaluated based on the completion of other duties.

Mr. Woods stated that evaluating an employee on criteria not included in his or her position description does not comply with IDOT policy, but is not necessarily improper. Mr. Woods said position descriptions should "typically" be used as the basis for employee performance evaluations because the position descriptions should reflect the duties that the employee performs. Mr. Woods said *Rutan*-exempt Staff Assistants might not be evaluated based on the content of their position descriptions.

b. Former Director of Finance and Administration and Former Bureau Chief of Personnel Management Matt Hughes

Former Director of Finance and Administration and former Bureau Chief of Personnel Management Matt Hughes informed investigators that employees in his Division are evaluated "on an annual basis ... and in accordance with the collective bargaining language." Investigators provided Mr. Hughes with a copy of Section 5-7 of the IDOT Personnel Policy Manual, which states that employee performance standards are based on assigned job description accountabilities. Investigators then asked Mr. Hughes if he reviews an employee's position description when completing his or her evaluations. In response, Mr. Hughes said "that's possibly part of it." When asked if he evaluated employees in terms of the information contained in their job description or the work they actually performed, Mr. Hughes responded "probably a bit of both." Mr. Hughes stated that he knew that the Collective Bargaining Agreement between IDOT and Teamsters Local 916 governed the manner in which IDOT evaluated its Teamsters employees. Mr. Hughes also said he was not aware of any side letter that altered that language with respect to *Rutan*-exempt Teamsters employees.

When asked who is responsible for ensuring employee evaluations are accurate, Mr. Hughes responded, "[t]he manager obviously is asked to be responsible for evaluating their subordinate accurately." Mr. Hughes said he is responsible for accurately evaluating his subordinates. When asked if he had any reason to believe IDOT employees were not evaluated based on their position descriptions, Mr. Hughes said he "wouldn't be surprised if some of the review is being done for things that are not germane." Mr. Hughes explained that "when you assess somebody and what they've been doing for you for the period of time covered by the review, certainly you're going to say they did a good job on that project or dealing with that matter at my request." Mr. Hughes was then asked if an employee who completed duties wholly

unrelated to his or her position description would have an evaluation that may not be related to his or her principal accountabilities, Mr. Hughes said "that may be true." In his second interview, Mr. Hughes initially stated that he was not aware of Staff Assistants being evaluated on working titles that were different from position description. However, when asked about the evaluation involving Staff Assistant Employee 52, Mr. Hughes told investigators he was aware Staff Assistants were evaluated under different working titles.

5. Senior IDOT Staff's Legal Basis for use of Staff Assistant

a. Former Bureau Chief of Personnel Management and Current Deputy Director of Finance and Administration Mike Woods, Jr.

Former Bureau Chief of Personnel Management and Current Deputy Director of Finance and Administration Mike Woods, Jr. explained that there were discussions at IDOT concerning the propriety of *Rutan*-exempt employees performing duties outside of their position descriptions before the OEIG investigation began. Mr. Woods specifically recalled having a short conversation with former Chief Counsel Ellen Schanzle-Haskins and former Secretary of Transportation Gary Hannig regarding this matter. However, Mr. Woods said that no changes were made to the duties that the *Rutan*-exempt employees were doing after these conversations concluded.

Mr. Woods said that the decision to hire a *Rutan*-exempt Staff Assistant is ultimately that of the Secretary of Transportation, because he or she has final ePAR approval, and that Ann Schneider, as current Secretary of Transportation, was aware of the individuals hired into *Rutan*-exempt positions.

b. Former Director of Finance and Administration and Former Bureau Chief of Personnel Management Matt Hughes

Former Director of Finance and Administration and former Bureau Chief of Personnel Management Matt Hughes told investigators that when the OEIG investigation of IDOT began he had concerns that the OEIG would find the practice of having employees performing jobs unrelated to those defined in their position description to be inappropriate. Consequently, he said he brought the issue to the attention of former Chief Counsel Ellen Schanzle-Haskins, former Secretary of Transportation Gary Hannig, and current Secretary of Transportation Ann Schneider.

Specifically, Mr. Hughes stated that he had conversations with former IDOT Chief Counsel Ms. Schanzle-Haskins about *Rutan*-exempt Staff Assistants "working outside their job title" because he "was concerned that [it] may be occurring." When asked what prompted that concern, Mr. Hughes said "[t]he fact that I know individuals have been asked to help out ..." Mr. Hughes also said he "was concerned that there were Staff Assistants that were doing other duties." Investigators asked Mr. Hughes if the *Rutan*-exempt Staff Assistants in his Division exclusively performing "other duties as assigned;" Mr. Hughes responded "yeah."

V. Former IDOT General Counsel Ellen Schanzle-Haskins

Investigators interviewed IDOT's former General Counsel Ellen Schanzle-Haskins about a variety of subjects. Below is information Ms. Schanzle-Haskins provided investigators.

1. Staff Assistant and Sister-in-Law Employee 1

Ms. Schanzle-Haskins told investigators that she was looking for a job for her sister-in-law Employee 1 and contacted "a couple of [friends] in state government" to "help her find a *Rutan*-exempt position at another State agency." Ms. Schanzle-Haskins said that she contacted, among others "Scott Doubet [who] was at IDOT at the time." According to Ms. Schanzle-Haskins, Mr. Doubet "indicated that there would be . . . a possibility of a position as an Assistant to the Admin Manager in ... Effingham." Ms. Schanzle-Haskins said she did not want Employee 1 working at IDOT, but Mr. Doubet convinced her "that she would be in Effingham and [that did not] violate the nepotism policy..." Ms. Schanzle-Haskins also said, thereafter, she "reluctantly agreed" to have IDOT hire Employee 1 and recused herself from any involvement in Employee 1's employment. Ms. Schanzle-Haskins said she spoke with former IDOT Secretary Milton Sees regarding Employee 1's potential IDOT employment. When asked if, in the normal course of business as Chief Counsel, she would have been involved in filling an administrative position in District 7, Ms. Schanzle-Haskins said she would not have. Ms. Schanzle-Haskins said, ultimately, Mr. Sees was responsible for approving Employee 1's hiring.

According to Ms. Schanzle-Haskins, former Secretary Sees believed IDOT hiring Employee 1 was appropriate because "it was a *Rutan*-exempt job." When asked if she would be surprised to know that her sister-in-law was serving as a Switchboard Operator and was evaluated as a Switchboard Operator, Ms. Schanzle-Haskins said, "I didn't know that."

Ms. Schanzle-Haskins said that her sister-in-law, Employee 1 is employed in IDOT's District 7 office. When asked specific questions regarding Employee 1's employment, Ms. Schanzle-Haskins said that she:

> did not know Employee 1's position or duties, but knew that Employee 1 was in a *Rutan*-exempt position because she (Ms. Schanzle-Haskins) "was attempting to help her get a job back in 2008 and I would not help her get a job that was *Rutan*-covered."

Finally, Ms. Schanzle-Haskins said she believed that Employee 1 had the skill set to hold a *Rutan*-exempt position because "she had a degree in communications."

2. Staff Assistant Performance of Duties Unrelated to Position Description

Prior to her interview, Ms. Schanzle-Haskins provided investigators with a memo that she had said she wrote and circulated to IDOT senior staff on November 7, 2007.[141] In the memo, Ms. Schanzle-Haskins writes that no one at IDOT could interfere with *Rutan* interviews, try to influence the selection of *Rutan*-covered positions, consider political influence or activities when hiring someone into a *Rutan*-covered position, or otherwise bring pressure to ensure that political cronies or friends are hired into *Rutan*-covered positions. The memo concludes with the following statement: "If you know of *Rutan* violations, report to Office of Chief Counsel for

[141] *See* Appendix to Report at Exhibit 25.

Governor or Chief Counsel for IDOT or the Executive Inspector General or any other law enforcement office. You as IDOT management have a duty to report."

During her interview with the OEIG, Ms. Schanzle-Haskins affirmed her understanding, as set forth in her 2007 memo, that an agency could not consider political affiliation in its decision to hire, fire, promote, transfer, or recall a *Rutan*-covered employee. Investigators asked Ms. Schanzle-Haskins what type of duties make a State position *Rutan*-exempt and she answered by stating that if the position had duties involving policy-making, policy-enforcing, or was one in which the employee had a lot of contact with outside entities, it could be *Rutan*-exempt. She further stated that if the employee was in a low-level position, he could be *Rutan*-exempt if his duties involved confidentiality such as having access to the thoughts of a *Rutan*-exempt superior.

Ms. Schanzle-Haskins told investigators that it would not surprise her to learn that IDOT hired employees into a specific position, but immediately had them perform the duties of another position. Regarding this practice, Ms. Schanzle-Haskins remarked, "If you're hired into a *Rutan*-exempt position, and for operational needs you're needed to do something else, I don't think there's a problem and I don't think the case law says that." Ms. Schanzle-Haskins elaborated on the subject, "OK, so you know, is it good policy for somebody to come in as a *Rutan*-exempt and immediately start doing other duties? Probably not a good policy, but is it a *Rutan* violation? I don't think it is." She characterized this type of practice as a collective bargaining issue, or an unfair labor practice, but not a *Rutan* violation.

3. Transferring of Employees into *Rutan*-covered Positions and Related Topics

Ellen Schanzle-Haskins also told investigators that prior to Milton Sees becoming Secretary of IDOT in 2007, various members of management did not believe that the practice of summarily transferring employees from *Rutan*-exempt positions into *Rutan*-covered positions constituted a *Rutan* violation. However, Ms. Schanzle-Haskins said that after January 2007, IDOT altered policy to require that all employees undergo the *Rutan* hiring process if they wished to transfer from a *Rutan*-exempt position to a *Rutan*-covered position.[142] Based on this information, the OEIG requested from IDOT any document that memorialized this change in policy. In response, IDOT provided the OEIG with an email sent in September 2003 at the request of former Bureau Chief of Personnel Management Jacob Miller to various members of management. The email stated in relevant part, "[P]lease be reminded that transfers from Rutan Exempt positions to Rutan Covered positions will not be approved. . . ." This September 2003 email was the only document that IDOT could produce to show that it had a formal policy prohibiting transfers of employees from *Rutan*-exempt positions to *Rutan*-covered positions without going through the *Rutan* hiring process.

Investigators also asked Ms. Schanzle-Haskins if IDOT could legally treat a *Rutan*-covered position like a *Rutan*-exempt position by filling it without going through the *Rutan* hiring procedures. Ms. Schanzle-Haskins replied, "Well that's a complicated question." She then explained that she always thought that transferring a *Rutan*-exempt employee into a *Rutan*-

[142] "Timetable for Legal Positions Taken by IDOT over the Years with Respect to Voluntary Reductions, Lateral Transfers and Rutan Application."

covered position was a problem, but said IDOT's previous Chief Counsel Sam Ach and former Secretary of Transportation Timothy Martin were of a different opinion.

Ms. Schanzle-Haskins said that after Secretary Martin left IDOT in 2007, the agency became much more proactive on questions of *Rutan*. She said that even though the OEIG did not find that *Rutan* interviews were being fixed in case 07-00366, "it was pretty clear to us that that's exactly what they were doing." Ms. Schanzle-Haskins stated that the Personnel Policies manual was then changed to require interviews any time that an employee applied for a voluntary reduction and that Secretary of Transportation Milton Sees had her conduct *Rutan* training for IDOT's senior management.

Ms. Schanzle-Haskins said the following about the issue of a *Rutan*-exempt employee being assigned to not-exempt duties:

- There is no problem with a person in a *Rutan*-exempt position being assigned "other duties." When asked whether there would be a problem if "you never do the *Rutan*-exempt duties," she stated that she didn't know whether that had ever been determined by a court, but that "the courts say that it's the job description that determines the *Rutan* applicability." For that proposition, Ms. Schanzle-Haskins invoked court decisions titled *Pillsbury, Killman, Riley, Allen,* and *Moss v. Martin.*[143]

- That the cases say you are to look past the official job description where the plaintiff demonstrates "systematic unreliability."

- That she believed most of the *Rutan*-exempt job descriptions "say something like other duties as assigned." She later repeated that she thinks the assignment of duties not set forth in the job description might be a "collective bargaining issue," or "maybe an unfair labor practice," but that she did not "think it's a *Rutan* violation." She said, "[t]hat's my legal opinion."

Ms. Schanzle-Haskins was presented with a hypothetical scenario in which a person is hired, using the (*Rutan*-exempt) Staff Assistant position, to pick up trash on the side of the road, and to do nothing else. She responded, "I think that's a collective bargaining issue and I think we'd get dinged on a collective bargaining [basis], [or] on an unfair labor practice." She was asked, "[w]ell what would it take … to get a violation of *Rutan* then?" She responded by citing the *Killman* case, in which Killman "apparently never did any Rutan-exempt activities." "And we fired him, and he sued us and we won because the federal courts said it doesn't matter whether or not he was doing *Rutan*-covered duties. He's not *Rutan*-covered, he's *Rutan*-exempt, therefore you're entitled to fire him. So I don't see how it's a violation. I think it's a terrible practice.... But I don't think it's a *Rutan* violation."

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[143]Ms. Schanzle-Haskins was referring to *Pillsbury v. Martin*, No. 05-3139, 2006 WL 2361895 (C.D. Ill. Aug. 15, 2006); *Killman v. Martin*, No. 04-3165, 2006 WL 2472262 (C.D. Ill. Aug. 25, 2006); *Riley v. Blagojevich,* 425 F.3d 357 (7th Cir. 2005); *Allen v. Martin,* 460 F.3d 939 (7th Cir. 2006); *Moss v. Martin,* 473 F.3d 694 (7th Cir. 2007) (*Moss I*); and *Moss v. Martin,* 614 F.3d 707 (7th Cir. 2010) (*Moss II*), all of which stand for the proposition that, in the firing context, a new administration is entitled to rely on the job descriptions established by his or her predecessor in determining *Rutan*-exempt status, absent a showing a "systemic unreliability" of the job description.

In addition, Ms. Schanzle-Haskins was asked about the hiring context (as opposed to the firing context). Specifically, she was asked whether it would "undermine the *Rutan* requirements and merit principles" to hire someone into an exempt title with the intent that the "function of that person would be to pick up trash [?]" In response, she invoked the *Killman* case and said Killman "came in, he was hired *Rutan*-exempt, he mowed the yard. Judge Scott said doesn't matter."

Finally, Ms. Schanzle-Haskins was asked whether she thought it would be "systematic unreliability of a job description" if "an entire category of positions" had "position descriptions ... [that] had no connection to the duties actually being performed[.]" In response, Ms. Schanzle-Haskins responded, "I can't imagine that that's the case. I think you're asking me to assume facts that I don't think exist."

W. Former Department of Transportation Secretary Gary Hannig

Investigators interviewed former IDOT Secretary Gary Hannig.[144] Mr. Hannig has served as Director of Legislative Affairs for Governor Quinn since January 2012. Prior to his present position, Mr. Hannig served as IDOT Secretary from about March 2009 to June 30, 2011. Mr. Hannig said he was appointed IDOT Secretary almost immediately after having served in the Illinois General Assembly. According to Mr. Hannig, he left the General Assembly on a Thursday and started at IDOT the following Monday. Because of his quick transition, Mr. Hannig said he was not aware of the existence of an IDOT Personnel Policies Manual and told investigators:

> [W]e had a lot of, we had the biggest road construction program in the history of the state going on during my tenure, which we tried to accomplish with the lowest, near, near record low headcounts, and so there was a lot going on in the office. We had a high speed rail grant of over $1.3 billion that we tried to roll out as well, so there was a lot of activity during the time that I was there, [], and, [] there were probably some things like this that I was not aware of.[145]

In addition, Mr. Hannig said he was unaware that pursuant to Section 1-2 of the Personnel Policies Manual:

> The Office of Secretary of Transportation is responsible for administration of the Illinois Department of Transportation's personnel policies.

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[144] A review of IPRs, ePARs, and Notices of Personnel Action reveal that Mr. Hannig's signature as Secretary appears on personnel documents relating to Staff Assistants: Employee 152, Employee 105, Employee 109, Employee 25, Employee 131, Employee 130, Employee 210, Employee 9, Employee 203, Employee 164, Employee 180, Employee 167, Employee 80, Employee 35, Employee 175, Employee 137, Employee 139, Employee 173, Employee 157, Employee 48, Employee 185, Employee 150, Employee 159, Employee 204, Employee 2, Employee 177, Employee 183, Employee 161, Employee 128, Employee 205, Employee 140, Employee 98, Employee 184, Employee 169, Employee 173, and Employee 78.

[145] Although former Secretary Hannig was not shown a copy of the 2010 IDOT Personnel Policies Manual, which IDOT noted that it had completely rewritten, investigators were perplexed former Secretary Hannig said he was unaware of the existence of an the Personnel Policies Manual especially since the 2010 Personnel Policies Manual noted that it was approved by the *Secretary*, during the time Mr. Hannig served as Secretary (February 2010).

Nevertheless, Mr. Hannig did stated he had "a general concept that there were rules" that employees were required to follow, but also said he never claimed to "be an expert on what those would be," and explained, "that's why we have different agency parts, right?"

Mr. Hannig was also questioned about other issues. When asked about the categories of IDOT employees, how they were classified or defined, Mr. Hannig said he was not aware that IDOT had three categories of employees, how IDOT technical employees were exempt from the Personnel Code or how IDOT defined the term "technical." Mr. Hannig was also shown the Office of Internal Audit report reflecting IDOT had undergone an audit in 2005 relating to technical employees, but said he was also unaware of the existence of that audit or what IDOT had done in response to the recommendations.

Mr. Hannig's responses to questions asked about additional topics are below.

1. The *Rutan* Decision and Related Administrative Orders

During his interview, Mr. Hannig was asked about the *Rutan v. Republican Party of Illinois* decision and whether he was aware of the related administrative orders. In response, Mr. Hannig provided investigators with his understanding of the *Rutan* decision by noting that he was aware that certain state positions were *Rutan*-exempt and other positions were not, meaning they were required to be filled following a specific hiring process. Mr. Hannig described *Rutan*-covered positions as civil service positions which had to be filled based upon merit as compared to *Rutan*-exempt positions that could be filled with persons who have the same or similar philosophy as that of the Governor.

According to Mr. Hannig, although he was aware that agencies were required to comply with the *Rutan* decision, he was not familiar with any of the various Governor administrative orders, directing state agencies to comply with the *Rutan* decision. After being shown a copy of Administrative Order No. 2 (2009), which Governor Quinn issued in December 2009 and discussed, among other things, directives to state agencies regarding compliance with the *Rutan* decision, Mr. Hannig stated it had been the first time he had seen the administrative order but said he thought it might be something agency lawyers may be aware of. When asked if he was one of the employees who had to comply with the administrative order, Mr. Hannig responded by stating:

> Well, I think, in a very technical way, everybody at the agency, including the Secretary. But I think what you need to realize is that the Governor, [] asked me help to pass a Capital bill. I spent most of my time in 2008 getting a mini capital and then [], we got a big Capital bill; 21 billion out of 31 billion flowed through IDOT. [] We had a stimulus program where we had 1.3 billion came through us. So, [], my primarily -- my primary job [], first and foremost, I guess, was to make sure that there was safety when you assess the risk, [], we don't want any bridges falling down. We don't want people getting killed on highways because of errors that we make in the agency. So, safety. But then secondly, [], we had this big capital bill that my job was to make sure that it rolled out. [], were there other things that I needed to do as Secretary? Absolutely, [], but, you know, I don't recall that this was an issue that [] came past my desk.

Mr. Hannig did recall having meetings to discuss open *Rutan*-exempt positions and that the meetings would occur more often than monthly. When asked if IDOT expected persons hired into a particular position to perform the duties of those positions, Mr. Hannig stated:

> I think it's fair to say that we would, we would say that there are a number of things that double-exempt people would do [], and expected to do in terms of legitimate work for the government, [], and that this probably be the very least. As I said, we were at an agency, where at a time in the agency where we were very much stressed for manpower. And it was not unusual to ask people to take positions on a temporary basis, [], including becoming part of my management team in a much lower level.

Finally, Mr. Hannig told investigators that his management style was to manage at the highest level because IDOT was "just too big," to micromanage.

2. IDOT Personnel Forms Relating to Staff Assistants and Related Subjects

Mr. Hannig was also asked about various IDOT personnel forms, all of which related in one way or another to the Technical Manager positions referred to as Staff Assistant. In response to various questions, Mr. Hannig stated that although he was aware IDOT had a position referred to as a Staff Assistant he was not aware IDOT created Staff Assistant position descriptions or:

- the number of Staff Assistant positions that existed when he was first Secretary; or
- how many additional Staff Assistant positions were created while he was Secretary.

In addition, Mr. Hannig stated he was not aware of any *Rutan*-exempt Staff Assistants who:

- were hired and then transferred directly into *Rutan*-covered positions while he was Secretary;
- worked under the same position description, but were paid at different technical manager levels;
- reported to *Rutan*-covered supervisors; or
- were not evaluated based on the duties and responsibilities that they performed as Staff Assistants but rather on other duties.

Nevertheless, Mr. Hannig agreed that it was his expectation that persons hired would be performing the work set forth on ePARs. In addition, Mr. Hannig confirmed he had not approved ePARs knowing that the person would not be performing any of the duties and responsibilities of the position. Finally, Mr. Hannig was asked if he was aware of the particular duties IDOT Staff Assistant Employee 137 performed at IDOT. In response, Mr. Hannig said he was not and further stated that he was unaware that the duties Employee 137 was performing were the same duties a *Rutan*-covered employee was performing while making $28,000 less in salary.

X. Illinois Department of Transportation Secretary Ann Schneider

Investigators interviewed IDOT Secretary Ann Schneider on two separate occasions regarding a variety of matters relating to IDOT Staff Assistants. Below is a summary of information Secretary Schneider provided.

1. Duties and Responsibilities as IDOT Secretary and as Former Director of Finance and Administration

Secretary Schneider stated that during the time period she has served as IDOT Secretary, July 2011 to present, she has been responsible for the overall operations at IDOT.[146]

During the time she served as Director of Finance and Administration, November 2005 to August 2010, Secretary Schneider stated she was responsible for, among other things, the oversight of the Bureau of Personnel Management. When investigators showed Secretary Schneider the job description for IDOT's Director of Finance and Administration, she stated that although she did not recall ever receiving a copy of that position description, the duties set forth in the position description were accurate. The job duties and responsibilities stated:

- "Within guidelines set by the Secretary of Transportation, this position develops and directs programs to meet the fiscal, *personnel*, and business needs of the Department statewide."
- "[T]his position manages all business, financial, *personnel,* and information technology services statewide."

(emphasis added). In addition, Secretary Schneider did not dispute that as Director of Finance and Administration she was also responsible for the following:

- Accountability 3: "Attracts, obtains, retains, trains, and compensates an adequate and *competent staff* to ensure efficient and cost-effective operations statewide."

- Accountability 4: "Exercises discretion and control over highway user taxes, revenues, and transportation bond proceeds and the general revenue fund appropriations through the maintenance of sound fiscal policy to ensure the *proper allocation* of limited resources as well as maintain fiscal integrity." (emphasis added).

Secretary Schneider was also shown the position description for the Bureau Chief of Personnel Management. With regard to the position description, Secretary Schneider also did not dispute that the Bureau Chief's responsibilities stated:

- "The incumbent is personally responsible for the development of *technical personnel policies* and programs for employment classification and compensation programs."

[146] According to §1002 of the Fiscal Control and Internal Auditing Act, "[i]t is the policy of this State that the chief executive officer of every State agency is responsible for effectively and efficiently managing the agency and establishing and maintaining an effective system of internal control."

- "The incumbent is also responsible for the development and administration of the technical classification program for the Department and administers the rules/regulations of the *Personnel Code* in conjunction with the Department of Central Management Services."

- "S/He also directs the development of programs and policies for employment programs to *attract and retain* qualified candidates."

(emphasis added).

2. *Rutan* Determinations and Method IDOT Uses to Fill *Rutan*-exempt Positions

Secretary Schneider was asked if she was aware of the process CMS uses to make *Rutan* determinations. In response, she stated:

> "I would say that I have become more familiar with that process most recently, but generally I was aware that there was some process involved."

When asked if she recognized the CMS form titled "(Non Code) Position Review Determination Form," Secretary Schneider stated, "this is the first time I've seen one of these that – that I can remember." In light of the fact that the CMS form contained a place for the agency director signature, investigators asked Secretary Schneider if it was her understanding that IDOT completed the top portion of the form, submitted it to CMS with the IDOT position description, and then, CMS would issue a determination as to whether the proposed IDOT position was *Rutan*-exempt or *Rutan*-covered. In response, Secretary Schneider stated, "based on what I'm looking at here, yes" but later repeated, "I don't recall ever seeing one of these [forms]."

Secretary Schneider was asked about the process by which IDOT would fill *Rutan*-exempt positions. In response Secretary Schneider stated,

> "Let me preface by starting, when I first started with the agency in '05, I did not know the difference between the two, [], processes, [] between the covered and exempt, but, as I learned more about the exempt process, [], there were, [], parts of it that we did change over time that I think before, [], I think it was around 2009, [], we would just get the résumés in place—individuals based on information contained in the résumés, and then in 2009 we started requiring that interviews take place for the [] exempt positions.

In light of her statement, investigators asked Secretary Schneider if during the time period she was Director of Finance and Administration *Rutan*-exempt positions were filled based solely on a résumé and she responded by stating, "I wasn't completely familiar with that process during that time." In addition, investigators asked Secretary Schneider if she provided her Bureau Chief with direction regarding *Rutan*-exempt interviews. Regarding this question, Secretary Schneider stated, "I don't remember having any of those conversations. Typically, the Bureau Chief of Personnel Management [] managed that level of detail."

3. IDOT Employee Evaluations

Investigators asked Secretary Schneider if position descriptions should be used when evaluating employees and in response stated she could not "speak to how people do that with their employees in terms of evaluation." Investigators then directed Secretary Schneider's attention to a copy of Chapter 5 of the IDOT Personnel Policy Manual and in particular Section 5-2. After reviewing Section 5-2, Secretary Schneider agreed that it said employees "will be regularly and systematically evaluated." Investigators then directed Secretary Schneider to Section 5-7 of the IDOT Personnel Policy Manual. After reviewing this section, she agreed that it said performance standards were to be "based on assigned job description accountabilities" which are to be "discussed with the employee." In addition, investigators asked Secretary Schneider if the job description accountabilities referenced in Section 5-7 were the accountabilities in the employee's position description, and in response she stated, "I would say that and then other duties that somebody may be performing." Secretary Schneider told investigators that every individual who signs an evaluation is responsible for ensuring that the evaluation is accurate; namely, the evaluated employee's direct supervisor and second level supervisor.

4. Internal Personnel Request Forms with Two Signatures and Employment Decision Form

Secretary Schneider was shown an IDOT Internal Personnel Request (IPRs) that only contained two signatures (not one from the requesting director) and was asked if she knew why some IPRs only contained two as opposed to three signatures on them. In response, Secretary Schneider stated, "I don't know. But I would assume is that this was, this IPR was created by personnel." When asked how the Bureau of Personnel would know whether Highway Region 1 would need this position, as reflected in the IPR, Secretary Schneider stated, "they would work with the [], Admin manager in the district." Then, when asked if the Administrative Manager of the District would need to sign the form as the requesting director, Secretary Schneider stated, "Yeah. I don't know. I think from the look of this, it doesn't look like it, no."

Secretary Schneider was asked to review an Employment Decision Form investigators discovered IDOT used to justify hiring decisions for *Rutan*-covered employment positions. After reviewing the Employment Decision form, Secretary Schneider said, "I've never seen one of these before." Secretary Schneider's attention was then directed to the portion of the Employment Decision form that contained a space for the agency director's signature and reflected the name "Ann Schneider" along with the initials "MW." After reviewing this portion of the Employment Decision form, Secretary Schneider stated, "I don't know whose initials those are. [], MW, maybe Mike Woods, Jr.." Secretary Schneider was then asked if she was aware of how IDOT used the Employment Decision form and in response stated, "I'm reading it right now []. I don't – it's the first time I've seen one of these."

5. IDOT's 2005 Office of Internal Audit Report and Related Findings

In light of the fact that in 2005, the Office of Internal Audit had issued a number of findings with regard to IDOT's non-code positions, Secretary Schneider was asked about the 2005 Audit.

Secretary Schneider was asked if she was aware of the audit. In response, she said she became aware of the existence of the audit for the first time "about a month ago."[147] In addition, Secretary Schneider stated that "Jeff Heck brought it to [her] office." When asked if she had seen the audit before that time, she said, "the best that I can recall – that's the first and only time I've seen this."

6. Definition of Technical and the "Technical Position Classification Request" Form

Investigators initially asked Secretary Schneider if she was aware of any IDOT document that defined the term "technical" or identified what made an IDOT position "technical" in nature. At first, Secretary Schneider said she thought IDOT did define a "technical position." Investigators reminded Secretary Schneider of the 2005 audit findings in which auditors recommended that:

> [T]he Illinois Department of Transportation and CMS work in conjunction to review *all* position classifications as *technical* or engineering in the Technical Manager or Manager Technician job classifications to ensure that the positions are *sufficiently technical* to be classified as non-code.

(emphasis added). After the reminder, Secretary Schneider agreed that in light of the 2005 audit finding and recommendation, it appeared as though IDOT did not define the term technical.

Secretary Schneider was then shown a copy of a "Technical Position Classification Request" form, which IDOT used to create Staff Assistant positions. Investigators asked Secretary Schneider to review and explain the significance of the information in Box 11, titled "Authorized Person(s)," of the Technical Position Classification Request form. After reviewing Box 11 for IDOT position number PW412-23-70-303-00-01 which contained the number "1," Secretary Schneider stated she thought it represented "the number of positions that are authorized to be hired" under the job title.[148] Asked if the authorized positions could mean that there could be more than one person for a particular position number, Secretary Schneider stated, "I don't know that for sure."

7. IDOT's *Rutan*-Exempt List

Secretary Schneider was shown a 2013 IDOT document that contained a listing of all IDOT *Rutan*-exempt positions, which reflected a total of 448 *Rutan*-exempt IDOT positions. Specifically, Secretary Schneider was asked if the 448 total number of positions reflected on the document also included the number of authorized persons (per box 11) that could fill each position, Secretary Schneider responded, "I don't know." Secretary Schneider was shown an

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[147] Secretary Schneider informed investigators of this during her second interview which occurred on May 19, 2014, which means she would have become aware of the 2005 audit sometime in April 2014.

[148] Secretary Schneider was also asked about IDOT position numbers and in particular was asked to explain the significance of the letter and number sequence for IDOT position number PW412-23-70-303-00-01. After reviewing Staff Assistant position number PW412-23-70-303-00-01, Secretary Schneider stated she did not know what the "PW represented, nor did she know what the first three numbers "412" meant. Secretary Schneider stated, "I know we have position numbers, but I don't know what any of the code means."

IDOT position description that corresponded with position number PW 412-23-404-300-00-01, which reflected in box 11 a total of 11 authorized positions. Ms. Schneider was asked to find that same position, which authorized 11 hires, on the "Listing of All Employees in Positions Exempt from Rutan" chart. The chart indicated that two persons had been hired into the relevant position on the date the chart was generated. She was then asked if even though the "Listing of all Employees in Positions Exempt from Rutan" identified two persons, if additional persons could be hired into that position number, such as an additional 9 hires of the 11 authorized, and in response stated, "I think so." In other words, the 448 *Rutan*-exempt positions may not have included the total number of authorized hires each particular *Rutan*-exempt position.

8. Increase in IDOT *Rutan*-Exempt Staff Assistant Positions

Secretary Schneider was shown a graph investigators created reflecting the number of IDOT Staff Assistant positions per year starting in 2003 (three Staff Assistant positions) and continuing through 2014 (67 Staff Assistant positions) and was asked if she was aware of the reason the number of Staff Assistant positions increased over the years. In response, Secretary Schneider said that "[a]t that time, I might not have been aware, that, this – they were adding all of these positions, but I'm aware of it currently." In addition, Secretary Schneider stated, "I can tell you around, [], 2009, late 2008 and then into 2009, we were, we had the federal stimulus package to deliver, and then we also had, [], the Illinois Jobs Now capital program. And, [], we were also under mandate to hire, I think it's something like 160 highway maintainers within a few month period. And the existing staff we had was not able to help deliver those things all at once, and, [] I assume that's why the number of staff assistants increased exponentially during that period."

Investigators asked Secretary Schneider if she was able to explain how federal stimulus dollars might result in the increase in number of Staff Assistant positions and she stated:

> [w]e were trying to get more and more people hired, [], to help us deliver that program, so hiring is one aspect of it. The other I think you, we saw the Employee 113 thing earlier. Part of it, what we had to do was additional administrative requirements, and we didn't have the resources on board to deliver some of those new administrative requirements that were tied, and so there were some of those folks that came on that helped with those administrative requirements, and, [], the same with the Illinois Jobs Now program, it's you know, in trying to help us staff up in--in the requisite areas but then also, to meet new administrative."

Later in her interview, Secretary Schneider was asked if some *Rutan*-exempt Staff Assistants were hired into the position because of the time it would take to fill the position through the *Rutan*-covered process, and, in response, she stated, "correct."

9. *Rutan*-Exempt Employees Performing *Rutan*-Covered Duties

During her interviews, Secretary Schneider was also asked if as Director of Finance and Administration and as Secretary, she was aware that some *Rutan*-exempt Staff Assistants performed *Rutan*-covered duties. In response to this query, she stated:

> "[a]t the time, I will tell you that, this is back when I was director of finance and administration I did not understand that people were being brought on, [], an exempt title and then performing all *Rutan*-covered duties. [], I assumed that – that they would be performing the positions that are the duties that were consistent with their job descriptions for the most part. [], I don't—it's like—I'm trying to remember the example, that I've recently learned about some aspect of the organization that's very detailed that I hadn't known before, that you might expect I would."

Secretary Schneider further stated, "At the time I did not realize that they were doing that. I have since, as—as I've gone through this process, or if I did know it I didn't understand it. As I've gone through this process, [], I have learned a great deal more about what people do, and—and don't do once they get hired at the agency." Regarding *Rutan*-exempt Staff Assistants performing *Rutan*-covered duties, Secretary Schneider also told investigators, "[i]t was probably a mixture," but then also stated, "[n]o. When, it was, we were hiring people, and everybody within the organization, their duties were starting to expand beyond what their position descriptions had in –had listed for them." Secretary Schneider then picked up a Staff Assistant position description, reviewed it and said certain Staff Assistants were performing the duties referenced in "number 2," of the principal accountabilities and numbers "4,[]. Number 5 and then number 7," of the Staff Assistant position description.

Secretary Schneider said that when she started with IDOT, the Bureau Chief of Personnel Management at the time was "kind of bulldogging a lot of things" and she was not aware of what was happening. Secretary Schneider also said that while she should have educated herself on these matters, she relied on the Personnel Manager to do the "right thing."

Despite her above-referenced acknowledgment, Secretary Schneider told investigators that she had not sought counsel on the issue of hiring individuals into *Rutan*-exempt position and them performing the work of *Rutan*-covered positions because it was never brought to her attention. Secretary Schneider added, if this information had been brought to her attention, she said she would check with IDOT's Chief Counsel to ask if it was "proper and appropriate."

In her second interview, investigators asked Secretary Schneider who has responsibility if IDOT employees in *Rutan*-exempt Staff Assistant positions were performing *Rutan*-covered duties. In response Secretary Schneider stated, "[t]heir supervisor." Secretary Schneider was then asked if the Bureau Chief of the Bureau of Personnel Management had any responsibility and in response, stated, "Yes." However, when asked if the Director of Finance and Administration had any responsibility, Secretary Schneider stated:

> I'd want to back up on the bureau chief answer too. I think once somebody comes on board, you have to trust that their supervisors are doing what is consistent with what they're supposed to be doing. There's 5,200 people in the organization, and it's, it would be difficult to know what every single person in the organization, and what job duties every single person in the organization are fulfilling at any single point in time.

In her interview, Ms. Schneider told OEIG investigators that the Bureau Chief of Personnel Management is responsible for initiating the hire of a *Rutan*-exempt Staff Assitant to meet operational needs and that the Office of the Governor ultimately approved these hires. In

addition, Secretary Schneider told investigators that she understood IDOT was required to go through a competitive, structured interview process in order to fill a *Rutan*-covered position but also said she thought it was appropriate to hire *Rutan*-exempt Staff Assistants and then assign them duties of a *Rutan*-covered position, stating, "it would depend on operational need."

According to Secretary Schneider, she was aware that nearly all Staff Assistants were *Rutan*-exempt and also stated that she was aware IDOT "used Staff Assistants to fill holes." When asked if using *Rutan*-exempt employees to perform *Rutan*-covered work violated the *Rutan* hiring process. Ms. Schneider stated, "my concern is that, not understanding that area of law very well, I to me, it doesn't sound like it would be a good practice." Secretary Schneider added, however, that she could not "think of a situation... where somebody would have been brought on in one capacity specifically to do something totally different."

10. December 2011 Staff Assistant Complaints sent to her Attention

As noted in this Final Summary Report, the OEIG received a number of complaints, most of which were anonymous, and some of which were addressed to Secretary Schneider. In fact, one December 16, 2011 complaint was addressed to Secretary Schneider and appeared to have a received stamp reflecting the Office of the Secretary did receive the letter. Investigators asked Secretary Schneider about the complaints and in particular asked if she became aware of issues relating to Staff Assistants based upon a complaint addressed to her and dated December 16, 2001. In response, Secretary Schneider told investigators that after receiving one complaint, she gave it to "Jeff Heck of our Office of Quality Compliance and Review, and asked that [] he investigate this issue."

Secretary Schneider was then asked if she read the December 16, 2011 complaint letter and asked her if she knew the person was complaining that there were about 10 staff assistants hired with no job description or assigned duties, and that many Staff assistants were doing the work of vacant positions, or doing absolutely nothing, as set forth in the letter. In response, she stated:

> that's why I asked Jeff to investigate it. I get a lot of complaints, a lot of anonymous complaints that don't pan out to be true, so I wanted to make sure that whatever the issue was, was appropriately investigated.

Secretary Schneider was then asked if she had any knowledge as to whether Mr. Heck actually conducted any investigation in regards to the complaint, to which she stated, "I don't know that."

11. Step-Daughter and Staff Assistant Employee 3

IDOT records revealed that Employee 3 was initially hired as a Staff Assistant in October 2006. Investigators asked Secretary Schneider about her involvement in the hiring of her step-daughter and Staff Assistant Employee 3. According to Secretary Schneider, she notified her step-daughter of the vacancy and provided former Bureau Chief of Personnel Management Scott Doubet a copy of her résumé. Secretary Schneider said that she verbally informed people that she did not want anything to do with any personnel decisions regarding her step-daughter; however, she did not think she submitted a recusal letter prior to the December 12, 2012,

memorandum to the Chief Counsel's office that she provided to OEIG investigators on the day of her interview.

When asked if, in light of her (Secretary Schneider's) management positions, the hiring of her step-daughter or her IDOT employment violated IDOT's conflict of interest policy, Secretary Schneider said that:

- she did not believe that her step-daughter's hiring created a real or perceived conflict of interest because her step-daughter was not in any way directly responsible to her;
- her step-daughter's employment "might have" created a conflict of interest while she (Ms. Schneider) was Secretary; and
- she should have done a recusal letter relating to her step-daughter when she was appointed Secretary.

Secretary Schneider was also asked about the transfer of her step-daughter to the Division of Traffic Safety. Secretary Schneider said she knew nothing about the transfer because when it occurred, she was having serious medical issues and was not at IDOT offices. When asked if her step-daughter's employment at the Division of Traffic Safety created a real or perceived conflict of interest, Secretary Schneider responded, "It might have created an apparent conflict of interest, which is probably why they put it—Bernie Schoenburg put it in the newspaper."

12. Additional IDOT Staff Assistants

Secretary Schneider was also asked about specific Staff Assistants, most of which worked in the Office of Finance and Administration. Below are Secretary Schneider's responses:

a. Staff Assistant Employee 218

IDOT records revealed that Staff Assistant Employee 218 was hired in April 2009. Secretary Schneider was asked about Staff Assistant Employee 218 and specifically whether she knew if Employee 218 had a relationship with anyone in government. In response, Secretary Schneider said that Employee 218 had worked in some capacity in former Governor Rod Blagojevich's Office and her résumé came from the Office of the Governor.

b. Staff Assistant Employee 193

IDOT records revealed that Staff Assistant Employee 193 was hired in August 2009. Secretary Schneider was asked about Staff Assistant Employee 193. According to Secretary Schneider, Staff Assistant Employee 193 was "friends with the former Secretary," Gary Hannig, and he provided IDOT with Employee 193's résumé.

c. Staff Assistant Employee 111

IDOT records revealed that Staff Assistant Employee 111 was hired in March 2007. Secretary Schneider was asked about Staff Assistant Employee 111. In response, Secretary Schneider said that she was familiar with Employee 111 and that her husband works at the Capital Development Board. Secretary Schneider said that Employee 111's husband is the one who provided Schneider with Employee 111's résumé.

d. Staff Assistant Employee 170

IDOT records revealed that Staff Assistant Employee 170 was hired in November 2007. Secretary Schneider stated that although she was familiar with Staff Assistant Employee 170, she was not aware of Employee 170's relationship to anyone in government.[149]

e. Staff Assistant Employee 121

IDOT records revealed that Staff Assistant Employee 121 was hired in June 2009. When asked, Schneider said that she was aware that Employee 121 was Illinois State Senator Kimberly Lightford's husband and that he was reallocated.

Secretary Schneider said she could not recall if she was aware of the relationship between Staff Assistant Employee 121 and State Senator Lightford at the time he was initially hired or at the time of his reallocation. Moreover, Secretary Schneider was unable to recall the specifics of Staff Assistant Employee 121's reallocation but when asked what impact or role his relationship with a senator had in the reallocation, she said "that wouldn't have played into the reallocation decision."

13. Review of IDOT Personnel Documents and IDOT Excel Spreadsheet reflecting 48 of 60 Staff Assistants Performing *Rutan*-Covered Duties

An OEIG review of IDOT documents including IPRs, ePARs, and Notices of Personnel Action revealed that in her capacity as Secretary, Secretary Schneider approved the hire of various Staff Assistants including: Employee 166, Employee 163, Employee 208, Employee 4, Employee 179, Employee 174, Employee 176, Employee 160, Employee 184, Employee 181, Employee 169, Employee 207, Employee 214, Employee 212, and Employee 155.

In her capacity as Director of Finance and Administration, Secretary Schneider executed personnel documents relating to the following Staff Assistants: Employee 152, Employee 105, Employee 115, Employee 22, Employee 109, Employee 111, Employee 131, Employee 130, Employee 3, Employee 52, Employee 56, Employee 9, Employee 203, Employee 164, Employee 167, Employee 38, Employee 114, Employee 70, Employee 36, Employee 35, Employee 77, Employee 1, Employee 175, Employee 127, Employee 137, Employee 156, Employee 78, Employee 59, Employee 48, Employee 150, Employee 57, Employee 2, Employee 118, Employee 159, Employee 34, Employee 213, Employee 79, Employee 112, Employee 183, Employee 151, Employee 126, Employee 74, Employee 211, Employee 91, Employee 117, Employee 140, Employee 206, Employee 162, Employee 125, Employee 25, Employee 98, Employee 176, Employee 184, Employee 172, Employee 179, Employee 160, Employee 169, and Employee 173.

[149] During the interview, Schneider's representative provided the name Employee 226 from the Office of the Governor.

In addition, Secretary Schneider was shown an IDOT Excel spreadsheet that included names of about 60 IDOT Staff Assistants as of May 2014 and was asked if she was able to explain the significance of the names on the spreadsheet. In response, Secretary Schneider said:

> [t]here's 60, there were 60 positions and 48 come, came back as *Rutan*-covered. In other words, 12 remained *Rutan*-exempt."

When asked if her statement meant that 48 of the 60 reviewed Staff Assistant positions were held by individuals who were doing *Rutan*-covered duties, Secretary Schneider stated, "[t]hat's correct." Secretary Schneider was then asked if IDOT intended to take any action with regard to the 48 Staff assistant positions and in response said:

> "[w]e had discussed with CMS that the appropriate action would be to interview these people [], to see if they would get these positions through *Rutan*-covered process but they came back to us with an opinion which there yet to give us in writing [], that because they are covered by a collective bargaining unit agreement, it would become too cost prohibitive for us to essentially, what I would say is, make these people re-interview for their positions and if they didn't, if they weren't the selected candidate, they would be let go."

Of the 48 person identified in the Excel spreadsheet was Staff Assistant Employee 208. IDOT documents revealed that Employee 208 was hired on July 1, 2013 as a Staff Assistant and that he was one of the 48 identified in May 2013 as performing Rutan-covered duties. In other words, it appears as though as late as July 1, 203, IDOT was hiring persons as *Rutan*-exempt Staff assistants and assigning them to perform *Rutan*-covered duties, as reflected by the very same agency they hired to review the duties Staff Assistant were performing.[150]

14. Matt Hughes' October 2009 Staffing Memo

Investigators also asked Secretary Schneider about the October 2009 Staffing Memo from former Bureau Chief of Personnel Management Matt Hughes wherein he informed Secretary Schneider of his intent to hire Staff Assistants to work as Interviewers and as a Training Specialist. In regards to this memo, Secretary Schneider said when she was Director of Finance and Administration, in order to determine proposed headcount for budgeting purposes, she asked bureau chiefs to provide her with their staffing needs. When asked if she knew that Interviewer and Training positions were *Rutan*-covered positions, Secretary Schneider said she never put it together that Mr. Hughes was proposing to hire *Rutan*-exempt Staff Assistants to perform duties of *Rutan*-covered Interviewers and said, "clearly that wasn't very smart of me."

15. Secretary Schneider's Final Comments

During her final interview, Secretary Schneider was asked if there was anything she wanted to say and in response, stated the following:

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[150] *See* Appendix at Exhibit 17 (listing Employee 208 on the last page reflecting he was hired on July 1, 2013) and Exhibit 24 (listing Employee 208 on the first page reflecting a proposed *Rutan* status as "covered.")

One is that I am very frustrated with myself for not totally understanding all of this when I first started at the agency and really not understanding it. Until we started going through a lot of these processes and one thing that I would strongly recommend, I know that you guys are in charge of the ethics training but I think there should be a separate type of ethics training for agency heads because when you come in [], even though I had been with the organization there's a lot about what you do that you may not understand completely. And I think it would be helpful to understand some of these things on the front end. I relied on the people that work for me [], Scott Doubet and Matt Hughes [], that they would be doing things consistent with the way the laws were written and everything. [], I know also that we had opinions from our former Chief Counsel that [], some of what we discussed here that she opined on that gave a different impression then what I've gotten since I've started looking into this much more closely. So I just really strongly recommend [], some sort of directed training [] to agency heads. I'm trying to do a procurement directed training to anybody in my agency that deals with procurement now. Because I think there are a lot of pitfalls that people just don't know and they don't think about [], and I think this is one of those areas that you know somebody can come in and just not understand this stuff. It's very confusing to be honest with you, very [], unless you really are working day-to-day in personnel management. You don't necessarily tie all these pieces together. I mean now that you sit here and tie all these pieces together through all these documents, it make sense. But going through it at the time, it doesn't. [], you don't think about this at all. [], so I just my strong recommendation is [], whatever happens with this process happens but I think going forward for people who are coming into these types of positions, they really need to understand this stuff because they can fall into the same traps.

IV. ANALYSIS

The Office of Executive Inspector General for the Agencies of the Illinois Governor (OEIG) is statutorily obligated to investigate "mismanagement, nonfeasance,[151] misfeasance,[152] malfeasance,"[153] and violations of the Ethics Act or violations of other related laws and rules. In addition, in 2009, the Illinois General Assembly expanded the duties and responsibilities of the OEIG:

> To review hiring and employment files of each State agency within the Executive Inspector General's jurisdiction to ensure compliance with *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), and with all applicable employment laws.

The investigation in this matter has reflected a series of alleged violations starting as early as late 2003 and continuing through at least late 2013. The alleged misconduct can be broken down into two general allegations, namely:

(1) that IDOT used the nominally *Rutan*-exempt Staff Assistant position to circumvent the *Rutan* hiring process that is required by the Governors' Administrative Orders; and

(2) that IDOT senior officials hired family members in violation of IDOT policies regarding conflicts of interest and the hiring of family members.

With regard to the first general allegation and as described in more detail below, the OEIG has determined that reasonable cause exists to believe that IDOT has improperly used the Staff Assistant position to hire individuals into *Rutan*-covered positions or to perform *Rutan*-covered duties without complying with the *Rutan* hiring procedures required by various Administrative Orders. With regard to the second general allegation, although it does appear that IDOT senior officials improperly used the Staff Assistant position to hire family members without them going through the competitive *Rutan* hiring process, the OEIG concludes that IDOT conflict of interest and nepotism policies were not violated in doing so. Thus, the OEIG has determined that there is *not* reasonable cause to believe that IDOT senior officials violated IDOT conflict of interest or nepotism policies by hiring family members.

Below we discuss: (a) the standard of proof the OEIG applies to investigations; (b) the OEIG's analysis and findings with regard to IDOT's alleged misuse of the Staff Assistant position; and (c) the OEIG's analysis and findings with regard to the alleged violation of IDOT conflict of interest and nepotism policies by senior IDOT officials.

A. Standard of Proof

The Ethics Act provides that an Executive Inspector General shall issue a summary report of an investigation if, at the conclusion of an investigation, the Executive Inspector General

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[151] Black's Law Dictionary defines nonfeasance as: the failure to act when a duty to act existed. (9th ed. 2009)

[152] Black's Law Dictionary defines misfeasance as: a lawful act performed in a wrongful manner. (9th ed. 2009)

[153] Black's Law Dictionary defines malfeasance as: a wrongful or unlawful act; esp. wrongdoing or misconduct by a public official. (9th ed. 2009)

determines that "reasonable cause exists to believe that a violation has occurred [.]" 5 ILCS 430/20-50(a). The Ethics Act does not define "reasonable cause." Under federal case law, it has been held that the amount of evidence needed to show reasonable cause is more than mere suspicion. *In re T.P. Sausage Casing Co.,* 1980 Bankr. LEXIS 5703 at 5 (N.D. Ill. 1980) (citing *In re Eggert* 102 F. 735, 741 (7th Cir. 1900)), or mere possibility, *CSX Transportation, Inc. v. Tenn. State Bd. of Equalization,* 964 F. 2d 548, 555 (6th Cir. 1992).

On the other hand, the amount of evidence needed to show reasonable cause is less than that required to find that a statute actually was violated. *Id.,* at 556, *EEOC v. Chesapeake & Ohio Railway Co.,* 577 F.2d 229, 232 (4th Cir. 1978). A federal statutory definition of "reasonable cause" is that it requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. *See* 12 U.S.C. §4003(c)(1)(1998).

Accordingly, a "finding" by the OEIG means that it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance or malfeasance. It does not mean that the OEIG has concluded by a preponderance of the evidence or some higher standard of proof that a violation has occurred or that there has been misconduct. That said, the OEIG endeavors to be fair, to consider all of the relevant evidence, and to gather *more* evidence than is required to make a "reasonable cause" determination before concluding that a violation or other misconduct has occurred.

B. Analysis and Findings with Regard to IDOT's Alleged Misuse of the Staff Assistant Position

This section will discuss (1) the relevant authority on State hiring; (2) evidence of IDOT's use of the Staff Assistant position to circumvent the *Rutan*-process prescribed in the Administrative Orders; (3) Staff Assistants hired with political affiliations; (4) former IDOT Chief Counsel's defense of IDOT's use of the Staff Assistant position; and (5) the OEIG's general and specific findings.

1. The Relevant Authority on State Hiring

a. The *Rutan* Case and Its Progeny

As set forth in the Background section of this Report, the United States Constitution generally prohibits public entities from using political affiliation as a basis for making employment decisions.[154] In *Elrod v. Burns,*[155] the Supreme Court held that a public entity is generally prohibited from firing a public employee based on political affiliation (a "patronage dismissal"). Subsequently, in *Rutan v. Republican Party of Illinois,*[156] the Court held that the prohibition extended to the use of political affiliation as a basis for promotion, transfer, recall, and *hiring* decisions. Both *Elrod* and *Rutan* recognized that in narrow circumstances the government might be able to demonstrate a compelling interest in using political affiliation as a

[154] *E.g., Rutan v. Republican Party of Illinois,* 497 U.S. 62 (1990); *Elrod v. Burns,* 427 U.S. 347 (1976).
[155] 427 U.S. 347 (1976)
[156] 497 U.S. 62 (1990)

basis for making an employment decision.[157] In *Branti v. Finkel* the Court articulated the test as being whether "party affiliation is an appropriate requirement for the effective performance the public office involved."[158]

b. Administrative Orders

Following the Supreme Court's ruling in *Rutan*, and for the purpose of compliance with the decision, various Illinois Governors issued several Administrative Orders related to hiring and employment practices of agencies under the jurisdiction of the Governor.

Administrative Order Number 1 (1990), issued by Governor James Thompson on July 17, 1990, announced that it had been and would continue to be the policy of the Thompson Administration, "to fill positions in the state only with individuals who are qualified for their positions." Administrative Order Number 1 (1990) also set forth preliminary policies and procedures to ensure that all personnel decisions made by State agencies were in full compliance with the Supreme Court's *Rutan* decision. These preliminary policies and procedures included: all hiring and other personnel decisions shall be based on the merit and qualifications of the candidates; and no hiring or other personnel decisions – including promotions, transfers or recalls from layoff – may be decided on the basis of the candidate's party affiliation or support.

Administrative Order Number 2 (1990), issued by Governor James Thompson on October 1, 1990, was intended to provide guidance and clarification to State agencies with respect to the interview process referenced in Administrative Order Number 1 (1990). Administrative Order Number 2 (1990) makes clear that the employment policies and procedures that it described only apply to positions that are not exempt from *Rutan*; that is, *Rutan*-covered positions. It stated that agencies could submit materials to CMS for a determination as to whether a given position was exempted from the requirements of the *Rutan* decision, but "[i]n the absence of a determination that a position is exempted, this memorandum will apply to all positions." In other words, all positions were to be treated as *Rutan*-covered, unless CMS had determined them to be *Rutan*-exempt. Administrative Order Number 2 (1990) also set forth minimum steps that agencies had to comply with prior to filling a *Rutan*-covered position, including: documenting hiring criteria for each position to be filled before conducting the interview; developing a standardized interview questionnaire; conducting a structured employment interview using a standardized interview questionnaire; and evaluating each candidate interviewed by rating the completed interview questionnaire.[159]

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[157] *Elrod*, 427 U.S. at 367 (observing that "[l]imiting patronage dismissals to policy-making positions is sufficient to achieve" governmental interest in the political loyalty of its employees); *Rutan*, 497 U.S. at 71 n. 5 ("[A] State demonstrates a compelling interest in infringing First Amendment rights only when it can show that party affiliation is an appropriate requirement for the effective performance the public office involved.") (quoting *Branti v. Finkel*, 445 U.S. 507, 518 (1980)).

[158] 445 U.S. at 518.

[159] *Administrative Order Number 1 (1991)*, issued by Governor Jim Edgar on January 31, 1991, declared that the Edgar Administration was committed to fully complying with the *Rutan* ruling and all other relevant constitutional provisions, laws and United States Supreme Court decisions. Administrative Order Number 1 (1991) also affirmed and adopted the provisions of Administrative Order Number 1 (1990) and Administrative Order Number 2 (1990), and further ordered that CMS would be responsible for determining whether a position was exempt from *Rutan*.

Administrative Order Number 2 (2009), issued by Governor Pat Quinn on December 10, 2009, declared that the Quinn Administration was firmly committed to adhering to the principles articulated in the *Rutan* decision, its progeny, and Administrative Orders Number 1 (1990), Number 2 (1990), and Number 1 (1991). Administrative Order Number 2 (2009) also affirmed those prior Administrative Orders and announced new, additional guidelines and procedures relating to personnel transactions for *Rutan*-covered positions.

As set forth above, the Administrative Orders provided that CMS would be the State agency responsible for making the determination of whether a State position is *Rutan*-covered or *Rutan*-exempt. Requiring CMS to make the *Rutan* determination serves as a safeguard against agencies self-servingly determining that positions are *Rutan*-exempt in order to justify politically motivated employment decisions. Moreover, CMS safeguards the criteria it employs when making *Rutan* determinations so agencies do not craft job descriptions for the sole purpose of obtaining a *Rutan*-exempt status.

2. Evidence IDOT Used the Staff Assistant Position to Circumvent the *Rutan* Hiring Process Prescribed by the Administrative Orders

The OEIG has determined that there is reasonable cause to believe that IDOT used the Staff Assistant position to circumvent the process required in the Governors' Administrative Orders for hiring persons into *Rutan*-covered positions. The evidence that supports the conclusion that IDOT misused the Staff Assistant position to circumvent the *Rutan* hiring process includes the following:

(a) IDOT deemed the Staff Assistant position "technical" – and thus exempt from the Personnel Code – without any apparent justification and, subsequently, the number of IDOT Staff Assistants increased substantially.

(b) IDOT hired Staff Assistants directly into *Rutan*-covered positions.

(c) IDOT transferred Staff Assistants directly into *Rutan*-covered positions.

(d) IDOT assigned Staff Assistants to duties outside of the job description and that would not support a *Rutan*-exempt status.

(e) IDOT hired Staff Assistants into *Rutan*-covered positions after the Staff Assistants gained relevant experience in their *Rutan*-exempt Staff Assistant position.

(f) Staff Assistants were evaluated in reference to job titles and duties not set forth in the Staff Assistant position description.

(g) Staff Assistants were assigned to varying Technical Manager levels even though their position descriptions were virtually identical.

Following the discussion of the evidence that supports the conclusion that IDOT misused the Staff Assistant position to circumvent the *Rutan* hiring process, the OEIG has identified summary findings relating to Staff Assistants.

b. IDOT Determines that Staff Assistant Positions are "Technical" – thus Exempt from Personnel Code – Without Apparent Justification and Number of IDOT Staff Assistants Increased Substantially

i. Staff Assistants are deemed "Technical" and thus Exempt from Personnel Code

Although it appears that the majority of State positions are subject to the Illinois Personnel Code, there are exceptions. The Personnel Code specifically exempts from its provisions, "[t]he technical and engineering staffs of the Department of Transportation[.]"

During this investigation, the OEIG discovered that although IDOT classifies some of its positions as "technical," it does not define the term. IDOT's failure to define or clarify the term continued even in the face of a 2005 Office of Internal Audit that found IDOT "[n]on-code employees" performing duties of positions covered by the Personnel Code and that recommended IDOT and CMS work to make certain that positions classified as technical are sufficiently technical. This recommendation was *never* implemented. In fact, former Secretary Gary Hannig told investigators that he was not aware of the 2005 audit, nor was he aware of whether the audit recommendations had been implemented. Similarly, Secretary Ann Schneider, who began serving as Director of Finance and Administration only months after the 2005 Office of Internal Audit report was issued, told investigators she only became aware of the audit in about April 2014, or approximately nine years after it was issued.

Despite having no definition of the term "technical" and having failed to work with CMS to make certain that positions were sufficiently technical, IDOT nonetheless classified the Staff Assistant position as a Technical Manager position. That classification exempted positions from the constraints of the Personnel Code and CMS' heightened scrutiny as administrator of the Personnel Code. IDOT's decision to classify Staff Assistants as "Technical Managers" allowed IDOT to create its own Staff Assistant position description, draft it with language calculated to obtain a *Rutan*-exempt classification, and then present that description to CMS for a *Rutan* determination. Not surprisingly, CMS determined that nearly every IDOT Staff Assistant position description it reviewed was *Rutan*-exempt.

ii. Number of Staff Assistant Positions Increases Substantially Between 2003 and 2011

Investigators discovered that in 2002, IDOT had only three *Rutan*-exempt Staff Assistant positions—throughout the entire agency. Then, starting in late 2003, when Jacob Miller served as IDOT's Bureau Chief of the Bureau of Personnel Management, the number of Staff Assistants increased substantially. A review of IDOT documents and records reveals that during the brief 7-month period Mr. Miller served as Bureau Chief of Personnel Management, the number of Staff Assistants increased from about three to fifteen.

During his interview, Mr. Miller was unable to recall very much, if anything, about his time as IDOT Bureau Chief, including why the number of Staff Assistants increased. Despite his

inability to recall information, Mr. Miller did not dispute the facts that were recalled by others, namely, the facts recalled by long-serving IDOT employees Employee 8 and Employee 97.

Employee 8 and Employee 97 recalled that Mr. Miller sought to increase the number of IDOT *Rutan*-exempt Staff Assistants. According to Employee 8, Mr. Miller requested that her Section create boilerplate Staff Assistant positions in each IDOT district. Employee 97 confirmed this and noted that classification levels for Staff Assistant positions (Technical Manager Level I through VI) were not meaningfully distinguishable from each other in terms of varying degrees of responsibility. That is, according to Employee 97, if the Director of Finance and Administration or Bureau Chief wanted a position created at a certain Technical Manager level, they would ask that it be created at that level without offering justification as to why it should be created at that level.[160]

In any event, what is clear is that the number of Staff Assistant positions continued to increase even after Mr. Miller left IDOT and eventually reached a high of 67. But note, the number of Staff Assistant positions (67) does not reflect that multiple individuals could be, and were, hired into many of those individual positions at any one time. Investigators discovered that one Staff Assistant position description could be used to hire from one to eleven individuals. That explains why, in December 2011, the year in which the number of Staff Assistants employed at IDOT was at its peak, IDOT employed 104 Staff Assistants in those 67 Staff Assistant positions.

Both Bureau Chief Matt Hughes and Secretary Schneider tried to explain the increase in the number of Staff Assistant positions and the even larger number of individuals employed in those positions by noting that IDOT needed to hire a substantial number of employees because of IDOT's receipt of federal stimulus money. Although the investigation revealed that Staff Assistants were hired during the time of 2009 to 2010 period during which IDOT said it needed to hire more employees, the increase in Staff Assistants preceded those events and continued after that period. Assuming IDOT did indeed need to quickly hire staff during 2009 and 2010 or at any time, there were mechanisms in place, other than circumventing the *Rutan* hiring process, which would have allowed IDOT to do so – namely, IDOT could have hired employees on an emergency or temporary basis. But, according to Mr. Hughes, IDOT chose not to do so.

The chart below combines the three charts referenced in Section III(I)(1)(h) of this report and illustrates the growth in IDOT's use of Staff Assistants. It charts the growth by graphing three separate statistics. The first bar (blue) represents the change in the number (e.g. +12, +5, +7 etc.) of Staff Assistant positions each year. The second bar (orange) represents the total number of Staff Assistant positions that existed each year. The third bar (green) represents the total number of individuals employed as Staff Assistants in December of each year (note that several Staff Assistant positions were used to employ multiple individuals).

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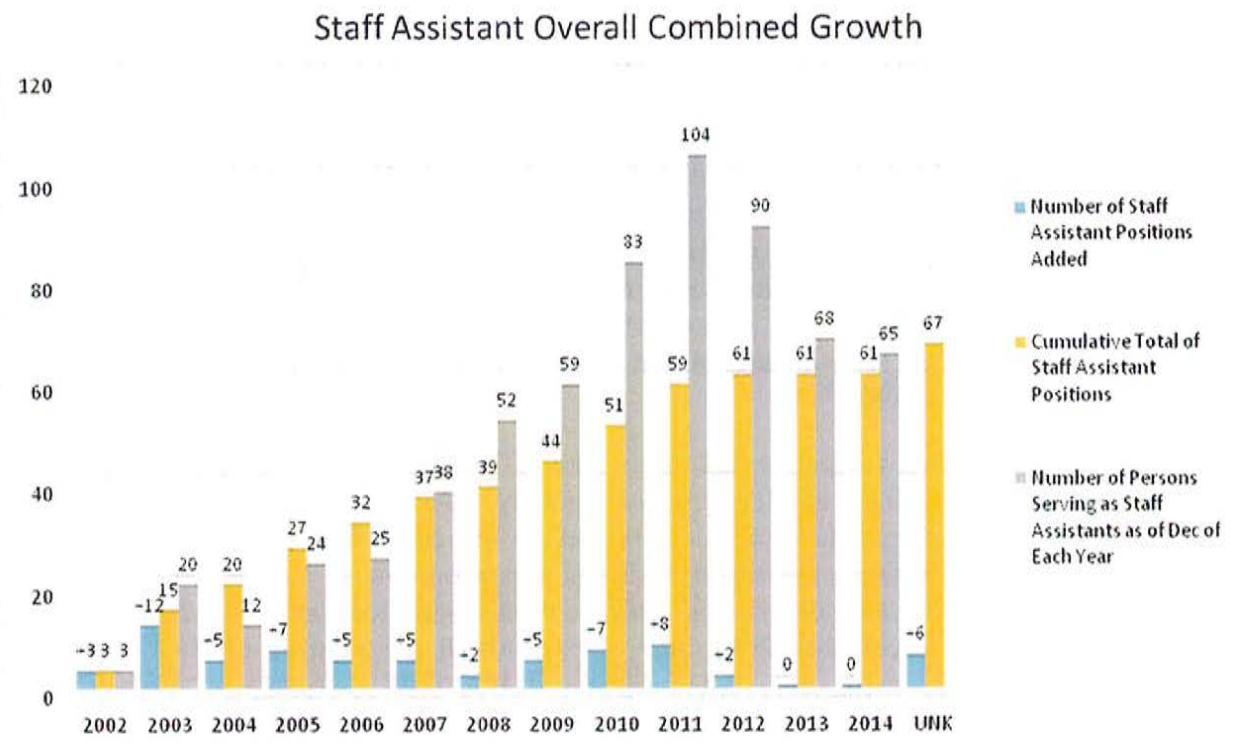
[160] As will be discussed more fully below, information Employee 97 provided investigators about Technical Manager levels turned out to be true. For example, investigators discovered Staff Assistant position numbers at differing Technical Manager levels that shared nearly identical position descriptions. In other words, the only difference between two positions, other than location of the position or the position's supervisor, was the Technical Manager level and therefore the pay range.



Despite the clear and steady growth in IDOT's use of Staff Assistants as reflected in the chart above, and despite statements from senior IDOT staff, including Secretary Schneider, that IDOT used *Rutan*-exempt Staff Assistant positions to hire a substantial number of employees in response to its receipt of federal stimulus money, the investigation revealed that no senior staff member actually monitored IDOT's growing use of Staff Assistants.

During Secretary Schneider's interview, she was shown a graph, similar to the one above, reflecting the steady increase in Staff Assistants and was asked if she was aware of the increase. In response, and despite having served as Director of Finance and Administration for five years where she had responsibility over the bureau in charge of personnel matters, and despite having also served as Secretary since July 2011, Secretary Schneider told investigators that "[a]t that time, I might not have been aware, that, this – they were adding all of these positions, but I'm aware of it currently." In addition, Secretary Schneider told investigators,

> "[] when I first started with the agency in '05, I did not know the difference between the two, [], processes, [] between the covered and exempt, but, as I learned more about the exempt process, [], there were, [], parts of it that we did change over time that I think before, [], I think it was around 2009, [], we would just get the resumes in place — individuals based on information contained in the resumes, and then in 2009 we started requiring that interviews take place for the [] exempt positions.

Former Secretary Hannig was also shown a chart reflecting the increase in the number of Staff Assistant positions and also stated he was unaware of the number of Staff Assistant positions that existed when he was appointed Secretary, and was unaware of the number of new or additional Staff Assistant positions created during the time period he served as Secretary. Similarly, former Bureau Chief of Personnel Management and current Deputy Director of

Finance and Administration Mike Woods, Jr. told investigators that he did not keep track of the number of Technical Position Classification Requests or the number he approved, until the last couple of years.

In summary, the OEIG investigation revealed that IDOT created a Staff Assistant position description and classified it as a Technical Manager, despite not knowing what constituted a technical position, such that it was exempt from the Personnel Code and the scrutiny of CMS. IDOT then repeatedly used the same or similar position description to generate additional positions and authorized multiple persons to fill those positions. Despite its growing use of the Staff Assistant position, those most responsible for monitoring the use of the position, acknowledged that they failed to do so.

b. IDOT Hires Staff Assistants Directly Into *Rutan*-Covered Positions

The investigation also revealed that IDOT hired *Rutan*-exempt Staff Assistants into *Rutan*-covered positions. This practice occurred at the upper echelons of IDOT management and in the very organizational unit charged with overseeing personnel matters, *i.e.*, the Bureau of Personnel Management. For example, in an October 2009 Staffing Memo, then Bureau Chief Matt Hughes informed then Director of Finance and Administration Ann Schneider that he intended to hire three *Rutan*-exempt Staff Assistants to meet the needs of his Bureau. He said that the three Staff Assistants would perform the work of persons whom investigators discovered should have been hired through the *Rutan* hiring process, consistent with Administrative Orders, because the positions (Interviewer and Training Specialist) were *Rutan*-covered positions. In other words, Mr. Hughes made clear his intent and then hired three *Rutan*-exempt Staff Assistants to perform the work of three *Rutan*-covered employees, in circumvention of the Administrative Orders.

When Mr. Hughes was asked about his October 2009 Staffing Memo, he stated, he wanted to hire *Rutan*-exempt Staff Assistants because the hiring turn-around time was much less for *Rutan*-exempt positions than it was for *Rutan*-covered positions. In addition, Mr. Hughes justified his actions by stating that IDOT had received federal funds and needed to hire a substantial number of additional staff in a short amount of time. When Secretary Schneider was asked about Mr. Hughes's 2009 request, she told investigators that she never put it together that Mr. Hughes was proposing to hire *Rutan*-exempt Staff Assistants to perform the duties of *Rutan*-covered Interviewers because her query was a budget exercise, she said, "clearly that wasn't very smart of me."

c. IDOT Transfers Staff Assistants Directly Into *Rutan*-Covered Positions

The investigation also revealed that on multiple occasions, IDOT hired numerous persons into *Rutan*-exempt Staff Assistant positions only to later transfer them into *Rutan*-covered positions without having the *Rutan*-exempt Staff Assistants go through the *Rutan* hiring process. This activity occurred even though, investigators were informed, in a September 2003 email sent at the request of former Bureau Chief of Personnel Management Jacob Miller, employees were instructed that "transfers from Rutan exempt positions into Rutan covered positions will not be approved." For example, investigators discovered that:

- On December 1, 2003, Staff Assistant Employee 85 was "transferred" into a *Rutan*-covered Lead Interviewer position. Employee 85 did not interview for her new position.

- On November 1, 2004, Staff Assistant Employee 88 was "transferred" into a *Rutan*-covered Employment Support Assistant position. Employee 88 did not apply for or interview for her new position.

- On April 1, 2006, Staff Assistant Employee 11 was "transferred" into a *Rutan*-covered Resource Analyst position even though IDOT did not follow the *Rutan* hiring process.

- On September 1, 2008, Staff Assistant Employee 38 was transferred into a Support Services technical position. Employee 38 did not interview for the position and IDOT did not follow the *Rutan* hiring process when transferring him into the position.

Moreover, investigators discovered an additional nine instances in which Staff Assistants were transferred into *Rutan*-covered positions. The following nine *Rutan*-exempt Staff Assistants were transferred into *Rutan*-covered positions without going through the *Rutan* hiring process:

Employee 82	***Employee 83***	***Employee 135***	***Employee 136***
Employee 134	***Employee 87***	***Employee 64***	***Employee 22***
Employee 20			

d. IDOT Assigns Staff Assistants to Duties Outside of the Job Description and That Would Not Support *Rutan*-Exempt Status

In addition to placing Staff Assistants directly into *Rutan*-covered positions or transferring them directly into *Rutan*-covered positions, investigators discovered that IDOT assigned duties to new *Rutan*-exempt Staff Assistant that were inconsistent with the duties and responsibilities set forth in Staff Assistant position descriptions. To be sure, Matt Hughes, Mike Woods, Jr. and even Secretary Schneider did not dispute that some Staff Assistants performed "some" *Rutan*-covered duties. Investigators discovered a number of circumstances in which persons IDOT hired as Staff Assistants were assigned job duties and responsibilities that were more consistent with duties of a *Rutan*-covered position.

A detailed review of IDOT personnel documents, coupled with related interviews revealed several instances in which it was discovered that Staff Assistants performed duties of persons in *Rutan*-covered positions. The specific examples revealed that:

- From May 2010, the time Employee 105 was hired as a Staff Assistant, through at least August 2012, Employee 105 performed the same duties as a prior IDOT employee who held a *Rutan*-covered position.

- From November 2007, the time Employee 38 was hired as a Staff Assistant, through at least September 2008, Employee 38 performed the same duties as a prior IDOT employee who held a *Rutan*-covered position.

- From May 2010, the time Employee 109 was hired as a Staff Assistant, through at least July 2012, Employee 109 performed the same duties as a prior IDOT employee who held a *Rutan*-covered position.

Moreover, in each of the three examples set forth above (Employee 105, Employee 38 and Employee 109) Secretary Ann Schneider, as IDOT's then Director of Finance and Administration, authorized the hires. In two of the three examples (Employee 105 and Employee 38), then Bureau Chief of Personnel Management Matt Hughes also authorized the hires.

In addition to the above specific examples, investigator interviews of Staff Assistants and/or their supervisors revealed an additional 85 examples of persons hired between April 2003 and February 2012 as *Rutan*-exempt Staff Assistants at various Technical Manager levels, who were performing *Rutan*-covered duties. The 85 Staff Assistant examples include those Staff Assistants previously identified in Section III (O) of this report and include the following individuals:

Employee 82	***Employee 21***	***Employee 127***	***Employee 80***
Employee 85	***Employee 112***	***Employee 178***	***Employee 185***
Employee 55	***Employee 70***	***Employee 162***	***Employee 172***
Employee 72	***Employee 74***	***Employee 117***	***Employee 177***
Employee 60	***Employee 59***	***Employee 91***	***Employee 161***
Employee 51	***Employee 165***	***Employee 118***	***Employee 154***
Employee 182	***Employee 36***	***Employee 164***	***Employee 157***
Employee 26	***Employee 79***	***Employee 48***	***Employee 158***
Employee 40	***Employee 126***	***Employee 150***	***Employee 176***
Employee 153	***Employee 116***	***Employee 175***	***Employee 65***
Employee 20	***Employee 22***	***Employee 78***	***Employee 160***
Employee 171	***Employee 113***	***Employee 152***	***Employee 155***
Employee 83	***Employee 170***	***Employee 180***	***Employee 184***
Employee 135	***Employee 156***	***Employee 151***	***Employee 69***
Employee 87	***Employee 249***	***Employee 173***	***Employee 179***
Employee 89	***Employee 34***	***Employee 25***	***Employee 163***
Employee 124	***Employee 114***	***Employee 125***	***Employee 181***
Employee 92	***Employee 115***	***Employee 167***	***Employee 169***
Employee 136	***Employee 56***	***Employee 6***	***Employee 174***
Employee 77	***Employee 53***	***Employee 159***	***Employee 166***
Employee 119	***Employee 57***	***Employee 183***	***Employee 4***

Interviews of the above-referenced Staff Assistants or their supervisors specifically revealed that they were not performing the spokesperson, confidential, or policymaking duties that comprise the duties of a *Rutan*-exempt Staff Assistant. Instead, they performed duties such as:

- general housekeeping
- setting up computers
- yard maintenance
- mowing
- answering phones
- taking messages
- making travel arrangements
- overseeing motor pools
- vehicle inspections
- planting trees
- assisting with safety inspections
- managing workers' compensation claims
- monitoring supply rooms
- overseeing heavy equipment usage
- data entry
- payroll functions
- stamping files
- organizing files

It is clear that those duties would not support a determination that these were *Rutan*-exempt positions.

e. IDOT Hires Staff Assistants into *Rutan*-Covered Positions after the Staff Assistants Gained Relevant Experience in their *Rutan*-Exempt Staff Assistant Positions

Investigators discovered that some IDOT employees who had been hired into *Rutan*-covered positions, after having gone through the *Rutan* hiring process, were hired based upon experience they gained while performing duties as *Rutan*-exempt Staff Assistants. In other words, Staff Assistants who were performing the duties and responsibilities of *Rutan*-covered employees parlayed the experience they gained while serving as a *Rutan*-exempt Staff Assistant to eventually obtain a *Rutan*-covered position through the *Rutan* hiring process.

For example, in March 2011, Employee 128 was hired as a *Rutan*-exempt Staff Assistant in the Office of Finance and Administration. He was supervised by IT Procurement Manager Employee 62, who told investigators that Staff Assistant Employee 128 prepared Invitations for Bids, Requests for Proposals, and Basic Ordering Agreements, which, in one way or another, related to procurement matters. In fact, Employee 128 was even evaluated in the working title, "Procurement Assistant."

Thus, in March 2012, when a *Rutan*-covered "Senior IT Procurement Analyst" position was posted, Employee 128 applied for it. His application for the job listed various procurement duties that he performed while a Staff Assistant. A résumé attached to the job application stated Employee 128's job title was "Procurement Assistant," again, even though he was actually a Staff Assistant. After going through the *Rutan* hiring process, not surprisingly, Employee 128 was hired into the Senior IT Procurement Analyst position. The Employment Decision Form that identified Employee 128 as the top-ranking candidate for the IDOT *Rutan*-covered position "Senior IT Procurement Analyst" justified his selection, in part, because his work experience at IDOT included dealing with Requests for Proposals, Basic Ordering Agreements, Requests for Information, and Invitations for Bids. Employee 62 told investigators that she highly doubted Employee 128 would have obtained the Senior IT Procurement Analyst position without the procurement experience he gained as a Staff Assistant.

As set forth above, according to an October 2009 Staffing Memo, former Bureau Chief of Personnel Management Matt Hughes informed then Director of Finance and Administration Ann

Schneider that he intended to hire three *Rutan*-exempt Staff Assistants to perform the duties of three *Rutan*-covered positions; namely, two Interviewers and a Training Specialist. Two of the *Rutan*-exempt Staff Assistants hired pursuant to Mr. Hughes's October 2009 Staff Memo were Employee 131 and Employee 130.

After the October 2009 Staffing Memo was sent to Ms. Schneider, Employee 131 was hired into the first of several temporary appointments as a *Rutan*-exempt Staff Assistant, before being hired into that position on a full-time basis in June 2010. In addition, Employee 130 took a voluntary reduction from a Technical Manager IV Legislative Liaison position into a Technical Manager II Staff Assistant position in February 2009. Then, in May 2011, after having served as *Rutan*-exempt Staff Assistants performing *Rutan*-covered duties, both men (Employee 131 and Employee 130) were hired into the *Rutan*-covered Interviewer position. In fact, the Employment Decision Form for Employee 131 identified him as a top-ranked candidate for the Interviewer position, in part, because he had been conducting interviews since 2010 after becoming *Rutan* Certified in December 2009. Similarly, the Employment Decision Form that identified Employee 130 as a top-ranked candidate for the Interviewer position also justified his selection, in part, because he had above average experience in conducting interviews. In addition, notes taken by those who interviewed him for the Interviewer position indicated that he had been conducting numerous interviews for a year, although the notes did not reflect he had been doing so as a *Rutan*-exempt Staff Assistant.

f. Staff Assistants Are Evaluated Based on Job Titles and Duties other than those Set Forth in the Staff Assistant Job Description

Pursuant to IDOT personnel policies, technical employees, which included Staff Assistants, should be evaluated at least once every 12 months, utilizing the performance management system identified above. When developing the performance standards to be included on the performance evaluation, IDOT's personnel policy requires that the "Performance standards are to be developed within the following constraints. Each must be: related to the job accountabilities and/or additional direction..." *See* IDOT Personnel Policies Manual 5-7 A.1. In other words, Staff Assistants should have been evaluated based upon their position description duties and responsibilities.

Investigators, however, discovered that a number of Staff Assistants were evaluated on position working titles *other* than their Staff Assistant working title. This discovery is consistent with the discovery that most *Rutan*-exempt Staff Assistants were not performing the duties set forth in their Staff Assistant position descriptions but rather the duties of other *Rutan*-covered positions. For example, a detailed review of IDOT personnel documents, coupled with related interviews, revealed instances in which Staff Assistants were evaluated in working titles other than their Staff Assistant positions. The examples revealed that:

- Between August 2008 and June 2012, Staff Assistant Employee 52 was evaluated as a Property Maintenance Specialist, a job position that did not even exist.

- Between December 2007 and June 2012, Staff Assistant Employee 110 was evaluated as a Motor Pool/Fleet Coordinator.

In addition to the above specific examples, investigator interviews and review of IDOT personnel records revealed that numerous other Staff Assistants were also evaluated in working titles other than Staff Assistants. The evaluations occurred from at least October 2007 through at least July 2012. Those 21 Staff Assistants included:

Employee 111	***Employee 109***	***Employee 119***	***Employee 124***
Employee 112	***Employee 56***	***Employee 120***	***Employee 125***
Employee 113	***Employee 59***	***Employee 121***	***Employee 126***
Employee 114	***Employee 117***	***Employee 122***	***Employee 127***
Employee 115	***Employee 118***	***Employee 123***	***Employee 101***
Employee 116			

Moreover, a review of the performance evaluations and other personnel documents revealed that a number of Staff Assistants did not report to *Rutan*-exempt supervisors. According to CMS Employee 7, whenever a subordinate position reports to a *Rutan*-covered supervisor, the subordinate position will be deemed *Rutan*-covered. In other words, if a supervisor is not instilled with sufficient authority to be *Rutan*-exempt, then neither could the subordinate, and that makes perfect sense. Yet, Staff Assistants such as Employee 132 and Employee 105 both reported to *Rutan*-covered supervisors. Moreover, some employees in the Staff Assistant position were not even physically located in the Office or Division described in the Staff Assistant position description. For example, IDOT's organizational chart revealed that Mike Woods, Jr.'s wife worked in the Bureau of Personnel Management, yet when investigators interviewed her and Mr. Woods, they each stated she did not work in that bureau but rather the Division of Aeronautics.

The foregoing reveals that IDOT not only violated its personnel policies on multiple occasions, but that employees who were hired as Staff Assistants were generally not performing the duties set forth in their Staff Assistant position descriptions or reporting to supervisors or locations identified in their Staff Assistant position descriptions.

g. Staff Assistants Were Assigned to Varying Technical Manager Levels Even Though their Position Descriptions Were Virtually Identical

IDOT classifies its "technical" non-code employees into various Position Titles, including the title of Technical Manager. Each Position Title is divided into several levels. For example, Technical Managers are divided into ten levels, Technical Manager I through Technical Manager X. All Staff Assistants are classified as Technical Managers. However, even though the position descriptions, and thus the prescribed duties and responsibilities for Staff Assistants are virtually identical across the board, Staff Assistants have been assigned to varying Technical Manager levels, including Technical Manager I, II and VI. This means, among other things, that their pay varies even though they ostensibly are performing the same work.

OEIG investigators learned that IDOT has no established criteria for determining the level to which an employee should be assigned within a particular Position Title. In other words, there are no established criteria for determining the level to which a Technical Manager should be assigned. IDOT's Technical Pay Plan establishes general criteria for determining starting pay, but no criteria determining Technical Manager levels.

Former Director of the Office of Finance and Administration Matt Hughes, current Deputy Director of the Office of Finance and Administration Mike Woods, Jr., and current Secretary of Transportation Ann Schneider (who is also a former Director of the Office of Finance and Administration) all acknowledged that there should be a difference in position descriptions that correspond to the differences in Technical Manager levels. None of them could provide an explanation for how IDOT had assigned Staff Assistants to different Technical Manager levels.

A prominent example is Staff Assistant Employee 137, who IDOT hired as a Staff Assistant assigned to a Technical Manager VI position level. Employee 137, whose position as Staff Assistant was ostensibly *Rutan*-exempt, was paid about $28,000 more than Employee 138, a Project Manager classified as Technical Manager III, even though they were both doing the same work. Indeed, the work that Employee 137 was doing was not the work set forth in the Staff Assistant position description.

The lack of any controls regarding the position levels at which Technical Manager positions and other technical positions are assigned allows hiring abuses, including the gratuitous setting of pay levels for reasons that may be personal or political, rather than for reasons that legitimately serve the interests of IDOT and the public. Moreover, it is a matter for concern that IDOT's Directors of the Office of Finance and Administration and the Secretary of Transportation did not appear to have any idea how Technical Manager levels are assigned, and had no knowledge that Staff Assistants were assigned to varying Technical Manager levels even though their position descriptions are virtually identical across the board.

Finally, the assignment of varying Technical Manager levels to the Staff Assistant position corroborates an inference that the Staff Assistant position description was fictitious and existed only on paper. Other than for the purpose of obtaining a *Rutan*-exempt determination, the Staff Assistant position description was ignored. It was ignored with regard to the assignment of actual duties; it was ignored with regard to employee evaluations; and it was ignored with regard to assigning Technical Manager position levels.

h. Summary Findings Relating to Staff Assistant Duties

During the course of this investigation, three individuals or groups reviewed the duties IDOT Staff Assistants were performing, including:

1) OEIG investigators,

2) CMS Employee 7, and

3) IDOT (or its designee).

In total, the OEIG discovered that about 255 separate persons held a Staff Assistant position sometime between 2003 and 2013. Of those persons, the position duties of 155 Staff Assistants were reviewed by one of the three reviewers. Investigators did not review the position

duties of 100 of the 255 Staff Assistants.[161] Below is a summary of what each reviewer discovered.

As set forth above, OEIG investigators identified over 100 *Rutan*-exempt Staff Assistants performing duties of *Rutan*-covered persons. In addition, in December 2012, OEIG investigators provided CMS Employee 7 with a summary of activities that 39 *Rutan*-exempt Staff Assistants were performing for the purpose of asking her to review the duties and inform investigators if the duties were *Rutan*-exempt or *Rutan*-covered duties. After her review, Employee 7 concluded that the overwhelming majority of the positions (35 of 39 or about 90%) would have resulted in *Rutan*-covered position determinations.

In May 2014, investigators learned that IDOT had conducted its own review of the duties performed by about 60 *Rutan*-exempt Staff Assistants currently employed. IDOT's review disclosed that 48 of those 60, or about 80%, of *Rutan*-exempt Staff Assistants were performing *Rutan*-covered duties. Below we summarize the Staff Assistants whose position duties were reviewed by at least one of the three reviewers and categorize them into one of three categories:

- **Category I** is a list of 108 *Rutan*-exempt Staff Assistants who were identified by one or more reviewer as a Staff Assistant who performed *Rutan*-covered duties.

- **Category II** is a list of 25 *Rutan*-exempt Staff Assistants who were identified by one or more reviewer as a Staff Assistant who performed *Rutan*-covered duties but who was identified by another reviewer as performing *Rutan*-exempt duties.[162]

- **Category III** is a list of 22 *Rutan*-exempt Staff Assistants who were identified as performing *Rutan*-exempt duties by all reviewers.

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[161] The 100 Staff Assistants not reviewed by one of the three groups of reviewers were: Employee 227, Employee 228, Employee 229, Employee 230, Employee 231, Employee 232, Employee 233, Employee 234, Employee 235, Employee 236, Employee 237, Employee 142, Employee 224, Employee 238, Employee 239, Employee 216, Employee 240, Employee 241, Employee 242, James Kirk, Employee 243, Employee 244, Employee 245, Employee 246, Employee 247, Employee 248, Employee 249, Employee 225, Employee 250, Employee 16, Employee 251, Employee 252, Employee 253, Employee 218, Employee 254, Employee 255, Employee 219, Employee 256, Employee 257, Employee 258, Employee 259, Employee 260, Employee 220, Employee 261, Employee 221, Employee 262, Employee 263, Employee 264, Employee 265, Employee 266, Employee 267, Employee 268, Employee 269, Employee 270, Employee 271, Employee 272, Employee 273, Employee 274, Employee 275, Employee 276, Employee 277, Employee 278, Employee 279, Employee 280, Employee 281, Employee 282, Employee 283, Employee 123, Employee 284, Employee 285, Employee 222, Employee 286, Employee 287, Employee 288, Employee 289, Employee 290, Employee 291, Employee 292, Employee 293, Employee 294, Employee 295, Employee 296, Employee 297, Employee 298, Employee 299, Employee 300, Employee 301, Employee 302, Employee 102, Employee 303, Employee 304, Employee 305, Employee 306, Employee 307, Employee 308, Employee 223, Employee 309, Employee 310, Employee 311, Employee 312.

[162] In some instances, a reviewer needed additional information to reach a determination. Out of an abundance of caution, the OEIG has classified those individuals as performing *Rutan*-exempt duties.

Category I

Employee 82
Employee 85
Employee 55
Employee 54
Employee 72
Employee 60
Employee 51
Employee 134
Employee 182
Employee 40
Employee 153
Employee 26
Employee 20
Employee 171
Employee 83
Employee 11
Employee 135
Employee 88
Employee 87
Employee 110
Employee 89
Employee 124
Employee 136
Employee 64
Employee 165
Employee 119
Employee 21
Employee 112
Employee 70
Employee 213
Employee 111
Employee 3
Employee 74
Employee 9
Employee 59
Employee 77
Employee 36
Employee 79
Employee 206
Employee 126
Employee 22
Employee 113
Employee 38
Employee 156
Employee 34
Employee 114
Employee 115
Employee 56
Employee 53
Employee 57
Employee 127
Employee 52
Employee 162
Employee 117
Employee 1
Employee 91
Employee 118
Employee 164
Employee 211
Employee 98
Employee 131
Employee 48
Employee 150
Employee 175
Employee 130
Employee 78
Employee 152
Employee 180
Employee 151
Employee 203
Employee 140
Employee 173
Employee 25
Employee 35
Employee 109
Employee 105
Employee 125
Employee 167
Employee 159
Employee 183
Employee 137
Employee 80
Employee 2
Employee 210
Employee 205
Employee 185
Employee 172
Employee 177
Employee 128
Employee 161
Employee 139
Employee 157
Employee 204
Employee 176
Employee 160
Employee 155
Employee 184
Employee 179
Employee 163
Employee 181
Employee 169
Employee 174
Employee 212
Employee 166
Employee 214
Employee 4
Employee 207
Employee 208

Category II

Employee 92
Employee 193
Employee 116
Employee 170
Employee 178
Employee 198
Employee 132
Employee 6
Employee 195
Employee 192
Employee 199
Employee 188
Employee 154
Employee 101
Employee 158
Employee 68
Employee 65
Employee 76
Employee 69
Employee 49
Employee 200
Employee 94

Category III

Employee 84
Employee 186
Employee 37
Employee 27
Employee 81
Employee 71
Employee 39
Employee 122
Employee 63
Employee 121
Employee 120
Employee 75
Employee 191
Employee 90
Employee 189
Employee 201
Employee 86
Employee 194
Employee 196
Employee 93
Employee 73
Employee 190
Employee 209
Employee 95
Employee 313

Thus, as reflected by the above categories, of the 155 total Staff Assistants whose position descriptions were reviewed, 108 out of 155 or about 70% of Staff Assistants were found to be performing *Rutan*-covered duties and only 22 Staff Assistants or about 14% were clearly found to be performing *Rutan*-exempt duties.

3. Staff Assistants Hired with Political Affiliations

During the course of this investigation, investigators identified a number of persons who had been hired into *Rutan*-exempt Staff Assistant positions and who had some sort of affiliation or association with an elected official. In light of the fact that many of the Staff Assistants hired actually performed duties consistent with persons who should have been hired through the more stringent *Rutan* hiring process, because they performed *Rutan*-covered duties, investigators sought to determine whether there was any correlation between these facts.

a. *Rutan*-Exempt Positions

As an initial matter, it is clear that federal courts have recognized that in narrow circumstances the government might be able to demonstrate a compelling interest in using political affiliation as a basis for making an employment decision. As set forth above, in *Branti v. Finkel* the Court articulated the test as being whether "party affiliation is an appropriate requirement for the effective performance the public office involved."

In response to the *Rutan* decision and in order to fully comply with *Rutan*, since 1990, various Illinois Governors, most recently Governor Quinn in 2009, issued Administrative Orders setting forth an elaborate process aimed at making certain that State agencies comply with *Rutan*. These Administrative Orders were no doubt put into place because there was recognition that non-policy related State jobs should be filled without regard to a person's party affiliation. In fact, in 2009, the Illinois General Assembly went even further by appointing the various Offices of Executive Inspectors General to oversee State employment practices "to ensure compliance with *Rutan v. Republican Party of Illinois*."

The OEIG concludes that the efforts of various Illinois Governors as well as those of the Illinois General Assembly have resulted in the creation of a State hiring system whereby a number of checks and balances have been put into place in order to prevent agency manipulation of State hiring procedures or worse, the intentional circumvention of the *Rutan* hiring process. Unfortunately, as with all man-made safeguards, rules and procedures are sometimes unintentionally or intentionally violated. What IDOT and its senior staff were discovered to have done in relation to its Staff Assistant positions is one such example. And, although OEIG investigators required some time to unravel the various layers of misconduct, this report reflects that violations of the processes and checks and balances occurred.

b. *Rutan*-Exempt Staff Assistants

IDOT's decision to hire *Rutan*-exempt Staff Assistants based upon political affiliation, personal friendship, and familial relationship or for that matter, any other reason, so long as the person was qualified, would not, in and of itself, be inappropriate. In other words, if IDOT needed one, five or one-hundred Staff Assistants to perform the duties set forth in the Staff Assistant position descriptions it created and submitted to CMS, and which CMS determined to

be *Rutan*-exempt, then nothing the OEIG discovered during the course of this investigation would have resulted in findings of misconduct. However, that is not what happened here.

As set forth above, the OEIG discovered that the majority of the Staff Assistants IDOT hired did not perform the duties they were purportedly hired to perform. In fact, some Staff Assistants did not even know they were hired into Staff Assistant positions, and others clearly were hired into Staff Assistant positions without any knowledge of what duties they would be performing as Staff Assistants. While nearly every single high-ranking IDOT official interviewed tried to explain that hiring Staff Assistants to perform "other duties" took place because IDOT had received federal funds or road funds that needed to be spent, their statements were explanations or excuses rather than legitimate justifications. Neither *Rutan* nor the various Governors' Administrative Orders contain exceptions that permit political hiring because a State agency receives a $1.2 or $1.3 billion dollar influx of federal funds. The hiring rules are simple and clear – positions for which political affiliation is not a valid consideration must be filled via the *Rutan* hiring process. IDOT circumvented the process for at least 10 years.

The actions of IDOT raise the question of whether IDOT intentionally circumvented the *Rutan* hiring process by *creating* Staff Assistant positions *for the purpose* of hiring persons with political affiliation into those positions. On this question, the OEIG makes the following observations.

First, there is evidence that a number of persons hired into Staff Assistant positions stated they obtained their position as a result of some sort of political affiliation. The following persons fit within this category:

- Staff Assistant Employee 56 who said he submitted an open application after he contacted Senator Clayborne, whom he has known since grade school.

- Former Staff Assistant Employee 40 who said she first learned that IDOT was looking to hire a Staff Assistant in 2003, when then-Rock Island County Chairman John Gianulis informed her about an IDOT position.

- Staff Assistant Employee 64 who said he learned IDOT may be hiring from his brother-in-law, then-Deputy Chief of Staff for Governor Rod Blagojevich.

- Former Staff Assistant Employee 20 who that said in early 2003, while she was working as a County Coordinator for Rod Blagojevich's gubernatorial campaign she met Sam Flood, a St. Clair County Clerk and downstate liaison for Mr. Blagojevich.

- Staff Assistant Employee 36 who said his brother, former State Senator Gary Forby, informed him of a Staff Assistant position.

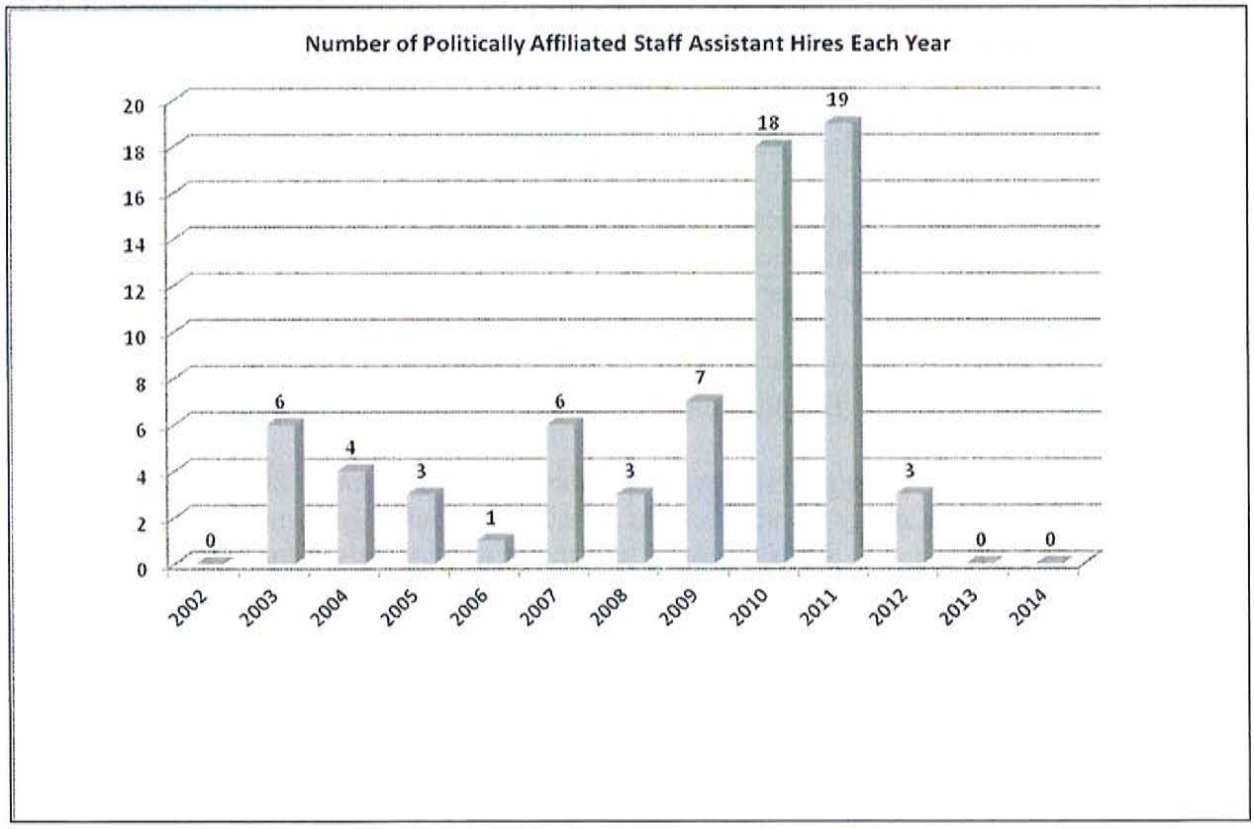
In addition, former Director of the Division of Traffic Safety Michael Stout told investigators, unabashedly, that his requests to obtain a position for his daughter were permissible because she had worked on Governor Quinn's campaign and deserved a job at IDOT.

Second, there is evidence that persons hired into Staff Assistant positions did in fact have some affiliation with an elected official. For example, three Staff Assistants were former Staff

Members of former US Congressman and House Transportation and Infrastructure Committeeman Phil Hare and were hired as Staff Assistants just prior to or soon after Mr. Hare left office. In addition, the following persons also fit in this category:

Employee 84	***Employee 220***	***Employee 150***	***Employee 39***
Employee 55	***Employee 140***	***Employee 219***	***Employee 217***
Employee 40	***Employee 221***	***Employee 193***	***Employee 36***
Employee 182	***Employee 125***	***Employee 156***	***Employee 59***
Employee 153	***Employee 132***	***Employee 163***	***Employee 89***
Employee 87	***Employee 137***	***Employee 20***	***Employee 95***
Employee 37	***Employee 222***	***Employee 218***	***Employee 223***
Employee 64	***Employee 201***	***Employee 184***	***Employee 212***
Employee 216	***Employee 205***	***Employee 118***	***Employee 38***
Employee 121	***Employee 185***	***Employee 176***	***Employee 56***
Employee 70	***Employee 123***	***Employee 206***	***Employee 102***
Employee 74	***Employee 139***	***Employee 204***	***Employee 11***
Employee 128			

Third, there is evidence that the majority of persons who had political affiliations who were hired into Staff Assistant positions between 2003 and 2013 were in fact hired in 2010 and 2011. That is they were hired when all senior IDOT officials said IDOT was in need of hiring additional personnel. The below chart summarizes this information.



Fourth, there is also evidence that in at least nine instances, IDOT created new Staff Assistant positions and within weeks, they were filled by persons who had political affiliations. Those nine individuals are:

Employee 84	***Employee 40***	***Employee 182***	***Employee 153***
Employee 20	***Employee 70***	***Employee 74***	***Employee 218***
Employee 193			

Nevertheless, and despite the extensive investigation, the OEIG is unable to conclude, that IDOT senior staff knowingly created *Rutan*-exempt positions descriptions for the purpose of intentionally circumventing State *Rutan* hiring rules solely to select persons with political affiliation. That being said, the OEIG does credit the statements of Employee 8 and Employee 97, who both noted that IDOT's former Bureau Chief of Personnel Management Jacob Miller asked them to create boilerplate Staff Assistant positions, which the OEIG concludes did occur. In addition, the OEIG credits their statements in which they say that Mr. Miller told them he wanted to fill the positions with persons who had political affiliations, which the OEIG concludes might explain why of the nine persons whom the OEIG identified as having filled newly created Staff Assistant positions, five positions were created during the time period Mr. Miller served as Bureau Chief of Personnel Management. However, these facts do not reveal any clear intent on the part of IDOT. This conclusion in no way diminishes the OEIG's general finding that IDOT and in particular certain IDOT staff did circumvent *Rutan* hiring rules as set forth in Administrative Orders.

4. Former IDOT Chief Counsel's Arguments that IDOT's Use of the Staff Assistant Position Did Not Violate Rutan

During her interview, Ms. Schanzle-Haskins opined that it would not be a *Rutan* violation for IDOT to create a job description that was deemed by CMS to be *Rutan*-exempt, and then fill that position with someone assigned to do wholly unrelated duties that would not support a *Rutan*-exempt determination. She further opined that such a practice might violate union rules or be an unfair labor practice, but that it would not violate *Rutan.*[163] Ms. Schanzle-Haskins based her opinion on a line of cases involving patronage dismissals (not patronage hiring) in which it has been held that, absent a showing of systematic unreliability, an elected official is entitled to rely on official job descriptions in determining who he or she may fire and replace without violating *Rutan.* Those cases indicate that the official is not required to dig behind the job description to determine what an employee actually does.[164]

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[163] It should be noted that hiring a person into a *Rutan*-exempt position and then assigning them *Rutan*-covered duties or placing them into a *Rutan*-covered position would not by itself constitute a violation of the First Amendment under the *Rutan* decision. That would require an additional showing that the person was hired on the basis of political affiliation. However, it is the OEIG's position that such a practice would be a violation of the Governors' Administrative and Executive Orders, which require *Rutan*-covered positions to be filled through the prescribed open and competitive process, irrespective of whether the motivation for the hiring is political patronage.

[164] As noted above, the cases the Chief Counsel relied on are *Pillsbury v. Martin*, 2006 WL 2361895 (C.D. Ill. Aug. 15, 2006); *Killman v. Martin*, 2006 WL 2472262 (C.D. Ill. Aug. 25, 2006); *Riley v. Blagojevich*, 425 F.3d 357 (7th Cir. 2005); *Allen v. Martin*, 460 F.3d 939 (7th Cir. 2006); *Moss v. Martin*, 473 F.3d 694 (7th Cir. 2007) (*Moss I*); and *Moss v. Martin*, 614 F.3d 707 (7th Cir. 2010) (*Moss II*).

However, the line of patronage dismissal cases upon which IDOT's former Chief Counsel relied do not assist IDOT in avoiding an OEIG finding, as set forth below, that IDOT violated the Governors' Administrative Orders by using the Staff Assistant positions to circumvent required hiring procedures for *Rutan*-covered positions. There are at least two reasons for that, as discussed below.

First, the patronage dismissal cases are wholly inapplicable to the context of patronage hiring. In the patronage dismissal context, it makes eminent sense that a new administration should be able to rely on the official job descriptions promulgated by the prior administration in determining who it may appropriately fire and replace with its own people. It should not be hamstrung because the prior administration inappropriately hired people based on political affiliation. As long as the new administration has not itself manipulated the job descriptions in order to facilitate its patronage dismissals, it should not be stuck with the prior administration's political hires simply because those political hires never actually performed work that would support *Rutan*-exempt status. Indeed, that would be a perverse result.

Likewise, an employee who was hired into a putatively *Rutan*-exempt position based on political affiliation, and thus was able to avoid a competitive, merit-based process for obtaining the position, should not be heard to complain about being fired based on political affiliation simply because he or she never actually performed the duties prescribed by the job description. That would essentially reward the employee for having cheated. If that were the rule, it would incentivize patronage hires to not perform their duties in order to insulate themselves from patronage dismissal.

But those considerations do not apply at all in the context of patronage *hiring*. Indeed, the opposite is true. There is no reason that an elected official should be able to rely on his or her *own* putatively *Rutan*-exempt job description in order to hire someone based on political affiliation, and not based on the competitive, merit-based process, and then place that political hire into a *Rutan*-covered position or assign him or her duties that would not support *Rutan*-exempt status. That would be an equally perverse result. It would eviscerate the *Rutan* decision. We are aware of no case holding that the job description controls in the context of patronage hiring. We are aware of no case that even addresses the issue of whether elected officials may presumptively rely on job descriptions in the context of patronage hiring as opposed to patronage dismissals. That is likely because no one has had the temerity to make that argument to a court.

Second, even if the patronage dismissal cases were applicable in the hiring context, those cases have held that reliance on the job description is *provisional*, and is not warranted where there is a showing that the job descriptions are "systemically unreliable."[165] In the Seventh Circuit's *Riley* decision, it found that the job description was reliable because, among other things, the job descriptions were made and updated by CMS and reviewed by the Civil Service Commission.[166] Here, the job descriptions are created and updated solely by IDOT, not CMS or the Civil Service Commission. Moreover, as discussed in more detail elsewhere in this report, most of the IDOT employees in Staff Assistant positions performed duties that were wholly or largely outside of their job descriptions and that would not support *Rutan*-exempt status.

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[165] *Riley*, 425 F.3d at 365.
[166] *Id.* at 361.

5. The OEIG's Findings

a. Findings Relating to the Illinois Department of Transportation

In this case, the OEIG's investigation has revealed that the Illinois Department of Transportation circumvented Administrative Orders; orders that were put into place for the purpose of ensuring that State agencies complied with *Rutan v. Republican Party of Illinois*.

The investigative evidence supporting this conclusion revealed that IDOT deemed the Staff Assistant position as a "technical" position – thus allowing IDOT to exempt a substantial number of Staff Assistant positions from the Personnel Code – without any apparent justification. IDOT then hired nominally *Rutan*-exempt Staff Assistants to perform duties of persons who held *Rutan*-covered positions. IDOT also transferred Staff Assistants directly into *Rutan*-covered positions. And, IDOT assigned duties to a substantial number of Staff Assistants which were outside of the job descriptions and that would not support *Rutan*-exempt status. Investigators discovered that IDOT also hired some Staff Assistants into *Rutan*-covered positions after they gained relevant experience in their *Rutan*-exempt Staff Assistant positions. In many other cases, IDOT supervisors evaluated Staff Assistants with reference to job titles and duties *not* set forth in the Staff Assistant position descriptions. Many Staff Assistants were supervised by persons who held *Rutan*-covered positions.

In summary, IDOT staff repeatedly ignored many of its own personnel policies. Surprisingly, former Secretary Gary Hannig informed investigators he was not even aware IDOT had personnel policies. In any event, investigators discovered that IDOT inexplicably deemed Staff Assistant positions to be "technical" positions, a term IDOT does not define, and by doing so crafted Staff Assistant position descriptions to escape further CMS oversight of this position. Again, IDOT was able to craft its own position descriptions because so-called IDOT "engineering and technical" positions are exempt from the provisions of the Personnel Code, meaning that CMS played no role in creating or approving these types of job descriptions. IDOT's ability to craft technical position descriptions unchecked by CMS, ultimately resulted in CMS determinations that Staff Assistant positions were *Rutan*-exempt. By obtaining *Rutan*-exempt determinations, IDOT was able to increase the number of *Rutan*-exempt positions by submitting the same or similar Staff Assistant job descriptions to CMS over and over again.

In 2002, there were only three Staff Assistant positions in all of IDOT. However, through 2012, IDOT continued to classify so-called Staff Assistant positions as "technical," and continued to draft their position duties and responsibilities in nearly the exact manner. Thus, IDOT was able to obtain multiple additional *Rutan*-exempt IDOT positions year after year. This allowed IDOT to fill positions without regard to the *Rutan* hiring process and more importantly, allowed it to hire employees based on political affiliations or associations or other non merit-based considerations. By the time IDOT was done, it created at least 67 Staff Assistant positions, some of which were used to hire multiple individuals. IDOT's decision to hire *Rutan*-exempt Staff Assistants to perform duties of *Rutan*-covered employees deprived hundreds of persons of the opportunity to obtain employment at IDOT through appropriate and lawful means.

The OEIG finds that IDOT's Staff Assistant job position descriptions are and have been "systemically unreliable." The OEIG bases its finding upon its extensive review of Staff

Assistant position descriptions, its numerous interviews and its analysis of the evidence discovered during the course of this investigation. As recently as May 2014 the OEIG's findings have been corroborated by IDOT and CMS when, pursuant to a desk audit, they determined 48 of 60, or about 80%, of current IDOT Staff Assistants were performing *Rutan*-covered duties. That figure further supports the OEIG's finding that IDOT Staff Assistant position descriptions are in fact "systemically unreliable."

The *Rutan* hiring process was established in order to ensure that agency employment decisions relating to *Rutan*-covered positions are based on merit rather than political affiliation. The *Rutan* hiring process was also put in place to make certain *Rutan*-covered positions were filled in a manner consistent with an open competitive process. In other words, even if IDOT did not intentionally seek or attempt to fill every *Rutan*-exempt Staff Assistant position based on political affiliation, it nevertheless circumvented the *Rutan* hiring process with regard to positions that should have been filled by persons competing for the positions.

During interviews, it became clear to investigators that senior IDOT staff, including former Secretary Gary Hannig, Secretary Ann Schneider, former Director of Finance and Administration and former Bureau Chief of Personnel Management Matt Hughes and former Bureau Chief of Personnel Management and current Deputy Director of Finance and Administration Mike Woods, Jr., were all fully aware that the *Rutan* hiring process required certain steps to be followed when filling *Rutan*-covered positions. In addition, two of those individuals, Matt Hughes and Mike Woods, Jr., stated that the *Rutan* hiring process took longer to complete than the process for filling *Rutan*-exempt positions. As described earlier in this report, there were at least 10 steps IDOT needed to take in order to fill a *Rutan*-covered position whereas they needed far fewer steps in order to fill a *Rutan*-exempt position. However, by hiring *Rutan*-exempt Staff Assistants and immediately having them perform duties entirely unrelated to those duties that defined the Staff Assistant positions, or, more specifically, *Rutan*-covered duties, IDOT was able to circumvent the entire *Rutan* hiring process. To be clear, although there may have been times that IDOT needed to hire employees more rapidly, IDOT had existing legitimate mechanisms at its disposal to hire persons on an emergency or temporary basis. Violating Administrative Orders for expediency or because it ostensibly helped IDOT operate more efficiently is inappropriate. In any event, despite acknowledging awareness of those alternative legitimate processes, IDOT staff did not use them. Rather, IDOT simply opted to hire Staff Assistants and assign them *Rutan*-covered duties. When IDOT properly posted a *Rutan*-covered positions, the *Rutan*-exempt Staff Assistant was often able to obtain the position.

Therefore, the OEIG finds that there is reasonable cause to believe that from about 2003 through at least July 1, 2013 (when Staff Assistant Employee 208 was hired), IDOT approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties. Thus, IDOT circumvented Administrative Order No. 2 (2009), which was put into place in order to make certain that persons hired into *Rutan*-covered positions were hired pursuant to the *Rutan* hiring process consistent with the United States Supreme Court decision *Rutan v. Republican Party of Illinois.* Thus this allegation is **FOUNDED**.

b. Findings Related to Allegations Initially Received by the OEIG

i. Anonymous Complaint No. 11-00553

As noted at the beginning of this report, an anonymous complaint sent to the OEIG alleged that Employee 1, who is the sister-in-law of then Chief Counsel Ellen Schanzle-Haskins, was hired without an interview into a Technical Manager position and without being qualified.[167] The OEIG investigation into this matter revealed that Employee 1 was hired as a *Rutan*-exempt Staff Assistant at District 7 of the Division of Highways in October 2008. Ann Schneider, as the then Director of Finance and Administration and Matt Hughes as the then Bureau Chief of Personnel Management approved hiring Employee 1, as did the then IDOT Secretary.

The OEIG found that Employee 1 was performing the following duties and responsibilities: receptionist duties, verifying credentials, operating a multi-line telephone, transferring phone calls, relaying messages to staff, and opening, stamping, sorting, and distributing mail, duties that should have been performed by a person hired pursuant to the *Rutan* hiring process.

In addition to the OEIG, CMS Employee 7, as well as CGN Global/IDOT concluded that *Rutan*-exempt Staff Assistant Employee 1 was performing the duties of a *Rutan*-covered position. Therefore, the OEIG finds that there is reasonable cause to believe that IDOT hired Employee 1 as a *Rutan*-exempt Staff Assistant and assigned *Rutan*-covered duties to her in circumvention of the *Rutan* hiring process, and thus in violation of Administrative Order No. 2 (2009). Therefore, this allegation is **FOUNDED**.

ii. Anonymous Complaint No. 11-00713

As noted at the beginning of this report, an anonymous complaint sent to the OEIG alleged that Employee 2, who is the daughter of former Director of Traffic Safety Michael Stout, was improperly hired because of her familial relation to Mr. Stout.[168] The OEIG investigation into this matter revealed that Employee 2 was hired as a *Rutan*-exempt Staff Assistant at District 6 of the Division of Highways in September 2010. Ann Schneider as the then Director of Finance and Administration and Matt Hughes as the then Bureau Chief of Personnel Management approved Employee 2's hire, as did the then IDOT Secretary.

The OEIG found that Employee 2 was performing the following duties and responsibilities: upkeep of the telephone directory, ordering office supplies, assisting management, maintaining tuition reimbursement files, copying vehicle maintenance bills, preparing interview packets, scheduling interviews, grading employment applications, conducting *Rutan* interviews, booking conference rooms, answering phones, documenting overtime, updating the SharePoint website for Administrative Services, and serving as a liaison between District 6 Manager and Central Office Personnel, among others, duties that should have been performed by a person hired pursuant to the *Rutan* hiring process.

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[167] Discussion of whether this hire violated IDOT's nepotism or conflict of interest policy is discussed below in a separate section.

[168] Discussion of whether this hire violated IDOT's nepotism or conflict of interest policy is discussed below in a separate section.

In addition to the OEIG, CMS Employee 7, as well as CGN Global/IDOT also concluded that *Rutan*-exempt Staff Assistant Employee 2 was performing the duties of a *Rutan*-covered position. Therefore, the OEIG finds that there is reasonable cause to believe that IDOT hired Employee 2 as a *Rutan*-exempt Staff Assistant and assigned her *Rutan*-covered duties in circumvention of the *Rutan* hiring process, and thus in violation of Administrative Order No. 2 (2009). Therefore, this allegation is **FOUNDED**.

iii. Complaints No. 11-02227, 11-02299, 11-02300, 11-02391, 12-00025, and 12-00031

As noted at the beginning of this report, the OEIG received six complaints alleging that the Division of Aeronautics had added at least 10 Technical Manager II Staff Assistants, which were filled with employees who did not interview for these positions. The ten employees identified in these complaints were:

Employee 92	***Employee 314***	***Employee 52***	***Employee 76***
Employee 73	***Employee 315***	***Employee 86***	***Employee 75***
Employee 74	***Employee 78***		

The OEIG's review of personnel records obtained as part of its investigation did not indicate that either Employee 314 or Employee 315 was employed as a *Rutan*-exempt Staff Assistant. The other named employees were all hired as *Rutan*-exempt Staff Assistants in the Division of Aeronautics. We discuss each of these below.

Employee 92

The OEIG's review of personnel records revealed that Employee 92 was hired as a Staff Assistant in March 2005. OEIG investigators discovered that Employee 92 performed the following duties and responsibilities: serving as the building manager, serving as the point of contact for security guards, placing service calls when building issues arose, overseeing the motor pool, scheduling hazardous waste disposal pick-up, and serving as capital improvement liaison, duties that should have been performed by a person hired pursuant to the *Rutan* hiring process.

In addition to the OEIG, CMS Employee 7, as well as CGN Global/IDOT concluded that *Rutan*-exempt Staff Assistant Employee 92 was performing the duties of a *Rutan*-covered position. Therefore, the OEIG finds that there is reasonable cause to believe that IDOT hired Employee 92 as a *Rutan*-exempt Staff Assistant and assigned him *Rutan*-covered duties in circumvention of the *Rutan* hiring process, and thus in violation of Administrative Order No. 2 (2009). Therefore, this allegation is **FOUNDED**.

Employee 52

The OEIG's review of personnel records revealed that Employee 52 was hired as a Staff Assistant in August 2008. OEIG investigators discovered that Employee 52 performed the following duties and responsibilities: supervising employees who cut grass, completing home inspections of homes purchased by IDOT, and signing invoices for maintenance work, duties that should have been performed by a person hired pursuant to the *Rutan* hiring process.

In addition to the OEIG, CMS Employee 7, as well as CGN Global/IDOT concluded that *Rutan*-exempt Staff Assistant Employee 52 was performing the duties of a *Rutan*-covered position. Therefore, the OEIG finds that there is reasonable cause to believe that IDOT hired Employee 52 as a *Rutan*-exempt Staff Assistant and assigned him *Rutan*-covered duties in circumvention of the *Rutan* hiring process, and thus in violation of Administrative Order No. 2 (2009). Therefore, this allegation is **FOUNDED**.

Employee 76

The OEIG's review of personnel records revealed that Employee 76 was hired as a Staff Assistant in September 2011. OEIG investigators discovered that Employee 76 performed the following duties and responsibilities: sending supplies to surplus, formatting Excel spreadsheets, helping with airport inspections, assisting staff when they forget passwords, rewriting and maintaining the Airport Directory in Microsoft Access, and assisting with the basic maintenance of printers and computers, duties that should have been performed by a person hired pursuant to the *Rutan* hiring process.

In addition to the OEIG, CGN Global/IDOT concluded that *Rutan*-exempt Staff Assistant Employee 76 was performing the duties of a *Rutan*-covered position. Therefore, the OEIG finds that there is reasonable cause to believe that IDOT hired Employee 76 as a *Rutan*-exempt Staff Assistant and assigned her *Rutan*-covered duties in circumvention of the *Rutan* hiring process, and thus in violation of Administrative Order No. 2 (2009). Therefore, this allegation is **FOUNDED**.

Employee 73

The OEIG's review of personnel records revealed that Employee 73 was hired as a Staff Assistant in July 2011. OEIG investigators discovered Employee 73 was performing the duties of a legislative liaison for Aeronautics.

In addition, CGN Global/IDOT determined that Employee 73 was performing the duties of a *Rutan*-exempt position. Thus, this allegation is **UNFOUNDED**.

Employee 86

The OEIG's review of personnel records revealed that Employee 86 was hired as a Staff Assistant in February 2011. OEIG investigators discovered that Employee 86 assisted the Director of Aeronautics with her daily tasks, worked on Division communications, and assisted with scheduling.

Thus, the OEIG determined that Employee 86 was performing some of the duties of a *Rutan*-exempt position, and thus this allegation is **UNFOUNDED.**

Employee 75

The OEIG's review of personnel records revealed that Employee 75 was hired as a Staff Assistant in December 2009. OEIG investigators discovered Employee 75 performed the following duties and responsibilities: legislative reviews, handling special requests from the

Office of the Governor and other State agencies, reviewing over four hundred pieces of legislation for Personnel, and helping to maintain the ePAR system for Personnel.

Accordingly, the OEIG determined that Employee 75 was performing the duties of a *Rutan*-exempt position. Thus, this allegation is **UNFOUNDED.**

Employee 74

The OEIG's review of personnel records revealed that Employee 74 was hired as a Staff Assistant in April 2007. OEIG investigators discovered that Employee 74 performed the following duties and responsibilities: timekeeping, forms management, record retention, serving as the point of contact for correspondence with the Secretary's Office, scheduling flight safety seminars, coordinating pilots' flight times and holiday schedules, ensuring that contracts and subcontracts are in order, attending meeting with the Director and Bureau Chiefs, assisting with travel vouchers and invoices, and assisting with reports, spreadsheets, and other documents using Excel and Word, duties that should have been performed by a person hired pursuant to the *Rutan* hiring process.

In addition to the OEIG, CGN Global/IDOT concluded that *Rutan*-exempt Staff Assistant Employee 74 was performing the duties of a *Rutan*-covered position. Therefore, the OEIG finds that there is reasonable cause to believe that IDOT hired Employee 74 as a *Rutan*-exempt Staff Assistant and assigned her *Rutan*-covered duties in circumvention of the *Rutan* hiring process, and thus in violation of Administrative Order No. 2 (2009). Therefore, this allegation is **FOUNDED**.

Employee 78

The OEIG's review of personnel records revealed that Employee 78 was hired as a Staff Assistant in May 2010. OEIG investigators discovered that Employee 78 performed the following duties and responsibilities: assisting with audits, drafting spreadsheets, assembling Material Correspondence files, entering data for material database and Mistic contracts, and examining documents for the Regional Engineer, duties that should have been performed by a person hired pursuant to the *Rutan* hiring process.

Therefore, the OEIG finds that there is reasonable cause to believe that IDOT hired Employee 78 as a *Rutan*-exempt Staff Assistant and assigned him *Rutan*-covered duties in circumvention of the *Rutan* hiring process, and thus in violation of Administrative Order No. 2 (2009). Therefore, this allegation is **FOUNDED**.

iv. Anonymous Complaint No. 12-0305

As noted at the beginning of this report, an anonymous complaint sent to the OEIG alleged that Employee 4 was hired into a position that was not posted and for which he did not interview. The OEIG investigation into this matter revealed that Employee 4 was hired as a *Rutan*-exempt Staff Assistant in February 2012 in the Office of Finance and Administration. His hire was approved by Ann Schneider as Secretary of Transportation, Matt Hughes as Director of Finance and Administration, and Mike Woods, Jr., as the Bureau Chief of Personnel Management.

The OEIG discovered Employee 4's actual duties and responsibilities included: providing SharePoint support, setting up the Active Data Calendar software, helping end-users get accustomed to Office 2010, and completing a printer consolidation project, duties that should have been performed by a person hired pursuant to the *Rutan* hiring process. In addition, the OEIG, Employee 7, and CGN Global/IDOT determined that Employee 4 was performing the duties of a *Rutan*-covered position.

Therefore, the OEIG finds that there is reasonable cause to believe that IDOT hired Employee 4 as a *Rutan*-exempt Staff Assistant and assigned him *Rutan*-covered duties in circumvention of the *Rutan* hiring process, and thus in violation of Administrative Order No. 2 (2009). Therefore, this allegation is **FOUNDED**.

v. Complaint No. 13-01787

As noted at the beginning of this report, the OEIG received a complaint alleging that Employee 6 was hired as a Staff Assistant without interviewing for the position. The OEIG investigation into this matter revealed that Employee 6 was hired as a *Rutan*-exempt Staff Assistant in August 2010 in District 3 of the Division of Highways. Her hire was approved by Ann Schneider as Director of Finance and Administration, and Matt Hughes as Bureau Chief of Personnel Management.

The OEIG discovered that the duties and responsibilities of Employee 6 included making spreadsheets, assembling personnel paperwork, and completing financial reports, duties that should have been performed by a person hired pursuant to the *Rutan* hiring process. Accordingly, the OEIG determined that Employee 6 was performing the duties of a *Rutan*-covered position.[169] Therefore, the OEIG finds that there is reasonable cause to believe that IDOT hired Employee 6 as a *Rutan*-exempt Staff Assistant and assigned her *Rutan*-covered duties in circumvention of the *Rutan* hiring process, and thus in violation of Administrative Order No. 2 (2009). Therefore, this allegation is **FOUNDED**.

c. Findings Against Individual IDOT Officials – Persons Responsible for Ensuring Agency Compliance With *Rutan*

As discussed above and throughout this report, the OEIG investigation of IDOT's personnel practices revealed wholesale manipulation of the *Rutan*-exempt Staff Assistant position for the purpose of circumventing the *Rutan* hiring process as set forth in the various Administrative Orders. The *Rutan* hiring process described in the Administrative Orders pertain to all *Rutan*-covered personnel transactions of State agencies under the jurisdiction of the Illinois Governor. Responsibility for ensuring compliance with the *Rutan* decision and the related Administrative Orders rests with those who have authority over an agency's personnel functions.

At IDOT, all hires require the approval of the Secretary of Transportation—no person may be hired at IDOT without the ePAR approval of the Secretary, regardless of whether it is for

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[169] CMS Employee 7 concluded that she needed more information regarding Employee 6's duties and responsibilities before she could reach a *Rutan* determination for the position.

a *Rutan*-exempt or *Rutan*-covered position. In addition, the Director of Finance and Administration and the Bureau Chief of Personnel Management or some combination of the two are primarily responsible and are required to approve and or execute various IDOT personnel forms. In other words, IDOT employees cannot be promoted, *transferred*, recalled, or *hired* without appropriate IDOT approval. Forms requiring IDOT approval of either the Secretary, Director of Finance and Administration or Bureau Chief of Personnel Management, or some combination of the three include:

- The (Non Code) Position Review/Determination Form, which IDOT submits to CMS for a *Rutan* determination and which includes a signature space for the "Agency Director" which for IDOT is its Secretary.

- IDOT's position description is referred to as the "Technical Position Classification Request" form and includes signature spaces for IDOT's "Bureau Chief" or "Regional Director," "Bureau Chief of Personnel Management," and IDOT "Secretary."

- The "Internal Personnel Request" form, which includes signature spaces for IDOT's "Requesting Director," and the "Director of Finance and Administration."

- The "Notice of Personnel Action" form, which has signature spaces for IDOT's "District/Bureau Chief," "Personnel Clearance," "Director Approval," and "Secretary Approval."

Below is a chart identifying the persons who held IDOT positions responsible for approving one or more of the above forms and corresponding transfers and hires, and whom the OEIG concludes were responsible for the circumvention of the *Rutan* hiring process as it relates to Staff Assistants: IDOT's Secretary, Director of Finance and Administration and Bureau Chief of Personnel Management for the period of 2005 to July 1, 2013.

The OEIG recognizes that a number of additional IDOT personnel had differing levels of responsibility over Staff Assistant personnel matters, including Staff Assistant supervisors and Division, Bureau or District heads who had Staff Assistants under their jurisdiction. Some persons who fit into one or more of these categories were interviewed and their statements are referenced in this report. While the OEIG is not analyzing the action(s) or inaction(s) of every single IDOT employee who may have had some level of responsibility over Staff Assistants, this decision should not be interpreted as a conclusion by the OEIG that they may not have violated IDOT personnel policies or related orders.

Nevertheless, the widespread and long-term misuse of Staff Assistants necessarily required the OEIG to limit its findings to certain individuals because they remain State employees and to Mr. Hughes because he only recently left IDOT. The OEIG recommends the Office of the Governor take whatever action it deems appropriate with respect to others in this report for which no findings are made.

The Illinois Department of Transportation

2005 to Present

	2005	2006	2007	2008	2009	2010	2011	2012	2013
Secretary	**Timothy Martin** Jan. 2003 to Jan. 2007		**Milton Sees** Jan. 2007 to Feb. 2009		**Gary Hannig** Feb. 2009 to July 2011		**Ann Schneider** July 2011 to present		
Director of Finance and Administration	**Ann Schneider** November 2005 to August 2010						**Matt Hughes** August 2010 to September 2013		A[170]
Bureau Chief of Personnel Management	**Scott Doubet** February 2004 to April 2009				**Matt Hughes** Apr. 2009 to Aug. 2010	B[171]	**Mike Woods, Jr.** Dec. 2010 to Oct. 2013		C[172]

Below, we will discuss each of these relevant positions. Specifically, each section pertaining to the relevant position will identify:

(1) the responsibilities of the position;
(2) the persons who held those positions and the forms they signed;
(3) the failure(s) of the person(s) to carry out responsibilities of their position; and
(4) the findings against each person.

i. Bureau Chief of Personnel Management

(1) Responsibilities of the Position

Pursuant to section 3-2 of IDOT's Personnel Policies Manual, and the Bureau Chief of Personnel Management position description, the Bureau Chief of Personnel Management is:

- primarily responsible for the development and application of the Department's recruitment, interview, selection, and placement programs of all employees;
- responsible for the overall employment functions of the Bureau of Personnel Management;
- personally responsible for the development of *technical personnel policies* and programs for employment classification and compensation programs;
- responsible for the development and administration of the technical classification program for the Department

[170] A: Walter Small is presently IDOT's Director of Finance and Administration and has been so since Sept. 2013.
[171] B: Employee 5 held the position of Director of Finance and Administration from August to Nov. 2010.
[172] C: James Kirk is presently IDOT's Bureau Chief of Personnel Management and has been so since Oct. 2013.

- responsible for the administration of the rules/regulations of the Personnel Code in conjunction with the Department of Central Management Services; and

- responsible for directing the development of programs and policies for employment programs to *attract and retain* qualified candidates.

In addition, the accountabilities articulated in the position description for the Bureau Chief of Personnel Management state, among other things, that the incumbent:

- develops and directs personnel policies, procedures, and programs that enhance the attainment of Departmental goals;

- directs the classification of technical/professional positions in a fair and equitable manner; and

- obtains, develops, and maintains a competent, well-motivated staff capable of carrying out Bureau programs in an efficient and effective manner.

(2) Persons Who Held the Position of Bureau Chief of Personnel Management and the Forms They Signed

Bureau Chiefs of Personnel Management: Matt Hughes and Mike Woods, Jr.

Matt Hughes served as IDOT's Bureau Chief of Personnel Management for about a 15-month period or from April 2009 to August 2010.[173]

Mike Woods, Jr. served in the same position for about a 34-month period from about December 2010 to October 2013.

Forms Signed by Matt Hughes and Mike Woods, Jr.

The investigation revealed that both Mr. Hughes and Mr. Woods executed a number of IDOT personnel documents relating to Staff Assistants. Mr. Hughes and Mr. Woods were both asked about the significance of their signatures on specific of these personnel documents. In response, Mr. Hughes stated his signature on personnel documents, while serving as Bureau Chief of Personnel Management, meant he was going to present the candidate to the Director of Finance and Administration as an option to *hire* the person based upon a request from the entity originating the request. Mr. Woods stated his signature on documents such as the Internal Personnel Request served as another level of "checks and balances."

A review of IPRs, ePARs, and Notices of Personnel Action reveal that a number of these documents bear the signature of Matt Hughes in his capacity as Bureau Chief of Personnel Management and indicate his approval of the hire of various Staff Assistants.[174] Mr. Hughes

[173] The OEIG acknowledges that Mr. Hughes held the Bureau Chief of Personnel Management until April 2011. However, from August 2010 until April 2011, Mr. Hughes served as Acting Director of Finance and Administration. His actions for the time frame August 2010 until April 2011 will be discussed below as they pertain to his time as Acting Director of Finance and Administration.

[174] As indicated in this Final Report, a document could bear the signature of an individual, a stamped signature of the individual, or a delegated signature.

executed personnel documents relating to multiple Staff Assistants who the OEIG concludes were performing *Rutan*-covered duties, including:

Employee 152	*Employee 105*	*Employee 109*	*Employee 25*
Employee 125	*Employee 78*	*Employee 9*	*Employee 203*
Employee 164	*Employee 180*	*Employee 167*	*Employee 35*
Employee 175	*Employee 137*	*Employee 173*	*Employee 48*
Employee 150	*Employee 159*	*Employee 2*	*Employee 183*
Employee 151	*Employee 211*	*Employee 140*	*Employee 98*
Employee 130	*Employee 131*		

Similarly, a review of IPRs, ePARs, and Notices of Personnel Action reveal that a number of IDOT personnel documents bear the signature of Mike Woods, Jr. in his capacity as Bureau Chief of Personnel Management and indicate his approval to hire various Staff Assistants. Mr. Woods executed personnel documents relating to multiple Staff Assistants who the OEIG or IDOT via the CGN Global/IDOT discovered were performing *Rutan*-covered duties, including:

Employee 166	*Employee 163*	*Employee 4*	*Employee 179*
Employee 214	*Employee 176*	*Employee 160*	*Employee 184*
Employee 181	*Employee 139*	*Employee 169*	*Employee 157*
Employee 185	*Employee 204*	*Employee 172*	*Employee 174*
Employee 177	*Employee 161*	*Employee 212*	*Employee 155*
Employee 205	*Employee 128*	*Employee 207*	*Employee 208*

IDOT records reveal that Staff Assistant Employee 208, who was hired on July 1, 2013, appears to be the last Staff Assistant IDOT hired who was found to be performing *Rutan*-covered duties.

(3) Failure of Matt Hughes and Mike Woods, Jr. to Carry Out the Responsibilities of the Bureau Chief of Personnel Management

As indicated above, the Bureau Chief of Personnel Management has a number of duties and responsibilities. The OEIG concludes that Matt Hughes and Mike Woods, Jr. failed to carry out certain of their duties. Below, the OEIG discusses each of those failures.

Primarily responsible for the development and application of IDOT's recruitment, interview, selection, and placement programs of all employees *and* Responsible for the overall employment functions of the Bureau of Personnel Management

As Bureau Chiefs of Personnel Management, the duties and responsibilities of both men required them to have:

> *primary responsibility for the development and application of the department's recruitment, interview, selection, and placement programs of all employees* and *to be responsible for the overall employment functions of the Bureau of Personnel Management.*

Despite these responsibilities, both Mr. Hughes and Mr. Woods informed investigators that they were aware Staff Assistants performed duties other than those contained in their Staff Assistant position descriptions, and even acknowledged that certain Staff Assistants performed ministerial duties. In other words, Mr. Hughes and Mr. Woods acknowledged that they allowed Staff Assistants to be hired and to perform duties of *Rutan*-covered positions without going through the *Rutan* hiring process. As such, Mr. Hughes and Mr. Woods failed to apply IDOT's recruitment, interview, selection, and placement programs, which required employees performing *Rutan*-covered duties be hired pursuant to the *Rutan* hiring process.

When investigators asked the men about this practice, Mr. Woods told investigators he did not view hiring and then having *Rutan*-exempt Staff Assistants performing *Rutan*-covered position duties as being inappropriate because the work was based upon IDOT operational needs. Mr. Woods also did not view hiring *Rutan*-exempt employees to do *Rutan*-covered duties as a best practice. Interestingly, Mr. Hughes recognized and confirmed that hiring *Rutan*-exempt Staff Assistants to perform *Rutan*-covered duties was not a best practice, yet he too stated that he allowed the practice to continue. Allowing this practice in the first place and then allowing it to continue despite recognizing it was not a best practice is evidence that Mr. Hughes and Mr. Woods eschewed their obligation to take overall responsibility for the employment functions of the Bureau of Personnel Management.

Responsible to develop and direct personnel policies, procedures, and programs that enhance the attainment of IDOT goals

In addition, both men had responsibility to develop and direct:

"*personnel policies, procedures, and programs that enhance the attainment of departmental goals.*"

The OEIG recognizes that it may have been a goal of IDOT to quickly hire staff for various reasons. According to Mr. Hughes and Mr. Woods that is exactly why they approved the hiring of Staff Assistants to perform duties other than those identified in the Staff Assistant position description. Mr. Woods even noted that if the *Rutan* hiring process could be completed in three to four months, as opposed to about eight, he would require employees be hired through the *Rutan* hiring process as opposed to filing *Rutan*-exempt Staff Assistant positions. Speed of hiring also appeared to be the reason why Mr. Hughes informed Secretary Schneider in his October 2009 Staffing Memo that he wanted to hire Staff Assistants to perform duties of those persons who should have been hired via the *Rutan* hiring process.

However, hiring *Rutan*-exempt persons to perform *Rutan*-covered duties simply because they can be hired more quickly does not in any way "enhance the attainment of [IDOT] goals." IDOT is required to comply with Administrative Order No. 2 (2009) in relation to persons hired into *Rutan*-covered positions. The decision to hire Staff Assistants to perform *Rutan*-covered work was the functional equivalent of hiring *Rutan*-covered employees and thus was a clear circumvention of Administrative Order No. 2 (2009). As such, Mr. Hughes and Mr. Woods developed and directed personnel policies and procedures that were in violation of Administrative Orders. Such a practice can in no way be deemed as enhancing the attainment of IDOT goals.

To be sure, Mr. Hughes also credited the misuse of the *Rutan*-exempt Staff Assistant position to IDOT's need to hire additional employees because of federal stimulus funding IDOT received. Again, the OEIG acknowledges that IDOT may have indeed had the goal of hiring additional staff as a result of the stimulus funding (or some other reason) and wanted to and perhaps even needed to hire them quickly. However, the manner in which Mr. Hughes and Mr. Woods allowed this to occur in no way "enhance[d] the attainment of [IDOT] goals." If the goal of IDOT was to quickly bring on additional staff, it could have done so through the preexisting emergency or temporary employee hiring mechanisms. That was not done here. Instead, Mr. Hughes and Mr. Woods failed to develop and direct personnel policies, procedures, and programs that were in compliance with State law, which for obvious reasons is a goal that IDOT must always have, regardless of any others it pursues.

Personally responsible for the development of technical personnel policies and programs for employment classification and compensation programs and responsible for the development and administration of the technical classification program for IDOT

As Bureau Chiefs of Personnel Management, Mr. Hughes and Mr. Woods were also:

personally responsible for the development of technical personnel policies and programs for employment classification and compensation programs and for the *development and administration of the technical classification program for IDOT.*

Despite these responsibilities, neither man could inform investigators how IDOT defined the term technical, explain what made the Staff Assistant position technical in nature, or explain why Staff Assistants were classified in differing Technical Manager levels while performing the same or very similar duties.

Mr. Hughes told investigators the term "technical" was defined by IDOT's Organization Analysis and Compensation Section but was unaware of the existence of any IDOT document defining a technical position or any personnel policy that stated that a technical position required the employee in such a position to have specialized knowledge or skill. Despite having no definition of the term, Mr. Woods was nonetheless able to identify for investigators that not all Technical Managers performed "technical work." Failing to define the term "technical," the basic building block needed to develop a responsible technical personnel policy and program, was inconsistent with Mr. Hughes' and Mr. Woods' responsibilities as Bureau Chiefs.

Responsible for the administration of the rules and regulations of the Personnel Code in conjunction with the Department of Central Management Services

Both Mr. Hughes and Mr. Woods, as Bureau Chiefs of Personnel Management, were also responsible for the administration of the:

rules and regulations of the Personnel Code in conjunction with the Department of Central Management Services.

Part of administering the rules and regulations of the Personnel Code in conjunction with CMS could have included working with CMS to define the term "technical," since IDOT's technical

positions are exempt from the Personnel Code. Indeed, even the Office of Internal Audit made that recommendation in 2005 by recommending IDOT and CMS work together to make sure technical positions were in fact sufficiently technical in nature. Yet, when asked if IDOT and CMS worked together in relation to the 2005 Office of Internal Audit recommendations, Mr. Woods said he did not even know of its existence. Thus, the 2005 recommendations were never implemented and the 2005 audit must have apparently sat on some shelf. Moreover, as set forth below, not even Secretary Schneider knew about its existence until about 9 years after issuance.

Mr. Hughes and Mr. Woods failed to administer the rules and regulations of the Personnel Code in conjunction with CMS in that it appears IDOT purposefully classified the Staff Assistant position as a Technical Manager position to exempt it from the Personnel Code and subsequent oversight. With respect to determining whether a position should be classified as technical, Mr. Woods stated that when choosing he would err on the side of deeming a position to be technical. Mr. Woods added that a Technical Manager position made the hiring process much easier for IDOT because it is a more efficient process than having a CMS code title. Indeed, classifying the Staff Assistant position as a Technical Manager position made it a more efficient process for IDOT to circumvent the *Rutan* hiring process with respect to filling those positions. Nonetheless, classifying a Staff Assistant position or any position as "technical" for mere ease is no justification. As such, Mr. Hughes and Mr. Woods again failed to comply with their responsibility to administer the rules and regulations of the Personnel Code in conjunction with CMS.

Responsible for the classification of technical/professional positions in a fair and equitable manner

Mr. Hughes and Mr. Woods were responsible for IDOT's:

classification of technical/professional positions in a fair and equitable manner.

Evidence investigators uncovered revealed that some Staff Assistants were treated in a non-equitable manner when compared with other IDOT personnel. For example, investigators discovered in one instance, a Staff Assistant was paid $28,000 more than *Rutan*-covered employee performing the exact same duties. In other instances, Staff Assistants were classified at differing Technical Manager levels and therefore, received disparate pay despite their position descriptions referencing no discernable differences in duties. Often, there appeared to be no justification as to the amount certain Staff Assistants were paid. Instead, as Employee 97 stated in his interview, Technical Manager levels for Staff Assistants seemed to be decided solely because the Staff Assistant was to be brought on at a certain salary, not because of differences in their levels of responsibility.

When shown Staff Assistant position descriptions that had the exact same duties and responsibilities but differing technical levels and therefore pay levels, Mr. Woods stated he was aware that the Technical Manager Staff Assistants had basically the same position description but also told investigators he should have looked "closer" at the technical levels. He added, it "should have been a requirement."

When asked about the reallocation of two Staff Assistants Employee 121 and Employee 120, from Technical Manager III positions to Technical Manager V positions, Mr. Woods stated

there was "no justification" for the reallocation. Although Employee 121 is married to State Senator Kimberly Lightford, Mr. Woods said he did not know of this relationship at the time of the reallocation.

Mr. Hughes' and Mr. Woods' tacit approval of this unfair and inequitable treatment of the Staff Assistant position classification was a clear disregard of their responsibilities.

> **Responsible for directing the development of programs and policies for employment programs to attract and retain qualified candidates and Responsible to obtain, develop, and maintain a competent, well-motivated staff capable of carrying out bureau programs in an efficient and effective manner**
>
> Mr. Hughes and Mr. Woods were responsible for:
>
> *directing the development of programs and policies for employment programs to attract and retain qualified candidates* and were also responsible to *obtain, develop, and maintain a competent, well-motivated staff capable of carrying out bureau programs in an efficient and effective manner.*

Permitting the hiring of Staff Assistants in the Bureau of Management who ultimately performed the duties of *Rutan*-covered positions clearly did not comport with these requirements.

Mr. Woods acknowledged that persons hired by IDOT, including Staff Assistants in his Bureau, had to be qualified for the position they were hired to fill. Nonetheless, the investigation revealed that some Staff Assistants in his Bureau were performing *Rutan*-covered duties but had not gone through the *Rutan* hiring process. The best way Mr. Hughes and Mr. Woods could have obtained a competent, well-motivated staff would have been to follow the *Rutan* hiring process when filling *Rutan*-covered positions. Failure to follow the *Rutan* hiring process shows that merit was not a consideration and the staff may not have been the most qualified or competent for the position they were hired into.

Moreover, the practice of treating Staff Assistants in a manner not equitable in relationship to *Rutan*-covered employees did not make for the maintenance of a well-motivated staff. Instead, the exact opposite was true. As indicated in one of the anonymous complaints received by the OEIG, the complainant found the practice to be "offensive" and a "recipe for low morale." The OEIG agrees. By failing to evaluate Staff Assistants on the duties they would actually be performing, Mr. Hughes and Mr. Woods failed to ensure they retained qualified and competent staff. Similarly, by treating Staff Assistants inequitably and preferentially, Mr. Hughes and Mr. Woods failed to maintain a well-motivated staff.

Responsible for complying with Administrative Order No. 2 (2009)

The various failings of both Mr. Hughes and Mr. Woods, as reflected above and throughout this report, clearly reveal a circumvention of the Rutan hiring process and in turn a violation of Administrative Order No. 2 (2009).

(4) OEIG Findings

Matt Hughes

Based upon the above facts and the evidence obtained during the course of this investigation, the OEIG finds that there is reasonable cause to believe that between April 2009 and August 2010 and while serving as Bureau Chief of Personnel Management, Matt Hughes violated section 3-2 of IDOT's Personnel Policies Manual and failed to comply with the accountabilities of the Bureau Chief of Personnel Management position description when he, among other things:

- despite having primary responsibility for the *development and application of IDOT's recruitment, interview, selection, and placement programs of all employees*, and responsibility for the *overall employment functions of the Bureau of Personnel Management,* executed IDOT personnel documents in which he approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management, thus this allegation is **FOUNDED**;

- despite having responsibility to *develop and direct IDOT personnel policies, procedures, and programs that enhance the attainment of IDOT goals* executed IDOT personnel documents in which he approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management, thus this allegation is **FOUNDED**;

- despite being *personally responsible for the development of technical personnel policies and programs for employment classification and compensation programs,* and being responsible for the *development and administration of the technical class program for IDOT*, executed IDOT personnel documents in which he approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management, thus this allegation is **FOUNDED**;

- despite being responsible for IDOT's *classification of technical/professional positions in a fair and equitable manner,* he was unaware that Staff Assistant position descriptions were all basically the same but were different Technical Manager levels thus allowing the classification of Staff Assistant positions to result in an unfair and inequitable manner, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management, thus this allegation is **FOUNDED**;

- despite being responsible for *directing the development of programs and policies for employment programs to attract and retain qualified candidates* and being responsible for *obtaining, developing, and maintaining a competent, well-motivated staff capable of carrying out bureau programs in an efficient and effective manner,* he allowed the hire of multiple Staff Assistants without knowing if they were indeed qualified to perform the duties they actually did, and failed to maintain a well-motivated staff, thus engaging in

nonfeasance and mismanagement of the Bureau of Personnel Management, thus this allegation is **FOUNDED**; and

- by engaging in all of the above acts of nonfeasance and mismanagement, approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, thus circumventing Administrative Order No. 2 (2009) which was put into place in order to make certain the persons hired into *Rutan*-covered positions were hired pursuant to the *Rutan* hiring process consistent with the United States Supreme Court decision *Rutan v. Republican Party of Illinois,* thus this allegation is **FOUNDED**.

Mike Woods, Jr.

Based upon the above facts and the evidence obtained during the course of this investigation, the OEIG finds that there is reasonable cause to believe that between December 2010 and through at least July 1, 2013 (when Staff Assistant Employee 208 was hired), while serving as Bureau Chief of Personnel Management, Mike Woods, Jr. violated section 3-2 of IDOT's Personnel Policies Manual and failed to comply with the Bureau Chief of Personnel Management position description when he, among other things:

- despite having primary responsibility for the *development and application of IDOT's recruitment, interview, selection, and placement programs of all employees*, and responsibility for the *overall employment functions of the Bureau of Personnel Management,* executed IDOT personnel documents in which he approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management, thus this allegation is **FOUNDED**;

- despite having responsibility to *develop and direct IDOT personnel policies, procedures, and programs that enhance the attainment of IDOT goals* executed IDOT personnel documents in which he approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management, thus this allegation is **FOUNDED**;

- despite being *personally responsible for the development of technical personnel policies and programs for employment classification and compensation programs,* and being responsible for the *development and administration of the technical class program for IDOT*, executed IDOT personnel documents in which he approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management, thus this allegation is **FOUNDED**;

- despite being responsible for the administration of *the rules/regulations of the Personnel Code in conjunction with the Department of Central Management Services*, failed to take steps to implement the 2005 Office of Internal Audit recommendations or classify the

Staff Assistant position in accordance with the Personnel Code, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management, thus this allegation is **FOUNDED**;

- despite being responsible for IDOT's *classification of technical/professional positions in a fair and equitable manner,* he was unaware that Staff Assistant position descriptions were all basically the same but were different Technical Manager levels thus allowing the classification of Staff Assistant positions to result in an unfair and inequitable manner, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management, thus this allegation is **FOUNDED**;

- despite being responsible for *directing the development of programs and policies for employment programs to attract and retain qualified candidates* and being responsible for *obtaining, developing, and maintaining a competent, well-motivated staff capable of carrying out bureau programs in an efficient and effective manner,* he allowed the hire of multiple Staff Assistants without knowing if they were indeed qualified to perform the duties they actually did, and failed to maintain a well-motivated staff, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management, thus this allegation is **FOUNDED**; and

- by engaging in all of the above acts of nonfeasance and mismanagement, approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, thus circumventing Administrative Order No. 2 (2009) which was put into place in order to make certain persons hired into *Rutan*-covered positions were hired pursuant to the *Rutan* hiring process consistent with the United States Supreme Court decision *Rutan v. Republican Party of Illinois,* thus this allegation is **FOUNDED**.

ii. Director of Finance and Administration

(1) Responsibilities of the Position

Pursuant to section 1-2 of IDOT's own Personnel Policies Manual and according to the Director of Finance and Administration position description, the Director of Finance and Administration:

- has been delegated the *major responsibility* for personnel activities;

- oversees the Office of Finance and Administration, which includes the Bureau of Personnel Management;

- develops and directs programs to meet the fiscal, *personnel*, and business needs of IDOT statewide; and

- manages all business, financial, *personnel*, and information technology services statewide.

In addition, the accountabilities articulated in the position description for the Director of Finance and Administration states, among other things, that the incumbent:

- attracts, obtains, retains, trains, and compensates an adequate and *competent staff* to ensure efficient and cost-effective operations statewide; and

- exercises discretion and control over highway user taxes, revenues, and transportation bond proceeds and the general revenue fund appropriations through the maintenance of sound fiscal policy to ensure the *proper allocation* of limited resources as well as maintain fiscal integrity.

(2) Persons Who Held the Position of Director of Finance and Administration and the Forms They Signed

Directors of Finance and Administration: Matt Hughes and Ann Schneider

Ann Schneider served as the Director of Finance and Administration for over four and one-half years or from about November 2005 to about August 2010.[175]

In addition, Matt Hughes served in this same position for just over three years or from about August 2010 to about September 2013.[176]

Forms Signed by Ann Schneider and Matt Hughes

A review of IPRs, ePARs, and Notices of Personnel Action revealed that a number of IDOT personnel documents bear the signature of Ann Schneider in her capacity as Director of Finance and Administration and indicate her approval of the hire of various Staff Assistants. Investigators discovered that that Ann Schneider executed documents relating to multiple Staff Assistants who, the OEIG concludes, were performing *Rutan*-covered duties, including Staff Assistants:

Employee 152	***Employee 105***	***Employee 115***	***Employee 22***
Employee 109	***Employee 111***	***Employee 131***	***Employee 130***
Employee 3	***Employee 52***	***Employee 56***	***Employee 9***
Employee 203	***Employee 164***	***Employee 167***	***Employee 38***
Employee 114	***Employee 70***	***Employee 36***	***Employee 35***
Employee 77	***Employee 1***	***Employee 175***	***Employee 127***
Employee 137	***Employee 156***	***Employee 78***	***Employee 59***
Employee 48	***Employee 150***	***Employee 57***	***Employee 2***
Employee 118	***Employee 159***	***Employee 34***	***Employee 212***
Employee 79	***Employee 112***	***Employee 183***	***Employee 151***
Employee 126	***Employee 74***	***Employee 211***	***Employee 91***
Employee 117	***Employee 140***	***Employee 206***	***Employee 162***

[175] Secretary Schneider held the title of Director of Finance and Administration until April 2011 but was serving as Acting Chief Operating Officer from August 2010 until April 2011. Because Mr. Hughes was serving as Acting Director of Finance and Administration during the time period Secretary Schneider served as Acting Chief Operating Officer, Mr. Hughes' actions will evaluated for that time period as opposed to Secretary Schneider's.

[176] The current Director of Finance and Administration is Walter "Tony" Small who did not serve in this capacity until about September 2013, or after the events which were the subject of this investigation.

Employee 25	*Employee 125*	*Employee 173*	*Employee 53*
Employee 98			

Similarly, a review of IPRs, ePARs, and Notices of Personnel Action revealed that a number of IDOT personnel documents bear the signature of Matt Hughes in his capacity as Director of Finance and Administration and indicate his approval of the hire of various Staff Assistants. Investigators discovered that Matt Hughes executed documents relating to multiple Staff Assistants who, the OEIG concludes, were performing *Rutan*-covered duties, including Staff Assistants:

Employee 166	*Employee 163*	*Employee 4*	*Employee 179*
Employee 214	*Employee 176*	*Employee 160*	*Employee 184*
Employee 181	*Employee 139*	*Employee 169*	*Employee 157*
Employee 185	*Employee 204*	*Employee 172*	*Employee 174*
Employee 177	*Employee 161*	*Employee 128*	*Employee 207*
Employee 155	*Employee 212*	*Employee 205*	

(3) Failure of Ann Schneider and Matt Hughes to Carry Out the Responsibilities of the Director of Finance and Administration

As indicated above, the Director of Finance and Administration has a number of duties and responsibilities. The OEIG concludes that Ann Schneider and Matt Hughes failed to carry out certain of their duties. Below, the OEIG discusses each of those failures.

Delegated major responsibility for personnel activities, Responsible for developing and directing programs to meet the personnel needs of IDOT, and Responsible for managing all personnel services statewide

As Director of Finance and Administration the duties of both Secretary Schneider and Matt Hughes required them to have:

> *major responsibility for personnel activities,* to *develop and direct programs to meet the personnel needs of IDOT,* and to *manage all personnel services* statewide.

Despite these major responsibilities, Secretary Schneider was relatively unaware of IDOT's personnel practices. Specifically, Secretary Schneider stated:

- when she first started at IDOT (Secretary Schneider's first position at IDOT was that of Director of Finance and Administration), she did not know the difference between how a *Rutan*-covered position should be filled versus a *Rutan*-exempt position;
- she was aware that CMS made *Rutan* determinations for all positions based on position descriptions, but stated she had never seen a (Non Code) Position Review Determination form, the form IDOT sent to CMS along with the position description

for a *Rutan* determination, even though the form contains a signature space for "Agency Director";[177]

- she had never seen an Employment Decision form, the form IDOT used when justifying the selection of candidates for hire into *Rutan*-covered positions, even though the form contains a signature space for "Agency Director" and her apparent authorized signature appeared on one such document;[178]

- she was unaware of how IDOT defined "technical" or if a definition existed; and

- she was unaware of the 2005 Office of Internal Audit findings that directly related to IDOT's personnel program, and which had been issued just prior to her becoming Director of Finance and Administration, a copy of which had been given to her immediate predecessor (Director of Finance and Administration Robert Millette).[179]

Based on Secretary Schneider's statements and admitted ignorance of even basic provisions of IDOT's personnel program, it is clear she could not have adequately developed, directed, or managed IDOT personnel matters relating to *Rutan* sufficient to make certain IDOT in fact complied with Administrative Orders relating to *Rutan* or even her own policies.

To be sure, Secretary Schneider told investigators that at the time she was Director of Finance and Administration, she did not know IDOT was hiring Staff Assistants to perform the duties of *Rutan*-covered positions and thus allowed IDOT to circumvent the *Rutan* hiring process and Administrative Orders. Again, these failures were wholly inconsistent with her obligations because as Director of Finance and Administration, Secretary Schneider was responsible for directing and managing IDOT's personnel program. Part of managing the program included having knowledge of what was occurring and complying with law and policy. By her own admission, Secretary Schneider did not have knowledge and thus was not sufficiently managing or directing IDOT's personnel program and in particular its programs with regard to *Rutan* compliance.

On the other hand, Matt Hughes *was* aware that IDOT was hiring Staff Assistants in circumvention of the *Rutan* hiring principles. As discussed above, while serving as Bureau Chief of Personnel Management, Mr. Hughes determined this practice was appropriate depending on operational need and this thinking appeared to carry over into his time as Director of Finance and Administration as he failed to take any action to halt the practice. His knowledge that this occurred and his failure to take any action to stop it from repeatedly occurring was a clear dereliction of his duty to direct and manage IDOT's personnel program.

Oversees the Office of Finance and Administration, which includes the Bureau of Personnel Management

As Directors of Finance and Administration, both Secretary Schneider and Matt Hughes were also responsible for:

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[177] *See* Appendix at Exhibit 6.
[178] *See* Appendix at Exhibit 14.
[179] *See* Appendix at Exhibit 15.

> *overseeing the Bureau of Personnel Management,* which includes the Bureau of Personnel Management and the Bureau Chief.

Yet, Secretary Schneider and Matt Hughes failed to appropriately do so. For example, when asked about her time as Director of Finance and Administration, Secretary Schneider made statements to investigators in which she appeared to suggest that she had delegated her personnel program responsibilities to others, which is inconsistent with the responsibility that she had overseeing the Bureau of Personnel Management. For example, when she was in this role, Secretary Schneider stated she:

> *assumed* persons would be performing duties consistent with their job descriptions, as opposed to ensuring employees were performing duties consistent with their job descriptions.

Moreover, when asked about the *Rutan* process, Secretary Schneider said she was not "completely familiar with" the process and when asked if as Director of Finance and Administration she provided her Bureau Chief with direction regarding *Rutan*-exempt interviews, she said she did not recall "having any of those conversations," and explained that the Bureau Chief of Personnel Management managed that level of detail.

In addition, Secretary Schneider admitted that she was not aware of what was happening in the Bureau because when she started with IDOT, the Bureau Chief of Personnel Management at the time (Scott Doubet) was "kind of bulldogging a lot of things" and she was not aware of what was happening. Secretary Schneider also said that while she should have educated herself on these matters, which the OEIG wholeheartedly agrees with, she relied on the Personnel Manager to do the "right thing." However, when asked about *Rutan*-exempt Staff Assistants performing *Rutan*-covered work and whose responsibility that would be, Secretary Schneider stated, "[t]heir supervisor," and when asked if the Bureau Chief of the Bureau of Personnel Management had any responsibility, she stated, "Yes." However, when asked if the Director of Finance and Administration had any responsibility, the very position she held, Secretary Schneider stated, "I'd want to back up on the bureau chief answer too. I think once somebody comes on board, you have to trust that their supervisors are doing what is consistent with what they're supposed to be doing." Trust seems to be what Secretary Schneider relied upon, which in this circumstance was insufficient. Secretary Schneider then discussed the large number of IDOT employees (5,200 people) and said "it would be difficult to know what every single person in the organization, and what job duties every single person in the organization are fulfilling at any single point in time."

The OEIG recognizes that Directors rightfully must and are often required to delegate multiple responsibilities and must rely upon their subordinate staff to comply with rules and policies. However, in this instance, Secretary Schneider delegated her personnel responsibilities to the point of being wholly unaware of what was happening in the Bureau of Personnel Management. This abdication allowed her staff to have free reign and knowingly circumvent *Rutan* and the Administrative Orders. For example, then Bureau Chief of Personnel Management Matt Hughes sent Secretary Schneider an email and memo (the 2009 staffing memo) wherein he indicated he was going to hire Staff Assistants to fill three *Rutan*-covered positions. It appears as though Secretary Schneider had delegated her oversight of the Bureau so much so that she did not even recognize what Mr. Hughes was intending to do per his memo and

as a result could not properly oversee his inappropriate request. Clearly, as Director of Finance and Administration, Secretary Schneider failed to oversee the Bureau of Personnel Management.

Similarly, Matt Hughes failed to oversee the Bureau of Personnel Management. Like Secretary Schneider, Mr. Hughes delegated his responsibilities when it came to the Bureau of Personnel Management. Mr. Hughes acknowledged that as Director of Finance and Administration he was responsible for ensuring position descriptions were accurate. However, when asked if as Director of Finance and Administration he specifically assigned any individual under his control the duty of ensuring position descriptions were accurate, Mr. Hughes responded "personnel management...by expectation" and "...that's the expectation of the Bureau of Personnel Management..." Again, this is evidence of the Director of Finance and Administration delegating his responsibilities as they pertain to the Bureau of Management to the point of not being an effective overseer of the Bureau.

Moreover, Mr. Hughes was aware that the Bureau of Personnel Management was allowing and supporting the practice of hiring Staff Assistants to perform duties consistent with *Rutan*-covered positions. Nonetheless, Mr. Hughes allowed the practice to continue and to grow to the point that IDOT created 67 staff Assistant positions and employed over 250 individuals in those positions between about 2003 to 2014. By failing to take appropriate action or manage the practice, Mr. Hughes failed to oversee the Bureau of Personnel Management during the time he served as Director of Finance and Administration.

Responsible for attracting, obtaining, retaining, training and compensating an adequate and competent staff to ensure efficient and cost-effective operations statewide

As Directors of Finance and Administration, both Secretary Schneider and Matt Hughes were also responsible for:

> *attracting, obtaining, retaining, training, and compensating an adequate and competent staff to ensure efficient and cost-effective operations statewide.*

Secretary Schneider and Mr. Hughes failed to do so when they allowed Staff Assistants, who did not perform the duties of a Staff Assistant, to be hired into the Office of Finance and Administration.

As indicated in the above chart titled "Staff Assistants Hired by Location 2002-2014," the Office of Finance and Administration was the IDOT location most heavily populated by Staff Assistants.[180] Between 2002 and 2014, the Office of Finance and Administration employed more than 100 Staff Assistants. As determined by the OEIG, CMS Employee 7, and IDOT itself, most Staff Assistants, including those in the Office of Finance and Administration were not performing Staff Assistant duties. For example, even Mr. Hughes acknowledged that Staff Assistant Employee 123 was hired as a Staff Assistant in the Office of Finance and Administration because payroll was "a tough position to fill." It necessarily follows that those Staff Assistants were not hired based on their qualifications or ability to do the duties they actually performed but apparently for some other reason, and in the case of Employee 123, because her positon was "tough" to fill. This is no reason to violation *Rutan*.

[180] Located in section III (I)(1)(h) of this Final Report.

As such, Secretary Schneider and Mr. Hughes cannot claim that they obtained or retained an adequate and competent staff as they were not aware of whether the Staff Assistants were qualified to perform the duties actually performed. Therefore, Secretary Schneider and Mr. Hughes failed to attract, obtain, and retain an adequate and competent staff.

Responsible for exercising discretion and control over highway user taxes, revenues, and transportation bond proceeds and the general revenue fund appropriations through the maintenance of sound fiscal policy to ensure the proper allocation of limited resources as well as maintain fiscal integrity

As Director of Finance and Administration, both Secretary Schneider and Matt Hughes were responsible for:

> *exercising discretion and control over highway user taxes, revenues, and transportation bond proceeds and the general revenue fund appropriations through the maintenance of sound fiscal policy to ensure the proper allocation of limited resources as well as maintain fiscal integrity.*

By allowing Staff Assistants to be hired at varying pay levels that were not justified on the basis of the Staff Assistants performing additional duties, Secretary Schneider and Mr. Hughes failed to comply with this responsibility.

As discussed above, the OEIG investigation revealed that a number of Staff Assistants were assigned varying Technical Manager classification levels (many of which had some overlap) despite performing the exact same duties. In certain instances, one Staff Assistant could have been paid between $43,920 and $78,360 to perform the exact same duties as a Staff Assistant who was earning between $70,020 and $118,080.[181] Obviously, the most fiscally responsible action would have been to pay employees performing the same duties similar salaries. Instead, IDOT, under the supervision of Secretary Schneider and Matt Hughes as Director of Finance and Administration, was doling out salaries that in certain instances appeared to be over $25,000 more (or less) than they should have been. For example, Staff Assistant Employee 137 earned almost $28,000 more than his *Rutan*-covered counterpart. When asked about Employee 137's salary, Mr. Hughes responded that it may have been justified by his previous employment or W-2 that was given to IDOT. However, when the OEIG requested from IDOT information relating to Employee 137's prior employment or W-2, IDOT provided none. It necessarily follows that Employee 137's salary may very well not have been the result of a well-thought out and calculated number based on his prior employment or W-2, or the duties that he would be performing, and it is also clear that it may not have been based on the fact that he was required to perform additional duties. Instead, it appears that Employee 97 may have had it right, and that Staff Assistant pay, in this case Employee 137's salary, was the result of nothing more than somebody's request that he be paid a certain salary.

Secretary Schneider and Mr. Hughes' failure to classify and compensate Staff Assistants based upon appropriate reasoning as opposed to some unknown reason is not sound fiscal policy,

[181] This example is based on the OEIG's discovery that the position descriptions for the partial position number 23-80-000-00-02 for the Technical Manager II and Technical Manager VI were identical.

does not ensure the proper allocation of IDOT's limited resources, and is not in keeping with the idea of maintaining fiscal integrity.

(4) OEIG Findings

Ann Schneider

Based upon the above facts and the evidence obtained during the course of this investigation, the OEIG finds that there is reasonable cause to believe that between November 2005 and August 2010, while serving as Director of Finance and Administration, Ann Schneider violated section 1-2 of IDOT's Personnel Policies Manual and failed to comply with the position description of the Director of Finance and Administration when she, among other things:

- despite having *major responsibility for personnel activities, Responsible for developing and directing programs to meet the personnel needs of IDOT, and Responsible for managing all personnel services statewide,* she was unaware of the basic tenets of IDOT's personnel practices and of the fact that her subordinates were circumventing the *Rutan* hiring process, thus engaging in nonfeasance and mismanagement of the Office of Finance and Administration, thus this allegation is **FOUNDED**;

- despite being responsible for *overseeing the Office of Finance and Administration, which includes the Bureau of Personnel Management*, she delegated her personnel program responsibilities such that she was not an effective overseer of the Bureau of Personnel Management, thus engaging in nonfeasance and mismanagement of the Office of Finance and Administration, thus this allegation is **FOUNDED**;

- despite being responsible for *attracting, obtaining, retaining, training and compensating an adequate and competent staff to ensure efficient and cost-effective operations statewide*, she allowed Staff Assistants who did not perform the duties of a Staff Assistant be hired into the Office of Finance and Administration, thus engaging in nonfeasance and mismanagement of the Office of Finance and Administration, thus this allegation is **FOUNDED**; and

- despite being *responsible for exercising discretion and control over highway user taxes, revenues, and transportation bond proceeds and the general revenue fund appropriations through the maintenance of sound fiscal policy to ensure the proper allocation of limited resources as well as maintain fiscal integrity*, she allowed Staff Assistants to be paid salaries that were not justified by the duties they performed thus mismanaging the Office of Finance and Administration, thus this allegation is **FOUNDED**.

In addition, the OEIG finds that there is reasonable cause to believe that between November 2005 and August 2010, while serving as Director of Finance and Administration, Ann Schneider:

- allowed her staff to circumvent the Administrative Orders which were put into place in order to make certain persons hired into *Rutan*-covered positions were hired pursuant to

the *Rutan* hiring process consistent with the United States Supreme Court decision *Rutan v. Republican Party of Illinois,* thus this allegation is **FOUNDED**.

Matt Hughes

Based upon the above facts and the evidence obtained during the course of this investigation, the OEIG finds that there is reasonable cause to believe that between August 2010 and July 2013, Matt Hughes violated section 1-2 of IDOT's Personnel Policies Manual and failed to comply with the position description of the Director of Finance and Administration when he, among other things:

- despite having *major responsibility for personnel activities, Responsible for developing and directing programs to meet the personnel needs of IDOT, and Responsible for managing all personnel services statewide,* he allowed staff to circumvent *Rutan*, thus engaging in nonfeasance and mismanagement of the Office of Finance and Administration, thus this allegation is **FOUNDED** ;

- despite being responsible for *overseeing the Office of Finance and Administration, which includes the Bureau of Personnel Management*, he delegated his personnel program responsibilities such that he could no longer be an effective overseer of the Bureau of Personnel Management and failed to curtail his subordinates' circumvention of the *Rutan* hiring process, thus engaging in nonfeasance and mismanagement of the Office of Finance and Administration, thus this allegation is **FOUNDED**;

- despite being responsible for *attracting, obtaining, retaining, training and compensating an adequate and competent staff to ensure efficient and cost-effective operations statewide*, he allowed Staff Assistants who did not perform the duties of a Staff Assistant be hired into the Office of Finance and Administration, thus engaging in nonfeasance and mismanagement of the Office of Finance and Administration, thus this allegation is **FOUNDED**; and

- despite being *responsible for exercising discretion and control over highway user taxes, revenues, and transportation bond proceeds and the general revenue fund appropriations through the maintenance of sound fiscal policy to ensure the proper allocation of limited resources as well as maintain fiscal integrity*, he allowed Staff Assistants to be paid salaries that were not justified by the duties they performed, thus mismanaging the Office of Finance and Administration, thus this allegation is **FOUNDED**.

In addition, the OEIG finds that there is reasonable cause to believe that between August 2010 and July 1, 2013 (the date Staff Assistant Employee 208 was hired), while serving as Director of Finance and Administration, Matt Hughes:

- allowed his staff to circumvent the Administrative Orders which were put into place in order to make certain persons hired into *Rutan*-covered positions were hired pursuant to the *Rutan* hiring process consistent with the United States Supreme Court decision *Rutan v. Republican Party of Illinois,* thus this allegation is **FOUNDED**.

iii. Secretary

(1) Responsibilities of the Position

Pursuant to section 1-2 of IDOT's own Personnel Policies Manual and the Fiscal Control and Auditing Act:

- the Office of the Secretary of Transportation is responsible for administration of the Illinois Department of Transportation's *personnel* policies; and

- the Secretary of Transportation is responsible for effectively and efficiently managing the agency and establishing and maintaining an effective system of internal control.[182]

The responsibility to ensure that IDOT is in full compliance with the *Rutan* decision and the various Administrative Orders issued by the Office of the Governor, thus ultimately rests with the Secretary of Transportation, who is in charge of the overall operations of IDOT.

(2) Persons Who Held the Position of Director of Finance and Administration and the Forms They Signed

Secretary: Gary Hannig and Ann Schneider

Gary Hannig served as IDOT Secretary of Transportation for about 27 months or from about March 2009 to June 30, 2011.

Ann Schneider has served as IDOT Secretary since July 2011.

Forms Signed by Gary Hannig and Ann Schneider

A review of IPRs, ePARs, and Notices of Personnel Action revealed that a number of IDOT personnel documents bear the signature of Gary Hannig in his capacity as Secretary and indicate his approval of the hiring of various Staff Assistants. Investigators discovered that Gary Hannig executed documents relating to multiple Staff Assistants who, the OEIG concludes, were performing *Rutan*-covered duties, including Staff Assistants:

Employee 152	***Employee 105***	***Employee 109***	***Employee 25***
Employee 131	***Employee 130***	***Employee 210***	***Employee 9***
Employee 203	***Employee 164***	***Employee 180***	***Employee 167***
Employee 80	***Employee 35***	***Employee 175***	***Employee 137***
Employee 139	***Employee 173***	***Employee 157***	***Employee 48***
Employee 185	***Employee 150***	***Employee 159***	***Employee 204***
Employee 2	***Employee 177***	***Employee 183***	***Employee 161***
Employee 128	***Employee 205***	***Employee 140***	***Employee 98***
Employee 78			

A review of IPRs, ePARs, and Notices of Personnel Action revealed that a number of IDOT personnel documents bear the signature of Ann Schneider in her capacity as Secretary and

[182] Fiscal Control and Internal Auditing Act, 30 ILCS 10/3001.

indicate her approval of the hire of various Staff Assistants. Investigators discovered that Ann Schneider executed documents relating to multiple Staff Assistants who, the OEIG concludes, were performing *Rutan*-covered duties, including Staff Assistants:

Employee 166	*Employee 163*	*Employee 208*	*Employee 4*
Employee 179	*Employee 174*	*Employee 176*	*Employee 160*
Employee 184	*Employee 181*	*Employee 169*	*Employee 207*
Employee 214	*Employee 212*	*Employee 155*	

(3) Failure of Gary Hannig and Ann Schneider to Carry Out the Responsibilities of the Secretary of IDOT

As indicated above, the Secretary of IDOT has a number of duties and responsibilities. The OEIG concludes that Gary Hannig and Ann Schneider failed to carry out certain of their duties. Below, the OEIG discusses each of those failures.

The Office of the Secretary of Transportation is responsible for administration of the Illinois Department of Transportation's *personnel* policies

As Secretary of IDOT, both Gary Hannig and Secretary Schneider were responsible for administration of IDOT's personnel policies, among other things. Mr. Hannig and Secretary Schneider failed to fulfill their responsibility as it relates to the hiring of Staff Assistants and the *Rutan* hiring process. As Secretary of Transportation, Mr. Hannig was involved in the approval of *Rutan*-exempt hires, including Staff Assistants, through the ePAR approval process. Mr. Hannig confirmed that he would have meetings with IDOT management concerning pending ePARs several times a month. However, during his interview with OEIG investigators, Mr. Hannig stated that he was unaware of Administrative Order No. 2 (2009) and in fact had never before seen it. Mr. Hannig also stated that at the time he became Secretary of Transportation he was unaware of the existence of IDOT's Personnel Policies Manual, saying that he had "a general concept that there were rules" that had to be followed.

Nevertheless, despite the frequency with which Mr. Hannig appeared to regularly convene meetings to discuss ePARs, he said he had not seen a *Rutan*-exempt Staff Assistant position description and was not familiar with the duties and responsibilities of the position. In fact, he also did not know that the Staff Assistant position was a technical position and exempt from the Personnel Code and was unaware of the number of Staff Assistant positions that existed or were added during his tenure as Secretary. Mr. Hannig stated that he was unaware of what would make a person a good fit for the Staff Assistant position, although he knew some IDOT Staff Assistants personally, including Employee 193. In addition, Mr. Hannig was unaware of what duties Staff Assistant Employee 137 performed, but acknowledged that he had approved the ePAR to hire him as a Technical Manager VI, with a $92,000 salary. Finally, Mr. Hannig did not know Staff Assistant Employee 137 was earning $28,000 more than what *Rutan*-covered employee, who was performing the same duties that Employee 137 was performing, was earning.

The OEIG concludes that as Secretary of Transportation, Gary Hannig allowed his subordinates to manipulate and circumvent the *Rutan* hiring process as it relates to the Staff

Assistant position. Thus, both failed to appropriately manage the operations of the agency, failed to provide sufficient oversight of the Director of Finance and Administration who reported directly to him, failed to responsibly administer the personnel policies of the agency, and failed to establish and maintain an effective system of internal control.

In addition to Mr. Hannig, Ann Schneider has also served as IDOT Secretary, a position she has held since July 2011. When asked if she thought that having *Rutan*-exempt employees perform exclusively *Rutan*-covered work was a problem, Secretary Schneider responded by saying that it would be something she would want an opinion from the Chief Counsel about. However, Secretary Schneider said she did not think she had brought the issue to the attention of Chief Counsel because she was unaware that it was occurring. Secretary Schneider was also shown a copy of letter she received in about *December 2011*, in which an anonymous IDOT employee complained to her about various Staff Assistants hired in IDOT's Division of Aeronautics who had allegedly been hired without an interview, a job description, or assigned duties. In response to the complaint, Secretary Schneider said she referred the matter to Director of Quality Compliance and Review Jeff Heck, whose office conducted internal IDOT investigations. Interestingly enough, IDOT's Office of Quality Compliance and Review also employed a *Rutan*-exempt Staff Assistant whom the OEIG concluded was performing *Rutan*-covered duties rather than *Rutan*-exempt one, namely Employee 180.

Nevertheless, when investigators asked Secretary Schneider if she was aware if Mr. Heck had investigated the matter, she said she was not. However, had Secretary Schneider read just the first sentence of the paragraph of the December 12, 2011 letter directed to her attention, as well as the first paragraph, she would have easily been able to know that the writer was complaining and clearly suggesting that IDOT was engaging in inappropriate action with regard to its hiring practices. Specifically, in the first paragraph of the December 2011 letter to Secretary Schneider, the writer stated, among other things:

> *I wish to relate to you the ethical and professional misconduct going on at the Illinois Department of Transportation – Division of Aeronautics regarding the addition of individuals to the staff under the title of Staff Assistant.* These people are being added under the pay title of a Technical Manager II without in any way being interviewed for any position. They are assuming duties that would normally be done by positions that are currently vacant on the Division organization chart, but would need to be interviewed and *filled by qualified individuals*. (emphasis added).[183]

In addition, when asked if she had any comments to make to the OEIG, Secretary Schneider told investigators she thought there should be ethics training tailored to agency heads because *Rutan* issues could be confusing unless one had a background in personnel management.[184]

The OEIG concludes that both Secretary Schneider and former Secretary Hannig permitted the Staff Assistant position to be manipulated in circumvention of the *Rutan* hiring process. In addition the OEIG finds that they failed to appropriately manage the operations of the

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[183] *See* Appendix at Exhibit 6.

[184] The OEIG would note that CMS does provide regular *Rutan* training and Secretary Schneider's suggestion that the OEIG conduct the training is misplaced.

agency, and failed to provide sufficient oversight of the Director of Finance and Administration who reported directly to them, failed to responsibly administer the personnel policies of the agency as they related to the hiring of *Rutan*-exempt positions. Finally, the OEIG also concludes that they failed to establish and maintain an effective system of internal control.

(4) OEIG Findings

Gary Hannig

Therefore, between March 2009 and June 2011, with respect to *Rutan*-exempt Staff Assistants, Secretary Gary Hannig approved the hiring of Staff Assistants whom the OEIG concluded were performing *Rutan*-covered position duties, and finds there is reasonable cause to believe that while serving as Secretary of IDOT, Gary Hannig

- violated section 1-2 of IDOT's Personnel Policies Manual eventhough he, among other things, was responsible for *administration of the Illinois Department of Transportation's personnel policies*, thus this allegation is **FOUNDED**.

- violated section 1-2 of IDOT's Personnel Policies Manual eventhough he, among other things, was responsible for *effectively and efficiently managing the agency and establishing and maintaining an effective system of internal control,* thus this allegation is **FOUNDED.**

In addition, the OEIG finds that there is reasonable cause to believe that between March 2009 and June 2011, while serving as Secretary of IDOT, Gary Hannig:

- allowed his staff to circumvent Administrative Order No. 2 (2009) which was put into place in order to make certain persons hired into *Rutan*-covered positions were hired pursuant to the *Rutan* hiring process consistent with the United States Supreme Court decision *Rutan v. Republican Party of Illinois*, thus this allegation is **FOUNDED**.

Ann Schneider

Based upon the above facts and the evidence obtained during the course of this investigation, the OEIG finds that between July 2011 and at least July 1, 2013 (the date Staff Assistant Employee 208 was hired), while serving as Secretary of IDOT, Ann Schneider:

- violated section 1-2 of IDOT's Personnel Policies Manual eventhough she, among other things, was responsible for *administration of the Illinois Department of Transportation's personnel policies*, thus this allegation is **FOUNDED**.

- violated section 1-2 of IDOT's Personnel Policies Manual eventhough she, among other things, was responsible for *effectively and efficiently managing the agency and establishing and maintaining an effective system of internal control,* thus this allegation is **FOUNDED.**

In addition, the OEIG finds that between July 2011 and at least July 1, 2013, while serving as Secretary of IDOT, Ann Schneider:

allowed her staff to circumvent Administrative Order No. 2 (2009) which was put into place in order to make certain persons hired into *Rutan*-covered positions were hired pursuant to the *Rutan* hiring process consistent with the United States Supreme Court decision *Rutan v. Republican Party of Illinois,* thus this allegation is **FOUNDED.**

d. Office of the Governor

The OEIG interviewed the Governor's current and former Chiefs of Staff and a Deputy Chief of Staff to determine the involvement of the Governor's office in IDOT's use of the Staff Assistant position to circumvent Administrative Orders. In response to questions from investigators, current and former Chiefs of Staff Jerry Stermer and Ryan Croke stated they:

- had never seen a Staff Assistant position description;
- were not aware IDOT hired *Rutan*-exempt Staff Assistants and then had them perform *Rutan*-covered position duties; and
- were not aware that IDOT later transferred some *Rutan*-exempt Staff Assistants into *Rutan*-covered positions without going through the *Rutan* hiring process.

Mr. Croke added that the Office of the Governor was not involved in determining whether a position is *Rutan*-exempt and that his knowledge of a given position came from the position's title and the short description of the position on the ePARs that he reviewed. According to Mr. Croke, he relied heavily on the agency Director and Deputy Chiefs of Staff to review a candidate's credentials and assumed the candidate would be performing the duties set forth in the ePAR. Futhermore, Mr Croke said that he never knowingly approved an ePAR to hire someone who was not going to perform duties described in the position description.

Deputy Chief of Staff Sean O'Shea told investigators that the Office of the Governor did assist agencies in filling *Rutan*-exempt positions, and that he has to approve *Rutan*-exempt hires, but does not do anything to ensure that a candidate will perform the duties of a *Rutan*-exempt position. According to Mr. O'Shea, he too accepts the employing agency's representation that a candidate is qualified for the *Rutan*-exempt position.

Based upon its investigation, the OEIG is unable to conclude that the Office of the Governor was aware of IDOT's misuse of the Staff Assistant position or who was aware that IDOT was circumventing the *Rutan* hiring process. However, there is little doubt that the protocol the Office of the Governor had relating to the approval of *Rutan*-exempt employees was insufficient to prevent this ten-year improper practice. This investigation clearly reveals that the Office of the Governor should take immediate steps to develop a revised protocol to ensure that every State agency and every State agency head is aware of their obligations vis-à-vis *Rutan.* Futhermore, they must establish and implement additional controls, including random review of approved ePARs signed by Office of the Governor staff in order to make certain the *Rutan* hiring process is followed and that persons performing *Rutan*-exempt duties are in fact performing them.

C. The Hiring of Relatives by IDOT Senior Officials

The OEIG reviewed IDOT's nepotism policy in light of the investigation revealing that some of the employees hired into Staff Assistant positions were related to members of IDOT's senior management. This policy is contained in IDOT's Personnel Policies Manual, which is prepared by the Office of Finance and Administration. Section 3-8 (B) of the Personnel Policies Manual sets forth IDOT's nepotism policy in a subsection titled "Employment of Relatives." It states the following:

1. The department considers it improper for a supervisor to oversee a relative. Therefore, no applicant or employee may be considered for or hold a position wherein s/he would be in a superior or subordinate relationship with a relative. Relatives include spouse, domestic partner, parent, child, step-child, brother, sister, grandparent, grandchild, aunt, uncle, niece, nephew, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

2. Employees prohibited by the provision of 3-8 B.1. from holding a superior or subordinate position are also prohibited from holding a position which involves a "check and balance" function, i.e., the review and approval of said employee's work.

The OEIG also considered IDOT's conflict of interest policy with regard to the employment of relatives and found it not to be applicable in this instance.

The OEIG investigation considered whether IDOT's nepotism policy was violated by IDOT with respect to the employment of (1) Employee 3, step-daughter of Secretary of Transportation Ann Schneider; (2) Employee 88, wife of former Director of Finance and Administration Matt Hughes; (3) Employee 224, sister-in-law of Mr. Hughes; (4) Employee 225, wife of former Bureau Chief of Personnel Management; (5) Employee 1, sister-in-law of former Chief Counsel Ellen Schanzle-Haskins; and (6) Employee 2, daughter of former Director of the Division of Traffic Safety. Our findings follow.

a. Employee 3, Step-daughter of Secretary Ann Schneider

The OEIG investigation confirmed that Employee 3 is the step-daughter of Ann Schneider, which means that IDOT's nepotism policy applies to her employment. Accordingly, Employee 3's employment violates the nepotism policy if Secretary Schneider oversees Employee 3 as her supervisor, or shared a superior-subordinate relationship with her. In addition, the nepotism policy is violated if Secretary Schneider holds a position which involves a check and balance function such that she reviews and approves of Employee 3's work.

The OEIG investigation revealed that Employee 3 initially worked in a temporary position in the Division of Aeronautics, before joining District 6 of the Division of Highways as a Staff Assistant in April 2007. Employee 3 remained in District 6 until August 2010 when she transferred to the Division of Traffic Safety. During this period of time, Secretary Schneider held the position of Director of the Office of Finance and Administration. Employee 3 did not report to the Director of Finance and Administration while she was a Staff Assistant at District 6. According to Secretary Schneider, as the Director of Finance and Administration, she did not

evaluate Employee 3's job performance, nor was she "responsible for anything related to [Employee 3's] job."

In August 2010, Employee 3 began working in the Division of Traffic Safety as a Staff Assistant. At this point in time, Secretary Schneider was in the position of Chief Operating Officer, which she held until she was promoted to Acting Secretary of Transportation in July 2011. Secretary Schneider was permanently appointed Secretary of Transportation in November 2011. At no time did Employee 3 report to the Chief Operating Officer or the Secretary of Transportation while she was a Staff Assistant at the Division of Traffic Safety. The OEIG investigation did not find evidence that Secretary Schneider evaluated Employee 3's job performance as a Staff Assistant at the Division of Traffic Safety or that Ms. Schneider had any involvement in the review and approval of Employee 3's work.

With regard to Employee 3's employment at IDOT, the OEIG investigation did not establish reasonable cause to find that IDOT's nepotism policy as embodied in the Personnel Policies Manual was violated. Therefore, the allegation that Employee 3's employment violated IDOT's nepotism policy is **UNFOUNDED**.

b. Employee 88, wife of former Director of Finance and Administration and Former Bureau Chief of Personnel Management Matt Hughes

The OEIG investigation confirmed that Employee 88 married former Director of Finance and Administration Matt Hughes in August 2011; thus, IDOT's nepotism policy applies to her employment as of that date. Accordingly, Employee 88's employment violates the nepotism policy if Mr. Hughes oversaw Employee 88 as her supervisor, or shared a superior-subordinate relationship with her. In addition, the nepotism policy is violated if Mr. Hughes held a position which involved a check and balance function such that he reviewed and approved of Employee 88's work.

Employee 88 worked as a Staff Assistant in the Bureau of Personnel Management from May 2004 until June 2010 when she transferred into the position of Policy Analysis Section Chief in the Office of Planning and Programming. According to Employee 88, she transferred from the Bureau of Personnel Management to the Office of Planning and Programming when she and Mr. Hughes began dating. She then became the Personnel Manager for District 6 of the Division of Highways in August 2011. Mr. Hughes was the Bureau Chief of Personnel Management from April 2009 until he became the Director of Finance and Administration in August 2010. He married Employee 88 in August 2011.

The OEIG investigation did not find evidence that Employee 88 reported to Mr. Hughes at any point after August 2011, the month in which they were married. As of the date of the marriage, Employee 88 was working in District 6 as Personnel Manager and had previously worked in the Office of Planning and Programming for over a year. Mr. Hughes told the OEIG that the Deputy Director of Finance and Administration Tony Small handled all personnel transactions arising out of District 6, because Mr. Hughes did not want to be involved in transactions that his wife had initiated. The OEIG investigation did not find evidence that Mr. Hughes evaluated Employee 88's job performance as Policy Analysis Section Chief in the Office of Planning and Programming or as Personnel Manager at District 6 of the Division of

Highways. Furthermore, the OEIG investigation did not find evidence that Mr. Hughes reviewed and approved of Employee 88's work.

With regard to Employee 88's employment at IDOT, the OEIG investigation did not establish reasonable cause to find that IDOT's nepotism policy as embodied in the Personnel Policies Manual was violated. Therefore, the allegation that Employee 88's employment violated IDOT's nepotism policy is **UNFOUNDED**.

c. Employee 224, Sister-In-Law of former Director of Finance and Administration and Former Bureau Chief of Personnel Management Matt Hughes

The OEIG investigation confirmed that in August 2011, Employee 224 became the sister-in-law of former Director of Finance and Administration Matt Hughes; thus, IDOT's nepotism policy applies to her employment. Accordingly, Employee 224's employment violates the nepotism policy if Mr. Hughes oversaw Employee 224 as her supervisor, or shared a superior-subordinate relationship with her. In addition, the nepotism policy is violated if Mr. Hughes held a position which involved a check and balance function such that he reviewed and approved of Employee 224's work.

Employee 224 was hired into the position of Administrative Organizational Manager in District 1 of the Division of Highways after going through the *Rutan* hiring process in August 2007. Mr. Hughes did not work at District 1 for the entirety of his tenure at IDOT. Mr. Hughes told the OEIG that, as the Director of Finance and Administration, he had no interaction with Employee 224 because she was at a lower level of the organization and reported to a Bureau Chief. The OEIG did not discover any evidence of Mr. Hughes evaluating Employee 224's job performance.

With regard to Employee 224's employment at IDOT, the OEIG investigation did not establish reasonable cause to find that IDOT's nepotism policy as embodied in the Personnel Policies Manual was violated. Therefore, the allegation that Employee 224's employment violated IDOT's nepotism policy is **UNFOUNDED**.

d. Employee 225, Wife of Bureau Chief of Personnel Management Mike Woods, Jr.

The OEIG investigation confirmed that Employee 225 married former Bureau Chief of Personnel Management Mike Woods, Jr. in July 2010; thus, IDOT's nepotism policy applies to her employment as of that date. Accordingly, Employee 225's employment violates the nepotism policy if Mr. Woods oversaw Employee 225 as her supervisor, or shared a superior-subordinate relationship with her. In addition, the nepotism policy is violated if Mr. Woods held a position which involved a check and balance function such that he reviewed and approved of Employee 225's work.

Employee 225 worked in the Bureau of Personnel Management as a Staff Assistant beginning in July 2008. She transferred from the Bureau of Personnel Management to the Division of Aeronautics when Mr. Woods became Bureau Chief of Personnel Management on December 1, 2010. Although she remained on the payroll of the Bureau of Personnel Management, she was physically relocated so that she would not have to report to Mr. Woods,

consistent with IDOT's personnel policies. However, nothing in Employee 225's personnel file indicates that this transfer occurred. The OEIG asked Mr. Woods why there was nothing in Employee 225's personnel file documenting this transfer. Mr. Woods responded that it was not the greatest practice, but the transfer was not formalized on paper because it was a lateral transfer and it was not permanent. While at the Division of Aeronautics, Employee 225 assisted the Administrative Services Manager and completed various tasks relating to payroll, timekeeping, and labor relations. Employee 225 is no longer employed with IDOT as of August 2011.

The OEIG considers the transfer of Employee 225 to the Division of Aeronautics as a violation of the various Executive and Administrative Orders relating to *Rutan*, because once she transferred to Aeronautics she reported to a different supervisor, in a different location, than those set forth in the position description applicable to her Staff Assistant position. Her transfer should have been accomplished either by filling a vacancy in Aeronautics or by creating a new position and submitting the relevant position description to CMS for a *Rutan* determination.

Nevertheless, with regard to Employee 225's employment at IDOT, the OEIG investigation did not establish reasonable cause to find that IDOT's nepotism policy as embodied in the Personnel Policies Manual was violated. Therefore, the allegation that Employee 225's employment violated IDOT's nepotism policy is **UNFOUNDED**.

e. Employee 1, sister-in-law of former Chief of Counsel Ellen Schanzle-Haskins

The OEIG investigation confirmed that Employee 1 is the sister-in-law of former Chief Counsel Ellen Schanzle-Haskins; thus, IDOT's nepotism policy applies to her employment. Accordingly, Employee 1's employment violates the nepotism policy if Ms. Schanzle-Haskins oversaw Employee 1 as her supervisor, or shared a superior-subordinate relationship with her. In addition, the nepotism policy is violated if Ms. Schanzle-Haskins held a position which involved a check and balance function such that she reviewed and approved of Employee 1's work.

Employee 1 was hired as a Staff Assistant in October 2008 at District 7 of the Division of Highways. According to Employee 1, she reports to the District 7 Administrative Services Manager and the Business Services Manager. Ms. Schanzle-Haskins informed the OEIG that apart from helping Employee 1 obtain her Staff Assistant job, she had no involvement with her employment.

With regard to Employee 1's employment at IDOT, the OEIG investigation did not establish reasonable cause to find that IDOT's nepotism policy as embodied in the Personnel Policies Manual was violated. Therefore, the allegation that Employee 1's employment violated IDOT's nepotism policy is **UNFOUNDED**.

f. Employee 2, Daughter of former Director of Traffic Safety Michael Stout

The OEIG investigation confirmed that Employee 2 is the daughter of former Director of Traffic Safety Michael Stout; thus, IDOT's nepotism policy applies to her employment. Accordingly, Employee 2's employment violates the nepotism policy if Mr. Stout oversaw Employee 2 as her supervisor, or shared a superior-subordinate relationship with her. In

addition, the nepotism policy is violated if Mr. Stout held a position which involved a check and balance function such that he reviewed and approved of Employee 2's work.

Employee 2 was hired as a Staff Assistant in District 6 of the Division of Highways, in September 2010. According to Employee 2, she has always reported to the District 6 Administrative Services Manager Employee 13. Mr. Stout told the OEIG that he helped Employee 2 obtain her job at IDOT, but knew that she could not work in the Division of Traffic Safety because he was the Director. He also informed the OEIG that Employee 2 could not work in the Bureau of Personnel Management, because his wife worked there.

With regard to Employee 2's employment at IDOT, the OEIG investigation did not establish reasonable cause to find that IDOT's nepotism policy as embodied in the Personnel Policies Manual was violated. Therefore, the allegation that Employee 2's employment violated IDOT's nepotism policy is **UNFOUNDED**.

V. Findings and Recommendations

Following due investigation, the OEIG issues these findings:

Regarding Illinois Department of Transportation:

- **FOUNDED** - From about 2003 through at least July 1, 2013, the Illinois Department of Transportation hired multiple *Rutan*-exempt Staff Assistants who were assigned to perform *Rutan*-covered duties or placed into *Rutan*-covered positions, thus circumventing Administrative Order No. 2 (2009), which was put into place in order to ensure that persons hired into *Rutan*-covered positions are hired pursuant to the *Rutan* hiring process consistent with the United States Supreme Court decision *Rutan v. Republican Party of Illinois*.

Regarding the Individual Complaints the OEIG received:

- **FOUNDED** - Complaint No. 11-00553: The OEIG finds that IDOT hired Employee 1 as a *Rutan*-exempt Staff Assistant and assigned her *Rutan*-covered duties, in circumvention of the *Rutan* hiring process prescribed by Administrative Order No. 2 (2009).

- **FOUNDED** - Complaint No. 11-00713: The OEIG finds that IDOT hired Employee 2 as a *Rutan*-exempt Staff Assistant and assigned her *Rutan*-covered duties in circumvention of the *Rutan* hiring process prescribed by Administrative Order No. 2 (2009).

- Complaints No. 11-02227, 11-02299, 11-02300, 11-02391, 12-00025, and 12-00031: The OEIG finds that there is reasonable cause to believe that:

  - **FOUNDED** - IDOT hired Employee 92 as a *Rutan*-exempt Staff Assistant and assigned him *Rutan*-covered duties in circumvention of the *Rutan* hiring process prescribed Administrative Order No. 2 (2009).

  - **FOUNDED** - IDOT hired Employee 52 as a *Rutan*-exempt Staff Assistant and assigned him *Rutan*-covered duties in circumvention of the *Rutan* hiring process prescribed by Administrative Order No. 2 (2009).

- ❖ **FOUNDED** - IDOT hired Employee 76 as a *Rutan*-exempt Staff Assistant and assigned her *Rutan*-covered duties in circumvention of the *Rutan* hiring process prescribed by Administrative Order No. 2 (2009).

- ❖ **UNFOUNDED** - IDOT hired Employee 73 as a *Rutan*-exempt Staff Assistant and who performed duties of a *Rutan*-exempt position.

- ❖ **UNFOUNDED** - IDOT hired Employee 86 as a *Rutan*-exempt Staff Assistant and who performed some of the duties of a *Rutan*-exempt position.

- ❖ **UNFOUNDED** - IDOT hired Employee 75 as a *Rutan*-exempt Staff Assistant and who performed duties of a *Rutan*-exempt position.

- ❖ **FOUNDED** - IDOT hired Employee 74 as a *Rutan*-exempt Staff Assistant and assigned her *Rutan*-covered duties in circumvention of the *Rutan* hiring process prescribed by Administrative Order No. 2 (2009).

- ❖ **FOUNDED** - IDOT hired Employee 78 as a *Rutan*-exempt Staff Assistant and assigned him *Rutan*-covered duties in circumvention of the *Rutan* hiring process prescribed by Administrative Order No. 2 (2009).

- ➢ **FOUNDED** - Complaint No. 12-0305: The OEIG finds that there is reasonable cause to believe that IDOT hired Employee 4 as a *Rutan*-exempt Staff Assistant and assigned him *Rutan*-covered duties in circumvention of the *Rutan* hiring process prescribed by Administrative Order No. 2 (2009).

- ➢ **FOUNDED** - Complaint No. 13-01787: The OEIG finds that there is reasonable cause to believe that IDOT hired Employee 6 as a *Rutan*-exempt Staff Assistant and assigned her *Rutan*-covered duties in circumvention of the *Rutan* hiring process prescribed by Administrative Order No. 2 (2009).

Regarding Illinois Department of Transportation's former employee Matt Hughes in his capacity as Bureau Chief of Personnel Management:

- ➢ **FOUNDED** - Between April 2009 and August 2010, despite having primary responsibility for the *development and application of IDOT's recruitment, interview, selection, and placement programs of all employees*, and responsibility for the *overall employment functions of the Bureau of Personnel Management,* Mr. Hughes executed IDOT personnel documents in which he approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management in violation of section 3-2 of IDOT's Personnel Policies Manual.

- ➢ **FOUNDED** - Between April 2009 and August 2010, despite having responsibility to *develop and direct IDOT personnel policies, procedures, and programs that enhance the attainment of IDOT goals*, Mr. Hughes executed IDOT personnel documents in which he

approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management in violation of section 3-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** - Between April 2009 and August 2010, despite being *personally responsible for the development of technical personnel policies and programs for employment classification and compensation programs,* and being responsible for the *development and administration of the technical class program for IDOT*, Mr. Hughes executed IDOT personnel documents in which he approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management in violation of section 3-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** - Between April 2009 and August 2010, despite being responsible for the administration of *the rules/regulations of the Personnel Code in conjunction with the Department of Central Management Services*, Mr. Hughes failed to take steps to implement the 2005 Office of Internal Audit recommendations or appropriately classify the Staff Assistant position, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management in violation of section 3-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** - Between April 2009 and August 2010, despite being responsible for IDOT's *classification of technical/professional positions in a fair and equitable manner,* Mr. Hughes was unaware that Staff Assistant position descriptions were all virtually identical, but were nevertheless classified into differing Technical Manager levels, resulting in differing pay ranges for employees who were doing the same work, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management in violation of section 3-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** - Between April 2009 and August 2010, despite being responsible for *directing the development of programs and policies for employment programs to attract and retain qualified candidates* and being responsible for *obtaining, developing, and maintaining a competent, well-motivated staff capable of carrying out bureau programs in an efficient and effective manner,* Mr. Hughes allowed the hiring of multiple Staff Assistants without knowing whether they were qualified to perform the duties they actually performed, and failed to maintain a well-motivated staff, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management in violation of section 3-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** - Between April 2009 and August 2010, by engaging in all of the above acts of nonfeasance and mismanagement, and approving the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, Mr. Hughes circumvented Administrative Order No. 2 (2009).

Regarding Illinois Department of Transportation's former employee Mike Woods, Jr. in his capacity as Bureau Chief of Personnel Management:

- **FOUNDED** - Between December 2010 and at least July 1, 2013, despite having primary responsibility for the *development and application of IDOT's recruitment, interview, selection, and placement programs of all employees*, and responsibility for the *overall employment functions of the Bureau of Personnel Management,* Mr. Woods executed IDOT personnel documents in which he approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management in violation of section 3-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** - Between December 2010 and at least July 1, 2013, despite having responsibility to *develop and direct IDOT personnel policies, procedures, and programs that enhance the attainment of IDOT goals*, Mr. Woods executed IDOT personnel documents in which he approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management in violation of section 3-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** - Between December 2010 and at least July 1, 2013, despite being *personally responsible for the development of technical personnel policies and programs for employment classification and compensation programs,* and being responsible for the *development and administration of the technical class program for IDOT*, Mr. Woods executed IDOT personnel documents in which he approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management in violation of section 3-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** - Between December 2010 and at least July 1, 2013, despite being responsible for the administration of *the rules/regulations of the Personnel Code in conjunction with the Department of Central Management Services*, Mr. Woods failed to take steps to implement the 2005 Office of Internal Audit recommendations or appropriately classify the Staff Assistant position, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management in violation of section 3-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** - Between December 2010 and at least July 1, 2013, despite being responsible for IDOT's *classification of technical/professional positions in a fair and equitable manner,* Mr. Woods was unaware that Staff Assistant position descriptions were all virtually identical, but were nevertheless classified into differing Technical Manager levels, resulting in differing pay ranges for employees who were doing the same work, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management in violation of section 3-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** - Between December 2010 and at least July 1, 2013, despite being responsible for *directing the development of programs and policies for employment programs to attract and retain qualified candidates* and being responsible for *obtaining, developing, and maintaining a competent, well-motivated staff capable of carrying out bureau programs in an efficient and effective manner,* he allowed the hiring of multiple Staff Assistants without knowing whether they were qualified to perform the duties they actually performed, and failed to maintain a well-motivated staff, thus engaging in nonfeasance and mismanagement of the Bureau of Personnel Management in violation of section 3-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** - Between December 2010 and at least July 1, 2013, by engaging in all of the above acts of nonfeasance and mismanagement, Mr. Woods approved the hiring of multiple *Rutan*-exempt Staff Assistants knowing some were going to perform *Rutan*-covered duties, thus circumventing Administrative Order No. 2 (2009).

Regarding Illinois Department of Transportation's former employee Matt Hughes in his capacity as Director of Finance and Administration:

- **FOUNDED** – Between August 2010 and at least July 1, 2013, despite having *major responsibility for personnel activities, Responsible for developing and directing programs to meet the personnel needs of IDOT, and responsibility for managing all personnel services statewide,* Mr. Hughes allowed staff to circumvent the *Rutan* hiring process, thus engaging in nonfeasance and mismanagement of the Office of Finance and Administration in violation of section 1-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** – Between August 2010 at least July 1, 2013, despite being responsible for *overseeing the Office of Finance and Administration, which includes the Bureau of Personnel Management*, Mr. Hughes delegated his personnel program responsibilities such that he could no longer be an effective overseer of the Bureau of Personnel Management and failed to prevent his subordinates' circumvention of the *Rutan* hiring process, thus engaging in nonfeasance and mismanagement of the Office of Finance and Administration in violation of section 1-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** – Between August 2010 at least July 1, 2013, despite being responsible for *attracting, obtaining, retaining, training and compensating an adequate and competent staff to ensure efficient and cost-effective operations statewide*, Mr. Hughes allowed Staff Assistants who did not perform the duties of a Staff Assistant be hired into the Office of Finance and Administration, thus engaging in nonfeasance and mismanagement of the Office of Finance and Administration in violation of section 1-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** – Between August 2010 at least July 1, 2013, despite being *responsible for exercising discretion and control over highway user taxes, revenues, and transportation bond proceeds and the general revenue fund appropriations through the maintenance of sound fiscal policy to ensure the proper allocation of limited resources as well as maintain fiscal integrity*, Mr. Hughes allowed Staff Assistants to be classified at varying Technical Manager levels with varying salaries despite their position descriptions being

ostensibly identical, thus mismanaging the Office of Finance and Administration in violation of section 1-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** – Between August 2010 at least July 1, 2013, Mr. Hughes allowed his staff to circumvent Administrative Order No. 2 (2009).

Regarding Illinois Department of Transportation Secretary Ann Schneider, in her capacity as IDOT's Former Director of Finance and Administration:

- **FOUNDED** - Between November 2005 and August 2010, Ms. Schneider failed to comply with the position description of the Director of Finance and Administration. In accordance with that position description, Ms. Schneider was *responsible for personnel activities, responsible for developing and directing programs to meet the personnel needs of IDOT, and responsible for managing all personnel services statewide.* Ms. Schneider failed to meet those responsibilities because she was unaware of the basic requirements of IDOT's Personnel Manual and of the fact that her subordinates were circumventing the *Rutan* hiring process. Such lack of awareness constituted nonfeasance and mismanagement of the Office of Finance and Administration in violation of section 1-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** - Between November 2005 and August 2010, while serving as Director of Finance and Administration, Ms. Schneider failed to comply with the position description of the Director of Finance and Administration. Despite being responsible for *overseeing the Office of Finance and Administration, which includes the Bureau of Personnel Management*, she delegated her personnel program responsibilities such that she could no longer be an effective overseer of the Bureau of Personnel Management, thus engaging in nonfeasance and mismanagement of the Office of Finance and Administration in violation of section 1-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** - Between November 2005 and August 2010, while serving as Director of Finance and Administration, Ms. Schneider failed to comply with the position description of the Director of Finance and Administration. Despite being responsible for *attracting, obtaining, retaining, training and compensating an adequate and competent staff to ensure efficient and cost-effective operations statewide*, she allowed Staff Assistants who did not perform the duties of a Staff Assistant to be hired into the Office of Finance and Administration, thus engaging in nonfeasance and mismanagement of the Office of Finance and Administration in violation of section 1-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** - Between November 2005 and August 2010, while serving as Director of Finance and Administration, Ms. Schneider failed to comply with the position description of the Director of Finance and Administration. Despite being *responsible for exercising discretion and control over highway user taxes, revenues, and transportation bond proceeds and the general revenue fund appropriations through the maintenance of sound fiscal policy to ensure the proper allocation of limited resources as well as maintain fiscal integrity*, she allowed Staff Assistants to be classified at varying Technical Manager levels with varying salaries despite their position descriptions being ostensibly

identical, thus mismanaging the Office of Finance and Administration in violation of section 1-2 of IDOT's Personnel Policies Manual.

- **FOUNDED** - Between November 2005 and August 2010, while serving as Director of Finance and Administration, Ms. Schneider failed to comply with the position description of the Director of Finance and Administration because she allowed her staff to circumvent Administrative Order No. 2 (2009).

Regarding Illinois Department of Transportation former Secretary Gary Hannig:

- **FOUNDED** – Between March 2009 and June 2011, Mr. Hannig violated section 1-2 of IDOT's Personnel Policies Manual by, among other things, failing to appropriately administer Illinois Department of Transportation's personnel policies.

- **FOUNDED** – Between March 2009 and June 2011, Mr. Hannig violated section 1-2 of IDOT's Personnel Policies Manual when he, among other things, failed to effectively and efficiently manage the agency and establish and maintain an effective system of internal control.

- **FOUNDED** – Between March 2009 and June 2011, Mr. Hannig allowed his staff to circumvent Administrative Order No. 2 (2009), which was put into place in order to ensure that persons hired into *Rutan*-covered positions were hired pursuant to the *Rutan* hiring process, which was put in place to ensure compliance with the United States Supreme Court decision *Rutan v. Republican Party of Illinois*,

Regarding the hiring of Relatives by IDOT Senior Officials:

- **UNFOUNDED** - Employee 3's employment violated IDOT's nepotism policy.

- **UNFOUNDED** - Employee 224's employment violated IDOT's nepotism policy.

- **UNFOUNDED** – Employee 225's employment violated IDOT's nepotism policy.

- **UNFOUNDED** - Employee 1's employment violated IDOT's nepotism policy.

- **UNFOUNDED** - Employee 2's employment violated IDOT's nepotism policy.

In light of the ongoing, pervasive and serious nature of misconduct and mismanagement that occurred over the course of at least ten years relating to *Rutan*-exempt IDOT Staff Assistants, the OEIG makes the following recommendations to the Office of the Governor. Specifically, the OEIG recommends that the Office of the Governor direct the Illinois Department of Transportation to:

1) require its employees who are responsible for employee personnel action(s), including the Secretary, to complete Central Management Services' *Rutan* training;

2) review all prior internal and external audits to make certain that all recommendations related to *Rutan* and which IDOT previously agreed to comply with, have been either implemented or will be implemented within a reasonable period of time;

3) determine a working definition of the term "technical," such that IDOT positions can be appropriately classified;

4) work with CMS and/or any other appropriate agencies, to ensure that IDOT positions currently classified as "technical" have been appropriately classified as technical;

5) require IDOT's Office of Internal Audit to regularly review non-code positions to ensure that they are properly classified and that proper hiring practices are being followed;

6) update organizational charts periodically and review IDOT's reporting structure to ensure that *Rutan*-exempt employees report to *Rutan*-exempt supervisors;

7) codify the manner in which position levels are assigned to non-code Position Titles so that differences in level reflect differences in the responsibilities of the position;

8) ensure that employee performance evaluations are performed annually and are consistent with IDOT policies, and ensure that performance standards used in evaluations are related to the accountabilities of the employee's position description;

9) determine what, if any, *Rutan*-exempt duties existing Staff Assistants are performing, and if in fact they are performing *Rutan*-exempt duties, identify what IDOT position duties the person is performing, and re-classify them into that position;

10) abolish the Staff Assistant position; and

11) conduct regular audits or review of *Rutan*-Exempt positions approved in order to ensure that agencies do not circumvent the *Rutan* hiring process.

With respect to individual IDOT employees and officials, the OEIG recommends that the Office of the Governor:

- take whatever action it deems appropriate with respect to Secretary Ann Schneider;
- take whatever action it deems appropriate with respect to former Secretary Gary Hannig;
- direct IDOT to terminate Mike Woods, Jr.;
- place a copy of this report in the personnel file of Matt Hughes; and
- remind all agency heads under its jurisdiction of Administrative Order No. 2 (2009).

Furthermore, with respect to all agencies under its jurisdiction, the OEIG recommends that the Office of the Governor:

- take immediate steps to develop additional protocol to make certain every State agency and every State agency head is aware of their obligations vis-à-vis *Rutan*; and
- establish and create additional steps which should include random reviews of approved ePARs signed by Office of the Governor staff in order to make certain the *Rutan* hiring process is followed.

Finally, the OEIG recommends that the Office of the Governor take whatever additional action it believes necessary in light of this investigation regarding any other present or former IDOT employee or official.

No further action is required and this matter is closed.

Date: June 12, 2014

Office of Executive Inspector General
for the Agencies of the Illinois Governor
69 W. Washington Street, Ste. 3400
Chicago, IL 60601

Kristy Shores
First Deputy Inspector General

David Sanchez
Assistant Inspector General

Donald Meeks
Supervising Investigator

Edward Escamilla
Supervising Investigator

OFFICE OF EXECUTIVE INSPECTOR GENERAL
OEIG Self Initiated Case
(Predicate)

Case No. 11-01567

Date Sep 16, 2011

An article in the September 1, 2011 edition of the Springfield Journal-Register reported the hiring of Ashley Carpenter at the Illinois Department of Transportation (IDOT). Ms. Carpenter is reported to be the daughter of Acting IDOT Secretary Ann Schneider. According to the article, Ms. Carpenter was hired into the position of technical manager II in 2007.

The OEIG is currently investigating two complaints -- Case Nos. 11-00553 and 11-00713 -- that allege that family members of IDOT senior managers were hired inappropriately. In both cases, the family members were hired into technical manager II staff assistant positions. According to information obtained in Case No. 11-00553, these positions are double-exempt positions. These positions reportedly exist in IDOT offices across the State. In Case No. 11-00553, the IDOT employee filling the position appears to be unqualified to perform the duties in the existing job description. Further, the job descriptions include policy-making duties, resulting in Central Management Services determining the positions are exempt from Rutan hiring procedures. At least in the case of 11-00553, it appears that the staff assistant is not performing any duties that would warrant an exemption from Rutan requirements.

Because of the potential for hiring abuses and information that relatives of senior IDOT managers are being hired as "staff assistants," the OEIG will open a wider investigation on the staff assistant positions within IDOT. The investigation will seek information on the staff assistant positions statewide. The focus of the investigation will be on how these positions are being created, whether position descriptions are being manipulated to have the positions exempted from Rutan, what the qualifications of the employees filling the positions are, and the relationships between these employees and senior IDOT managers or others with influence within IDOT.

Kristy Shores
Deputy Inspector General
Kristy L Shores
Date Sep 16, 2011

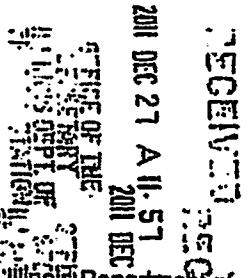
Cole S. Kain
Chief of Staff/General Counsel
Cole S Kain
Date Sep 19, 2011

Ricardo Meza
Executive Inspector General
Ricardo Meza
Date Sep 19, 2011

☐ Attachments

EXHIBIT 1

Ms. Ann L. Schneider - Secretary of Transportation
Illinois Department of Transportation
2300 S. Dirksen Parkway
Springfield, IL 62764



12/21/11

Madam Secretary:

I wish to relate to you the ethical and professional misconduct going on at the Illinois Department of Transportation – Division of Aeronautics regarding the addition of individuals to the staff under the title of Staff Assistant. These people are being added under the pay title of a Technical Manager II without in any way being interviewed for any position. They are then assuming duties that would normally be done by positions that are currently vacant on the Division organizational chart, but would need to be interviewed and filled by qualified individuals.

Currently the amount of staff personnel that are not part of Operations (mechanics & pilots) comprises 40 people at Aeronautics. As of this date, there are 10 staff assistants at Aero, or 25% of the staff. None of these individuals interviewed for their current job at Aero. Considering there is upwards of 20-30 open positions on the organizational chart that need to be filled the in Safety, Engineering, and Administrative Sections, I find this constant stream of new, unqualified, and sometimes useless individuals offensive as both a taxpayer and a professional employee. Even as I write this letter, another cubical is being cleaned up and prepared for someone new, yet the Division has conducted 1 interview in the last year for an open position, which was filled by an in-house person 2 months ago. Combine that with the fact that, for some of these individuals, the current staff is being told to "train" them or find things for them to do, thus taking time away from the duties they should be doing, and you have the recipe for both low morale as well as contractual violations with Teamsters and AFSCME.

Just as newspapers are calling for investigations into state pension system misconduct reform, these acts tie into that with unqualified people being put on the payroll and into the pension system that are not qualified to do the job duties they are given and unfairly burdening the remaining qualified staff with their incompetence. While some of these individuals may be qualified to fill the open positions at Aero, they should at least have to go through the interview process first. This current process of having these Staff Assistants do the job first, then open up interviews for the spot they have been doing, is a violation of the heart of the union contracts that the Administration is suppose to abide by. It is interesting to see the hypocrisy demonstrated every day by the administration in calling for cuts to worker benefits and re-organizing the pension system, and then see another unqualified person come in who did not interview for the job and get paid a 40-50K salary for doing nothing.

As such, I ask you to investigate this gross injustice of taxpayer dollars and violation of the core of the union contracts in an effort to stop the Administration from continually burdening both the taxpayers and the state employees at the IDOT Division of Aeronautics with these unqualified, politically-connected, and incompetent people labeled as Staff Assistants. Thank you for your time and effort in helping the State of Illinois and its government workers.

Cc: Teamsters Local 916, AFSCME Council 31

EXHIBIT 2

PAR #59093
Department Of Transportation Jump to PAR: [PAR list] [PSC list] [Main Menu]

My Action Comment: Post
Hiring Information
Archive

MIKE.WOODS - This PPT position will not be posted. It will be filled by a Rutan exempt appointment. [x]

Workflow
Director: ann schneider
OMB: REDACTED
Gov DCS:
Can post: APPROVED
Gov DCS: ??
Can hire: APPROVED

Maximum headcount : 5,526 Certified headcount : 5,236 Pending headcount : 17
IPR #36043
742101

Candidate	Salary Request	Previous Salary	Percent Change	Incumbent's Salary
Employee 205	45,720	45,720	0.0%	0

Comments: No previous incumbent due to this being an additional position to assist the Bureau Chief in an increased workload. This is the minimum salary for the TM II position. Salary bracket effective 1-1-11 $45,720-81,540 annually.

Budget Title: TM II (PPT) (Double Exempt) (collective bargaining)	**Functional Title:** Staff Assistant
Summary of duties Serves as a confidential assistant to the Bureau Chief, policy analyst, and liaison.	**Work location** Finance & Administration Personnel Management Sangamon County
Type of appointment BA 045 - Exempt Appointment	**Funding source** Road Fund
Headcount impact 1	**Position number** PW412-23-40-300-00-03

Why does this vacancy or new position exist?
This is an additional position to assist the Bureau Chief of Personnel Management in an increased workload.

What critical, front-line service needs will the position fill? How many similar positions are in the agency and in this location? What is the appropriate level of staffing for this position? Why?
This position assists the Personnel Support Coordinator in coordinating department wide issues. This position is accountable for assisting in the overall development and coordination of policy and directives regarding programs developed by the Bureau of Personnel Management. This position monitors conformance to existing policies and conducts reviews or studies that are of special interest. S/He provides policy interpretation and analysis. In addition, this position provides assistance to elected officials and the general public. There is one (1) position within the agency at this location. The authorized level of staffing is one (1), and it is vacant.

What will happen if the position is not filled by a certain date?
Assistance to the Director in the tactical aspects of developing and/or positions to be taken by the Bureau of Personnel Management on policies and procedures affecting the Department will not be handled in a timely manner.

What is the salary for the new position? What position does the proposed candidate

currently hold? At what salary?
The salary range for this position is $3,810-$6,795/month. There is no proposed candidate at this time.

Please provide any additional information necessary to justify an exception to Executive Order 1.
The Bureau Chief is in need of a confidential assistant, who can serve as a liaison between elected officials, other state agencies, and the general public.

Pursuant to Executive Order 1, approval is required for all probationary appointments; trainee appointments; provisional appointments; exempt code appointments; emergency appointments; reinstatements; reemployment; promotion to vacant positions (including but not limited to newly created positions); and all term appointment activity, including probationary, reinstatement, renewal, promotion, reinstatements, and transfers to term appointments.

Illinois Department of Transportation

Internal Personnel Request

Division/Office: Highways/Region 2/District 2	Bureau: Administrative Services
Location/County: 819 Depot Avenue, Dixon/Lee	Yard/Zone:
Position Title: Technical Manager II	Working Title: Staff Assistant
Position Number: PW412-23-52-100-00-01	Rutan Status: ☐ Covered ☒ Exempt
	Number of Positions: 1

Requested Action		Action Type	
☒ Appointment	☐ Personal Service Contract	☐ Emergency	☐ Temporary
☐ Promotion	☐ Establish Position	☐ PPT	☒ PFT
☐ Lateral Transfer	☐ Blanket	☐ CO-OP	☐ 75-Day
☐ Reallocation	☐ Voluntary Reduction	☐ Recruit	☐ Intermittent
		☐ Term Appointment	☐ Internship

Previous Incumbent Information

Name	Date Position Vacated / Salary
	☒ Monthly ☐ Annual

Reason for Vacancy or Establishment ☐ ERI

AI

Justification

This position is accountable for assisting in the overall development and coordination of policy and directives regarding bureau programs for the District. This position monitors conformance to existing policies and conducts reviews or studies issues that are of special interest. S/he provides policy interpretation and analysis of policies. In addition, this position provides assistance to the local agencies, elected officials, and the general public.

5-16-11

Is Position Budgeted? ☐ Yes ☐ No	Is Position Within Headcount? ☐ Yes ☐ No
Requesting Director	Date
Director of Finance and Administration: REDACTED	Date: 1-7-11
REDACTED 5-16-11	IPR Number: 35406
	Requisition Number

EXHIBIT 8

PM 2205 (Rev 10/03)

Illinois Department of Transportation

Technical Position Classification Request

Instructions:

Fill in items 1 through 18 as indicated on this form. Incomplete and inaccurate forms may cause delays in processing; therefore, it is essential each item be completed properly.

The immediate supervisor should not be confused with lead workers or positions giving functional guidance. An immediate supervisor not only assigns work but evaluates, disciplines and makes recommendations concerning the hiring and employment of subordinates.

Complete the original and two copies of this form along with the original and two copies of the technical position description and forward to the Bureau of Personnel Management. One copy of each will be returned and will serve as notification of the action.

Additional information for completing this form can be located in the procedure manual Title "Writing and Processing Technical Position Descriptions."

For Use Of The Requestor		For Use Of The Bureau of Personnel Management	
1. Date of Request: March 16, 2010	2. Division or Office: OCC		Effective Date: 4/1/10
3. Reason For Submittal: ☒ Est. Position ☐ Alt. Change ☐ Clar. Position ☐ In Training Position ☐ Blue Ribbon Recommended Title: Technical Manager I		Action Taken: ☒ Est. Code ☐ Changed ☐ Clarification ☐ Reallocation	
4. Position Title (If Established): Technical Manager I		Position Title	
5. Position Number (If Established): PW411-23-30-600-00-01		Position Number	
6. Bureau (If necessary include specific District): Civil Rights		Bureau (If necessary include specific District)	
7. Section		Section	
8. Unit		Unit	
9. Sub-Unit		Sub-Unit	
10. Address-Place of Work: 2300 S. Dirksen Prkwy., Spfld.	County Code: 084	Address-Place of Work	County Code
11. Authorized Position(s): One		Authorized Position(s)	
12. Immediate Supervisor-Position Title and Number: PW417-23-30-600-00-01		13. Next Immediate Supervisor-Position Title and Number: PW420-23-30-000-00-01	

14. Positions and number of employees reporting directly to the described position

POSITION NUMBER	POSITION TITLE	AUTHORIZED POSITION(S)

15. Licenses or Certificates Desired or Required

16. Comments

Prepared by the Bureau of Personnel Management

Ethics Statement: Yes ☒ No ☐

Pay Plan: PA (Non-Union) ☐ PM (Union) ☒

Authorization And Approval

17. Bureau Chief or Regional Engineer: Bureau Civil [redacted]

18. Bureau Chief: Secretary, Department of Transportation

REDACTED

REDACTED

EXHIBIT 10

ILLINOIS DEPARTMENT OF TRANSPORTATION
POSITION DESCRIPTION

DATE: March 16 2010 POSITION: Staff Assistant

APPROVED BY: REDACTED OFFICE: Chief Counsel/Bureau of Civil Rights

CODE: Jcs\tech\OCC\CR\PW411-23-30-600-00-01 REPORTS TO: Bureau Chief

POSITION PURPOSE

This position is accountable for assisting in the overall development and coordination of policy and directives regarding the Office of Chief Counsel (OCC), Bureau of Civil Rights, programs. This position monitors conformance to existing policies and conducts reviews or studies issues that are of special interest. S/He provides policy interpretation and analysis of policies. In addition, this position provides assistance to the elected officials and the general public.

DIMENSIONS

Departmental Staff: 5,050

NATURE AND SCOPE

This position reports to the Bureau Chief of Civil Rights as do the Title VI Specialist, the Affirmative Action Specialist, the Civil Rights Specialist, the EEO Specialist, the Affirmative Actions Specialist and an Executive Secretary.

The environment of this position is unique in that the incumbent at times provides staff assistance and performs special assignments for Bureau Chief regarding statewide civil rights programs. In order to be most effective, s/he must be able to personally anticipate and identify impending issues and problems, many of a confidential nature, especially issues involving policy and related subjects. The incumbent initiates reviews and/or studies of policy issues and presents, upon almost immediate notice, written and precise documents or outlines for management. This position serves as a spokesperson for OCC civil rights programs and as a liaison between the Bureau Chief, the Director of OCC, the Governor's Office, the legislature, other state agencies and the general public.

The greatest challenge of this position is to ensure the development of the best possible solutions to policy issues within the constraints of budgetary and socioeconomic factors. Typical problems encountered include providing liaison between the bureau and legislators, local officials and others to resolve problems that could delay or halt policy initiatives.

The incumbent assists in the development of policy. This position coordinates information and activities office-wide. S/He manages development of background and position documents which detail specific policy problems, information and possible solutions, and recommends alternative courses of action and positions in dealing with such problems. The issues with which the incumbent typically deals with are of a sensitive and confidential nature of which s/he must be continually aware and exercise discretion. Where issues or problems cross departmental office/division lines, s/he serves as a liaison to ensure proper communication of goals and objectives throughout the process. This position ensures that final presentation of policy information or solutions to management represents all relevant points of view and policy recommendations are of a consistent pattern with past decisions/activities and compatible with the overall objectives and plans. It is essential that the incumbent has the ability to elicit, understand and present divergent views. This position serves as liaison between the Bureau Chief and the Governor's Office, the legislature, other state agencies a

and the general public. S/He assists in responding to written and verbal inquiries from the Governor's Office, the legislature and the general public regarding bureau policies and procedures. This position assists in obtaining a timely response to those inquiries. The incumbent serves as a departmental spokesperson on issues concerning personnel problems to create departmental awareness and develop a suitable climate for initiating corrective actions by conducting presentations to departmental management. This position replies to questions at these presentations through the explanation of the departmental stance in these matters and the explanation of all applicable rules/laws involved with the personnel program.

The incumbent maintains liaison with departmental staff. S/He is in frequent contact with the legislators and the general public regarding proposed legislation and concerning bureau programs. S/He meets frequently with various local officials.

The incumbent is expected to develop new and innovative strategies in addressing and formulating resolutions to policy and other problems. The incumbent is required to operate within the established departmental rules and regulations and in accordance with legislative mandates and executive orders.

The effectiveness of this position is measurable by the timely production of policy reports and documents; by the validity, thoroughness and accuracy of information provided to management; and by the degree of reliance management demonstrates in the incumbent.

PRINCIPAL ACCOUNTABILITIES

1. Serves as confidential assistant to the Bureau Chief in all matters regarding employees.
2. Serves as liaison between the Bureau Chief and the Governor's Office, the legislature, other state agencies and the general public to ensure effective and efficient communication..
3. Serves as departmental spokesperson for civil rights programs conducting presentations to departmental management, elected officials and the general public.
4. Coordinates and assists in imp'ementing policy initiatives. Reports on the process to management.
5. Develops informational documents accurately presenting background and options for addressing issues of policy concern. Develops appropriate policy recommendations to provide maximum benefits to IDOT and the State of Illinois.
6. Provides analysis and recommendations on policy issues for management.
7. Coordinates information on relevant policy issues to ensure that decisions are consistent with past policies and current goals and objectives of the bureau.
8. Ensures compliance with departmental safety rules and practices. Performs all duties in a manner conducive to the fair and equitable treatment of all employees.

Illinois Department of Transportation

Technical Position Classification Request

Instructions:

Items 1 through 18 as listed on this form. Incomplete and inaccurate forms may cause delays in processing. Therefore, it is essential each item be completed properly.

The immediate supervisor should not be confused with lead workers or positions giving functional guidance. An immediate supervisor not only assigns work but evaluates employees and makes recommendations concerning the tenure and employment of subordinates.

Complete the original and two copies of this form along with the original and two copies of the technical position description and forward to the Bureau of Personnel Management. One copy of each will be returned and will serve as notification of the action.

Additional information for completing this form can be located in the procedure manual Title "Writing and Processing Technical Position Descriptions."

For Use Of The Requestor		For Use Of The Bureau of Personnel Management	
1. Date of Request: August 4, 2010	2. Division or Office: DPIT		Effective Date: August 1, 2010
3. Reason For Submittal: ☒ Est. Position ☐ Alt. Change ☐ Clar. Position ☐ In Training Position ☐ Blue Ribbon		Action Taken: ◉ Est. Code ☐ Reall. ☐ Changed ☐ Clarified	
Recommended Title			
4. Position Title (If Established): Technical Manager VI		Position Title	
5. Position Number (If Established): PW416-23-80-000-00-02		Position Number	
6. Bureau (If necessary include specific District)		Bureau (If necessary include specific District)	
7. Section		Section	
8. Unit		Unit	
9. Sub Unit		Sub-Unit	
10. Address-Place of Work: JRTC, Chicago	County Code: 016	Address-Place of Work	County Code
11. Authorized Position(s): One		Authorized Position(s)	
12. Immediate Supervisor-Position Title and Number: PW419-23-80-000-00-01		13. Next Immediate Supervisor-Position Title and Number: Secretary of Transportation	

14. Positions and number of employees reporting directly to the described position

POSITION NUMBER	POSITION TITLE	AUTHORIZED POSITION(S)

15. Licenses or Certificates Desired or Required

16. Comments

Ethics Statement: Yes ☒ No ☐

Prepared by the Bureau of Personnel Mgmt.

Pay Plan: PA (Non-Union) ☐ PM (Union) ☒

Authorization And Approval	
17. Bureau Chief or Regional Engineer	Bureau Chief of Personnel Management: REDACTED
18. Director	Secretary, Department of Transportation: REDACTED

BM 1244 (Rev. 1/90)

EXHIBIT 11

ILLINOIS DEPARTMENT OF TRANSPORTATION
POSITION DESCRIPTION

DATE:	August 4, 2010	*POSITION:*	Staff Assistant
APPROVED BY:	REDACTED	*DIVISION:*	Public & Intermodal Transportation
CODE.	[illegible]	*REPORTS TO:*	Director

POSITION PURPOSE

This position is accountable for assisting in the overall development and coordination of policy and directives regarding programs for the DPIT. This position monitors conformance to existing policies and conducts reviews or studies issues that are of special interest. S/He provides policy interpretation and analysis of policies. In addition, this position provides assistance to the local agencies, elected officials, and the general public.

DIMENSIONS

Division Staff:	20
Policy Issues Addressed:	10 – 30 +

NATURE AND SCOPE

This position reports to the Director as do the Deputy Director and the Bureau Chiefs of Downstate Area Programs, Northeastern IL Programs and Railroads and an Administrative Assistant.

The environment of this position is unique in that the incumbent at times provides staff assistance and performs special assignments for the Director as well as divisional managers regarding programs. In order to be most effective, s/he must be able to personally anticipate and identify impending issues and problems, many of a confidential nature, confronting the DPIT, especially issues involving policy and related subjects. The incumbent initiates reviews and/or studies of policy issues and presents, upon almost immediate notice, written and precise documents or outlines for management. This position serves as a spokesperson for divisional programs and as a liaison between the Director, the Governor's Office, the legislature, other state agencies and the general public.

The greatest challenge of this position is to ensure the development of the best possible solutions to policy issues within the constraints of budgetary and socioeconomic factors. Typical problems encountered include providing liaison between the DPIT and legislators, local officials and others to resolve problems that could delay or halt policy initiatives.

The incumbent assists in the development of policy. This position coordinates information and activities division-wide. S/He manages development of background and position documents which detail specific policy problems, information and possible solutions, and recommends alternative courses of action and positions in dealing with such problems. The issues with which the incumbent typically deals with are of a sensitive and confidential nature of which s/he must be continually aware and exercise discretion. Where issues or problems cross departmental office/division lines, s/he serves as a liaison to ensure proper communication of goals and objectives throughout the process. This position ensures that final presentation of policy information or solutions to management represents all relevant points of view and policy recommendations are of a consistent pattern with past decisions/activities and compatible with the overall objectives and plans. It is essential that the incumbent has the ability to elicit, understand and present divergent views. This position serves as liaison between the Director and the Governor's Office, the legislature, other state

agencies and the general public. S/He assists the Director in responding to written and verbal inquiries from the Governor's Office, the legislature and the general public regarding policies and procedures. This position assists the Director in obtaining a timely response to those inquiries. The incumbent serves as a departmental spokesperson on issues concerning divisional problems to create departmental awareness and develop a suitable climate for initiating corrective actions by conducting presentations to departmental management. This position replies to questions at these presentations through the explanation of the divisional/departmental stance in these matters and the explanation of all applicable rules/laws involved with the personnel program.

The incumbent maintains close liaison with all division staff. S/He is in frequent contact with the legislators and the general public regarding proposed legislation and concerning programs. S/He meets frequently with various local officials.

The incumbent is expected to develop new and innovative strategies in addressing and formulating resolutions to policy and other problems. The incumbent is required to operate within the established departmental rules and regulations and in accordance with legislative mandates and executive orders.

The effectiveness of this position is measurable by the timely production of policy reports and documents; by the validity, thoroughness and accuracy of information provided to management; and by the degree of reliance management demonstrates in the incumbent.

PRINCIPAL ACCOUNTABILITIES

1. Serves as confidential assistant to the Director in all matters regarding employees.

2. Serves as liaison between the Director and the Governor's Office, the legislature, other state agencies and the general public to ensure effective and efficient communication.

3. Serves as departmental spokesperson for divisional programs conducting presentations to departmental management, elected officials and the general public.

4. Coordinates and assists in implementing policy initiatives. Reports on the process to management.

5. Develops informational documents accurately presenting background and options for addressing issues of policy concern. Develops appropriate policy recommendations to provide maximum benefits to the DPIT, IDOT and the State of Illinois.

6. Provides analysis and recommendations on policy issues for management.

7. Coordinates information on relevant policy issues to ensure that decisions are consistent with past policies and current goals and objectives of the bureau.

8. Ensures compliance with departmental safety rules and practices. Performs all duties in a manner conducive to the fair and equitable treatment of all employees.

Rod R. Blagojevich, Governor

John W. Cressman, Chief Internal Auditor

Illinois Office of Internal Audit
Wm. G. Stratton Building, Room 616 • Springfield, IL 62706-4100
James R. Thompson Center, Suite 414 • Chicago, IL 60601-3219

May 24, 2005

Secretary Timothy W. Martin
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, Illinois 62702

Dear Secretary Martin:

Enclosed is a copy of the final report for the Non-Code Personnel audit of the Department of Transportation. There were six material findings.

The Revised Draft Report dated March 30, 2005 contained seven material findings. Finding #3, "Rutan Covered Positions Incorrectly Coded as Rutan Exempt", after further clarification and documentation by IDOT and our subsequent review, has been removed. We have renumbered the remaining audit findings accordingly in this final report.

In Audit Finding #4 (Finding #5 in the Revised Draft Report), "Employees in Rutan-Exempt Positions Transferred Into Rutan Covered Positions," IDOT has disagreed with our finding and has provided clarification and additional documentation for support. Based on our subsequent review, we maintain the validity of our original finding and have provided our rationale in the attached report following your response.

We would like to thank you for your cooperation with our auditors in the completion of this review. If you have any questions, please contact REDACTED Audit Manager at REDACTED or REDACTED

Sincerely,

REDACTED

Chief Internal Auditor

Enclosures

cc: REDACTED Chief of Staff
Robert Millette, Director, Office of Finance and Administration
REDACTED, Bureau Chief, Bureau of Accounting and Auditing
REDACTED, Chief of Audits, Bureau of Accounting and Auditing, Audit Section
Scott Doubet, Bureau Chief, Bureau of Personnel Management

EXHIBIT 15

Rod R. Blagojevich, Governor

John W. Cressman, Chief Internal Auditor

Illinois Office of Internal Audit
Wm. G. Stratton Building, Room 618 • Springfield, IL 62706-4100

IDOT Non-Code Personnel

05-0206-45

This report is deemed confidential and has been prepared for the exclusive use of only those persons identified as recipients of this report. This report is exempt from disclosure under the Freedom of Information Act. It may not be copied or distributed to any other party without the express written consent of the Chief Internal Auditor.

Distribution:
Secretary Timothy W. Martin, IDOT
REDACTED Chief of Staff, IDOT
Robert Millette, Director of Finance and Administration, IDOT
REDACTED Chief of Accounting and Auditing, IDOT
REDACTED Chief of Audits, IDOT
Scott Lindner, Bureau Chief, Bureau of Personnel Management, IDOT

Auditor(s): REDACTED

REDACTED

REDACTED Audit Manager

REDACTED

REDACTED Division Manager

REDACTED

REDACTED, Chief Internal Auditor

Review Period: 07/01/1999 through 10/01/2004
Revised Report Issued: March 28, 2005
Final Report Issued May 24, 2005
Previous Report Issued: N/A

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EXECUTIVE SUMMARY

The Illinois Office of Internal Audit conducted an audit of Non-Code Personnel of the Illinois Department of Transportation.

Our audit found that, except for the six material findings identified below, the internal controls for the area reviewed were adequate. Our audit disclosed no immaterial findings.

- **Non-code Employees Performing Duties Covered by the Personnel Code – Finding 1**
  Of the 65 positions reviewed in the Technical Manager, Management Technician, Realty Specialist and Urban Planner title groups, 60 (92.31%) of the positions were comparable to Personnel Code positions.

- **Specific Job Duties Not Consistent with General Job Duties – Finding 2**
  Four of the 65 (6.15%) sampled from the Technical Management, Management Technician, Technical Advisor and Urban Planner job descriptions were not consistent with the generic job descriptions.

- **Rutan Exempt Employees Reporting to Non-Rutan Exempt Employees – Finding 3**
  We identified 86 employees that were in Rutan exempt positions where there was a Rutan covered position with a higher position title. Of those 86, we found 12 (13.95%) employees that were directly supervised by managers in a Rutan covered position.

- **Employees In Rutan Exempt Positions Transferred into Rutan Covered Positions – Finding 4**
  There were ten employees that were transferred from Rutan exempt positions to Rutan covered positions without going through interview processes as required by State Executive Orders #2.

- **Outdated Position Descriptions – Finding 5**
  Of the 108 position descriptions reviewed, 34 (31.48%) have not been updated for at least five years.

- **Incomplete Interview Files – Finding 6**
  Of the 20 interview files reviewed, 8 (40%) did not have all required documents.

This Summary is deemed confidential and has been prepared for the exclusive use of only those persons identified as recipients of this report. This Summary is exempt from disclosure under the Freedom of Information Act. It may not be copied or distributed to any other party without the express written consent of the Chief Internal Auditor.

INTRODUCTION/BACKGROUND

The Illinois Office of Internal Audit (IOIA) has completed an audit of the non-code employees at the Illinois Department of Transportation. The objectives of this audit were to:

1. Analyze risks and control structures by obtaining an understanding of the governing rules, statutes, policies, procedures and contractual requirements processes.
2. Ensure non-code employees were properly classified.
3. Ensure proper hiring practices were followed for non-code employees in positions determined to be covered by the Rutan decision.
4. Ensure that Rutan exempt rules were followed.

This audit was chosen as a result of IOIA's risk assessment and was included in our FY05 audit plan.

When a position needs to be filled at the Illinois Department of Transportation (IDOT), the requesting office submits an Internal Personnel Request (IPR) to the Office of Finance Administration. The IPR is reviewed to determine if there is funding available to cover the salary expenditure. If funding is not available, the IPR is denied. If funding is available, the IPR is then forwarded to the Bureau of Personnel Management.

Upon receipt of the IPR by the Bureau of Personnel Management, a Position Review Form (PRF) is prepared. The PRF includes pertinent information such as position title, position number and work county. If the position is identified as potentially "Rutan exempt", the PRF is submitted to Central Management Services (CMS) to determine whether the position is covered by "Rutan." The positions that include high-level decision-making positions which do not fall under "Rutan" require the approval of the Governor's Office.

SCOPE AND METHODOLOGY

The scope of this audit was to review a sample of non-code job descriptions to ensure that they were true non-code positions and should not be classified as positions covered by the Personnel Code, review non-code personnel files to determine their completeness, review a sample of Rutan covered and Rutan exempt positions to determine compliance and review applicable policies and procedures. The review included procedures and tests considered necessary for the purpose of determining with reasonable, but not absolute, assurance whether the system of internal controls was in place and functioning as intended. The audit tests were conducted in accordance with the Standards for the Professional Practice of Internal Auditing.

In order to determine if non-code employees should be classified as code positions, we performed the following tests and procedures:

- Reviewed laws, rules, regulations, system descriptions, policies, procedures, FCIAA certifications and prior audit findings to become familiar with the area to be audited and to address any prior concerns in the area.
- Tested position descriptions to ensure they were properly classified as non-code employees.
- Reviewed the interview files for a sample of individuals that were either hired or promoted within the last five years to determine their completeness.
- Reviewed the non-code Position Review/Determination Form to ensure that CMS approved the Rutan exempt status for newly created positions.

OPINION

Based upon the Illinois Office of Internal Audit's review, the system of internal controls for the non-code personnel area were determined to be adequate with the exception of six material matters identified below. Internal Audit believes these matters require management's attention. Each finding has been reviewed with the responsible manager for the control area reviewed. There were no Immaterial Findings noted. Those areas identified as having weaknesses, are detailed on the following pages.

FINDINGS AND RECOMMENDATIONS

1. Non-Code Employees Performing Duties Covered by the Personnel Code

Illinois Department of Transportation technical employees in non-code positions were performing the same or similar duties as employees that fall under the Personnel Code. IDOT has approximately 3,400 technical positions. Using the payroll pay grade IV or below, we identified 839 employees for our sample population.

Of the 65 positions reviewed in the Technical Manager, Management Technician, Realty Specialist and Urban Planner title groups, the job duties of 60 (92.31%) of the positions were similar or comparable to Personnel Code positions. Examples of these are: Accountants; Administrative Assistants, Office Coordinators, Office Specialists, Human Resource Specialists and Executives. The 65 positions reviewed did not appear to be of a technical or engineering nature.

According to Illinois Compiled Statutes (20 ILCS 415), Section 4c, "The following positions in State service shall be exempt from jurisdictions A, B, and C, unless the jurisdictions shall be extended as provided in this Act...(12) The technical and engineering staffs of the Department of Transportation...."

According to the June 2004 edition of the Illinois Department of Transportation's Technical Classification Manual, "position description should be written clearly and concisely without the use of ambiguous verbiage. Position descriptions are intended to summarize the primary role, major functions and major accountabilities of individual positions. They should not be considered as exhaustive listings of job tasks. [Principal Accountabilities] are statements of the end results of the position. The term "end results"...fairly broad statements of what the job is trying to accomplish."

A standard set of criteria to evaluate specific duties in relation to code position descriptions does not appear to be utilized during the review process by the Bureau of Personnel Management. As such, it appears that the 60 positions above are in violation of state statute by not following the requirements of the Personnel Code.

RECOMMENDATION:

The Illinois Office of Internal Audit recommends the Illinois Department of Transportation and CMS work in conjunction to review all positions classified as technical or engineering in the Technical Manager and Management Technician job classifications to ensure that the positions are sufficiently technical to be classified as non-code. Positions that are not considered exempt under 20 ILCS 415, Section 4c, should be reclassified as coded employees and remedial corrective action should be taken to ensure compliance with the Personnel Code.

AUDITEE RESPONSE:

The Department agrees with the finding.

The technical titles cited in this finding have been in place for an extensive amount of time, some for 40 years. (Technical Managers – 1969; Management Technicians – 1978; Realty Specialist/Urban Planners – 1965). During this time period, there has always been some duplication of duties with the DCMS classification system.

Although there may have been some erroneous use of classification systems, the recent consolidations of the Bureaus of Information Services and Administrative and Facility Services should help remedy some of the sighted examples.

The Department agrees to review each new establishment to verify that functions fall within the correct classification system so that this does not occur in the future.

Implementation Date: Ongoing.

2. Specific Job Duties Not Consistent with General Job Duties

In four of the 65 (6.15%) positions sampled from the Technical Management, Management Technician, Technical Advisor and Urban Planner, individual job descriptions were not consistent with the generic job description for the job title.

Generic job descriptions outline common tasks or duties of a specific pay grade within the department's technical classification structure. As such, it would be expected that individual job descriptions must encompass some, if not all, of the duties outlined in the generic job descriptions.

Management has not thoroughly reviewed the individual job descriptions to ensure they conform to the generic job descriptions, which can result in employees with the same job title doing significantly different duties (i.e. Project Manager).

RECOMMENDATION:

The Illinois Office of Internal Audit recommends the Bureau of Personnel Management review all position descriptions to ensure their comparability to the generic job descriptions. Policies and procedures need to be written and followed to ensure individual job descriptions conform to the requirements of the generic job descriptions.

AUDITEE RESPONSE:

The Department agrees with the finding.

The Department's response is based on the assumption by "general job duties," the Office of Internal Audits is referring to Technical Job Classification Specifications. These specifications are only generic guidelines of functions which may be performed by that particular classification level. In addition, these specifications are not all inclusive of functions which may be performed at that level.

The Department is currently at its lowest historical headcount due to ERIs and retirements. As a result of budgetary constraints restricting hiring, departmental staff are assuming additional functions, which may not typically fall within their designated classification in order to accomplish the workload. Typically these functions should be of a temporary nature, ending when the vacant positions are filled.

The Department agrees to review job specifications to ensure that generic functions reflect general levels of responsibilities for that classification. In addition, the Department agrees to review new establishments to ensure that functions fall within the appropriate classification level.

Implementation Date: Ongoing.

3. Rutan Exempt Employees Reporting to Non-Rutan Exempt Employees

We identified 86 individuals that were in Rutan exempt positions where there was a higher position title that was subject to the Rutan provisions. Of those 86, we identified 12 (13.95%) Rutan exempt employees that were directly supervised by managers in a Rutan covered position.

Exemption of Rutan rules is based in part on duties performed. Individuals in positions that are supervisory, require confidentiality, or those that can affect policy making/decisions are generally exempt. Best practices would require that a position that was supervisory over a Rutan exempt staff position should also be exempt.

Because of coding errors (see Finding #3) and inconsistent job specifications and classifications (see Findings #1 and #2), lower level technical positions (pay grade IV and below) have been determined to be Rutan exempt with no regard to the line of supervision.

RECOMMENDATION:

The Illinois Office of Internal Audit recommends the Illinois Department of Transportation review the above 12 individuals to determine and correct Rutan status. A review process should also be developed to ensure consistency in line responsibility.

AUDITEE RESPONSE:

The Department agrees with the finding.

With the inception of the Rutan review process in the early'90's, these inconsistencies have occurred. Some may have been based on the initial lack of consistency in the Rutan review completed at the start of the process due to the confusion regarding the administration/definition of exemptions. Some may have occurred over time as reviews were submitted and changes made in exemption status. As departmental management has become aware of these issues, they have been addressed.

The Department agrees to review the 12 positions cited to review the reporting relationships, etc., as well as work with appropriate management both at IDOT and DCMS to resolve this issue. In addition, the Department agrees to ensure that any newly created positions will meet the appropriate guidelines for reporting relations due to Rutan exemptions.

Implementation Date: Ongoing

4. Employees In Rutan Exempt Positions Transferred into Rutan Covered Positions

Our comparison of the IDOT internal file of exempt positions and CMS' report of exempt positions revealed that 26 (32%) of the 80 positions selected for review were listed on the department's report, but did not appear on the CMS report. We had initially determined that there were 238 employees in Rutan exempt positions. Our sample of 80 employees was based on pay grade Technical Manager V and below or the equivalent.

After reviewing the personnel files of these 26 employees for the required documentation supporting the decision for classifying the positions as Rutan exempt, we found that 13 had been properly approved. The remaining 13 employees were currently in positions covered by the Rutan decision.

Further review revealed that 10 (76%) of these 13 employees were transferred without going through the interview processes as required by state Executive Order #2. Eight of the ten were lateral transfers to the same pay grade and two were promotions from a TM II pay grade to TM III pay grades. The remaining 3 employees had been interviewed for the current position.

As determined by the U.S. Supreme Court decision in Rutan v Republican Party of Illinois, "... promotion, transfer and recall and hiring decisions involving non-policymaking employees may not be decided on the basis of party affiliation and support" In addition to the court decision, previous administrations have issued Administrative Orders specifically addressing the promotion, transfer, or recall into Rutan covered positions are to be based on the relative merit and fitness of the candidates for the position and not on political affiliations or the lack thereof."

Administrative Order #1, Directive to State Agencies Regarding Personnel Practices (1990) states that "All hiring and other personnel decisions shall be based on the merit and qualifications of the candidates." Administrative Order #2, Directive to State Agencies Guidelines for Interviewing Job Candidates (1990) provides policies and procedures regarding the interview process. Administrative Order #2 also contains principles to assist agencies in

assuring that their personnel policies and procedures relating to interviewing and selecting candidates for employment; promotion and other personnel transactions are in compliance with the Rutan decision.

IDOT Bureau of Personnel Management, by not adequately reviewing promotions and transfers, failed to adhere to established policies and procedures concerning the promotions and transfers contained in the Administrative Orders and appears to be in violation of the U.S. Supreme Court ruling commonly referred to as the "Rutan" decision.

RECOMMENDATION:

The Illinois Office of Internal Audit recommends the Illinois Department of Transportation contact Central Management Services to address and correct the ten Rutan exempt to Rutan covered transfers cited above. Furthermore, we recommend that IDOT review all future requests for lateral transfers and promotions to ensure that positions that have been determined to be non-exempt from the Rutan decision are filled as a result of candidate interviews as required by the Supreme Court decision and the Administrative Orders.

AUDITEE RESPONSE:

The Department disagrees with the finding.

The Department cannot verify the accuracy of the list with the handwritten title of "Rutan Exempt Employees" prepared by DCMS, 10/1/04, due to issues discussed in Finding 3. It may be then, that some of the employees' respective Rutan status cited in the sample is not accurate.

Nevertheless, the Department is entitled to make management-directed as well as employee-requested lateral transfers. Currently, both requests are completed by *Internal Personnel Request* form, PM 2205 (Attachment 4: Finding 5) marked lateral transfer with documentation in the body. Employee-requested transfers are additionally documented by written requests from the employee.

In the past, the Department has complied with the Rutan decision by completing the *Lateral Transfer Form*, PM 2217, (Attachment 4: Finding 5). This form prepared initially after the Rutan decision, and in use for a significant length of time has an affidavit that states, "I certify that the hiring criteria related to this employment decision were developed prior to initiating the candidate selection process. Furthermore, I understand that the hiring decisions documented on this form have not been decided on the basis of political party affiliation, support or lack thereof." Thus necessary legal assurances are given that Rutan is not violated. Furthermore, as far as Departmental management knows, this form has sufficed over the past 13 years for compliance with Rutan requirements. It appears from legal interpretations in the past and currently, at both IDOT and other state agencies, that these types of transfers, without interviews, do not violate the tenets of the Rutan decision. This interpretation, that lateral or voluntary reductions do not violate Rutan, by our past legal counsels as well as other state agencies, leads the Department to disagree with this finding. Frankly, the Department is surprised by this new found IOIA interpretation and does not agree.

The Department agrees, however, to ensure that supporting documentation in the form the *Lateral Transfer Form* will be completed for all lateral transfers.

IOIA COMMENTS

The IOIA respectfully disagrees with the Department's position on this finding.

The listing provided to the Department as support for this finding was an extraction of information contained in the Department's database. The handwritten title "Rutan Exempt Employees" was for identification purposes. The list was not prepared by DCMS, however the extraction program the IOIA utilizes is licensed to DCMS. The confusion may have been caused by the heading "Produced with ACL by: Illinois/CMS, Springfield, IL." This is unrelated to the issues discussed in the Finding #3 of the draft report. Finding #3 in the draft report was removed after clarification by the Department and our subsequent review. This final report does not contain that finding and the findings have been renumbered respectively.

The IOIA agrees with the Department that they are entitled to make "management-directed as well as employee-requested lateral transfers." During our testing we located the appropriate *Internal Personnel Request Form*, PM 2205 for each of the transfers and the IOIA does not take exception in this area.

However, the IOIA is not aware of any statutory authority that authorizes the use of an affidavit, to satisfy the requirements of the Rutan decision or of any court revisiting this issue. Further, based on our review of other agencies, we are also unaware of the usage of similar language or affidavits to satisfy the requirements of Rutan. To validate our position, we will refer this issue to in-house legal counsel for clarification.

Finally, if statutory authority or other precedent was provided, of the eight lateral transfers cited above, the Department could not provide the *Lateral Transfer Form*, PM 2205 that the Department holds as evidence of compliance with Rutan.

5. Outdated Position Descriptions

Of the 108 position descriptions reviewed, 34 (31.48%) had not been updated for at least five years. The oldest position description reviewed was last updated in April 1986. The average age of the position descriptions last updated more than five years ago was almost nine years.

IDOT's Technical Classification Manual (6/04) states that "all position descriptions should be maintained current within five years."

Management has not placed the necessary emphasis required to ensure that position descriptions accurately reflect the duties and responsibilities of the individual. The lack of periodic review of position descriptions may not reflect actual position duties.

RECOMMENDATION:

The Illinois Office of Internal Audit recommends the Illinois Department of Transportation review and update the position descriptions for the 34 individuals cited above. Additionally, IDOT should implement a procedure that ensures all position descriptions are reviewed and updated at least every five years.

AUDITEE RESPONSE:

The Department agrees with the finding.

Initially, the Department's practice was that any position to be posted should be current within one year of posting (Attachment 6: Finding 6). The current practice states that any job description that is to be posted must be recent within two years of posting (Attachment 7: Finding 6). In addition, as the Bureau of Personnel becomes aware of jobs older than five years, the originating office/division is noted with a request to submit the position for clarification (Attachment 8: Finding 6).

The Department is currently undergoing massive reorganizations. During the process, positions that are no longer required will be targeted for abolishment thereby resolving some of the outdated position description issues. In addition, the Department is currently readdressing this issue and will shortly send out an update to the practice above requesting that all position descriptions older than five years be submitted for clarification. It should be recognized that due to manpower/staffing issues, responses may not be as timely as desired.

Implementation Date: Implementation of corrective action will be in conjunction with the ongoing and proposed reorganizations throughout the Department.

6. Incomplete Interview Files

Of the 20 interview files reviewed, 9 (45%) did not have all the documentation as required by the Interview and Selection Criteria and Techniques procedures issued by the Department of Central Management Services. The missing documentation included the

- Employment Decision Form – 6 of the 20 (30%) files, and
- Candidate Evaluation Form – 3 of the 20 (15%) files.

In addition to the CMS requirements, the following IDOT required documents were also missing:

- Applicant Flow Analysis Form – 6 of the 20 (30%)
- Salary Name Memo – 7 of the 20 (35%).

(Note: The total above of missing documentation is greater than 9 because some files were missing more than one document and we only counted total file exceptions rather than document exceptions.)

Failure to maintain complete interview files with all supporting documentation could adversely affect the department's ability to substantiate their selection decision.

The missing documentation could be attributed to the unrestricted access by authorized personnel to the files. Currently there is no process to review file content for completeness when the file is returned.

RECOMMENDATION:

The Illinois Office of Internal Audit recommends the Illinois Department of Transportation establish and enforce procedures to ensure that interview files are completed, maintained, and secured in a consistent manner.

AUDITEE RESPONSE:

The Department agrees with the finding.

Some documentation cited as missing was placed in the employee's individual personnel file as opposed to the interviewing file, i.e., the *Employment Decision Form, Salary Name Memb*, etc., which has been a consistent departmental practice. The Department also recognizes that staff other than bureau personnel, however limited, have access to employee personnel files.

The Department agrees to document access to the files through the implementation of a newly created policy (Attachment 9: Finding 7). The Department further agrees to maintain consistent documentation in the practice maintained in the past as stated above.

Implementation Date: Implemented.

Unknown

From: Hughes, Matthew R
Sent: Wednesday, October 14, 2009 1:10 PM
To: Schneider, Ann L
Attachments: Staffing Needs in the Bureau of Personnel Management.docx

Attached is a summary of what I think needs to happen in terms of staffing in BPM. I would like a chance to convey in person what I have presented here in writing. I have a fairly developed set of goals and a strategy for implementing some improvements down here and a course of action to achieve the new challenges that BPM is facing. This document defines what I think I need in terms of bodies. It's my understanding that I have 4 positions available.

I bet you thought you would never see it... ☺

Matthew R. Hughes
Bureau Chief of Personnel Management
Illinois Department of Transportation
Office of Finance and Administration
2300 S Dirksen Parkway
Springfield, IL 62764
REDACTED office
REDACTED blackberry/cell
REDACTED

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Staffing Needs in the Bureau of Personnel Management

10/14/2009

Personnel Needs:

TM II Training Specialist – The Bureau would like address this position in anticipation of the new Learning Management System set to arrive this month. Employee 82 currently occupies this position although has been TA'd to BIP. I believe our best option at the moment is a Rutan-exempt **TM II Staff Assistant** to handle these duties full-time via Temp Assignment once hired.

TM II Staff Assistant – The Bureau is in need of two Staff Assistants to serve as Rutan Certified interviewers in our Recruiting and Interviewing Unit. BPM has been asked to process a higher than typical number of transactions this year and the help is greatly needed in order to meet our hiring goals this year.

***TM IV Project Manager** – The Bureau would like to propose the creation of a new position along the lines of a Project Manager position which exists in other areas of the Department. My current vision for BPM is to try and streamline some existing process by utilizing technology and communication practices more effectively. The creation of this position would help to achieve some of the goals that I have in mind for BPM and will assist in implementing some much needed advancements in the utilization of technology. This position would also assist in implementing a more "paperless" environment via Document Scanning (Personnel Files), Intranet-based Document Sharing, Signature/Approval Tracking and Executive Level Reporting.

New Hires/Headcount Transactions:

(1) Staff Assistant – TM II (Interviewer)
(1) Staff Assistant - TM II (Training)
(1) Staff Assistant - TM III (Interviewer)
(1) *Project Manager – TM IV (new position)

Internal Promotions:

(1) Recruiting and Interviewing Unit Manager – TM V
(1) Code Employment Specialist – TM III

Temporary/Emergency Help:

(3) 60-day Emergency TM II's – to serve in temporary/emergency capacity until approval to hire is attained. Intent would be to serve/train in interviewer capacity or in a capacity to where some training can take place.
(1) 75-day Employee

OFFICE OF THE GOVERNOR
JRTC, 100 W. RANDOLPH, SUITE 16-100
CHICAGO, ILLINOIS 60601

PAT QUINN
GOVERNOR

July 3, 2014

VIA ELECTRONIC MAIL
Kristy Shores
First Deputy Inspector General
Office of Executive Inspector General
69 W. Washington Street, Suite 3400
Chicago, Illinois 60602
kristy.shores@illinois.gov

Re: Office of the Governor Response in Case No. 11-01567

Dear Ms. Shores:

This letter is in response to the Report identified as Office of the Executive Inspector General (OEIG) Investigation Case No. 11-01567 received by the Office of the Governor (OOG) on June 12, 2014. The OOG has already begun or will immediately undertake a number of actions in relation to the implementation of the recommendations made by the OEIG, as described below.

I. OEIG Recommendations Regarding the Illinois Department of Transportation (IDOT)

The OOG agrees to follow all of the OEIG's IDOT recommendations. The direction to IDOT as to nearly all of the recommendations is reflected in the attached July 3, 2014 memorandum to IDOT's Secretary and Chief Counsel. *See* Attachment A. The same memorandum is to be provided to all IDOT employees. The OOG will follow-up directly with IDOT to implement the remaining recommendations.

II. OEIG Recommendations Regarding the Office of the Governor

The OOG agrees to follow all of the OEIG's recommendations as to the Office of the Governor. The direction to all agency, board and commission heads is contained in the attached July 3, 2014 memorandum. *See* Attachment B.

III. OEIG Recommendations Regarding Individual Employees and Officials at IDOT

Consistent with the OEIG's recommendations, the current status of and actions as to current and former IDOT employees and officials is as follows:

(1) Matt Hughes- As noted in the OEIG's report, Mr. Hughes is no longer employed by the State. The OOG has directed IDOT to place a copy of the above referenced report in Mr. Hughes personnel file.

(2) Mike Woods, Jr.- Mr. Woods resigned from his position at IDOT on July 2, 2014.

(3) Ann Schneider- Secretary Schneider resigned from her position at IDOT, effective July 10, 2014.

(4) Gary Hannig- Former Secretary Hannig's contract with the state expired on June 30, 2014. He is no longer doing work for the State.

IV. Additional Actions Regarding the *Rutan* Hiring Process

In addition to the actions recommended in the report and described above, the OOG will initiate the following actions, reflected in Attachments A and B, to further ensure that the *Rutan* hiring process is followed at IDOT and throughout the State:

(1) ePar Verification- In the coming weeks, the ePar system will be updated to require agency personnel staff and agency heads who approve ePars to verify that an employee filling a position, whether that position is *Rutan*-Covered or *Rutan*-Exempt, will be carrying out the duties and responsibilities contained in that employee's job description.

(2) Creating a Technical Code Merit Board- The OOG will be seeking to create an independent statutory board to oversee and further ensure the integrity of Technical Code personnel decisions at IDOT.

(3) Executive *Rutan* Training- All agency, board, and commission heads and all executive level staff at all agencies, boards, and commissions will be required to complete specialized Executive *Rutan* Training conducted by the Department of Central Management Services.

(4) Reminder to All State Employees Regarding Reporting Potential *Rutan* Violations to the OEIG- The OOG will remind all State employees that any potential *Rutan* violations must be reported to the OEIG.

If there are any questions, please feel free to contact me or General Counsel John Schomberg.

Sincerely,

Marla Harris
Senior Counsel & Ethics Officer

Enclosures
cc: Ryan Croke, Chief of Staff
John Schomberg, General Counsel

Office of Executive Inspector General
for the Agencies of the Illinois Governor
www.inspectorgeneral.illinois.gov

AGENCY OR ULTIMATE JURISDICTIONAL AUTHORITY RESPONSE FORM

Case Number: 11-01567 Return 20 Days After Receipt

Please check the box that applies. (Please attach additional materials, as necessary.)

☑ We have implemented all of the OEIG recommendations. Please provide details as to actions taken:

Please see attached with modifications.

☐ We will implement some or all of the OEIG recommendations but will require additional time to do so.
We will report to OEIG within _____days from the original return date.

☐ We do not wish to implement some or all of the OEIG recommendations. Please provide details as to what actions were taken, if any, in response to OEIG recommendations:

[redacted]
Signature

Office of the Governor, Ethics Officer
Print Agency and Job Title

Marla Harris
Print Name

July 3, 2014
Date

ATTACHMENT A

OFFICE OF THE GOVERNOR
JRTC, 100 W. RANDOLPH, SUITE 16-100
CHICAGO, ILLINOIS 60601

PAT QUINN
GOVERNOR

TO: ANN SCHNEIDER, SECRETARY, ILLINOIS DEPARTMENT OF TRANSPORTATION

MICHAEL FORTI, CHIEF COUNSEL, ILLINOIS DEPARTMENT OF TRANSPORTATION

FROM: JOHN SCHOMBERG, GENERAL COUNSEL

CC: RYAN CROKE, CHIEF OF STAFF

ERICA BORGGREN, INCOMING ACTING SECRETARY, ILLINOIS DEPARTMENT OF TRANSPORTATION

SIMONE MCNEIL, ACTING DIRECTOR, DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

SUBJECT: CONTINUED *RUTAN* COMPLIANCE & MANDATORY TRAINING

DATE: JULY 3, 2014

As part of the Quinn Administration's ongoing commitment (i) to adhering to the principles articulated in the United States Supreme Court decision, *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990) ("*Rutan*"), and to *Rutan* Administrative Orders issued by Governor Quinn and previous Illinois Governors,[1] that **prohibit consideration of political affiliation or support (or lack thereof) in connection with employment positions covered by the *Rutan* decision** and (ii) to ensuring and maintaining the organizational integrity of the Illinois Department of Transportation ("Department"), the Office of the Governor is directing the Department to do the following:

- *Rutan* Training- All executive level staff members, including, but not limited to, the Secretary and all Bureau and Office Heads, will be required to attend a *Rutan* training course conducted by personnel experts at the Department of Central Management Services ("CMS"). This will be an executive-level overview intended to further ensure

[1] Copies of *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990) and of Administrative Order No. 1 (1990), No. 2 (1990), No. 1 (1991), and No. 2 (2009), are attached hereto as Exhibit A.

that all agency executives continue to ensure compliance with and awareness of the requirements of the *Rutan* decision and the *Rutan* process. In addition, every member of the Department's Bureau of Finance and Administration who works on personnel matters and every *Rutan* interviewer within the Department will be required to receive *Rutan* training from CMS, regardless of what training an individual has received in the past. Further details regarding the dates, times, and locations for these training sessions will be circulated in the very near future by CMS.

- Annual Employee Evaluations and Job Description Reviews- Consistent with the Department's Personnel Policies Manual (CHAPTER 5, Employee Evaluation and Development), all employees must receive a written performance evaluation on an annual basis. As part of this annual review, supervisors must compare the employee's actual job duties and responsibilities to those listed on the employee's job description. If discrepancies exist, the job description must be clarified or the employee's duties must be revised to be consistent with the current description. As further detailed below, any clarification to a currently *Rutan*-Exempt job description must be submitted to CMS's Bureau of Personnel to determine whether the position remains *Rutan*-Exempt or must be reclassified as *Rutan*-Covered.

- Audit of All *Rutan*-Exempt Positions- The Department shall have an outside consultant conduct an audit of all Department job descriptions for positions that are currently classified as *Rutan*-Exempt. That outside consultant shall work in consultation with CMS. Upon completion of this audit, the consultant shall make any job description clarifications and submit any updated job descriptions to CMS's Bureau of Personnel to determine whether the position remains *Rutan*-Exempt or must be reclassified as *Rutan*-Covered. This is in follow-up to an audit that has already been completed for Department Staff Assistants.

- Moratorium on New or Additional *Rutan*-Exempt Positions- Until further notice, the Department shall not seek to create any new or additional *Rutan*-Exempt positions until such time as the Office of the Governor has determined that the corrective actions contained in this memo are being satisfactorily implemented.

- Abolishing Staff Assistant Title- The Department's Staff Assistant working title is to be abolished. In follow-up to the audit of these positions, employees currently in Staff Assistant positions shall be reclassified into appropriate working titles and accurate job descriptions. In the meantime, the Department shall not hire any new Staff Assistants or backfill any current or future Staff Assistant vacancies.

- Reforming the Department's Technical Code- The Department shall, in consultation with and with the approval of CMS's Bureau of Personnel: (i) create a narrowly tailored definition of "technical," for the purposes of classifying positions that are exempt from the Personnel Code under Section 4(c)(12) and thus fall under the Department's

Technical Code, (ii) create and implement personnel policies and procedures for the Department's Technical Code, including, but not limited to, a merit-based classification and salary administration plan, (iii) work with an outside consultant to review all current Technical Code positions against that "technical" definition to determine whether they are appropriately classified, and (iii) if they are not appropriately classified, take the necessary steps to move those positions to fall under the State's Personnel Code.

The Department's Office of Internal Audit shall regularly review those positions to ensure that they are properly classified and that proper hiring practices are being followed.

- Creating a Technical Code Merit Board- In addition to the above and to the independent Office of the Executive Inspector General's *Rutan* jurisdiction and investigatory powers, signed into law by the Governor in 2009 and detailed below, the Administration will seek to create a separate and independent statutory Technical Code Merit Board, to oversee and ensure the integrity of the Technical Code process.

- Employee Transfers to *Rutan*-Covered Positions Must Follow the *Rutan* Process- The Department shall ensure that all employee transfers into *Rutan*-Covered positions are made in compliance with the *Rutan* decision and all *Rutan* administrative orders.

- Implementing Already-Agreed-To *Rutan* Recommendations From Previous Audits- The Department's Office of Internal Audit shall review all prior internal and external audits to make certain that all recommendations related to *Rutan*, that the Department previously agreed to implement, have been implemented. To the extent any such agreed-to recommendations have not been implemented, the Department must move immediately to do so. The Department's Office of Internal Audit shall also develop a plan to regularly conduct reviews of *Rutan*-Exempt positions to ensure that they are properly classified and that they do not circumvent the *Rutan* hiring process.

This memorandum shall be circulated by the Department to all Department employees. In August 2009, the Governor signed into law provisions expanding the jurisdiction of the Office of the Executive Inspector General (OEIG) to include ensuring compliance with *Rutan*. **If an employee is aware of any potential *Rutan* violations (e.g. failures to follow the *Rutan* hiring process, the use of political considerations in *Rutan*-Covered hiring, etc.), he or she should—and has a duty to—report any such violations to the OEIG. Complaints can be securely and anonymously filed electronically or by fax by going to the OEIG's website at http://www2.illinois.gov/oeig/Pages/FileaComplaint.aspx. The employee may also notify his or her supervisor and the agency's Ethics Officer and Chief Counsel, Michael Forti at 312-793-2255 or michael.forti@illinois.gov.** If any employee has any questions regarding the *Rutan* process, he or she should contact the Department's Human Resources staff or Mr. Forti. The Department's Human Resources staff and Ethics Officer should use CMS's Bureau of Personnel as a resource in answering employee questions.

As stated above, the Quinn Administration continues to require strict compliance with *Rutan* principles and to ensuring that employees are appropriately classified as either *Rutan*-Covered or *Rutan*-Exempt. We expect all State employees to continue to be committed to and accountable for the same. For those vast number of State employee positions that are *Rutan*-Covered, the Administration not only expects, but demands, that the *Rutan* hiring process continue to be followed and that politics plays no role.

Thank you for your attention to this matter.

J.F.S.

EXHIBIT A

Supreme Court of the United States
Cynthia RUTAN, et al., Petitioners
v.
REPUBLICAN PARTY OF ILLINOIS, et al.
Mark FRECH, et al., Petitioners
v.
Cynthia RUTAN, et al.

Nos. 88-1872, 88-2074.
Argued Jan. 16, 1990.
Decided June 21, 1990.
Rehearing Denied Aug. 30, 1990.
See 497 U.S. 1050, 111 S.Ct. 13.

Former and present low-level public employees and employment applicant brought action challenging Governor's use of political considerations in hiring, rehiring, transferring, and promoting. The United States District Court for the Central District of Illinois, Baker, Chief Judge, 641 F.Supp. 249, dismissed complaint, and appeal was taken. The Court of Appeals for the Seventh Circuit affirmed in part, reversed in part, and remanded initially, 848 F.2d 1396, and on rehearing en banc, 868 F.2d 943. Certiorari was granted. The Supreme Court, Justice Brennan, held that: (1) promotions, transfers, and recalls based on political affiliation or support are impermissible infringements on public employees' First Amendment rights, and (2) conditioning hiring decisions on political belief and association violates applicants' First Amendment rights in absence of vital governmental interest.

Court of Appeals decision affirmed in part, reversed in part, and remanded.

Justice Stevens filed a concurring opinion.

Justice Scalia filed a dissenting opinion in which Chief Justice Rehnquist and Justice Kennedy joined, and in which Justice O'Connor joined as to Parts II and III.

West Headnotes

[1] Constitutional Law 92 ⚿1475(5)

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1475 Political Affiliation; Patronage
92k1475(5) k. Adverse Action in General. Most Cited Cases
(Formerly 92k82(11))

Constitutional Law 92 ⚿1475(7)

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1475 Political Affiliation; Patronage
92k1475(7) k. Promotion. Most Cited Cases
(Formerly 92k82(11))

States 360 ⚿53

360 States
360II Government and Officers
360k53 k. Appointment or Employment and Tenure of Agents and Employees in General. Most Cited Cases

That low-level public employees had no legal entitlement to promotion, transfer, or recall was not determinative of their claims that promotions, transfers, and recalls based on political affiliation or support were impermissible infringement on their First Amendment rights; government could not rely on basis that infringed employees' constitutionally protected interests to deny them valuable benefits. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law 92 ⚿1475(5)

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1475 Political Affiliation; Patronage

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92k1475(5) k. Adverse Action in General. Most Cited Cases
(Formerly 92k82(11))

Constitutional Law 92 ⚖1475(7)

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1475 Political Affiliation; Patronage
92k1475(7) k. Promotion. Most Cited Cases
(Formerly 92k82(11))

Promotions, transfers, and recalls after layoffs based on political affiliation or support are impermissible infringement on First Amendment rights of low-level public employees; such patronage practices are not sufficiently narrowly tailored to serve vital government interests in securing effective employees, in securing employees who will loyally implement policies, or in preserving democratic process. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 92 ⚖1475(5)

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1475 Political Affiliation; Patronage
92k1475(5) k. Adverse Action in General. Most Cited Cases
(Formerly 92k91, 92k82(11))

It was not necessary that employment decision based on patronage be the "substantial equivalent of a dismissal" for decision to violate low-level public employee's rights under First Amendment; this test is unduly restrictive because it fails to recognize that there are deprivations less harsh than dismissal that nevertheless press state employees and applicants to conform their beliefs and associations to some state-selected orthodoxy. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law 92 ⚖1181

92 Constitutional Law
92X First Amendment in General
92X(B) Particular Issues and Applications
92k1180 Public Employees and Officials
92k1181 k. In General. Most Cited Cases
(Formerly 92k82(11))

Constitutional Law 92 ⚖1446

92 Constitutional Law
92XVI Freedom of Association
92k1446 k. Public Employees and Officials. Most Cited Cases
(Formerly 92k82(11), 92k91)

First Amendment prevents government, except in most compelling circumstances, from wielding its power to interfere with its employees' freedom to believe and associate, or to not believe and not associate; it is not merely tenure provision, protecting public employees from actual or constructive discharge. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law 92 ⚖1150

92 Constitutional Law
92X First Amendment in General
92X(A) In General
92k1150 k. In General. Most Cited Cases
(Formerly 92k82(3))

What the First Amendment precludes government from commanding directly, it also precludes government from accomplishing indirectly. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law 92 ⚖1474(1)

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1474 Political Beliefs or Discrimination in General
92k1474(1) k. In General. Most Cited Cases
(Formerly 92k91)

Constitutional Law 92 ⚖1474(2)

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92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1474 Political Beliefs or Discrimination in General
92k1474(2) k. Adverse Action. Most Cited Cases
(Formerly 92k82(11))

Constitutional Law 92 ⚖1475(4)

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1475 Political Affiliation; Patronage
92k1475(4) k. Appointment and Hiring; Qualifications. Most Cited Cases
(Formerly 92k82(11))

Conditioning public hiring decisions on political belief and association violates First Amendment rights of applicants in absence of vital governmental interest. U.S.C.A. Const.Amend. 1.

****2730 Syllabus*** [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

*62 The Illinois Governor issued an executive order instituting a hiring freeze, whereby state officials are prohibited from hiring any employee, filling any vacancy, creating any new position, or taking any similar action without the Governor's "express permission." Petitioners in No. 88-1872 and cross-respondents in No. 88-2074-an applicant for employment, employees who had been denied promotions or transfers, and former employees who had not been recalled after layoffs-brought suit in the District Court, alleging that, by means of the freeze, the Governor was operating a political patronage system; that they had suffered discrimination in state employment because they had not been Republican Party supporters; and that this discrimination violates the First Amendment. The District Court dismissed the complaint for failure to state a claim upon which relief could be granted. The Court of Appeals affirmed in part and reversed in part. Noting that *Elrod v. Burns*, 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547, and *Branti v. Finkel*, 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574, had found that the patronage practice of discharging public employees on the basis of their political affiliation violates the First Amendment, the court held that other patronage practices violate the Amendment only when they are the "substantial equivalent of a dismissal," *i.e.*, when they would lead reasonable persons to resign. The court concluded, based on *Wygant v. Jackson Bd. of Education*, 476 U.S. 267, 106 S.Ct. 1842, 90 L.Ed.2d 260, that rejecting an employment application did not impose a hardship comparable to the loss of a job. Thus, it dismissed the hiring claim, but remanded the others for further proceedings.

Held: The rule of *Elrod* and *Branti* extends to promotion, transfer, recall, and hiring decisions based on party affiliation and support, and petitioners and cross-respondents have stated claims upon which relief may be granted. Pp. 2734-2739.

(a) Promotions, transfers, and recalls based on political affiliation or support are an impermissible infringement on public employees' First Amendment rights. Even though petitioners and cross-respondents *63 have no legal entitlement to the promotions, transfers, and recalls, the government **2731 may not rely on a basis that infringes their constitutionally protected interests to deny them these valuable benefits. *Perry v. Sindermann*, 408 U.S. 593, 597, 92 S.Ct. 2694, 2697, 33 L.Ed.2d 570. Significant penalties are imposed on those employees who exercise their First Amendment rights. Those who do not compromise their beliefs stand to lose the considerable increases in pay and job satisfaction attendant to promotions, the shorter commuting hours and lower maintenance expenses incident to transfers to more convenient work loca-

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tions, and even the jobs themselves in the case of recalls. As in *Elrod* and *Branti,* these patronage practices are not narrowly tailored to serve vital government interests. A government's interest in securing effective employees can be met by discharging, demoting, or transferring persons whose work is deficient, and its interest in securing employees who will loyally implement its policies can be adequately served by choosing or dismissing high-level employees on the basis of their political views. Likewise, the "preservation of the democratic process" is not furthered by these patronage decisions, since political parties are nurtured by other, less intrusive and equally effective methods, and since patronage decidedly impairs the elective process by discouraging public employees' free political expression. Pp. 2735-2737.

(b) The standard used by the Court of Appeals to measure alleged patronage practices in government employment is unduly restrictive because it fails to recognize that there are deprivations less harsh than dismissal that nevertheless press state employees and applicants to conform their beliefs and associations to some state-selected orthodoxy. Pp. 2737-2738.

(c) Patronage hiring places burdens on free speech and association similar to those imposed by patronage promotions, transfers, and recalls. Denial of a state job is a serious privation, since such jobs provide financial, health, and other benefits; since there may be openings with the State when business in the private sector is slow; and since there are occupations for which the government is the sole or major employer. Under this Court's sustained precedent, conditioning hiring decisions on political belief and association plainly constitutes an unconstitutional condition, unless the government has a vital interest in doing so. See, *e.g., Branti, supra,* 445 U.S., at 515-516, 100 S.Ct., at 1293. There is no such government interest here, for the same reasons that the government lacks justification for patronage promotions, transfers, and recalls. It is inappropriate to rely on *Wygant* to distinguish hiring from dismissal in this context, since that case was concerned with the least harsh means of remedying past wrongs and did not question that *some* remedy was permissible when there was sufficient evidence of past discrimination. Here, however, it is unnecessary to consider whether not being hired is less burdensome *64 than being discharged, because the government is not pressed to do *either* on the basis of political affiliation. Pp. 2738-2739.

868 F.2d 943 (CA7 1989), affirmed in part, reversed in part, and remanded.

BRENNAN, J., delivered the opinion of the Court, in which WHITE, MARSHALL, BLACKMUN, and STEVENS, JJ., joined. STEVENS, J., filed a concurring opinion, *post,* p. 2740. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C.J., and KENNEDY, J., joined, and in which O'CONNOR, J., joined as to Parts II and III, *post,* p. 2746.

Mary Lee Leahy argued the cause for petitioners in No. 88-1872 and respondents in No. 88-2074. With her on the briefs were *Michael R. Berz, Cheryl R. Jansen,* and *Kathryn E. Eisenhart.*

Thomas P. Sullivan argued the cause for respondents in No. 88-1872 and petitioners in No. 88-2074. With him on the briefs were *Jeffrey D. Colman, Michael J. Hayes,* and *Roger P. Flahaven.*†

† Briefs of *amici curiae* urging reversal in both cases were filed for the American Federation of Labor and Congress of Industrial Organizations by *George Kaufmann* and *Laurence Gold;* and for the North Carolina Professional Fire Fighters Association by *J. Michael McGuiness. C. Richard Johnson* filed a brief for the Independent Voters of Illinois-Independent Precinct Organization et al. as *amici curiae* urging reversal in No. 88-1872. *Richard H. Chanin* and *Jeremiah A. Collins* filed a brief for the National Education Association as *amicus curiae* urging reversal in No. 88-1872 and affirmance in No. 88-2074.

Hector Rivera Cruz, Secretary of Justice of Puerto

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Rico, *Jorge E. Perez Diaz,* Solicitor General, and *Lino J. Saldaña* filed a brief for the Commonwealth of Puerto Rico as *amicus curiae* urging affirmance in both cases.

Justice BRENNAN delivered the opinion of the Court.

To the victor belong only those spoils that may be constitutionally obtained. *Elrod v. Burns,* 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), and **2732*Branti v. Finkel,* 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980), decided that the First Amendment forbids government officials to discharge or threaten to discharge public employees solely for not being supporters of the political party in power, unless party affiliation is an appropriate requirement for the position involved. *65 Today we are asked to decide the constitutionality of several related political patronage practices-whether promotion, transfer, recall, and hiring decisions involving low-level public employees may be constitutionally based on party affiliation and support. We hold that they may not.

I

The petition and cross-petition before us arise from a lawsuit protesting certain employment policies and practices instituted by Governor James Thompson of Illinois.[FN1] On November 12, 1980, the Governor issued an executive order proclaiming a hiring freeze for every agency, bureau, board, or commission subject to his control. The order prohibits state officials from hiring any employee, filling any vacancy, creating any new position, or taking any similar action. It affects approximately 60,000 state positions. More than 5,000 of these become available each year as a result of resignations, retirements, deaths, expansions, and reorganizations. The order proclaims that "*no* exceptions" are permitted without the Governor's "express permission after submission of appropriate requests to [his] office." Governor's Executive Order No. 5 (Nov. 12, 1980), Brief for Petitioners and Cross-Respondents 11 (emphasis added).

FN1. The cases come to us in a preliminary posture, and the question is limited to whether the allegations of petitioners Rutan et al. state a cognizable First Amendment claim sufficient to withstand respondents' motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Therefore, for purposes of our review we must assume that petitioners' well-pleaded allegations are true. *Berkovitz v. United States,* 486 U.S. 531, 540, 108 S.Ct. 1954, 1961, 100 L.Ed.2d 531 (1988).

Three of the five original plaintiffs who brought the lawsuit-Rutan, Taylor, and Moore-are petitioners in No. 88-1872, and we refer to them as "petitioners." The defendants in the lawsuit are various Illinois and Republican Party officials. We refer to them as "respondents" because they are the respondents in No. 88-1872. They are also the cross-petitioners in No. 88-2074. Four of the five original plaintiffs-Rutan, Taylor, Standefer, and O'Brien-are named as cross-respondents in No. 88-2074.

*66 Requests for the Governor's "express permission" have allegedly become routine. Permission has been granted or withheld through an agency expressly created for this purpose, the Governor's Office of Personnel (Governor's Office). Agencies have been screening applicants under Illinois' civil service system, making their personnel choices, and submitting them as requests to be approved or disapproved by the Governor's Office. Among the employment decisions for which approvals have been required are new hires, promotions, transfers, and recalls after layoffs.

By means of the freeze, according to petitioners and cross-respondents, the Governor has been using the Governor's Office to operate a political patronage system to limit state employment and beneficial employment-related decisions to those who are supported by the Republican Party. In review-

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ing an agency's request that a particular applicant be approved for a particular position, the Governor's Office has looked at whether the applicant voted in Republican primaries in past election years, whether the applicant has provided financial or other support to the Republican Party and its candidates, whether the applicant has promised to join and work for the Republican Party in the future, and whether the applicant has the support of Republican Party officials at state or local levels.

Five people (including the three petitioners) brought suit against various Illinois and Republican Party officials in the United States District Court for the Central District of Illinois.[FN2] They alleged that they had suffered**2733 discrimination with respect to state employment because they had not been supporters of the State's Republican Party and that this discrimination violates the First Amendment. Cynthia B. *67 Rutan has been working for the State since 1974 as a rehabilitation counselor. She claims that since 1981 she has been repeatedly denied promotions to supervisory positions for which she was qualified because she had not worked for or supported the Republican Party. Franklin Taylor, who operates road equipment for the Illinois Department of Transportation, claims that he was denied a promotion in 1983 because he did not have the support of the local Republican Party. Taylor also maintains that he was denied a transfer to an office nearer to his home because of opposition from the Republican Party chairmen in the counties in which he worked and to which he requested a transfer. James W. Moore claims that he has been repeatedly denied state employment as a prison guard because he did not have the support of Republican Party officials.

> FN2. The five originally brought this action both individually and on behalf of those similarly situated. The Seventh Circuit, noting that the District Court had failed to address the class-action questions, reviewed the case as one brought by individuals only. 868 F.2d 943, 947 (1989). We therefore have only the claims of the individuals before us.

The two other plaintiffs, before the Court as cross-respondents, allege that they were not recalled after layoffs because they lacked Republican credentials. Ricky Standefer was a state garage worker who claims that he was not recalled, although his fellow employees were, because he had voted in a Democratic primary and did not have the support of the Republican Party. Dan O'Brien, formerly a dietary manager with the mental health department, contends that he was not recalled after a layoff because of his party affiliation and that he later obtained a lower paying position with the corrections department only after receiving support from the chairman of the local Republican Party.

The District Court dismissed the complaint with prejudice, under Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief could be granted. 641 F.Supp. 249 (1986). The United States Court of Appeals for the Seventh Circuit initially issued a panel opinion, 848 F.2d 1396 (1988), but then reheard the appeal en banc. The court affirmed the District Court's decision in part and reversed in part. 868 F.2d 943 (1989). Noting that this Court had previously determined that the patronage practice of discharging*68 public employees on the basis of their political affiliation violates the First Amendment, the Court of Appeals held that other patronage practices violate the First Amendment only when they are the "substantial equivalent of a dismissal." *Id.*, at 955. The court explained that an employment decision is equivalent to a dismissal when it is one that would lead a reasonable person to resign. *Ibid.* The court affirmed the dismissal of Moore's claim because it found that basing hiring decisions on political affiliation does not violate the First Amendment, but remanded the remaining claims for further proceedings.[FN3]

> FN3. The Seventh Circuit explained that Standefer's and O'Brien's claims might be cognizable if there were a formal or informal system of rehiring employees in

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their positions, 868 F.2d, at 956-957, but expressed considerable doubt that Rutan and Taylor would be able to show that they suffered the "substantial equivalent of a dismissal" by being denied promotions and a transfer. *Id.*, at 955-956.

Rutan, Taylor, and Moore petitioned this Court to review the constitutional standard set forth by the Seventh Circuit and the dismissal of Moore's claim. Respondents cross-petitioned this Court, contending that the Seventh Circuit's remand of four of the five claims was improper because the employment decisions alleged here do not, as a matter of law, violate the First Amendment. We granted certiorari, 493 U.S. 807, 110 S.Ct. 48, 107 L.Ed.2d 17 (1989), to decide the important question whether the First Amendment's proscription of patronage dismissals recognized in **2734*Elrod v. Burns,* 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), and *Branti v. Finkel,* 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980), extends to promotion, transfer, recall, or hiring decisions involving public employment positions for which party affiliation is not an appropriate requirement.

II

A

In *Elrod, supra,* we decided that a newly elected Democratic sheriff could not constitutionally engage in the patronage practice of replacing certain office staff with members of *69 his own party "when the existing employees lack or fail to obtain requisite support from, or fail to affiliate with, that party." *Id.*, 427 U.S., at 351, 373, 96 S.Ct., at 2679, 2689 (plurality opinion), and 375, 96 S.Ct., at 2690 (Stewart, J., joined by BLACKMUN, J., concurring in judgment). The plurality explained that conditioning public employment on the provision of support for the favored political party "unquestionably inhibits protected belief and association." *Id.*, at 359, 96 S.Ct., at 2683. It reasoned that conditioning employment on political activity pressures employees to pledge political allegiance to a party with which they prefer not to associate, to work for the election of political candidates they do not support, and to contribute money to be used to further policies with which they do not agree. The latter, the plurality noted, had been recognized by this Court as "tantamount to coerced belief." *Id.*, 427 U.S., at 355, 96 S.Ct., at 2681 (citing *Buckley v. Valeo,* 424 U.S. 1, 19, 96 S.Ct. 612, 634-635, 46 L.Ed.2d 659 (1976)). At the same time, employees are constrained from joining, working for or contributing to the political party and candidates of their own choice. *Elrod, supra,* 427 U.S., at 355-356, 96 S.Ct., at 2681. "[P]olitical belief and association constitute the core of those activities protected by the First Amendment," the plurality emphasized. 427 U.S., at 356, 96 S.Ct., at 2681. Both the plurality and the concurrence drew support from *Perry v. Sindermann,* 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972), in which this Court held that the State's refusal to renew a teacher's contract because he had been publicly critical of its policies imposed an unconstitutional condition on the receipt of a public benefit. See *Elrod, supra,* 427 U.S., at 359, 96 S.Ct., at 2682 (plurality opinion) and 375, 96 S.Ct., at 2690 (Stewart, J., concurring in judgment); see also *Branti, supra,* 445 U.S., at 514-516, 100 S.Ct., at 1292-1293.

The Court then decided that the government interests generally asserted in support of patronage fail to justify this burden on First Amendment rights because patronage dismissals are not the least restrictive means for fostering those interests. See *Elrod, supra,* 427 U.S., at 372-373, 96 S.Ct., at 2689 (plurality opinion) and 375, 96 S.Ct., at 2690 (Stewart, J., concurring in judgment). The plurality acknowledged that a government has a significant interest in ensuring that it has effective and efficient employees. It expressed*70 doubt, however, that "mere difference of political persuasion motivates poor performance" and concluded that, in any case, the government can ensure employee effectiveness and efficiency through the less drastic means of discharging staff members whose work is inadequate. 427 U.S., at 365-366, 96 S.Ct., at 2685-2686. The plurality also found that a govern-

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ment can meet its need for politically loyal employees to implement its policies by the less intrusive measure of dismissing, on political grounds, only those employees in policymaking positions. *Id.*, at 367, 96 S.Ct., at 2686-2687. Finally, although the plurality recognized that preservation of the democratic process "may in some instances justify limitations on First Amendment freedoms," it concluded that the "process functions as well without the practice, perhaps even better." Patronage, it explained, "can result in the entrenchment of one or a few parties to the exclusion of others" and "is a very effective impediment to the associational and speech freedoms which are essential to a meaningful system of **2735 democratic government." *Id.*, at 368-370, 96 S.Ct., at 2688.[FN4]

FN4. Justice SCALIA's lengthy discussion of the appropriate standard of review for restrictions the government places on the constitutionally protected activities of its employees to ensure efficient and effective operations, see *post*, at 2747-2752, is not only questionable, it offers no support for his conclusion that patronage practices pass muster under the First Amendment. The interests that Justice SCALIA regards as potentially furthered by patronage practices are not interests that the government has in its capacity as an employer. Justice SCALIA describes the possible benefits of patronage as follows: "patronage stabilizes political parties and prevents excessive political fragmentation," *post*, at 2752; patronage is necessary to strong, disciplined party organizations, *post*, at 2752-2753; patronage "fosters the two-party system," *post*, at 2754; and patronage is "a powerful means of achieving the social and political integration of excluded groups," *post*, at 2754-2755. These are interests the government might have in the structure and functioning of society as a whole. That the government attempts to use public employment to further such interests does not render those interests employment related. Therefore, even were Justice SCALIA correct that less-than-strict scrutiny is appropriate when the government takes measures to ensure the proper functioning of its internal operations, such a rule has no relevance to the restrictions on freedom of association and speech at issue in these cases.

*71 Four years later, in *Branti, supra*, we decided that the First Amendment prohibited a newly appointed public defender, who was a Democrat, from discharging assistant public defenders because they did not have the support of the Democratic Party. The Court rejected an attempt to distinguish the case from *Elrod*, deciding that it was immaterial whether the public defender had attempted to coerce employees to change political parties or had only dismissed them on the basis of their private political beliefs. We explained that conditioning continued public employment on an employee's having obtained support from a particular political party violates the First Amendment because of "the coercion of belief that necessarily flows from the knowledge that one must have a sponsor in the dominant party in order to retain one's job." 445 U.S., at 516, 100 S.Ct., at 1294. "In sum," we said, "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 517, 100 S.Ct., at 1294. To prevail, we concluded, public employees need show only that they were discharged because they were not affiliated with or sponsored by the Democratic Party. *Ibid.*[FN5]

FN5. *Branti v. Finkel*, 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980), also refined the exception created by *Elrod v. Burns*, 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), for certain employees. In *Elrod*, we suggested that policymaking and confidential employees probably could be dismissed on the basis of their political

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views. *Id.*, at 367, 96 S.Ct., at 2686-2687 (plurality opinion) and 375, 96 S.Ct., at 2690 (Stewart, J., concurring in judgment). In *Branti*, we said that a State demonstrates a compelling interest in infringing First Amendment rights only when it can show that "party affiliation is an appropriate requirement for the effective performance of the public office involved." *Branti, supra*, 100 U.S., at 518, 100 S.Ct., at 1295. The scope of this exception does not concern us here as respondents concede that the five employees who brought this suit are not within it.

B

[1] We first address the claims of the four current or former employees. Respondents urge us to view *Elrod* and *Branti* *72 as inapplicable because the patronage dismissals at issue in those cases are different in kind from failure to promote, failure to transfer, and failure to recall after layoff. Respondents initially contend that the employee petitioners' and cross-respondents' First Amendment rights have not been infringed because they have no entitlement to promotion, transfer, or rehire. We rejected just such an argument in *Elrod*, 427 U.S., at 359-360, 96 S.Ct., at 2683 (plurality opinion) and 375, 96 S.Ct., at 2690 (Stewart, J., concurring in judgment), and *Branti*, 445 U.S., at 514-515, 100 S.Ct., at 1293, as both cases involved state workers who were employees at will with no legal entitlement to continued employment. In *Perry*, 408 U.S., at 596-598, 92 S.Ct., at 2696-2697, we held explicitly that the plaintiff teacher's lack of a contractual or tenure right to re-employment**2736 was immaterial to his First Amendment claim. We explained the viability of his First Amendment claim as follows:

"For at least a quarter-century, this Court has made clear that even though a person has no 'right' to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, *there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests-especially, his interest in freedom of speech.* For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to 'produce a result which [it] could not command directly.' *Speiser v. Randall*, 357 U.S. 513, 526 [78 S.Ct. 1332, 1342, 2 L.Ed.2d 1460 (1958)]. Such interference with constitutional rights is impermissible." *Id.*, 408 U.S., at 597, 92 S.Ct., at 2697 (emphasis added).

Likewise, we find the assertion here that the employee petitioners and cross-respondents had no legal entitlement to promotion, transfer, or recall beside the point.

*73 [2][3][4] Respondents next argue that the employment decisions at issue here do not violate the First Amendment because the decisions are not punitive, do not in any way adversely affect the terms of employment, and therefore do not chill the exercise of protected belief and association by public employees.[FN6] This is not credible. Employees who find themselves in dead-end positions due to their political backgrounds *are* adversely affected. They will feel a significant obligation to support political positions held by their superiors, and to refrain from acting on the political views they actually hold, in order to progress up the career ladder. Employees denied transfers to workplaces reasonably close to their homes until they join and work for the Republican Party will feel a daily pressure from their long commutes to do so. And employees who have been laid off may well feel compelled to engage in whatever political activity is necessary to regain regular paychecks and positions corresponding to their skill and experience.[FN7]

FN6. Respondents' reliance on *Johnson v. Transportation Agency, Santa Clara County*, 480 U.S. 616, 107 S.Ct. 1442, 94

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L.Ed.2d 615 (1987), to this effect is misplaced. The question in *Johnson* was whether the Santa Clara County affirmative-action program violated the anti-discrimination requirement of Title VII of the Civil Rights Act of 1964. In that context, we said that the denial of a promotion did not unsettle any legitimate, firmly rooted expectations. We did not dispute, however, that it placed a burden on the person to whom the promotion was denied. We considered Johnson's expectations in discussing whether the plan unnecessarily trammeled the rights of male employees-*i.e.*, whether its goal was pursued with an excessive, rather than reasonable, amount of dislocation. Our decision that promotion denials are not such an imposition that Title VII prevented Santa Clara from considering gender in order to redress past discrimination does not mean that promotion denials are not enough of an imposition to pressure employees to affiliate with the favored party.

FN7. The complaint in this case states that Dan O'Brien was driven to do exactly this. After being rejected for recall by the Governor's Office, he allegedly pursued the support of a Republican Party official, despite his previous interest in the Democratic Party.

*74 The same First Amendment concerns that underlay our decisions in *Elrod, supra,* and *Branti, supra,* are implicated here. Employees who do not compromise their beliefs stand to lose the considerable increases in pay and job satisfaction attendant to promotions, the hours and maintenance expenses that are consumed by long daily commutes, and even their jobs if they are not rehired after a "temporary" layoff. These are significant penalties and are imposed for the exercise of rights guaranteed by the First Amendment. Unless these patronage practices are narrowly tailored to further vital government interests, we must conclude that they impermissibly encroach on First Amendment freedoms. See **2737*Elrod, supra,* 427 U.S., at 362-363, 96 S.Ct., at 2684 (plurality opinion) and 375, 96 S.Ct., at 2690 (Stewart, J., concurring in judgment); *Branti, supra,* 445 U.S., at 515-516, 100 S.Ct., at 1293.

We find, however, that our conclusions in *Elrod, supra,* and *Branti, supra,* are equally applicable to the patronage practices at issue here. A government's interest in securing effective employees can be met by discharging, demoting, or transferring staff members whose work is deficient. A government's interest in securing employees who will loyally implement its policies can be adequately served by choosing or dismissing certain high-level employees on the basis of their political views. See *Elrod, supra,* 427 U.S., at 365-368, 96 S.Ct., at 2685-2687 (plurality opinion); *Branti, supra,* 445 U.S., at 518, and 520, n. 14, 100 S.Ct., at 1294-1295, and 1295, n. 14. Likewise, the "preservation of the democratic process" is no more furthered by the patronage promotions, transfers, and rehires at issue here than it is by patronage dismissals. First, "political parties are nurtured by other, less intrusive and equally effective methods." *Elrod, supra,* 427 U.S., at 372-373, 96 S.Ct., at 2689 (plurality opinion). Political parties have already survived the substantial decline in patronage employment practices in this century. See *Elrod, supra,* at 369, and n. 23, 96 S.Ct., at 2688, and n. 23 (plurality opinion); see also L. Sabato, Goodbye to Good-time Charlie 67 (2d ed. 1983) ("The number of patronage positions has significantly decreased in virtually every state"); Congressional Quarterly Inc., State Government,*75 CQ's Guide to Current Issues and Activities 134 (T. Beyle ed. 1989-1990) ("Linkage[s] between political parties and government office-holding ... have died out under the pressures of varying forces [including] the declining influence of election workers when compared to media and money-intensive campaigning, such as the distribution of form letters and advertising"); Sorauf, Patronage and Party, 3 Midwest J.

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Pol. Sci. 115, 118-120 (1959) (many state and local parties have thrived without a patronage system). Second, patronage decidedly impairs the elective process by discouraging free political expression by public employees. See *Elrod,* 427 U.S., at 372, 96 S.Ct., at 2689 (plurality opinion) (explaining that the proper functioning of a democratic system "is indispensably dependent on the unfettered judgment of each citizen on matters of political concern"). Respondents, who include the Governor of Illinois and other state officials, do not suggest any other overriding government interest in favoring Republican Party supporters for promotion, transfer, and rehire.

We therefore determine that promotions, transfers, and recalls after layoffs based on political affiliation or support are an impermissible infringement on the First Amendment rights of public employees. In doing so, we reject the Seventh Circuit's view of the appropriate constitutional standard by which to measure alleged patronage practices in government employment. The Seventh Circuit proposed that only those employment decisions that are the "substantial equivalent of a dismissal" violate a public employee's rights under the First Amendment. 868 F.2d, at 954-957. We find this test unduly restrictive because it fails to recognize that there are deprivations less harsh than dismissal that nevertheless press state employees and applicants to conform their beliefs and associations to some state-selected orthodoxy. See *Elrod, supra,* 427 U.S., at 356-357, 96 S.Ct., at 2681 (plurality opinion); *West Virginia Bd. of Education v. Barnette,* 319 U.S. 624, 642, 63 S.Ct. 1178, 1187, 87 L.Ed. 1628 (1943).[FN8] *76 The First Amendment is not a tenure provision, protecting public **2738 employees from actual or constructive discharge. The First Amendment prevents the government, except in the most compelling circumstances, from wielding its power to interfere with its employees' freedom to believe and associate, or to not believe and not associate.

FN8. The Seventh Circuit's proffered test was not based on that court's determination that other patronage practices do not burden the free exercise of First Amendment rights. Rather, the court chose to defer to the political process in an area in which it felt this Court had not yet spoken clearly. 868 F.2d, at 953-954. The court also expressed concern that the opposite conclusion would open state employment to excessive interference by the Federal Judiciary. *Ibid.* We respect but do not share this concern.

> Our decision does not impose the Federal Judiciary's supervision on any state government activity that is otherwise immune. The federal courts have long been available for protesting unlawful state employment decisions. Under Title VII, 42 U.S.C. §§ 2000e(a), (f), and 2000e-2(a) (1982 ed.), it is a violation of federal law to discriminate in any way in state employment (excepting certain high-level positions) on the basis of race, color, religion, sex, or national origin. Moreover, the First Amendment, as the court below noted, already protects state employees not only from patronage dismissals but also from "even an act of retaliation as trivial as failing to hold a birthday party for a public employee ... when intended to punish her for exercising her free speech rights." 868 F.2d, at 954, n. 4.

Whether the four employees were in fact denied promotions, transfers, or rehires for failure to affiliate with and support the Republican Party is for the District Court to decide in the first instance. What we decide today is that such denials are irreconcilable with the Constitution and that the allegations of the four employees state claims under 42 U.S.C. § 1983 (1982 ed.) for violations of the First and Fourteenth Amendments. Therefore, although we affirm the Seventh Circuit's judgment to reverse

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the District Court's dismissal of these claims and remand them for further proceedings, we do not adopt the Seventh Circuit's reasoning.

C

[5][6] Petitioner James W. Moore presents the closely related question whether patronage hiring violates the First Amendment.*77 Patronage hiring places burdens on free speech and association similar to those imposed by the patronage practices discussed above. A state job is valuable. Like most employment, it provides regular paychecks, health insurance, and other benefits. In addition, there may be openings with the State when business in the private sector is slow. There are also occupations for which the government is a major (or the only) source of employment, such as social workers, elementary school teachers, and prison guards. Thus, denial of a state job is a serious privation.

Nonetheless, respondents contend that the burden imposed is not of constitutional magnitude.[FN9] Decades of decisions by this Court belie such a claim. We premised *Torcaso v. Watkins,* 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961), on our understanding that loss of a job opportunity for failure to compromise one's convictions states a constitutional claim. We held that Maryland could not refuse an appointee a commission for the position of notary public on the ground that he refused to declare his belief in God, because the required oath "unconstitutionally invades the appellant's freedom of belief and religion." *Id.,* at 496, 81 S.Ct., at 1684. In *Keyishian v. Board of Regents of Univ. of New York,* 385 U.S. 589, 609-610, 87 S.Ct. 675, 687, 17 L.Ed.2d 629 (1967), we held a law affecting appointment and retention of teachers invalid because it premised employment on an unconstitutional restriction of political belief and association. In *Elfbrandt v. Russell,* 384 U.S. 11, 19, 86 S.Ct. 1238, 1242, 16 L.Ed.2d 321 (1966), we struck down a loyalty oath which was a prerequisite for public employment.

FN9. To the extent that respondents also argue that Moore has not been penalized for the exercise of protected speech and association rights because he had no claim of right to employment in the first place, that argument is foreclosed by *Perry v. Sindermann,* 408 U.S. 593, 597, 92 S.Ct. 2694, 2697, 33 L.Ed.2d 570 (1972). See *supra,* at 2735-2736.

Almost half a century ago, this Court made clear that the government "may not enact a regulation providing that no Republican ... shall be appointed to federal office." *Public Workers v. Mitchell,* 330 U.S. 75, 100, 67 S.Ct. 556, 569, 91 L.Ed. 754 (1947). What the *78 First Amendment precludes the government**2739 from commanding directly, it also precludes the government from accomplishing indirectly. See *Perry,* 408 U.S., at 597, 92 S.Ct., at 2697 (citing *Speiser v. Randall,* 357 U.S. 513, 526, 78 S.Ct. 1332, 1342, 2 L.Ed.2d 1460 (1958)); see *supra,* at 2735. Under our sustained precedent, conditioning hiring decisions on political belief and association plainly constitutes an unconstitutional condition, unless the government has a vital interest in doing so. See *Elrod,* 427 U.S., at 362-363, 96 S.Ct., at 2684 (plurality opinion) and 375, 96 S.Ct., at 2690 (Stewart, J., concurring in judgment); *Branti,* 445 U.S., at 515-516, 100 S.Ct., at 1293; see also *Sherbert v. Verner,* 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963) (unemployment benefits); *Speiser v. Randall, supra* (tax exemption). We find no such government interest here, for the same reasons that we found that the government lacks justification for patronage promotions, transfers, or recalls. See *supra,* at 2735-2738.

The court below, having decided that the appropriate inquiry in patronage cases is whether the employment decision at issue is the substantial equivalent of a dismissal, affirmed the trial court's dismissal of Moore's claim. See 868 F.2d, at 954. The Court of Appeals reasoned that "rejecting an employment application does not impose a hardship upon an employee comparable to the loss of [a] job." *Ibid.,* citing *Wygant v. Jackson Bd. of Educa-*

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tion, 476 U.S. 267, 106 S.Ct. 1842, 90 L.Ed.2d 260 (1986) (plurality opinion). Just as we reject the Seventh Circuit's proffered test, see *supra,* at 2737-2738, we find the Seventh Circuit's reliance on *Wygant* to distinguish hiring from dismissal unavailing. The court cited a passage from the plurality opinion in *Wygant* explaining that school boards attempting to redress past discrimination must choose methods that broadly distribute the disadvantages imposed by affirmative-action plans among innocent parties. The plurality said that race-based layoffs placed too great a burden on individual members of the nonminority race, but suggested that discriminatory hiring was permissible, under certain circumstances, even though it burdened white applicants, because the burden was less intrusive than the loss of an existing job. *79 476 U.S., at 282-284, 106 S.Ct., at 1851-1852. See also *id.,* at 294-295, 106 S.Ct., at 1857-1858 (WHITE, J., concurring in judgment).

Wygant has no application to the question at issue here. The plurality's concern in that case was identifying the least harsh means of remedying past wrongs. It did not question that *some* remedy was permissible when there was sufficient evidence of past discrimination. In contrast, the Governor of Illinois has not instituted a remedial undertaking. It is unnecessary here to consider whether not being hired is less burdensome than being discharged, because the government is not pressed to do *either* on the basis of political affiliation. The question in the patronage context is not which penalty is more acute but whether the government, without sufficient justification, is pressuring employees to discontinue the free exercise of their First Amendment rights.

If Moore's employment application was set aside because he chose not to support the Republican Party, as he asserts, then Moore's First Amendment rights have been violated. Therefore, we find that Moore's complaint was improperly dismissed.

III

We hold that the rule of *Elrod* and *Branti* extends to promotion, transfer, recall, and hiring decisions based on party affiliation and support and that all of the petitioners and cross-respondents have stated claims upon which relief may be granted. We affirm the Seventh Circuit insofar as it remanded Rutan's, Taylor's, Standefer's, and O'Brien's claims. However, we reverse the Seventh Circuit's decision to uphold the dismissal of Moore's claim. All five claims are remanded for proceedings consistent with this opinion.

It is so ordered.

**2740 Justice STEVENS, concurring.

While I join the Court's opinion, these additional comments are prompted by three propositions advanced by Justice SCALIA in his dissent. First, he implies that prohibiting imposition*80 of an unconstitutional condition upon eligibility for government employment amounts to adoption of a civil service system. Second, he makes the startling assertion that a long history of open and widespread use of patronage practices immunizes them from constitutional scrutiny. Third, he assumes that the decisions in *Elrod v. Burns,* 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), and *Branti v. Finkel,* 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980), represented dramatic departures from prior precedent.

Several years before either *Elrod* or *Branti* was decided, I had occasion as a judge on the Court of Appeals for the Seventh Circuit to evaluate each of these propositions. *Illinois State Employees Union, Council 34, Am. Federation of State, Cty., and Municipal Employees, AFL-CIO v. Lewis,* 473 F.2d 561 (1972), cert. denied, 410 U.S. 928, 93 S.Ct. 1364, 35 L.Ed.2d 590 (1973). With respect to the first, I wrote:

> "Neither this court nor any other may impose a civil service system upon the State of Illinois. The General Assembly has provided an elaborate system regulating the appointment to specified positions solely on the basis of merit and fitness, the grounds for termination of such employment,

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and the procedures which must be followed in connection with hiring, firing, promotion, and retirement. A federal court has no power to establish any such employment code.

"However, recognition of plaintiffs' claims will not give every public employee civil service tenure and will not require the state to follow any set procedure or to assume the burden of explaining or proving the grounds for every termination. It is the former employee who has the burden of proving that his discharge was motivated by an impermissible consideration. It is true, of course, that a prima facie case may impose a burden of explanation on the State. But the burden of proof will remain with the plaintiff employee and we must assume that the trier of fact will be able to differentiate between those discharges which are politically motivated and *81 those which are not. There is a clear distinction between the grant of tenure to an employee-a right which cannot be conferred by judicial fiat-and the prohibition of a discharge for a particular impermissible reason. The Supreme Court has plainly identified that distinction on many occasions, most recently in *Perry v. Sindermann,* 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972).

"Unlike a civil service system, the Fourteenth Amendment to the Constitution does not provide job security, as such, to public employees. If, however, a discharge is motivated by considerations of race, religion, or punishment of constitutionally protected conduct, it is well settled that the State's action is subject to federal judicial review. There is no merit to the argument that recognition of plaintiffs' constitutional claim would be tantamount to foisting a civil service code upon the State." 473 F.2d, at 567-568 (footnotes and citations omitted).

Denying the Governor of Illinois the power to require every state employee, and every applicant for state employment, to pledge allegiance and service to the political party in power is a far cry from a civil service code. The question in this case is simply whether a Governor may adopt a rule that would be plainly unconstitutional if enacted by the General Assembly of Illinois.[FN1]

FN1. Despite Justice SCALIA's imprecise use of the term, *post,* at 2758, the legal issue presented in this litigation is plainly not a "political question." See *Elrod v. Burns,* 427 U.S. 347, 351-353, 96 S.Ct. 2673, 2678-2679, 49 L.Ed.2d 547 (1976) (plurality opinion); *Illinois State Employees Union, Council 34, Am. Federation of State, Cty., and Municipal Employees, AFL-CIO v. Lewis,* 473 F.2d 561, 566-567 (1972), cert. denied, 410 U.S. 928, 93 S.Ct. 1364, 35 L.Ed.2d 590 (1973).

**2741 Second, Justice SCALIA asserts that "when a practice not expressly prohibited by the text of the Bill of Rights bears the endorsement of a long tradition of open, widespread, and unchallenged use that dates back to the beginning of the Republic, we have no proper basis for striking it down." *Post,* at 2748; *post,* at 2752 (a "clear and continuing tradition of our people" *82 deserves " *dispositive* effect"). The argument that traditional practices are immune from constitutional scrutiny is advanced in two plurality opinions that Justice SCALIA has authored, but not by any opinion joined by a majority of the Members of the Court.[FN2]

FN2. See *Michael H. v. Gerald D.,* 491 U.S. 110, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989) (plurality opinion); *Burnham v. Superior Court of California, Marin County,* 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990) (plurality opinion). Justice SCALIA's additional reliance on *Bowers v. Hardwick,* 478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986), *post,* at 2752, is misplaced because in that case the Court used a history of state criminal prohibitions to support its refusal to extend the doctrine of substantive due process to previously unprotected conduct. The question

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> in these cases is whether mere longevity can immunize from constitutional review state conduct that would otherwise violate the First Amendment.

In the *Lewis* case, I noted the obvious response to this position: "[I]f the age of a pernicious practice were a sufficient reason for its continued acceptance, the constitutional attack on racial discrimination would, of course, have been doomed to failure." 473 F.2d, at 568, n. 14. See, *e.g., Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).[FN3] I then added *83 this comment on the specific application of that argument to patronage practices:

> FN3. Ironically, at the time of the adoption of the Bill of Rights, the party system itself was far from an "accepted political nor[m]." *Post,* at 2748. Our founders viewed it as a pathology:
>
> "Political discussion in eighteenth-century England and America was pervaded by a kind of anti-party cant. Jonathan Swift, in his *Thoughts on Various Subjects,* had said that 'Party is the madness of many, for the gain of the few.' This maxim, which was repeated on this side of the Atlantic by men like John Adams and William Paterson, plainly struck a deep resonance in the American mind. Madison and Hamilton, when they discussed parties or factions (for them the terms were usually interchangeable) in *The Federalist,* did so only to arraign their bad effects. In the great debate over the adoption of the Constitution both sides spoke ill of parties. The popular sage, Franklin (who was not always consistent on the subject), gave an eloquent warning against factions and 'the infinite mutual abuse of parties, tearing to pieces the best of characters.' George Washington devoted a large part of his political testament, the Farewell Address, to stern warnings against 'the baneful effects of the Spirit of Party.' His successor, John Adams, believed that 'a division of the republic into two great parties.... is to be dreaded as the greatest political evil under our Constitution.' Similar admonitions can be found in the writings of the arch-Federalist Fisher Adams and the 'philospher of Jeffersonian democracy,' John Taylor of Caroline. If there was one point of political philosophy upon which these men, who differed on so many things, agreed quite readily, it was their common conviction about the baneful effects of the spirit of party." R. Hofstadter, The Idea of a Party System 2-3 (1969) (footnote omitted).
>
> Our contemporary recognition of a state interest in protecting the two major parties from damaging intraparty feuding or unrestrained factionalism, see, *e.g., Storer v. Brown,* 415 U.S. 724, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974); *post,* at 2754-2755, has not disturbed our protection of the rights of individual voters and the role of alternative parties in our government. See, *e.g., Anderson v. Celebrezze,* 460 U.S. 780, 793, 103 S.Ct. 1564, 1572, 75 L.Ed.2d 547 (1983) (burdens on new or small parties and independent candidates impinge on associational choices); *Williams v. Rhodes,* 393 U.S. 23, 32, 89 S.Ct. 5, 11, 21 L.Ed.2d 24 (1968) (there is "no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them").

"Finally, our answer to the constitutional question is not foreclosed by the fact that the 'spoils system has been entrenched in American history for almost two hundred years.' *Alomar v. Dwyer,* 447 F.2d 482, 483 (2d Cir.1971). For most of that period it was assumed, without serious question

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or debate, that since a public employee has no constitutional right to his job, there can be no valid constitutional objection to his summary removal. See *Bailey v. Richardson,* 86 U.S.App.D.C. 248, 182 F.2d 46, 59 (1950), affirmed per curiam by an equally divided Court, 341 U.S. 918 [71 S.Ct. 669, 95 L.Ed. 1352 (1951)]; **2742*Adler v. Board of Education,* 342 U.S. 485 [, 72 S.Ct. 380, 96 L.Ed. 517 (1952)]. But as Mr. Justice Marshall so forcefully stated in 1965 when he was a circuit judge, 'the theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected.' *Keyishian v. Board of Regents,* 345 F.2d 236, 239 (2d Cir.1965). The development of constitutional law subsequent to the Supreme Court's unequivocal repudiation of the line of cases ending with *Bailey v. *84 Richardson* and *Adler v. Board of Education* is more relevant than the preceding doctrine which is now 'universally rejected.' " 473 F.2d, at 568 (footnotes and citations omitted).

With respect to Justice SCALIA's view that until *Elrod v. Burns* was decided in 1976, it was unthinkable that patronage could be unconstitutional, see *post,* at 2748-2749, it seems appropriate to point out again not only that my views in *Lewis* antedated *Elrod* by several years, but, more importantly, that they were firmly grounded in several decades of decisions of this Court. As explained in *Lewis:*

"[In 1947] a closely divided Supreme Court upheld a statute prohibiting federal civil service employees from taking an active part in partisan political activities. *United Public Workers v. Mitchell,* 330 U.S. 75 [67 S.Ct. 556, 91 L.Ed. 754 (1947)]. The dissenting Justices felt that such an abridgment of First Amendment rights could not be justified. The majority, however, concluded that the government's interests in not compromising the quality of public service and in not permitting individual employees to use their public offices to advance partisan causes were sufficient to justify the limitation on their freedom.

"There was no dispute within the Court over the proposition that the employees' interests in political action were protected by the First Amendment. The Justices' different conclusions stemmed from their different appraisals of the sufficiency of the justification for the restriction. That justification-the desirability of political neutrality in the public service and the avoidance of the use of the power and prestige of government to favor one party or the other-would condemn rather than support the alleged conduct of defendant in this case. Thus, in dicta, the Court unequivocally stated that the Legislature could not require allegiance to a particular political faith as a condition of public employment:

*85 " 'Appellants urge that federal employees are protected by the Bill of Rights and that Congress may not "enact a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, or that no federal employee shall attend Mass or take any active part in missionary work." None would deny such limitations on Congressional power but, because there are some limitations it does not follow that a prohibition against acting as ward leader or worker at the polls is invalid.' 330 U.S. 75, 100, 67 S.Ct., at 569-570.

"In 1952 the Court quoted that dicta in support of its holding that the State of Oklahoma could not require its employees to profess their loyalty by denying past association with Communists. *Wieman v. Updegraff,* 344 U.S. 183, 191-192 [73 S.Ct. 215, 219, 97 L.Ed. 216 (1952)]. That decision did not recognize any special right to public employment; rather, it rested on the impact of the requirement on the citizen's First Amendment rights. We think it unlikely that the Supreme Court would consider these plaintiffs' interest in freely associating with members of the Democratic Party less worthy of protection than the Oklahoma employees' interest in associating with

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Communists or former Communists.

"In 1961 the Court held that a civilian cook could be summarily excluded from a naval gun factory. **2743*Cafeteria and Restaurant Workers Union, Local 473, AFL-CIO v. McElroy,* 367 U.S. 886 [81 S.Ct. 1743, 6 L.Ed.2d 1230 (1961)]. The government's interest in maintaining the security of the military installation outweighed the cook's interest in working at a particular location. Again, however, the Court explicitly assumed that the sovereign could not deny employment for the reason that the citizen was a member of a particular political party or religious faith-'that she could not have been kept out because she was a Democrat or a Methodist.' 367 U.S., at 898 [81 S.Ct., at 1750].

*86 "In 1968 the Court held that 'a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment.' *Pickering v. Board of Education,* 391 U.S. 563, 574, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968). The Court noted that although criminal sanctions 'have a somewhat different impact on the exercise of the right to freedom of speech from dismissal from employment, it is apparent that the threat of dismissal from public employment is nonetheless a potent means of inhibiting speech.' *Ibid.* The holding in *Pickering* was a natural sequel to Mr. Justice Frankfurter's comment in dissent in Shelton v. Tucker that a scheme to terminate the employment of teachers solely because of their membership in unpopular organizations would run afoul of the Fourteenth Amendment. 364 U.S. 479, 496[, 81 S.Ct. 247, 256, 5 L.Ed.2d 231 (1960)].

"In 1972 the Court reaffirmed the proposition that a nontenured public servant has no constitutional right to public employment, but nevertheless may not be dismissed for exercising his First Amendment rights. *Perry v. Sindermann,* 408 U.S. 593 [92 S.Ct. 2694, 33 L.Ed.2d 570]. The Court's explanation of its holding is pertinent here:

" 'For at least a quarter century, this Court has made clear that even though a person has no "right" to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not act. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests-especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to "produce a result which [it] could not command directly." *Speiser v. Randall,* 357 U.S. 513, 526 [78 S.Ct. 1332, 2 L.Ed.2d 1460]. Such interference with constitutional rights is impermissible.'

*87 " 'We have applied this general principle to denials of tax exemptions, *Speiser v. Randall, supra,* unemployment benefits, *Sherbert v. Verner,* 374 U.S. 398, 404-405 [83 S.Ct. 1790, 1794, 10 L.Ed.2d 965 (1963)], and welfare payments, *Shapiro v. Thompson,* 394 U.S. 618, 627 n. 6 [89 S.Ct. 1322, 1327 n. 6, 22 L.Ed.2d 600 (1969)]; *Graham v. Richardson,* 403 U.S. 365, 374 [91 S.Ct. 1848, 1853, 29 L.Ed.2d 534 (1971)]. But, most often, we have applied the principle to denials of public employment. *United Public Workers v. Mitchell,* 330 U.S. 75, 100 [67 S.Ct. 556, 569, 91 L.Ed. 754 (1947)]; *Wieman v. Updegraff,* 344 U.S. 183, 192 [73 S.Ct. 215, 219, 97 L.Ed. 216 (1952)]; *Shelton v. Tucker,* 364 U.S. 479, 485-486 [81 S.Ct. 247, 250-251, 5 L.Ed.2d 231 (1960)]; *Torcaso v. Watkins,* 367 U.S. 488, 495-496 [81 S.Ct. 1680, 1683-1684, 6 L.Ed.2d 982 (1961)]; *Cafeteria and Restaurant Workers, etc. v. McElroy,* 367 U.S. 886, 894 [81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230 (1961)]; *Cramp v. Board of Public Instruction,* 368 U.S. 278, 288 [82 S.Ct. 275, 281, 7 L.Ed.2d 285 (1961)]; *Baggett v. Bullitt,* 377 U.S. 360 [84 S.Ct. 1316, 12 L.Ed.2d 377 (1964)]; **2744*Elfbrandt v. Russell,* 384 U.S. [11,] 17 [86 S.Ct. 1238, 1241, 16

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L.Ed.2d 321 (1966)]; *Keyishian v. Board of Regents,* 385 U.S. 589, 605-606 [87 S.Ct. 675, 684-685, 17 L.Ed.2d 629 (1967)]; *Whitehill v. Elkins,* 389 U.S. 54 [88 S.Ct. 184, 19 L.Ed.2d 228 (1967)]; *United States v. Robel,* 389 U.S. 258 [88 S.Ct. 419, 19 L.Ed.2d 508 (1967)]; *Pickering v. Board of Education,* 391 U.S. 563, 568 [88 S.Ct. 1731, 1734-1735, 20 L.Ed.2d 811 (1968)]. We have applied the principle regardless of the public employee's contractual or other claim to a job. Compare *Pickering v. Board of Education, supra,* with *Shelton v. Tucker, supra.*'

"Thus the respondent's lack of a contractual or tenure "right" to reemployment for the 1969-1970 academic year is immaterial to his free speech claim....' 408 U.S., at 597, 92 S.Ct., at 2696-2698.

"This circuit has given full effect to this principle." 473 F.2d, at 569-572 (footnotes and citations omitted).

See also *American Federation of State, Cty. and Municipal Employees, AFL-CIO v. Shapp,* 443 Pa. 527, 537-545, 280 A.2d 375, 379-383 (1971) (Barbieri, J., dissenting).

To avoid the force of the line of authority described in the foregoing passage, Justice SCALIA would weigh the supposed general state interest in patronage hiring against the *88 aggregated interests of the many employees affected by the practice. This defense of patronage obfuscates the critical distinction between partisan interest and the public interest.[FN4] It assumes that governmental power and public resources *89 in this case employment opportunities-may appropriately be used to subsidize partisan activities even when the political affiliation of the employee or the job applicant is entirely unrelated to **2745 his or her public service.[FN5] The premise on which this position rests would justify the use of public funds to compensate party members for their campaign work, or, conversely, a legislative enactment denying public employment to nonmembers of the majority party. If such legislation is unconstitutional-as it clearly would be-an equally pernicious rule promulgated by the executive must also be invalid.

FN4. Although Justice SCALIA's defense of patronage turns on the benefits of fostering the two-party system, *post,* at 2754, his opinion is devoid of reference to meaningful evidence that patronage practices have played a significant role in the preservation of the two-party system. In each of the examples that he cites-"the Boss Tweeds, the Tammany Halls, the Pendergast Machines, the Byrd Machines, and the Daley Machines," *post,* at 2747-patronage practices were used solely to protect the power of an entrenched majority. See Laycock, Notes on the Role of Judicial Review, the Expansion of Federal Power, and the Structure of Constitutional Rights, 99 Yale L.J. 1711, 1722 (1990) (describing the "hopelessness of contesting elections" in Chicago's "one-party system" when "half a dozen employees of the city and of city contractors were paid with public funds to work [a precinct] for the other side"); Johnson, Successful Reform Litigation: The *Shakman* Patronage Case, 64 Chi.-Kent L.Rev. 479, 481 (1988) (the "massive Democratic patronage employment system" maintained a "noncompetitive political system" in Cook County in the 1960's).

Without repeating the Court's studied rejection of the policy arguments for patronage practices in *Elrod,* 427 U.S., at 364-373, 96 S.Ct., at 2685-2690, I note only that many commentators agree more with Justice SCALIA's admissions of the systemic costs of patronage practices-the "financial corruption, such as salary kickbacks and partisan political activity on government-paid time," the reduced efficiency of government, and the undeniable constraint upon the ex-

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pression of views by employees, *post,* at 2755-2756-than with his belief that patronage is necessary to political stability and integration of powerless groups. See, *e.g.,* G. Pomper, Voters, Elections, and Parties 282-304 (1988) (multiple causes of party decline); D. Price, Bringing Back the Parties 22-25 (1984) (same); Comment, 41 U.Chi.L.Rev. 297, 319-328 (1974) (same); Wolfinger, Why Political Machines Have Not Withered Away and Other Revisionist Thoughts, 34 J.Politics 365, 398 (1972) (absence of machine politics in California); J. James, American Political Parties in Transition 85 (1974) (inefficient and antiparty effects of patronage); Johnston, Patrons and Clients, Jobs and Machines: A Case Study of the Uses of Patronage, 73 Am.Pol.Sci.Rev. 385 (1979) (same); Grimshaw, The Political Economy of Machine Politics, 4 Corruption and Reform 15 (1989) (same); Comment, 49 U.Chi.L.Rev. 181, 197-200 (1982) (same); Freedman, Doing Battle with the Patronage Army: Politics, Courts and Personnel Administration in Chicago, 48 Pub.Admin.Rev. 847 (1988) (race and machine politics).

Incidentally, although some might suggest that Jacob Arvey was "best known as the promoter of Adlai Stevenson," *post,* at 2753, that connection is of interest only because of Mr. Arvey's creative and firm leadership of the powerful political organization that was subsequently led by Richard J. Daley. M. Tolchin & S. Tolchin, To the Victor 36 (1971).

FN5. Neither Justice SCALIA nor any of the parties suggests that party affiliation is relevant to any of the positions at stake in this litigation-rehabilitation counselor, road equipment operator, prison guard, dietary manager, and temporary garage worker. Reliance on the difficulty of precisely dividing the positions in which political affiliation is relevant to the quality of public service from those in which it is not an appropriate requirement of the job is thus inapposite. See *post,* at 2756-2758. Difficulty in deciding borderline cases does not justify imposition of a loyalty oath in the vast category of positions in which it is irrelevant.

Justice SCALIA argues that distinguishing "inducement and compulsion" reveals that a patronage system's impairment of the speech and associational rights of employees and would-be employees is insignificant. *Post,* at 2755-2756. This analysis contradicts the harsh reality of party discipline that is the linchpin of his theory of patronage. *Post,* at 2753 (emphasizing the "link between patronage and party discipline, and between that and party success").[FN6] More importantly,*90 it rests on the long-rejected fallacy that a privilege may be burdened by unconstitutional conditions. See, *e.g., Perry v. Sindermann,* 408 U.S. 593, 597, 92 S.Ct. 2694, 2697, 33 L.Ed.2d 570 (1972). There are a few jobs for which an individual's race or religion may be relevant, see *Wygant v. Jackson Bd. of Education,* 476 U.S. 267, 314-315, 106 S.Ct. 1842, 1868-1869, 90 L.Ed.2d 260 (1986) (STEVENS, J., dissenting); there are many jobs for which political affiliation is relevant to the employee's ability to function effectively as part of a given administration. In those cases-in other words, cases in which "the efficiency of the public service," *Public Workers v. Mitchell,* 330 U.S. 75, 101, 67 S.Ct. 556, 570, 91 L.Ed. 754 (1947), would be advanced by hiring workers who are loyal to the Governor's party-such hiring is permissible under the holdings in *Elrod* and *Branti.* These cases, however, concern jobs in which race, religion, and political affiliation are all equally and entirely irrelevant to the public service to be performed. When an individual has *91 been denied employment for an impermissible reason, it

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is unacceptable to balance the constitutional rights of the individual against the political interests of the party in power. It seems to me obvious that the government may not discriminate against particular individuals in hopes of advancing **2746 partisan interests through the misuse [FN7] of public funds.

FN6. The iron fist inside the velvet glove of Justice SCALIA's "inducements" and "influences" is apparent from his own descriptions of the essential features of a patronage system. See, *e.g., post,* at 2755 (the worker may "urge *within the organization* the adoption of any political position; but if that position is rejected he must vote and work for the party nonetheless"); *post,* at 2753 (quoting M. Tolchin & S. Tolchin, To the Victor, at 123 (reporting that Montclair, New Jersey, Democrats provide fewer services than Cook County, Illinois, Democrats, while "the rate of issue participation is much higher among Montclair Democrats who are not bound by the fear displayed by the Cook County committeemen")); *post,* at 2753 (citing W. Grimshaw, The Political Economy of Machine Politics, 4 Corruption and Reform 15, 30 (1989) (reporting that Mayor Daley "sacked" a black committeeman for briefly withholding support for a school board nominee whom civil rights activists opposed)).

Of course, we have firmly rejected any requirement that aggrieved employees "prove that they, or other employees, have been coerced into changing, either actually or ostensibly, their political allegiance." *Branti,* 445 U.S. 507, 517, 100 S.Ct. 1287, 1294, 63 L.Ed.2d 574 (1980) . What is at issue in these cases is not whether an employee is actually coerced or merely influenced, but whether the attempt to obtain his or her support through "party discipline" is legitimate. To apply the relevant question to Justice SCALIA's example, *post,* at 2755-2756 the person who attempts to bribe a public official is guilty of a crime regardless of whether the official submits to temptation; likewise, a political party's attempt to maintain loyalty through allocation of government resources is improper regardless of whether any employee capitulates.

FN7. I use the term "misuse" deliberately because the entire rationale for patronage hiring as an economic incentive for partisan political activity rests on the assumption that the patronage employee filling a government position must be paid a premium to reward him for his partisan services. Without such a premium, the economic incentive rationale on which Justice SCALIA relies does not exist. It has been clear to Congress and this Court for over a century that refusal to contribute "may lead to putting good men out of the service, liberal payments may be made the ground for keeping poor ones in," and "the government itself may be made to furnish indirectly the money to defray the expenses of keeping the political party in power that happens to have for the time being the control of the public patronage." *Ex parte Curtis,* 106 U.S. 371, 375, 1 S.Ct. 381, 385, 27 L.Ed. 232 (1882) (upholding constitutionality of Act of Aug. 15, 1876, § 6, ch. 287, 19 Stat. 169, prohibiting nonappointed federal employees from requesting or receiving any thing of value for political purposes).

Petitioners Rutan and Taylor both allege that they are more qualified than the persons who were promoted over them.

The only systemic consideration permissible in these circumstances is not that of the controlling party, but that of the aggregate of burdened indi-

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viduals. By impairing individuals' freedoms of belief and association, unfettered patronage practices undermine the "free functioning of the electoral process." *Elrod,* 427 U.S., at 356, 96 S.Ct., at 2681. As I wrote in 1972:

> "Indeed, when numbers are considered, it is appropriate not merely to consider the rights of a particular janitor who may have been offered a bribe from the public treasury to obtain his political surrender, but also the impact on the body politic as a whole when the free political choice of millions of public servants is inhibited or manipulated by the selective award of public benefits. While the patronage system is defended in the name of democratic tradition, its paternalistic impact on the political *92 process is actually at war with the deeper traditions of democracy embodied in the First Amendment." *Lewis,* 473 F.2d, at 576.[FN8]

FN8. A decade later, in *Anderson v. Celebrezze,* 460 U.S., at 794, 103 S.Ct., at 1572, this Court decided that a law burdening independent candidates, by "limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group," would burden associational choices and thereby "threaten to reduce diversity and competition in the marketplace of ideas." We concluded that "the primary values protected by the First Amendment-'a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,' *New York Times Co. v. Sullivan,* 376 U.S. 254, 270, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964)-are served when election campaigns are not monopolized by the existing political parties." *Ibid.*

The tradition that is relevant in these cases is the American commitment to examine and reexamine past and present practices against the basic principles embodied in the Constitution. The inspirational command by our President in 1961 is entirely consistent with that tradition: "Ask not what your country can do for you-ask what you can do for your country." These cases involve a contrary command: "Ask not what job applicants can do for the State-ask what they can do for our party." Whatever traditional support may remain for a command of that ilk, it is plainly an illegitimate excuse for the practices rejected by the Court today.

Justice SCALIA, with whom The Chief Justice and Justice KENNEDY join, and with whom Justice O'CONNOR joins as to Parts II and III, dissenting.

Today the Court establishes the constitutional principle that party membership is not a permissible factor in the dispensation of government jobs, except those jobs for the performance of which party affiliation is an "appropriate requirement." *Ante,* at 2732. It is hard to say precisely (or even generally) what that exception means, but if there is any category of jobs for whose performance party affiliation is not an appropriate requirement, it is the job of being a judge, where *93 partisanship is not only unneeded but positively undesirable. It is, however, **2747 rare that a federal administration of one party will appoint a judge from another party. And it has always been rare. See *Marbury v. Madison,* 1 Cranch 137, 2 L.Ed. 60 (1803). Thus, the new principle that the Court today announces will be enforced by a corps of judges (the Members of this Court included) who overwhelmingly owe their office to its violation. Something must be wrong here, and I suggest it is the Court.

The merit principle for government employment is probably the most favored in modern America, having been widely adopted by civil service legislation at both the state and federal levels. But there is another point of view, described in characteristically Jacksonian fashion by an eminent practitioner of the patronage system, George Washington Plunkitt of Tammany Hall:

> "I ain't up on sillygisms, but I can give you some arguments that nobody can answer.

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"First, this great and glorious country was built up by political parties; second, parties can't hold together if their workers don't get offices when they win; third, if the parties go to pieces, the government they built up must go to pieces, too; fourth, then there'll be hell to pay." W. Riordon, Plunkitt of Tammany Hall 13 (1963).

It may well be that the Good Government Leagues of America were right, and that Plunkitt, James Michael Curley, and their ilk were wrong; but that is not entirely certain. As the merit principle has been extended and its effects increasingly felt; as the Boss Tweeds, the Tammany Halls, the Pendergast Machines, the Byrd Machines, and the Daley Machines have faded into history; we find that political leaders at all levels increasingly complain of the helplessness of elected government, unprotected by "party discipline," before the demands of small and cohesive interest groups.

*94 The choice between patronage and the merit principle-or, to be more realistic about it, the choice between the desirable mix of merit and patronage principles in widely varying federal, state, and local political contexts-is not so clear that I would be prepared, as an original matter, to chisel a single, inflexible prescription into the Constitution. Fourteen years ago, in *Elrod v. Burns,* 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), the Court did that. *Elrod* was limited however, as was the later decision of *Branti v. Finkel,* 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980), to patronage firings, leaving it to state and federal legislatures to determine when and where political affiliation could be taken into account in hirings and promotions. Today the Court makes its constitutional civil service reform absolute, extending to all decisions regarding government employment. Because the First Amendment has never been thought to require this disposition, which may well have disastrous consequences for our political system, I dissent.

I

The restrictions that the Constitution places upon the government in its capacity as lawmaker, *i.e.,* as the regulator of private conduct, are not the same as the restrictions that it places upon the government in its capacity as employer. We have recognized this in many contexts, with respect to many different constitutional guarantees. Private citizens perhaps cannot be prevented from wearing long hair, but policemen can. *Kelley v. Johnson,* 425 U.S. 238, 247, 96 S.Ct. 1440, 1445, 47 L.Ed.2d 708 (1976). Private citizens cannot have their property searched without probable cause, but in many circumstances government employees can. *O'Connor v. Ortega,* 480 U.S. 709, 723, 107 S.Ct. 1492, 1500, 94 L.Ed.2d 714 (1987) (plurality opinion); *id.,* at 732, 107 S.Ct., at 1505 (SCALIA, J., concurring in judgment). Private citizens cannot be punished for refusing to provide the government information that may incriminate them, but government employees can be dismissed when the incriminating information that they refuse to provide relates to the performance of their jobs. *Gardner v.* **2748 *Broderick,* 392 *95 U.S. 273, 277-278, 88 S.Ct. 1913, 1915-1916, 20 L.Ed.2d 1082 (1968). With regard to freedom of speech in particular: Private citizens cannot be punished for speech of merely private concern, but government employees can be fired for that reason. *Connick v. Myers,* 461 U.S. 138, 147, 103 S.Ct. 1684, 1690, 75 L.Ed.2d 708 (1983). Private citizens cannot be punished for partisan political activity, but federal and state employees can be dismissed and otherwise punished for that reason. *Public Workers v. Mitchell,* 330 U.S. 75, 101, 67 S.Ct. 556, 570, 91 L.Ed. 754 (1947); *Civil Service Comm'n v. Letter Carriers,* 413 U.S. 548, 556, 93 S.Ct. 2880, 2886, 37 L.Ed.2d 796 (1973); *Broadrick v. Oklahoma,* 413 U.S. 601, 616-617, 93 S.Ct. 2908, 2918-2919, 37 L.Ed.2d 830 (1973).

Once it is acknowledged that the Constitution's prohibition against laws "abridging the freedom of speech" does not apply to laws enacted in the government's capacity as employer in the same way that it does to laws enacted in the government's capacity as regulator of private conduct, it may some-

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times be difficult to assess what employment practices are permissible and what are not. That seems to me not a difficult question, however, in the present context. The provisions of the Bill of Rights were designed to restrain transient majorities from impairing long-recognized personal liberties. They did not create by implication novel individual rights overturning accepted political norms. Thus, when a practice not expressly prohibited by the text of the Bill of Rights bears the endorsement of a long tradition of open, widespread, and unchallenged use that dates back to the beginning of the Republic, we have no proper basis for striking it down.[FN1] Such a venerable and accepted tradition is not to *96 be laid on the examining table and scrutinized for its conformity to some abstract principle of First Amendment adjudication devised by this Court. To the contrary, such traditions are themselves the stuff out of which the Court's principles are to be formed. They are, in these uncertain areas, the very points of reference by which the legitimacy or illegitimacy of *other* practices are to be figured out. When it appears that the latest "rule," or "three-part test," or "balancing test" devised by the Court has placed us on a collision course with such a landmark practice, it is the former that must be recalculated by us, and not the latter that must be abandoned by our citizens. I know of no other way to formulate a constitutional jurisprudence that reflects, as it should, the principles adhered to, over time, by the American people, rather than those favored by the personal (and necessarily shifting) philosophical dispositions of a majority of this Court.

FN1. The customary invocation of *Brown v. Board of Education,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), as demonstrating the dangerous consequences of this principle, see *ante,* at 2741 (STEVENS, J., concurring), is unsupportable. I argue for the role of tradition in giving content only to *ambiguous* constitutional text; no tradition can supersede the Constitution. In my view the Fourteenth Amendment's requirement of "equal protection of the laws," combined with the Thirteenth Amendment's abolition of the institution of black slavery, leaves no room for doubt that laws treating people differently because of their race are invalid. Moreover, even if one does not regard the Fourteenth Amendment as crystal clear on this point, a tradition of *unchallenged* validity did not exist with respect to the practice in *Brown.* To the contrary, in the 19th century the principle of "separate-but-equal" had been vigorously opposed on constitutional grounds, litigated up to this Court, and upheld only over the dissent of one of our historically most respected Justices. See *Plessy v. Ferguson,* 163 U.S. 537, 555-556, 16 S.Ct. 1138, 1145, 41 L.Ed. 256 (1896) (Harlan, J., dissenting).

I will not describe at length the claim of patronage to landmark status as one of our accepted political traditions. Justice Powell discussed it in his dissenting opinions in *Elrod* and *Branti. Elrod, supra,* 427 U.S., at 378-379, 96 S.Ct., at 2692; *Branti, supra,* 445 U.S., at 522, n. 1, 100 S.Ct., at 1296, n. 1. Suffice it to say that patronage was, without any thought that it could be unconstitutional, a basis for government employment from the **2749 earliest days of the Republic until *Elrod*- and has continued unabated *since Elrod,* to the extent still permitted by that unfortunate decision. See, *e.g.,* D. Price, Bringing Back the Parties 24, 32 (1984); Gardner, A Theory of the Spoils System, 54 Public Choice 171, 181 (1987); Toinet & Glenn, Clientelism and Corruption in the "Open" Society: The Case of the United States, in Private Patronage and Public Power 193, 202 (C. Clapham ed. *97 1982). Given that unbroken tradition regarding the application of an ambiguous constitutional text, there was in my view no basis for holding that patronage-based dismissals violated the First Amendment-much less for holding, as the Court does today, that even patronage hiring does so.[FN2]

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FN2. Justice STEVENS seeks to counteract this tradition by relying upon the supposed "unequivocal repudiation" of the right-privilege distinction. *Ante,* at 2742. That will not do. If the right-privilege distinction was once used to explain the practice, and if that distinction is to be repudiated, then one must simply devise some other theory to explain it. The order of precedence is that a constitutional theory must be wrong if its application contradicts a clear constitutional tradition; not that a clear constitutional tradition must be wrong if it does not conform to the current constitutional theory. On Justice STEVENS' view of the matter, this Court examines a historical practice, endows it with an intellectual foundation, and later, by simply undermining that foundation, relegates the constitutional tradition to the dustbin of history. That is not how constitutional adjudication works. Cf. *Burnham v. Superior Court of California, Marin County,* 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990) (opinion of SCALIA, J.). I am not sure, in any event, that the right-privilege distinction has been as unequivocally rejected as Justice STEVENS supposes. It has certainly been recognized that the fact that the government need not confer a certain benefit does not mean that it can attach any conditions whatever to the conferral of that benefit. But it remains true that certain conditions can be attached to benefits that cannot be imposed as prescriptions upon the public at large. If Justice STEVENS chooses to call this something other than a right-privilege distinction, that is fine and good-but it is in any case what explains the nonpatronage restrictions upon federal employees that the Court continues to approve, and there is no reason why it cannot support patronage restrictions as well.

II

Even accepting the Court's own mode of analysis, however, and engaging in "balancing" a tradition that ought to be part of the scales, *Elrod, Branti,* and today's extension of them seem to me wrong.

A

The Court limits patronage on the ground that the individual's interest in uncoerced belief and expression outweighs the systemic interests invoked to justify the practice. *Ante,* *98 at 2734-2735. The opinion indicates that the government may prevail only if it proves that the practice is "narrowly tailored to further vital government interests." *Ante,* at 2736.

That strict-scrutiny standard finds no support in our cases. Although our decisions establish that government employees do not lose all constitutional rights, we have consistently applied a lower level of scrutiny when "the governmental function operating ... [is] not the power to regulate or license, as lawmaker, an entire trade or profession, or to control an entire branch of private business, but, rather, as proprietor, to manage [its] internal operatio [ns]...." *Cafeteria & Restaurant Workers v. McElroy,* 367 U.S. 886, 896, 81 S.Ct. 1743, 1749, 6 L.Ed.2d 1230 (1961). When dealing with its own employees, the government may not act in a manner that is "patently arbitrary or discriminatory," *id.,* at 898, 81 S.Ct., at 1750, but its regulations are valid if they bear a "rational connection" to the governmental end sought to be served, *Kelley v. Johnson,* 425 U.S., at 247, 96 S.Ct., at 1446.

In particular, restrictions on speech by public employees are not judged by the test applicable to similar restrictions on speech by nonemployees. We have said that "[a] governmental employer may subject its employees to such special restrictions on free expression as are reasonably necessary to promote effective government." **2750*Brown v. Glines,* 444 U.S. 348, 356, n. 13, 100 S.Ct. 594, 600, n. 13, 62 L.Ed.2d 540 (1980). In *Public Workers v. Mitchell,* 330 U.S., at 101, 67 S.Ct., at 570

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upholding provisions of the Hatch Act which prohibit political activities by federal employees, we said that "it is not necessary that the act regulated be anything more than an act reasonably deemed by Congress to interfere with the efficiency of the public service." We reaffirmed *Mitchell* in *Civil Service Comm'n v. Letter Carriers,* 413 U.S., at 556, 93 S.Ct., at 2886, over a dissent by Justice Douglas arguing against application of a special standard to Government employees, except insofar as their "job performance" is concerned, *id.,* at 597, 93 S.Ct., at 2906. We did not say that the Hatch Act was narrowly tailored to meet *99 the government's interest, but merely deferred to the judgment of Congress, which we were not "in any position to dispute." *Id.,* at 567, 93 S.Ct., at 2891. Indeed, we recognized that the Act was not indispensably necessary to achieve those ends, since we repeatedly noted that "Congress at some time [may] come to a different view." *Ibid.;* see also *id.,* at 555, 564, 93 S.Ct., at 2890. In *Broadrick v. Oklahoma,* 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973), we upheld similar restrictions on state employees, though directed "at political expression which if engaged in by private persons would plainly be protected by the First and Fourteenth Amendments," *id.,* at 616, 93 S.Ct., at 2918.

To the same effect are cases that specifically concern adverse employment action taken against public employees because of their speech. In *Pickering v. Board of Education of Township High School Dist.,* 391 U.S. 563, 568, 88 S.Ct. 1731, 1734, 20 L.Ed.2d 811 (1968), we recognized:

> "[T]he State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees."

Because the restriction on speech is more attenuated when the government conditions employment than when it imposes criminal penalties, and because "government offices could not function if every employment decision became a constitutional matter," *Connick v. Myers,* 461 U.S., at 143, 103 S.Ct., at 1688, we have held that government employment decisions taken on the basis of an employee's speech do not "abridg[e] the freedom of speech," U.S. Const., Amdt. 1, merely because they fail *100 the narrow-tailoring and compelling-interest tests applicable to direct regulation of speech. We have not subjected such decisions to strict scrutiny, but have accorded "a wide degree of deference to the employer's judgment" that an employee's speech will interfere with close working relationships. 461 U.S., at 152, 103 S.Ct., at 1692.

When the government takes adverse action against an employee on the basis of his political affiliation (an interest whose constitutional protection is derived from the interest in speech), the same analysis applies. That is why both the *Elrod* plurality, 427 U.S., at 359, 96 S.Ct., at 2682, and the opinion concurring in the judgment, *id.,* at 375, 96 S.Ct., at 2690, as well as *Branti,* 445 U.S., at 514-515, 100 S.Ct., at 1292-1293, and the Court today, *ante,* at 2735-2736, rely on *Perry v. Sindermann,* 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972), a case that applied the test announced in *Pickering,* not the strict-scrutiny test applied to restrictions imposed on the public at large. Since the government may dismiss an employee for political *speech* "reasonably deemed by Congress to interfere with the efficiency of the public service," *Public Workers v. Mitchell, supra,* 330 U.S., at 101, 67 S.Ct., at 570, it follows, *a fortiori,* that the government may dismiss an employee for political *affiliation* if "reasonably necessary to promote effective government." **2751 *Brown v. Glines, supra,* 444 U.S., at 356, n. 13, 100 S.Ct., at 600, n. 13.

While it is clear from the above cases that the normal "strict scrutiny" that we accord to government regulation of speech is not applicable in this

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field, [FN3] the precise test that **2752 replaces*101 it is not so clear; we have used various formulations. The one that appears in the case dealing with an employment practice closest in its effects to patronage is whether the *102 practice could be "reasonably deemed" by the enacting legislature to further a legitimate goal. *Public Workers v. Mitchell,* 330 U.S., at 101, 67 S.Ct., at 570. For purposes of my ensuing discussion, however, I will apply a less permissive standard that seems more in accord with our general "balancing" test: Can the governmental advantages of this employment practice reasonably be deemed to outweigh its "coercive" effects?

FN3. The Court calls our description of the appropriate standard of review "questionable," and suggests that these cases applied strict scrutiny ("even *were* Justice SCALIA correct that less-than-strict scrutiny is appropriate"). *Ante,* at 2735, n. 4 (emphasis added). This suggestion is incorrect, does not aid the Court's argument, and if accepted would eviscerate the strict-scrutiny standard. It is incorrect because even a casual perusal of the cases reveals that the governmental actions were sustained, not because they were shown to be "narrowly tailored to further vital government interests," *ante,* at 2736, but because they were "reasonably" deemed necessary to promote effective government. It does not aid the Court's argument, moreover, because *whatever* standard those cases applied must be applied here, and if the asserted interests in patronage are as weighty as those proffered in the previous cases, then *Elrod* and *Branti* were wrongly decided. It eviscerates the standard, finally, because if the practices upheld in those cases survived strict scrutiny, then the so-called "strict-scrutiny" test means nothing. Suppose a State made it unlawful for an employee of a privately owned nuclear powerplant to criticize his employer. Can there be any doubt that we would reject out of hand the State's argument that the statute was justified by the compelling interest in maintaining the appearance that such employees are operating nuclear plants properly, so as to maintain public confidence in the plants' safety? But cf. *Civil Service Comm'n v. Letter Carriers,* 413 U.S. 548, 565, 93 S.Ct. 2880, 2890, 37 L.Ed.2d 796 (1973) (Hatch Act justified by need for Government employees to "appear to the public to be avoiding [political partiality], if confidence in the system of representative Government is not to be eroded"). Suppose again that a State prohibited a private employee from speaking on the job about matters of private concern. Would we even hesitate before dismissing the State's claim that the compelling interest in fostering an efficient economy overrides the individual's interest in speaking on such matters? But cf. *Connick v. Myers,* 461 U.S. 138, 147, 103 S.Ct. 1684, 1690, 75 L.Ed.2d 708 (1983) ("[W]hen a public employee speaks ... upon matters only of personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee's behavior"). If the Court thinks that strict scrutiny is appropriate in all these cases, then it should forthrightly admit that *Public Workers v. Mitchell,* 330 U.S. 75, 67 S.Ct. 556, 91 L.Ed. 754 (1947) , *Letter Carriers, supra, Pickering v. Board of Education of Township High School Dist.,* 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968), *Connick, supra,* and similar cases were mistaken and should be overruled; if it rejects that course, then it should admit that those cases applied, as they said they did, a reasonableness test.

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The Court's further contention that these cases are limited to the "interests that the government has in its capacity as an employer," *ante,* at 2735, n. 4, as distinct from its interests "in the structure and functioning of society as a whole," *ibid.,* is neither true nor relevant. Surely a principal reason for the statutes that we have upheld preventing political activity by government employees-and indeed the *only* substantial reason, with respect to those employees who are permitted to be hired and fired on a political basis-is to prevent the party in power from obtaining what is considered an unfair advantage in political campaigns. That is precisely the type of governmental interest at issue here. But even if the Court were correct, I see no reason in policy or principle why the government would be limited to furthering *only* its interests "as an employer." In fact, we have seemingly approved the furtherance of broader governmental interests through employment restrictions. In *Hampton v. Mow Sun Wong,* 426 U.S. 88, 96 S.Ct. 1895, 48 L.Ed.2d 495 (1976), we held unlawful a Civil Service Commission regulation prohibiting the hiring of aliens on the ground that the Commission lacked the requisite authority. We were willing, however, to "assume ... that if the Congress or the President had expressly imposed the citizenship requirement, it would be justified by the national interest in providing an incentive for aliens to become naturalized, or possibly even as providing the President with an expendable token for treaty negotiating purposes." *Id.,* at 105, 96 S.Ct., at 1906. Three months after our opinion, the President adopted the restriction by Executive Order. Exec.Order No. 11935, 3 CFR 146 (1976 Comp.). On remand, the lower courts denied the *Mow Sun Wong* plaintiffs relief on the basis of this new Executive Order and relying upon the interest in providing an incentive for citizenship. *Mow Sun Wong v. Hampton,* 435 F.Supp. 37 (ND Cal.1977), aff'd, 626 F.2d 739 (CA9 1980). We denied certiorari *sub nom. Lum v. Campbell,* 450 U.S. 959, 101 S.Ct. 1419, 67 L.Ed.2d 384 (1981). In other cases, the lower federal courts have uniformly reached the same result. See, *e.g., Jalil v. Campbell,* 192 U.S.App.D.C. 4, 7, n. 3, 590 F.2d 1120, 1123, n. 3 (1978); *Vergara v. Hampton,* 581 F.2d 1281 (CA7 1978), cert. denied, 441 U.S. 905, 99 S.Ct. 1993, 60 L.Ed.2d 373 (1979); *Santin Ramos v. United States Civil Service Comm'n,* 430 F.Supp. 422 (PR 1977) (three-judge court).

B

Preliminarily, I may observe that the Court today not only declines, in this area replete with constitutional ambiguities, to give the clear and continuing tradition of our people the *dispositive* effect I think it deserves, but even declines to give it substantial weight in the balancing. That is contrary to what the Court has done in many other contexts. In evaluating*103 so-called "substantive due process" claims we have examined our history and tradition with respect to the asserted right. See, *e.g., Michael H. v. Gerald D.,* 491 U.S. 110, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989); *Bowers v. Hardwick,* 478 U.S. 186, 192-194, 106 S.Ct. 2841, 2844-2846, 92 L.Ed.2d 140 (1986). In evaluating claims that a particular procedure violates the Due Process Clause we have asked whether the procedure is traditional. See, *e.g., Burnham v. Superior Court of California, Marin County,* 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990). And in applying the Fourth Amendment's reasonableness test we have looked to the history of judicial and public acceptance of the type of search in question. See, *e.g., Camara v. Municipal Court of San Francisco,* 387 U.S. 523, 537, 87 S.Ct. 1727, 1735, 18 L.Ed.2d 930

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(1967). See also *Press-Enterprise Co. v. Superior Court of California, Riverside County,* 478 U.S. 1, 8, 106 S.Ct. 2735, 2740, 92 L.Ed.2d 1 (1986) (tradition of accessibility to judicial proceedings implies judgment of experience that individual's interest in access outweighs government's interest in closure); *Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555, 589, 100 S.Ct. 2814, 2834, 65 L.Ed.2d 973 (1980) (BRENNAN, J., concurring in judgment) ("Such a tradition [of public access] commands respect in part because the Constitution carries the gloss of history"); *Walz v. Tax Comm'n of New York City,* 397 U.S. 664, 678, 90 S.Ct. 1409, 1416, 25 L.Ed.2d 697 (1970) ("unbroken practice of according the [property tax] exemption to churches" demonstrates that it does not violate Establishment Clause).

But even laying tradition entirely aside, it seems to me our balancing test is amply met. I assume, as the Court's opinion assumes, that the balancing is to be done on a generalized basis, and not case by case. The Court holds that the governmental benefits of patronage cannot reasonably be thought to outweigh its "coercive" effects (even the lesser "coercive" effects of patronage hiring as opposed to patronage firing) not merely in 1990 in the State of Illinois, but at any time in any of the numerous political subdivisions of this vast country. It seems to me that that categorical pronouncement reflects a naive vision of politics and an inadequate appreciation of the systemic effects of patronage in promoting political stability*104 and facilitating the social and political integration of previously powerless groups.

The whole point of my dissent is that the desirability of patronage is a policy question to be decided by the people's representatives; I do not mean, therefore, to endorse that system. But in order to demonstrate that a legislature could reasonably determine that its benefits outweigh its "coercive" effects, I must describe those benefits as the proponents of patronage see them: As Justice Powell discussed at length in his *Elrod* dissent, patronage stabilizes political parties and prevents excessive political fragmentation-both of which are results in which States have a strong governmental interest. **2753 Party strength requires the efforts of the rank and file, especially in "the dull periods between elections," to perform such tasks as organizing precincts, registering new voters, and providing constituent services. *Elrod,* 427 U.S., at 385, 96 S.Ct., at 2695 (dissenting opinion). Even the most enthusiastic supporter of a party's program will shrink before such drudgery, and it is folly to think that ideological conviction alone will motivate sufficient numbers to keep the party going through the off years. "For the most part, as every politician knows, the hope of some reward generates a major portion of the local political activity supporting parties." *Ibid.* Here is the judgment of one such politician, Jacob Arvey (best known as the promoter of Adlai Stevenson): Patronage is " 'a necessary evil if you want a strong organization, because the patronage system permits of discipline, and without discipline, there's no party organization.' " Quoted in M. Tolchin & S. Tolchin, To the Victor 36 (1971). A major study of the patronage system describes the reality as follows:

> "[A]lthough men have many motives for entering political life ... the vast underpinning of both major parties is made up of men who seek practical rewards. Tangible advantages constitute the unifying thread of most successful political practitioners" *Id.,* at 22.
>
> *105 "With so little patronage cement, party discipline is relatively low; the rate of participation and amount of service the party can extract from [Montclair] county committeemen are minuscule compared with Cook County. The party considers itself lucky if 50 percent of its committeemen show up at meetings-even those labeled 'urgent'-while even lower percentages turn out at functions intended to produce crowds for visiting candidates." *Id.,* at 123.

See also W. Grimshaw, The Political Economy of Machine Politics, 4 Corruption and Reform 15,

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30 (1989); G. Pomper, Voters, Elections, and Parties 255 (1988); Wolfinger, Why Political Machines Have Not Withered Away and Other Revisionist Thoughts, 34 J. Politics 365, 384 (1972).

The Court simply refuses to acknowledge the link between patronage and party discipline, and between that and party success. It relies (as did the plurality in *Elrod, supra,* at 369, n. 23, 96 S.Ct., at 2688, n. 23) on a single study of a rural Pennsylvania county by Professor Sorauf, *ante,* at 2738-a work that has been described as "more persuasive about the ineffectuality of Democratic leaders in Centre County than about the generalizability of [its] findings." Wolfinger, *supra,* at 384, n. 39. It is unpersuasive to claim, as the Court does, that party workers are obsolete because campaigns are now conducted through media and other money-intensive means. *Ante,* at 2737. Those techniques have supplemented but not supplanted personal contacts. See Price, Bringing Back the Parties, at 25. Certainly they have not made personal contacts unnecessary in campaigns for the lower level offices that are the foundations of party strength, nor have they replaced the myriad functions performed by party regulars not directly related to campaigning. And to the extent such techniques have replaced older methods of campaigning (partly in response to the limitations the Court has placed on patronage), the political system is not clearly better off. See *Elrod, supra,* at 384, 96 S.Ct., at 2694 (Powell, J., dissenting); *Branti,* 445 *106 U.S., at 528, 100 S.Ct., at 1300 (Powell, J., dissenting). Increased reliance on money-intensive campaign techniques tends to entrench those in power much more effectively than patronage-but without the attendant benefit of strengthening the party system. A challenger can more easily obtain the support of party workers (who can expect to be rewarded even if the candidate loses-if not this year, then the next) than the financial support of political action committees (which will generally support incumbents, who are likely to prevail).

It is self-evident that eliminating patronage will significantly undermine party discipline;**2754 and that as party discipline wanes, so will the strength of the two-party system. But, says the Court, "[p]olitical parties have already survived the substantial decline in patronage employment practices in this century." *Ante,* at 2737. This is almost verbatim what was said in *Elrod,* see 427 U.S., at 369, 96 S.Ct., at 2687. Fourteen years later it seems much less convincing. Indeed, now that we have witnessed, in 18 of the last 22 years, an Executive Branch of the Federal Government under the control of one party while the Congress is entirely or (for two years) partially within the control of the other party; now that we have undergone the most recent federal election, in which 98% of the incumbents, of whatever party, were returned to office; and now that we have seen elected officials changing their political affiliation with unprecedented readiness, Washington Post, Apr. 10, 1990, p. A1, the statement that "political parties have already survived" has a positively whistling-in-the-graveyard character to it. Parties have assuredly survived-but as what? As the forges upon which many of the essential compromises of American political life are hammered out? Or merely as convenient vehicles for the conducting of national Presidential elections?

The patronage system does not, of course, merely foster political parties in general; it fosters the two-party system in particular. When getting a job, as opposed to effectuating a particular substantive policy, is an available incentive for *107 party workers, those attracted by that incentive are likely to work for the party that has the best chance of displacing the "ins," rather than for some splinter group that has a more attractive political philosophy but little hope of success. Not only is a two-party system more likely to emerge, but the differences between those parties are more likely to be moderated, as each has a relatively greater interest in appealing to a majority of the electorate and a relatively lesser interest in furthering philosophies or programs that are far from the mainstream. The stabilizing effects of such a system are obvious. See

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Toinet & Glenn, Clientelism and Corruption in the "Open" Society, at 208. In the context of electoral laws we have approved the States' pursuit of such stability, and their avoidance of the "splintered parties and unrestrained factionalism [that] may do significant damage to the fabric of government." *Storer v. Brown,* 415 U.S. 724, 736, 94 S.Ct. 1274, 1282, 39 L.Ed.2d 714 (1974) (upholding law disqualifying persons from running as independents if affiliated with a party in the past year).

Equally apparent is the relatively destabilizing nature of a system in which candidates cannot rely upon patronage-based party loyalty for their campaign support, but must attract workers and raise funds by appealing to various interest groups. See Tolchin & Tolchin, To the Victor, at 127-130. There is little doubt that our decisions in *Elrod* and *Branti,* by contributing to the decline of party strength, have also contributed to the growth of interest-group politics in the last decade. See, *e.g.,* Fitts, The Vice of Virtue, 136 U.Pa.L.Rev. 1567, 1603-1607 (1988). Our decision today will greatly accelerate the trend. It is not only campaigns that are affected, of course, but the subsequent behavior of politicians once they are in power. The replacement of a system firmly based in party discipline with one in which each office-holder comes to his own accommodation with competing interest groups produces "a dispersion of political influence that may inhibit a *108 political party from enacting its programs into law." *Branti, supra,* at 531, 100 S.Ct., at 1301 (Powell, J., dissenting).[FN4]

> FN4. Justice STEVENS discounts these systemic effects when he characterizes patronage as fostering partisan, rather than public, interests. *Ante,* at 2744. But taking Justice STEVENS at his word, one wonders why patronage can *ever* be an "appropriate requirement for the position involved," *ante,* at 2732.

Patronage, moreover, has been a powerful means of achieving the social and political **2755 integration of excluded groups. See, *e.g., Elrod,* 427 U.S. at 379, 96 S.Ct. at 2692 (Powell, J., dissenting); Cornwell, Bosses, Machines and Ethnic Politics, in Ethnic Group Politics 190, 195-197 (H. Bailey, Jr., & E. Katz eds. 1969). By supporting and ultimately dominating a particular party "machine," racial and ethnic minorities have-on the basis of their politics rather than their race or ethnicity-acquired the patronage awards the machine had power to confer. No one disputes the historical accuracy of this observation, and there is no reason to think that patronage can no longer serve that function. The abolition of patronage, however, prevents groups that have only recently obtained political power, especially blacks, from following this path to economic and social advancement.

> " 'Every ethnic group that has achieved political power in American cities has used the bureaucracy to provide jobs in return for political support. It's only when Blacks begin to play the same game that the rules get changed. Now the use of such jobs to build political bases becomes an "evil" activity, and the city insists on taking the control back "downtown." ' " New York Amsterdam News, Apr. 1, 1978, p. A-4, quoted in Hamilton, The Patron-Recipient Relationship and Minority Politics in New York City, 94 Pol. Sci. Q. 211, 212 (1979).

While the patronage system has the benefits argued for above, it also has undoubted disadvantages. It facilitates financial corruption, such as salary kickbacks and partisan political activity on government-paid time. It reduces the efficiency *109 of government, because it creates incentives to hire more and less qualified workers and because highly qualified workers are reluctant to accept jobs that may only last until the next election. And, of course, it applies some greater or lesser inducement for individuals to join and work for the party in power.

To hear the Court tell it, this last is the greatest evil. That is not my view, and it has not historically been the view of the American people. Corruption and inefficiency, rather than abridgment of liberty,

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have been the major criticisms leading to enactment of the civil service laws-for the very good reason that the patronage system does not have as harsh an effect upon conscience, expression, and association as the Court suggests. As described above, it is the nature of the pragmatic, patronage-based, two-party system to build alliances and to suppress rather than foster ideological tests for participation in the division of political "spoils." What the patronage system ordinarily demands of the party worker is loyalty to, and activity on behalf of, the organization itself rather than a set of political beliefs. He is generally free to urge *within the organization* the adoption of any political position; but if that position is rejected he must vote and work for the party nonetheless. The diversity of political expression (other than expression of party loyalty) is channeled, in other words, to a different stage-to the contests for party endorsement rather than the partisan elections. It is undeniable, of course, that the patronage system entails some constraint upon the expression of views, particularly at the partisan-election stage, and considerable constraint upon the employee's right to associate with the other party. It greatly exaggerates these, however, to describe them as a general " 'coercion of belief,' " *ante,* at 2735, quoting *Branti,* 445 U.S., at 516, 100 S.Ct., at 1293; see also *ante,* at 2737; *Elrod, supra,* 427 U.S., at 355, 96 S.Ct., at 2681 (plurality opinion). Indeed, it greatly exaggerates them to call them "coercion" at all, since we generally make a distinction between inducement and compulsion. The public official *110 offered a bribe is not "coerced" to violate the law, and the private citizen offered a patronage job is not "coerced" to work for the party. In sum, I do not deny that the patronage system influences or redirects, perhaps to a substantial degree, individual political expression and political association. But like the many generations of Americans that have preceded us, I do not consider that **2756 a significant impairment of free speech or free association.

In emphasizing the advantages and minimizing the disadvantages (or at least minimizing one of the disadvantages) of the patronage system, I do not mean to suggest that that system is best. It may not always be; it may never be. To oppose our *Elrod-Branti* jurisprudence, one need not believe that the patronage system is *necessarily* desirable; nor even that it is always and everywhere *arguably* desirable; but merely that it is a political arrangement that may sometimes be a reasonable choice, and should therefore be left to the judgment of the people's elected representatives. The choice in question, I emphasize, is not just between patronage and a merit-based civil service, but rather among various combinations of the two that may suit different political units and different eras: permitting patronage hiring, for example, but prohibiting patronage dismissal; permitting patronage in most municipal agencies but prohibiting it in the police department; or permitting it in the mayor's office but prohibiting it everywhere else. I find it impossible to say that, always and everywhere, all of these choices fail our "balancing" test.

C

The last point explains why *Elrod* and *Branti* should be overruled, rather than merely not extended. Even in the field of constitutional adjudication, where the pull of *stare decisis* is at its weakest, see *Glidden Co. v. Zdanok,* 370 U.S. 530, 543, 82 S.Ct. 1459, 1469, 8 L.Ed.2d 671 (1962) (opinion of Harlan, J.), one is reluctant to depart from precedent. But when that precedent is not only wrong, not only recent, not only contradicted by a long prior *111 tradition, but also has proved unworkable in practice, then all reluctance ought to disappear. In my view that is the situation here. Though unwilling to leave it to the political process to draw the line between desirable and undesirable patronage, the Court has neither been prepared to rule that no such line exists (*i.e.,* that *all* patronage is unconstitutional) nor able to design the line itself in a manner that judges, lawyers, and public employees can understand. *Elrod* allowed patronage dismissals of persons in "policymaking" or "confidential" positions. 427 U.S., at 367, 96 S.Ct., at 2687 (plurality opinion); *id.,* at 375, 96 S.Ct., at 2690 (Stewart, J., concurring in judgment). *Branti* retreated from that for-

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mulation, asking instead "whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." 445 U.S., at 518, 100 S.Ct., at 1295. What that means is anybody's guess. The Courts of Appeals have devised various tests for determining when "affiliation is an appropriate requirement." See generally Martin, A Decade of *Branti* Decisions: A Government Officials' Guide to Patronage Dismissals, 39 Am.U.L.Rev. 11, 23-42 (1989). These interpretations of *Branti* are not only significantly at variance with each other; they are still so general that for most positions it is impossible to know whether party affiliation is a permissible requirement until a court renders its decision.

A few examples will illustrate the shambles *Branti* has produced. A city cannot fire a deputy sheriff because of his political affiliation, [FN5] but then again perhaps it can, [FN6] especially if he is called the "police captain." [FN7] A county cannot fire on that basis its attorney for the department of social *112 services, [FN8] nor **2757 its assistant attorney for family court, [FN9] but a city can fire its solicitor and his assistants, [FN10] or its assistant city attorney, [FN11] or its assistant state's attorney, [FN12] or its corporation counsel. [FN13] A city cannot discharge its deputy court clerk for his political affiliation, [FN14] but it can fire its legal assistant to the clerk on that basis. [FN15] Firing a juvenile court bailiff seems impermissible, [FN16] but it may be permissible if he is assigned permanently to a single judge. [FN17] A city cannot fire on partisan grounds its director of roads, [FN18] but it can fire the second in command of the water department. [FN19] A government cannot discharge for political reasons the senior vice president of its development bank, [FN20] but it can discharge the regional director of its rural housing administration. [FN21]

FN5. *Jones v. Dodson*, 727 F.2d 1329, 1338 (CA4 1984).

FN6. *McBee v. Jim Hogg County*, 730 F.2d 1009, 1014-1015 (CA5 1984) (en banc).

FN7. *Joyner v. Lancaster*, 553 F.Supp. 809, 818 (MDNC 1982), later proceeding, 815 F.2d 20, 24 (CA4), cert. denied, 484 U.S. 830, 108 S.Ct. 102, 98 L.Ed.2d 62 (1987).

FN8. *Layden v. Costello*, 517 F.Supp. 860, 862 (NDNY 1981).

FN9. *Tavano v. County of Niagara*, 621 F.Supp. 345, 349-350 (WDNY 1985), aff'd mem., 800 F.2d 1128 (CA2 1986).

FN10. *Ness v. Marshall*, 660 F.2d 517, 521-522 (CA3 1981); *Montaquila v. St. Cyr*, 433 A.2d 206, 211 (R.I.1981).

FN11. *Finkelstein v. Barthelemy*, 678 F.Supp. 1255, 1265 (ED La.1988).

FN12. *Livas v. Petka*, 711 F.2d 798, 800-801 (CA7 1983).

FN13. *Bavoso v. Harding*, 507 F.Supp. 313, 316 (SDNY 1980).

FN14. *Barnes v. Bosley*, 745 F.2d 501, 508 (CA8 1984), cert. denied, 471 U.S. 1017, 105 S.Ct. 2022, 85 L.Ed.2d 303 (1985).

FN15. *Bauer v. Bosley*, 802 F.2d 1058, 1063 (CA8 1986), cert. denied, 481 U.S. 1038, 107 S.Ct. 1976, 95 L.Ed.2d 816 (1987).

FN16. *Elrod v. Burns*, 427 U.S. 347, 351, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976).

FN17. *Balogh v. Charron*, 855 F.2d 356 (CA6 1988).

FN18. *Abraham v. Pekarski*, 537 F.Supp. 858, 865 (ED Pa.1982), aff'd in part and dism'd in part, 728 F.2d 167 (CA3), cert. denied, 467 U.S. 1242, 104 S.Ct. 3513, 82 L.Ed.2d 822 (1984).

FN19. *Tomczak v. Chicago*, 765 F.2d 633

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(CA7), cert. denied, 474 U.S. 946, 106 S.Ct. 313, 88 L.Ed.2d 289 (1985).

FN20. *De Choudens v. Government Development Bank of Puerto Rico,* 801 F.2d 5, 10 (CA1 1986) (en banc), cert. denied, 481 U.S. 1013, 107 S.Ct. 1886, 95 L.Ed.2d 494 (1987).

FN21. *Rosario Nevarez v. Torres Gaztambide,* 820 F.2d 525 (CA1 1987).

The examples could be multiplied, but this summary should make obvious that the "tests" devised to implement *Branti* have produced inconsistent and unpredictable results. That uncertainty undermines the purpose of both the nonpatronage*113 rule and the exception. The rule achieves its objective of preventing the "coercion" of political affiliation, see *supra,* at 2749, only if the employee is confident that he can engage in (or refrain from) political activities without risking dismissal. Since the current doctrine leaves many employees utterly in the dark about whether their jobs are protected, they are likely to play it safe. On the other side, the exception was designed to permit the government to implement its electoral mandate. *Elrod, supra,* at 367, 96 S.Ct., at 2687 (plurality opinion). But unless the government is fairly sure that dismissal is permitted, it will leave the politically uncongenial official in place, since an incorrect decision will expose it to lengthy litigation and a large damages award, perhaps even against the responsible officials personally.

This uncertainty and confusion are not the result of the fact that *Elrod,* and then *Branti,* chose the wrong "line." My point is that there is no right line-or at least no right line that can be nationally applied and that is known by judges. Once we reject as the criterion a long political tradition showing that party-based employment is entirely permissible, yet are unwilling (as any reasonable person must be) to replace it with the principle that party-based employment is entirely impermissible, we have left the realm of law and entered the domain of political science, seeking to ascertain when and where the undoubted benefits of political hiring and firing are worth its undoubted costs. The answer to that will vary from State to State, and indeed from city to city, even if one **2758 rejects out of hand (as the *Branti* line does) the benefits associated with party stability. Indeed, the answer will even vary from year to year. During one period, for example, it may be desirable for the manager of a municipally owned public utility to be a career specialist, insulated from the political system. During another, when the efficient operation of that utility or even its very existence has become a burning political issue, it may be desirable that he be hired and fired on a political basis. The appropriate "mix" of party-based *114 employment is a political question if there ever was one, and we should give it back to the voters of the various political units to decide, through civil service legislation crafted to suit the time and place, which mix is best.

III

Even were I not convinced that *Elrod* and *Branti* were wrongly decided, I would hold that they should not be extended beyond their facts, viz., actual discharge of employees for their political affiliation. Those cases invalidated patronage firing in order to prevent the "restraint it places on freedoms of belief and association." *Elrod,* 427 U.S., at 355, 96 S.Ct., at 2681 (plurality opinion); see also *id.,* at 357, 96 S.Ct., at 2682 (patronage "compels or restrains" and "inhibits" belief and association). The loss of one's current livelihood is an appreciably greater constraint than such other disappointments as the failure to obtain a promotion or selection for an uncongenial transfer. Even if the "coercive" effect of the former has been held always to outweigh the benefits of party-based employment decisions, the "coercive" effect of the latter should not be. We have drawn a line between firing and other employment decisions in other contexts, see *Wygant v. Jackson Bd. of Education,* 476 U.S. 267, 282-283, 106 S.Ct. 1842, 1851-1852, 90 L.Ed.2d 260 (1986) (plurality opinion), and should do so here as well.

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I would reject the alternative that the Seventh Circuit adopted in this case, which allows a cause of action if the employee can demonstrate that he was subjected to the "substantial equivalent of dismissal." 868 F.2d 943, 950, 954 (1989). The trouble with that seemingly reasonable standard is that it is so imprecise that it will multiply yet again the harmful uncertainty and litigation that *Branti* has already created. If *Elrod* and *Branti* are not to be reconsidered in light of their demonstrably unsatisfactory consequences, I would go no further than to allow a cause of action when the employee has lost his position, that is, his formal title and salary. That narrow ground alone is enough to resolve the constitutional*115 claims in the present case. Since none of the plaintiffs has alleged loss of his position because of affiliation,[FN22] I would affirm the Seventh Circuit's judgment insofar as it affirmed the dismissal of petitioner Moores' claim and would reverse the Seventh Circuit's judgment insofar as it reversed the dismissal of the claims of other petitioners and of cross-respondents.

FN22. Standefer and O'Brien do not allege that their political affiliation was the reason they were laid off, but only that it was the reason they were not recalled. Complaint ¶¶ 9, 21-22, App. to Respondents' Brief in Opposition; 641 F.Supp. 249, 256, 257 (CDIll.1986). Those claims are essentially identical to the claims of persons wishing to be hired; neither fall within the narrow rule of *Elrod* and *Branti* against patronage firing.

The Court's opinion, of course, not only declines to confine *Elrod* and *Branti* to dismissals in the narrow sense I have proposed, but, unlike the Seventh Circuit, even extends those opinions beyond "constructive" dismissals-indeed, even beyond adverse treatment of current employees-to all hiring decisions. In the long run there may be cause to rejoice in that extension. When the courts are flooded with litigation under that most unmanageable of standards *(Branti)* brought by that most persistent and tenacious of suitors (the disappointed office seeker) we may **2759 be moved to reconsider our intrusion into this entire field.

In the meantime, I dissent.

U.S.Ill.,1990.
Rutan v. Republican Party of Illinois
497 U.S. 62, 110 S.Ct. 2729, 111 L.Ed.2d 52, 58 USLW 4872, 5 IER Cases 673

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State of Illinois
Office of the Governor
Springfield 62706
July 17, 1990

James R. Thompson
Governor

Administrative Order
Number 1 (1990)

DIRECTIVE TO STATE AGENCIES REGARDING PERSONNEL PRACTICES

As you know, on Thursday, June 21, 1990, the United States Supreme Court issued its decision in Rutan v. Republican Party of Illinois, in which the Court held that promotion, transfer, recall and hiring decisions involving nonpolicymaking employees may not be decided on the basis of party affiliation and support. It has been the policy and practice of this administration to fill positions in the state only with individuals who are qualified for their positions. This will continue to be our policy.

We are reviewing the Supreme Court's decision with our attorneys to determine what actions we will take in the Rutan lawsuit in light of the Supreme Court's opinion. As part of our review of the decision, we set forth the following preliminary policies and procedures to ensure that all personnel decisions made by state agencies under the control of the Governor are in full compliance with the Supreme Court's decision:

1. All hiring and other personnel decisions shall be based on the merit and qualifications of the candidates. Where the selection of a candidate is made pursuant to an interview process, the agency must use uniform, job-related criteria and interview questions; the responses to such questions must be evaluated by reference to the requirements for the particular position and such evaluation must be thoroughly documented and must demonstrate the basis on which the selection was made.

2. No hiring or other personnel decisions - including promotions, transfers or recalls from layoff - may be decided on the basis of the candidate's party affiliation or support. Where practical the agency shall interview all qualified candidates on the eligibility list for the position being filled.

   In instances where it is not practical to do so, the method used by the agency for determining the individual candidates to be interviewed for a particular position shall be based on factors related to the merits of the individual applicants, length of time on the list, random selection or any other reasonable and impartial standard.

3. No investigation shall be performed into a candidate's political affiliation, including his or her voting record, financial support, and/or willingness to work for or donate to any political party. This information shall not be reviewed or considered at any point in the employment process.

4. In making personnel decisions, agencies may consider recommendations and referrals from any sources, including elected officials or representatives of any political party. However, referrals or recommendations may be considered only if they relate to the job qualifications of the particular candidate. The political affiliation of the candidate or of the elected official or party representative who provides the recommendation or referral may not be considered in making personnel decisions.

* * * * * * * * * * * * * * *

Please ensure that all officials and employees in your agency immediately become familiar with the terms of this order, and that they take all necessary steps to see that it is implemented. We will advise you as to any further changes in our personnel practices based upon our continuing review of the Supreme Court's decision. Thank you for your full cooperation.

State of Illinois
Office of the Governor
Springfield 62706
October 1 1990

James R. Thompson
Governor

Administrative Order
Number 2 (1990)

DIRECTIVE TO STATE AGENCIES
GUIDELINES FOR INTERVIEWING JOB CANDIDATES

The following employment policies and procedures regarding the interview process are intended to provide additional guidance and clarification to state agencies with respect to the following directive taken from the Governor's Administrative Order, Number 1, dated July 17, 1990.

> "1. All hiring and other personnel decisions shall be based on the merit and qualifications of the candidates. Where the selection of a candidate is made pursuant to an interview process, the agency must use uniform, job-related criteria and interview questions; the responses to such questions must be evaluated by reference to the requirements for the particular position and such evaluation must be thoroughly documented and must demonstrate the basis on which the selection was made."

This Directive contains principles which will assist agencies in assuring that their personnel policies and procedures relating to interviewing and selecting candidates for employment, promotion or other personnel transaction are in compliance with the requirements of the Rutan decision. Adherence to these principles will also result in the production of documentation necessary to defend against any claims that may arise under this ruling.

It is not the intent of this directive to mandate a single, specific set of personnel policies and procedures applicable to all agencies and all personnel transactions. Nor is it is the intent of this directive to mandate agency employment decisions, but to provide a consistent, fair and objective basis to assure compliance with Rutan as well as the employment of fully qualified persons.

Other employment policies such as Veterans Appointment Preference, Affirmative Action, and bargaining agreements will not be replaced by these policies and procedures. Additional screening requirements that the agency may impose prior to placing an individual on the payroll, promoting, transferring, or recalling an employee (e.g., background check, drug testing, residency) or other employment policies will not be restricted so long as they are not inconsistent with the procedures described herein. In addition, these policies and procedures address only the interview process, and do not apply where other types of selection devices are used.

I. SCOPE

A. Positions for which Principles are Relevant

The employment policies and procedures described in the following sections should be followed for all positions not specifically exempted from Rutan. A preliminary listing of those positions which, due to their policymaking or confidential nature, are clearly exempted from Rutan, will be published within the next two weeks. There will be many more positions which are not clearly exempt or non-exempt. Cataloguing and reviewing all these positions will be a time consuming effort which is too extensive to be undertaken in the time remaining to this administration. However, agencies wishing to make a determination regarding a particular position which is not included in this initial listing of exempted positions may submit the appropriate materials to CMS. In consultant with Ernst and Young and Jenner and Block, CMS will determine whether or not such a position is exempted from the requirements of the Rutan decision. In the absence of a determination that a position is exempted, this memorandum will apply to all positions.

B. Personnel Actions for which Principles are Relevant

The following principles apply to all employment decisions concerning individuals who are currently candidates to be interviewed for employment by the State or who are current State employees who are to be interviewed for promotion, transfer, or recall from layoff. Note that when the remainder of this document mentions "hiring" that this pertains to the interview activities involving both the hire of new employees and the promotion, transfer, or recall of current employees.

II. OBJECTIVES

Within the framework established by the Governor's directive, the State is committed to an interview process which will:

- Base employee selection on a candidate's ability to perform effectively on the job;
- Provide equal opportunity for State employment to all qualified job candidates;
- Prohibit the basing of employment, promotion, transfer, and recall decisions on partisan affiliation or support;
- Provide the hiring agency with maximum lawful discretion in making selection decisions; and
- Adequately document all employment, promotion, transfer and recall decisions.

III. THE INTERVIEW PROCESS

A. Approach

Following is a summary of minimum steps which should be part of an interview process to ensure compliance with the principles of the Governor's aforementioned Order. A summary of these steps is explained more fully below:

- Document and file hiring criteria for each position to be filled before conducting the interview, regardless of location:
  - Define and document major position responsibilities;
  - Define required knowledge, skills, abilities, and personal characteristics essential for competent performance in the job; and
  - Determine the relative weight of each hiring criterion.
- Develop a standardized interview questionnaire for each position to be filled to gather pertinent information about the candidate's knowledge, skill, abilities, and personal characteristics.
- Conduct a structured employment interview using a standardized interview questionnaire and note pertinent responses from the candidates that can be compared and evaluated in a consistent manner.
- Evaluate each candidate interviewed:
  - Rate the completed interview questionnaire;
  - Score each hiring criterion and note on an evaluation form;
  - Determine each candidate's overall score based on all hiring criteria; and
  - Rank all candidates interviewed by overall score.
- Document the interview process for all candidates interviewed.
- Document the employment decision.

- Maintain a chronological file of all interview questionnaires, evaluation and employment decision forms for each position when interviews were conducted.

B. Establish the Hiring Criteria

The reliability of a structured employment interview in screening qualified candidates is based on the identification of pre-established criteria for successful job performance which are required for entry into the position. Hiring criteria include major position responsibilities, knowledge, skills, abilities, and personal characteristics. As a general rule, the larger the number of qualified candidates, and/or additional identical positions to be filled, the higher the level of standardization required to assure the objectivity of the actual interviews.

The following approach to the development of hiring criteria assures that the criteria will be job-related, specific to the particular position, and essential to acceptable job performance. It is important to remember that hiring criteria which have not been pre-established should not be used as justification for the employment decision.

1. Define major position responsibilities. As a first step, this information should be obtained from existing job descriptions and class specifications. However, it is important to review this information with current job incumbents and/or the supervisor to assure its accuracy with respect to the specific position being filled. This step should produce up to ten major duties which serve as the primary areas of inquiry during the interview as well as the basis for identifying the knowledge, skills, abilities, and personal characteristics required to perform each major duty, and the subsequent development of specific interview questions. These duties should reflect the position as it is documented by the existing position description, not how it could be changed or improved.

2. Define required knowledge, skills, and abilities ("KSAs") and personal characteristics. Job-related KSAs and personal characteristics are derived from the position's major duties by focusing on such questions as "What would a candidate need to know to perform this duty?", "Can the required knowledge be obtained through formalized training or must it be learned through experience?", and "What types of behaviors are demonstrated by current incumbents who successfully perform this duty?". Once identified, the task of developing interview questions which are clearly and demonstrably job-related is greatly simplified.

   To the extent that the position's major duties, required KSAs and personal characteristics are too broadly defined, the agency may have difficulty developing questions as well as differentiating, and subsequently selecting, between qualified candidates. Conversely, being too specific may cause well qualified candidates to be eliminated from consideration. In summary, the hiring authority must be actively involved in the definition of a position's hiring criteria.

3. Weight to each hiring criteria. These weights should reflect the relative importance of each criteria to acceptable job performance.

4. Document the hiring criteria on a Candidate Evaluation Form. The hiring criteria for each position must be documented prior to the conduct of any interviews.

C. Develop the Interview Questionnaire

The interview questionnaire will be used to assess all candidates who are being interviewed for a particular position. Interview questions derived from the identified KSA's and personal characteristics should also, to the extent possible, reference the position's major duties.

1. Common types of hiring criteria and the development of related interview questions are briefly summarized as follows:

a. Knowledge and Experience - Assess whether the candidate has the required level of job knowledge that is both essential to job performance and constitutes the minimum which must be known prior to entering the position. Determine the extent to which the candidate has, in fact, ever performed the major duties of the position for which s/he is applying. These questions should deal with the more technical aspects of the position, or basic knowledge that is essential to enable the candidate to learn the job within the allotted probationary timeframe. Since this level of detailed information may be difficult to ascertain from the candidate's application, such questions are critical for those technically oriented positions where very specific skill and/or experience is required. During the actual interview, it is appropriate for the interviewer to probe further, as necessary, to evaluate the candidate's quality and level of experience. Concise, detailed notes should support any subsequent reliance on prior experience as a means of differentiating between candidates who would otherwise appear to be substantially equal.

b. Education, Training, and Special Skills - Determine if the candidate has the necessary education, training, and special skills to learn and/or perform the major duties as required. Ask about any specific coursework, training programs, and special skills which are considered desirable for the position.

c. Ability - Evaluate whether the candidate possesses the level of ability required to effectively perform the major duties. Abilities, and their relative importance, generally vary substantially based upon the nature and level of the position. The most commonly required abilities include problem-solving, oral/written communications, leadership, and interpersonal relations.

d. Personal Characteristics - To the extent possible, the simple noting of "impressions" by the interviewer should be avoided. It is, however, appropriate to ask candidates to demonstrate their application of the required personal characteristics in terms of specific job-related behaviors.

e. Willingness - For those positions with few or only very basic minimum requirements, as well as for jobs with some unpleasant or monotonous working conditions, the hiring authority/interviewer should prepare questions regarding the candidate's understanding of, and willingness to perform the major duties. The outlining and detailed disclosure of duties and working conditions in this context will serve as a realistic job preview for the candidate and may aid in self-selection.

2. Review interview questions. The following guidelines should be used in the development and evaluation of specific interview questions:

a. Questions should be accurate, complete and easily understood. The need to clarify questions during the interview for certain candidates reduces standardization.

b. Questions must be clearly and strictly job-related, and must be directly linked to the position's major duties.

c. Questions must focus on the KSAs and personal characteristics necessary to perform the job at entry.

d. Questions should reflect, as nearly as possible, the content of the specific position for which the candidate is being interviewed.

e. To increase job-relatedness, questions should be stated in terms of sample position duties, and should be designed to elicit information on job-related behaviors.

f. Questions should be geared to the appropriate complexity level of the job.

g. Questions must be carefully reviewed to eliminate any possible accusation of partisan affiliation or support.

D. Conduct the Interview

1. Interview Obligations. Whatever the actual design of the interview, the interviewer must not ask any questions concerning political affiliation (or any question which could be construed as such). Politically-related topics that are to be avoided include:

   - Political affiliation;
   - Political contributions;
   - Political sponsorship or recommendation and

   In addition, it must be made clear to the interviewer that, if the candidate volunteers non-job-related information about political topics, s/he should be interrupted and the interviewer should be directed toward other topics.

2. Following is a basic agenda for conducting the structured employment interview.

   a. Put the candidate at ease and build rapport.

   b. Explain the purpose of the interview.

   c. Provide a brief description of the position and important organization characteristics.

   d. Ask the pre-established interview questions contained in the questionnaire and take notes on the candidate's response to each question, allowing the applicant to organize his/her own experiences, and to speak with spontaneity to reveal relevant information. The interviewer should probe for expansion and clarification of candidate responses to obtain adequate information for the evaluation of the candidate and, ultimately, the employment decision.

   e. After you have completed the questionnaire, inform the candidate when the decision will be made, and ask whether s/he has any questions.

E. Additional Candidate Evaluation Criteria

The hiring authority will often use other evaluation methods in addition to personal interviews. Examination of performance records for current employees and work sample tests and job or community service related references would be examples of other legitimate screening devices.

F. Rating the Candidate

The agency must have standardized procedures in place to rank all candidates interviewed for a particular position based upon the pre-established hiring criteria, interview questionnaire and scoring of the candidate's responses to each question. By ranking candidates agencies are provided one measure to further distinguish between equally qualified candidates.

It is important to note that there is no requirement for agencies to hire in rank order or to hire a particular candidate. It is not the intent of the preceding policies and procedures to mandate agency employment decisions, but to provide a consistent, fair, and objective basis to assure compliance with Rutan as well as the employment of fully qualified employees.

IV. DOCUMENTATION OF EMPLOYMENT DECISIONS

Adequate documentation of employment decisions is a critical component of the Rutan compliance program. Although there is some latitude in other aspects of the previously described employment polices and procedures, agencies must strictly adhere to their requirements for documentation of all employment decisions.

A. Documenting the Interview Process

The hiring authority is required to provide the following documentation on each candidate interviewed:

1. An interview questionnaire which briefly summarizes the candidate's responses and assigns a rating for each question.

2. A candidate evaluation form including comments reflecting the hiring authority's assessment of the candidate's qualifications against each criteria.

In some cases, it may not be necessary to evaluate the candidate against all of the hiring criteria. If, for example, prior work experience or basic skills are unacceptable, the hiring authority may decide that further evaluation of the candidate would be pointless. In such cases, documentation needs to be provided only for those criteria against which the candidate was evaluated.

B. Documenting and Filing the Employment Decision

The hiring authority must complete an employment decision form prior to the extension of the employment offer, that provides, at a minimum, the following information:

1. The candidate to be hired and the position number being filled.

2. Justification for the decision to hire the selected candidate. This justification must clearly explain the reason(s) for hiring the selected candidate and provide a general statement comparing the selected candidate with others who were interviewed. To be considered appropriate, this justification must be job-related. In addition, where the candidate selected is one who did not receive the highest score, the justification should be sufficiently well documented so as to be subject to verification and allow inferences to be drawn as to why one candidate was selected over another.

3. The date the form was completed.

4. The agency must maintain an up-to-date, chronological file of employment decision forms as well as the candidate evaluation forms and completed interview questionnaires for all interviews conducted. In addition, a copy of the position description and major responsibilities must be included for each filled position. Each file must be labeled by the position number, title, and date of the employment decision.

ABC6/175

State of Illinois
Office of the Governor
Springfield 62706
January 31, 1991

Jim Edgar
Governor

Administrative Order
Number 1 (1991)

PERSONNEL POLICIES DIRECTIVE

On June 21, 1990, the United States Supreme Court ruled for the first time, in the case of Rutan v. the Republican Party of Illinois, that decisions to hire, promote, transfer or recall from layoff employees of public bodies could not be made on the basis of such employees' political affiliation or support. The exception for policy making or confidential employees or spokespersons established in earlier cases also applies to the Rutan ruling.

I hereby commit myself and all appointees, officials and employees in my Administration to fully comply with this ruling and all other, relevant constitutional provisions, laws and United States Supreme Court decisions.

Specifically, I order that the following principles be adhered to:

1. No employee may be dismissed from a non-exempt* state position on the basis of political affiliation or support.

2. No employee may be demoted, denied consideration for a raise or promotion, or disciplined on the basis of political affiliation or support.

Furthermore, I hereby affirm and adopt the provisions of Administrative Order #1 (1990), which state in pertinent part the following.

3. All hiring and other personnel decisions affecting non-exempt individuals shall be based on the merit and qualifications of the candidates. Where the selection of a candidate is made pursuant to an interview process, the agency must use uniform, job-related criteria and interview process; the responses to such questions must be evaluated by reference to the requirements for the particular position and such evaluation must be thoroughly documented and must demonstrate the basis on which the selection was made.

4. No hiring or other personnel decisions - including promotions, transfers or recalls from layoff - may be decided on the basis of the candidate's party affiliation or support. Where practical the agency shall interview all qualified candidates on the eligibility list for the position being filled.

5. In instances where it is not practical to do so, the method used by the agency for determining the individual candidates to be interviewed for a particular position shall be based on factors related to the merits of the individual applicants, length of time on the list, random selection or any other reasonable and impartial standard.

6. No investigation shall be performed into a candidate's political affiliation, including his or her voting record, financial support, and/or willingness to work for or donate to any political party. This information shall not be reviewed or considered at any point in the employment process.

7. In making personnel decisions, agencies may consider recommendations and referrals from any source, including elected officials or representatives of any political party. However, referrals or recommendations may be considered only if they relate to the job qualifications of the particular candidate. The political affiliation of the candidate or of the elected official or party representative who provides the recommendation or referral may not be considered in making personnel decisions.

Additionally, I hereby affirm and adopt Administrative Order #2 (1990) which establishes guidelines for development of job criteria, interview questionnaires, for objectively rating candidates, and for documenting selection decisions. Administrative Order #2 is attached hereto and made a part of this order.

I further order that:

8. The Department of Central Management Services shall be responsible for developing and implementing such rules, policies, guidelines and manuals, including the training manual already prepared in conjunction with the management consulting firm of Ernst and Young, as are necessary or appropriate to ensure that the personnel policies and procedures of all agencies, boards, and commissions under my jurisdiction comply with the requirements of this Administrative Order and generally with all applicable constitutional provisions, laws and United States Supreme Court rulings concerning personnel matters, as well as with all other requirements of State law and regulations and budgetary and fiscal guidelines. The Department shall also be responsible for coordinating information about agency hiring and other employment data with the Bureau of the Budget and assisting with the administration of any budget or fiscal policies or guidelines issued by the Bureau.

9. Whether a position is exempt from the requirements of Rutan and other relevant United States Supreme Court cases shall be determined by the Department of Central Management Services in consultation with the Office of Counsel to the Governor, and such recognized experts or advisors as may be retained by that Department. Any personnel transactions for which there is a question as to whether the position is exempt from Rutan should be submitted to the Department of Central Management Services for determination in accordance with this consultation process.

10. The Department of Central Management Services shall notify the initiating agency and the Director of Executive Employment and Labor Relations in the Office of the Governor of any positions that have been determined to be exempt by that Department under Rutan.

11. The requirements of this Administrative Order and rules, policies, guidelines and manuals issued hereunder shall supersede any procedures which may still be in effect pursuant to Executive Order #5 (1980) which is revoked.

12. The procedures set forth in this Administrative Order apply to all personnel transactions of agencies, boards, and commissions subject to my control or direction whether or not the position affected by the personnel transaction in question is under the jurisdiction of the Personnel Code.

*As used in this Order, "non-exempt" refers to an employee who is not exempt from the requirements of Rutan and has no relevance to whether such employee is or is not exempt from the Illinois Personnel Code.

OFFICE OF THE GOVERNOR
JRTC, 100 W. RANDOLPH, SUITE 16-100
CHICAGO, ILLINOIS 60601

PAT QUINN
GOVERNOR

Administrative Order
Number 2 (2009)
December 10, 2009

DIRECTIVE TO STATE AGENCIES, UPDATING GUIDELINES FOR COMPLIANCE WITH THE *RUTAN* DECISION

This Administration is firmly committed to adhering to the principles articulated in the United States Supreme Court decision, *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990) ("*Rutan*"), and its progeny, as well as Administrative Order No. 1 (1990), No. 2 (1990), and No. 1 (1991) (collectively, the "Prior Administrative Orders"), all of which prohibit consideration of political affiliation or support (or lack thereof) in connection with hiring, promotion, transfer, or recall from layoff, with respect to employment positions covered by the *Rutan* decision ("*Rutan*-covered positions").[1]

It is the intent of this Directive (i) to provide guidance and clarification with respect to certain aspects of the Prior Administrative Orders, all of which are hereby affirmed and shall remain in effect, and (ii) to announce certain new guidelines and procedures relating to personnel transactions for *Rutan*-covered positions. It is not the intent of this Directive to mandate a single, specific set of personnel procedures to be used in connection with every single personnel transaction or to limit the ability of agencies, boards, and commissions to impose job-related requirements and procedures (e.g., background checks, drug testing, residency requirements, job-related driver's license requirements), in addition to those set forth below, prior to making an offer of employment, so long as they are not inconsistent with any policies or procedures described herein, or any applicable laws. Instead, through the guidelines and procedures set forth below, this Directive seeks to ensure that applicable decision-making processes comply with *Rutan* and rely upon politically neutral, merit-based criteria.

I. Scope

This Directive shall apply to all personnel transactions relating to *Rutan*-covered positions of State agencies, boards, and commissions under the jurisdiction of the Office of the Governor ("OOG"), whether or not the positions affected by the personnel transactions in question are under the jurisdiction of the Personnel Code and Rules. That is, this Directive applies to both "code" and "non-code" positions under the jurisdiction of the OOG.

[1] As used in this Directive, "Rutan-covered" refers to an employment position that is subject to the requirements of *Rutan*.

In the event of a conflict between this Directive and the requirements of a collective bargaining agreement, the collective bargaining agreement shall govern. In the event of a conflict between this Directive and any policies or procedures relating to employment positions or personnel transactions that are set by statute (*e.g.*, the Veteran Preference set forth in 20 ILCS 415/8b.7), the policies and procedures set by statute shall govern.

II. Employment Applications

A. Submission of Applications

1. The Bureau of Personnel in the Department of Central Management Services ("CMS") has served and shall continue to serve as the central point of intake for all employment applications under the jurisdiction of the Personnel Code and Rules ("coded classifications").

2. Each *Rutan*-covered position shall be posted on the Work 4 Illinois website, <http://www.work.illinois.gov>, which can be accessed from home or through public access computers at most public libraries or State offices.

3. Any employee of an agency, board, or commission under the jurisdiction of the OOG who receives a personnel request, referral, or recommendation for a *Rutan*-covered position shall refer the person making the request, referral, or recommendation to CMS Governmental Affairs for disposition.

B. Grading of Applications

1. For coded classifications under the jurisdiction of the OOG, subject to any time limitation on when applications will be accepted and how long an application can remain active, CMS personnel shall grade each application for a classification in the order in which the application has been received and shall not grade any application out of order. Subject to the limitations, above, all other classifications under the jurisdiction of the OOG, but not under the jurisdiction of the Personnel Code and Rules ("non-code positions") shall be graded in the order received by the employing agency, board, or commission.

2. Each application shall have the name of the applicant and any references or any other personally identifiable information redacted so that the grading can be done on a blind basis. CMS personnel shall perform any necessary credential verification in a manner that preserves the integrity of the blind grading process. As soon as practicable, CMS will move towards a fully automated system.

3. The grader shall employ objective, merit-based criteria in his or her grading of applications. Grading shall be free from all political considerations.

4. All documents and data regarding applications for *Rutan*-covered positions shall be available for regular auditing.

C. Creation of Eligibility Lists

In creating an open competitive eligible list, to be utilized by an agency for an open *Rutan*-covered position, CMS shall redact the names of the applicants and other personally identifiable information so that the selection of candidates for an interview pool can be done on a blind basis.

D. Job Descriptions

Job descriptions shall be reviewed and, if necessary, updated prior to any *Rutan*-covered posting, to reflect current duties, responsibilities, and requirements.

III. The Interview, Evaluation, and Selection Process

Administrative Order No. 2 (1990) contains detailed procedures and guidelines for conducting applicant interviews for *Rutan*-covered positions in a manner intended to ensure compliance with *Rutan*. This Directive reaffirms the applicability of the interview, evaluation, and selection guidelines set forth in Administrative Order No. 2 (1990) and supplements that Order with the following additional procedures and guidelines:

A. Training of Interviewers

1. CMS and other State agencies, boards, and commissions have training programs to orient agency employees responsible for making personnel decisions to the State's *Rutan* hiring procedures and corresponding interview and selection methods ("*Rutan* training"). *Rutan* training and certification has proven to be an effective component of the State's *Rutan* compliance program. The current website to register for CMS's *Rutan* training is <http://www.state.il.us/cms/2_servicese_edu>.

2. Any agency employee who participates in the interview of a candidate for a *Rutan*-covered position must have successfully completed *Rutan* training. A non-certified member of an interview panel may only function in a technical expert capacity; he or she may ask specific technical follow-up questions to clarify a response and assist the certified interviewers in

understanding technical responses given by the interviewee, but he or she may not participate in the evaluation and scoring process.

3. As soon as practicable, but no later than six months after the date of this Directive, CMS shall develop a Refresher Course for re-certification of *Rutan* interviewers. The Refresher Course may be offered online or in any other appropriate format. The Refresher Course for interviewers shall review key elements of the State's *Rutan* compliance program, offer updates as to changes or enhancements in compliance policies and practices, and include an evaluative component to ensure that those taking the Refresher Course continue to have an appropriate knowledge of compliance guidelines and procedures. Once the Refresher Course is implemented, each *Rutan* interviewer must successfully complete the Refresher Course and be re-certified at least once every 3 years.

B. Interview Panels

1. *Rutan* interviewers must make their assessments of candidates based upon their responses to a pre-determined and uniform set of job description-related questions that are developed prior to posting and posed during the interview (as outlined in Administrative Order No. 2 (1990)), in an atmosphere where interviewers are free of advance knowledge of candidates and of outside influences. *Rutan* interviewers must be insulated from any attempts to sway their assessments or hinder their objectivity. No interview panel should include, either as interviewers or as technical advisors, any person who is related to, or otherwise would have a conflict of interest in connection with evaluating, any of the applicants for the position.

2. Since multi-member interviewer panels provide greater input and reduce the risk of improper influence in the hiring process for *Rutan*-covered positions, agencies shall utilize such panels rather than single interviewers in the interview and evaluation process. Members of the interview panel must remain consistent throughout the course of the interview process for a position. A technical advisor who has not completed training to be a certified *Rutan* interviewer shall not be considered a member of an interview panel for purposes of determining the numerical composition of the panel. Under limited circumstances, the Director of CMS or his or her designee may approve the use of single interviewers for *Rutan* interviews and evaluations, but only after the director of the requesting agency provides written justification for the use of a single interviewer.

C. Interview, Evaluation, and Selection of Candidates

1. Administrative Order No. 2 (1990) contains appropriate guidelines for the interview and evaluation of candidates, and it is hereby affirmed. In addition to those guidelines, the following guidelines shall also apply to the interview and evaluation process for all *Rutan*-covered positions.

2. To the extent practicable, the agency shall interview all reachable applicants. In situations where it is not practical to interview all reachable applicants, the agency shall use a standardized method to select the names of candidates to interview for a position. Such a method shall be based on: (i) factors related to the merits of the individual applicants, (ii) random selection, or (iii) any other reasonable, impartial, and legally compliant standard. In the event that an agency uses a method other than random selection, however, it shall create a written record, specifically identifying the alternative selection method used and the justification for its use.

3. Prior to commencing interviews for a *Rutan*-covered position, the interview panel shall ensure that the Hiring Criteria and Interview Questionnaire agreed upon for the interviews and developed prior to posting are preserved and made a part of the *Rutan* file for that position. *Rutan* files must be maintained separately from employee personnel files.

4. Copies of the Interview Questionnaire, which shall include the interviewer(s) summary(ies) of a candidate's responses to each question and the weighted score assigned by the interviewer(s) thereto, shall be placed in the *Rutan* file and preserved.

5. A Candidate Evaluation Form, reflecting the interview assessments of the candidate's qualifications against each criterion for the position at issue, should be preserved for each candidate interviewed and made a part of the *Rutan* file for the position. Each member of the interview panel shall sign and date the form and certify that the evaluation was not based on political party affiliation or support (or lack thereof).

6. The Employment Decision Form for the position shall be preserved and made a part of the *Rutan* file for the position. The form shall include a written justification for the agency's decision as to the candidate chosen to be hired for the position. The agency director or his/her designee shall sign and date the form and certify that the employment decision was not based on political party affiliation or support (or lack thereof).

7. In the event that an agency decides to cancel an opening rather than hire any of the interviewed candidates, a written justification for the cancellation decision shall be included in the *Rutan* file.

D. Retention of Records

1. Each agency shall maintain *Rutan* files for each job position number in chronological order, so that hiring decisions can be audited.

2. *Rutan* files shall be maintained for a period of three years from the date of the employment decision or in accordance with agency record retention policies, whichever is longer, at which time the files shall be transferred to the State Records Center for disposition in accordance with the State Records Act, 5 ILCS 160/1 *et seq.*

IV. Savings Clause

Nothing in this Directive shall be construed to contravene the terms of any collective bargaining agreement or any State or federal law.

V. No New Rights Created

Nothing in this Directive is intended to create any new right or benefit, substantive or procedural, enforceable at law by a party against the State of Illinois, its agencies, boards, commissions, officers, or employees, or any person.

VI. Severability

If any provision of this Directive is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

VII. Effective Date

This Directive shall become effective immediately.

Unless otherwise noted, to the extent any new requirements in this Directive are not already fully in place, the responsible State agencies, boards, and commissions under the jurisdiction of the OOG shall have 120 days to become fully compliant.

Pat Quinn

Governor Pat Quinn

ATTACHMENT B

OFFICE OF THE GOVERNOR
JRTC, 100 W. RANDOLPH, SUITE 16-100
CHICAGO, ILLINOIS 60601

PAT QUINN
GOVERNOR

TO: AGENCY, BOARD, AND COMMISSION HEADS

FROM: JOHN SCHOMBERG, GENERAL COUNSEL

CC: RYAN CROKE, CHIEF OF STAFF

SIMONE MCNEIL, ACTING DIRECTOR, DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

SUBJECT: CONTINUED *RUTAN* COMPLIANCE & MANDATORY TRAINING

DATE: JULY 3, 2014

The purpose of this memorandum is to reinforce the importance of your agency's continued compliance with hiring and personnel practices that are consistent with the U.S. Supreme Court's 1990 decision in *Rutan v. Republican Party of Illinois* ("*Rutan*")[1] and directives from Governor Quinn's Administrative Order No. 2 (2009) and previous *Rutan* Administrative Orders.[2]

I. Background: *Rutan* and Illinois Administrative Orders

In *Rutan*, the U.S. Supreme Court held that the First Amendment of the U.S. Constitution prohibits State agencies from considering political affiliation or support (or lack thereof) in connection with employment positions covered by the *Rutan* decision. The limited number of positions that are exempt from *Rutan* (*i.e.*, "*Rutan*-Exempt" positions) are explicitly determined to be so by the Department of Central Management Services ("CMS"). Such positions are policymaking, spokesperson, or confidential positions. Since the *Rutan* decision was issued in June 1990, Governor Quinn and Governors Thompson and Edgar have each issued Administrative Orders that set forth guidelines and procedures to ensure that political affiliation is not considered in employment decisions (e.g. hiring, promotion, transfer, recall from layoff, etc.) relating to any position covered by the *Rutan* decision (*i.e.*, "*Rutan*- Covered" positions).

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[1] A copy of *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), is attached hereto as Exhibit A.
[2] Administrative Order No. 1 (1990), No. 2 (1990), No. 1 (1991), and No. 2 (2009) are attached hereto as Exhibit B.

II. Action Steps

To further ensure that all State agencies, boards, and commissions under the jurisdiction of the Office of the Governor continue to comply with *Rutan* and the referenced Administrative Orders, the Governor is mandating the following actions from you and your staff:

- Executive *Rutan* Training- In the coming weeks, there will be a cabinet meeting at which the Governor's cabinet will receive Executive *Rutan* Training from the personnel experts at CMS. Additionally, in the coming weeks, there will be mandatory Executive *Rutan* Training for all executive level staff at all agencies, boards, and commissions. This will be an executive-level overview to further ensure that all agency executives continue to maintain compliance with and awareness of the requirements of the *Rutan* decision and the *Rutan* process. Further details regarding the dates, times, and locations for these training sessions will be circulated in the very near future.

- Annual Employee Evaluations and Job Description Reviews- Consistent with existing personnel rules and sound personnel management practices, all employees (both *Rutan*-Covered and *Rutan*-Exempt) must receive a written performance evaluation on an annual basis. As part of this annual review, supervisors must review the employee's job description to ensure the accuracy of the job description as compared to the duties being performed. If discrepancies exist, the job description must be clarified or the employee's duties must be revised to be consistent with the current description. Any clarification to a *Rutan*-Exempt job description must be submitted to CMS's Bureau of Personnel to determine whether the position remains *Rutan*-Exempt or must be reclassified as *Rutan*-Covered.

- ePar Verification That Employees Will Be Working Within Job Description- In the coming weeks, the ePar system will be updated to require agency, board, and commission personnel staff and all agency, board, and commission heads who approve ePars to verify that an employee filling a position, whether that position is *Rutan*-Covered or *Rutan*-Exempt, will be carrying out the duties and responsibilities contained in that employee's job description. If any agency approver cannot verify that is the case, then the job description review, detailed above, should be undertaken at the time of hiring, promotion, transfer, etc. and the job description should be updated to reflect the prospective employee's actual duties and responsibilities.

- Review of *Rutan*-Exempt Positions- In addition to any already-existing reviews related to *Rutan* and personnel and in addition to the job description review by employee supervisors, detailed above, agency, board, and commission internal audit staffs must at least annually review a sample of *Rutan*-Exempt hires to ensure that those hires are carrying out the duties and responsibilities contained in their job descriptions. The results

of such audits must be shared with the Office of the Governor Deputy Chief of Staff and Associate General Counsel working with that agency, board, or commission.

If an agency, board, or commission already undertakes such a review, at least annually, the results of the most recent review should be provided to the Office of the Governor immediately. If an agency, board, or commission is not already conducting such a review, such a review should be undertaken immediately, to be completed and provided to the Office of the Governor no later than December 31, 2014.

Please circulate this memorandum to all employees within your agency, board, or commission.

In August 2009, the Governor signed into law provisions expanding the jurisdiction of the Office of the Executive Inspector General ("OEIG") to include ensuring compliance with *Rutan*. **If an employee is aware of any potential *Rutan* violations (e.g. failures to follow the *Rutan* hiring process, the use of political considerations in *Rutan*-Covered hiring, etc.), he or she should—and has a duty to—report any such violations to the OEIG. Complaints can be securely and anonymously filed electronically or by fax by going to the OEIG's website at http://www2.illinois.gov/oeig/Pages/FileaComplaint.aspx. The employee may also notify his or her supervisor and the agency, board, or commission's Ethics Officer.** If any employee has any questions regarding the *Rutan* process, he or she should contact the agency's Human Resources staff or Ethics Officer. Agency Human Resources staff or Ethics Officers should use CMS's Bureau of Personnel as a resource in answering employee questions.

As stated above, the Quinn Administration continues to be wholly committed to complying with *Rutan* principles and to ensuring that employees are appropriately classified as either *Rutan*-Covered or *Rutan*-Exempt. We expect all State employees to remain committed to and accountable for the same. For those vast number of State employee positions that are *Rutan*-Covered, the Administration not only expects, but demands, that the *Rutan* hiring process continue to be followed and that politics continue to play no role. For all agency, board, and commission heads, the Governor looks forward to your continued leadership and vigilance on this issue, including ensuring that the action steps, above, are carried out and ensuring that your agency, board, or commission maintains a culture of compliance.

J.F.S.

EXHIBIT A

Supreme Court of the United States
Cynthia RUTAN, et al., Petitioners
v.
REPUBLICAN PARTY OF ILLINOIS, et al.
Mark FRECH, et al., Petitioners
v.
Cynthia RUTAN, et al.

Nos. 88-1872, 88-2074.
Argued Jan. 16, 1990.
Decided June 21, 1990.
Rehearing Denied Aug. 30, 1990.
See 497 U.S. 1050, 111 S.Ct. 13.

Former and present low-level public employees and employment applicant brought action challenging Governor's use of political considerations in hiring, rehiring, transferring, and promoting. The United States District Court for the Central District of Illinois, Baker, Chief Judge, 641 F.Supp. 249, dismissed complaint, and appeal was taken. The Court of Appeals for the Seventh Circuit affirmed in part, reversed in part, and remanded initially, 848 F.2d 1396, and on rehearing en banc, 868 F.2d 943. Certiorari was granted. The Supreme Court, Justice Brennan, held that: (1) promotions, transfers, and recalls based on political affiliation or support are impermissible infringements on public employees' First Amendment rights, and (2) conditioning hiring decisions on political belief and association violates applicants' First Amendment rights in absence of vital governmental interest.

Court of Appeals decision affirmed in part, reversed in part, and remanded.

Justice Stevens filed a concurring opinion.

Justice Scalia filed a dissenting opinion in which Chief Justice Rehnquist and Justice Kennedy joined, and in which Justice O'Connor joined as to Parts II and III.

West Headnotes

[1] Constitutional Law 92 ⚿1475(5)

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1475 Political Affiliation; Patronage
92k1475(5) k. Adverse Action in General. Most Cited Cases
(Formerly 92k82(11))

Constitutional Law 92 ⚿1475(7)

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1475 Political Affiliation; Patronage
92k1475(7) k. Promotion. Most Cited Cases
(Formerly 92k82(11))

States 360 ⚿53

360 States
360II Government and Officers
360k53 k. Appointment or Employment and Tenure of Agents and Employees in General. Most Cited Cases

That low-level public employees had no legal entitlement to promotion, transfer, or recall was not determinative of their claims that promotions, transfers, and recalls based on political affiliation or support were impermissible infringement on their First Amendment rights; government could not rely on basis that infringed employees' constitutionally protected interests to deny them valuable benefits. U.S.C.A. Const.Amend. 1.

[2] Constitutional Law 92 ⚿1475(5)

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1475 Political Affiliation; Patronage

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92k1475(5) k. Adverse Action in General. Most Cited Cases
(Formerly 92k82(11))

Constitutional Law 92 ⚿1475(7)

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1475 Political Affiliation; Patronage
92k1475(7) k. Promotion. Most Cited Cases
(Formerly 92k82(11))

Promotions, transfers, and recalls after layoffs based on political affiliation or support are impermissible infringement on First Amendment rights of low-level public employees; such patronage practices are not sufficiently narrowly tailored to serve vital government interests in securing effective employees, in securing employees who will loyally implement policies, or in preserving democratic process. U.S.C.A. Const.Amend. 1.

[3] Constitutional Law 92 ⚿1475(5)

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1475 Political Affiliation; Patronage
92k1475(5) k. Adverse Action in General. Most Cited Cases
(Formerly 92k91, 92k82(11))

It was not necessary that employment decision based on patronage be the "substantial equivalent of a dismissal" for decision to violate low-level public employee's rights under First Amendment; this test is unduly restrictive because it fails to recognize that there are deprivations less harsh than dismissal that nevertheless press state employees and applicants to conform their beliefs and associations to some state-selected orthodoxy. U.S.C.A. Const.Amend. 1.

[4] Constitutional Law 92 ⚿1181

92 Constitutional Law
92X First Amendment in General
92X(B) Particular Issues and Applications
92k1180 Public Employees and Officials
92k1181 k. In General. Most Cited Cases
(Formerly 92k82(11))

Constitutional Law 92 ⚿1446

92 Constitutional Law
92XVI Freedom of Association
92k1446 k. Public Employees and Officials. Most Cited Cases
(Formerly 92k82(11), 92k91)

First Amendment prevents government, except in most compelling circumstances, from wielding its power to interfere with its employees' freedom to believe and associate, or to not believe and not associate; it is not merely tenure provision, protecting public employees from actual or constructive discharge. U.S.C.A. Const.Amend. 1.

[5] Constitutional Law 92 ⚿1150

92 Constitutional Law
92X First Amendment in General
92X(A) In General
92k1150 k. In General. Most Cited Cases
(Formerly 92k82(3))

What the First Amendment precludes government from commanding directly, it also precludes government from accomplishing indirectly. U.S.C.A. Const.Amend. 1.

[6] Constitutional Law 92 ⚿1474(1)

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1474 Political Beliefs or Discrimination in General
92k1474(1) k. In General. Most Cited Cases
(Formerly 92k91)

Constitutional Law 92 ⚿1474(2)

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92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1474 Political Beliefs or Discrimination in General
92k1474(2) k. Adverse Action. Most Cited Cases
(Formerly 92k82(11))

Constitutional Law 92 ⚖1475(4)

92 Constitutional Law
92XVII Political Rights and Discrimination
92k1471 Public Employees and Officials
92k1475 Political Affiliation; Patronage
92k1475(4) k. Appointment and Hiring; Qualifications. Most Cited Cases
(Formerly 92k82(11))

Conditioning public hiring decisions on political belief and association violates First Amendment rights of applicants in absence of vital governmental interest. U.S.C.A. Const.Amend. 1.

***2730 Syllabus** FN**

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

*62 The Illinois Governor issued an executive order instituting a hiring freeze, whereby state officials are prohibited from hiring any employee, filling any vacancy, creating any new position, or taking any similar action without the Governor's "express permission." Petitioners in No. 88-1872 and cross-respondents in No. 88-2074-an applicant for employment, employees who had been denied promotions or transfers, and former employees who had not been recalled after layoffs-brought suit in the District Court, alleging that, by means of the freeze, the Governor was operating a political patronage system; that they had suffered discrimination in state employment because they had not been Republican Party supporters; and that this discrimination violates the First Amendment. The District Court dismissed the complaint for failure to state a claim upon which relief could be granted. The Court of Appeals affirmed in part and reversed in part. Noting that *Elrod v. Burns*, 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547, and *Branti v. Finkel*, 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574, had found that the patronage practice of discharging public employees on the basis of their political affiliation violates the First Amendment, the court held that other patronage practices violate the Amendment only when they are the "substantial equivalent of a dismissal," *i.e.*, when they would lead reasonable persons to resign. The court concluded, based on *Wygant v. Jackson Bd. of Education*, 476 U.S. 267, 106 S.Ct. 1842, 90 L.Ed.2d 260, that rejecting an employment application did not impose a hardship comparable to the loss of a job. Thus, it dismissed the hiring claim, but remanded the others for further proceedings.

Held: The rule of *Elrod* and *Branti* extends to promotion, transfer, recall, and hiring decisions based on party affiliation and support, and petitioners and cross-respondents have stated claims upon which relief may be granted. Pp. 2734-2739.

(a) Promotions, transfers, and recalls based on political affiliation or support are an impermissible infringement on public employees' First Amendment rights. Even though petitioners and cross-respondents *63 have no legal entitlement to the promotions, transfers, and recalls, the government **2731 may not rely on a basis that infringes their constitutionally protected interests to deny them these valuable benefits. *Perry v. Sindermann*, 408 U.S. 593, 597, 92 S.Ct. 2694, 2697, 33 L.Ed.2d 570. Significant penalties are imposed on those employees who exercise their First Amendment rights. Those who do not compromise their beliefs stand to lose the considerable increases in pay and job satisfaction attendant to promotions, the shorter commuting hours and lower maintenance expenses incident to transfers to more convenient work loca-

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tions, and even the jobs themselves in the case of recalls. As in *Elrod* and *Branti,* these patronage practices are not narrowly tailored to serve vital government interests. A government's interest in securing effective employees can be met by discharging, demoting, or transferring persons whose work is deficient, and its interest in securing employees who will loyally implement its policies can be adequately served by choosing or dismissing high-level employees on the basis of their political views. Likewise, the "preservation of the democratic process" is not furthered by these patronage decisions, since political parties are nurtured by other, less intrusive and equally effective methods, and since patronage decidedly impairs the elective process by discouraging public employees' free political expression. Pp. 2735-2737.

(b) The standard used by the Court of Appeals to measure alleged patronage practices in government employment is unduly restrictive because it fails to recognize that there are deprivations less harsh than dismissal that nevertheless press state employees and applicants to conform their beliefs and associations to some state-selected orthodoxy. Pp. 2737-2738.

(c) Patronage hiring places burdens on free speech and association similar to those imposed by patronage promotions, transfers, and recalls. Denial of a state job is a serious privation, since such jobs provide financial, health, and other benefits; since there may be openings with the State when business in the private sector is slow; and since there are occupations for which the government is the sole or major employer. Under this Court's sustained precedent, conditioning hiring decisions on political belief and association plainly constitutes an unconstitutional condition, unless the government has a vital interest in doing so. See, *e.g., Branti, supra,* 445 U.S., at 515-516, 100 S.Ct., at 1293. There is no such government interest here, for the same reasons that the government lacks justification for patronage promotions, transfers, and recalls. It is inappropriate to rely on *Wygant* to distinguish hiring from dismissal in this context, since that case was concerned with the least harsh means of remedying past wrongs and did not question that *some* remedy was permissible when there was sufficient evidence of past discrimination. Here, however, it is unnecessary to consider whether not being hired is less burdensome *64 than being discharged, because the government is not pressed to do *either* on the basis of political affiliation. Pp. 2738-2739.

868 F.2d 943 (CA7 1989), affirmed in part, reversed in part, and remanded.

BRENNAN, J., delivered the opinion of the Court, in which WHITE, MARSHALL, BLACKMUN, and STEVENS, JJ., joined. STEVENS, J., filed a concurring opinion, *post,* p. 2740. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C.J., and KENNEDY, J., joined, and in which O'CONNOR, J., joined as to Parts II and III, *post,* p. 2746.

Mary Lee Leahy argued the cause for petitioners in No. 88-1872 and respondents in No. 88-2074. With her on the briefs were *Michael R. Berz, Cheryl R. Jansen,* and *Kathryn E. Eisenhart.*

Thomas P. Sullivan argued the cause for respondents in No. 88-1872 and petitioners in No. 88-2074. With him on the briefs were *Jeffrey D. Colman, Michael J. Hayes,* and *Roger P. Flahaven.*†

† Briefs of *amici curiae* urging reversal in both cases were filed for the American Federation of Labor and Congress of Industrial Organizations by *George Kaufmann* and *Laurence Gold;* and for the North Carolina Professional Fire Fighters Association by *J. Michael McGuiness. C. Richard Johnson* filed a brief for the Independent Voters of Illinois-Independent Precinct Organization et al. as *amici curiae* urging reversal in No. 88-1872. *Richard H. Chanin* and *Jeremiah A. Collins* filed a brief for the National Education Association as *amicus curiae* urging reversal in No. 88-1872 and affirmance in No. 88-2074.

Hector Rivera Cruz, Secretary of Justice of Puerto

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Rico, *Jorge E. Perez Diaz,* Solicitor General, and *Lino J. Saldaña* filed a brief for the Commonwealth of Puerto Rico as *amicus curiae* urging affirmance in both cases.

Justice BRENNAN delivered the opinion of the Court.

To the victor belong only those spoils that may be constitutionally obtained. *Elrod v. Burns,* 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), and **2732*Branti v. Finkel,* 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980), decided that the First Amendment forbids government officials to discharge or threaten to discharge public employees solely for not being supporters of the political party in power, unless party affiliation is an appropriate requirement for the position involved. *65 Today we are asked to decide the constitutionality of several related political patronage practices-whether promotion, transfer, recall, and hiring decisions involving low-level public employees may be constitutionally based on party affiliation and support. We hold that they may not.

I

The petition and cross-petition before us arise from a lawsuit protesting certain employment policies and practices instituted by Governor James Thompson of Illinois.[FN1] On November 12, 1980, the Governor issued an executive order proclaiming a hiring freeze for every agency, bureau, board, or commission subject to his control. The order prohibits state officials from hiring any employee, filling any vacancy, creating any new position, or taking any similar action. It affects approximately 60,000 state positions. More than 5,000 of these become available each year as a result of resignations, retirements, deaths, expansions, and reorganizations. The order proclaims that "*no* exceptions" are permitted without the Governor's "express permission after submission of appropriate requests to [his] office." Governor's Executive Order No. 5 (Nov. 12, 1980), Brief for Petitioners and Cross-Respondents 11 (emphasis added).

FN1. The cases come to us in a preliminary posture, and the question is limited to whether the allegations of petitioners Rutan et al. state a cognizable First Amendment claim sufficient to withstand respondents' motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Therefore, for purposes of our review we must assume that petitioners' well-pleaded allegations are true. *Berkovitz v. United States,* 486 U.S. 531, 540, 108 S.Ct. 1954, 1961, 100 L.Ed.2d 531 (1988).

Three of the five original plaintiffs who brought the lawsuit-Rutan, Taylor, and Moore-are petitioners in No. 88-1872, and we refer to them as "petitioners." The defendants in the lawsuit are various Illinois and Republican Party officials. We refer to them as "respondents" because they are the respondents in No. 88-1872. They are also the cross-petitioners in No. 88-2074. Four of the five original plaintiffs-Rutan, Taylor, Standefer, and O'Brien-are named as cross-respondents in No. 88-2074.

*66 Requests for the Governor's "express permission" have allegedly become routine. Permission has been granted or withheld through an agency expressly created for this purpose, the Governor's Office of Personnel (Governor's Office). Agencies have been screening applicants under Illinois' civil service system, making their personnel choices, and submitting them as requests to be approved or disapproved by the Governor's Office. Among the employment decisions for which approvals have been required are new hires, promotions, transfers, and recalls after layoffs.

By means of the freeze, according to petitioners and cross-respondents, the Governor has been using the Governor's Office to operate a political patronage system to limit state employment and beneficial employment-related decisions to those who are supported by the Republican Party. In review-

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ing an agency's request that a particular applicant be approved for a particular position, the Governor's Office has looked at whether the applicant voted in Republican primaries in past election years, whether the applicant has provided financial or other support to the Republican Party and its candidates, whether the applicant has promised to join and work for the Republican Party in the future, and whether the applicant has the support of Republican Party officials at state or local levels.

Five people (including the three petitioners) brought suit against various Illinois and Republican Party officials in the United States District Court for the Central District of Illinois.[FN2] They alleged that they had suffered**2733 discrimination with respect to state employment because they had not been supporters of the State's Republican Party and that this discrimination violates the First Amendment. Cynthia B. *67 Rutan has been working for the State since 1974 as a rehabilitation counselor. She claims that since 1981 she has been repeatedly denied promotions to supervisory positions for which she was qualified because she had not worked for or supported the Republican Party. Franklin Taylor, who operates road equipment for the Illinois Department of Transportation, claims that he was denied a promotion in 1983 because he did not have the support of the local Republican Party. Taylor also maintains that he was denied a transfer to an office nearer to his home because of opposition from the Republican Party chairmen in the counties in which he worked and to which he requested a transfer. James W. Moore claims that he has been repeatedly denied state employment as a prison guard because he did not have the support of Republican Party officials.

FN2. The five originally brought this action both individually and on behalf of those similarly situated. The Seventh Circuit, noting that the District Court had failed to address the class-action questions, reviewed the case as one brought by individuals only. 868 F.2d 943, 947 (1989). We therefore have only the claims of the individuals before us.

The two other plaintiffs, before the Court as cross-respondents, allege that they were not recalled after layoffs because they lacked Republican credentials. Ricky Standefer was a state garage worker who claims that he was not recalled, although his fellow employees were, because he had voted in a Democratic primary and did not have the support of the Republican Party. Dan O'Brien, formerly a dietary manager with the mental health department, contends that he was not recalled after a layoff because of his party affiliation and that he later obtained a lower paying position with the corrections department only after receiving support from the chairman of the local Republican Party.

The District Court dismissed the complaint with prejudice, under Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief could be granted. 641 F.Supp. 249 (1986). The United States Court of Appeals for the Seventh Circuit initially issued a panel opinion, 848 F.2d 1396 (1988), but then reheard the appeal en banc. The court affirmed the District Court's decision in part and reversed in part. 868 F.2d 943 (1989). Noting that this Court had previously determined that the patronage practice of discharging*68 public employees on the basis of their political affiliation violates the First Amendment, the Court of Appeals held that other patronage practices violate the First Amendment only when they are the "substantial equivalent of a dismissal." *Id.*, at 955. The court explained that an employment decision is equivalent to a dismissal when it is one that would lead a reasonable person to resign. *Ibid.* The court affirmed the dismissal of Moore's claim because it found that basing hiring decisions on political affiliation does not violate the First Amendment, but remanded the remaining claims for further proceedings.[FN3]

FN3. The Seventh Circuit explained that Standefer's and O'Brien's claims might be cognizable if there were a formal or informal system of rehiring employees in

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their positions, 868 F.2d, at 956-957, but expressed considerable doubt that Rutan and Taylor would be able to show that they suffered the "substantial equivalent of a dismissal" by being denied promotions and a transfer. *Id.*, at 955-956.

Rutan, Taylor, and Moore petitioned this Court to review the constitutional standard set forth by the Seventh Circuit and the dismissal of Moore's claim. Respondents cross-petitioned this Court, contending that the Seventh Circuit's remand of four of the five claims was improper because the employment decisions alleged here do not, as a matter of law, violate the First Amendment. We granted certiorari, 493 U.S. 807, 110 S.Ct. 48, 107 L.Ed.2d 17 (1989), to decide the important question whether the First Amendment's proscription of patronage dismissals recognized in **2734*Elrod v. Burns,* 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), and *Branti v. Finkel,* 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980), extends to promotion, transfer, recall, or hiring decisions involving public employment positions for which party affiliation is not an appropriate requirement.

II

A

In *Elrod, supra,* we decided that a newly elected Democratic sheriff could not constitutionally engage in the patronage practice of replacing certain office staff with members of *69 his own party "when the existing employees lack or fail to obtain requisite support from, or fail to affiliate with, that party." *Id.,* 427 U.S., at 351, 373, 96 S.Ct., at 2679, 2689 (plurality opinion), and 375, 96 S.Ct., at 2690 (Stewart, J., joined by BLACKMUN, J., concurring in judgment). The plurality explained that conditioning public employment on the provision of support for the favored political party "unquestionably inhibits protected belief and association." *Id.,* at 359, 96 S.Ct., at 2683. It reasoned that conditioning employment on political activity pressures employees to pledge political allegiance to a party with which they prefer not to associate, to work for the election of political candidates they do not support, and to contribute money to be used to further policies with which they do not agree. The latter, the plurality noted, had been recognized by this Court as "tantamount to coerced belief." *Id.,* 427 U.S., at 355, 96 S.Ct., at 2681 (citing *Buckley v. Valeo,* 424 U.S. 1, 19, 96 S.Ct. 612, 634-635, 46 L.Ed.2d 659 (1976)). At the same time, employees are constrained from joining, working for or contributing to the political party and candidates of their own choice. *Elrod, supra,* 427 U.S., at 355-356, 96 S.Ct., at 2681. "[P]olitical belief and association constitute the core of those activities protected by the First Amendment," the plurality emphasized. 427 U.S., at 356, 96 S.Ct., at 2681. Both the plurality and the concurrence drew support from *Perry v. Sindermann,* 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972), in which this Court held that the State's refusal to renew a teacher's contract because he had been publicly critical of its policies imposed an unconstitutional condition on the receipt of a public benefit. See *Elrod, supra,* 427 U.S., at 359, 96 S.Ct., at 2682 (plurality opinion) and 375, 96 S.Ct., at 2690 (Stewart, J., concurring in judgment); see also *Branti, supra,* 445 U.S., at 514-516, 100 S.Ct., at 1292-1293.

The Court then decided that the government interests generally asserted in support of patronage fail to justify this burden on First Amendment rights because patronage dismissals are not the least restrictive means for fostering those interests. See *Elrod, supra,* 427 U.S., at 372-373, 96 S.Ct., at 2689 (plurality opinion) and 375, 96 S.Ct., at 2690 (Stewart, J., concurring in judgment). The plurality acknowledged that a government has a significant interest in ensuring that it has effective and efficient employees. It expressed*70 doubt, however, that "mere difference of political persuasion motivates poor performance" and concluded that, in any case, the government can ensure employee effectiveness and efficiency through the less drastic means of discharging staff members whose work is inadequate. 427 U.S., at 365-366, 96 S.Ct., at 2685-2686. The plurality also found that a govern-

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ment can meet its need for politically loyal employees to implement its policies by the less intrusive measure of dismissing, on political grounds, only those employees in policymaking positions. *Id.*, at 367, 96 S.Ct., at 2686-2687. Finally, although the plurality recognized that preservation of the democratic process "may in some instances justify limitations on First Amendment freedoms," it concluded that the "process functions as well without the practice, perhaps even better." Patronage, it explained, "can result in the entrenchment of one or a few parties to the exclusion of others" and "is a very effective impediment to the associational and speech freedoms which are essential to a meaningful system of **2735 democratic government." *Id.*, at 368-370, 96 S.Ct., at 2688.[FN4]

FN4. Justice SCALIA's lengthy discussion of the appropriate standard of review for restrictions the government places on the constitutionally protected activities of its employees to ensure efficient and effective operations, see *post,* at 2747-2752, is not only questionable, it offers no support for his conclusion that patronage practices pass muster under the First Amendment. The interests that Justice SCALIA regards as potentially furthered by patronage practices are not interests that the government has in its capacity as an employer. Justice SCALIA describes the possible benefits of patronage as follows: "patronage stabilizes political parties and prevents excessive political fragmentation," *post,* at 2752; patronage is necessary to strong, disciplined party organizations, *post,* at 2752-2753; patronage "fosters the two-party system," *post,* at 2754; and patronage is "a powerful means of achieving the social and political integration of excluded groups," *post,* at 2754-2755. These are interests the government might have in the structure and functioning of society as a whole. That the government attempts to use public employment to further such interests does not render those interests employment related. Therefore, even were Justice SCALIA correct that less-than-strict scrutiny is appropriate when the government takes measures to ensure the proper functioning of its internal operations, such a rule has no relevance to the restrictions on freedom of association and speech at issue in these cases.

*71 Four years later, in *Branti, supra,* we decided that the First Amendment prohibited a newly appointed public defender, who was a Democrat, from discharging assistant public defenders because they did not have the support of the Democratic Party. The Court rejected an attempt to distinguish the case from *Elrod,* deciding that it was immaterial whether the public defender had attempted to coerce employees to change political parties or had only dismissed them on the basis of their private political beliefs. We explained that conditioning continued public employment on an employee's having obtained support from a particular political party violates the First Amendment because of "the coercion of belief that necessarily flows from the knowledge that one must have a sponsor in the dominant party in order to retain one's job." 445 U.S., at 516, 100 S.Ct., at 1294. "In sum," we said, "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 517, 100 S.Ct., at 1294. To prevail, we concluded, public employees need show only that they were discharged because they were not affiliated with or sponsored by the Democratic Party. *Ibid.*[FN5]

FN5. *Branti v. Finkel,* 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980), also refined the exception created by *Elrod v. Burns,* 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), for certain employees. In *Elrod,* we suggested that policymaking and confidential employees probably could be dismissed on the basis of their political

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views. *Id.*, at 367, 96 S.Ct., at 2686-2687 (plurality opinion) and 375, 96 S.Ct., at 2690 (Stewart, J., concurring in judgment). In *Branti*, we said that a State demonstrates a compelling interest in infringing First Amendment rights only when it can show that "party affiliation is an appropriate requirement for the effective performance of the public office involved." *Branti, supra*, 100 U.S., at 518, 100 S.Ct., at 1295. The scope of this exception does not concern us here as respondents concede that the five employees who brought this suit are not within it.

B

[1] We first address the claims of the four current or former employees. Respondents urge us to view *Elrod* and *Branti* *72 as inapplicable because the patronage dismissals at issue in those cases are different in kind from failure to promote, failure to transfer, and failure to recall after layoff. Respondents initially contend that the employee petitioners' and cross-respondents' First Amendment rights have not been infringed because they have no entitlement to promotion, transfer, or rehire. We rejected just such an argument in *Elrod*, 427 U.S., at 359-360, 96 S.Ct., at 2683 (plurality opinion) and 375, 96 S.Ct., at 2690 (Stewart, J., concurring in judgment), and *Branti*, 445 U.S., at 514-515, 100 S.Ct., at 1293, as both cases involved state workers who were employees at will with no legal entitlement to continued employment. In *Perry*, 408 U.S., at 596-598, 92 S.Ct., at 2696-2697, we held explicitly that the plaintiff teacher's lack of a contractual or tenure right to re-employment**2736 was immaterial to his First Amendment claim. We explained the viability of his First Amendment claim as follows:

"For at least a quarter-century, this Court has made clear that even though a person has no 'right' to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, *there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests-especially, his interest in freedom of speech.* For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to 'produce a result which [it] could not command directly.' *Speiser v. Randall*, 357 U.S. 513, 526 [78 S.Ct. 1332, 1342, 2 L.Ed.2d 1460 (1958)]. Such interference with constitutional rights is impermissible." *Id.*, 408 U.S., at 597, 92 S.Ct., at 2697 (emphasis added).

Likewise, we find the assertion here that the employee petitioners and cross-respondents had no legal entitlement to promotion, transfer, or recall beside the point.

*73 [2][3][4] Respondents next argue that the employment decisions at issue here do not violate the First Amendment because the decisions are not punitive, do not in any way adversely affect the terms of employment, and therefore do not chill the exercise of protected belief and association by public employees.[FN6] This is not credible. Employees who find themselves in dead-end positions due to their political backgrounds *are* adversely affected. They will feel a significant obligation to support political positions held by their superiors, and to refrain from acting on the political views they actually hold, in order to progress up the career ladder. Employees denied transfers to workplaces reasonably close to their homes until they join and work for the Republican Party will feel a daily pressure from their long commutes to do so. And employees who have been laid off may well feel compelled to engage in whatever political activity is necessary to regain regular paychecks and positions corresponding to their skill and experience.[FN7]

FN6. Respondents' reliance on *Johnson v. Transportation Agency, Santa Clara County*, 480 U.S. 616, 107 S.Ct. 1442, 94

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L.Ed.2d 615 (1987), to this effect is misplaced. The question in *Johnson* was whether the Santa Clara County affirmative-action program violated the anti-discrimination requirement of Title VII of the Civil Rights Act of 1964. In that context, we said that the denial of a promotion did not unsettle any legitimate, firmly rooted expectations. We did not dispute, however, that it placed a burden on the person to whom the promotion was denied. We considered Johnson's expectations in discussing whether the plan unnecessarily trammeled the rights of male employees-*i.e.*, whether its goal was pursued with an excessive, rather than reasonable, amount of dislocation. Our decision that promotion denials are not such an imposition that Title VII prevented Santa Clara from considering gender in order to redress past discrimination does not mean that promotion denials are not enough of an imposition to pressure employees to affiliate with the favored party.

FN7. The complaint in this case states that Dan O'Brien was driven to do exactly this. After being rejected for recall by the Governor's Office, he allegedly pursued the support of a Republican Party official, despite his previous interest in the Democratic Party.

*74 The same First Amendment concerns that underlay our decisions in *Elrod, supra,* and *Branti, supra,* are implicated here. Employees who do not compromise their beliefs stand to lose the considerable increases in pay and job satisfaction attendant to promotions, the hours and maintenance expenses that are consumed by long daily commutes, and even their jobs if they are not rehired after a "temporary" layoff. These are significant penalties and are imposed for the exercise of rights guaranteed by the First Amendment. Unless these patronage practices are narrowly tailored to further vital government interests, we must conclude that they impermissibly encroach on First Amendment freedoms. See **2737*Elrod, supra,* 427 U.S., at 362-363, 96 S.Ct., at 2684 (plurality opinion) and 375, 96 S.Ct., at 2690 (Stewart, J., concurring in judgment); *Branti, supra,* 445 U.S., at 515-516, 100 S.Ct., at 1293.

We find, however, that our conclusions in *Elrod, supra,* and *Branti, supra,* are equally applicable to the patronage practices at issue here. A government's interest in securing effective employees can be met by discharging, demoting, or transferring staff members whose work is deficient. A government's interest in securing employees who will loyally implement its policies can be adequately served by choosing or dismissing certain high-level employees on the basis of their political views. See *Elrod, supra,* 427 U.S., at 365-368, 96 S.Ct., at 2685-2687 (plurality opinion); *Branti, supra,* 445 U.S., at 518, and 520, n. 14, 100 S.Ct., at 1294-1295, and 1295, n. 14. Likewise, the "preservation of the democratic process" is no more furthered by the patronage promotions, transfers, and rehires at issue here than it is by patronage dismissals. First, "political parties are nurtured by other, less intrusive and equally effective methods." *Elrod, supra,* 427 U.S., at 372-373, 96 S.Ct., at 2689 (plurality opinion). Political parties have already survived the substantial decline in patronage employment practices in this century. See *Elrod, supra,* at 369, and n. 23, 96 S.Ct., at 2688, and n. 23 (plurality opinion); see also L. Sabato, Goodbye to Good-time Charlie 67 (2d ed. 1983) ("The number of patronage positions has significantly decreased in virtually every state"); Congressional Quarterly Inc., State Government,*75 CQ's Guide to Current Issues and Activities 134 (T. Beyle ed. 1989-1990) ("Linkage[s] between political parties and government office-holding ... have died out under the pressures of varying forces [including] the declining influence of election workers when compared to media and money-intensive campaigning, such as the distribution of form letters and advertising"); Sorauf, Patronage and Party, 3 Midwest J.

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Pol. Sci. 115, 118-120 (1959) (many state and local parties have thrived without a patronage system). Second, patronage decidedly impairs the elective process by discouraging free political expression by public employees. See *Elrod,* 427 U.S., at 372, 96 S.Ct., at 2689 (plurality opinion) (explaining that the proper functioning of a democratic system "is indispensably dependent on the unfettered judgment of each citizen on matters of political concern"). Respondents, who include the Governor of Illinois and other state officials, do not suggest any other overriding government interest in favoring Republican Party supporters for promotion, transfer, and rehire.

We therefore determine that promotions, transfers, and recalls after layoffs based on political affiliation or support are an impermissible infringement on the First Amendment rights of public employees. In doing so, we reject the Seventh Circuit's view of the appropriate constitutional standard by which to measure alleged patronage practices in government employment. The Seventh Circuit proposed that only those employment decisions that are the "substantial equivalent of a dismissal" violate a public employee's rights under the First Amendment. 868 F.2d, at 954-957. We find this test unduly restrictive because it fails to recognize that there are deprivations less harsh than dismissal that nevertheless press state employees and applicants to conform their beliefs and associations to some state-selected orthodoxy. See *Elrod, supra,* 427 U.S., at 356-357, 96 S.Ct., at 2681 (plurality opinion); *West Virginia Bd. of Education v. Barnette,* 319 U.S. 624, 642, 63 S.Ct. 1178, 1187, 87 L.Ed. 1628 (1943).[FN8] *76 The First Amendment is not a tenure provision, protecting public **2738 employees from actual or constructive discharge. The First Amendment prevents the government, except in the most compelling circumstances, from wielding its power to interfere with its employees' freedom to believe and associate, or to not believe and not associate.

FN8. The Seventh Circuit's proffered test was not based on that court's determination that other patronage practices do not burden the free exercise of First Amendment rights. Rather, the court chose to defer to the political process in an area in which it felt this Court had not yet spoken clearly. 868 F.2d, at 953-954. The court also expressed concern that the opposite conclusion would open state employment to excessive interference by the Federal Judiciary. *Ibid.* We respect but do not share this concern.

> Our decision does not impose the Federal Judiciary's supervision on any state government activity that is otherwise immune. The federal courts have long been available for protesting unlawful state employment decisions. Under Title VII, 42 U.S.C. §§ 2000e(a), (f), and 2000e-2(a) (1982 ed.), it is a violation of federal law to discriminate in any way in state employment (excepting certain high-level positions) on the basis of race, color, religion, sex, or national origin. Moreover, the First Amendment, as the court below noted, already protects state employees not only from patronage dismissals but also from "even an act of retaliation as trivial as failing to hold a birthday party for a public employee ... when intended to punish her for exercising her free speech rights." 868 F.2d, at 954, n. 4.

Whether the four employees were in fact denied promotions, transfers, or rehires for failure to affiliate with and support the Republican Party is for the District Court to decide in the first instance. What we decide today is that such denials are irreconcilable with the Constitution and that the allegations of the four employees state claims under 42 U.S.C. § 1983 (1982 ed.) for violations of the First and Fourteenth Amendments. Therefore, although we affirm the Seventh Circuit's judgment to reverse

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the District Court's dismissal of these claims and remand them for further proceedings, we do not adopt the Seventh Circuit's reasoning.

C

[5][6] Petitioner James W. Moore presents the closely related question whether patronage hiring violates the First Amendment.*77 Patronage hiring places burdens on free speech and association similar to those imposed by the patronage practices discussed above. A state job is valuable. Like most employment, it provides regular paychecks, health insurance, and other benefits. In addition, there may be openings with the State when business in the private sector is slow. There are also occupations for which the government is a major (or the only) source of employment, such as social workers, elementary school teachers, and prison guards. Thus, denial of a state job is a serious privation.

Nonetheless, respondents contend that the burden imposed is not of constitutional magnitude.[FN9] Decades of decisions by this Court belie such a claim. We premised *Torcaso v. Watkins,* 367 U.S. 488, 81 S.Ct. 1680, 6 L.Ed.2d 982 (1961), on our understanding that loss of a job opportunity for failure to compromise one's convictions states a constitutional claim. We held that Maryland could not refuse an appointee a commission for the position of notary public on the ground that he refused to declare his belief in God, because the required oath "unconstitutionally invades the appellant's freedom of belief and religion." *Id.,* at 496, 81 S.Ct., at 1684. In *Keyishian v. Board of Regents of Univ. of New York,* 385 U.S. 589, 609-610, 87 S.Ct. 675, 687, 17 L.Ed.2d 629 (1967), we held a law affecting appointment and retention of teachers invalid because it premised employment on an unconstitutional restriction of political belief and association. In *Elfbrandt v. Russell,* 384 U.S. 11, 19, 86 S.Ct. 1238, 1242, 16 L.Ed.2d 321 (1966), we struck down a loyalty oath which was a prerequisite for public employment.

FN9. To the extent that respondents also argue that Moore has not been penalized for the exercise of protected speech and association rights because he had no claim of right to employment in the first place, that argument is foreclosed by *Perry v. Sindermann,* 408 U.S. 593, 597, 92 S.Ct. 2694, 2697, 33 L.Ed.2d 570 (1972). See *supra,* at 2735-2736.

Almost half a century ago, this Court made clear that the government "may not enact a regulation providing that no Republican ... shall be appointed to federal office." *Public Workers v. Mitchell,* 330 U.S. 75, 100, 67 S.Ct. 556, 569, 91 L.Ed. 754 (1947). What the *78 First Amendment precludes the government**2739 from commanding directly, it also precludes the government from accomplishing indirectly. See *Perry,* 408 U.S., at 597, 92 S.Ct., at 2697 (citing *Speiser v. Randall,* 357 U.S. 513, 526, 78 S.Ct. 1332, 1342, 2 L.Ed.2d 1460 (1958)); see *supra,* at 2735. Under our sustained precedent, conditioning hiring decisions on political belief and association plainly constitutes an unconstitutional condition, unless the government has a vital interest in doing so. See *Elrod,* 427 U.S., at 362-363, 96 S.Ct., at 2684 (plurality opinion) and 375, 96 S.Ct., at 2690 (Stewart, J., concurring in judgment); *Branti,* 445 U.S., at 515-516, 100 S.Ct., at 1293; see also *Sherbert v. Verner,* 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963) (unemployment benefits); *Speiser v. Randall, supra* (tax exemption). We find no such government interest here, for the same reasons that we found that the government lacks justification for patronage promotions, transfers, or recalls. See *supra,* at 2735-2738.

The court below, having decided that the appropriate inquiry in patronage cases is whether the employment decision at issue is the substantial equivalent of a dismissal, affirmed the trial court's dismissal of Moore's claim. See 868 F.2d, at 954. The Court of Appeals reasoned that "rejecting an employment application does not impose a hardship upon an employee comparable to the loss of [a] job." *Ibid.,* citing *Wygant v. Jackson Bd. of Educa-*

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tion, 476 U.S. 267, 106 S.Ct. 1842, 90 L.Ed.2d 260 (1986) (plurality opinion). Just as we reject the Seventh Circuit's proffered test, see *supra,* at 2737-2738, we find the Seventh Circuit's reliance on *Wygant* to distinguish hiring from dismissal unavailing. The court cited a passage from the plurality opinion in *Wygant* explaining that school boards attempting to redress past discrimination must choose methods that broadly distribute the disadvantages imposed by affirmative-action plans among innocent parties. The plurality said that race-based layoffs placed too great a burden on individual members of the nonminority race, but suggested that discriminatory hiring was permissible, under certain circumstances, even though it burdened white applicants, because the burden was less intrusive than the loss of an existing job. *79 476 U.S., at 282-284, 106 S.Ct., at 1851-1852. See also *id.,* at 294-295, 106 S.Ct., at 1857-1858 (WHITE, J., concurring in judgment).

Wygant has no application to the question at issue here. The plurality's concern in that case was identifying the least harsh means of remedying past wrongs. It did not question that *some* remedy was permissible when there was sufficient evidence of past discrimination. In contrast, the Governor of Illinois has not instituted a remedial undertaking. It is unnecessary here to consider whether not being hired is less burdensome than being discharged, because the government is not pressed to do *either* on the basis of political affiliation. The question in the patronage context is not which penalty is more acute but whether the government, without sufficient justification, is pressuring employees to discontinue the free exercise of their First Amendment rights.

If Moore's employment application was set aside because he chose not to support the Republican Party, as he asserts, then Moore's First Amendment rights have been violated. Therefore, we find that Moore's complaint was improperly dismissed.

III

We hold that the rule of *Elrod* and *Branti* extends to promotion, transfer, recall, and hiring decisions based on party affiliation and support and that all of the petitioners and cross-respondents have stated claims upon which relief may be granted. We affirm the Seventh Circuit insofar as it remanded Rutan's, Taylor's, Standefer's, and O'Brien's claims. However, we reverse the Seventh Circuit's decision to uphold the dismissal of Moore's claim. All five claims are remanded for proceedings consistent with this opinion.

It is so ordered.

**2740 Justice STEVENS, concurring.

While I join the Court's opinion, these additional comments are prompted by three propositions advanced by Justice SCALIA in his dissent. First, he implies that prohibiting imposition*80 of an unconstitutional condition upon eligibility for government employment amounts to adoption of a civil service system. Second, he makes the startling assertion that a long history of open and widespread use of patronage practices immunizes them from constitutional scrutiny. Third, he assumes that the decisions in *Elrod v. Burns,* 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), and *Branti v. Finkel,* 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980), represented dramatic departures from prior precedent.

Several years before either *Elrod* or *Branti* was decided, I had occasion as a judge on the Court of Appeals for the Seventh Circuit to evaluate each of these propositions. *Illinois State Employees Union, Council 34, Am. Federation of State, Cty., and Municipal Employees, AFL-CIO v. Lewis,* 473 F.2d 561 (1972), cert. denied, 410 U.S. 928, 93 S.Ct. 1364, 35 L.Ed.2d 590 (1973). With respect to the first, I wrote:

> "Neither this court nor any other may impose a civil service system upon the State of Illinois. The General Assembly has provided an elaborate system regulating the appointment to specified positions solely on the basis of merit and fitness, the grounds for termination of such employment,

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and the procedures which must be followed in connection with hiring, firing, promotion, and retirement. A federal court has no power to establish any such employment code.

"However, recognition of plaintiffs' claims will not give every public employee civil service tenure and will not require the state to follow any set procedure or to assume the burden of explaining or proving the grounds for every termination. It is the former employee who has the burden of proving that his discharge was motivated by an impermissible consideration. It is true, of course, that a prima facie case may impose a burden of explanation on the State. But the burden of proof will remain with the plaintiff employee and we must assume that the trier of fact will be able to differentiate between those discharges which are politically motivated and *81 those which are not. There is a clear distinction between the grant of tenure to an employee-a right which cannot be conferred by judicial fiat-and the prohibition of a discharge for a particular impermissible reason. The Supreme Court has plainly identified that distinction on many occasions, most recently in *Perry v. Sindermann,* 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972).

"Unlike a civil service system, the Fourteenth Amendment to the Constitution does not provide job security, as such, to public employees. If, however, a discharge is motivated by considerations of race, religion, or punishment of constitutionally protected conduct, it is well settled that the State's action is subject to federal judicial review. There is no merit to the argument that recognition of plaintiffs' constitutional claim would be tantamount to foisting a civil service code upon the State." 473 F.2d, at 567-568 (footnotes and citations omitted).

Denying the Governor of Illinois the power to require every state employee, and every applicant for state employment, to pledge allegiance and service to the political party in power is a far cry from a civil service code. The question in this case is simply whether a Governor may adopt a rule that would be plainly unconstitutional if enacted by the General Assembly of Illinois.[FN1]

FN1. Despite Justice SCALIA's imprecise use of the term, *post,* at 2758, the legal issue presented in this litigation is plainly not a "political question." See *Elrod v. Burns,* 427 U.S. 347, 351-353, 96 S.Ct. 2673, 2678-2679, 49 L.Ed.2d 547 (1976) (plurality opinion); *Illinois State Employees Union, Council 34, Am. Federation of State, Cty., and Municipal Employees, AFL-CIO v. Lewis,* 473 F.2d 561, 566-567 (1972), cert. denied, 410 U.S. 928, 93 S.Ct. 1364, 35 L.Ed.2d 590 (1973).

**2741 Second, Justice SCALIA asserts that "when a practice not expressly prohibited by the text of the Bill of Rights bears the endorsement of a long tradition of open, widespread, and unchallenged use that dates back to the beginning of the Republic, we have no proper basis for striking it down." *Post,* at 2748; *post,* at 2752 (a "clear and continuing tradition of our people" *82 deserves " *dispositive* effect"). The argument that traditional practices are immune from constitutional scrutiny is advanced in two plurality opinions that Justice SCALIA has authored, but not by any opinion joined by a majority of the Members of the Court.[FN2]

FN2. See *Michael H. v. Gerald D.,* 491 U.S. 110, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989) (plurality opinion); *Burnham v. Superior Court of California, Marin County,* 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990) (plurality opinion). Justice SCALIA's additional reliance on *Bowers v. Hardwick,* 478 U.S. 186, 106 S.Ct. 2841, 92 L.Ed.2d 140 (1986), *post,* at 2752, is misplaced because in that case the Court used a history of state criminal prohibitions to support its refusal to extend the doctrine of substantive due process to previously unprotected conduct. The question

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> in these cases is whether mere longevity can immunize from constitutional review state conduct that would otherwise violate the First Amendment.

In the *Lewis* case, I noted the obvious response to this position: "[I]f the age of a pernicious practice were a sufficient reason for its continued acceptance, the constitutional attack on racial discrimination would, of course, have been doomed to failure." 473 F.2d, at 568, n. 14. See, *e.g., Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).[FN3] I then added *83 this comment on the specific application of that argument to patronage practices:

> FN3. Ironically, at the time of the adoption of the Bill of Rights, the party system itself was far from an "accepted political nor[m]." *Post,* at 2748. Our founders viewed it as a pathology:
>
> "Political discussion in eighteenth-century England and America was pervaded by a kind of anti-party cant. Jonathan Swift, in his *Thoughts on Various Subjects,* had said that 'Party is the madness of many, for the gain of the few.' This maxim, which was repeated on this side of the Atlantic by men like John Adams and William Paterson, plainly struck a deep resonance in the American mind. Madison and Hamilton, when they discussed parties or factions (for them the terms were usually interchangeable) in *The Federalist,* did so only to arraign their bad effects. In the great debate over the adoption of the Constitution both sides spoke ill of parties. The popular sage, Franklin (who was not always consistent on the subject), gave an eloquent warning against factions and 'the infinite mutual abuse of parties, tearing to pieces the best of characters.' George Washington devoted a large part of his political testament, the Farewell Address, to stern warnings against 'the baneful effects of the Spirit of Party.' His successor, John Adams, believed that 'a division of the republic into two great parties.... is to be dreaded as the greatest political evil under our Constitution.' Similar admonitions can be found in the writings of the arch-Federalist Fisher Adams and the 'philospher of Jeffersonian democracy,' John Taylor of Caroline. If there was one point of political philosophy upon which these men, who differed on so many things, agreed quite readily, it was their common conviction about the baneful effects of the spirit of party." R. Hofstadter, The Idea of a Party System 2-3 (1969) (footnote omitted).
>
> Our contemporary recognition of a state interest in protecting the two major parties from damaging intraparty feuding or unrestrained factionalism, see, *e.g., Storer v. Brown,* 415 U.S. 724, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974); *post,* at 2754-2755, has not disturbed our protection of the rights of individual voters and the role of alternative parties in our government. See, *e.g., Anderson v. Celebrezze,* 460 U.S. 780, 793, 103 S.Ct. 1564, 1572, 75 L.Ed.2d 547 (1983) (burdens on new or small parties and independent candidates impinge on associational choices); *Williams v. Rhodes,* 393 U.S. 23, 32, 89 S.Ct. 5, 11, 21 L.Ed.2d 24 (1968) (there is "no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them").

"Finally, our answer to the constitutional question is not foreclosed by the fact that the 'spoils system has been entrenched in American history for almost two hundred years.' *Alomar v. Dwyer,* 447 F.2d 482, 483 (2d Cir.1971). For most of that period it was assumed, without serious question

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or debate, that since a public employee has no constitutional right to his job, there can be no valid constitutional objection to his summary removal. See *Bailey v. Richardson,* 86 U.S.App.D.C. 248, 182 F.2d 46, 59 (1950), affirmed per curiam by an equally divided Court, 341 U.S. 918 [71 S.Ct. 669, 95 L.Ed. 1352 (1951)]; **2742*Adler v. Board of Education,* 342 U.S. 485 [, 72 S.Ct. 380, 96 L.Ed. 517 (1952)]. But as Mr. Justice Marshall so forcefully stated in 1965 when he was a circuit judge, 'the theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected.' *Keyishian v. Board of Regents,* 345 F.2d 236, 239 (2d Cir.1965). The development of constitutional law subsequent to the Supreme Court's unequivocal repudiation of the line of cases ending with *Bailey v. *84 Richardson* and *Adler v. Board of Education* is more relevant than the preceding doctrine which is now 'universally rejected.' " 473 F.2d, at 568 (footnotes and citations omitted).

With respect to Justice SCALIA's view that until *Elrod v. Burns* was decided in 1976, it was unthinkable that patronage could be unconstitutional, see *post,* at 2748-2749, it seems appropriate to point out again not only that my views in *Lewis* antedated *Elrod* by several years, but, more importantly, that they were firmly grounded in several decades of decisions of this Court. As explained in *Lewis:*

"[In 1947] a closely divided Supreme Court upheld a statute prohibiting federal civil service employees from taking an active part in partisan political activities. *United Public Workers v. Mitchell,* 330 U.S. 75 [67 S.Ct. 556, 91 L.Ed. 754 (1947)]. The dissenting Justices felt that such an abridgment of First Amendment rights could not be justified. The majority, however, concluded that the government's interests in not compromising the quality of public service and in not permitting individual employees to use their public offices to advance partisan causes were sufficient to justify the limitation on their freedom.

"There was no dispute within the Court over the proposition that the employees' interests in political action were protected by the First Amendment. The Justices' different conclusions stemmed from their different appraisals of the sufficiency of the justification for the restriction. That justification-the desirability of political neutrality in the public service and the avoidance of the use of the power and prestige of government to favor one party or the other-would condemn rather than support the alleged conduct of defendant in this case. Thus, in dicta, the Court unequivocally stated that the Legislature could not require allegiance to a particular political faith as a condition of public employment:

*85 " 'Appellants urge that federal employees are protected by the Bill of Rights and that Congress may not "enact a regulation providing that no Republican, Jew or Negro shall be appointed to federal office, or that no federal employee shall attend Mass or take any active part in missionary work." None would deny such limitations on Congressional power but, because there are some limitations it does not follow that a prohibition against acting as ward leader or worker at the polls is invalid.' 330 U.S. 75, 100, 67 S.Ct., at 569-570.

"In 1952 the Court quoted that dicta in support of its holding that the State of Oklahoma could not require its employees to profess their loyalty by denying past association with Communists. *Wieman v. Updegraff,* 344 U.S. 183, 191-192 [73 S.Ct. 215, 219, 97 L.Ed. 216 (1952)]. That decision did not recognize any special right to public employment; rather, it rested on the impact of the requirement on the citizen's First Amendment rights. We think it unlikely that the Supreme Court would consider these plaintiffs' interest in freely associating with members of the Democratic Party less worthy of protection than the Oklahoma employees' interest in associating with

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Communists or former Communists.

"In 1961 the Court held that a civilian cook could be summarily excluded from a naval gun factory. **2743*Cafeteria and Restaurant Workers Union, Local 473, AFL-CIO v. McElroy,* 367 U.S. 886 [81 S.Ct. 1743, 6 L.Ed.2d 1230 (1961)]. The government's interest in maintaining the security of the military installation outweighed the cook's interest in working at a particular location. Again, however, the Court explicitly assumed that the sovereign could not deny employment for the reason that the citizen was a member of a particular political party or religious faith-'that she could not have been kept out because she was a Democrat or a Methodist.' 367 U.S., at 898 [81 S.Ct., at 1750].

*86 "In 1968 the Court held that 'a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment.' *Pickering v. Board of Education,* 391 U.S. 563, 574, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968). The Court noted that although criminal sanctions 'have a somewhat different impact on the exercise of the right to freedom of speech from dismissal from employment, it is apparent that the threat of dismissal from public employment is nonetheless a potent means of inhibiting speech.' *Ibid.* The holding in *Pickering* was a natural sequel to Mr. Justice Frankfurter's comment in dissent in Shelton v. Tucker that a scheme to terminate the employment of teachers solely because of their membership in unpopular organizations would run afoul of the Fourteenth Amendment. 364 U.S. 479, 496[, 81 S.Ct. 247, 256, 5 L.Ed.2d 231 (1960)].

"In 1972 the Court reaffirmed the proposition that a nontenured public servant has no constitutional right to public employment, but nevertheless may not be dismissed for exercising his First Amendment rights. *Perry v. Sindermann,* 408 U.S. 593 [92 S.Ct. 2694, 33 L.Ed.2d 570]. The Court's explanation of its holding is pertinent here:

" 'For at least a quarter century, this Court has made clear that even though a person has no "right" to a valuable governmental benefit and even though the government may deny him the benefit for any number of reasons, there are some reasons upon which the government may not act. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests-especially, his interest in freedom of speech. For if the government could deny a benefit to a person because of his constitutionally protected speech or associations, his exercise of those freedoms would in effect be penalized and inhibited. This would allow the government to "produce a result which [it] could not command directly." *Speiser v. Randall,* 357 U.S. 513, 526 [78 S.Ct. 1332, 2 L.Ed.2d 1460]. Such interference with constitutional rights is impermissible.'

*87 " 'We have applied this general principle to denials of tax exemptions, *Speiser v. Randall, supra,* unemployment benefits, *Sherbert v. Verner,* 374 U.S. 398, 404-405 [83 S.Ct. 1790, 1794, 10 L.Ed.2d 965 (1963)], and welfare payments, *Shapiro v. Thompson,* 394 U.S. 618, 627 n. 6 [89 S.Ct. 1322, 1327 n. 6, 22 L.Ed.2d 600 (1969)]; *Graham v. Richardson,* 403 U.S. 365, 374 [91 S.Ct. 1848, 1853, 29 L.Ed.2d 534 (1971)]. But, most often, we have applied the principle to denials of public employment. *United Public Workers v. Mitchell,* 330 U.S. 75, 100 [67 S.Ct. 556, 569, 91 L.Ed. 754 (1947)]; *Wieman v. Updegraff,* 344 U.S. 183, 192 [73 S.Ct. 215, 219, 97 L.Ed. 216 (1952)]; *Shelton v. Tucker,* 364 U.S. 479, 485-486 [81 S.Ct. 247, 250-251, 5 L.Ed.2d 231 (1960)]; *Torcaso v. Watkins,* 367 U.S. 488, 495-496 [81 S.Ct. 1680, 1683-1684, 6 L.Ed.2d 982 (1961)]; *Cafeteria and Restaurant Workers, etc. v. McElroy,* 367 U.S. 886, 894 [81 S.Ct. 1743, 1748, 6 L.Ed.2d 1230 (1961)]; *Cramp v. Board of Public Instruction,* 368 U.S. 278, 288 [82 S.Ct. 275, 281, 7 L.Ed.2d 285 (1961)]; *Baggett v. Bullitt,* 377 U.S. 360 [84 S.Ct. 1316, 12 L.Ed.2d 377 (1964)]; **2744*Elfbrandt v. Russell,* 384 U.S. [11,] 17 [86 S.Ct. 1238, 1241, 16

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L.Ed.2d 321 (1966)]; *Keyishian v. Board of Regents,* 385 U.S. 589, 605-606 [87 S.Ct. 675, 684-685, 17 L.Ed.2d 629 (1967)]; *Whitehill v. Elkins,* 389 U.S. 54 [88 S.Ct. 184, 19 L.Ed.2d 228 (1967)]; *United States v. Robel,* 389 U.S. 258 [88 S.Ct. 419, 19 L.Ed.2d 508 (1967)]; *Pickering v. Board of Education,* 391 U.S. 563, 568 [88 S.Ct. 1731, 1734-1735, 20 L.Ed.2d 811 (1968)]. We have applied the principle regardless of the public employee's contractual or other claim to a job. Compare *Pickering v. Board of Education, supra,* with *Shelton v. Tucker, supra.*'

"Thus the respondent's lack of a contractual or tenure "right" to reemployment for the 1969-1970 academic year is immaterial to his free speech claim....' 408 U.S., at 597, 92 S.Ct., at 2696-2698.

"This circuit has given full effect to this principle." 473 F.2d, at 569-572 (footnotes and citations omitted).

See also *American Federation of State, Cty. and Municipal Employees, AFL-CIO v. Shapp,* 443 Pa. 527, 537-545, 280 A.2d 375, 379-383 (1971) (Barbieri, J., dissenting).

To avoid the force of the line of authority described in the foregoing passage, Justice SCALIA would weigh the supposed general state interest in patronage hiring against the ***88** aggregated interests of the many employees affected by the practice. This defense of patronage obfuscates the critical distinction between partisan interest and the public interest.[FN4] It assumes that governmental power and public resources ***89** in this case employment opportunities-may appropriately be used to subsidize partisan activities even when the political affiliation of the employee or the job applicant is entirely unrelated to ****2745** his or her public service.[FN5] The premise on which this position rests would justify the use of public funds to compensate party members for their campaign work, or, conversely, a legislative enactment denying public employment to nonmembers of the majority party. If such legislation is unconstitutional-as it clearly would be-an equally pernicious rule promulgated by the executive must also be invalid.

FN4. Although Justice SCALIA's defense of patronage turns on the benefits of fostering the two-party system, *post,* at 2754, his opinion is devoid of reference to meaningful evidence that patronage practices have played a significant role in the preservation of the two-party system. In each of the examples that he cites-"the Boss Tweeds, the Tammany Halls, the Pendergast Machines, the Byrd Machines, and the Daley Machines," *post,* at 2747-patronage practices were used solely to protect the power of an entrenched majority. See Laycock, Notes on the Role of Judicial Review, the Expansion of Federal Power, and the Structure of Constitutional Rights, 99 Yale L.J. 1711, 1722 (1990) (describing the "hopelessness of contesting elections" in Chicago's "one-party system" when "half a dozen employees of the city and of city contractors were paid with public funds to work [a precinct] for the other side"); Johnson, Successful Reform Litigation: The *Shakman* Patronage Case, 64 Chi.-Kent L.Rev. 479, 481 (1988) (the "massive Democratic patronage employment system" maintained a "noncompetitive political system" in Cook County in the 1960's).

Without repeating the Court's studied rejection of the policy arguments for patronage practices in *Elrod,* 427 U.S., at 364-373, 96 S.Ct., at 2685-2690, I note only that many commentators agree more with Justice SCALIA's admissions of the systemic costs of patronage practices-the "financial corruption, such as salary kickbacks and partisan political activity on government-paid time," the reduced efficiency of government, and the undeniable constraint upon the ex-

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pression of views by employees, *post,* at 2755-2756-than with his belief that patronage is necessary to political stability and integration of powerless groups. See, *e.g.,* G. Pomper, Voters, Elections, and Parties 282-304 (1988) (multiple causes of party decline); D. Price, Bringing Back the Parties 22-25 (1984) (same); Comment, 41 U.Chi.L.Rev. 297, 319-328 (1974) (same); Wolfinger, Why Political Machines Have Not Withered Away and Other Revisionist Thoughts, 34 J.Politics 365, 398 (1972) (absence of machine politics in California); J. James, American Political Parties in Transition 85 (1974) (inefficient and antiparty effects of patronage); Johnston, Patrons and Clients, Jobs and Machines: A Case Study of the Uses of Patronage, 73 Am.Pol.Sci.Rev. 385 (1979) (same); Grimshaw, The Political Economy of Machine Politics, 4 Corruption and Reform 15 (1989) (same); Comment, 49 U.Chi.L.Rev. 181, 197-200 (1982) (same); Freedman, Doing Battle with the Patronage Army: Politics, Courts and Personnel Administration in Chicago, 48 Pub.Admin.Rev. 847 (1988) (race and machine politics).

Incidentally, although some might suggest that Jacob Arvey was "best known as the promoter of Adlai Stevenson," *post,* at 2753, that connection is of interest only because of Mr. Arvey's creative and firm leadership of the powerful political organization that was subsequently led by Richard J. Daley. M. Tolchin & S. Tolchin, To the Victor 36 (1971).

FN5. Neither Justice SCALIA nor any of the parties suggests that party affiliation is relevant to any of the positions at stake in this litigation-rehabilitation counselor, road equipment operator, prison guard, dietary manager, and temporary garage worker. Reliance on the difficulty of precisely dividing the positions in which political affiliation is relevant to the quality of public service from those in which it is not an appropriate requirement of the job is thus inapposite. See *post,* at 2756-2758. Difficulty in deciding borderline cases does not justify imposition of a loyalty oath in the vast category of positions in which it is irrelevant.

Justice SCALIA argues that distinguishing "inducement and compulsion" reveals that a patronage system's impairment of the speech and associational rights of employees and would-be employees is insignificant. *Post,* at 2755-2756. This analysis contradicts the harsh reality of party discipline that is the linchpin of his theory of patronage. *Post,* at 2753 (emphasizing the "link between patronage and party discipline, and between that and party success").[FN6] More importantly,*90 it rests on the long-rejected fallacy that a privilege may be burdened by unconstitutional conditions. See, *e.g., Perry v. Sindermann,* 408 U.S. 593, 597, 92 S.Ct. 2694, 2697, 33 L.Ed.2d 570 (1972). There are a few jobs for which an individual's race or religion may be relevant, see *Wygant v. Jackson Bd. of Education,* 476 U.S. 267, 314-315, 106 S.Ct. 1842, 1868-1869, 90 L.Ed.2d 260 (1986) (STEVENS, J., dissenting); there are many jobs for which political affiliation is relevant to the employee's ability to function effectively as part of a given administration. In those cases-in other words, cases in which "the efficiency of the public service," *Public Workers v. Mitchell,* 330 U.S. 75, 101, 67 S.Ct. 556, 570, 91 L.Ed. 754 (1947), would be advanced by hiring workers who are loyal to the Governor's party-such hiring is permissible under the holdings in *Elrod* and *Branti.* These cases, however, concern jobs in which race, religion, and political affiliation are all equally and entirely irrelevant to the public service to be performed. When an individual has *91 been denied employment for an impermissible reason, it

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is unacceptable to balance the constitutional rights of the individual against the political interests of the party in power. It seems to me obvious that the government may not discriminate against particular individuals in hopes of advancing **2746 partisan interests through the misuse [FN7] of public funds.

FN6. The iron fist inside the velvet glove of Justice SCALIA's "inducements" and "influences" is apparent from his own descriptions of the essential features of a patronage system. See, *e.g., post,* at 2755 (the worker may "urge *within the organization* the adoption of any political position; but if that position is rejected he must vote and work for the party nonetheless"); *post,* at 2753 (quoting M. Tolchin & S. Tolchin, To the Victor, at 123 (reporting that Montclair, New Jersey, Democrats provide fewer services than Cook County, Illinois, Democrats, while "the rate of issue participation is much higher among Montclair Democrats who are not bound by the fear displayed by the Cook County committeemen")); *post,* at 2753 (citing W. Grimshaw, The Political Economy of Machine Politics, 4 Corruption and Reform 15, 30 (1989) (reporting that Mayor Daley "sacked" a black committeeman for briefly withholding support for a school board nominee whom civil rights activists opposed)).

Of course, we have firmly rejected any requirement that aggrieved employees "prove that they, or other employees, have been coerced into changing, either actually or ostensibly, their political allegiance." *Branti,* 445 U.S. 507, 517, 100 S.Ct. 1287, 1294, 63 L.Ed.2d 574 (1980) . What is at issue in these cases is not whether an employee is actually coerced or merely influenced, but whether the attempt to obtain his or her support through "party discipline" is legitimate. To apply the relevant question to Justice SCALIA's example, *post,* at 2755-2756 the person who attempts to bribe a public official is guilty of a crime regardless of whether the official submits to temptation; likewise, a political party's attempt to maintain loyalty through allocation of government resources is improper regardless of whether any employee capitulates.

FN7. I use the term "misuse" deliberately because the entire rationale for patronage hiring as an economic incentive for partisan political activity rests on the assumption that the patronage employee filling a government position must be paid a premium to reward him for his partisan services. Without such a premium, the economic incentive rationale on which Justice SCALIA relies does not exist. It has been clear to Congress and this Court for over a century that refusal to contribute "may lead to putting good men out of the service, liberal payments may be made the ground for keeping poor ones in," and "the government itself may be made to furnish indirectly the money to defray the expenses of keeping the political party in power that happens to have for the time being the control of the public patronage." *Ex parte Curtis,* 106 U.S. 371, 375, 1 S.Ct. 381, 385, 27 L.Ed. 232 (1882) (upholding constitutionality of Act of Aug. 15, 1876, § 6, ch. 287, 19 Stat. 169, prohibiting nonappointed federal employees from requesting or receiving any thing of value for political purposes).

Petitioners Rutan and Taylor both allege that they are more qualified than the persons who were promoted over them.

The only systemic consideration permissible in these circumstances is not that of the controlling party, but that of the aggregate of burdened indi-

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viduals. By impairing individuals' freedoms of belief and association, unfettered patronage practices undermine the "free functioning of the electoral process." *Elrod,* 427 U.S., at 356, 96 S.Ct., at 2681. As I wrote in 1972:

> "Indeed, when numbers are considered, it is appropriate not merely to consider the rights of a particular janitor who may have been offered a bribe from the public treasury to obtain his political surrender, but also the impact on the body politic as a whole when the free political choice of millions of public servants is inhibited or manipulated by the selective award of public benefits. While the patronage system is defended in the name of democratic tradition, its paternalistic impact on the political *92 process is actually at war with the deeper traditions of democracy embodied in the First Amendment." *Lewis,* 473 F.2d, at 576.[FN8]

FN8. A decade later, in *Anderson v. Celebrezze,* 460 U.S., at 794, 103 S.Ct., at 1572, this Court decided that a law burdening independent candidates, by "limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political effectiveness as a group," would burden associational choices and thereby "threaten to reduce diversity and competition in the marketplace of ideas." We concluded that "the primary values protected by the First Amendment-'a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open,' *New York Times Co. v. Sullivan,* 376 U.S. 254, 270, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964)-are served when election campaigns are not monopolized by the existing political parties." *Ibid.*

The tradition that is relevant in these cases is the American commitment to examine and reexamine past and present practices against the basic principles embodied in the Constitution. The inspirational command by our President in 1961 is entirely consistent with that tradition: "Ask not what your country can do for you-ask what you can do for your country." These cases involve a contrary command: "Ask not what job applicants can do for the State-ask what they can do for our party." Whatever traditional support may remain for a command of that ilk, it is plainly an illegitimate excuse for the practices rejected by the Court today.

Justice SCALIA, with whom The Chief Justice and Justice KENNEDY join, and with whom Justice O'CONNOR joins as to Parts II and III, dissenting.

Today the Court establishes the constitutional principle that party membership is not a permissible factor in the dispensation of government jobs, except those jobs for the performance of which party affiliation is an "appropriate requirement." *Ante,* at 2732. It is hard to say precisely (or even generally) what that exception means, but if there is any category of jobs for whose performance party affiliation is not an appropriate requirement, it is the job of being a judge, where *93 partisanship is not only unneeded but positively undesirable. It is, however, **2747 rare that a federal administration of one party will appoint a judge from another party. And it has always been rare. See *Marbury v. Madison,* 1 Cranch 137, 2 L.Ed. 60 (1803). Thus, the new principle that the Court today announces will be enforced by a corps of judges (the Members of this Court included) who overwhelmingly owe their office to its violation. Something must be wrong here, and I suggest it is the Court.

The merit principle for government employment is probably the most favored in modern America, having been widely adopted by civil service legislation at both the state and federal levels. But there is another point of view, described in characteristically Jacksonian fashion by an eminent practitioner of the patronage system, George Washington Plunkitt of Tammany Hall:

> "I ain't up on sillygisms, but I can give you some arguments that nobody can answer.

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"First, this great and glorious country was built up by political parties; second, parties can't hold together if their workers don't get offices when they win; third, if the parties go to pieces, the government they built up must go to pieces, too; fourth, then there'll be hell to pay." W. Riordon, Plunkitt of Tammany Hall 13 (1963).

It may well be that the Good Government Leagues of America were right, and that Plunkitt, James Michael Curley, and their ilk were wrong; but that is not entirely certain. As the merit principle has been extended and its effects increasingly felt; as the Boss Tweeds, the Tammany Halls, the Pendergast Machines, the Byrd Machines, and the Daley Machines have faded into history; we find that political leaders at all levels increasingly complain of the helplessness of elected government, unprotected by "party discipline," before the demands of small and cohesive interest groups.

*94 The choice between patronage and the merit principle-or, to be more realistic about it, the choice between the desirable mix of merit and patronage principles in widely varying federal, state, and local political contexts-is not so clear that I would be prepared, as an original matter, to chisel a single, inflexible prescription into the Constitution. Fourteen years ago, in *Elrod v. Burns,* 427 U.S. 347, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976), the Court did that. *Elrod* was limited however, as was the later decision of *Branti v. Finkel,* 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980), to patronage firings, leaving it to state and federal legislatures to determine when and where political affiliation could be taken into account in hirings and promotions. Today the Court makes its constitutional civil service reform absolute, extending to all decisions regarding government employment. Because the First Amendment has never been thought to require this disposition, which may well have disastrous consequences for our political system, I dissent.

I

The restrictions that the Constitution places upon the government in its capacity as lawmaker, *i.e.,* as the regulator of private conduct, are not the same as the restrictions that it places upon the government in its capacity as employer. We have recognized this in many contexts, with respect to many different constitutional guarantees. Private citizens perhaps cannot be prevented from wearing long hair, but policemen can. *Kelley v. Johnson,* 425 U.S. 238, 247, 96 S.Ct. 1440, 1445, 47 L.Ed.2d 708 (1976). Private citizens cannot have their property searched without probable cause, but in many circumstances government employees can. *O'Connor v. Ortega,* 480 U.S. 709, 723, 107 S.Ct. 1492, 1500, 94 L.Ed.2d 714 (1987) (plurality opinion); *id.,* at 732, 107 S.Ct., at 1505 (SCALIA, J., concurring in judgment). Private citizens cannot be punished for refusing to provide the government information that may incriminate them, but government employees can be dismissed when the incriminating information that they refuse to provide relates to the performance of their jobs. *Gardner v.* **2748 *Broderick,* 392 *95 U.S. 273, 277-278, 88 S.Ct. 1913, 1915-1916, 20 L.Ed.2d 1082 (1968). With regard to freedom of speech in particular: Private citizens cannot be punished for speech of merely private concern, but government employees can be fired for that reason. *Connick v. Myers,* 461 U.S. 138, 147, 103 S.Ct. 1684, 1690, 75 L.Ed.2d 708 (1983). Private citizens cannot be punished for partisan political activity, but federal and state employees can be dismissed and otherwise punished for that reason. *Public Workers v. Mitchell,* 330 U.S. 75, 101, 67 S.Ct. 556, 570, 91 L.Ed. 754 (1947); *Civil Service Comm'n v. Letter Carriers,* 413 U.S. 548, 556, 93 S.Ct. 2880, 2886, 37 L.Ed.2d 796 (1973); *Broadrick v. Oklahoma,* 413 U.S. 601, 616-617, 93 S.Ct. 2908, 2918-2919, 37 L.Ed.2d 830 (1973).

Once it is acknowledged that the Constitution's prohibition against laws "abridging the freedom of speech" does not apply to laws enacted in the government's capacity as employer in the same way that it does to laws enacted in the government's capacity as regulator of private conduct, it may some-

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times be difficult to assess what employment practices are permissible and what are not. That seems to me not a difficult question, however, in the present context. The provisions of the Bill of Rights were designed to restrain transient majorities from impairing long-recognized personal liberties. They did not create by implication novel individual rights overturning accepted political norms. Thus, when a practice not expressly prohibited by the text of the Bill of Rights bears the endorsement of a long tradition of open, widespread, and unchallenged use that dates back to the beginning of the Republic, we have no proper basis for striking it down.[FN1] Such a venerable and accepted tradition is not to *96 be laid on the examining table and scrutinized for its conformity to some abstract principle of First Amendment adjudication devised by this Court. To the contrary, such traditions are themselves the stuff out of which the Court's principles are to be formed. They are, in these uncertain areas, the very points of reference by which the legitimacy or illegitimacy of *other* practices are to be figured out. When it appears that the latest "rule," or "three-part test," or "balancing test" devised by the Court has placed us on a collision course with such a landmark practice, it is the former that must be recalculated by us, and not the latter that must be abandoned by our citizens. I know of no other way to formulate a constitutional jurisprudence that reflects, as it should, the principles adhered to, over time, by the American people, rather than those favored by the personal (and necessarily shifting) philosophical dispositions of a majority of this Court.

FN1. The customary invocation of *Brown v. Board of Education,* 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954), as demonstrating the dangerous consequences of this principle, see *ante,* at 2741 (STEVENS, J., concurring), is unsupportable. I argue for the role of tradition in giving content only to *ambiguous* constitutional text; no tradition can supersede the Constitution. In my view the Fourteenth Amendment's requirement of "equal protection of the laws," combined with the Thirteenth Amendment's abolition of the institution of black slavery, leaves no room for doubt that laws treating people differently because of their race are invalid. Moreover, even if one does not regard the Fourteenth Amendment as crystal clear on this point, a tradition of *unchallenged* validity did not exist with respect to the practice in *Brown.* To the contrary, in the 19th century the principle of "separate-but-equal" had been vigorously opposed on constitutional grounds, litigated up to this Court, and upheld only over the dissent of one of our historically most respected Justices. See *Plessy v. Ferguson,* 163 U.S. 537, 555-556, 16 S.Ct. 1138, 1145, 41 L.Ed. 256 (1896) (Harlan, J., dissenting).

I will not describe at length the claim of patronage to landmark status as one of our accepted political traditions. Justice Powell discussed it in his dissenting opinions in *Elrod* and *Branti. Elrod, supra,* 427 U.S., at 378-379, 96 S.Ct., at 2692; *Branti, supra,* 445 U.S., at 522, n. 1, 100 S.Ct., at 1296, n. 1. Suffice it to say that patronage was, without any thought that it could be unconstitutional, a basis for government employment from the **2749 earliest days of the Republic until *Elrod*- and has continued unabated *since Elrod,* to the extent still permitted by that unfortunate decision. See, *e.g.,* D. Price, Bringing Back the Parties 24, 32 (1984); Gardner, A Theory of the Spoils System, 54 Public Choice 171, 181 (1987); Toinet & Glenn, Clientelism and Corruption in the "Open" Society: The Case of the United States, in Private Patronage and Public Power 193, 202 (C. Clapham ed. *97 1982). Given that unbroken tradition regarding the application of an ambiguous constitutional text, there was in my view no basis for holding that patronage-based dismissals violated the First Amendment-much less for holding, as the Court does today, that even patronage hiring does so.[FN2]

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FN2. Justice STEVENS seeks to counteract this tradition by relying upon the supposed "unequivocal repudiation" of the right-privilege distinction. *Ante,* at 2742. That will not do. If the right-privilege distinction was once used to explain the practice, and if that distinction is to be repudiated, then one must simply devise some other theory to explain it. The order of precedence is that a constitutional theory must be wrong if its application contradicts a clear constitutional tradition; not that a clear constitutional tradition must be wrong if it does not conform to the current constitutional theory. On Justice STEVENS' view of the matter, this Court examines a historical practice, endows it with an intellectual foundation, and later, by simply undermining that foundation, relegates the constitutional tradition to the dustbin of history. That is not how constitutional adjudication works. Cf. *Burnham v. Superior Court of California, Marin County,* 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990) (opinion of SCALIA, J.). I am not sure, in any event, that the right-privilege distinction has been as unequivocally rejected as Justice STEVENS supposes. It has certainly been recognized that the fact that the government need not confer a certain benefit does not mean that it can attach any conditions whatever to the conferral of that benefit. But it remains true that certain conditions can be attached to benefits that cannot be imposed as prescriptions upon the public at large. If Justice STEVENS chooses to call this something other than a right-privilege distinction, that is fine and good-but it is in any case what explains the nonpatronage restrictions upon federal employees that the Court continues to approve, and there is no reason why it cannot support patronage restrictions as well.

II

Even accepting the Court's own mode of analysis, however, and engaging in "balancing" a tradition that ought to be part of the scales, *Elrod, Branti,* and today's extension of them seem to me wrong.

A

The Court limits patronage on the ground that the individual's interest in uncoerced belief and expression outweighs the systemic interests invoked to justify the practice. *Ante,* *98 at 2734-2735. The opinion indicates that the government may prevail only if it proves that the practice is "narrowly tailored to further vital government interests." *Ante,* at 2736.

That strict-scrutiny standard finds no support in our cases. Although our decisions establish that government employees do not lose all constitutional rights, we have consistently applied a lower level of scrutiny when "the governmental function operating ... [is] not the power to regulate or license, as lawmaker, an entire trade or profession, or to control an entire branch of private business, but, rather, as proprietor, to manage [its] internal operatio [ns]...." *Cafeteria & Restaurant Workers v. McElroy,* 367 U.S. 886, 896, 81 S.Ct. 1743, 1749, 6 L.Ed.2d 1230 (1961). When dealing with its own employees, the government may not act in a manner that is "patently arbitrary or discriminatory," *id.,* at 898, 81 S.Ct., at 1750, but its regulations are valid if they bear a "rational connection" to the governmental end sought to be served, *Kelley v. Johnson,* 425 U.S., at 247, 96 S.Ct., at 1446.

In particular, restrictions on speech by public employees are not judged by the test applicable to similar restrictions on speech by nonemployees. We have said that "[a] governmental employer may subject its employees to such special restrictions on free expression as are reasonably necessary to promote effective government." **2750*Brown v. Glines,* 444 U.S. 348, 356, n. 13, 100 S.Ct. 594, 600, n. 13, 62 L.Ed.2d 540 (1980). In *Public Workers v. Mitchell,* 330 U.S., at 101, 67 S.Ct., at 570

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upholding provisions of the Hatch Act which prohibit political activities by federal employees, we said that "it is not necessary that the act regulated be anything more than an act reasonably deemed by Congress to interfere with the efficiency of the public service." We reaffirmed *Mitchell* in *Civil Service Comm'n v. Letter Carriers,* 413 U.S., at 556, 93 S.Ct., at 2886, over a dissent by Justice Douglas arguing against application of a special standard to Government employees, except insofar as their "job performance" is concerned, *id.,* at 597, 93 S.Ct., at 2906. We did not say that the Hatch Act was narrowly tailored to meet *99 the government's interest, but merely deferred to the judgment of Congress, which we were not "in any position to dispute." *Id.,* at 567, 93 S.Ct., at 2891. Indeed, we recognized that the Act was not indispensably necessary to achieve those ends, since we repeatedly noted that "Congress at some time [may] come to a different view." *Ibid.;* see also *id.,* at 555, 564, 93 S.Ct., at 2890. In *Broadrick v. Oklahoma,* 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973), we upheld similar restrictions on state employees, though directed "at political expression which if engaged in by private persons would plainly be protected by the First and Fourteenth Amendments," *id.,* at 616, 93 S.Ct., at 2918.

To the same effect are cases that specifically concern adverse employment action taken against public employees because of their speech. In *Pickering v. Board of Education of Township High School Dist.,* 391 U.S. 563, 568, 88 S.Ct. 1731, 1734, 20 L.Ed.2d 811 (1968), we recognized:

> "[T]he State has interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general. The problem in any case is to arrive at a balance between the interests of the [employee], as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees."

Because the restriction on speech is more attenuated when the government conditions employment than when it imposes criminal penalties, and because "government offices could not function if every employment decision became a constitutional matter," *Connick v. Myers,* 461 U.S., at 143, 103 S.Ct., at 1688, we have held that government employment decisions taken on the basis of an employee's speech do not "abridg[e] the freedom of speech," U.S. Const., Amdt. 1, merely because they fail *100 the narrow-tailoring and compelling-interest tests applicable to direct regulation of speech. We have not subjected such decisions to strict scrutiny, but have accorded "a wide degree of deference to the employer's judgment" that an employee's speech will interfere with close working relationships. 461 U.S., at 152, 103 S.Ct., at 1692.

When the government takes adverse action against an employee on the basis of his political affiliation (an interest whose constitutional protection is derived from the interest in speech), the same analysis applies. That is why both the *Elrod* plurality, 427 U.S., at 359, 96 S.Ct., at 2682, and the opinion concurring in the judgment, *id.,* at 375, 96 S.Ct., at 2690, as well as *Branti,* 445 U.S., at 514-515, 100 S.Ct., at 1292-1293, and the Court today, *ante,* at 2735-2736, rely on *Perry v. Sindermann,* 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972), a case that applied the test announced in *Pickering,* not the strict-scrutiny test applied to restrictions imposed on the public at large. Since the government may dismiss an employee for political *speech* "reasonably deemed by Congress to interfere with the efficiency of the public service," *Public Workers v. Mitchell, supra,* 330 U.S., at 101, 67 S.Ct., at 570, it follows, *a fortiori,* that the government may dismiss an employee for political *affiliation* if "reasonably necessary to promote effective government." **2751 *Brown v. Glines, supra,* 444 U.S., at 356, n. 13, 100 S.Ct., at 600, n. 13.

While it is clear from the above cases that the normal "strict scrutiny" that we accord to government regulation of speech is not applicable in this

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field, [FN3] the precise test that **2752 replaces*101 it is not so clear; we have used various formulations. The one that appears in the case dealing with an employment practice closest in its effects to patronage is whether the *102 practice could be "reasonably deemed" by the enacting legislature to further a legitimate goal. *Public Workers v. Mitchell,* 330 U.S., at 101, 67 S.Ct., at 570. For purposes of my ensuing discussion, however, I will apply a less permissive standard that seems more in accord with our general "balancing" test: Can the governmental advantages of this employment practice reasonably be deemed to outweigh its "coercive" effects?

FN3. The Court calls our description of the appropriate standard of review "questionable," and suggests that these cases applied strict scrutiny ("even *were* Justice SCALIA correct that less-than-strict scrutiny is appropriate"). *Ante,* at 2735, n. 4 (emphasis added). This suggestion is incorrect, does not aid the Court's argument, and if accepted would eviscerate the strict-scrutiny standard. It is incorrect because even a casual perusal of the cases reveals that the governmental actions were sustained, not because they were shown to be "narrowly tailored to further vital government interests," *ante,* at 2736, but because they were "reasonably" deemed necessary to promote effective government. It does not aid the Court's argument, moreover, because *whatever* standard those cases applied must be applied here, and if the asserted interests in patronage are as weighty as those proffered in the previous cases, then *Elrod* and *Branti* were wrongly decided. It eviscerates the standard, finally, because if the practices upheld in those cases survived strict scrutiny, then the so-called "strict-scrutiny" test means nothing. Suppose a State made it unlawful for an employee of a privately owned nuclear powerplant to criticize his employer. Can there be any doubt that we would reject out of hand the State's argument that the statute was justified by the compelling interest in maintaining the appearance that such employees are operating nuclear plants properly, so as to maintain public confidence in the plants' safety? But cf. *Civil Service Comm'n v. Letter Carriers,* 413 U.S. 548, 565, 93 S.Ct. 2880, 2890, 37 L.Ed.2d 796 (1973) (Hatch Act justified by need for Government employees to "appear to the public to be avoiding [political partiality], if confidence in the system of representative Government is not to be eroded"). Suppose again that a State prohibited a private employee from speaking on the job about matters of private concern. Would we even hesitate before dismissing the State's claim that the compelling interest in fostering an efficient economy overrides the individual's interest in speaking on such matters? But cf. *Connick v. Myers,* 461 U.S. 138, 147, 103 S.Ct. 1684, 1690, 75 L.Ed.2d 708 (1983) ("[W]hen a public employee speaks ... upon matters only of personal interest, absent the most unusual circumstances, a federal court is not the appropriate forum in which to review the wisdom of a personnel decision taken by a public agency allegedly in reaction to the employee's behavior"). If the Court thinks that strict scrutiny is appropriate in all these cases, then it should forthrightly admit that *Public Workers v. Mitchell,* 330 U.S. 75, 67 S.Ct. 556, 91 L.Ed. 754 (1947) , *Letter Carriers, supra, Pickering v. Board of Education of Township High School Dist.,* 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968), *Connick, supra,* and similar cases were mistaken and should be overruled; if it rejects that course, then it should admit that those cases applied, as they said they did, a reasonableness test.

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The Court's further contention that these cases are limited to the "interests that the government has in its capacity as an employer," *ante,* at 2735, n. 4, as distinct from its interests "in the structure and functioning of society as a whole," *ibid.,* is neither true nor relevant. Surely a principal reason for the statutes that we have upheld preventing political activity by government employees-and indeed the *only* substantial reason, with respect to those employees who are permitted to be hired and fired on a political basis-is to prevent the party in power from obtaining what is considered an unfair advantage in political campaigns. That is precisely the type of governmental interest at issue here. But even if the Court were correct, I see no reason in policy or principle why the government would be limited to furthering *only* its interests "as an employer." In fact, we have seemingly approved the furtherance of broader governmental interests through employment restrictions. In *Hampton v. Mow Sun Wong,* 426 U.S. 88, 96 S.Ct. 1895, 48 L.Ed.2d 495 (1976), we held unlawful a Civil Service Commission regulation prohibiting the hiring of aliens on the ground that the Commission lacked the requisite authority. We were willing, however, to "assume ... that if the Congress or the President had expressly imposed the citizenship requirement, it would be justified by the national interest in providing an incentive for aliens to become naturalized, or possibly even as providing the President with an expendable token for treaty negotiating purposes." *Id.,* at 105, 96 S.Ct., at 1906. Three months after our opinion, the President adopted the restriction by Executive Order. Exec.Order No. 11935, 3 CFR 146 (1976 Comp.). On remand, the lower courts denied the *Mow Sun Wong* plaintiffs relief on the basis of this new Executive Order and relying upon the interest in providing an incentive for citizenship. *Mow Sun Wong v. Hampton,* 435 F.Supp. 37 (ND Cal.1977), aff'd, 626 F.2d 739 (CA9 1980). We denied certiorari *sub nom. Lum v. Campbell,* 450 U.S. 959, 101 S.Ct. 1419, 67 L.Ed.2d 384 (1981). In other cases, the lower federal courts have uniformly reached the same result. See, *e.g., Jalil v. Campbell,* 192 U.S.App.D.C. 4, 7, n. 3, 590 F.2d 1120, 1123, n. 3 (1978); *Vergara v. Hampton,* 581 F.2d 1281 (CA7 1978), cert. denied, 441 U.S. 905, 99 S.Ct. 1993, 60 L.Ed.2d 373 (1979); *Santin Ramos v. United States Civil Service Comm'n,* 430 F.Supp. 422 (PR 1977) (three-judge court).

B

Preliminarily, I may observe that the Court today not only declines, in this area replete with constitutional ambiguities, to give the clear and continuing tradition of our people the *dispositive* effect I think it deserves, but even declines to give it substantial weight in the balancing. That is contrary to what the Court has done in many other contexts. In evaluating*103 so-called "substantive due process" claims we have examined our history and tradition with respect to the asserted right. See, *e.g., Michael H. v. Gerald D.,* 491 U.S. 110, 109 S.Ct. 2333, 105 L.Ed.2d 91 (1989); *Bowers v. Hardwick,* 478 U.S. 186, 192-194, 106 S.Ct. 2841, 2844-2846, 92 L.Ed.2d 140 (1986). In evaluating claims that a particular procedure violates the Due Process Clause we have asked whether the procedure is traditional. See, *e.g., Burnham v. Superior Court of California, Marin County,* 495 U.S. 604, 110 S.Ct. 2105, 109 L.Ed.2d 631 (1990). And in applying the Fourth Amendment's reasonableness test we have looked to the history of judicial and public acceptance of the type of search in question. See, *e.g., Camara v. Municipal Court of San Francisco,* 387 U.S. 523, 537, 87 S.Ct. 1727, 1735, 18 L.Ed.2d 930

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(1967). See also *Press-Enterprise Co. v. Superior Court of California, Riverside County,* 478 U.S. 1, 8, 106 S.Ct. 2735, 2740, 92 L.Ed.2d 1 (1986) (tradition of accessibility to judicial proceedings implies judgment of experience that individual's interest in access outweighs government's interest in closure); *Richmond Newspapers, Inc. v. Virginia,* 448 U.S. 555, 589, 100 S.Ct. 2814, 2834, 65 L.Ed.2d 973 (1980) (BRENNAN, J., concurring in judgment) ("Such a tradition [of public access] commands respect in part because the Constitution carries the gloss of history"); *Walz v. Tax Comm'n of New York City,* 397 U.S. 664, 678, 90 S.Ct. 1409, 1416, 25 L.Ed.2d 697 (1970) ("unbroken practice of according the [property tax] exemption to churches" demonstrates that it does not violate Establishment Clause).

But even laying tradition entirely aside, it seems to me our balancing test is amply met. I assume, as the Court's opinion assumes, that the balancing is to be done on a generalized basis, and not case by case. The Court holds that the governmental benefits of patronage cannot reasonably be thought to outweigh its "coercive" effects (even the lesser "coercive" effects of patronage hiring as opposed to patronage firing) not merely in 1990 in the State of Illinois, but at any time in any of the numerous political subdivisions of this vast country. It seems to me that that categorical pronouncement reflects a naive vision of politics and an inadequate appreciation of the systemic effects of patronage in promoting political stability*104 and facilitating the social and political integration of previously powerless groups.

The whole point of my dissent is that the desirability of patronage is a policy question to be decided by the people's representatives; I do not mean, therefore, to endorse that system. But in order to demonstrate that a legislature could reasonably determine that its benefits outweigh its "coercive" effects, I must describe those benefits as the proponents of patronage see them: As Justice Powell discussed at length in his *Elrod* dissent, patronage stabilizes political parties and prevents excessive political fragmentation-both of which are results in which States have a strong governmental interest. **2753 Party strength requires the efforts of the rank and file, especially in "the dull periods between elections," to perform such tasks as organizing precincts, registering new voters, and providing constituent services. *Elrod,* 427 U.S., at 385, 96 S.Ct., at 2695 (dissenting opinion). Even the most enthusiastic supporter of a party's program will shrink before such drudgery, and it is folly to think that ideological conviction alone will motivate sufficient numbers to keep the party going through the off years. "For the most part, as every politician knows, the hope of some reward generates a major portion of the local political activity supporting parties." *Ibid.* Here is the judgment of one such politician, Jacob Arvey (best known as the promoter of Adlai Stevenson): Patronage is " 'a necessary evil if you want a strong organization, because the patronage system permits of discipline, and without discipline, there's no party organization.' " Quoted in M. Tolchin & S. Tolchin, To the Victor 36 (1971). A major study of the patronage system describes the reality as follows:

> "[A]lthough men have many motives for entering political life ... the vast underpinning of both major parties is made up of men who seek practical rewards. Tangible advantages constitute the unifying thread of most successful political practitioners" *Id.,* at 22.
>
> *105 "With so little patronage cement, party discipline is relatively low; the rate of participation and amount of service the party can extract from [Montclair] county committeemen are minuscule compared with Cook County. The party considers itself lucky if 50 percent of its committeemen show up at meetings-even those labeled 'urgent'-while even lower percentages turn out at functions intended to produce crowds for visiting candidates." *Id.,* at 123.

See also W. Grimshaw, The Political Economy of Machine Politics, 4 Corruption and Reform 15,

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30 (1989); G. Pomper, Voters, Elections, and Parties 255 (1988); Wolfinger, Why Political Machines Have Not Withered Away and Other Revisionist Thoughts, 34 J. Politics 365, 384 (1972).

The Court simply refuses to acknowledge the link between patronage and party discipline, and between that and party success. It relies (as did the plurality in *Elrod, supra,* at 369, n. 23, 96 S.Ct., at 2688, n. 23) on a single study of a rural Pennsylvania county by Professor Sorauf, *ante,* at 2738-a work that has been described as "more persuasive about the ineffectuality of Democratic leaders in Centre County than about the generalizability of [its] findings." Wolfinger, *supra,* at 384, n. 39. It is unpersuasive to claim, as the Court does, that party workers are obsolete because campaigns are now conducted through media and other money-intensive means. *Ante,* at 2737. Those techniques have supplemented but not supplanted personal contacts. See Price, Bringing Back the Parties, at 25. Certainly they have not made personal contacts unnecessary in campaigns for the lower level offices that are the foundations of party strength, nor have they replaced the myriad functions performed by party regulars not directly related to campaigning. And to the extent such techniques have replaced older methods of campaigning (partly in response to the limitations the Court has placed on patronage), the political system is not clearly better off. See *Elrod, supra,* at 384, 96 S.Ct., at 2694 (Powell, J., dissenting); *Branti,* 445 *106 U.S., at 528, 100 S.Ct., at 1300 (Powell, J., dissenting). Increased reliance on money-intensive campaign techniques tends to entrench those in power much more effectively than patronage-but without the attendant benefit of strengthening the party system. A challenger can more easily obtain the support of party workers (who can expect to be rewarded even if the candidate loses-if not this year, then the next) than the financial support of political action committees (which will generally support incumbents, who are likely to prevail).

It is self-evident that eliminating patronage will significantly undermine party discipline;**2754 and that as party discipline wanes, so will the strength of the two-party system. But, says the Court, "[p]olitical parties have already survived the substantial decline in patronage employment practices in this century." *Ante,* at 2737. This is almost verbatim what was said in *Elrod,* see 427 U.S., at 369, 96 S.Ct., at 2687. Fourteen years later it seems much less convincing. Indeed, now that we have witnessed, in 18 of the last 22 years, an Executive Branch of the Federal Government under the control of one party while the Congress is entirely or (for two years) partially within the control of the other party; now that we have undergone the most recent federal election, in which 98% of the incumbents, of whatever party, were returned to office; and now that we have seen elected officials changing their political affiliation with unprecedented readiness, Washington Post, Apr. 10, 1990, p. A1, the statement that "political parties have already survived" has a positively whistling-in-the-graveyard character to it. Parties have assuredly survived-but as what? As the forges upon which many of the essential compromises of American political life are hammered out? Or merely as convenient vehicles for the conducting of national Presidential elections?

The patronage system does not, of course, merely foster political parties in general; it fosters the two-party system in particular. When getting a job, as opposed to effectuating a particular substantive policy, is an available incentive for *107 party workers, those attracted by that incentive are likely to work for the party that has the best chance of displacing the "ins," rather than for some splinter group that has a more attractive political philosophy but little hope of success. Not only is a two-party system more likely to emerge, but the differences between those parties are more likely to be moderated, as each has a relatively greater interest in appealing to a majority of the electorate and a relatively lesser interest in furthering philosophies or programs that are far from the mainstream. The stabilizing effects of such a system are obvious. See

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Toinet & Glenn, Clientelism and Corruption in the "Open" Society, at 208. In the context of electoral laws we have approved the States' pursuit of such stability, and their avoidance of the "splintered parties and unrestrained factionalism [that] may do significant damage to the fabric of government." *Storer v. Brown,* 415 U.S. 724, 736, 94 S.Ct. 1274, 1282, 39 L.Ed.2d 714 (1974) (upholding law disqualifying persons from running as independents if affiliated with a party in the past year).

Equally apparent is the relatively destabilizing nature of a system in which candidates cannot rely upon patronage-based party loyalty for their campaign support, but must attract workers and raise funds by appealing to various interest groups. See Tolchin & Tolchin, To the Victor, at 127-130. There is little doubt that our decisions in *Elrod* and *Branti,* by contributing to the decline of party strength, have also contributed to the growth of interest-group politics in the last decade. See, *e.g.,* Fitts, The Vice of Virtue, 136 U.Pa.L.Rev. 1567, 1603-1607 (1988). Our decision today will greatly accelerate the trend. It is not only campaigns that are affected, of course, but the subsequent behavior of politicians once they are in power. The replacement of a system firmly based in party discipline with one in which each office-holder comes to his own accommodation with competing interest groups produces "a dispersion of political influence that may inhibit a ***108** political party from enacting its programs into law." *Branti, supra,* at 531, 100 S.Ct., at 1301 (Powell, J., dissenting).[FN4]

> FN4. Justice STEVENS discounts these systemic effects when he characterizes patronage as fostering partisan, rather than public, interests. *Ante,* at 2744. But taking Justice STEVENS at his word, one wonders why patronage can *ever* be an "appropriate requirement for the position involved," *ante,* at 2732.

Patronage, moreover, has been a powerful means of achieving the social and political ****2755** integration of excluded groups. See, *e.g., Elrod,* 427 U.S. at 379, 96 S.Ct. at 2692 (Powell, J., dissenting); Cornwell, Bosses, Machines and Ethnic Politics, in Ethnic Group Politics 190, 195-197 (H. Bailey, Jr., & E. Katz eds. 1969). By supporting and ultimately dominating a particular party "machine," racial and ethnic minorities have-on the basis of their politics rather than their race or ethnicity-acquired the patronage awards the machine had power to confer. No one disputes the historical accuracy of this observation, and there is no reason to think that patronage can no longer serve that function. The abolition of patronage, however, prevents groups that have only recently obtained political power, especially blacks, from following this path to economic and social advancement.

> " 'Every ethnic group that has achieved political power in American cities has used the bureaucracy to provide jobs in return for political support. It's only when Blacks begin to play the same game that the rules get changed. Now the use of such jobs to build political bases becomes an "evil" activity, and the city insists on taking the control back "downtown." ' " New York Amsterdam News, Apr. 1, 1978, p. A-4, quoted in Hamilton, The Patron-Recipient Relationship and Minority Politics in New York City, 94 Pol. Sci. Q. 211, 212 (1979).

While the patronage system has the benefits argued for above, it also has undoubted disadvantages. It facilitates financial corruption, such as salary kickbacks and partisan political activity on government-paid time. It reduces the efficiency ***109** of government, because it creates incentives to hire more and less qualified workers and because highly qualified workers are reluctant to accept jobs that may only last until the next election. And, of course, it applies some greater or lesser inducement for individuals to join and work for the party in power.

To hear the Court tell it, this last is the greatest evil. That is not my view, and it has not historically been the view of the American people. Corruption and inefficiency, rather than abridgment of liberty,

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have been the major criticisms leading to enactment of the civil service laws-for the very good reason that the patronage system does not have as harsh an effect upon conscience, expression, and association as the Court suggests. As described above, it is the nature of the pragmatic, patronage-based, two-party system to build alliances and to suppress rather than foster ideological tests for participation in the division of political "spoils." What the patronage system ordinarily demands of the party worker is loyalty to, and activity on behalf of, the organization itself rather than a set of political beliefs. He is generally free to urge *within the organization* the adoption of any political position; but if that position is rejected he must vote and work for the party nonetheless. The diversity of political expression (other than expression of party loyalty) is channeled, in other words, to a different stage-to the contests for party endorsement rather than the partisan elections. It is undeniable, of course, that the patronage system entails some constraint upon the expression of views, particularly at the partisan-election stage, and considerable constraint upon the employee's right to associate with the other party. It greatly exaggerates these, however, to describe them as a general " 'coercion of belief,' " *ante,* at 2735, quoting *Branti,* 445 U.S., at 516, 100 S.Ct., at 1293; see also *ante,* at 2737; *Elrod, supra,* 427 U.S., at 355, 96 S.Ct., at 2681 (plurality opinion). Indeed, it greatly exaggerates them to call them "coercion" at all, since we generally make a distinction between inducement and compulsion. The public official *110 offered a bribe is not "coerced" to violate the law, and the private citizen offered a patronage job is not "coerced" to work for the party. In sum, I do not deny that the patronage system influences or redirects, perhaps to a substantial degree, individual political expression and political association. But like the many generations of Americans that have preceded us, I do not consider that **2756 a significant impairment of free speech or free association.

In emphasizing the advantages and minimizing the disadvantages (or at least minimizing one of the disadvantages) of the patronage system, I do not mean to suggest that that system is best. It may not always be; it may never be. To oppose our *Elrod-Branti* jurisprudence, one need not believe that the patronage system is *necessarily* desirable; nor even that it is always and everywhere *arguably* desirable; but merely that it is a political arrangement that may sometimes be a reasonable choice, and should therefore be left to the judgment of the people's elected representatives. The choice in question, I emphasize, is not just between patronage and a merit-based civil service, but rather among various combinations of the two that may suit different political units and different eras: permitting patronage hiring, for example, but prohibiting patronage dismissal; permitting patronage in most municipal agencies but prohibiting it in the police department; or permitting it in the mayor's office but prohibiting it everywhere else. I find it impossible to say that, always and everywhere, all of these choices fail our "balancing" test.

C

The last point explains why *Elrod* and *Branti* should be overruled, rather than merely not extended. Even in the field of constitutional adjudication, where the pull of *stare decisis* is at its weakest, see *Glidden Co. v. Zdanok,* 370 U.S. 530, 543, 82 S.Ct. 1459, 1469, 8 L.Ed.2d 671 (1962) (opinion of Harlan, J.), one is reluctant to depart from precedent. But when that precedent is not only wrong, not only recent, not only contradicted by a long prior *111 tradition, but also has proved unworkable in practice, then all reluctance ought to disappear. In my view that is the situation here. Though unwilling to leave it to the political process to draw the line between desirable and undesirable patronage, the Court has neither been prepared to rule that no such line exists (*i.e.,* that *all* patronage is unconstitutional) nor able to design the line itself in a manner that judges, lawyers, and public employees can understand. *Elrod* allowed patronage dismissals of persons in "policymaking" or "confidential" positions. 427 U.S., at 367, 96 S.Ct., at 2687 (plurality opinion); *id.,* at 375, 96 S.Ct., at 2690 (Stewart, J., concurring in judgment). *Branti* retreated from that for-

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mulation, asking instead "whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." 445 U.S., at 518, 100 S.Ct., at 1295. What that means is anybody's guess. The Courts of Appeals have devised various tests for determining when "affiliation is an appropriate requirement." See generally Martin, A Decade of *Branti* Decisions: A Government Officials' Guide to Patronage Dismissals, 39 Am.U.L.Rev. 11, 23-42 (1989). These interpretations of *Branti* are not only significantly at variance with each other; they are still so general that for most positions it is impossible to know whether party affiliation is a permissible requirement until a court renders its decision.

A few examples will illustrate the shambles *Branti* has produced. A city cannot fire a deputy sheriff because of his political affiliation, [FN5] but then again perhaps it can, [FN6] especially if he is called the "police captain." [FN7] A county cannot fire on that basis its attorney for the department of social *112 services, [FN8] nor **2757 its assistant attorney for family court, [FN9] but a city can fire its solicitor and his assistants, [FN10] or its assistant city attorney, [FN11] or its assistant state's attorney, [FN12] or its corporation counsel. [FN13] A city cannot discharge its deputy court clerk for his political affiliation, [FN14] but it can fire its legal assistant to the clerk on that basis. [FN15] Firing a juvenile court bailiff seems impermissible, [FN16] but it may be permissible if he is assigned permanently to a single judge. [FN17] A city cannot fire on partisan grounds its director of roads, [FN18] but it can fire the second in command of the water department. [FN19] A government cannot discharge for political reasons the senior vice president of its development bank, [FN20] but it can discharge the regional director of its rural housing administration. [FN21]

FN5. *Jones v. Dodson*, 727 F.2d 1329, 1338 (CA4 1984).

FN6. *McBee v. Jim Hogg County*, 730 F.2d 1009, 1014-1015 (CA5 1984) (en banc).

FN7. *Joyner v. Lancaster*, 553 F.Supp. 809, 818 (MDNC 1982), later proceeding, 815 F.2d 20, 24 (CA4), cert. denied, 484 U.S. 830, 108 S.Ct. 102, 98 L.Ed.2d 62 (1987).

FN8. *Layden v. Costello*, 517 F.Supp. 860, 862 (NDNY 1981).

FN9. *Tavano v. County of Niagara*, 621 F.Supp. 345, 349-350 (WDNY 1985), aff'd mem., 800 F.2d 1128 (CA2 1986).

FN10. *Ness v. Marshall*, 660 F.2d 517, 521-522 (CA3 1981); *Montaquila v. St. Cyr*, 433 A.2d 206, 211 (R.I.1981).

FN11. *Finkelstein v. Barthelemy*, 678 F.Supp. 1255, 1265 (ED La.1988).

FN12. *Livas v. Petka*, 711 F.2d 798, 800-801 (CA7 1983).

FN13. *Bavoso v. Harding*, 507 F.Supp. 313, 316 (SDNY 1980).

FN14. *Barnes v. Bosley*, 745 F.2d 501, 508 (CA8 1984), cert. denied, 471 U.S. 1017, 105 S.Ct. 2022, 85 L.Ed.2d 303 (1985).

FN15. *Bauer v. Bosley*, 802 F.2d 1058, 1063 (CA8 1986), cert. denied, 481 U.S. 1038, 107 S.Ct. 1976, 95 L.Ed.2d 816 (1987).

FN16. *Elrod v. Burns*, 427 U.S. 347, 351, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976).

FN17. *Balogh v. Charron*, 855 F.2d 356 (CA6 1988).

FN18. *Abraham v. Pekarski*, 537 F.Supp. 858, 865 (ED Pa.1982), aff'd in part and dism'd in part, 728 F.2d 167 (CA3), cert. denied, 467 U.S. 1242, 104 S.Ct. 3513, 82 L.Ed.2d 822 (1984).

FN19. *Tomczak v. Chicago*, 765 F.2d 633

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(CA7), cert. denied, 474 U.S. 946, 106 S.Ct. 313, 88 L.Ed.2d 289 (1985).

FN20. *De Choudens v. Government Development Bank of Puerto Rico,* 801 F.2d 5, 10 (CA1 1986) (en banc), cert. denied, 481 U.S. 1013, 107 S.Ct. 1886, 95 L.Ed.2d 494 (1987).

FN21. *Rosario Nevarez v. Torres Gaztambide,* 820 F.2d 525 (CA1 1987).

The examples could be multiplied, but this summary should make obvious that the "tests" devised to implement *Branti* have produced inconsistent and unpredictable results. That uncertainty undermines the purpose of both the nonpatronage*113 rule and the exception. The rule achieves its objective of preventing the "coercion" of political affiliation, see *supra,* at 2749, only if the employee is confident that he can engage in (or refrain from) political activities without risking dismissal. Since the current doctrine leaves many employees utterly in the dark about whether their jobs are protected, they are likely to play it safe. On the other side, the exception was designed to permit the government to implement its electoral mandate. *Elrod, supra,* at 367, 96 S.Ct., at 2687 (plurality opinion). But unless the government is fairly sure that dismissal is permitted, it will leave the politically uncongenial official in place, since an incorrect decision will expose it to lengthy litigation and a large damages award, perhaps even against the responsible officials personally.

This uncertainty and confusion are not the result of the fact that *Elrod,* and then *Branti,* chose the wrong "line." My point is that there is no right line-or at least no right line that can be nationally applied and that is known by judges. Once we reject as the criterion a long political tradition showing that party-based employment is entirely permissible, yet are unwilling (as any reasonable person must be) to replace it with the principle that party-based employment is entirely impermissible, we have left the realm of law and entered the domain of political science, seeking to ascertain when and where the undoubted benefits of political hiring and firing are worth its undoubted costs. The answer to that will vary from State to State, and indeed from city to city, even if one **2758 rejects out of hand (as the *Branti* line does) the benefits associated with party stability. Indeed, the answer will even vary from year to year. During one period, for example, it may be desirable for the manager of a municipally owned public utility to be a career specialist, insulated from the political system. During another, when the efficient operation of that utility or even its very existence has become a burning political issue, it may be desirable that he be hired and fired on a political basis. The appropriate "mix" of party-based *114 employment is a political question if there ever was one, and we should give it back to the voters of the various political units to decide, through civil service legislation crafted to suit the time and place, which mix is best.

III

Even were I not convinced that *Elrod* and *Branti* were wrongly decided, I would hold that they should not be extended beyond their facts, viz., actual discharge of employees for their political affiliation. Those cases invalidated patronage firing in order to prevent the "restraint it places on freedoms of belief and association." *Elrod,* 427 U.S., at 355, 96 S.Ct., at 2681 (plurality opinion); see also *id.,* at 357, 96 S.Ct., at 2682 (patronage "compels or restrains" and "inhibits" belief and association). The loss of one's current livelihood is an appreciably greater constraint than such other disappointments as the failure to obtain a promotion or selection for an uncongenial transfer. Even if the "coercive" effect of the former has been held always to outweigh the benefits of party-based employment decisions, the "coercive" effect of the latter should not be. We have drawn a line between firing and other employment decisions in other contexts, see *Wygant v. Jackson Bd. of Education,* 476 U.S. 267, 282-283, 106 S.Ct. 1842, 1851-1852, 90 L.Ed.2d 260 (1986) (plurality opinion), and should do so here as well.

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I would reject the alternative that the Seventh Circuit adopted in this case, which allows a cause of action if the employee can demonstrate that he was subjected to the "substantial equivalent of dismissal." 868 F.2d 943, 950, 954 (1989). The trouble with that seemingly reasonable standard is that it is so imprecise that it will multiply yet again the harmful uncertainty and litigation that *Branti* has already created. If *Elrod* and *Branti* are not to be reconsidered in light of their demonstrably unsatisfactory consequences, I would go no further than to allow a cause of action when the employee has lost his position, that is, his formal title and salary. That narrow ground alone is enough to resolve the constitutional*115 claims in the present case. Since none of the plaintiffs has alleged loss of his position because of affiliation,[FN22] I would affirm the Seventh Circuit's judgment insofar as it affirmed the dismissal of petitioner Moores' claim and would reverse the Seventh Circuit's judgment insofar as it reversed the dismissal of the claims of other petitioners and of cross-respondents.

FN22. Standefer and O'Brien do not allege that their political affiliation was the reason they were laid off, but only that it was the reason they were not recalled. Complaint ¶¶ 9, 21-22, App. to Respondents' Brief in Opposition; 641 F.Supp. 249, 256, 257 (CDIll.1986). Those claims are essentially identical to the claims of persons wishing to be hired; neither fall within the narrow rule of *Elrod* and *Branti* against patronage firing.

The Court's opinion, of course, not only declines to confine *Elrod* and *Branti* to dismissals in the narrow sense I have proposed, but, unlike the Seventh Circuit, even extends those opinions beyond "constructive" dismissals-indeed, even beyond adverse treatment of current employees-to all hiring decisions. In the long run there may be cause to rejoice in that extension. When the courts are flooded with litigation under that most unmanageable of standards *(Branti)* brought by that most persistent and tenacious of suitors (the disappointed office seeker) we may **2759 be moved to reconsider our intrusion into this entire field.

In the meantime, I dissent.

U.S.Ill.,1990.
Rutan v. Republican Party of Illinois
497 U.S. 62, 110 S.Ct. 2729, 111 L.Ed.2d 52, 58 USLW 4872, 5 IER Cases 673

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EXHIBIT B

State of Illinois
Office of the Governor
Springfield 62706
July 17, 1990

James R. Thompson
Governor

Administrative Order
Number 1 (1990)

DIRECTIVE TO STATE AGENCIES REGARDING PERSONNEL PRACTICES

As you know, on Thursday, June 21, 1990, the United States Supreme Court issued its decision in Rutan v. Republican Party of Illinois, in which the Court held that promotion, transfer, recall and hiring decisions involving nonpolicymaking employees may not be decided on the basis of party affiliation and support. It has been the policy and practice of this administration to fill positions in the state only with individuals who are qualified for their positions. This will continue to be our policy.

We are reviewing the Supreme Court's decision with our attorneys to determine what actions we will take in the Rutan lawsuit in light of the Supreme Court's opinion. As part of our review of the decision, we set forth the following preliminary policies and procedures to ensure that all personnel decisions made by state agencies under the control of the Governor are in full compliance with the Supreme Court's decision:

1. All hiring and other personnel decisions shall be based on the merit and qualifications of the candidates. Where the selection of a candidate is made pursuant to an interview process, the agency must use uniform, job-related criteria and interview questions; the responses to such questions must be evaluated by reference to the requirements for the particular position and such evaluation must be thoroughly documented and must demonstrate the basis on which the selection was made.

2. No hiring or other personnel decisions - including promotions, transfers or recalls from layoff - may be decided on the basis of the candidate's party affiliation or support. Where practical the agency shall interview all qualified candidates on the eligibility list for the position being filled.

   In instances where it is not practical to do so, the method used by the agency for determining the individual candidates to be interviewed for a particular position shall be based on factors related to the merits of the individual applicants, length of time on the list, random selection or any other reasonable and impartial standard.

3. No investigation shall be performed into a candidate's political affiliation, including his or her voting record, financial support, and/or willingness to work for or donate to any political party. This information shall not be reviewed or considered at any point in the employment process.

4. In making personnel decisions, agencies may consider recommendations and referrals from any sources, including elected officials or representatives of any political party. However, referrals or recommendations may be considered only if they relate to the job qualifications of the particular candidate. The political affiliation of the candidate or of the elected official or party representative who provides the recommendation or referral may not be considered in making personnel decisions.

* * * * * * * * * * * * * * *

Please ensure that all officials and employees in your agency immediately become familiar with the terms of this order, and that they take all necessary steps to see that it is implemented. We will advise you as to any further changes in our personnel practices based upon our continuing review of the Supreme Court's decision. Thank you for your full cooperation.

State of Illinois
Office of the Governor
Springfield 62706
October 1 1990

James R. Thompson
Governor

Administrative Order
Number 2 (1990)

DIRECTIVE TO STATE AGENCIES
GUIDELINES FOR INTERVIEWING JOB CANDIDATES

The following employment policies and procedures regarding the interview process are intended to provide additional guidance and clarification to state agencies with respect to the following directive taken from the Governor's Administrative Order, Number 1, dated July 17, 1990.

> "1. All hiring and other personnel decisions shall be based on the merit and qualifications of the candidates. Where the selection of a candidate is made pursuant to an interview process, the agency must use uniform, job-related criteria and interview questions; the responses to such questions must be evaluated by reference to the requirements for the particular position and such evaluation must be thoroughly documented and must demonstrate the basis on which the selection was made."

This Directive contains principles which will assist agencies in assuring that their personnel policies and procedures relating to interviewing and selecting candidates for employment, promotion or other personnel transaction are in compliance with the requirements of the Rutan decision. Adherence to these principles will also result in the production of documentation necessary to defend against any claims that may arise under this ruling.

It is not the intent of this directive to mandate a single, specific set of personnel policies and procedures applicable to all agencies and all personnel transactions. Nor is it is the intent of this directive to mandate agency employment decisions, but to provide a consistent, fair and objective basis to assure compliance with Rutan as well as the employment of fully qualified persons.

Other employment policies such as Veterans Appointment Preference, Affirmative Action, and bargaining agreements will not be replaced by these policies and procedures. Additional screening requirements that the agency may impose prior to placing an individual on the payroll, promoting, transferring, or recalling an employee (e.g., background check, drug testing, residency) or other employment policies will not be restricted so long as they are not inconsistent with the procedures described herein. In addition, these policies and procedures address only the interview process, and do not apply where other types of selection devices are used.

I. SCOPE

A. Positions for which Principles are Relevant

The employment policies and procedures described in the following sections should be followed for all positions not specifically exempted from Rutan. A preliminary listing of those positions which, due to their policymaking or confidential nature, are clearly exempted from Rutan, will be published within the next two weeks. There will be many more positions which are not clearly exempt or non-exempt. Cataloguing and reviewing all these positions will be a time consuming effort which is too extensive to be undertaken in the time remaining to this administration. However, agencies wishing to make a determination regarding a particular position which is not included in this initial listing of exempted positions may submit the appropriate materials to CMS. In consultant with Ernst and Young and Jenner and Block, CMS will determine whether or not such a position is exempted from the requirements of the Rutan decision. In the absence of a determination that a position is exempted, this memorandum will apply to all positions.

B. Personnel Actions for which Principles are Relevant

The following principles apply to all employment decisions concerning individuals who are currently candidates to be interviewed for employment by the State or who are current State employees who are to be interviewed for promotion, transfer, or recall from layoff. Note that when the remainder of this document mentions "hiring" that this pertains to the interview activities involving both the hire of new employees and the promotion, transfer, or recall of current employees.

II. OBJECTIVES

Within the framework established by the Governor's directive, the State is committed to an interview process which will:

- Base employee selection on a candidate's ability to perform effectively on the job;
- Provide equal opportunity for State employment to all qualified job candidates;
- Prohibit the basing of employment, promotion, transfer, and recall decisions on partisan affiliation or support;
- Provide the hiring agency with maximum lawful discretion in making selection decisions; and
- Adequately document all employment, promotion, transfer and recall decisions.

III. THE INTERVIEW PROCESS

A. Approach

Following is a summary of minimum steps which should be part of an interview process to ensure compliance with the principles of the Governor's aforementioned Order. A summary of these steps is explained more fully below:

- Document and file hiring criteria for each position to be filled before conducting the interview, regardless of location:
  - Define and document major position responsibilities;
  - Define required knowledge, skills, abilities, and personal characteristics essential for competent performance in the job; and
  - Determine the relative weight of each hiring criterion.
- Develop a standardized interview questionnaire for each position to be filled to gather pertinent information about the candidate's knowledge, skill, abilities, and personal characteristics.
- Conduct a structured employment interview using a standardized interview questionnaire and note pertinent responses from the candidates that can be compared and evaluated in a consistent manner.
- Evaluate each candidate interviewed:
  - Rate the completed interview questionnaire;
  - Score each hiring criterion and note on an evaluation form;
  - Determine each candidate's overall score based on all hiring criteria; and
  - Rank all candidates interviewed by overall score.
- Document the interview process for all candidates interviewed.
- Document the employment decision.

- Maintain a chronological file of all interview questionnaires, evaluation and employment decision forms for each position when interviews were conducted.

B. Establish the Hiring Criteria

The reliability of a structured employment interview in screening qualified candidates is based on the identification of pre-established criteria for successful job performance which are required for entry into the position. Hiring criteria include major position responsibilities, knowledge, skills, abilities, and personal characteristics. As a general rule, the larger the number of qualified candidates, and/or additional identical positions to be filled, the higher the level of standardization required to assure the objectivity of the actual interviews.

The following approach to the development of hiring criteria assures that the criteria will be job-related, specific to the particular position, and essential to acceptable job performance. It is important to remember that hiring criteria which have not been pre-established should not be used as justification for the employment decision.

1. Define major position responsibilities. As a first step, this information should be obtained from existing job descriptions and class specifications. However, it is important to review this information with current job incumbents and/or the supervisor to assure its accuracy with respect to the specific position being filled. This step should produce up to ten major duties which serve as the primary areas of inquiry during the interview as well as the basis for identifying the knowledge, skills, abilities, and personal characteristics required to perform each major duty, and the subsequent development of specific interview questions. These duties should reflect the position as it is documented by the existing position description, not how it could be changed or improved.

2. Define required knowledge, skills, and abilities ("KSAs") and personal characteristics. Job-related KSAs and personal characteristics are derived from the position's major duties by focusing on such questions as "What would a candidate need to know to perform this duty?", "Can the required knowledge be obtained through formalized training or must it be learned through experience?", and "What types of behaviors are demonstrated by current incumbents who successfully perform this duty?". Once identified, the task of developing interview questions which are clearly and demonstrably job-related is greatly simplified.

   To the extent that the position's major duties, required KSAs and personal characteristics are too broadly defined, the agency may have difficulty developing questions as well as differentiating, and subsequently selecting, between qualified candidates. Conversely, being too specific may cause well qualified candidates to be eliminated from consideration. In summary, the hiring authority must be actively involved in the definition of a position's hiring criteria.

3. Weight to each hiring criteria. These weights should reflect the relative importance of each criteria to acceptable job performance.

4. Document the hiring criteria on a Candidate Evaluation Form. The hiring criteria for each position must be documented prior to the conduct of any interviews.

C. Develop the Interview Questionnaire

The interview questionnaire will be used to assess all candidates who are being interviewed for a particular position. Interview questions derived from the identified KSA's and personal characteristics should also, to the extent possible, reference the position's major duties.

1. Common types of hiring criteria and the development of related interview questions are briefly summarized as follows:

a. Knowledge and Experience - Assess whether the candidate has the required level of job knowledge that is both essential to job performance and constitutes the minimum which must be known prior to entering the position. Determine the extent to which the candidate has, in fact, ever performed the major duties of the position for which s/he is applying. These questions should deal with the more technical aspects of the position, or basic knowledge that is essential to enable the candidate to learn the job within the allotted probationary timeframe. Since this level of detailed information may be difficult to ascertain from the candidate's application, such questions are critical for those technically oriented positions where very specific skill and/or experience is required. During the actual interview, it is appropriate for the interviewer to probe further, as necessary, to evaluate the candidate's quality and level of experience. Concise, detailed notes should support any subsequent reliance on prior experience as a means of differentiating between candidates who would otherwise appear to be substantially equal.

b. Education, Training, and Special Skills - Determine if the candidate has the necessary education, training, and special skills to learn and/or perform the major duties as required. Ask about any specific coursework, training programs, and special skills which are considered desirable for the position.

c. Ability - Evaluate whether the candidate possesses the level of ability required to effectively perform the major duties. Abilities, and their relative importance, generally vary substantially based upon the nature and level of the position. The most commonly required abilities include problem-solving, oral/written communications, leadership, and interpersonal relations.

d. Personal Characteristics - To the extent possible, the simple noting of "impressions" by the interviewer should be avoided. It is, however, appropriate to ask candidates to demonstrate their application of the required personal characteristics in terms of specific job-related behaviors.

e. Willingness - For those positions with few or only very basic minimum requirements, as well as for jobs with some unpleasant or monotonous working conditions, the hiring authority/interviewer should prepare questions regarding the candidate's understanding of, and willingness to perform the major duties. The outlining and detailed disclosure of duties and working conditions in this context will serve as a realistic job preview for the candidate and may aid in self-selection.

2. Review interview questions. The following guidelines should be used in the development and evaluation of specific interview questions:

a. Questions should be accurate, complete and easily understood. The need to clarify questions during the interview for certain candidates reduces standardization.

b. Questions must be clearly and strictly job-related, and must be directly linked to the position's major duties.

c. Questions must focus on the KSAs and personal characteristics necessary to perform the job at entry.

d. Questions should reflect, as nearly as possible, the content of the specific position for which the candidate is being interviewed.

e. To increase job-relatedness, questions should be stated in terms of sample position duties, and should be designed to elicit information on job-related behaviors.

f. Questions should be geared to the appropriate complexity level of the job.

g. Questions must be carefully reviewed to eliminate any possible accusation of partisan affiliation or support.

D. Conduct the Interview

1. Interview Obligations. Whatever the actual design of the interview, the interviewer must not ask any questions concerning political affiliation (or any question which could be construed as such). Politically-related topics that are to be avoided include:

   - Political affiliation;
   - Political contributions;
   - Political sponsorship or recommendation and

   In addition, it must be made clear to the interviewer that, if the candidate volunteers non-job-related information about political topics, s/he should be interrupted and the interviewer should be directed toward other topics.

2. Following is a basic agenda for conducting the structured employment interview.

   a. Put the candidate at ease and build rapport.

   b. Explain the purpose of the interview.

   c. Provide a brief description of the position and important organization characteristics.

   d. Ask the pre-established interview questions contained in the questionnaire and take notes on the candidate's response to each question, allowing the applicant to organize his/her own experiences, and to speak with spontaneity to reveal relevant information. The interviewer should probe for expansion and clarification of candidate responses to obtain adequate information for the evaluation of the candidate and, ultimately, the employment decision.

   e. After you have completed the questionnaire, inform the candidate when the decision will be made, and ask whether s/he has any questions.

E. Additional Candidate Evaluation Criteria

The hiring authority will often use other evaluation methods in addition to personal interviews. Examination of performance records for current employees and work sample tests and job or community service related references would be examples of other legitimate screening devices.

F. Rating the Candidate

The agency must have standardized procedures in place to rank all candidates interviewed for a particular position based upon the pre-established hiring criteria, interview questionnaire and scoring of the candidate's responses to each question. By ranking candidates agencies are provided one measure to further distinguish between equally qualified candidates.

It is important to note that there is no requirement for agencies to hire in rank order or to hire a particular candidate. It is not the intent of the preceding policies and procedures to mandate agency employment decisions, but to provide a consistent, fair, and objective basis to assure compliance with Rutan as well as the employment of fully qualified employees.

IV. DOCUMENTATION OF EMPLOYMENT DECISIONS

Adequate documentation of employment decisions is a critical component of the Rutan compliance program. Although there is some latitude in other aspects of the previously described employment polices and procedures, agencies must strictly adhere to their requirements for documentation of all employment decisions.

A. Documenting the Interview Process

The hiring authority is required to provide the following documentation on each candidate interviewed:

1. An interview questionnaire which briefly summarizes the candidate's responses and assigns a rating for each question.

2. A candidate evaluation form including comments reflecting the hiring authority's assessment of the candidate's qualifications against each criteria.

In some cases, it may not be necessary to evaluate the candidate against all of the hiring criteria. If, for example, prior work experience or basic skills are unacceptable, the hiring authority may decide that further evaluation of the candidate would be pointless. In such cases, documentation needs to be provided only for those criteria against which the candidate was evaluated.

B. Documenting and Filing the Employment Decision

The hiring authority must complete an employment decision form prior to the extension of the employment offer, that provides, at a minimum, the following information:

1. The candidate to be hired and the position number being filled.

2. Justification for the decision to hire the selected candidate. This justification must clearly explain the reason(s) for hiring the selected candidate and provide a general statement comparing the selected candidate with others who were interviewed. To be considered appropriate, this justification must be job-related. In addition, where the candidate selected is one who did not receive the highest score, the justification should be sufficiently well documented so as to be subject to verification and allow inferences to be drawn as to why one candidate was selected over another.

3. The date the form was completed.

4. The agency must maintain an up-to-date, chronological file of employment decision forms as well as the candidate evaluation forms and completed interview questionnaires for all interviews conducted. In addition, a copy of the position description and major responsibilities must be included for each filled position. Each file must be labeled by the position number, title, and date of the employment decision.

ABC6/175

State of Illinois
Office of the Governor
Springfield 62706
January 31, 1991

Jim Edgar
Governor

Administrative Order
Number 1 (1991)

PERSONNEL POLICIES DIRECTIVE

On June 21, 1990, the United States Supreme Court ruled for the first time, in the case of Rutan v. the Republican Party of Illinois, that decisions to hire, promote, transfer or recall from layoff employees of public bodies could not be made on the basis of such employees' political affiliation or support. The exception for policy making or confidential employees or spokespersons established in earlier cases also applies to the Rutan ruling.

I hereby commit myself and all appointees, officials and employees in my Administration to fully comply with this ruling and all other, relevant constitutional provisions, laws and United States Supreme Court decisions.

Specifically, I order that the following principles be adhered to:

1. No employee may be dismissed from a non-exempt* state position on the basis of political affiliation or support.

2. No employee may be demoted, denied consideration for a raise or promotion, or disciplined on the basis of political affiliation or support.

Furthermore, I hereby affirm and adopt the provisions of Administrative Order #1 (1990), which state in pertinent part the following.

3. All hiring and other personnel decisions affecting non-exempt individuals shall be based on the merit and qualifications of the candidates. Where the selection of a candidate is made pursuant to an interview process, the agency must use uniform, job-related criteria and interview process; the responses to such questions must be evaluated by reference to the requirements for the particular position and such evaluation must be thoroughly documented and must demonstrate the basis on which the selection was made.

4. No hiring or other personnel decisions - including promotions, transfers or recalls from layoff - may be decided on the basis of the candidate's party affiliation or support. Where practical the agency shall interview all qualified candidates on the eligibility list for the position being filled.

5. In instances where it is not practical to do so, the method used by the agency for determining the individual candidates to be interviewed for a particular position shall be based on factors related to the merits of the individual applicants, length of time on the list, random selection or any other reasonable and impartial standard.

6. No investigation shall be performed into a candidate's political affiliation, including his or her voting record, financial support, and/or willingness to work for or donate to any political party. This information shall not be reviewed or considered at any point in the employment process.

7. In making personnel decisions, agencies may consider recommendations and referrals from any source, including elected officials or representatives of any political party. However, referrals or recommendations may be considered only if they relate to the job qualifications of the particular candidate. The political affiliation of the candidate or of the elected official or party representative who provides the recommendation or referral may not be considered in making personnel decisions.

Additionally, I hereby affirm and adopt Administrative Order #2 (1990) which establishes guidelines for development of job criteria, interview questionnaires, for objectively rating candidates, and for documenting selection decisions. Administrative Order #2 is attached hereto and made a part of this order.

I further order that:

8. The Department of Central Management Services shall be responsible for developing and implementing such rules, policies, guidelines and manuals, including the training manual already prepared in conjunction with the management consulting firm of Ernst and Young, as are necessary or appropriate to ensure that the personnel policies and procedures of all agencies, boards, and commissions under my jurisdiction comply with the requirements of this Administrative Order and generally with all applicable constitutional provisions, laws and United States Supreme Court rulings concerning personnel matters, as well as with all other requirements of State law and regulations and budgetary and fiscal guidelines. The Department shall also be responsible for coordinating information about agency hiring and other employment data with the Bureau of the Budget and assisting with the administration of any budget or fiscal policies or guidelines issued by the Bureau.

9. Whether a position is exempt from the requirements of Rutan and other relevant United States Supreme Court cases shall be determined by the Department of Central Management Services in consultation with the Office of Counsel to the Governor, and such recognized experts or advisors as may be retained by that Department. Any personnel transactions for which there is a question as to whether the position is exempt from Rutan should be submitted to the Department of Central Management Services for determination in accordance with this consultation process.

10. The Department of Central Management Services shall notify the initiating agency and the Director of Executive Employment and Labor Relations in the Office of the Governor of any positions that have been determined to be exempt by that Department under Rutan.

11. The requirements of this Administrative Order and rules, policies, guidelines and manuals issued hereunder shall supersede any procedures which may still be in effect pursuant to Executive Order #5 (1980) which is revoked.

12. The procedures set forth in this Administrative Order apply to all personnel transactions of agencies, boards, and commissions subject to my control or direction whether or not the position affected by the personnel transaction in question is under the jurisdiction of the Personnel Code.

*As used in this Order, "non-exempt" refers to an employee who is not exempt from the requirements of Rutan and has no relevance to whether such employee is or is not exempt from the Illinois Personnel Code.

OFFICE OF THE GOVERNOR
JRTC, 100 W. RANDOLPH, SUITE 16-100
CHICAGO, ILLINOIS 60601

PAT QUINN
GOVERNOR

Administrative Order
Number 2 (2009)
December 10, 2009

DIRECTIVE TO STATE AGENCIES, UPDATING GUIDELINES FOR COMPLIANCE WITH THE *RUTAN* DECISION

This Administration is firmly committed to adhering to the principles articulated in the United States Supreme Court decision, *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990) ("*Rutan*"), and its progeny, as well as Administrative Order No. 1 (1990), No. 2 (1990), and No. 1 (1991) (collectively, the "Prior Administrative Orders"), all of which prohibit consideration of political affiliation or support (or lack thereof) in connection with hiring, promotion, transfer, or recall from layoff, with respect to employment positions covered by the *Rutan* decision ("*Rutan*-covered positions").[1]

It is the intent of this Directive (i) to provide guidance and clarification with respect to certain aspects of the Prior Administrative Orders, all of which are hereby affirmed and shall remain in effect, and (ii) to announce certain new guidelines and procedures relating to personnel transactions for *Rutan*-covered positions. It is not the intent of this Directive to mandate a single, specific set of personnel procedures to be used in connection with every single personnel transaction or to limit the ability of agencies, boards, and commissions to impose job-related requirements and procedures (e.g., background checks, drug testing, residency requirements, job-related driver's license requirements), in addition to those set forth below, prior to making an offer of employment, so long as they are not inconsistent with any policies or procedures described herein, or any applicable laws. Instead, through the guidelines and procedures set forth below, this Directive seeks to ensure that applicable decision-making processes comply with *Rutan* and rely upon politically neutral, merit-based criteria.

I. Scope

This Directive shall apply to all personnel transactions relating to *Rutan*-covered positions of State agencies, boards, and commissions under the jurisdiction of the Office of the Governor ("OOG"), whether or not the positions affected by the personnel transactions in question are under the jurisdiction of the Personnel Code and Rules. That is, this Directive applies to both "code" and "non-code" positions under the jurisdiction of the OOG.

[1] As used in this Directive, "Rutan-covered" refers to an employment position that is subject to the requirements of *Rutan*.

In the event of a conflict between this Directive and the requirements of a collective bargaining agreement, the collective bargaining agreement shall govern. In the event of a conflict between this Directive and any policies or procedures relating to employment positions or personnel transactions that are set by statute (*e.g.*, the Veteran Preference set forth in 20 ILCS 415/8b.7), the policies and procedures set by statute shall govern.

II. Employment Applications

A. Submission of Applications

1. The Bureau of Personnel in the Department of Central Management Services ("CMS") has served and shall continue to serve as the central point of intake for all employment applications under the jurisdiction of the Personnel Code and Rules ("coded classifications").

2. Each *Rutan*-covered position shall be posted on the Work 4 Illinois website, <http://www.work.illinois.gov>, which can be accessed from home or through public access computers at most public libraries or State offices.

3. Any employee of an agency, board, or commission under the jurisdiction of the OOG who receives a personnel request, referral, or recommendation for a *Rutan*-covered position shall refer the person making the request, referral, or recommendation to CMS Governmental Affairs for disposition.

B. Grading of Applications

1. For coded classifications under the jurisdiction of the OOG, subject to any time limitation on when applications will be accepted and how long an application can remain active, CMS personnel shall grade each application for a classification in the order in which the application has been received and shall not grade any application out of order. Subject to the limitations, above, all other classifications under the jurisdiction of the OOG, but not under the jurisdiction of the Personnel Code and Rules ("non-code positions") shall be graded in the order received by the employing agency, board, or commission.

2. Each application shall have the name of the applicant and any references or any other personally identifiable information redacted so that the grading can be done on a blind basis. CMS personnel shall perform any necessary credential verification in a manner that preserves the integrity of the blind grading process. As soon as practicable, CMS will move towards a fully automated system.

3. The grader shall employ objective, merit-based criteria in his or her grading of applications. Grading shall be free from all political considerations.

4. All documents and data regarding applications for *Rutan*-covered positions shall be available for regular auditing.

C. Creation of Eligibility Lists

In creating an open competitive eligible list, to be utilized by an agency for an open *Rutan*-covered position, CMS shall redact the names of the applicants and other personally identifiable information so that the selection of candidates for an interview pool can be done on a blind basis.

D. Job Descriptions

Job descriptions shall be reviewed and, if necessary, updated prior to any *Rutan*-covered posting, to reflect current duties, responsibilities, and requirements.

III. The Interview, Evaluation, and Selection Process

Administrative Order No. 2 (1990) contains detailed procedures and guidelines for conducting applicant interviews for *Rutan*-covered positions in a manner intended to ensure compliance with *Rutan*. This Directive reaffirms the applicability of the interview, evaluation, and selection guidelines set forth in Administrative Order No. 2 (1990) and supplements that Order with the following additional procedures and guidelines:

A. Training of Interviewers

1. CMS and other State agencies, boards, and commissions have training programs to orient agency employees responsible for making personnel decisions to the State's *Rutan* hiring procedures and corresponding interview and selection methods ("*Rutan* training"). *Rutan* training and certification has proven to be an effective component of the State's *Rutan* compliance program. The current website to register for CMS's *Rutan* training is <http://www.state.il.us/cms/2_servicese_edu>.

2. Any agency employee who participates in the interview of a candidate for a *Rutan*-covered position must have successfully completed *Rutan* training. A non-certified member of an interview panel may only function in a technical expert capacity; he or she may ask specific technical follow-up questions to clarify a response and assist the certified interviewers in

understanding technical responses given by the interviewee, but he or she may not participate in the evaluation and scoring process.

3. As soon as practicable, but no later than six months after the date of this Directive, CMS shall develop a Refresher Course for re-certification of *Rutan* interviewers. The Refresher Course may be offered online or in any other appropriate format. The Refresher Course for interviewers shall review key elements of the State's *Rutan* compliance program, offer updates as to changes or enhancements in compliance policies and practices, and include an evaluative component to ensure that those taking the Refresher Course continue to have an appropriate knowledge of compliance guidelines and procedures. Once the Refresher Course is implemented, each *Rutan* interviewer must successfully complete the Refresher Course and be re-certified at least once every 3 years.

B. Interview Panels

1. *Rutan* interviewers must make their assessments of candidates based upon their responses to a pre-determined and uniform set of job description-related questions that are developed prior to posting and posed during the interview (as outlined in Administrative Order No. 2 (1990)), in an atmosphere where interviewers are free of advance knowledge of candidates and of outside influences. *Rutan* interviewers must be insulated from any attempts to sway their assessments or hinder their objectivity. No interview panel should include, either as interviewers or as technical advisors, any person who is related to, or otherwise would have a conflict of interest in connection with evaluating, any of the applicants for the position.

2. Since multi-member interviewer panels provide greater input and reduce the risk of improper influence in the hiring process for *Rutan*-covered positions, agencies shall utilize such panels rather than single interviewers in the interview and evaluation process. Members of the interview panel must remain consistent throughout the course of the interview process for a position. A technical advisor who has not completed training to be a certified *Rutan* interviewer shall not be considered a member of an interview panel for purposes of determining the numerical composition of the panel. Under limited circumstances, the Director of CMS or his or her designee may approve the use of single interviewers for *Rutan* interviews and evaluations, but only after the director of the requesting agency provides written justification for the use of a single interviewer.

C. Interview, Evaluation, and Selection of Candidates

1. Administrative Order No. 2 (1990) contains appropriate guidelines for the interview and evaluation of candidates, and it is hereby affirmed. In addition to those guidelines, the following guidelines shall also apply to the interview and evaluation process for all *Rutan*-covered positions.

2. To the extent practicable, the agency shall interview all reachable applicants. In situations where it is not practical to interview all reachable applicants, the agency shall use a standardized method to select the names of candidates to interview for a position. Such a method shall be based on: (i) factors related to the merits of the individual applicants, (ii) random selection, or (iii) any other reasonable, impartial, and legally compliant standard. In the event that an agency uses a method other than random selection, however, it shall create a written record, specifically identifying the alternative selection method used and the justification for its use.

3. Prior to commencing interviews for a *Rutan*-covered position, the interview panel shall ensure that the Hiring Criteria and Interview Questionnaire agreed upon for the interviews and developed prior to posting are preserved and made a part of the *Rutan* file for that position. *Rutan* files must be maintained separately from employee personnel files.

4. Copies of the Interview Questionnaire, which shall include the interviewer(s) summary(ies) of a candidate's responses to each question and the weighted score assigned by the interviewer(s) thereto, shall be placed in the *Rutan* file and preserved.

5. A Candidate Evaluation Form, reflecting the interview assessments of the candidate's qualifications against each criterion for the position at issue, should be preserved for each candidate interviewed and made a part of the *Rutan* file for the position. Each member of the interview panel shall sign and date the form and certify that the evaluation was not based on political party affiliation or support (or lack thereof).

6. The Employment Decision Form for the position shall be preserved and made a part of the *Rutan* file for the position. The form shall include a written justification for the agency's decision as to the candidate chosen to be hired for the position. The agency director or his/her designee shall sign and date the form and certify that the employment decision was not based on political party affiliation or support (or lack thereof).

7. In the event that an agency decides to cancel an opening rather than hire any of the interviewed candidates, a written justification for the cancellation decision shall be included in the *Rutan* file.

D. Retention of Records

1. Each agency shall maintain *Rutan* files for each job position number in chronological order, so that hiring decisions can be audited.

2. *Rutan* files shall be maintained for a period of three years from the date of the employment decision or in accordance with agency record retention policies, whichever is longer, at which time the files shall be transferred to the State Records Center for disposition in accordance with the State Records Act, 5 ILCS 160/1 *et seq.*

IV. Savings Clause

Nothing in this Directive shall be construed to contravene the terms of any collective bargaining agreement or any State or federal law.

V. No New Rights Created

Nothing in this Directive is intended to create any new right or benefit, substantive or procedural, enforceable at law by a party against the State of Illinois, its agencies, boards, commissions, officers, or employees, or any person.

VI. Severability

If any provision of this Directive is found invalid by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

VII. **Effective Date**

This Directive shall become effective immediately.

Unless otherwise noted, to the extent any new requirements in this Directive are not already fully in place, the responsible State agencies, boards, and commissions under the jurisdiction of the OOG shall have 120 days to become fully compliant.

Pat Quinn

Governor Pat Quinn

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

RECEIVED
AUG 15 2014
EXECUTIVE
ETHICS COMMISSION

IN RE: ANN SCHNEIDER 11-01567

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked the Commission will not make your response public if the redacted report is made public.

✓ Below is my public response. Please make this response public if the summary report is also made public; or

_____ Below are my suggestions for redaction. I do not wish for these suggestions to be made public.

[signature]
Respondent's Signature

8/15/14
Date

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission
401 S. Spring Street, Room 513 Wm. Stratton Building
Springfield, IL 62706

My copy of this report did not include page 10 or 11.

August 15, 2014

Executive Director Chad Fornoff
Illinois Executive Ethics Commission
401 South Spring Street
Room 513, William Stratton Building
Springfield, IL 62706

Re: Ann Schneider 11-01567
Response to OEIG Final Report

Dear Mr. Fornoff:

In response to the OEIG final report you have provided, I make the following response:

I first began working with the Illinois Department of Transportation (IDOT) in 2005 as the Director and Chief Fiscal Officer of the Office of Finance and Administration. In 2010, I was appointed Chief Operating Officer in the Secretary's Office where I was responsible for six offices and four divisions of IDOT. In this capacity, I served as a liaison with the Governor's Office and the Illinois General Assembly. In 2011, I was appointed Secretary for the IDOT and was unanimously confirmed by the Illinois Senate one month later.

In each of these roles, I have tried to do my best to not only follow but improve the policies and goals of IDOT at both the agency and division level. During my tenure, I oversaw the delivery of the Illinois Jobs Now capital program – the largest in State history that created 140,000 jobs; served as Chair of the National Freight Advisory Committee; led the Illiana Public-Private Partnership Initiative; created the State Freight Advisory Committee; established Zero Fatalities as Illinois' Traffic Safety Goal to eliminate fatalities on the State's highways and protect workers who work every day to maintain and build our transportation system; directed the creation and strategy behind the State's first actionable long-range transportation plan; and established Intergovernmental Executive Strategic Highway Safety Committee which has helped to reduce fatalities below 1,000 for a record 5 years in a row, among many other accomplishments. As a result of my personal and collaborative efforts at IDOT, I was honored with several awards including the IDOT Outstanding Service Award in 2010, the Groundbreakers Award, Federation of Women Contractors in 2012, Woman of the Year, WTS (Women's Transportation Seminar) in 2012 to name just a few.

In my experience, persons who serve as Directors and Secretaries of State agencies rarely, if ever, are able to achieve significant progress through micromanagement. I have actively encouraged IDOT employees at all levels to do their jobs to the best of their abilities. I do not believe it is necessary or even beneficial to interfere with the day-to-day activities of every employee at IDOT. To do so would not only be impossible, given the number of employees, but would also take away from my ability to forge ahead with developing policies and programs including, but

not limited to, the development of jobs and improved safety in Illinois in the area of transportation services.

The allegations in the report focus generally on hiring practices and job development and classification. In my supervisory roles at IDOT, I had little direct involvement with most of the activities the OEIG has determined violates preferred hiring and employment Directives, Orders and practices. When I was recommended to serve as Director and Chief Fiscal Officer of the Office of Finance and Administration, I was not asked any questions about my understanding and familiarity with the forms being used at IDOT or the specifics of the hiring processes for *Rutan*-covered or *Rutan*-exempt candidates. It was not a secret that before working for IDOT, I would not have been made familiar with these forms and processes. The minutia of detail expected in this report is rarely found in the resumes of those assuming the top position of any large agency or organization.

Throughout my tenure at IDOT, I was committed to provide the highest level of service to the Agency and the State. Whenever a question came to me, I relied on the legal opinion and advice of the agency's chief counsel, but more often than not questions related to hiring practices never reached my level. I also insisted that for the 93% of positions at IDOT that were *Rutan*-covered, that the proper processes were followed to ensure fair and competitive hiring.

I am very proud of what I was able to accomplish at the Department of Transportation during my 3 year tenure as Secretary, including advancing IDOT's commitment to diversity, sustainability, job creation and freight mobility, while ensuring that Illinois remains the transportation hub of the nation. During my tenure, the Department gained the respect of the transportation industry and earned bipartisan support in the General Assembly.

As it relates to the specific allegations, I respond as follows:

1. **The Report establishes that allegations against me concerning the hiring of my step-daughter are UNFOUNDED.** I agree with the OEIG's finding.

2. **The Report asserts that I improperly was involved in creating and/or classifying positions at IDOT as *Rutan*-exempt.** I deny this allegation. As it relates to each and every claim relating to *Rutan*-exempt positions, it is undisputed that employees of CMS were responsible for classifying positions as either *Rutan*-covered or *Rutan*-exempt. Neither I nor my office played any role in the classification process. I did not direct or encourage my staff to unnecessarily or inappropriately create job descriptions with the intent to have CMS classify them as *Rutan*-exempt in order to circumvent Administrative Directives or personnel policies.

3. **The Report suggests that I had either an active role or took a passive position which resulted in an increase in the number of *Rutan*-exempt employees in the Division of Aeronautics.** I deny this allegation. When I and my staff received these

anonymous complaints about the number of staff assistants in the Division of Aeronautics, we forwarded these complaints to the OEIG for further investigation and assistance. My interpretation of the complaints was that persons employed within the Division of Aeronautics were upset that many *Rutan*-exempt staff assistants were being assigned to positions in their division. In addition, the complaints asserted that these staff assistants did not have the qualifications sufficient for the positions. These positions had been classified by CMS as *Rutan*-exempt. Once CMS designates a position as *Rutan*-exempt, I did not believe that I was legally able to appeal and change CMS's classification. It was my understanding that one of the stated purposes for giving CMS this duty was to increase the likelihood of an impartial assessment and to decrease the Agency's ability to influence these determinations to avoid just these types of allegations. Referencing the second sentence above during my tenure at IDOT, we did not receive an answer from the OEIG with recommendations as to how to address the issue. We were of the understanding that the OIEG would continue to investigate and assist us in assessing the complaints and suggest a solution through the cooperation of our State agencies and resources. How can the OEIG make this allegation against me, when I had forwarded the complaints to them for their investigation and received no answer or recommendations?

5. **The Report suggests that I was responsible for filling *Rutan*-covered positions with *Rutan*-exempt hires and that I independently submitted and approved ePARs to the Governor's Office with the intent to recommend unqualified persons to fill *Rutan*-covered positions.** I deny this allegation. At no time did either I or my staff fill a *Rutan*-covered position with a *Rutan*-exempt person. At IDOT I tried to create a culture that we were one team and we had to get the job done safely and as efficiently and effectively as possible. Did I create a culture where people would step up and pitch in to get the job done, yes I did. Therefore, I would agree and admit that there were times that *Rutan*-exempt individuals were asked to fulfill job duties that were not clearly identified in their job descriptions. It was and is my opinion that performing tasks that were not clearly specified in one's job description does not convert either the person or the position to *Rutan*-covered status. This conclusion was supported by Agency counsel, Ellen Schanzle-Haskins who specifically advised us that such task assignments were not a violation of *Rutan*. The singular purpose of asking employees to complete necessary work was to accomplish the task at hand.

   It is my recollection that vast majority of *Rutan*-exempt hires were chosen from those recommended to me or my staff by the Governor's office. The Governor's office would have been provided resumes of all such candidates and would have requested that we complete the process of having the recommended person approved for the open position. Neither I nor my staff were in a position to reject the recommended individuals for these exempt positions as no additional interview process was required.

6. **The Report suggests that I was unable to define the term "technical" as it related to the use of that term in a job description at IDOT.** I admit that I could not give a definition of that term beyond the common use. I did not write the job description or provide direction to whoever wrote it. This is not a task that I would consider requires the attention of either a Director within or Secretary of a State agency.

7. **The Report suggests that I inappropriately ignored the results of a 2005 internal audit of IDOT which referenced some of the same issues that were investigated by the OEIG in this audit.** First, I deny that the 2005 audit related to any actions taken on my part as the report was a summary of an investigation based upon what had occurred before my employment with IDOT. Second, many of the audit findings were rejected. The audit had already been addressed by my predecessors. No one suggested to me that I was required to go back and re-evaluate prior responses or provide my own assessment as to what had happened before I was employed at IDOT. This is not a duty of either a Director within or Secretary of a State agency.

If the OEIG and the Executive Ethics Commission are going to hold agency heads and senior management responsible for these hires, then in general, I would agree with many of the OEIG recommendations which support increased education for those in hiring and management positions concerning *Rutan*; using independent contractors to audit job classifications and descriptions; reducing the number of *Rutan*-exempt positions overall; and eliminating unnecessary positions altogether. I believe I asserted a similar position while serving as Secretary for the IDOT. It would also be my recommendation that consultation with the Directors of each Agency be required when determining employment needs as it relates to the balance of *Rutan*-covered vs. exempt positions.

I would also point out that the *Rutan* training for executives and senior level management that had been presented by CMS did NOT cover the level of detail included in this report, which again is not something an agency head would be aware of in order to oversee or not inappropriately delegate as suggested by the findings.

In my roles as Director and Secretary of IDOT, I have strived to do what I thought was best for the Agency and the people of Illinois. I worked hard to set positive goals for IDOT which I feel were successfully achieved by me and my staff during my tenure. This OEIG investigation suggests that I engaged in efforts to sabotage IDOT divisions with incompetent political hires. The facts establish that to the extent political hires were made, they did not originate from me or my staff. Under the law it is my understanding that the Governor has the authority to hire whoever he deems

appropriate for *Rutan*-exempt positions, but I support any effort to reduce the number of PURELY political positions at IDOT.

It hurt me deeply that I was not able to prepare a defense to refute the charges against me and prove that the charges were unfounded.

This report AND the chance that it's going to be made public have wreaked havoc on me personally, professionally and emotionally. I have always worked hard my entire career to do what is right and ethical and in the best interest of the taxpayers whom I served. I pray that you do not make this report public.

Nevertheless, to the extent this report is made public, I would ask that my response be made public to accompany the report.

Sincerely,

Ann Schneider

RECEIVED
AUG 15 2014
EXECUTIVE ETHICS COMMISSION

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: GARY HANNIG #11-01507

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked the Commission will not make your response public if the redacted report is made public.

__X__ Below is my public response. Please make this response public if the summary report is also made public; or

_____ Below are my suggestions for redaction. I do not wish for these suggestions to be made public.

Respondent's Signature

8/15/14
Date

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission
401 S. Spring Street, Room 513 Wm. Stratton Building
Springfield, IL 62706

See attachment

TM II Rutan-exempt positions at IDOT were well established and accepted since the 1990s at IDOT.

Rutan-exempt TM II Staff Assistant positions have been in place at IDOT since the 1990s, apparently without complaint or issue. The position of Technical Manager II was well established and accepted as a Rutan-exempt position and exempt from Rutan long before I arrived as Secretary of Transportation in 2009. (Exempt from Rutan, means the appointment can be made for political or other reasons, without competing with others. Rutan-exempt staff can also be fired if the political affiliation of the administration changes). In fact, the OEIG report establishes that when I became Secretary, there were 52-59 Rutan-exempt Staff Assistant IIs working in various positions among the 5200 employees at IDOT who were then in place at the agency (Report page 33). The TM II position was apparently established as Rutan-exempt in the 1990s (Report page 42 footnote)

The OEIG mistakenly states that "IDOT has created 'technical positions', some of which are classified as Technical Managers that are fully exempt from the Personnel Code" (page 11). It was the General Assembly who made this distinction in 20 ILCS 4/5/4(c)(12).

My arrival at IDOT and my understanding of IDOT reputation with respect to enforcement of Rutan in hiring.

I was not aware of any issue or disagreement as to how TMs were hired or what duties they were performing. In fact, IDOT had a close working relationship with CMS and the OEIG, co-sponsoring Ethics in the Workplace seminars most years and working together.

During my two plus years as IDOT Secretary (2009 -2011) no entity ever raised an issue with respect to any of the Technical Manager Rutan-exempt positions at IDOT. Neither the Inspector General, the Illinois Auditor General, the federal auditors, my internal IDOT auditor, the Governor's legal counsel assigned to IDOT, CMS who classified TM IIs, nor the unions who represented Rutan covered employees ever suggested that the classification of Technical Managers II should be anything other than Rutan-exempt. No one raised a question as to what duties the Rutan exempt staff were performing. As I told the Inspector General when the OEIG interviewed me in 2014 (3 years after I had left the position as Secretary) this issue as to TM IIs and duties assigned had not passed over my desk (Report page 168)[1].

Consequently, because of past approved practice and no thought that there were perceived problems, the TM II staff assistant jobs were filled consistent with the rules pertaining to Rutan-exempt positions. Had any of these entities expressed concerns, I would have taken immediate action.

What was on my plate as Secretary of IDOT from 2009-2011 and staffing needs

During my two plus years running the agency, I focused on passing a $31 billion capital bill and rolling out the largest road program in the history of the state with near record low IDOT staff. Federal stimulus monies were coming into the agency quickly. In order to receive this funding and complete many needed road projects, I was required to pay overtime and add new staff. Although the Federal Highway Administration was skeptical and felt that IDOT could not adequately staff the stimulus projects, IDOT rose to the task. Under my leadership, we negotiated and began the $1.3 billion high speed rail from Chicago to St. Louis. We brought highway fatalities down to their lowest level since 1926. We laid the groundwork for the Elgin O'Hare Western Bypass, the Illiana expressway and the South Suburban Airport. We broke ground on the Stan Musial Veterans Bridge in East St. Louis which is now complete. We significantly improved diversity at the agency and on construction projects. I ordered the agency to resume inspections of all bridges, including local bridges. My best recollection is that we closed at least one unsafe local bridge and repaired many, many more. In short, we were unaware of any Rutan classification questions. We were proudly working to help the Illinois economy and to provide Illinois jobs.

If handled properly and according to statute, this three year long, expensive investigation could have been averted and the OEIG could have satisfactorily resolved the issues discussed in the OEIG report.

The OEIG has spent the last three years and countless taxpayers' dollars investigating IDOT and the end result, as outlined in their 250 plus page report, is that they believe the agency should reclassify about 48 technical manager positions out of the 5200 staff at IDOT. (Page 135)

The Report indicates that in October 2012 before senior staff at IDOT were interviewed and first became aware of OEIG concerns about TM IIs, the senior staff and the Ethics Officer at IDOT attempted to reach out to the OEIG to get direction from the OEIG as they had been able to do in the past. The meeting was proposed to explain what IDOT policies were and to ask for

guidance. This request for a meeting happened before a full blown OEIG investigation was underway. The IDOT staff asked the OEIG to meet to:

> "Discuss IDOT's personnel policies- primarily pertaining to Rutan- exempt hiring and the basis for our policies." (Report page 7)

This request was made in light of IDOT's belief that they were entitled to meet with the OEIG, since the statutory duties of the OEIG require the OEIG:

> "(6) to assist and coordinate the Ethics Officers for State agencies under the jurisdiction of the Executive Inspector General and to **work with those ethics officers.**" 5 ILCS 430/20-20(6)

Further, as noted on the OEIG website, the OEIG has the responsibility to:

> "educate public employees and appointees regarding issues of ethics and integrity and specifically about laws and policies that govern their conduct." (OEIG website)

The IDOT Ethics Officer, Chief Counsel and Office of Chief Compliance had enjoyed a good relationship with the OEIG in the past. This October 2012 attempt to try to work with and gain an understanding of what the OEIG thought IDOT might be doing wrong was a sensible and sincere request. IDOT suggested who they would send to meet, including the Ethics Officer, but left it to the OEIG to pick the attendees. (page 7)

Not only did the OEIG summarily turn down IDOT's meeting request, they gave no hint as to their concerns or interpretations of the Rutan caselaw. Instead, the OEIG chose to proceed with another two years of full blown investigation, without explanation.

Even now the OEIG has the audacity to imply in their report that IDOT's Ethics Officer and staff attempts to contact and sit down with the OEIG in October of 2012, which Illinois law clearly allows, was somehow inappropriate and sinister (Report pages 7 and 8).

Instead of "assisting" IDOT senior staff to understand that a perceived problem existed, the OEIG reviewed:

> "thousands of documents, conducting over 100 interviews...throughout the State...creating 65 requests for documents and more than 300 investigative reports." (Report page 8)

only to find that there were no violations of the Rutan case but instead, violations of a 2009 Administrative Order.

Had the OEIG agreed to sit down and discuss their concerns and legal interpretations with IDOT (or IDOT's Ethics Officer as required by statute), IDOT management could have addressed the issues (that IDOT did not realize existed) and together IDOT and the OEIG could have fixed the problems and saved the taxpayers thousands of dollars. Instead, the OEIG, by their admission, rather than assist IDOT and educating it, launched an investigation that lasted three years and cost the taxpayer thousands of dollars.

In the interest of the taxpayers, this kind of OEIG over-reaching is counterproductive, destroys agencies and people for no reason.

The most important lesson of the OEIG investigation of IDOT is its lack of significance

1. **The OEIG has found that there was no Rutan violation;**
   The OEIG has now found in this report that no Rutan violations have occurred (iv) but that IDOT has violated an Administrative Order:

   > "IDOT's actions may not have violated Rutan's proscription of political hiring.., But they did violate the Administrative Orders' requirement that Rutan-covered hiring be based on merit".

In looking at the OEIG final report, I noticed that the opinion of IDOT's lawyer and legal staff (which was not sought until December of 2012) was criticized. The OEIG apparently does not agree with the opinion of IDOT legal staff. However it is obvious that the IDOT legal opinion was based on interpretation of actual cases decided by the courts that have interpreted Rutan (page 200, line 164). The OEIG said that these cases don't apply to this investigation because the cases deal with Rutan firing rather than Rutan hiring, even though the hiring cases IDOT counsel uses to support their legal position dealt with job descriptions such as those in question here (page 201). So the OEIG criticized IDOT's legal opinion but admits:

> "we (OEIG) are aware of no case holding that the job description controls the context of patronage hiring. We are aware of no case that even addresses the issue..." (page 201)

I am not a lawyer, but it seems reasonable to me that a legal opinion of IDOT's lawyers which is based on actual cases is preferable to the contrary legal opinion of the OEIG which the OEIG admits is based on no cases. The OEIG is not a court, but seems to be attempting to act as one.

2. **The OEIG has found violations of the Governor's Administrative Order #2 (December 2009) in certain hiring scenarios where the hire occurred before the order was issued:**

It is interesting to note that after a 3 year investigation the OEIG says IDOT violated Administrative Order #2 with respect to the hiring of some employees. The OEIG is simply in error in its allegation that some IDOT employees violated an Administrative Order of the Governor. The hiring of several employees couldn't have violated Administrative Order #2 because their hires took place before Administrative Order #2 even existed. Administrative Order #2 was issued in December 2009 and yet the OEIG claims IDOT violated the Order by the hiring of these employees in circumvention of the Executive Order #2.

A look at hiring dates reveals employee:

#74 (hired 2007) (page 90) and founded against IDOT at page 238 as circumventing 2009 Administrative Order #2.

#1 (hired 2008) (page 148) and founded against IDOT at page 237 as circumventing 2009 Administrative Order.

#53 (hired 2008) (page 51) and founded against IDOT at page 237 as circumventing 2009 Administrative Order.

The OEIG unfairly and erroneously found a violation with regard to IDOT and these employees but it seems impossible to be accused of hiring a staff member in violation of an order that did not yet exist. This is simply shoddy work by the Inspector General.

The OEIG suggests, for example, as to Employee #1's hire in 2008 that the hire circumvented Administrative Order #2 which was not issued until a year later. (Report page 237) They criticize hiring of unqualified individuals but make no mention of the fact that employee #1 had a degree in communications and that there was no political implication in the hire.

Administrative Order #2 did not exist in 2008 and it is not a law but is still used as a basis for a "founded" complaint against IDOT by the OEIG.

The OEIG seems to think it can serve as a court. In reality, neither the OEIG nor the Executive Ethics Commission is a court of law and it is disingenuous for either body to imply that it can provide a legal interpretation of Rutan. Rutan is limited to cases involving political hiring, firing, promotion and termination. Many of these TM IIs were not political hires and the OEIG found no Rutan violations. Thus the OEIG was relegated to enforcing an Administrative Order, which wasn't in place in many instances at the time the hires in question were made.

Conclusion

In conclusion, when IDOT reached out to the OEIG in 2012 to try to get direction, the OEIG was statutorily mandated and honor bound to work with the IDOT Ethics Officer to try to help IDOT management understand and comply with perceived job classification and hiring issues. They had an obligation to work with the ethics officer and educate IDOT specifically about their interpretation of the laws and policies that govern IDOT's hiring policies. Instead, the OEIG and now the Executive Ethics Commission if they choose to publish this report, are apparently conducting a game of "gotcha" and spending taxpayer dollars when all could have been resolved when IDOT attempted to reach out to the OEIG.

[1] Lastly, I would point out that in my interview a few months ago the Inspector General put a 2014 Personnel Manual in front of me and asked if I was familiar with it. In fact, it was pointed out to the Inspector General that the document was dated well after I left the agency. In spite of this obvious error, the Inspector General continued asking questions about the manual as if he had not made a mistake. He continued the questioning as if I should be familiar with this document and raises my lack of familiarity in his report. This kind of injustice could only occur in a flawed process where the prosecutor is also the judge and jury. Obviously the outcome of the investigation had already been decided before I was interviewed.

RECEIVED
AUG 18 2014
EXECUTIVE ETHICS COMMISSION

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: MATTHEW HUGHES #11-01567

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked the Commission will not make your response public if the redacted report is made public.

X Below is my public response. Please make this response public if the summary report is also made public; or

_____ Below are my suggestions for redaction. I do not wish for these suggestions to be made public.

Respondent's Signature

8/18/14
Date

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission
401 S. Spring Street, Room 513 Wm. Stratton Building
Springfield, IL 62706

See attached response document ...

I never had the authority to approve or permanently hire Rutan-Exempt employees at the Illinois Department of Transportation. In the 10 years I spent with the Department, at no point in time did I possess the required level of authority to approve the hire of a Rutan-exempt candidate. Any implication that I did is factually inaccurate. The workflow associated with the hiring process in place at the time of this investigation, supported by the ePar system, reflects where that authority lies. An investigation such as this, in which the Office of the Executive Inspector General spent 2 plus years requesting documents, reviewing emails, conducting-in person interviews and reviewing policy and procedure, could not have credibly drawn any other conclusion.

It is evident that I cooperated fully during the course of this investigation. It is also evident, as indicated in this report, that I had sought the advice of the Agency's then Chief Counsel to seek legal opinion on the subject of assigning employees who were exempt from Rutan, duties typically deemed to be of a nature covered by Rutan. I was advised by Counsel at that time that it was allowable to do so. Therefore, out of necessity to maintain some semblance of continuity of operations, the practice became common. Headcounts were historically low and workloads associated with both federal stimulus dollars (American Recovery and Reinvestment Act of 2009) and the State's largest ever Capital Infrastructure Bill (Illinois Jobs Now!) were critically high. On the advice of IDOT's Chief Counsel at the time, the legal opinion of which is included in this report, this practice was allowed. This report discounts such legal opinion, but it was an opinion from the Chief Counsel, and I relied on it in good faith.

As Director of Finance and Administration, at my direction, the Department issued a Request for Proposals (RFP) for a management consultant to conduct a Business Process Review. One of the required deliverables was to be an extensive report detailing the hiring and recruitment processes at the Department and specifically in my Office. The consultant conducted a thorough review of all hiring activities as well as some of information technology functions at the Department. The purpose of this initial engagement was to identify ways to improve upon those activities and to become more effective. Recommendations were made to me as a result of the initial review and a subsequent RFP was issued for the purpose of implementing those recommendations. The consultant is currently in the process of implementing improvements to date. In summary, consistent with the transcripts of my two extensive interviews with the Office of the Executive Inspector General, I recognized the need for improvements and took deliberate and documentable steps to make changes to hiring practices I inherited after being promoted twice over the course of 5 years.

8/18/14

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: MICHAEL WOODS, JR #11-01567

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked the Commission will not make your response public if the redacted report is made public.

✓ Below is my public response. Please make this response public if the summary report is also made public; or

_____ Below are my suggestions for redaction. I do not wish for these suggestions to be made public.

Respondent's Signature

8-20-14
Date

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Illinois Executive Ethics Commission
401 S. Spring Street, Room 513 Wm. Stratton Building
Springfield, IL 62706

I would like to express my appreciation to the Executive Ethics Commission for offering me the opportunity to respond to the OEIG's investigatory findings. I approached each OEIG interview mindful of my duty to answer their questions honestly and correctly. After reviewing the OEIG report, I feel obligated to provide a more realistic and complete description of my role as Bureau Chief of Personnel Management as opposed to the one depicted by the OEIG. I would also like to offer my analysis on the OEIG investigation along with my recommendations for meaningful solutions to fix a broken system that has been in place years before I became the Bureau Chief.

The OEIG report frequently states that I "approved the hiring of multiple Rutan-exempt Staff Assistants." In fact, my role in the hiring process of Rutan-exempt employees was much more limited than the one described throughout this report. The OEIG's description of my role could give the reader of this report the impression that I had a great deal of influence or even unilateral decision making power over the hiring process for Rutan-exempt positions. That is not true.

My role as IDOT's Bureau Chief of Personnel Management was more concentrated in the processing of paperwork than deciding who to hire for Rutan-exempt positions. Under no circumstances did I have the authority to fill a Rutan-exempt vacancy. Prior to being hired, every Rutan-exempt candidate required approval from my superiors at the Illinois Department of Transportation and ultimately members of the Governor's Office. The vast majority of the candidates for Rutan-exempt positions came pre-approved from my superiors (i.e. Director of Finance & Administration, Secretary of IDOT and/or Deputy Chiefs of Staff Mark Harris or Sean O'Shea).

Early in my tenure as Bureau Chief of Personnel Management and before the OEIG investigation was initiated, IDOT's Director of Finance & Administration and I, sought the advice of IDOT's Chief Legal Counsel, Ellen Shanzle-Haskins. Ms. Shanzle-Haskins gave us her legal opinion that it was not inappropriate to hire Rutan-exempt Staff Assistants even though some of them would be performing Rutan-covered duties. We relied upon her legal advice since neither the Director of Finance & Administration nor I are lawyers and the IDOT Chief Counsel has the responsibility of giving us legal advice about personnel related matters.

The OEIG report alleges that I "failed to implement the 2005 Office of Internal Audit recommendations.....thus engaging in nonfeasance and mismanagement." My first year at IDOT was in 2009, four years after the 2005 audit. During my tenure at IDOT, I was never made aware of that 2005 audit. Therefore, I was not in a position to implement those audit recommendations and I did not "engage in nonfeasance and mismanagement" for failing to do so.

Another conclusion in the OEIG report is that I allegedly "allowed the hire of multiple Staff Assistants without knowing if they were indeed qualified to perform the duties they actually did, and failed to maintain a well-motivated staff, thus engaging in nonfeasance and mismanagement....." I disagree that I engaged in nonfeasance and mismanagement especially under the circumstances involved. As I stated earlier, I was the lowest level employee in the approval process to fill a Rutan-exempt vacancy including the filling of Staff Assistant positions. IDOT's Director of Finance & Administration, the Secretary of

IDOT, the Governor's Office of Management & Budget, the Governor's Deputy Chief of Staff and the Governor's Chief of Staff were all required to approve personnel action requests pertaining to the hiring of Rutan-exempt positions.

It should be noted that the Staff Assistant job descriptions do not possess required job qualifications. To my understanding, this has been the case for Staff Assistant positions and the rest of the Technical Manager positions for the last 30 years. To my knowledge there has never been an examination or grading process in place for hiring Staff Assistants or other Technical Managers. Consequently, it can be difficult to more accurately assess an applicant's qualifications to fill those positions.

The OEIG's conclusion that I allegedly "failed to maintain a well-motivated staff" is inaccurate and it is not something that is objectively verifiable by the OEIG or anyone else. Therefore, in my opinion, it is an inappropriate conclusion for the OEIG to attempt to make in its report. Such a subjective allegation without empirical data to support it gives the impression that the OEIG is trying to pile on findings instead of engaging in objective analysis and providing meaningful solutions. I diligently focused on building a trusting and engaging work environment. I continuously sought feedback from my staff. I feel very confident in saying that I had as good, if not a better, relationship with the Bureau of Personnel Management staff than any of my predecessors over the last 12 years.

It also appears that the OEIG investigation is, at best, incomplete. Although, the OEIG investigated this matter for more than 2 years and interviewed numerous people, it does not appear that they interviewed former Governor's Office Deputy Chief of Staff Mark Harris. Mr. Harris was in place during the time at issue in the OEIG report. To my understanding the Chief of Staff relies heavily upon the input from his/her Deputy Chief of Staff. I have no reason to believe that the Governor's Chief of Staff was aware of the duties that were actually performed by Rutan-exempt IDOT Staff Assistants. However, Mr. Harris and current Deputy Chief of Staff Sean O'Shea were aware.

I have absolutely no reason to believe that the Governor, himself, was aware of the IDOT Staff Assistant hirings or the duties performed by those Staff Assistants. The number of IDOT Staff Assistants at issue is probably quite small compared to the total number of state employees under the purview of the Governor's Office.

As part of this response, I would also like to give some recommendations that might help address the situations set out in the OEIG report. Numerous state agencies and entities fall under the purview of the Governor's Office. To my knowledge, IDOT is the largest agency under the jurisdiction of the Governor's Office which has its own personnel system that is outside of the Illinois Personnel Code (also referred to as the CMS Personnel Code). Perhaps a remedy to be considered is to incorporate the IDOT Personnel Code under the CMS Personnel Code.

I agree with the OEIG's assessment that IDOT's Technical Personnel Code inherently possesses various flaws that make it ripe for reform. While CMS can certainly lack efficiency at times, in my opinion, its personnel code is more sophisticated than IDOT's

Technical Personnel Code. The CMS Personnel Code is equipped with safeguards that could help prevent situations similar to those identified in this report.

IDOT's technical classification system has been a problem that dates back at least 30 years ago. The legislation that exempted IDOT from the CMS Personnel Code provided few details on how the technical code would be enforced. Technical employees at IDOT do not have the same job protection that employees under the CMS Personnel Code have and instead work at the will of the Secretary of Transportation and Office of the Governor.

One proposal that has been made to address the situations set out in the OEIG report is to reclassify many of the Staff Assistants at issue in the OEIG report into Rutan-covered job descriptions without those employees going through the Rutan interview process. Personally, I disagree with this proposal. When I was the Bureau Chief of Personnel Management, I was adamant that a Rutan-exempt employee, such as a Staff Assistant, Legislative Liaison and others, not be able to transfer into a Rutan-covered position without first going through the Rutan hiring process. That process includes posting of the position and job description, accepting applications for the position, and interviewing and scoring the applicants for the position.

I am sure that there are other ways to effectively address the issues set out in the OEIG report. I am prepared to assist in helping to formulate the other ways to address those issues.

Once again, I appreciate the opportunity to respond to the OEIG's findings.

Sincerely,

Mike Woods Jr.