

No. 92473

**IN THE  
SUPREME COURT OF ILLINOIS**

JOHN H. STROGER, JR., President of the ) Cook County Board of Commissioners, ) and BERNARD SCAVELLA, a registered ) voter, residing in the 4th district of Cook ) County )	On Appeal from the ) Appellate Court of ) Illinois, First District ) No. 1-00-2545 )
Plaintiffs-Appellees, ) vs. )	There Heard on Appeal ) from the Circuit Court of ) Cook County, County ) Dept., Chancery Division )
The REGIONAL TRANSPORTATION ) AUTHORITY, a Municipal Corporation, ) METRA, the Commuter Rail Division of ) the Regional Transportation Authority, ) and PACE, the Suburban Bus Division ) of the Regional Transportation Authority, )	No. 00 CH 3291 ) Moshe Jacobius, ) Presiding Judge. )
Defendants-Appellants. )	

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**OPENING BRIEF OF DEFENDANTS-APPELLANTS  
REGIONAL TRANSPORTATION AUTHORITY,  
METRA, AND PACE**

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This case concerns the constitutionality of certain provisions of the Regional Transportation Authority Act, 70 ILCS 3615/1.01 *et seq.* (“RTA Act” or “Act”). Plaintiffs contend that the statutory process for appointing directors to the RTA, Metra, and Pace boards violates the “one person, one vote” and separation of powers principles of the Illinois Constitution and unconstitutionally alters the form of Cook County’s government without a referendum. The Circuit Court dismissed all three claims. The Appellate Court vacated that decision and remanded for further proceedings. Judgment was not based on the verdict of a jury, and no issue is raised on the pleadings.

**STATEMENT OF THE ISSUES PRESENTED FOR REVIEW**

1. Whether the RTA Act’s provisions governing appointments to the RTA, Metra, and Pace boards of directors violate the “one person, one vote” principle of the Illinois Constitution.

2. Whether the RTA Act’s appointment provisions violate the separation of powers principle of the Illinois Constitution.

3. Whether the RTA Act’s appointment provisions unconstitutionally alter Cook County’s form of government without referendum.

4. Whether the Appellate Court erred in ruling that the Circuit Court’s dismissal of plaintiffs’ complaint was “premature” and in remanding

for “hearings” on the meaning of “one man, one vote” in the section of the RTA Act providing for RTA Board appointments.

### **STATEMENT OF JURISDICTION**

The Appellate Court issued its opinion on August 24, 2001. A-1.<sup>1/</sup> Defendants-Appellants filed a timely Affidavit of Intent to file a Petition for Leave to Appeal on September 12, 2001. A-38. Defendants-Appellants filed their Petition for Leave to Appeal on September 28, 2001. This Court granted the Petition for Leave to Appeal on December 5, 2001. This Court has jurisdiction pursuant to Supreme Court Rule 315.

### **CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED**

Pertinent provisions of the Illinois Constitution and the RTA Act, 70 ILCS 3615/1.01 *et seq.*, are reproduced in the Appendix hereto.

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<sup>1/</sup> “A-” refers to the page of the Appendix filed with this Brief.

## **STATEMENT OF FACTS**

**Parties.** Plaintiff John H. Stroger, Jr. is President of the Cook County Board of Commissioners. Plaintiff Bernard Scavella is a registered voter residing in Calumet City and the 4th district of Cook County. A-26, ¶¶ 2-3. Defendant Regional Transportation Authority (“RTA”) is “a unit of local government, body politic, political subdivision and municipal corporation.” 70 ILCS 3615/1.04. Defendant Metra is the Commuter Rail Division of the RTA. *Id.* § 3B.01. Defendant Pace is the Suburban Bus Division of the RTA. *Id.* § 3A.01. The People of the State of Illinois, through the Office of Attorney-General, intervened in support of defendants in the Circuit Court and filed a brief in support of defendants in the Appellate Court, and this Court granted the People’s motion to adopt defendants’ Petition for Leave to Appeal.

**The RTA Act.** At a special session in 1973, the General Assembly enacted the RTA Act, P.A. 78-5., 3d Sp. Sess., codified at 70 ILCS 3615/1.01 *et seq.* The Act became effective after approval by the voters in a six-county referendum. This Court upheld the Act as constitutionally valid in *Hoogasian v. RTA*, 58 Ill. 2d 117, 121, 317 N.E.2d 534, 536 (1974). The purpose of the RTA Act was to “provide for, aid and assist public transportation in the northeastern area of the State, consisting of Cook, Dupage, Kane, Lake, McHenry and Will Counties.” 70 ILCS 3615/1.02(a). The General Assembly found that, due to their “grave financial condition,”

public transportation facilities were “not providing adequate public transportation to insure the public health, safety and welfare,” making it “necessary to provide for the creation of a regional transportation authority with the powers necessary to insure adequate public transportation.” *Ibid.* The General Assembly therefore created “a single authority responsive to the people and elected officials of the area and with the power and competence to provide and facilitate public transportation which is attractive and economical to users, comprehensive, coordinated among its various elements, economical, safe, efficient and coordinated with area and State plans.” *Ibid.* That authority is the RTA.

The original RTA Act allocated the responsibility for appointments to the RTA Board among elected officials in three sub-areas in the six-county region – Chicago, suburban Cook County, and the five collar counties. In 1983, the legislature substantially amended the RTA Act to provide additional state financial aid to transportation in the region, to transfer the RTA’s operating service functions to Metra and Pace (new entities responsible for commuter rail and suburban bus service, respectively), and to strengthen the RTA’s financial oversight function over its three Service Boards – the CTA, Metra, and Pace. In both the original Act and the substantial 1983 amendment, the General Assembly established an appointment process for the governing boards of the RTA, the CTA, Metra,

and Pace that reflects a continuing concern with ensuring political balance among the separate regions of metropolitan Chicago.

The RTA Act establishes separate Boards of Directors for the RTA, Metra, and Pace. The Act directs that the 13 appointments to the RTA Board be made as follows:

“(a) Four Directors appointed by the Mayor of the City of Chicago, with the advice and consent of the City Council of the City of Chicago, and a fifth director who shall be the Chairman of the Chicago Transit Authority. . . .

(b) Four Directors appointed by the members of the Cook County Board elected from that part of Cook County outside of Chicago, or, in the event such Board of Commissioners becomes elected from single member districts, by those Commissioners elected from districts, a majority of the electors of which reside outside Chicago . . . with the concurrence of four such Commissioners. . . .

(c) Two Directors appointed by the Chairmen of the county boards of Kane, Lake, McHenry and Will Counties, with the concurrence of not less than a majority of the Chairmen from such counties, from nominees by the Chairmen. . . .

(d) One Director shall be appointed by the Chairman of the Board of DuPage County with the advice and consent of the County Board of DuPage County . . . .

(e) [A Chairman] appointed by the other 12 Directors with the concurrence of three-fourths of such Directors [who] shall not be appointed from among the other Directors.”

70 ILCS 3615/3.01. All the RTA Board members appointed by the suburban Cook County Commissioners must reside in the Cook County suburbs. *Id.*, § 3615/3.01(b).

The Act grants the power to make the seven appointments to the Metra Board to the Mayor of Chicago (1 appointment), the suburban Cook County Commissioners from suburban-majority districts (3 appointments), the DuPage County Board Chairman (1 appointment), and the chairmen of the other collar county boards (2 appointments). *Id.*, § 3B.02. All the Metra Board members appointed by the suburban Cook County Commissioners must reside in suburban Cook County. *Id.*, § 3B.02(c).

The Act grants the power to make the 12 appointments to the Pace Board to the suburban Cook County Commissioners from suburban-majority districts (6 appointments) and to each of the chairmen of the collar county boards (5 appointments.) *Id.*, § 3A.02. Each of the Pace board members must be a chief executive officer of a municipality within a specified area of the region. *Id.*, § 3A.02(a). For both Metra and Pace, the chairman is appointed by the other board members.

The CTA Act provides for a seven-member Board, with four members appointed by the Mayor of Chicago and three by the Governor. 70 ILCS 3605/20. Only one of the Governor's and none of the Mayor's appointees are required to reside in suburban Cook County.

**The Circuit Court Proceeding.** Plaintiffs sued for declarative and injunctive relief, alleging that these longstanding provisions of the RTA Act violate the Illinois Constitution's "one person, one vote" and separation of

powers principles and unconstitutionally alter the form of Cook County's government without a referendum. After extensive briefing and oral argument, the Circuit Court granted defendants' motion to dismiss. A-24.

The Circuit Court rejected plaintiffs' "one person, one vote" claim, explaining that this Court and the United States Supreme Court consistently have held that "the 'one man, one vote' doctrine does not pertain to instances where the body in question is appointed." A-21. Because the RTA, Metra, and Pace board members are appointed rather than elected by the general public, the court held that plaintiffs failed to state a claim. Moreover, the court reasoned, the legislature ensured that all three boards include representatives of the City of Chicago, suburban Cook County, and the collar counties as part of its effort "to create a practicable geographical balance in order to efficiently meet the transportation needs of the residents of the Northeastern Illinois region." Thus, the court concluded, "[t]here is no basis to believe that the Directors representing the larger interests of suburban Cook County will not address the concerns of all the [Cook County] suburban residents," including plaintiff Scavella. A-22-23.

The Circuit Court also held that the appointment provisions do not violate separation of powers, recognizing that "the legislature may enact any legislation not expressly prohibited by the constitution" and that "courts have consistently upheld the authority of legislative bodies to establish the mode

and method of appointment” to legislatively created offices. A-18-20. Thus, the legislature had the authority to create the RTA, Metra, and Pace boards and to fashion their appointment procedures so as “to address the transportation needs of the six county area while maintaining a balance between the competing geographical entities.” A-19. Furthermore, the court explained, those procedures do not affect the Cook County Board President’s authority because the RTA, Metra, and Pace board members “are not employees of the County of Cook” but rather serve independent governmental entities not subject to the authority of the Cook County Board President. A-19-20. Finally, the court rejected plaintiffs’ claim that the appointment procedures alter Cook County’s form of government without a referendum. The court explained that “the RTA Act created a special district” and thus “did not alter the form of government of Cook County,” noting that, in any event, the RTA Act was approved by referendum. A-23.

**The Appellate Court Proceeding.** The Appellate Court vacated the Circuit Court’s judgment and remanded without “address[ing] the constitutional issues raised on appeal.” A-13. Instead, the Appellate Court found it “not clear” that the complaint failed to state a claim, ruled that dismissal of plaintiffs’ complaint was “premature,” and ordered the Circuit Court to conduct “hearings” on plaintiffs’ allegations. A-12-13. In particular, the Appellate Court held that the Circuit Court’s analysis was “insufficient”

as to the meaning of “one man, one vote” in Section 3.01(h) of the RTA Act, which states:

The Board of Directors shall be so appointed as to represent the City of Chicago, that part of Cook County outside the City of Chicago, and that part of the metropolitan region outside Cook County on the one man one vote basis. After each Federal decennial census the General Assembly shall review the composition of the Board and, if a change is needed to comply with this requirement, shall provide for the necessary revision by July 1 of the third year after such census.

The Appellate Court also ruled that the Circuit Court’s analysis was insufficient as to whether Cook County’s adoption of single-member districts in 1994 rendered the Act’s appointment provisions “inequitable.” A-12-13.

### **ARGUMENT**

As this Court has repeatedly emphasized, “the legislature may enact any legislation not expressly prohibited by the constitution,” *Graham v. Illinois State Toll Highway Auth.*, 182 Ill. 2d 287, 300, 695 N.E.2d 360, 366 (1998), and “[s]tatutes are presumed constitutional.” *Geja's Café v. Metropolitan Pier & Expo. Auth.*, 153 Ill. 2d 239, 248, 606 N.E.2d 1212, 1216 (1992); *Chicago Sch. Fin. Auth. v. City Council*, 104 Ill. 2d 437, 443, 472 N.E.2d 805, 808 (1984).

That presumption is even stronger in this case because the Illinois Constitution affirmatively authorizes the appointment provisions of the RTA Act. Article XIII, § 7 states that “[t]he General Assembly by law may provide

for, aid, and assist public transportation,” which it describes as an “essential public purpose.” Article VII, § 8, which governs “units of local government” such as the RTA, Metra, and Pace, states that “[t]he General Assembly shall provide by law for the selection of officers of [such] units.” Other than precluding such appointments “by any person in the Judicial Branch” (*ibid.*), the Constitution contains *no restriction* on whom the General Assembly may designate to make the appointments or on the method of appointment. See *Polich v. Chicago Sch. Fin. Auth.*, 79 Ill. 2d 188, 199, 402 N.E.2d 247, 251 (1980) (based on Article VII, § 8, members of the Chicago School Finance Authority, which the legislature authorized to compel tax increases to operate Chicago schools, did not have to be “elected or appointed in a manner approved by the voters of the City of Chicago”). Implementing its constitutional authority, the General Assembly enacted appointment procedures for the RTA, Metra, and Pace boards designed to obtain support from Chicago, suburban Cook County, and the five collar counties for a regional public transportation system.

Decades later, plaintiffs seek to unravel that carefully crafted design. As demonstrated below, none of plaintiffs’ claims passes legal muster. Moreover, this Court long ago dispelled any doubts about the constitutional validity of the RTA Act’s appointment provisions. In *Hoogasian*, this Court rejected claims, similar to those of plaintiffs here, that “the RTA Act deprives

local governmental units of the rights, powers and duties granted to them under sections 10, 11 and 12 of article VII of the Constitution” (58 Ill. 2d 117, 133, 317 N.E.2d 534, 542-43 (1974)), that “the RTA Act altered the ‘form of government’” of a local mass transit district (*id.* at 135, 317 N.E.2d at 544), and that “the RTA referendum somehow violated the constitutional guarantee of free and equal elections contained in section 3 of article III of the Constitution” (*id.* at 137, 317 N.E.2d at 545).

The Appellate Court failed to adhere to this Court’s deferential approach to the validity of legislative enactments and of the RTA Act in particular. The Appellate Court’s revival of plaintiffs’ patently meritless claims casts a cloud over governance of a critically important public transportation system serving the region’s eight million residents. This Court should remove that cloud by vacating the Appellate Court’s decision and confirming the constitutionality of the RTA Act’s appointment provisions.

**Standard of Review.** “The constitutionality of a statute is a question of law subject to *de novo* review.” *Miller v. Rosenberg*, 196 Ill. 2d 50, 57, 749 N.E.2d 946, 951 (2001); accord *Burger v. Lutheran Gen. Hosp.*, 198 Ill. 2d 21, 759 N.E.2d 533, 540 (2001).

**I. THE RTA ACT'S APPOINTMENT PROVISIONS DO NOT VIOLATE THE CONSTITUTIONAL PRINCIPLE OF "ONE PERSON, ONE VOTE."**

Under the RTA Act, Cook County Commissioners from districts with a majority of its population from the City of Chicago do not make appointments to the RTA, Metra, and Pace boards. The interests of those districts are to be represented by appointments made by the Mayor of Chicago. 70 ILCS 3615/3.01(a); *Id.*, § 3B.02(d). Plaintiffs allege that, as a result, suburban residents of those districts, such as Mr. Scavella, are "deprived entirely of any representation" on the three boards in violation of the "one person, one vote" principle of the Illinois Constitution. A-36, ¶ 47. The constitutional principle of "one person, one vote" derives from two constitutional provisions – Article I, § 2, which states that "[n]o person shall be \* \* \* denied the equal protection of the laws," and Article III, § 3, which provides that "[a]ll elections shall be free and equal." Plaintiffs' allegations do not state a claim for violation of that constitutional principle.

As demonstrated below, appointments to the RTA, Metra, and Pace boards are not subject to the constitutional "one person, one vote" principle. So long as the elections of the officials making the appointments were themselves representative, which plaintiffs do not contest, the "one person, one vote" principle has no application. Acceptance of plaintiffs' argument would raise doubts about the validity of appointments to numerous governmental bodies throughout the state. Moreover, no one's right to vote

has been abridged, and the legislature’s enactment of the appointment provisions was a rational response to a regional crisis in mass transportation. The legislature ensured that the City of Chicago, the Cook County suburbs, and the collar counties are each appropriately represented in the appointment process. The “one man, one vote” provision in the RTA Act referenced in the Appellate Court’s opinion simply guarantees that the number of appointments to the RTA Board accorded those three constituencies reflect any population shifts disclosed by census data.

**A. Governmental Appointments Are Not Subject To The Constitutional Principle of “One Person, One Vote.”**

Plaintiffs allege that precluding Cook County Commissioners from City-majority districts, like Mr. Stroger, from making appointments to the three public transportation boards violates the “one person, one vote” principle of the Illinois Constitution. However, the “one person, one vote” principle does not apply to appointed officials but only to “a public office [that] must be filled by election.” *Eastern v. Canty*, 75 Ill. 2d 566, 577, 389 N.E.2d 1160, 1165 (1979).

This Court in *Eastern* exhaustively analyzed the case law on this issue and adopted the very principle challenged by plaintiffs here: “[I]f the officer is elected, ‘one person, one vote’ applies. If he is appointed, the principle does not apply.” *Id.* at 583, 389 N.E.2d at 1168 (citation omitted). Indeed, “when an officeholder need not be elected at all, it seems questionable to

speak of him as a ‘representative.’” *Id.* at 585, 389 N.E.2d at 1168-69. This Court therefore concluded that the “one person, one vote” principle did not apply to the sanitary district board of commissioners at issue in *Eastern*. *Ibid.* See also *People ex rel. Peterson v. Pollock*, 306 Ill. 358, 362-64, 137 N.E. 820, 821-22 (1922) (statute that allowed properly elected members of board of education to make interim appointments in case of a vacancy did not run afoul of “free and equal” elections clause).

*Eastern* reaffirmed principles established by the United States Supreme Court, which has expressly held that “the principle of ‘one man, one vote’ has no relevancy” where board appointments “did not involve an election,” *Sailors v. Board of Educ.*, 387 U.S. 105, 111 (1967), and that the equal representation principle does not apply “where a State chooses to select members of an official body by appointment rather than election.” *Hadley v. Junior College Dist.*, 397 U.S. 50, 58 (1970). See also Richard Briffault, *Who Rules at Home?: One Person/One Vote and Local Governments*, 60 U. Chi. L. Rev. 339, 406 (1993) (“the courts have consistently treated appointive bodies [as] exempt from the equal population representation principle”).

Plaintiffs argued below that this Court repudiated those established principles in *Fumarolo v. Chicago Bd. of Educ.*, 142 Ill. 2d 54, 566 N.E.2d 1283 (1990). Pl. App. Ct. Br. 18. In fact, this Court in *Fumarolo* expressly confirmed that the “one person, one vote” principle does not apply to

appointed boards where “the members of the bodies responsible for making the appointments were constitutionally selected.” *Id.* at 98, 566 N.E.2d at 1303.

The problem identified by this Court in *Fumarolo* was that the *appointers* had not been constitutionally selected. Plaintiffs do not allege that the Cook County Commissioners were not properly elected. *Fumarolo* addressed the Chicago School Reform Act, under which elected local school councils in turn elected subdistrict councils which in turn elected members of the school board nominating commission which in turn nominated school board candidates for appointment to the Board of Education by the Mayor of Chicago. This Court found that the initial elections of the local school councils were inconsistent with the “one person, one vote” principle, and hence that “both the subdistrict councils and the nominating commission are made up of and selected by members of an unconstitutionally elected body.” *Id.* at 99, 566 N.E.2d at 1303. Thus, *Fumarolo*, unlike this case, involved appointing officials who were themselves unconstitutionally elected, thereby making their appointments constitutionally invalid. Here, to the contrary, plaintiffs do not allege that the Cook County Commissioners, the Mayor of Chicago, or any of the other elected officials making appointments to the RTA, Metra, and Pace boards were not constitutionally elected. Thus, *Fumarolo* does not support – but instead refutes – plaintiffs’ position. As the

Circuit Court properly recognized, plaintiffs have no support for their attempt to create a conflict between this Court’s *Eastern* and *Fumarolo* opinions (both of which were authored by Justice Ward).

Plaintiffs nevertheless contended below that the appointing Cook County Commissioners constitute an unelected “*entity or body*,” making their appointments to the RTA, Metra, and Pace boards constitutionally invalid. Pl. App. Ct. Br. 17 (emphasis in original). There is no constitutional or case law support for plaintiffs’ novel “entity/body” theory. As *Eastern*, *Sailors*, *Hadley*, and *Fumarolo* make clear, the constitutional “one person, one vote” principle *cannot* invalidate appointments to governmental bodies unless there was something unconstitutional about the elections of the officials making the appointments. In any event, the RTA Act does not create an appointing “body.” As plaintiffs’ own Complaint alleges, “the directors representing Cook County are appointed by *members* of the Cook County Board.” A-36 ¶ 45. There is no “body” comparable to the councils and commissions at issue in *Fumarolo*. Plaintiffs’ cannot overcome the inapplicability of the constitutional “one person, one vote” to appointed bodies by pinning the label “body” or “entity” on the appointing officials.<sup>2/</sup>

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<sup>2/</sup> Such vesting of appointment authority in individual elected officials is not unique to the RTA Act. For example, “members of the General Assembly whose legislative districts encompass any portion of [an airport authority other than DuPage] shall appoint the commissioners representing the area within an Authority located outside of any municipality having 5,000 or more

Plaintiffs also argued below that the constitutional “one person, one vote” principle applies in particular to appointed bodies that exercise “general governmental powers.” Pl. App. Ct. Br. 14, 18. But this Court in *Eastern* expressly rejected that position, recognizing that the inapplicability of the “one person, one vote” principle to appointed bodies extends to “a unit of local government having general powers.” 75 Ill. 2d at 579, 389 N.E.2d at 1166. And in *People ex rel. Hanrahan v. Caliendo*, 50 Ill. 2d 72, 82, 277 N.E.2d 319, 325 (1971), the Court held that the exercise of general governmental powers, specifically the imposition of taxes by appointed transportation district trustees, presented no equal protection issue because the “one man, one vote” rule applies only to “voter selection of governmental officials,” not to “appointments.” Thus, plaintiffs’ attempt to carve out an exception to the rule against applying the constitutional “one person, one vote” principle to governmental appointments fails as a matter of law.

**B. The RTA Act Rationally Ensures Proportional Appointment Authority Among The City, Cook County Suburbs, And Collar Counties.**

Even if the constitutional “one person, one vote” principle had any meaning in the context of appointed bodies like the RTA, Metra, and Pace boards, plaintiffs’ contention that the RTA Act disenfranchises Mr. Scavella is baseless. The legislature’s allocation of appointment authority does not  

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population and commissioners at large.” 70 ILCS 5/3.1(1)(c).

affect anyone's right to vote. Like all eligible voters in Cook County, Mr. Scavella may vote for his district Commissioner and for his legislative representatives and may otherwise make his views known to the legislature, which established and retains the authority to modify the RTA Act's appointment procedures. Moreover, all eligible voters in the six-county region had an opportunity to vote in the referendum approving the RTA Act and its appointment provisions, which was preceded by six weeks of vigorous public debate. See *Hoogasian*, 58 Ill. 2d at 136.

Because no right to vote has been abridged, the challenged provisions must be upheld so long as they have a rational basis. *Nevitt v. Langfelder*, 157 Ill. 2d 116, 125, 623 N.E.2d 281, 285 (1993); Briffault, *Who Rules at Home?*, *supra*, at 406 (the case law establishes that "any challenge to a state scheme of subunit representation on an appointive body [is] subject only to a rational basis test"). Under the rational basis test, "a legislative classification is presumed to be valid, and will not be set aside if any state of facts may reasonably be conceived which justify it." *Hoskins v. Walker*, 57 Ill. 2d 503, 509, 315 N.E.2d 25, 28 (1974); see also *Latham v. Board of Educ.*, 31 Ill. 2d 178, 184-85, 201 N.E.2d 111, 115-16 (1964) (statute providing for appointment of board of education members in large cities but for election in less populous areas had rational basis); *Orr v. Edgar*, 298 Ill. App. 3d 432, 438, 698 N.E.2d 560, 565 (1st Dist.) (dismissing equal protection count

where abolition of “one-punch,” straight party voting was rationally related to statute’s goals), appeal denied, 179 Ill. 2d 589 (1998). Thus, the issue is not whether the legislature’s enacted appointment procedures are the only or best possible procedures, but simply whether they serve to accomplish the legislation’s purposes. See *Potts v. Illinois Dept. of Reg. & Educ.*, 128 Ill. 2d 322, 332, 538 N.E.2d 1140, 1145 (1989) (“whether the course chosen by the legislature to achieve a desired result is either wise or the best means available is not a proper subject of judicial inquiry”).

The appointment scheme devised by the legislature embodies carefully drawn checks and balances designed to achieve a politically workable solution to the inherent difficulties of structuring the oversight of public transportation in a large and diverse region. The General Assembly faced the daunting task of creating manageably-sized public transportation boards reflecting the interests of all three core constituencies. The difficulties were particularly formidable because of the consensus view that the RTA Board had to be small to prevent “a diffusion of power and \* \* \* narrow, sectional points of view.” Joseph Tecson, *The RTA in Northeastern Illinois*, Part 2, Chgo. Bar Rcd., July-Aug. 1975, at 6, 7. As one observer posed the challenge: “How would the City of Chicago, suburban Cook and the five outlying counties be represented on the Board of Directors? What types of checks and balances could be utilized to maintain control of the board in a

balance reflecting the diverse political, ethnic, social and economic interests found in the 6-county region?” *Id.*, Part 1, Chgo. Bar Rcd., May-June 1975, at 318, 334.

A particularly difficult problem lay in the overlap between Cook County and the City of Chicago. Because the City has more registered voters than the rest of Cook County, the General Assembly had to establish a mechanism to ensure that the Cook County suburbs would have independent representation on the RTA Board. The General Assembly therefore decided to have the Cook County Commissioners from outside Chicago (or from the suburban-majority districts) make all the Cook County appointments. At the same time, it provided that each of the suburban Cook County Commissioners’ appointees must reside in suburban Cook County. 70 ILCS 3615/3.01(b); see also 3615/3A.02(a); 3615/3B.02(c). That was a rational solution to a pressing problem. To be sure, the General Assembly’s solution results in some Cook County Commissioners making appointments to the public transportation boards and some not. But “[a] legislative classification must be upheld if any set of facts can reasonably be conceived which justify [it].” *Miller v. Rosenberg*, 196 Ill. 2d 50, 59, 749 N.E.2d 946, 952 (2001). Applying that standard, the legislature’s choice of how best to ensure independent Cook County suburban input into the public transportation board appointments must be upheld. See *Holt Civic Club v. City of*

*Tuscaloosa*, 439 U.S. 60 (1978) (upholding under rational basis test a state statute that gave a city “police jurisdiction” over non-city residents who could not vote in city elections).

As in *Miller*, in which this Court recently upheld a statute as a rational “response to what was perceived to be a crisis in the area of medical malpractice” (196 Ill. 2d at 60, 749 N.E.2d at 953), the RTA Act and its appointment provisions were the legislature’s rational response to a crisis in public transportation in northeastern Illinois. See *supra* pp. 3-4. The success of the RTA Act in resolving that crisis and providing efficient public transportation over three decades speaks not only to the rationality but to the wisdom of the General Assembly’s judgment. The Circuit Court properly rejected plaintiffs’ attempt to use the courts to overturn the legislature’s achievement.

**C. The Appellate Court Erred By Remanding For A Hearing On The Meaning Of The RTA Act’s “One Man, One Vote” Provision.**

By failing to affirm dismissal of plaintiffs’ constitutional claims, and by remanding for “hearings” on the meaning of statutory language that has no bearing on those claims, the Appellate Court has spawned uncertainties about public transportation governance that were resolved almost three decades ago.

If ever a case exemplified the long-established presumption that state statutes are constitutional, this is it. As set forth above, the Illinois Constitution expressly authorizes the legislature to provide for appointments to the public transportation boards, the legislature rationally implemented that authority to ensure regional support for a coordinated public transportation system, the citizenry ratified the RTA Act, including its appointment process, in a six-county referendum, and this Court upheld the Act against constitutional challenge in *Hoogasian* and again in *Day v. RTA*, 66 Ill.2d 533 (1977). The legislature's efforts restored public transportation in northeastern Illinois to fiscal stability, and the RTA and the three Service Boards – the CTA, Metra and Pace – now provide reliable, economical service for almost 2 million weekday riders. A critical factor in that success has been the regionally balanced governance structure embodied in the Act. Plaintiffs have raised no valid reason to unravel the legislature's carefully-crafted and time-tested appointment process. Nevertheless, the Appellate Court has raised doubts about the validity of the RTA Act's appointment provisions and prejudiced the public interest in coordinated regional public transportation by refusing to affirm the Circuit Court's dismissal of plaintiffs' claims.

Instead of addressing plaintiffs' three constitutional claims – the only counts in plaintiffs' Complaint – the Appellate Court ordered the Circuit

Court to conduct “hearings” into the meaning of the “one man, one vote” provision in the RTA Act. A-13. That provision follows immediately after the RTA Board appointment provisions and states:

The Board of Directors shall be so appointed as to represent the City of Chicago, that part of Cook County outside the City of Chicago, and that part of the metropolitan region outside Cook County on the one man one vote basis. After each Federal decennial census the General Assembly shall review the composition of the Board and, if a change is needed to comply with this requirement, shall provide for the necessary revision by July 1 of the third year after such census.

70 ILCS 3615/3.01(h). The meaning of that provision is plain on the face of the statute. The RTA Board’s composition is to reflect the relative populations of Chicago, suburban Cook, and the collar counties, and the General Assembly is to ensure once each decade that the board appointment process accounts for population shifts within the region. That is all the provision says; it contains not a word pertaining to any right to vote for persons making the appointments, the issue raised by plaintiffs. Thus, the meaning of the RTA Act’s “one man, one vote” provision is neither relevant to plaintiffs’ claims nor requires further inquiry.<sup>3/</sup>

The Appellate Court’s decision, if upheld, would place the Circuit Court in a hopeless quandary. What purpose could hearings on the meaning of the

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<sup>3/</sup> Even if there were any question about the provision’s meaning, it would have to be resolved so as to uphold the statute. See *Miller*, 196 Ill. 2d at 58, 749 N.E.2d at 951 (“if a statute’s construction is doubtful, a court will resolve the doubt in favor of the statute’s validity”).

RTA Act's "one man, one vote" language possibly serve? Plaintiffs have not claimed a statutory violation and, even if they had, it would have to rest on the irrational concept that the RTA Act violates itself. Plaintiffs would have to contend that subsections 3615/3.01(a)-(e), which specify the appointment procedures, violate subsection 3615/3.01(h), which contains the "one man, one vote" language. But such an attempt to drive a wedge between two subsections of the same section of the RTA Act would flout established principles of statutory construction. See *Primeco Personal Communications L.P v. ICC*, 196 Ill. 2d 70, 91, 750 N.E.2d 202, 214 (2001) ("When construing a statute, this court evaluates it as a whole and interprets it, where possible, so that no term is rendered superfluous or meaningless"); *Michigan Ave. Nat'l Bank v. County of Cook*, 191 Ill. 2d 493, 504, 732 N.E.2d 528, 535 (2000) ("in construing a statute, courts presume that the General Assembly, in the enactment of legislation, did not intend absurdity").

In fact, any rational reading of the statute demonstrates that its appointment procedures and "one man, one vote" provisions are fully consistent. The General Assembly has accorded to each of the three specified constituencies the number of RTA Board appointments that reflect its proportionate population. Thus, 5 appointments come from the City, 4 from the Cook County suburbs, and 3 from the collar counties. Section 3615/3.01(h) simply directs the legislature to review that allocation after

each decennial census using the populations of the three regions as the determining criteria.

The Appellate Court also ordered the Circuit Court to consider whether Cook County's adoption of single-member districts in 1994 rendered the Act's appointment provisions "inequitable." A-13. This is not an appropriate judicial task. The RTA Act's appointment provisions did not change in 1994. Since its enactment, Section 3615/3.01(b) has provided that the RTA Board shall include "[f]our Directors appointed by the members of the Cook County Board elected from that part of Cook County outside of Chicago, or, in the event such Board of Commissioners becomes elected from single member districts, by those Commissioners elected from districts, a majority of the electors of which reside outside Chicago." Thus, the Act has always contemplated that Cook County might adopt single member districts. The fact that Cook County did so in 1994 has no bearing on plaintiffs' contention that section 3.01(b) violates the Illinois Constitution. Moreover, whether legislation is "inequitable" does not bear on whether it is constitutional. Courts have a "duty to construe acts of the legislature so as to uphold their constitutionality and validity if it can reasonably be done." *People ex rel. Devine v. Murphy*, 181 Ill. 2d 522, 527, 693 N.E.2d 349, 352 (1998). The Appellate Court's ordered inquiry into whether the appointment provisions are inequitable invades the province of the legislature.

The Appellate Court erred in allowing this non-issue to derail a ruling on the merits of the appeal before it. There is simply no reason to delve into the meaning of the RTA Act's "one man, one vote" provision because the outcome could make no difference to the Circuit Court's decision to dismiss plaintiffs' claims. Significantly, plaintiffs' Complaint does not even mention the RTA Act's "one man, one vote" provision, and none of the Complaint's three counts asserts a statutory violation. See *Solomon v. North Shore San. Dist.*, 48 Ill. 2d 309, 322, 269 N.E.2d 459, 464 (1971) (a reviewing court does not rule on issues that "were not raised in the plaintiffs' complaint"); *Season Comfort Corp. v. Ben A. Borenstein Co.*, 281 Ill. App. 3d 648,652, 655 N.E.2d 1065,1068 (1st Dist. 2000) ("a party cannot plead one cause of action in its complaint and receive judgment on the basis of a different cause of action"). The pointlessness of the Appellate Court's remand is underscored by the purely legal nature of the issues involved. There are no factual issues in dispute, so there is no need for discovery or an evidentiary hearing. See *State Life Ins. Co. v. Smith*, 66 Ill. 2d 591, 605, 363 N.E.2d 785, 791 (1977) (ordering Circuit Court to enter judgment for defendant because "no purpose will be served by remandment" where alleged errors were legal and not evidentiary). The Circuit Court got it right the first time around: It held up the challenged statutory provisions to the light of the invoked constitutional provisions, saw that there was no conflict, and dismissed plaintiffs' claims.

There is nothing more for the Circuit Court to do, making the Appellate Court's decision to vacate and remand wrong as a matter of law.

Because the Appellate Court had no valid ground for vacating the dismissal of plaintiffs' plainly meritless claims, because the inquiry directed by the Appellate Court is unrelated to the claims raised by plaintiffs, and to avoid disruption to regional public transportation in northeastern Illinois, this Court should itself decide the purely legal issues raised in plaintiffs' Complaint, affirm the decision of the Circuit Court, and order that judgment be entered for defendants. See *Swager v. Couri*, 77 Ill. 2d 173, 186-87, 395 N.E.2d 921, 926 (1979). Plaintiffs' plainly meritless claims should not be permitted to fester in the courts, cloud the legitimacy of important public bodies, and prejudice the public interest. The delicate political balance achieved by the legislature in allocating public transit appointment powers among Chicago, suburban Cook, and collar county elected officials has been an important factor in the stabilization of public transit services in the region. The success of the transit bodies in providing reliable and efficient public transportation to the people of northeastern Illinois is a notable achievement that should not be threatened by the ill-considered appellate decision. The legitimacy of the appointment process for the region's public transportation entities is at stake, delay will breed uncertainty, and uncertainty risks significant harm to the public transportation system's

customers, employees, bondholders, and contracting partners. Meanwhile, appointments to the three boards must be made, important financing, contractual, and policy issues must be decided, and public confidence must be maintained. This Court should put an end to plaintiffs' attempt to overturn this Court's precedents and upset the stability of public transportation services.

**D. Plaintiffs' Position, If Accepted, Would Disrupt Other Illinois Governmental Bodies.**

Affirming the dismissal of plaintiffs' claims will also remove the threat that this lawsuit represents to public bodies in Illinois other than defendants. Acceptance of plaintiffs' position – that appointments to boards and commissions must reflect the constitutional “one person, one vote” principle – would threaten the validity of dozens of governmental boards and commissions throughout Illinois. For example:

- The seven-member board of the Chicago Transit Authority (“CTA”) has four persons appointed by the Mayor of Chicago and three persons appointed by the Governor, with the Mayor and Governor each having veto power over the other's appointments. 70 ILCS 3605/20. Thus, the Mayor of Chicago, for whom suburban residents of areas served by the CTA cannot vote, appoints or has veto power over all the board members, while city residents can vote for both the Governor and the Mayor.

(The CTA's corporate territory includes most of the townships in suburban Cook County. See 70 ILCS 3605/3.) Moreover, the fact that only one appointee must reside in suburban Cook County results in over-representation of City residents, if plaintiffs' view of the law holds.

- Three-member boards of trustees of multi-township fire protection districts are appointed by the presiding officer of the county board – except in Cook County. In Cook County, two appointments are made by the trustees of the township with the largest population, and the third appointment by the trustees of townships with at least 10 percent of the district population. 70 ILCS 705/4(a)(3). Thus, residents of townships with less than 10 percent of the district population have no say in board appointments and are, according to plaintiffs' logic, “unrepresented.” Moreover, a township with 51% of the population would have 67% of the voting power on the Board.

- In addition to appointments to the DuPage Water Commission by the DuPage County Board Chairman, the mayors of municipalities with a majority of their respective populations residing within a County Board district vote for one Commissioner from that district. 70 ILCS 3720/2(c)(iii). As a

result, individuals residing in the “minority” district section of such municipalities have “no say” in the municipal appointments of Commissioners from their districts and are, according to plaintiffs’ way of thinking, “unrepresented.”

- In the case of multiple-county boards of health, each county gets four appointees, irrespective of the population of the appointing counties. 55 ILCS 5/5-25012. Such disproportionate “representation” does not fit plaintiffs’ “one person, one vote” paradigm.

These few illustrations demonstrate the widespread existence of bodies with appointment schemes not incorporating the constitutional “one person, one vote” principle. Plaintiffs’ novel position that courts should force the restructuring of such bodies would overturn longstanding practices in local government. Appointed boards and special commissions are integral to the governance of a complex society, especially on the local and regional level, and lawmakers must be accorded flexibility to fashion effective and efficient appointment procedures to fill them. As the U.S. Supreme Court has put it,

Viable local governments may need many innovations, numerous combinations of old and new devices, great flexibility in municipal arrangements to meet changing urban conditions. We see nothing in the Constitution to prevent experimentation. At least as respects nonlegislative officers, a State can appoint local officials or elect them or combine the elective and appointive systems.

*Sailors*, 387 U.S. at 111. Plaintiffs would remove that essential flexibility by forcing small appointed boards and commissions to comply with principles appropriate only for elected bodies. The cloud created by the Appellate Court’s decision thus extends far beyond the public transportation boards.

The logic of plaintiffs’ argument also throws into question the legislature’s efforts to allocate appointment powers based on factors in addition to population. For example, the allocation of appointment responsibilities with respect to the CTA board between the Governor and Mayor of Chicago is unrelated to population in the City and suburban townships. 70 ILCS 3605/20. Similarly, the Act allocates appointments to the Metra Board among the three sub-regions based on “morning boardings” on Metra trains, yet it also mandates one appointment by the Mayor of Chicago. 70 ILCS 3615 3B.02. And the Pace Board appointment power is allocated on a geographic, not a population basis, among suburban elected officials. See 70 ILCS 3615 3A.02.

Plaintiffs’ logic also makes constitutionally suspect the sharing of appointments to a special district board by the Mayor of Chicago and the Governor. For example, in the case of the CTA, residents of Chicago are eligible to vote for both of the appointing authorities, the Mayor and the Governor, whereas residents of the suburban area served by the CTA are eligible to vote only for the Governor. Such a “one person, two votes” process

surely violates plaintiffs' view of the law. But as demonstrated above, it does not violate the Illinois Constitution.

## **II. THE RTA ACT'S APPOINTMENT PROVISIONS DO NOT VIOLATE THE SEPARATION OF POWERS PRINCIPLE.**

The statutory appointment mechanism does not violate the principle of separation of powers, set forth in Article II, § 1 of the Illinois Constitution, which "ensure[s] that the whole power of two or more branches of government shall not reside in the same hands." *In re D.S.*, \_\_ Ill. 2d \_\_, 2001 WL 695076, at \*6 (June 21, 2001). The separation of powers principle applies only "when one branch seeks to exert a substantial power belonging to another." *People v. Izzo*, 195 Ill. 2d 109, 116, 745 N.E.2d 548, 553 (2001).

The legislature's enactment of the RTA Act and its appointment provisions was a proper exercise of legislative power. "[I]t is within the broad discretion of the legislature to determine not only what the public interest and welfare require, but to determine the measures needed to secure such interest." *Burger v. Lutheran Gen. Hosp.*, 198 Ill. 2d 21, 759 N.E.2d 533, 546 (2001). The legislature created the RTA, Metra, and Pace boards and allocated responsibility for appointments to them. It is "well settled" that the manner of filling statutorily created offices is "solely within the discretion of the State legislature." *Betts v. Village of Calumet Park*, 20 Ill. 2d 524, 525, 170 N.E.2d 563, 564 (1960).

In *Betts*, this Court rejected the contention that a state statute authorizing village trustees to appoint village officers violated separation of powers by permitting a legislative body to appoint executive officers. This Court explained that the discretion of the legislature to enact such a statute was so clear that it raised “no debatable constitutional issue.” *Id.* at 526, 170 N.E.2d at 564. Similarly, in *People v. CTA*, 392 Ill. 77, 64 N.E.2d 4 (1945), this Court rejected a separation of powers challenge to a statute requiring the Mayor of Chicago and Governor of Illinois to approve each other’s appointments to the CTA Board. Responding to the plaintiff’s argument that the Constitution required the Governor’s appointments to have the advice and consent of the Senate, the Court explained that “offices which are created by statute may be filled by such method of appointment as the General Assembly may provide.” *Id.* at 97-98, 64 N.E.2d at 14; accord *People ex rel. Hoyne v. McCormick*, 261 Ill. 413, 421, 103 N.E. 1053, 1057 (1913); *Perkins v. Board of Comm’rs*, 271 Ill. 449, 461, 111 N.E. 580, 585 (1916). Thus, the legislature had the authority to create the RTA, has the authority to abolish it, and has the ancillary authority to establish procedures for appointments to the RTA, Metra, and Pace boards.

Based on this established principle, this Court has consistently upheld statutes authorizing appointments to municipal bodies by legislative officials. For example, in addition to upholding a statute authorizing selection of

village officers by village trustees in *Betts, supra*, this Court upheld a statute authorizing county veterans assistance commissioners to select the commission superintendent in *Makowicz v. County of Macon*, 78 Ill. 2d 308, 313, 399 N.E.2d 1302, 1304 (1980). Similarly, this Court has found no separation of powers problem in appointments to state and municipal boards by members of the judiciary. See *People ex rel. Greening v. Green*, 382 Ill. 577, 584, 47 N.E.2d 465, 469 (1943); *People ex rel. Dunham v. Morgan*, 90 Ill. 558 (1878).

Given these precedents, the baselessness of plaintiffs' claim that the RTA Act unconstitutionally removes appointment power inherent in the Cook County President should have been apparent to the Appellate Court. It has long been settled that "the power to appoint to office is not inherent in the executive department unless conferred by the constitution or the legislature." *People ex rel. Gullett v. McCullough*, 254 Ill. 9, 15-16, 98 N.E. 156, 158 (1912). The Constitution does not confer authority on the Cook County Board President to make appointments to the RTA, Metra, and Pace boards. In fact, the Constitution expressly provides that county officers have only "those duties, powers and functions provided by law." Article VII, § 4(d). That provision was placed in the 1970 Constitution to give the General Assembly the authority to "remove the historical precedent and the common-law powers and duties" of county officials. 3 Record of Proceedings, Sixth Illinois

Constitutional Convention 3295 (1970). It is beyond dispute that the Cook County President *never* had the power to appoint directors to the RTA, Metra, or Pace boards. Thus, the RTA Act cannot have “removed” any such power.

Nevertheless, plaintiffs allege that the President’s power to make such appointments derives from two statutes, 55 ILCS 5/2-5009 and 55 ILCS 5/3-14001, as well as being “inherent in the role of chief executive.” A-32 ¶¶ 25-26. The two statutes do not support plaintiffs’ position and actually refute it. Section 5/2-5009 on its face applies only to a “county executive elected under this Division,” and the divisional definition of “county executive” is limited to “any county *other than Cook County.*” 55 ILCS 5/2-5003 (emphasis added). Section 5/3-14001 authorizes the Cook County Board President to appoint only “officers and employees of the county of Cook,” a provision plainly not applicable to board members of the multi-county RTA, Metra, and Pace. But even if those provisions did apply to appointments to the RTA, Metra, and Pace boards, they authorize the President to make appointments only as “provided by law” and prohibit such appointments where “otherwise provided by law.” 55 ILCS 5/2-5009(d) & (e); 55 ILCS 5/3-14001. The legislature has not “provided by law” for the Cook County Board President to make appointments to the RTA, Metra, and Pace boards. To the contrary, the legislature “otherwise provided by law” in the RTA Act by designating other public officials to make those appointments.

Nor does the Cook County Board President have “inherent” authority to appoint the RTA, Metra, and Pace board members. It has long been settled that “the power to appoint to office is not inherent in the executive department unless conferred by the constitution or the legislature.” *People ex rel. Gullett v. McCullough*, 254 Ill. 9, 15-16, 98 N.E. 156, 158 (1912) (legislature’s authorization for civil service commissioners, rather than Secretary of State, to appoint state officers did not violate separation of powers). The Constitution certainly does not confer authority on the Cook County Board President to make appointments to the RTA, Metra, and Pace boards – it does not even mention those statutorily created bodies.

In sum, appointment provisions of the RTA Act do not violate or even implicate the principle of separation of powers.

### **III. THE RTA ACT’S APPOINTMENT PROVISIONS DO NOT ALTER COOK COUNTY’S GOVERNMENT WITHOUT A REFERENDUM.**

Plaintiffs’ final contention – that the RTA Act’s board appointment provisions violate Article VII, § 6(f) by altering Cook County’s government without referendum – is frivolous on its face. Article VII, § 6(f) states: “A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article.” Because the Cook County President never had the authority to make appointments to the RTA, Metra, and Pace boards, the

RTA Act's appointment provisions did not effect any alteration in Cook County's government.

Moreover, the plain text of section 6(f) makes clear that it does not apply to changes effected by the General Assembly, and no case has ever held otherwise. See *Sampson v. Graves*, 304 Ill. App. 3d 961, 711 N.E.2d 1118, 1121-22 (1st Dist. 1999) (listing cases). Section 6(f) by its terms imposes a referendum requirement only on a home rule unit's alteration of its *own* form of government, as in *Pechous v. Slawko*, 64 Ill. 2d 576, 357 N.E.2d 1144 (1976) (city ordinances), *Dunne v. County of Cook*, 108 Ill. 2d 161, 483 N.E.2d 13 (1985) (county ordinance), and *Sampson*, 304 Ill. App. 3d 961, 711 N.E.2d at 1123 (city ordinance). The incorporation of Article VII, § 3 into § 6(f) for Cook County makes absolutely clear that these limitations are not directed to the legislature but only to local governments. Section 3 states that “[n]o county, other than Cook County, may change its method of electing board members except as approved by county-wide referendum,” and proceeds to outline options for electing members of the Cook County Board. That language could not conceivably be construed to apply to the state legislature.

Accordingly, there was no need for a referendum to ratify the RTA Act. As this Court expressly held in *Hoogasian*, “the establishment of a regional transportation authority pursuant to the RTA Act is not a matter for which

referendum is ‘required’ by article VII.” 58 Ill. 2d at 136, 317 N.E.2d at 544. In any event, the RTA Act *was* ratified in a referendum that this Court held was constitutionally valid. *Ibid.*

**CONCLUSION**

For the foregoing reasons, the decision of the Appellate Court should be vacated and the decision of the Circuit Court affirmed.

Dated: January 9, 2002

Respectfully submitted,

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## **APPENDIX**

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**CERTIFICATE OF MAILING AND SERVICE**

The undersigned, an attorney, hereby certifies that, on January 9, 2002, he caused the foregoing Opening Brief of Defendants-Appellants to be filed with the Illinois Supreme Court by depositing it in the United States mail, postage prepaid, and caused three copies of aforesaid Brief to be served on designated counsel of record by hand delivery, addressed to:

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