

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

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## **INTRODUCTION**

Plaintiffs contend as a matter of constitutional principle that population is the only basis on which appointment authority for seats on the RTA, Metra and Pace boards may be allocated and that therefore all eligible voters in the region must have an opportunity to vote for an appointing official. Plaintiffs are wrong as a matter of constitutional law. Moreover, their unprecedented application of the one-person, one vote principle to appointed bodies would eliminate the flexibility that the General Assembly has exercised when legislating governance systems for the region's public transportation systems. The legislature has indeed chosen population as the basis for allocating appointments to the RTA Board. However, it has chosen different bases with respect to the CTA, Metra, and Pace boards. Plaintiffs' theory would preclude the legislature from balancing state and local interests or from taking ridership levels or revenue generation into account when addressing governance for this critical governmental function.

Plaintiffs' multiple repetitions of the word "disenfranchised" cannot create a legally sufficient constitutional claim. No one, including Mr. Scavella, has been deprived of a vote. Instead, the legislature assured independent appointment authority for suburban Cook County and thereby achieved balanced support for its new regional public transportation system by having Cook County Commissioners from suburban-majority districts make the Cook County appointments to the RTA, Metra, and Pace boards. That was a rational solution to a pressing problem by the branch of government constitutionally responsible for making such decisions. The propriety of the legislature's exercise of its

authority was not affected by Cook County's 1994 decision to adopt single-member districts, as plaintiffs argue. To the contrary, the legislature expressly provided for that eventuality when it enacted the RTA Act in 1973.

Plaintiffs have not cited a single case where a court has invalidated governmental appointment procedures for failure to comply with the constitutional principle of "one person, one vote." The reason is plain: This Court in *Eastern v. Canty* and the U.S. Supreme Court in *Sailors* and *Hadley* firmly held that the "one person, one vote" principle applies only to elections, not to governmental appointments. Plaintiffs' contention that this Court's *Fumarolo* decision overthrew that established doctrine is simply wishful thinking. *Fumarolo* held that *elections* of local school councils violated the "one person, one vote" principle, thereby invalidating appointments made by the unlawfully elected councils. It has no application to this case where, as plaintiffs admit, all the appointing officials were properly elected in constitutionally representative elections.

Plaintiffs are reduced to arguing that the RTA Act violates itself, *i.e.*, that its board appointment provisions conflict with the "one man, one vote" provision appearing in the very same section of the Act. Yet, their Complaint does not allege a violation of the RTA Act, and in any event, it is well established that provisions within the same statute must be construed consistently whenever possible. Plaintiffs have not demonstrated any conflict between the RTA Act's board appointment provisions and its "one man, one vote" provision. The "one man, one vote" provision simply provides that the General Assembly is to ensure after each

decennial census that the number of RTA Board appointments accorded to the City of Chicago, the Cook County suburbs, and the collar counties remains proportional to each sub-region's population. Plaintiffs cannot transform this statutory provision, which the legislature may change at any time, into a constitutional obligation, much less a constitutional violation.

Plaintiffs also offer no plausible reason why separation of powers principles would prevent the legislature from establishing appointment procedures for public transportation entities that it created, nor how those appointment procedures unconstitutionally altered the form of Cook County's government.

Finally, we agree with plaintiffs (Br. 14) that, although the appellate court "did not address the constitutionality of the specific provisions of the RTA Act" challenged by plaintiffs, "the record before this Court is sufficient to permit this Court to reach the issues at this time." Pl. Br. 1, 14. Plaintiffs point to no issues of fact that would justify the remand ordered by the Appellate Court, and we agree that there are none. We therefore urge this Court to uphold the constitutionality of the RTA Act by vacating the Appellate Court's decision and affirming the Circuit Court's decision to dismiss plaintiffs' complaint.

## ARGUMENT

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

#### **A. No One Has Been Disenfranchised By The RTA Act's Appointment Provisions.**

Plaintiffs contend repeatedly that Mr. Scavella and some 226,000 suburban Cook County voters "are deprived of any representation on the RTA boards" and thus are "effectively disenfranchised." Pl. Br. 16. But as our opening brief demonstrated, seats on the RTA, Metra, and Pace boards are filled by appointment. Disenfranchisement is "the taking away of the *elective* franchise (that is, the right of voting in public elections) from any citizen or class of citizens." BLACK'S LAW DICTIONARY 468 (6th ed. 1990) (emphasis added). Mr. Scavella has not been deprived of the right to vote. He may vote for all the same public officials as any other citizen of suburban Cook County, including his state legislators, his County Commissioner, and the County Board President. And all eligible voters had the opportunity to vote the RTA Act and its appointment procedures up or down in a region-wide referendum which this Court held was not even constitutionally required. *Hoogasian v. RTA*, 58 Ill. 2d 117, 136, 317 N.E.2d 534, 544 (1974).

Plaintiffs' real complaint is not that Mr. Scavella is disenfranchised but that the officials he votes for do not make appointments to the public transportation boards. See Pl. Br. 18. However, *who* makes those appointments does not affect Mr. Scavella's right to vote. Thus, the fact that the legislature designated some

public officials and not others to make those appointments does not implicate the constitutional “one person, one vote” principle, as plaintiffs claim. Governmental appointments are not subject to that constitutional constraint.

As plaintiffs’ recitation of the *Reynolds v. Sims* “one person, one vote” principle makes clear, it applies only to “elections.” Pl. Br. 22. Both this Court and the U.S. Supreme Court have held that the “one person, one vote” principle has no application to appointed positions 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); see also *Sailors v. Board of Educ.*, 387 U.S. 105, 111 (1967); *Hadley v. Junior College Dist.*, 397 U.S. 50, 58 (1970). Plaintiffs dismiss *Eastern*, *Sailors*, and *Hadley* as “irrelevant,” contending that they stand merely for the proposition that “an appointed body may represent disparate populations without violating the ‘one person, one vote’ principle.” Pl. Br. 25. But those cases (and the legion of cases following them) do not speak so restrictively, and they have been uniformly understood to establish that “[t]he one person, one vote requirement does not apply to appointed bodies.” R. Briffault, *A Government for Our Time? Business Improvement Districts and Urban Governance*, 99 Colum. L. Rev. 365, 445-446 (1999).

Plaintiffs also pretend that, in *Fumarolo v. Chicago Bd. of Educ.*, 142 Ill. 2d 54, 566 N.E.2d 1283 (1990), this Court repudiated its *Eastern* holding that the constitutional “one person, one vote” principle plays no role in governmental appointments. They purport to find significance in the fact that *Eastern* predated

*Fumarolo* “by over ten years.” Pl. Br. 26. But there is not a word in *Fumarolo* repudiating *Eastern*. To the contrary, the *Fumarolo* opinion (which was authored by the same Justice that authored *Eastern*) reconfirmed that “one person, one vote” does not apply to appointments where “the members of the bodies responsible for making the appointments were constitutionally selected.” 42 Ill. 2d at 99, 566 N.E.2d at 1303. In *Fumarolo*, the local school council members had *not* been “constitutionally selected,” distinguishing that case from *Eastern*. *Ibid*. The *Fumarolo* distinction has no bearing on this case, where all the appointing officials were constitutionally selected, as plaintiffs admit. Pl. Br. 23.

Plaintiffs try to force this case into the *Fumarolo* mold by arguing that the appointing officials from Cook County make up an “appointing body” that was not constitutionally selected. Pl. Br. 23. But the RTA Act does not create any such “body,” unlike the Chicago School Reform Act addressed in *Fumarolo* which formally created the local school councils. Rhetorically asserting that the officials making appointments to the public transportation boards constitute an unlawful “body” cannot avoid the plain fact that, unlike in *Fumarolo*, each of them was elected in a constitutionally representative election. Thus, their appointments are not subject to constitutional “one person, one vote” analysis.

**B. Governmental Appointments, Unlike Voting Rights, Are Not Subject To Strict Scrutiny.**

As our opening brief demonstrated (at 19-20), the legislature ensured independent representation for suburban Cook County on the three

transportation boards by designating only Commissioners from suburban-majority districts to make the Cook County appointments. Plaintiffs do not deny that the RTA Act's appointment provisions were a rational means to achieve the legislature's purpose.

Instead, plaintiffs contend that a rational basis is not enough and that the Circuit Court should have applied "strict scrutiny" to what plaintiffs deem "the fundamental right to vote." Pl. Br. 26-27. But, again, Mr. Scavella has not been deprived of any right to vote, and plaintiffs' desire to have Mr. Stroger make *appointments* does not implicate a "fundamental right" subject to strict scrutiny. See Def. Opening Br. 18. Indeed, plaintiffs do not cite to a single case where a court has applied strict scrutiny to governmental appointments. Their reliance on *Fumarolo* gets them nowhere because, as discussed *supra*, *Fumarolo* concerned an unrepresentative *election*, the invalidation of which in turn invalidated derivative appointments. Here, plaintiffs admit that they challenge no election as unrepresentative.

Even if strict scrutiny were appropriate, the RTA Act's appointment provisions would still pass muster. They were enacted to advance a compelling governmental interest, what the legislature called the "urgent need" to solve the public transportation crisis in northeastern Illinois in a manner that would obtain and maintain support across the region, which required ensuring independent appointment authority for suburban Cook County. 70 ILCS 3615/1.02; see also Def. Opening Br. 19-20. The appointment provisions achieved this purpose by the

least restrictive means, namely, limiting Cook County appointments to Commissioners from suburban-majority districts. The legislature deemed that an appropriate means to prevent suburban Cook County's appointment authority from being diffused into the City of Chicago's appointment authority. Plaintiffs certainly have suggested no alternative way to ensure independent Cook County appointing authority. To the contrary, the relief they apparently seek — having the Cook County President make all the suburban Cook County appointments — would eliminate independent appointment authority for suburban Cook because the majority of registered voters in Cook County reside in the City of Chicago.

**C. The RTA Act's "One Man, One Vote" Provision Offers No Support To Plaintiffs' Constitutional Claim.**

Plaintiffs' argument based on the "one man, one vote" language in Section 3.01(h) of the RTA Act is incoherent. They appear to forget that they alleged only a *constitutional*, not a *statutory*, violation. For example, they contend that the appellate court properly vacated the dismissal of their "one person, one vote" count because "the RTA appointment provisions do not meet the statutory mandate." Pl. Br. 18. But their Complaint does not allege a violation of any statutory mandate. As their brief acknowledges, "plaintiffs have only sought to ensure the governing boards are appointed consistent with the Illinois Constitution." *Id.* at 19.

Plaintiffs apparently mean that, by using the words "one man, one vote" in Section 3.01(h), the General Assembly intended to incorporate the constitutional

principle of “one person, one vote” into the Act, thereby mandating that each board seat represent an equivalent number of voters and that each voter have an opportunity to vote for an appointing official. They assert that “the only possible meaning of the ‘one man, one vote’ requirement is that citizens, such as plaintiff Scavella, must have a right to representation on the RTA boards.” Pl. Br. 18. But courts often find that statutory language means something narrower than parallel constitutional language. *E.g., Verlinden B.V. v. Central Bank*, 461 U.S. 480, 494 (1983); *Tri-State Coach Lines, Inc. v. Metropolitan Pier & Expo. Auth.*, 315 Ill. App. 3d 179, 192, 732 N.E.2d 1137, 1147 (1st Dist. 2000). And plaintiffs’ “only possible meaning” is not even a permissible meaning in light of the provision’s plain text.

Plaintiffs would like that text to read: “The Board of Directors shall be so appointed so that each voter in the region may vote for at least one appointing official.” Instead, subsection (h) says the following:

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 “one man, one vote” sentence simply explains that the legislature allocated the appointments set forth in subsection (b) to reflect the three sub-regions’ proportional populations. In the next sentence, the General Assembly directed itself to determine, by July 1st of the third year after each

census, whether that initial allocation needs to be adjusted to reflect interim population shifts. That plain text reading does not render the “one man, one vote” language in subsection (h) “meaningless” or “irrelevant,” as plaintiffs contend. Pl. Br. 19-20. To the contrary, it makes subsection (h) an effective means of ensuring that the allocation of appointments *continues* to reflect the proportionate populations of the three sub-regions. Plaintiffs’ desire that the legislature had done something different does not authorize a judicial re-write of the RTA Act’s appointments provisions. See *Lawrence v. Regent Realty Group, Inc.*, 197 Ill. 2d 1, 11, 754 N.E.2d 334, 340 (2001) (“courts may not rewrite statutes to make them consistent with their own ideas of orderliness and public policy”).

Indeed, adopting plaintiffs’ position would create an intolerable conflict within Section 3.01. Under their reading, subsection (b), which provides that only the Commissioners from suburban-majority districts make Cook County’s RTA Board appointments, conflicts with the “one man, one vote” provision in Section 3.01(h), which (according to plaintiffs) requires that all eligible voters in the region have an equal opportunity to vote for appointing officials. “[I]t cannot be presumed that the legislature intended to enact laws which are contradictory.” *Lily Lake Rd. Defenders v. County of McHenry*, 156 Ill. 2d 1, 9, 619 N.E.2d 137, 141 (1993). As explained above, the statutory text shows the two provisions to be perfectly consistent and thus precludes indulgence in such a disfavored presumption. Moreover, “courts are to interpret statutes and ordinances in such manner as to avoid raising serious constitutional questions.” *Villegas v. Board of*

*Fire & Police Comm'rs*, 167 Ill. 2d 108, 124, 656 N.E.2d 1074, 1082 (1995). Plaintiffs' distortion of the statutory text in the hope of manufacturing a constitutional question must therefore be rejected.

Furthermore, plaintiffs' position that population is the *only* basis allowed by the Constitution for allocating appointment authority to the public transportation boards would remove any flexibility from the legislature, which is always free to modify such *statutory* provisions. Removing that flexibility would have serious practical implications. For example, reapportionment of the RTA Board based on the results of the 2000 census would *automatically* shift one appointment from the Mayor of Chicago to the collar counties, leaving each sub-region with 4 seats, and thereby increase the appointment power of the suburbs at the expense of the City.<sup>1/</sup> Acceptance of plaintiffs' position would make it unconstitutional for the legislature to consider other options, such as allocating seats on ridership or revenue generation, when designing governance for public transportation. See 70 ILCS 3615/3B.02 (allocating positions on the Metra board based on "morning boardings"); *id.*, § 3A.02 (allocating positions on the Pace board geographically).

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<sup>1/</sup> The 2000 Census shows the regional population served by the RTA to be 8,146,264. Dividing that figure by the 12 RTA Board seats (leaving aside the Chairman, who is elected by the other 12 members) results in 678,855 persons per seat. Dividing that figure by the populations of the three sub-regions (Chicago = 2,896,016, Suburban Cook = 2,480,725, Collar Counties = 2,769,523) provides Chicago with 4.27 seats, Suburban Cook with 3.65, and the collar counties with 4.08. Rounding those figures gives each sub-region 4 seats on the RTA Board.

Plaintiffs try to make something out of the fact that Cook County adopted single-member districts in 1994. But the legislature thought about and provided for that eventuality when it enacted the RTA Act in 1973. It ensured that the Cook County suburbs would have an independent role in the appointment process no matter whether Cook County Commissioners were elected at large or from single-member districts. It did so by providing that, if such elections were at large, the Cook County appointments would be made by the Commissioners elected “outside of Chicago,” and, “in the event” that single-member districts were adopted, from suburban-majority districts. 70 ILCS § 3615/3.01(b). Such a carefully drawn provision, the result of months of discussion and compromise, refutes plaintiffs’ speculation that the General Assembly “likely did not consider” the impact of the appointment provisions on suburban Cook County voters in City-majority districts. Pl. Br. 21. In any event, plaintiffs do not explain how a court could lawfully invalidate a three-decades-old statute on the ground that the legislature “likely did not consider” its impact. If any amendment is necessary based on such impact, that is a task for the legislature, not a court.

**D. It Is Appropriate To Consider The Consequences Of Adopting Plaintiffs’ Position.**

Our opening brief (at 28-31) demonstrated the detrimental impact that extending the constitutional “one person, one vote” principle to governmental appointments would have on appointed bodies throughout the State. Plaintiffs assert that there would be no such impact on governmental bodies other than the

RTA, but the only distinction they draw between the RTA Act and these other statutory appointment schemes rests on the “one man, one vote” language in the RTA Act. Pl. Br. 30.

Our point is simple: If the RTA Act’s appointment scheme is invalid because it does not comply with the constitutional principle of “one person, one vote,” the same must be true for other appointed bodies not incorporating that principle, irrespective of the language in their enabling statutes. Plaintiffs offer no response to our showing that their position cannot be reconciled with, for example, the “one person, two votes” process by which Chicago residents may vote for both of the CTA Board’s appointing authorities, the Mayor and the Governor, while residents of the suburban areas served by the CTA may vote only for the Governor. See Def. Opening Br. 31. Plaintiffs’ position would open up a Pandora’s box of threats to a wide variety of governmental bodies.

Taking note of such consequences would not be “rendering an advisory opinion,” as plaintiffs contend. Pl Br. 31. Grappling with the implications of their decisions is a proper function of reviewing courts.

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

As explained in our opening brief (at 32-34), because the legislature created the RTA, Metra, and Pace, its statutory procedures for making appointments to the boards of those bodies raise no conceivable separation of powers issue. As this Court has held, how statutorily created offices are filled 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).

Plaintiffs have no response other than to expound on the “constitutional underpinnings of the office of the President of the Cook County Board.” Pl. Br. 32. We do not contest the fact that the Constitution created that office and that the President has substantial executive authority *within Cook County*. Thus, none of the cases cited by plaintiffs upholding his authority over Cook County employees speaks to the issue at hand. The fact remains that nothing in the Constitution gives the Cook County President any authority over appointments to regional, cross-county, and legislatively-created bodies like the RTA, Metra, and Pace, as alleged in plaintiffs’ Complaint. Thus, the appointment provisions do not “conflict[] with the authority allocated to another officer by the Constitution,” as plaintiffs contend. Pl. Br. 34.

Plaintiffs try to manufacture Constitutional support by arguing that the office of Cook County President is “similar to the office of governor” and that therefore the appointment powers of the two offices are equivalent. Pl. Br. 32. They fail to mention that the Constitution (art. 5, § 9) expressly grants to the Governor the power to “appoint all officers whose election or appointment is not otherwise provided for” but does not articulate *any* appointment powers belonging to the office of Cook County President (see art. 7, § 4(b)). In any event, the RTA Act provides neither the Governor nor the Cook County President with any

authority to appoint RTA, Metra, or Pace board members, making plaintiffs' purported analogy immaterial.

With no Constitutional support for their position, plaintiffs argue that the Cook County President has "inherent" power to appoint members to the RTA, Metra, and Pace boards. Pl. Br. 34. Although they pay lip service to the established principle 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)), plaintiffs simply assert that the President has such inherent authority without identifying any constitutional or statutory source for it.

The cases cited by plaintiffs (at 32-34) do not support their position. Both *People ex rel. Hanrahan v. Beck*, 54 Ill. 2d 561, 301 N.E.2d 281 (1973), and *Dunne v. County of Cook*, 164 Ill. App. 3d 929, 518 N.E.2d 380 (1st Dist. 1987), addressed only the authority of Cook County officials over Cook County employees, an issue not presented in this case. And *People ex rel. Hansen v. Phelan*, 255 Ill. App. 3d 113, 628 N.E.2d 160 (1st Dist. 1993), which this Court vacated *in its entirety* and not simply "on other grounds" as plaintiffs state (158 Ill. 2d 445, 634 N.E.2d 739 (1994)), did not address the appointment powers of the Cook County President at all, much less his authority to make appointments to legislatively-created bodies like the RTA, Metra, and Pace. The cases plaintiffs cite from other jurisdictions are equally inapplicable. Pl. Br. 35-36. Those cases rely on separation of powers provisions that differ in text and meaning from Article II,

§ 1 of the Illinois Constitution and, in any event, address relationships between the coordinate executive and legislative branches of state government, not the legislature's provision of appointments to legislatively created entities.

Plaintiffs offer nothing to support their contention that two statutes provide the Cook County President with authority to make appointments to the RTA, Metra, and Pace boards. Pl. Br. 36. By their terms, those statutes are inapplicable to this question. As demonstrated in our opening brief (at 35) and as plaintiffs admit (Br. 36), 55 ILCS 5/2-5009 “does not apply to the President of the Cook County Board.” They nevertheless contend that it “defies logic” to construe his appointment powers as less than those of other county board chairmen. Pl. Br. 36. Defendants argue for no such construction. That statute does not provide *any* county board chairperson with the authority to make appointments to the RTA, Metra, or Pace boards, nor to any other regional bodies. By its terms, it authorizes them to make appointments to boards, districts, and commissions that are “within the county,” and it removes even that authority where the legislature has “otherwise provided.” The regional public transportation board appointments at issue here are not “within the county,” and the legislature has “otherwise provided” for making them. The second statute, 55 ILCS 5/3-14001, also applies by its terms only to *county* appointments — “officers and employees of the county of Cook.” The RTA Act does not infringe on the President's authority to make such in-county appointments.

Finally, plaintiffs half-heartedly contend (in a footnote) that the RTA Act's appointment provisions "reflect an indirect attack on Cook County's home rule authority." Pl. Br. 33 n.14. However, the Constitution expressly limits a home rule unit's powers to those "pertaining to *its* government and affairs." Art. 7, § 6(a) (emphasis added). Such powers have never been held to include appointments to legislatively created regional bodies. See *City of Evanston v. RTA*, 202 Ill. App. 3d 265, 274, 559 N.E.2d 899, 905 (1st Dist. 1990) (home rule unit had no authority to regulate the RTA or other regional bodies).

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

As our opening brief demonstrated (at 37), the constitutional requirement that changes in a home rule unit's form of government be approved by referendum has no application to the General Assembly's provision of appointments to the boards of non-home rule units like the RTA, Metra, and Pace. In response, plaintiffs do not cite a single case (because there is none) that has applied Section 6(f) to an act of the legislature. Nor do they deny that every case construing this provision has addressed an ordinance of a home rule unit. See Def. Opening Br. 37. Their contention that the text of Section 6(f) does not "support this limitation" (Pl. Br. 38) disregards the fact that the plain text of Section 6(f) addresses only what a "home rule unit" may do (and thus by implication what a home rule unit may not do).

With no support from the Constitution or case law, plaintiffs baldly assert that the RTA Act “removes” the Cook County President’s “power to appoint RTA board members from the chief executive.” Pl. 36. But the Act cannot have “removed” powers that the Cook County President never had, and it is uncontested that the Cook County President never had the power to make appointments to the RTA, Metra, or Pace boards. Section 6(f) applies only to fundamental changes to a home rule unit’s governmental structure. The RTA Act effected no such change. The power to make regional public transportation board appointments was brand new and thus did not change Cook County’s form of government at all, much less “fundamentally,” as plaintiffs assert. *Id.* at 37. See *Allen v. County of Cook*, 65 Ill. 2d 281, 292, 357 N.E.2d 458, 463-64 (1976) (county ordinance did not change the make-up of the Cook County Board and thus did not change its form of government within the meaning of the Constitution).

**CONCLUSION**

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

Dated: April 17, 2002

Respectfully submitted,

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**CERTIFICATE OF MAILING AND SERVICE**

The undersigned, an attorney, hereby certifies that, on April 17, 2002, he caused the foregoing Reply Brief of Defendants-Appellants to be filed with the Illinois Supreme Court and caused three copies of aforesaid Brief to be served on designated counsel of record by depositing it in the United States mail, postage prepaid, addressed to:

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