IN THE CIRCUIT COURT FOR THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY ILLINOIS

COUNTY OF LAKE and AARON LAWLOR Plaintiffs, and WILLARD HELANDER, Intervenor-Plaintiff, v. CHIEF JUDGE FRED FOREMAN, THE ILLINOIS STATE BOARD OF ELECTIONS, HAROLD D. BYERS, BETTY J. COFFRIN, ERNEST L. GOWEN, WILLIAM M. MCGUFFAGE, CASANDRA B. WATSON, BRYAN A. SCHNEIDER, CHARLES W. SCHOLZ, AND JESSE R. SMART, Defendants.	Case No. 13 CH 2208 Hon. David R. Akemann Judge Presiding

JUDGMENT ORDER

THIS MATTER coming to be heard on the parties cross motions for summary judgment, and the Court having considered the pleadings, the arguments of counsel, and being otherwise fully advised in the premises finds as follows:

Procedural History

Plaintiffs County of Lake and Lake County Board Chairman Aaron Lawlor (hereinafter collectively referred to as "the County" or "Plaintiffs") filed a two count Complaint on July 30, 2013, seeking declaratory and injunctive relief naming as Defendants, Chief Judge Fred Foreman, the Illinois State Board of Elections, and the members of the Illinois State Board of Elections (collectively referred to as "Defendants"). Count 1 of the Complaint sought a declaratory judgment that 10 ILCS 5/6A-1(b), 10 ILCS 5/6A-3(b), and 10 ILCS 5/6A-4 (10 ILCS 5/6A-1(b) and 10 ILCS 5/6A-3(b), hereinafter collectively "the challenged statute") of the Illinois Election Code violate the special legislation clause of the Illinois Constitution (Ill Const. 1970, art. IV, Sec. 13). Count 2 of the Complaint sought a declaratory judgment that the challenged statutes violate Article II, Section 4 of the Illinois Constitution. The Plaintiffs also

sought injunctive relief prohibiting the Chief Judge from appointing members to the election board required by the challenged statute and injunctive relief against the State Board of Elections and its individual members from "implementing, enforcing or administering" the challenged statutes. On the same day, Plaintiffs filed a Motion for Preliminary Injunction. Willard Helander, the Lake County Clerk, filed a Motion to intervene as an Intervenor- Defendant. The Defendants opposed the Helander Motion to Intervene and filed a Motion to Dismiss. This Court granted Helander, who opposed the Plaintiffs Motion for a Preliminary Injunction, leave to intervene initially as an Intervenor- Defendant and to file his answer.

On August 19, 2013, this Court entered a preliminary injunction prohibiting Chief Judge Fred Foreman, in his official capacity as the Chief Judge of the Nineteenth Judicial Circuit, from implementing, enforcing, or administering the challenged statute, pending a final determination of the issues on the merits. This Court also ordered Intervenor-Defendant Helander, as County Clerk, to continue to perform all functions as the county election authority pending final resolution of the case or further order of the court.

Subsequently, the Plaintiffs filed a Motion for Summary Judgment and the Defendants sought and were granted leave to have their previously filed Motion to Dismiss to serve as their Motion for Summary Judgment. Helander then moved to realign the parties so that Helander would become an Intervenor-Plaintiff, which was granted. The case then proceeded on the cross Motions for Summary Judgment and the parties submitted Statements of Uncontested Facts pursuant to Local Rules, as well as their briefs, which this Court considered along with the arguments of the parties.

ISSUE PRESENTED

The essential issue is whether the challenged statutes constitute impermissible special legislation prohibited by the Illinois Constitution. For the reasons set forth below, this Court finds that 10 ILCS 5/6A-1(b) and 10 ILCS 5/6A-3(b) as constituted by Public Act 98-115 violate the Constitution of the State of Illinois and are therefore held to be unconstitutional.

BACKGROUND

On July 27, 2013, Illinois Governor Quinn signed Public Act 98-115 into law, which included various amendments to the Illinois Election Code. Among said amendments, and the subject of the controversy in the instant matter, is 10 ILCS 5/6A-1(b). The Statute provides as follows:

> *Any county with a population of more than 700,000 persons as of the 2010 federal decennial census that borders another state and borders no more than 2 other Illinois counties, shall be subject to a county board of election commissioners beginning 90 days after the effective date of this amendatory Act of the 98th General Assembly.*

Subsequent portions of the statute, as amended by Public Act 98-115, relate to the selection process and qualifications of commissioners. Specifically, newly enacted 10 ILCS 5/6A-3(b) provides, in pertinent part, as follows:

> *For any county board of elections established under subsection (b) of Section 6A-1, within 30 days after the effective date of this amendatory Act of the 98th General Assembly, the chief judge of the circuit court of the county shall appoint 5 commissioners... No elected official or former elected official who has been out of elected office for less than 2 years may be appointed to the board.*

The County alleges that the above statutes are impermissible special legislation because Lake County is the only county that, either now and in the future, "has or will ever have more than 700,000 persons as of the 2010 federal decennial census and that also borders another state and borders no more than two other Illinois counties." *Complaint*, paragraph 4. Thus, according to the County, a "closed class" was created, forever limiting the statute's applicability solely to Lake County. According to the County, the classification creates two classes of counties-- Lake County, and every other county in Illinois. *Complaint*, paragraph 24.

The Complaint further alleges that the mandatory imposition of an elections commission on Lake County "deprives the voters and the county board of the ability to determine whether elections shall be governed by a *[sic]* elections commission, which mandate that the elections commissioners be appointed by a chief judge, and which preclude the appointment of the county clerk or any other elected official holding office within the last two years..." *Complaint*, paragraph 25. The County also notes that the establishment of a county board of election commissioners is, in every other county in the state except for Lake County, "left to the voters through referendum or to the discretion of the county board" pursuant to 10 ILCS 5/6A-1(a). *Complaint*, paragraph 5.

Defendants initially note that legislative classifications are presumed constitutionally valid, and must be upheld if any set of facts can be reasonably conceived to justify distinguishing

the class to which the law applies from the class to which the statute is inapplicable. *Defendant's Motion for Summary Judgment*, pgs. 2-4, citing *Cutinello v. Whitley*, 161 Ill. 2d 409, 418 (1994). Defendants assert that the Illinois Supreme Court's decision in *Cutinello v. Whitley*, 161 Ill. 2d 409 (1994) is controlling, and supports upholding the challenged statute. *Defendant's Motion for Summary Judgment*, pgs. 2-4, 7-8.

Defendants maintain that the classification at issue does not violate the prohibition on special legislation, as it is merely a population based classification that was not required to be precise. As framed by Defendants, "... the issue is whether there is a reason to distinguish based upon population. Whether [a] population size of 700,000 is a particularly good benchmark for judging the need for a board of election commissions is within the discretion of the legislature" *Defendant's Motion for Summary Judgment*, pgs. 7-8.

As Lake County is the third largest populous county in the state, and because the City of Chicago and DuPage County already have their own board of elections, it was reasonable for the General Assembly to focus on Lake County, according to Defendants. *Defendant's Motion for Summary Judgment*, pg. 5. Defendants assert that because of Lake County's "large population and the corresponding complexity of administering elections there, it makes sense to establish a board of election commissioners in Lake County." *Defendant's Motion for Summary Judgment*, pg. 5. Thus, according to the Defendants, the establishment of an elections commission would result in a more efficient elections process, as the board would be able to focus solely on administering elections. *Defendants' Motion for Summary Judgment*, pg. 4.

In the final paragraph of their motion, as well as in the final paragraph of a subsequently filed supporting motion, Defendants argue that the statute should not be invalidated simply because "the General Assembly chose not to describe Lake County by name," but rather "was described geographically." Defendants also rely on *Village of Chatham*, 351 Ill. App. 3d 889, wherein Defendants note that the appellate court found a classification constitutionally permissible that was limited to "a county with a population of more than 246,000 according to the 1990 federal census and bordered by the Mississippi River." *Reply in Support of Defendants' Motion for Summary Judgment*, pg. 8.

STANDARD FOR ANALYSIS

In general, statutes carry a strong presumption of constitutionality. *Crusius v. Illinois Gaming Board*, 216 Ill. 2d 315, 324 (2005); *In re Petition of the Village of Vernon Hills*, 168 Ill. 2d 117, 122-23 (1995). As the result of this strong presumption of constitutionality, the challengers of a statute bear the burden of clearly establishing the statute's constitutional infirmity. *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill. 2d 221, 213 (2005). Courts have a duty to uphold the constitutionality of a statute if it is reasonably possible to do so. *Big Sky Excavating*, 217 Ill. 2d at 234; *Village of Lake Villa v. Stokovich*, 221 Ill. 2d 106, 122 (2004).

THE "SPECIAL LEGISLATION" CLAUSE

Section 13 of article IV of the Illinois Constitution provides:

> *The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.*

THE "GENERAL AND UNIFORM" CLAUSE

Section 4 of Article III of the Illinois Constitution provides:

> *The General Assembly by law shall define permanent residence for voting purposes, insure secrecy of voting and the integrity of the election process, and facilitate registration and voting by all qualified persons. Laws governing voter registration and conduct of elections shall be general and uniform.*

Thus, the special legislation clause "prohibits passage of a special or local law only when 'a general law is or can be made applicable.'" *Elementary Sch. Dist. 159 v. Schilller*, 221 Ill. 2d 130 (2006). "Laws are general and uniform when alike in their operation upon all persons in like situation." "Special" laws are those "which impose a particular burden or concern a special right, privilege or immunity upon a portion of the people of the State." *Bridgewater v. Hotz*, 51 Ill. 2d 103, 109-10 (1971) Thus, our State Constitution prohibits the General Assembly from conferring a special benefit or exclusive privilege on a person, group of persons, or entity, to the exclusion of others similarly situated. *Schiller*, 221 Ill. 2d at 154; *Big Sky Excavating*, 217 Ill. 2d at 234. Though it is well accepted that the General Assembly has broad discretion to make statutory classifications, the special legislation clause precludes legislative classifications that

arbitrarily discriminate in favor of a select group. *Big Sky Excavating*, 217 Ill. 2d at 235; *Schiller*, 221 Ill. 2d at 149. Notwithstanding, it is well accepted that "Nothing in the constitution bars the legislature from enacting a law specifically addressing the conditions of an entity that is uniquely situated. *Schiller*, at 154.

When a statute is challenged as impermissible special legislation, it is generally judged under the same standards applicable in an equal protection challenge. *Cutinello v. Whitley*, 161 Ill. 2d 409, 417 (1994); *In re Belmont Fire Protection District*, 111 Ill. 2d 373, 379 (1986). In the instant matter, as the challenged statute does not affect a fundamental right or involve a suspect or quasi-suspect classification, the appropriate standard for review is the rational basis test. Under this deferential test, a statute is constitutional if the legislative classification is rationally related to a legitimate state purpose, and will be upheld "if any set of facts can be reasonably conceived that justifies distinguishing the class to which the statute applies from the class to which the statute is inapplicable. *Village of Vernon Hills*, 168 Ill. 2d at 122.

In reviewing classifications that are based on population or territorial differences, such as in the instant matter, the Illinois Supreme Court's decisions in *Belmont* and *the Village of Vernon Hills* have clarified how courts should apply the rational basis test. Referred to as a "two-prong test," the Court has instructed that a population or territorial classification will survive a special legislation challenge only (1) where founded upon a rational difference of situation or condition existing in the persons or objects upon which the classification rests; and (2) where there is a rational and proper basis for the classification in view of the objects and purposes to be accomplished." *Village of Vernon Hills*, 168 Ill. 2d at 123. As was clarified by the Court in *Vernon Hills*, "this test has remained the same for more than 50 years," notwithstanding the fact that it was not referred to as the "two-prong test" until 1986 in the *Belmont* decision. *Id.* at 123. The Court also noted that the "two-prong" test does not replace the rational basis test, but "merely describes in greater detail how a court applies the rational basis test when determining whether a legislative classification based upon population or territorial differences is unconstitutional special legislation. *Id.* at 127.

ANALYSIS

In this case, the parties filed cross-motions for summary judgment on the Plaintiffs declaratory judgment action. Summary judgment is appropriate when the pleadings, along with

any affidavits, show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c) By filing cross-motions for summary judgment, the parties agree that no factual issues exist so that the instant case turns solely on legal issues. *Gaffney v. Board of Trustees.*, 969 N.E.2d 359, 360 Ill. Dec. 549, at 564-565 (Ill. 2012) citing *Founders Insurance Co. v. Munoz*, 237 Ill. 2d 424, 432, 930 N.E.2d 999, 341 Ill. Dec. 485 (2010).

The jurisprudence of the Illinois Supreme Court on these two provisions of the 1970 Illinois Constitution dates back over 40 years to *Bridgewater*, where the Court considered the identical two provisions in an election case. The Plaintiffs in *Bridgewater* argued that,

> ". . . the provision in section 4 of article III that laws governing voter registration and conduct of elections be general and uniform is "a new, unprecedented constitutional standard for Illinois election laws, distinct from the continued standard of prohibiting local or special laws." They argue that the presence in the constitution of two separate provisions, each phrased differently, one specifically (article III, section 4) and the other generally (article IV, section 13) applicable to election laws, requires us to hold that they are different standards and that to hold them equivalent would "render the uniformity clause nugatory, or at best redundant." From this, they argue, it follows that the requirement that such laws be "general and uniform" imposes a more stringent standard than does the proscription of "local or special laws" and the test of reasonableness and validity of classifications is a much stricter one. They argue further that the test of "general and uniform" requires that the reasonableness and validity of a classification requires "affirmative justification by a valid purpose" rather than contrast, allows a classification to stand if a rational justification is logically possible."

Although perhaps the *Bridgewater* Court did not directly indicate whether the Plaintiff therein was correct, it did indicate clearly that the Court's definitions of when a law is "general and uniform," or "special," or "local," did not change from its prior decisions under the former constitution, but that the article IV section 13 language clearly made the decision as to whether a general law can be made applicable to be for judicial, not legislative, determination.

In the instant case, the parties, in their motions for summary judgment analyze the case in terms of a "special" legislation challenge under Article IV, Section 13.

This court first considers the language of the statute, *Gaffney*, supra, in determining the intent of the legislature in conducting the required analysis. The legislature did not provide in the legislation or the debates its actual intent in adopting the contested statutes. The statutory

language essentially requires, as opposed to permits, Lake County, and only Lake County, to have a county election commission. For all other counties in Illinois, an election commission is permitted by action of the county board or by the electorate, unless there is already a city, village or incorporated town with and election commission. (10 ILCS 5/6A-1) In the Lake County Election Commission mandated by the challenged statute, the chief judge would select the commissioners and the County Clerk would be excluded as a member along with all other current elected officials and former elected officials who have not been out of office for at least two years. Contrast this with the provisions in 10 ILCS 5/6A-3, which would apply to all other counties which provides that the county board chairman would appoint the members of all other county election commissions and the county clerk, rather than being mandatorily excluded, would have a right to be appointed one of the commissioners. The legislature is of course not required to give a reason for legislation but, when it declines to do so, the judicial analysis required by our constitution must go forward seeking a rational basis without an expression of legislative intent. So too the public officers who are the named Defendants are left with suggesting to the court arguments that they believe may be rational under the judicial mandate that statutes are presumed valid and must be upheld if there is a rational basis that can be found for doing so. The Plaintiffs argue there is no rational basis to make the "closed" class consisting only of Lake County.

The court first notes that in its list of challenged statutes, the Plaintiffs, in addition to 10 ILCS 5/6A-1(b) and 10 ILCS 5/6A-3(b), also include 10 ILCS 5/6A-4 as amended by Public Act Public Act 98-115. The Court finds that 5/6A-4, as amended by Public Act 98-115, relating to turn over of records when a new county election commission is formed, would apply to all counties for the transition from the County Clerk to a county election commission and, by its own terms, does not constitute special legislation for a county of one. Accordingly, this court's special legislation analysis will apply only to ILCS 5/6A-1(b) and 10 ILCS 5/6A-3(b).

From *Bridgewater* to its most recent decision in *Board of Education of Peoria School Dist. 150 v. Peoria Federation of Support Staff*, 2013 IL. 114853 (2013), the Illinois Supreme Court has set forth a framework from which this court analyzes the instant case.

In *Belmont*, the Illinois Supreme Court invalidated as special legislation section 19a of the Fire Protection District Act. *In re Belmont Fire Protection District*, 111 Ill. 2d 373 (1986). There, the challenged statute allowed municipalities in counties with populations between

600,000 and 1,000,000 to consolidate fire protection districts. *Belmont*, 111 Ill. 2d at 376. Application of the population classification rendered the statute applicable to just DuPage, and the legislative history removed any doubt that the population classification was intended to limit the statute's effect to DuPage. *Id.* at 381.

In challenging the statute as special legislation, plaintiffs there attempted to demonstrate that the population classification was not rationally related to the legislation's stated purpose, by demonstrating that municipalities in other counties of varying populations would still be served by more than one fire protection district. Defenders of the Act argued that it was designed to remedy the alleged dangers and disadvantages of having a municipality that was served by multiple fire protection districts.

The Illinois Supreme Court applied the "two-pronged test" and concluded that the contested statute was unconstitutional because the population classification was arbitrary and denied other counties the privilege of consolidating fire protection services into a single district. In articulating the two-prong test, the Court established that "In order for a legislative classification by population to withstand constitutional scrutiny, it cannot be arbitrary." Further, the Court stated that "in considering the special-legislation proscription of our constitution, in addition to a reasonable basis for the classification, the classification must also bear a rational and proper relation to the evil to be remedied and the purpose to be attained by the legislation." *Id.* at 373, 379-80. In applying the first prong of the test, that there must be a "reasonable basis for the classification," the court stated as follows:

> "We can perceive of no rational reason why a municipality served by multiple fire protection districts in a county with a population between 600,000 and 1 million can be said to differ from a municipality which is served by multiple fire protection districts in a county with less than 600,000 or more than 1 million inhabitants. If a real need exists to eliminate the alleged disadvantages and dangers of multiple fire protection districts serving one municipality, then the same need to remedy this evil also exists in other counties as well, regardless of the level of the population in the county. Because [the Act] denies municipalities with similar needs in other similar counties the privilege of consolidating fire protection services into a single fire protection district, the population classification is an arbitrary distinction not founded upon any rational or substantial difference of situation or condition and therefore violates our constitution." *Belmont*, 111 Ill. 2d at 382.

The Court also found that the classification also failed the test's second prong that requires the legislation to "bear a rational and proper relation to the evil to be remedied and the

purpose to be attained by the legislation." In so deciding, the Court held that the population classification bore no rational relationship to the purposes of the act, nor the evil it sought to remedy. The Court was unable to conceive of any "possible connection between the requirement that a *county* have a population between 600,000 and 1 million and the desirability of consolidating fire protection services within a given *municipality* into a single fire protection district." (Emphasis in original.) *Belmont*, at 383-84. Thus, the Court held that the relevant Act constituted impermissible special legislation.

In the instant matter, it is clear to this court, and is undisputed by both parties, that 10 ILCS 5/6A-1(b) is only applicable to Lake County. Therefore, as an initial matter, it should be noted that this court agrees with Plaintiffs that the application of the statute's population and geographical classification effectively divides each of Illinois' 102 counties into one of two categories-- Lake County falls into one category, and the State's other 101 counties fall into the other.

Defendants attempt to distinguish *Belmont* by asserting that a large population is reasonably related to necessity of a board of election commissioners. Defendants note that a larger population means more voters, candidates, voting booths, facilities, staff, and the like. The potential for voter fraud and disenfranchisement is also greater. Defendants argue that since the Lake County Clerk's Office has other duties, such as maintenance of vital records and public filings, the County Clerk's Office's focus is detracted from administering elections.

Under the contested statute, every county in the State of Illinois, except for Lake County, has the right to establish an elections commission, if they so choose, pursuant to 10 ILCS 5/6A-1(a)."

Despite Defendant's arguments to the contrary, the provisions at issue here fail the first prong of *Belmont's* two-pronged test. This court cannot perceive of a rational difference of situation or condition found to exist in a county whose population exceeds 700,000, borders another state, and borders no more than 2 other Illinois counties, from a county whose population exceeds 700,000 but does not border another state and less than three other Illinois counties. If the burden on county clerks in high population counties justifies the mandatory imposition of a board of elections, then the same need must also exist in the counties whose population also exceeds 700,000, but do not border another state and two other Illinois counties. The hybrid classification consisting of population and geographical characteristics is wholly arbitrary, and is

not founded upon any rational or substantial difference of situation or condition, and therefore violates the Illinois Constitution.

Belmont's second prong, that "the classification must also bear a rational and proper relation to the evil to be remedied and the purpose to be attained by the legislation," likewise is not met. There is no basis that this court can conceive of to treat an interior county differently for purposes of elections administration than a county that borders another state, or a county that borders another state and three Illinois counties, as opposed to two. While Defendants go to great lengths to defend the population classification as appropriate, they do not even attempt to offer a rationale for the statute's geographical aspects as they pertain to the alleged necessity of an elections commission in Lake County. Understandably, Defendants leave Petitioners' arguments regarding the geographical peculiarities largely unanswered.

Some nine years after *Belmont*, the Illinois Supreme Court ruled on *Cutinello v. Whitley*, which is relied upon heavily by Defendants in the instant matter. *Cutinello* dealt with the County Motor Fuel Tax, which specifically allowed DuPage, Kane, and McHenry Counties to impose a tax on individuals who sell motor fuel within the their borders. Defenders of the statute asserted that the purpose of the tax was to provide the proceeds to the counties to operate, construct, and improve public highways and waterways within their borders, as well as to acquire real property and right-of-ways for public highways and waterways. *Cutinello*, 161 Ill. 2d 409, 414 (1994). Plaintiffs, including purchasers and retailers of motor fuel in the affected counties, thereafter initiated a class action seeking to permanently enjoin the statute, wherein they alleged that the statute violated the special legislation and reasonable classification provisions of the Illinois Constitution.

Defenders of the law presented statistical evidence demonstrating that the three counties named in the statute were the three fastest growing counties in the state when the legislation was passed, and argued that the General Assembly had simply made a classification based upon rapid population growth. *Cutinello,* at 418. The counties argued that the growing population necessitated the building, maintenance, and repair of the counties' highway systems, more so than in other parts of the state. *Id.*

Noting that the Court has long recognized that a legislative classification may be based on population, it held that the legislature could have rationally concluded that a greater need for transportation financing existed in those three fastest growing counties than in other parts of

Illinois. The Court noted that legislative classifications may be based upon population, and that legislation is not rendered special simply because it operates only in one part of the state. *Id.* at 419. Moreover, the Court held that there was a rational and proper basis for the classification in light of the statute's purpose to provide fast growing counties a means to raise the funds needed to expand and maintain their burdened county highway systems. *Id.* at 422.

The instant case is distinguishable from *Cutinello*. In *Cutinello*, the legislature made the statute applicable to three specifically named counties-- Hence, the classification was not explicitly based on population or geographical characteristics. The Court found that the classification was based upon a rational difference of situation because the classification included only those counties whose populations were growing most rapidly when the General Assembly passed the statute. The classification at the heart of the current controversy, however, is not based upon a rational difference of situation, as discussed above. Moreover, the Court in *Cutinello* also found that there was a rational and proper basis for the classification in light of the statute's purpose to provide the fastest growing counties with a way to raise funds to maintain and expand their county highway systems. The instant matter plainly fails the second prong of the analysis, as their no rational and proper basis to distinguish a county based on geographical features in light of the evil the statute is alleged to remedy.

Just one year after *Cutinello*, the Illinois Supreme Court next considered *In re Petition of the Village of Vernon Hills*, 160 Ill. 2d 117 (1995). There, the court faced essentially the same issue as in *Belmont*, only this time, Lake County was the only affected county. In *Vernon Hills*, the contested legislation involved Section 14.14 of the Fire Protection District Act, which created a mechanism whereby a non-home-rule municipality with more than one fire protection district could transfer territory served by one district into another district in counties with populations between 500,000 and 750,000 people. The parties stipulated that the Village of Vernon Hills was a non-home-rule community in Lake County which, at the time the legislation was passed, was the only Illinois county with a population between 500,000 and 750,000. The Circuit Court of Lake County found Section 14.14 to be constitutional, but the appellate court reversed, finding that the contested statute was unconstitutional special legislation.

In finding *Belmont* to be strikingly similar to the issues before it, the Supreme Court held that the challenged statute failed *Belmont's* two-prong test. *Village of Vernon Hills*, 168 Ill. 2d at 125-27. In so doing, the Court stated "...we cannot perceive of any rational difference of

situation or condition that exists between a non-home-rule municipality served by more than on fire protection district in a county with a population of 500,000 to 750,000 persons- namely, Lake county. . . Second, there is no rational or proper basis for the population classification in view of the purposes to be accomplished by section 14.14." *Id.* at 126.

The Court in *Vernon Hills* distinguished *Cutinello*, wherein it noted that in *Cutinello*, the Court held that the legislature could have rationally concluded that a greater need for transportation financing existed in those three fastest growing counties than in other parts of the state. *Id.* at 128. The classification there was founded upon a rational difference of situation, because it only included the fastest growing counties in terms of percentage of growth. Also, in *Cutinello*, there was a rational and proper basis for the classification in view of the statute's purpose of providing fast growing counties a method to raise financing to expand their respective burdened highway systems of the affected counties. In *Vernon Hills*, however, the Court stated that, just as in *Belmont*, there was no relationship between *county* population and the need for *municipalities* to consolidate fire protection districts (emphasis in original). *Id.* at 129. Further, there was no basis to distinguish Lake County from any other county for purposes of the contested statute.

In the instant matter, just as above, the classification involving population and territorial distinctions is not based upon a rational difference of situation or condition. For reasons unknown, the General Assembly chose not to name Lake County by name, but rather created a classification based upon population and a suspect geographical carve-out. Defendants have consistently advanced the theory that this is a classification based purely on population-- This simply is not the case. Defendants have failed to advance a theory as to why a county that borders another state *and* less than three other Illinois counties would need an elections commission as opposed to, for example, an interior county that borders three other Illinois counties (or any number of other geographical oddities). In light of the Defendants' failure to even attempt to rationalize the geographical parameters of the statute, said parameters are palpably arbitrary.

Also of assistance to the court's holding in the instant matter is the Second District's decision in *Puffer-Hefty School Dist. v. DuPage County Regional Board of School Trustees,* 339 Ill. App. 3d 194 (2nd Dist. 2003). There, a school district challenged as special legislation a section of the Illinois School Code that allowed for the dissolution of a school district with a

population of less than 5,000 without referendum, whereas a referendum was required for the dissolution of a school district with a population in excess of 5,000. Plaintiffs argued that said section of the School Code was special legislation because it treats school districts differently, depending on which side of the 5,000 person population cutoff a district falls. *Id.* at 204.

In upholding the population based classification, the Second District distinguished *Belmont* and *Vernon Hills* by noting that no evidence was presented establishing that Puffer-Hefty was the only school district in the state with fewer than 5,000 residents. Therefore, the Second District held that the statute was not special legislation because "the statute applies to all Illinois school districts with fewer than 5,000 residents and is uniform in its application." *Id.* at 205. Further, the Second District noted that "...in any given time period and depending on the increase or decrease of an area's population, an Illinois school district may or may not be subject [to the statute]. . . Therefore, because the statute applies to all Illinois school districts with fewer than 5,000 residents and is uniform in its application, it does not constitute special legislation." *Id.*

The statute at issue in the instant matter is distinguishable from the statute analyzed by the Second District in *Puffer-Hefty*. Unlike in *Puffer-Hefty*, the challengers of the instant law have presented ample uncontested evidence to establish that Lake County is the only county affected by contested statutory classification. Moreover, the population and geographical classification in the instant case results in a so-called "closed class" of exactly one county; The General Assembly's decision to tie the statute's applicability to an unchanging population figure has the effect of forever tying only Lake County to the statute. The statute in the instant matter did not create a classification in harmony with the reasoning that led the Second District to uphold the statute in the *Puff-Hefty* decision, and thus warrants the opposite holding.

Defendants rely on *Village of Chatham v. County of Sangamon*, wherein a zoning and building code statute was challenged that exempted, among others, counties "...with a population of more than 246,000 according to the 1990 federal census and bordered by the Mississippi River..." *Village of Chatham v. County of Sangamon*, 351 Ill. App. 3d 889, 898 (4th Dist. 2004). In *Chatham*, the challenged provision applied to eight similarly situated counties, namely: Cook, Lake, McHenry, DuPage, Will, Kane, St. Clair, and Madison. The Court noted that the legislative history revealed that the General Assembly was attempting to remedy "actual problems [that] existed in the classified counties and this distinction alone is sufficient to show

the classification was not arbitrary and was supported by a rational basis." *Village of Chatham*, 351 Ill. App. 3d at 901.

Though Defendants are correct that the Fourth District's decision was affirmed by the Illinois Supreme Court on other grounds, the Supreme Court affirmed the decision because it found that the challengers of the amended statute lacked standing to contest it. "[Plaintiff] has not sustained any injury which is likely to be redressed by the relief requested and lacks standing to challenge the statute as special legislation." *Village of Chatham*, at 423-24. The Court also warned that "a statute will be invalidated if it creates a classification so narrow as to effectively identify a limited number of entities, precluding all others from ever joining the class." *Id.* at 418. Though relied on by Defendants, the Supreme Court's holding in the *Chatham* decision actually aids Plaintiffs, as the classification in the instant matter impermissibly results in a closed class of exactly one county, and would forever be limited to this lone county.

Defendants also cite *Crusius v. Illinois Gaming Board* for the proposition that the legislature's choice to describe Lake County geographically does not automatically invalidate the statute. *Defendant's Motion to Dismiss*, pg. 9. In *Crusius*, the plaintiff challenged a provision of the Riverboat Gambling Act that provided that a gambling licensee not conducting riverboat gambling on January 1, 1998, could apply to the Board for a renewal, and would be allowed to relocate after approval from the municipality in which the licensee wished to relocate. *Crusius v. Illinois Gaming Board*, 216 Ill. 2d 315, 318 (2005). The Court noted that it was clear that the contested statute discriminated in favor of a very select group, as well as that only one gambling licensee out of the ten statewide licensees would benefit from the statute. *Crusius*, 216 Ill. 2d at 326. Nevertheless, the Court in *Crusius* rejected a special legislation challenge, holding that the classification was rationally related to a legitimate state interest; specifically, it furthered the Riverboat Gambling Act's goals of aiding economic development, promoting tourism, and generating revenue for education. *Id.* at 327.

The instant matter is distinguishable from *Crusius*. Though still analyzed under the deferential rational basis test, the classification under review in *Crusius* was not based on population, and thus was not analyzed using *Belmont's* two-prong test. With the rational basis test still applicable, though, the Court found that the classification in *Crusuis* furthered the economic goals of the Riverboat Gambling Act, and the specific means chosen by the legislature were rational. In passing legislation focusing on the one licensee that was inoperable, the

> It is that principle that underpins our decisions in *Schiller, Big Sky Excavation, Inc. v. Illinois Bell Telephone Co.*, 217 Ill. 2d 221, 840 N.E.2d 1174, 298 Ill. Dec. 739 (2005), *Crusius v. Illinois Gaming Board*, 216 Ill. 2d 315, 837 N.E.2d 88, 297 Ill. Dec. 308 (2005), and *County of Bureau v. Thompson*, 139 Ill. 2d 323, 564 N.E.2d 1170, 151 Ill. Dec. 508 (1990), notwithstanding instances of broader language included in the analyses. *Bd. of Educ. of Peoria, at*

Applying the *Bd. of Educ. of Peoria* analysis, for the above reasons, this Court find that a general law could have been made applicable in this case, there is no rational justification for the amendment's limited application to a permanently "closed" class which applies only to Lake County. Thus, this courts holds that 10 ILCS 5/6A-1(b) and 10 ILCS 5/6A-3(b), as enacted by Public Act 98-115, violate article IV, section 13, of the Illinois Constitution.

RULE 18 FINDINGS:

Pursuant to Illinois Supreme Court Rule 18(a), the Court makes the following findings in this written Judgment Order:

Findings pursuant to Rule 18(b):

b (1): The Court finds that 10 ILCS 5/6A-1(b) and 10 ILCS 5/6A-3(b) as enacted by Public Act 98-115 are unconstitutional.

Findings pursuant to Rule 18(c):

c (1): The constitutional provision upon which the finding of unconstitutionality is Article IV, Section 13 of the 1970 Constitution of the State of Illinois.

c (2): The statutory provisions set for in b(1) above are unconstitutional on their face.

c (3): The statutes set forth in b (1) cannot reasonably be construed in a manner that would preserve their validity.

c (4): The finding of unconstitutionality is necessary to the decision and judgment rendered and that such decision and judgment cannot rest upon an alternate ground.

c (5): The Notice required by Rule 19 has been served and that those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute challenged.

IT IS THEREFORE ORDERED AND ADJUDGED:

A. Plaintiffs' Motion for Summary Judgment is GRANTED.

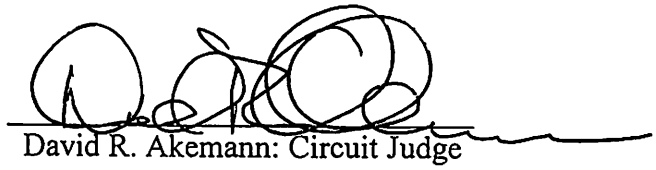
B. Defendants' Motion for Summary Judgment is DENIED.

C. The Court hereby declares that 10 ILCS 5/6A-1(b) and 10 ILCS 5/6A-3(b), as enacted by Public Act 98-115, violate Article IV, Section 13 and of the 1970 Constitution of the State of Illinois, and are therefore unconstitutional on their face.

D. Defendant Fred Forman, not individually, but as Chief Judge of the Nineteenth Judicial Circuit, is permanently enjoined from appointing a Lake County Board of Elections Commission as purportedly required under 10 ILCS 5/6A-1(b) as set forth in Public Act 98-115.

E. The Illinois State Board of Elections and all individual Defendants are hereby permanently enjoined from implementing, enforcing, or administering the provisions of 10 ILCS 5/6A-1(b) and 10 ILCS 5/6A-3(b) as enacted by Public Act 98-115.

Enter: this 7th day of November, 2013



David R. Akemann: Circuit Judge