FEDERAL COURTS — CONSENT DECREES — SEVENTH CIRCUIT HOLDS GOVERNOR SATISFIED REQUIREMENTS OF FIFTY-YEAR-OLD CONSENT DECREE. — *Shakman v. Pritzker*, 43 F.4th 723 (7th Cir. 2022), *reh'g and reh'g en banc denied*, No. 21-1739, 2022 WL 4351066 (7th Cir. Sept. 19, 2022).

For over sixty years, consent decrees[1] have been a driving force of institutional reform, enabling federal court oversight of illegal, unconstitutional, and sometimes stubborn state inaction.[2] Behind some of the most important civil rights victories have been advocates using consent decrees to cure cruel overcrowding in state prisons,[3] segregation in public schools,[4] and mistreatment of children at the hands of state agencies.[5] But, as many of these consent decrees turn decades old, courts have begun to more seriously confront the ways in which the enforcement of these decrees may press upon principles of federalism.[6] Recently, in *Shakman v. Pritzker*,[7] the Seventh Circuit set forth a sweeping vision of how federalism principles should steer the analysis of whether to terminate a fifty-year-old consent decree. The far-reaching language illustrates the precarious future of consent decrees in light of the Supreme Court's broader trend of articulating increasingly lenient standards for releasing state and local governments from federal oversight.

The "Governor of Illinois and units of local government" in Illinois have been subject to a series of consent decrees since 1972.[8] These decrees prohibited them "from conditioning employment decisions on political patronage,"[9] which had been a "chief characteristic of Chicago and Cook County politics for at least half a century."[10] Because this patronage system gave "officially favored candidates a massive, government-funded electioneering advantage over independent candidates and voters,"[11] the plaintiffs in the original 1969 suit alleged that their First, Fifth, and

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[1] "A consent decree is a settlement agreement among parties to a litigation that is subsequently entered by a court." Alan Effron, Note, *Federalism and Federal Consent Decrees Against State Governmental Entities*, 88 COLUM. L. REV. 1796, 1796 n.3 (1988). They are part private agreement and part judicial decree. *Id.*

[2] *See* Jason Parkin, *Aging Injunctions and the Legacy of Institutional Reform Litigation*, 70 VAND. L. REV. 167, 168 (2017) ("[I]nstitutional reform litigation has transformed countless bureaucracies notorious for resisting change, including public school systems, social services agencies, correctional facilities, housing authorities, and police departments."); *id.* at 172 ("Long-standing injunctions can be the source of ongoing, vigorous monitoring and enforcement efforts aimed at bringing a recalcitrant defendant into compliance with the law.").

[3] *E.g.*, Duran v. Elrod, 760 F.2d 756, 757 (7th Cir. 1985).

[4] *E.g.*, Milliken v. Bradley, 433 U.S. 267, 269 (1977).

[5] *E.g.*, LaShawn A. *ex rel.* Moore v. Fenty, 701 F. Supp. 2d 84, 98–100, 115 (D.D.C. 2010).

[6] *See, e.g.*, Parkin, *supra* note 2, at 183.

[7] 43 F.4th 723 (7th Cir. 2022).

[8] *Id.* at 724.

[9] *Id.*

[10] C. Richard Johnson, *Successful Reform Litigation: The* Shakman *Patronage Case*, 64 CHI.-KENT L. REV. 479, 481 (1988).

[11] *Id.* at 483.

Fourteenth Amendment rights were violated.[12] The resulting *Shakman* consent decree, approved by the district court in 1972, contained injunctions effectively prohibiting the hiring or firing of any Illinois government employee for any political reason or factor.[13] Despite these restraints, political-hiring scandals still make waves decades later.[14]

In 2014, the same plaintiffs from the original 1969 action sought supplemental relief from the district court.[15] They alleged that the Illinois Department of Transportation (IDOT) was filling "'Staff Assistant' positions based on political considerations" by first hiring people into positions exempt from the decree — positions where political considerations were allowed, like policymaking roles — and then transferring those people into nonexempt positions.[16] An appointed special master concluded that the Governor's Office had played a "key role" in political hiring,[17] and, in response, the district court in 2019 approved a plan from the Governor's Office outlining the process for converting positions from exempt to nonexempt and vice versa.[18] In November 2019, the State proposed the implementation of a Comprehensive Employment Plan (CEP) and expressed its desire to exit the 1972 decree.[19] Although significant parts of the CEP had not yet been implemented,[20] the Governor moved in 2020 to vacate the 1972 consent decree.[21]

The district court denied the motion.[22] Rule 60(b) of the Federal Rules of Civil Procedure asks whether the "objective of the original order has been achieved" and whether a durable remedy exists.[23] The

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[12] *Shakman*, 43 F.4th at 725. The Supreme Court in 1976 and 1990 "affirm[ed] the unlawfulness of political patronage in government employment decisions" with respect to the First and Fourteenth Amendments. *Id.* at 725–26 (citing Elrod v. Burns, 427 U.S. 347, 356–59 (1976) (plurality opinion); Rutan v. Republican Party of Ill., 497 U.S. 62, 79 (1990)); *see also Elrod*, 427 U.S. at 373.

[13] Johnson, *supra* note 10, at 487; *see also id.* at 484–85. This decree banned the Governor's Office from "conditioning, basing or knowingly prejudicing or affecting any term or aspect of governmental employment" for current employees based on political reasons. Shakman v. Off. of the Governor, No. 69-CV-02145, 2021 WL 1222898, at *6 (N.D. Ill. Mar. 31, 2021) (emphasis omitted) (quoting Judgment ¶ E(1), at 4, Shakman v. Democratic Org. of Cook Cnty., 356 F. Supp. 1241 (1972) (No. 69 C 2145), *reprinted in* Governor's Memorandum in Support of His Motion to Vacate the May 5, 1972 Consent Decree attach. 1, exhibit A, at 5, *Shakman*, No. 69-CV-02145, ECF No. 6946 [hereinafter Governor's Memorandum]).

[14] In 2006, one investigation resulted in four criminal convictions. Gretchen Ruethling, *Chicago Officials Convicted in Patronage Arrangement*, N.Y. TIMES (July 7, 2006), https://www.nytimes.com/2006/07/07/us/07chicago.html [https://perma.cc/UP9Y-U26N]. And recently, the Illinois Office of Executive Inspector General reported "multiple decree violations between 2003 and 2013." *Shakman*, 43 F.4th at 726.

[15] *Shakman*, 2021 WL 1222898, at *2.

[16] *Id.*

[17] *Id.* at *3 (quoting Fifth Report of the Special Master at 5, *Shakman*, No. 69 C 2145 (N.D. Ill. Apr. 24, 2017), ECF No. 4988).

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at *1; *see* Governor's Memorandum, *supra* note 13, at 42.

[22] *Shakman*, 2021 WL 1222898, at *17.

[23] *Id.* at *4; *see* FED. R. CIV. P. 60(b).

party seeking the discharge bears the burden of establishing that changed circumstances — meaning a significant change in either law or fact — warrant relief.[24] The State argued that both were present.[25] There was a change in law because, under "contemporary Article III standing doctrine," the Plaintiffs now would have a far weaker standing claim, which is an "equitable consideration under the Rule 60(b) analysis."[26] And there was a change in fact because the recent establishment of a state monitoring body for hiring, the development of comprehensive remedial plans,[27] and the lack of ongoing federal law violations[28] had "render[ed] federal court oversight unnecessary."[29] The district court disagreed. First, it dispensed with the standing concerns by undertaking to focus its analysis of the entire case on the specific First Amendment interest that the consent decree strove to protect.[30] The district court then concluded that the Governor had not shown that a durable remedy had been established.[31] It found the implementation of the plan to be lacking,[32] and "the mere existence . . . of oversight institutions" did not mitigate evidence of actual ongoing noncompliance with the consent decree,[33] especially considering the "damning" examples of political discrimination within the past six years.[34] The Governor then appealed.[35]

The Seventh Circuit reversed and remanded.[36] Writing for the panel, Judge Scudder[37] concluded that the Governor had satisfied the terms of the decree for two primary reasons.[38] First, the "last significant violations of the decree seem to have occurred nearly a decade ago with the [IDOT] patronage scandal."[39] The court was also unaware of "any meaningful number of lawsuits alleging that the Governor . . . violated the constitutional rules" in question.[40] Second, the Governor had instituted "several remedial measures in recent years . . . to minimize the risk of political patronage in employment practices."[41] That no constitutional

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[24] *Shakman*, 2021 WL 1222898, at *3 (citing Rufo v. Inmates of Suffolk Cnty. Jail, 502 U.S. 367, 384 (1992)).

[25] *Id.* at *4–5.

[26] *Id.* at *4.

[27] *Id.* at *9.

[28] *Id.* at *11.

[29] *Id.* at *5.

[30] *Id.*

[31] *Id.* at *10.

[32] *Id.* at *9.

[33] *Id.* at *10.

[34] *Id.* at *11.

[35] *Shakman*, 43 F.4th at 728.

[36] *Id.* at 732.

[37] Judge Scudder was joined by Judge Easterbrook. Judge Kanne passed away on June 16, 2022, and did not participate in deciding this case. *Id.* at 724 n.* (syllabus).

[38] *Id.* at 728.

[39] *Id.*

[40] *Id.*

[41] *Id.* at 729.

violations arose during those years was evidence that the State's reform measures were stable.[42] And, contrary to the district court's conclusions, strict adherence to the CEP was not required since it is more a "human resource manual than an articulation of the lines" between lawful and unlawful activity.[43]

Although the Seventh Circuit's analysis "could [have] end[ed] there, the constitutional implications of a contrary conclusion warrant[ed] special emphasis."[44] To continue to hold the Governor to the decree would both "affront principles of federalism" and propel the district court beyond the "Case or Controversy" limitation of Article III.[45] On federalism, because the Governor "swears an oath" to uphold the federal Constitution and to comply with the Supreme Court's constitutional rulings, his failure to do so means litigation in state or federal court should proceed in the usual, case-by-case manner.[46] "[E]xtended federal judicial oversight . . . , absent extraordinary circumstances, . . . should not serve as a primary means of ensuring" compliance of state officials with federal law.[47] The court had an "equally difficult time identifying any remaining Case or Controversy."[48] Federal courts are not "indefinite institutional monitor[s],"[49] and federal judges do not possess "'some amorphous power to supervise the operations of government and reimagine from the ground up' the employment practices of Illinois."[50]

The Seventh Circuit's constitutional reasoning was undoubtedly broad, using capacious language and drawing upon first principles of constitutional law to justify its retreat from the original *Shakman* decree. The unboundedness of its federalism reasoning undermines the very existence of consent decrees and is well-situated within a broader trend in which the Supreme Court amplifies federalism concerns while lowering the standard for state government defendants seeking terminations or modifications of judicially overseen remedies.[51]

Consent decrees can engender comprehensive remedial schemes that touch upon matters closely tied to state sovereignty, making them ripe for heightened federalism concerns.[52] The limiting and legitimating factor of consent decrees is that they "must be directed to protecting federal

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[42] *Id.*
[43] *Id.*
[44] *Id.* at 730.
[45] *Id.*
[46] *Id.* at 731.
[47] *Id.*
[48] *Id.*
[49] *Id.* at 732.
[50] *Id.* (internal quotation marks omitted in original) (quoting Whole Woman's Health v. Jackson, 142 S. Ct. 522, 532 (2021)).
[51] *See* Parkin, *supra* note 2, at 185 ("As the debate over institutional reform litigation has unfolded in the pages of law reviews, the Supreme Court has expressed growing discomfort with this form of litigation.").
[52] *See* Horne v. Flores, 557 U.S. 433, 448 (2009).

interests."[53] Where that requirement is met, the Supreme Court has affirmed the broad remedial jurisdiction of the district courts in administering consent decrees.[54] And, animated by the parties' consent, the potentially wide-reaching scope of consent decrees can extend beyond what a court may be able to order upon a finding of liability.[55]

Though federal courts were eager to affirm and implement consent decrees in the 1960s, particularly with regard to strengthening civil rights,[56] over time, the Supreme Court has become increasingly cognizant of the "sensitive federalism concerns" they raise.[57] *Horne v. Flores*,[58] the Court's most recent consideration of the matter, represents a zenith for both hostility toward institutional-reform litigation and attention to the federalism concerns it raises.[59] Besides suggesting for the first

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53 Frew *ex rel.* Frew v. Hawkins, 540 U.S. 431, 437 (2004).

54 *See* Milliken v. Bradley, 433 U.S. 267, 282 (1977) ("[W]here . . . a constitutional violation has been found, the remedy does not 'exceed' the violation if the remedy is tailored to cure the '*condition* that offends the Constitution.'" (internal quotation marks omitted) (quoting Milliken v. Bradley, 418 U.S. 717, 738 (1974))).

55 Loc. No. 93, Int'l Ass'n of Firefighters v. City of Cleveland, 478 U.S. 501, 525 (1986); *see also* Lloyd C. Anderson, *Implementation of Consent Decrees in Structural Reform Litigation*, 1986 U. ILL. L. REV. 725, 726–27; Effron, *supra* note 1, at 1809.

56 Anthony N.R. Zamora, Note, *The Century Freeway Consent Decree*, 62 S. CAL. L. REV. 1805, 1808–09 (1989); *see also* Parkin, *supra* note 2, at 177–78.

57 *Horne*, 557 U.S. at 448. The *Horne* decision is the latest in a series of cases embodying increasingly pronounced skepticism toward institutional-reform injunctions. Parkin, *supra* note 2, at 170 & n.7. In 1992, the Supreme Court in *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992), noted that, within the Rule 60(b)(5) inquiry for the modification of consent decrees, the "principles of federalism and simple common sense require the [district] court to give significant weight to the views of . . . government officials." *Id.* at 392 n.14. In doing so, however, the Court cautioned that consent decrees, as creatures of consensual negotiation *by* the state or local government, should not be enforced such that behavior conforms only to a "constitutional floor." *Id.* at 391. The Court in 2004 gave federalism more sustained attention in *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, though it nonetheless affirmed the federal court's power. *Id.* at 438. Texas had challenged a decree that imposed conditions "far beyond" the mandate of the Medicaid statute. Catherine Y. Kim, *Changed Circumstances: The Federal Rules of Civil Procedure and the Future of Institutional Reform Litigation After* Horne v. Flores, 46 U.C. DAVIS L. REV. 1435, 1453 (2013). The Court noted that federalism required responsibility for discharging the state's obligations to be "promptly" returned to the state once the decree's "objects . . . have been attained." *Frew*, 540 U.S. at 442. The concern for federalism is especially acute where prospective relief "mandates the State . . . to administer a significant federal program," such that "state officials with front-line responsibility . . . [must] be given latitude and substantial discretion." *Id.*

58 557 U.S. 433.

59 *See* Kim, *supra* note 57, at 1455; Parkin, *supra* note 2, at 170, 185–86, 185 n.79; Elizabeth G. Porter, *Pragmatism Rules*, 101 CORNELL L. REV. 123, 140 (2015) (arguing that *Horne* "strongly signal[s] lower courts to get out of the business of institutional reform"). Though *Horne* technically considered a court-ordered injunction after finding that the defendant had violated the law, the boundary between such a decree and consent decrees is blurry. *See* Kim, *supra* note 57, at 1461. *Horne* itself cited and quoted from cases like *Rufo* and *Frew* in its core reasoning, both of which consider consent decrees. *See, e.g.*, *Horne*, 557 U.S. at 449 (quoting *Frew*, 540 U.S. at 441) (pointing to *Frew* as the source of the democratic-accountability rationale); *id.* at 450 (quoting *Rufo*, 502 U.S. at 381). *Shakman v. Pritzker* similarly cited to *Frew* and *Horne* without distinction. *See Shakman*, 43 F.4th at 729–32 (quoting *Horne*, 557 U.S. at 447; *Frew*, 540 U.S. at 442) (citing *Horne*, 557 U.S. at 450);

time[60] that the state must be released from decrees once in compliance *with federal law* instead of the substantive objects of the decree[61] — a lenient standard by some measures[62] — the Court also expressed deep-seated skepticism toward institutional-reform injunctions in general.[63] Because these injunctions "bind state and local officials to the policy preferences of their predecessors," they may "improperly deprive future officials of their designated legislative and executive powers."[64] But implementation of these decrees "require[s] years, if not decades,"[65] and taken on its explicit terms, this federalism concern throws into doubt whether decrees stretching past a couple of election cycles will be tolerated. What's more, despite the fact that the Supreme Court has once used the state's consent as a factor legitimizing the sometimes-extraordinary reach of consent decrees,[66] this rationale weaponizes that very same consent by suggesting that it sanctions impermissible intrusion. In using such an expansive rationale, then, the *Horne* Court destabilized both an underlying premise and a legitimating force of consent decrees.

The Seventh Circuit's analysis of federalism in *Shakman* was just as boundless as the democratic-accountability rationale was in *Horne*. It articulated a string of structural factors signaling a retrenchment from *this* consent decree in service of federalism's ends. But these factors had little specific relevance to the case, and their conceivable scope threatens to subvert the very existence of consent decrees.

First, the court seemed to suggest that when the defendant is a state governor, it will tread with caution in enforcing a consent decree against

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see also United States *ex rel.* Anti-Discrimination Ctr. of Metro N.Y., Inc. v. Westchester County, 712 F.3d 761, 775 (2d Cir. 2013) (noting that *Horne* concerned the "modification[] of consent decrees" (citing *Horne*, 557 U.S. at 447–48)).

60 Kim, *supra* note 57, at 1466; *see id.* at 1452–53, 1460.

61 *Horne*, 557 U.S. at 450–51, 454. *Horne* "lower[ed] the threshold for defendants to obtain a modification to, or the dissolution of, orders in long-lasting institutional reform cases." Jackson v. Los Lunas Cmty. Program, 880 F.3d 1176, 1199 (10th Cir. 2018).

62 *See Rufo*, 502 U.S. at 391. One district court has further noted that this constitutional floor is "ill-defined." Evans v. Fenty, 701 F. Supp. 2d 126, 165 (D.D.C. 2010); *see* Mark Kelley, Note, *Saving 60(b)(5): The Future of Institutional Reform Litigation*, 125 YALE L.J. 272, 298 (2015) (quoting *Evans*, 701 F. Supp. 2d at 165).

63 Indeed, the Court cited prominent legal scholarship criticizing the existence or legitimacy of consent decrees in general. *See Horne*, 557 U.S. at 448–49.

64 *Id.* at 449 (quoting *Frew*, 540 U.S. at 441) ("Where 'state and local officials . . . inherit overbroad or outdated consent decrees . . . ,' they are constrained in their ability to fulfill their duties as democratically-elected officials." (first omission in original) (quoting AM. LEGIS. EXCH. COUNCIL, RESOLUTION ON THE FEDERAL CONSENT DECREE FAIRNESS ACT (2006), *reprinted in* Brief on Behalf of the American Legislative Exchange Council and Certain Individual State Legislators as *Amicus Curiae* in Support of Petitioners app. at 1a, *Horne* (No. 08-294), 2009 WL 526204)); *see also* Frank H. Easterbrook, *Justice and Contract in Consent Judgments*, 1987 U. CHI. LEGAL F. 19, 34; Christopher Serkin, *Public Entrenchment Through Private Law: Binding Local Governments*, 78 U. CHI. L. REV. 879, 897 (2011).

65 Parkin, *supra* note 2, at 171.

66 *See Rufo*, 502 U.S. at 389; *see also* Loc. No. 93, Int'l Ass'n of Firefighters v. City of Cleveland, 478 U.S. 501, 525 (1986).

her. It emphasized that the "Governor of Illinois is the state's highest ranking elected official"[67] but did not explain the specific relevance of the Governor's institutional capacity to the question whether a decree should be terminated because either the judgment has been satisfied or "applying [the judgment] prospectively is no longer equitable."[68] Indeed, if the Governor's position were important on its own, courts should move cautiously in enforcing any consent decree cabining the Governor's capacities as Governor, even when she may be acting in contravention of federal law. The court continued that the Governor "swears an oath to uphold both the Illinois Constitution *and* the federal Constitution," and that the federal Constitution presumes Governors "'have a high degree of competence in deciding how best to discharge their governmental responsibilities,' including how to effectuate constitutional compliance."[69] But an alleged lack of compliance with the Constitution or federal law is presumably the origin of the consent decree. There is tension here with the Supreme Court's admonition that, as an instrument animated by parties' consent and fashioned through negotiation,[70] a decree should not be reinterpreted by district courts to encompass protection only for a "constitutional floor."[71]

Second, the court suggested that consent decrees implicating core state functions presumptively threaten federalism principles. In its view, "[m]aking employment decisions is a meaningful part of the Governor's responsibility and executive prerogative,"[72] and a decree unduly impinges on that prerogative. But here, too, the court painted with a broad brush. Consent decrees frequently, and maybe even by their nature and function, involve core areas of state sovereignty and governance, yet this alone has never been sufficient to modify or terminate a consent decree.[73] Indeed, if federalism concerns counsel caution where consent decrees implicate core state functions, then these concerns should arise at the consent decree's creation, not only at its demise.

Third, and last, the court most obviously signaled a withdrawal from consent decrees as a whole when it insisted on "case-by-case" resolution of constitutional injuries, relinquishing federal judicial oversight to "extraordinary circumstances."[74] This assertion glossed over the fact that these decrees are products of negotiation and consent by the defendants, who had likely chosen, at the time, to avoid lengthy and costly litigation.[75] And it also arguably fails to sufficiently respect that consent decrees

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[67] *Shakman*, 43 F.4th at 730.
[68] FED. R. CIV. P. 60(b)(5).
[69] *Shakman*, 43 F.4th at 731 (quoting *Frew*, 540 U.S. at 442).
[70] *See Int'l Ass'n of Firefighters*, 478 U.S. at 525.
[71] *Rufo*, 502 U.S. at 391.
[72] *Shakman*, 43 F.4th at 730–31.
[73] Effron, *supra* note 1, at 1799.
[74] *Shakman*, 43 F.4th at 731.
[75] Anderson, *supra* note 55, at 726–27; *see also Int'l Ass'n of Firefighters*, 478 U.S. at 525.

were by definition born of the type of case-by-case adjudication that the court so acclaimed.

Though the Seventh Circuit appeared to consider its constitutional analysis auxiliary to its finding of satisfaction,[76] it nevertheless proclaimed that these federalism principles "supply a concrete guidepost for resolving [the] case."[77] Indeed, the Seventh Circuit's distaste for the longevity and perceived invasiveness of this consent decree spanned the length of the decision.[78] But this distaste may have been misplaced: Governor Pritzker restricted communications with the court-appointed watchdog early in 2019,[79] and, in June 2020, WBEZ Chicago reported that the Governor had hired thirty-five people from Illinois House Speaker Mike Madigan's "clout list."[80]

At its narrowest, *Shakman* signals that *Horne*'s wake may be larger than previously imagined.[81] The hostility to institutional-reform litigation will likely not end soon, and this case puts forth several new considerations that will whittle away at the basis on which consent decrees stand. At its broadest, *Shakman* may embody the conservative paring back of judicial remedies that has made many substantive rights more vulnerable.[82] Viewed this way, the expansive shadow cast by federalism over the legitimacy and enforcement of consent decrees not only has the potential to take a "potent tool" out of the public-interest litigant's toolbox[83] — it also threatens to unravel a key mechanism for ensuring that states abide by federal law at a time when they have demonstrated an increasing willingness to contravene it.[84]

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[76] *See Shakman*, 43 F.4th at 730.

[77] *Id.* at 731.

[78] In addition to the explicit constitutional analysis in section II.B of the opinion, the court alluded to its federalism concerns in section II.A, which analyzed whether the objects of the decree had been satisfied. *See, e.g.*, *id.* at 726 ("What may have started with a federal court's well-grounded injunction came to look more like indefinite federal judicial supervision of state employment practices."); *id.* at 727 ("[W]e sounded serious concerns about the duration and seemingly never-ending nature of the Shakman decrees: 'Do not let today's result cloud the grave federalism concerns we have with the fact that the Clerk of Cook County has been under the thumb of a federal consent decree for the last 50 years[.]' . . . '[This] should have raised red flags long ago.'" (quoting Shakman v. Clerk of Cook Cnty., 994 F.3d 832, 843 (7th Cir. 2021))); *id.* at 730 ("[A]llowing risk-driven reasoning to carry the day creates a most-concerning risk of its own — that the decree remains in place indefinitely.").

[79] Dan Petrella, *Court Monitor Says Anti-patronage Efforts Hampered by Gov. J.B. Pritzker's "Unproductive" Restrictions on Communications with State Agencies*, CHI. TRIB. (Feb. 6, 2020, 9:00 PM), https://www.chicagotribune.com/politics/ct-illinois-patronage-report-20200207-kzcggbe3j5ah7gm4ka5junorjy-story.html [https://perma.cc/Y7ZD-BD3Q].

[80] Dan Mihalopoulos, *Illinois Gov. JB Pritzker Hired 35 People from House Speaker Michael Madigan's Clout List*, WBEZ CHI. (June 15, 2020, 2:12 PM), https://www.wbez.org/stories/pritzker-madigan/809f86d3-4eff-413f-8c5c-cc3210a9ed9d [https://perma.cc/EP8H-46CL].

[81] *See* Parkin, *supra* note 2, at 206–07 (arguing that lower courts will have to discern whether *Horne* is applicable since the concerns in *Horne* will not be present in all institutional-reform cases).

[82] *See, e.g.*, AZIZ Z. HUQ, THE COLLAPSE OF CONSTITUTIONAL REMEDIES 3–5 (2021).

[83] Zamora, *supra* note 56, at 1808; *see* Parkin, *supra* note 2, at 173 (noting that developments in the termination of consent decrees "affect the ability of *new* plaintiffs to obtain *new* injunctions").

[84] *See* Whole Woman's Health v. Jackson, 142 S. Ct. 522, 545–46 (2021) (Sotomayor, J., concurring in the judgment in part and dissenting in part).