Consideration of Administrative Loyalty in Identifying Positions Exempt from the Shakman Decree

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INTRODUCTION

The Democratic political machine of Chicago has fostered a notorious system of patronage employment. Although numerous reformers have endeavored to eliminate the network, only recently has the patronage system been disturbed. Lawsuits by disgruntled candidates, voters and public employees have effectuated this decomposition of the Chicago machine. The judicial decisions, however, have not been simple ones; courts have deemed it necessary to preserve some administrative discretion within an elected gov-

1. Use of the word "machine" to denote the controlling organization of a political party in the United States dates back to at least 1876. T. Guterbock, Machine Politics in Transition 275 n.1 (1980) (citing 6 Oxford English Dictionary 8 (1961)). Machine politics has been defined as "the manipulation of certain incentives to partisan political participation; favoritism based on political criteria in personnel decisions, contracting, and administration of laws," and a political machine as "an organization that practices machine politics, i.e., that attracts and directs its members primarily by means of incentives." A. Gitelson, M. Conway & F. Feigert, American Political Parties: Stability and Change 112 (1984) [hereinafter cited as Stability and Change] (citing Wolfinger, Why Political Machines Have Not Withered Away and Other Revisionist Thoughts, 34 J. Pol. 373, 374-75 (1972)).


3. In 1971, the executive director of the Better Government Association, Richard Friedman, received less than thirty percent of the votes in an unsuccessful run for the mayoral seat against Richard J. Daley. Even those who had helped finance Friedman's exposé of the machine's waste and payroll padding failed to back the Republican candidate in the election. L. O'Connor, Clout: Mayor Daley and His City 7 (1975). Daley subsequently defeated Alderman William Singer, the city's new liberal hope, in the 1975 election. Id. at 242-43.

4. See infra notes 49-76 and accompanying text. Various structural reforms also have contributed to the decline in machine politics. Such reforms include the institution of merit systems of hiring and retaining government employees at the federal, state, and local levels; electoral reforms such as nonpartisan ballots, which reduce the party organization's power to influence election results; a transfer of responsibility for social services from local governments or party organizations to state and federal governments; and a constituency dependent on state and federal funds which are more carefully audited and controlled by neutral employees. Stability and Change, supra note 1, at 112-13.
ernment while dismembering systems of patronage. The decisions thus have taken the form of broad prohibitions of patronage which carve out exemptions for certain positions.

In 1972, a federal district court entered the *Shakman* consent decree ("1972 decree"), in which the court broadly proscribed conditioning employment on political considerations yet retained jurisdiction to ascertain which "policymaking" and "confidential" positions should be exempt from the judgment. In a 1976 decision, *Elrod v. Burns,* the United States Supreme Court held that the dismissal of a public employee for political patronage reasons violated the employee's first amendment rights. The Court, however, considering a new administration's need to implement its policies, determined that "policymaking" and "confidential" employees were not protected by its holding. Four years later, in *Branti v. Finkel,* the Court redefined the exempt class as those positions for which "political affiliation was an appropriate requirement." A Seventh Circuit decision further refined the *Branti* formula to include only positions which authorize "meaningful input" in areas where there is room for "principled disagree-

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6. See, e.g., *Branti v. Finkel,* 445 U.S. 507, 518 (1980); *Elrod v. Burns,* 427 U.S. 347, 367-68 (1976); *Shakman v. Democratic Org. of Cook County,* 481 F. Supp. 1315, 1356 (N.D. Ill. 1979) [hereinafter cited as *Shakman IV*]. The core *Shakman* cases are designated as follows:

*Shakman I,* 310 F. Supp. 1398 (N.D. Ill. 1969) (original *Shakman* complaint dismissed for its conclusory statements and plaintiffs' lack of standing); *Shakman II,* 435 F.2d 267 (7th Cir. 1970) (reversed and remanded 1969 holding based on findings that plaintiffs had standing, had not made conclusory statements, and had filed a justiciable complaint); *Shakman III,* 356 F. Supp. 1241 (N.D. Ill. 1972) (denied motion to dismiss; voter-candidate-taxpayer rights held not merely derivative of the rights of patronage employees; allegation that employment is conditioned on political considerations stated a cause of action); *Shakman IV,* 481 F. Supp. 1315 (N.D. Ill. 1979) (patronage practices which attempt to coerce public employees' political support held unconstitutional; 1972 consent decree attached); *Shakman V,* 569 F. Supp. 177 (N.D. Ill. 1983) (declaratory judgment entered holding that governmental hiring had been "unconstitutionally conditioned"; hiring implementation order; list of exempt positions under both the implementation order and 1972 decree).


10. *Id.* at 359-60.

11. *Id.* at 367-68, 375. Justices Brennan, Marshall and White joined in an opinion which exempted "policymakers." *Id.* at 467-68. Justice Stewart, joined by Justice Blackmun, concurred in the judgment but suggested extending protection to "confidential" employees as well. *Id.* at 375 (Stewart, J., concurring).


13. *Id.* at 518.
ment,” while a Northern District of Illinois federal court focused on whether an employee had the type of discretion which could be used to “thwart” an administration’s goals. Subsequently, an appendix to a 1983 Shakman implementation order offered an exhaustive schedule of exempt positions within the Chicago city government, with the court again retaining jurisdiction for reconsideration of those classifications.

Courts hearing Shakman petitions challenging exempt classifications have been inconsistent in choosing among the Elrod, Branti, and Seventh Circuit exemption formulas. Even individual opinions have vacillated between standards, as illustrated by the decision in Vrdolyak v. City of Chicago, an opinion which offered little guidance to public employers or employees considering the appropriateness of classifying a position as exempt.

The Vrdolyak court employed the Elrod labels, its decision turning on the plaintiff’s individual input into “policymaking” decisions and his involvement in “confidential matters.” The court’s introduction of the Branti and Seventh Circuit formulas and subsequent retreat to Elrod labels illustrates the difficulty courts have experienced in applying the various standards. This uncertainty has been curbed somewhat by the Seventh Circuit’s recent holding in Tomczak v. City of Chicago. The court in Tomczak

17. Id. at 178-84.
18. Id. at 191-203.
19. Id. at 207.
20. Compare Farina v. City of Chicago, No. 84-5881, slip op. at 6-9 (N.D. Ill. June 14, 1985) (job description is one of policymaker within the Shakman decree) with Vrdolyak v. City of Chicago, No. 83-7999, slip op. at 11-13 (N.D. Ill. Nov. 27, 1984) (available June 1, 1985, on LEXIS, Genfed Library, Dist file) (position improperly classified as exempt), appeal dismissed, No. 84-3160 (7th Cir. Nov. 20, 1985).
21. No. 83-7999 (N.D. Ill. Nov. 27, 1984). On Oct. 11, 1985, Peter Vrdolyak pleaded guilty to embezzling $1,500 in union funds by falsely claiming that he had taken a 10 day trip to Hawaii on union business. Chi. Tribune, Oct. 12, 1985, § 1, at 5, col. 2. Peter Vrdolyak subsequently resigned from his position as assistant director of the city’s Department of Inspectional Services. In memoranda to the Seventh Circuit, counsel for Vrdolyak and the city asserted that the city’s appeal had become moot as a result of Vrdolyak’s resignation. Accordingly, the Seventh Circuit vacated the district court’s judgment and remanded the case with instructions to dismiss the original complaint.
23. Id. at 11.
24. Id. at 12.
25. 765 F.2d 633 (7th Cir. 1985).
objectified the exemption rule by considering the "office held" rather than the performance of the individual "officeholder."  

Another recent Seventh Circuit case has provided additional guidance with its recognition of the need for "professional loyalty" between public employees and elected officials.

This note first will review the mechanics of patronage employment. Next, it will discuss the principles set forth in a sequence of Shakman decisions, with particular attention to positions listed as exempt from the various judgments. The Supreme Court decisions regarding patronage dismissals then will be reviewed, again with an emphasis on their formulas for determining which positions are exempt from their holdings. Next, the note will consider the Seventh Circuit and Northern District of Illinois reformulations of the Supreme Court exceptions, and how standards from various precedents have been applied in Shakman cases, especially Vrdolyak v. City of Chicago. This review of Shakman cases will consider whether courts have accommodated a new administration’s need to implement its policies. Following an examination of Vrdolyak, this note will turn to the recent Seventh Circuit decision in Tomczak to illustrate how that court's objective test provides more certainty to litigants and, possibly, contributes to the avoidance of unnecessary litigation.

The note will conclude that in determining exempt positions, courts must recognize that policies of a new administration can be effectuated only if employees possess "administrative loyalty": that loyalty which is necessary to ensure that an electorate's policy choices are implemented. Judicial recognition of a need for "professional loyalty," and business management theories which emphasize common objectives between employees and management, will provide support for this contention. Because the scope of the exempt class must not eviscerate the Shakman prohibitions, parameters of administrative loyalty will be defined by the objective standards of Tomczak and public administration theories of accountability.

**BACKGROUND**

*The Patronage System in Chicago and Cook County, Illinois*

The term "Chicago politics" conjures up thoughts of a Demo-

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26. *Id.* at 641.
27. Grossart v. Dinaso, 658 F.2d 1221, 1232 (7th Cir. 1985).
cratic machine and patronage appointments. The topic has, in
fact, occupied numerous chapters in the annals of patronage his-
tory, earning Chicago the title "patronage capital of the
world." The following description of the patronage system in the
Chicago area at the time of the early Shakman litigation supports
such a designation.

Cook County consists of the City of Chicago and thirty outlying
townships. In each Chicago ward, and in most of the townships,
there is a regular Democratic Party organization. Traditionally,
the heads of these ward and township organizations sponsored ap-
plicants for public jobs with the City, Cook County, various
County offices, the Cook County Forest Preserve District, and the
Park District. Sponsored individuals thus received preferential
treatment for over 20,000 governmental positions in the Cook
County area. Democratic sponsorship, however, usually was
granted only to those individuals who had done political work for
organization candidates, or who promised future work. Typi-

29. For definitions of "machine" and "political patronage," see supra notes 1-2.
30. See, e.g., H. GOSNELL, supra note 2, at 232-36; M. ROYKO, BOSS passim (1971);
M. TOLCHIN & S. TOLCHIN, TO THE VICTOR 27-45 (1971). Patronage was part of Amer-
ican politics long before it became the modus operandi of Chicago's City Hall. Even the
renowned egalitarian Thomas Jefferson replaced the Federalists with his party's Republi-
cans upon his election to the presidency in 1801, in order to create "a more even distribu-
tion between the parties." M. TOLCHIN & S. TOLCHIN, supra, at 323. But it was
President Andrew Jackson who first articulated, legitimized, and translated the spoils
system into the American experience. Id. Ironically, Jackson had been elected president
in large part due to his denouncement of John Quincy Adams' patronage practices. Id.
32. This description of patronage in Chicago and Cook County was provided when
several Democratic defendants who had consented to the 1972 Shakman decree stipu-
lated to numerous facts in order to resolve, without trial, disputed factual issues regard-
ing hiring practices. The parties negotiated until the summer of 1977, at which time the
following defendants submitted their admissions: The Democratic County Central Com-
mittee of Cook County and its members, including its Chairman, George W. Dunne; the
City of Chicago; Dunne, individually and as President of the Board of Commissioners of
Cook County; Morgan M. Finley, individually and as Clerk of the Circuit Court of Cook
County; Thomas M. Tully, as Assessor of Cook County; Stanley Kusper, as Clerk of
Cook County; Edward Rosewell, as Treasurer of Cook County; and the Forest Preserve
District of Cook County, through its President, George W. Dunne. Shakman IV, 481 F.
Supp. at 1324.
33. COOK COUNTY HIGHWAY DEPT., TOWNSHIP MAPS OF COOK CO., INCLUDING
34. Shakman IV, 481 F. Supp. at 1325. The ward or township organization is usually
run by a Democratic committeeman. Id. In those areas in which "independents" have
been elected committeemen, the regular organization may have its own head. Id.
35. Id. This sponsorship typically was provided by means of a letter to the employing
agency. Id.
36. Id.
37. Id.
cally, if the applicant had worked for an opposing political group, the regular Democratic organization would not sponsor that individual. Sometimes, however, sponsorship was bestowed if the individual agreed to switch allegiance to the regular Democratic organization.

On the average, this system produced 250 patronage employees in each city ward, a majority of whom helped elect candidates supported by the County Democratic Central Committee. The extensiveness of Chicago's patronage system was the product of several decades of organization; the system's labyrinthine nature served as an intrinsic defense mechanism against reform. Nevertheless, the Shakman litigation did make inroads into the patronage system. In accordance with the 1972 Shakman decree...

38. Id.
39. Id.
40. Id. As each of the fifty city wards averaged approximately sixty precincts per ward, approximately four employees per precinct received their jobs through patronage sponsorship. Id. Historically, a number of these public employees served as precinct captains who were responsible for winning votes for the party. See Machine Politics, supra note 2, at 51-54. For a discussion of the characteristics and roles of precinct captains, see Id. at 51-53 (selection), 54-68 (characteristics), 69-81 (relief and friendly activities), 81-88 (political activities).
41. Machine Politics, supra note 2, at 51-54. The Shakman defendants explained that "this is one of the purposes of giving the preference in hiring." Shakman IV, 481 F. Supp. at 1325.
42. P. KNAUSS, CHICAGO: A ONE-PARTY STATE 1 (1974). The [Mayor Richard J.] Daley machine is considered the product of four decades of work: "Founded by Anton Cermak in 1937, consolidated by Edward J. Kelly and Party Chairman Pat Nash during the 'Thirties and 'Forties, weakened by Martin J. Kennelly, it was refurbished, expanded, and refined during the [five] terms of Richard J. Daley." Id.
43. See supra notes 3, 33-42 and accompanying text. The complexity of the system frustrated the Shakman plaintiffs' initial attacks against the Cook County Democratic organization. In dismissing the plaintiffs' original complaint in Shakman I, the court explained that plaintiffs, who were not public employees, were unable to illustrate that the patronage system directly infringed upon their rights as candidates, voters, and taxpayers. Shakman I, 310 F. Supp. at 1400-01. The court also noted that courts generally "have maintained a reluctance to interfere with the strictly internal operations of a political party." Id. at 1400 (citing Irish v. Democratic Farmer Labor Party of Minn., 399 F.2d 119, 120 (8th Cir. 1968); Lynch v. Torquato, 343 F.2d 370 (3d Cir. 1965)).
44. The Shakman decisions, according to "one of the shrewdest committeemen the machine ever produced," former Alderman Thomas Keane, "are the reason the machine has broken down, never to be built again. Forcing people to work elections was the key to the organization's power, . . . and Shakman [threw] away the key." Tuohy, Happy Birthday, Chi. Law., Sept. 1985, at 8, 13.
45. Another commentator cited the Shakman decisions as a factor contributing to the fall of Chicago's machine: "The death of its patriarch, Richard Daley, the [Shakman] court rulings sharply restricting patronage, and the election of a black reformer as mayor have all combined to put the party in its present advanced state of decay." Hertz, Chicago's Vanishing Machine, Chi. Tribune, May 6, 1985, § 1, at 21, col. 1.

Alderman Edward Burke, a Democratic ward committeeman and a "machine main-
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and subsequent order and appendix, city and county public officials now are required to implement hiring plans which involve nonpolitical hiring standards and public notice of job availability. Furthermore, public employers are prohibited from dismissing employees on the basis of political considerations.

The Shakman Decisions

In 1969, Michael Shakman, independent candidate for delegate to the Illinois Constitutional Convention, and Paul Lurie, a voter who supported Shakman's candidacy, launched their attack against the Cook County patronage system. Their complaint against various agencies, elected officials, and the Democratic organization assailed the extensive system of patronage employment for its influence on the electoral process. That charge has generated litigation for well over a decade.

stay. Id., similarly commented on the decomposition of the machine, "'I don't think the [Democratic] endorsement is worth too much . . . there are only about 11 or 12 wards with real organizations, that canvass and ring doorbells and produce a vote.' " Id. 45. Shakman IV, 481 F. Supp. at 1356-59. See infra notes 58-63. 46. Shakman V, 569 F. Supp. at 177. See infra notes 68-76. 47. Shakman IV, 481 F. Supp. at 1356-59. See infra note 70. 48. Shakman V, 569 F. Supp. at 179. See infra notes 62, 69 and accompanying text. 49. Shakman II, 435 F.2d at 268. 50. Defendants included those listed supra in note 32, as well as several members of the Democratic County Central Committee, several aldermen and county commissioners, and Mayor Richard J. Daley. Shakman II, 435 F.2d at 268-69. 51. The extensiveness of the system is indisputable although the number of positions involved has been a source of disagreement. The court reviewing the original Shakman complaint noted that allegations as to the number of Democratic patronage employees in Cook County ranged from 8,000 to 30,000. Shakman II, 435 F.2d at 269. Subsequently, the parties in Shakman stipulated that the Democratic organization in Cook County controlled more than 20,000 positions. Shakman IV, 481 F. Supp. at 1325. One author has quoted a higher figure: 30,000 in Chicago plus another 15,000 in Cook County. L. O'CONNOR, supra note 3, at 33. Patronage also has been said to account for 60,000 state jobs in Illinois. Id. Though the patronage system predominantly involves public employment, Lois Wille, a former Chicago Daily News writer, estimated that between 5,000 and 6,000 jobs in the private sector were made available to the Democratic machine. P. KNAUSS, supra note 42, at 92. 52. Shakman I, 310 F. Supp. at 1399. This effect on the electoral process is often considered one of the principal functions of patronage. Six major functions often are noted: (1) patronage aids in the maintenance of an active party organization by providing rewards to organization workers; (2) patronage serves as an instrument for party discipline, binding the differing factions through the distribution of jobs and preferments; (3) patronage assures party leaders the voting loyalty of those whom they appoint to government jobs; (4) patronage reaps financial returns from those given jobs; (5) patronage secures favorable policy or administrative action for the party; and (6) patronage builds support for legislative programs of executive patronage leaders. STABILITY AND CHANGE, supra note 1, at 106 (citing Sorauf, The Silent Revolution in Patronage, 20 PUB. AD. REV. 28 (1960)). 53. The original Shakman complaint was filed in 1969, Shakman I, 310 F. Supp. 398
Plaintiffs Shakman and Lurie, in their capacities as voters and taxpayers, and Shakman as a candidate, asserted in their original complaint that the Democratic organization's use of patronage put at an electoral disadvantage individuals who supported the election of candidates opposing those in power.\(^4\) Thus, the plaintiffs sought a declaration that defendants' practices violated the constitutional and statutory rights of voters, taxpayers, and candidates,\(^5\) an injunction against those practices, and damages.\(^6\)

The Seventh Circuit reversed the district court's dismissal of the complaint and remanded the case, holding that the lower court had erred in finding that Shakman and Lurie lacked standing.\(^7\) Following the dismissal of the complaint, the litigation continued into 1985. See, e.g., Eiseman v. City of Chicago, No. 84-9717 (N.D. Ill. Aug. 28, 1985); Ianello v. City of Chicago, No. 84-5881 (N.D. Ill. Aug. 20, 1985).

\(^54\) Shakman II, 435 F.2d at 268. The complaint was filed as a class action. In the six-count complaint, two counts were brought by Shakman as a candidate for public office, two counts were brought by both plaintiffs as voters, and two counts were brought by both plaintiffs as taxpayers. \(\text{id.}\)


\(^56\) Id. Plaintiffs sought compensatory and exemplary damages. \(\text{id.}\) The complaint was dismissed on the grounds that the plaintiffs lacked standing and that their allegations were conclusory. \(\text{id.}\) at 1400-01.

The Supreme Court and Seventh Circuit have made it clear that the impairment of a candidate's bid for public office is not, in itself, an interference with first amendment rights. See Bullock v. Carter, 405 U.S. 134, 142-43 (1972); Trafelet v. Thompson, 594 F.2d 628, 632 (7th Cir.), cert. denied, 444 U.S. 906 (1979); Newcomb v. Brennan, 558 F.2d 825, 828 (7th Cir.), cert. denied, 434 U.S. 968 (1977).

Accordingly, the Shakman complaint spelled out the first amendment rights which plaintiffs sought to vindicate:

- (1) the rights of Shakman, as an independent candidate, to associate with actual and potential supporters and be free from invidious discrimination,
- (2) the rights of both plaintiffs, as independent voters, to associate and to cast their votes effectively in an electoral process free from substantial partisan interference,
- (3) the rights of both plaintiffs, as taxpayers, to be free from coerced political contributions to the Democratic Party organization and its candidates, and
- (4) the rights of the patronage employees to speak, vote and associate.

\(\text{Shakman IV, 481 F. Supp. at 1321.}\)

\(^57\) Shakman II, 435 F.2d at 269. The court determined that plaintiffs were seeking redress for injuries to their own interests as voters and candidates and to the interests of others similarly situated. The court concluded that if 'plaintiffs' rights as voters and candidates warranted constitutional protection, it was unnecessary to determine whether their interests as taxpayers alone were sufficient to give them standing. \(\text{id.}\) (citing Domeser v. Board of Educ., 342 U.S. 429 (1952)).

In its analysis of plaintiffs' interests, the court noted that several Supreme Court cases had addressed inequalities in election procedures involving the right to cast a vote, a candidate's place on a ballot, and equal size in districts entitled to a representative. \(\text{id.}\) at 270 (citing Moore v. Ogilvie, 394 U.S. 814 (1969); Williams v. Rhodes, 393 U.S. 23 (1968); Reynolds v. Sims, 377 U.S. 553 (1964); Snowden v. Hughes, 321 U.S. 1 (1944)). The court recognized that in Shakman, plaintiffs' interests, which allegedly involved an
lowing denial of certiorari by the Supreme Court,\textsuperscript{58} and much negotiation by the parties,\textsuperscript{59} forty-two defendants\textsuperscript{60} approved a consent decree in 1972.\textsuperscript{61} Stated briefly, the 1972 decree was intended to free government employees from any form of employment discrimination based on political considerations, including requests for political work or contributions.\textsuperscript{62} Despite its broad proscriptions of patronage practices, the consent decree provided explicitly (in the “exemption clause”) that the court would retain jurisdiction to allow parties to the decree to litigate the issue of “equal chance” and “equal voice,” were impaired in a less mechanical manner than in the election procedure cases. The court nevertheless found that, under the equal protection clause, plaintiffs’ interests warranted constitutional protection. \textit{Shakman II}, 435 F.2d at 270. The reviewing court also held that plaintiffs’ allegations concerning the operation of the patronage system and its effect on the electoral process were factual, not conclusory, and that the allegations gave adequate notice to the defendants. The court concluded, despite potential problems for the plaintiffs in proving injury and for the court in shaping relief, that the case was justiciable. \textit{Id.} at 271.

\textsuperscript{58} 402 U.S. 909 (1971).

\textsuperscript{59} \textit{Shakman IV}, 481 F. Supp. at 1323.

\textsuperscript{60} \textit{Id.} As the result of an agreement between the plaintiffs and the original defendants, plaintiffs filed an amended complaint, adding counts which were analogous to the original claim but directed toward practices of the Republican Party in the Northern District of Illinois, outside the City of Chicago. The amended complaint named various Republican defendants, including several state government officers, the Republican State Central Committee and its chairman, the Republican County Central Committees for the eight counties in the Northern District of Illinois, Eastern Division, and various government agencies and Republican Party officials in the relevant counties. Many of the Republican defendants agreed to be bound by the terms of the decree. \textit{Id.}

\textsuperscript{61} \textit{Id.}, referring to the judgment that is reprinted as an appendix to \textit{Shakman IV}. Following entry of the consent decree, various Democratic and Republican defendants who were not parties to the decree filed motions to dismiss. \textit{Shakman III}, 356 F. Supp. at 1241. The court’s granting of defendants’ motion to dismiss portions of the complaint, to the extent it holds that plaintiffs could only receive relief for illegal practices that affect their own rights, remains good law. See \textit{Shakman IV}, 481 F. Supp. at 1324 n.3, 1328-29. The court, however, rejected defendants’ attempt to distinguish between coerced political activity performed on public time and that performed on employees’ own time, holding that any such activity which adversely affected plaintiffs’ rights was prohibited. \textit{Id.} at 1323 n.3. Other courts have agreed that a distinction between public and private coerced political work is invalid. \textit{Id.} Moreover, they have determined that no showing of coercion on the part of defendants is required. \textit{Id.} at 1324 n.3, 1341 (citing Elrod v. Burns, 427 U.S. 347 (1979); Illinois State Employees Union v. Lewis, 473 F.2d 561 (7th Cir. 1972), \textit{cert. denied}, 410 U.S. 928, 943 (1973)). The Supreme Court asserted that it was sufficient if employees could prove that they were discharged “‘solely for the reason that they were not affiliated with or sponsored by the Democratic Party.’” \textit{Branti v. Finkel}, 445 U.S. 507, 517 (1980) (quoting \textit{Elrod v. Burns}, 427 U.S. 347, 350 (1976)).

\textsuperscript{62} \textit{Shakman IV}, 481 F. Supp. at 1358. In the words of the decree, defendants were permanently enjoined from “conditioning, basing, or knowingly prejudicing or affecting any term or aspect of government employment with respect to one who is at the time already a government employee, upon or because of political reasons or factors.” \textit{Id.} Defendants were further enjoined from facilitating partisan political work on public time, and from aiding prohibited employment or campaign activities. \textit{Id.}
which governmental positions by their nature involve "policy-making to such a degree or are so confidential in nature" that discharge from such positions would not be protected under the consent decree.\(^{63}\)

Litigation which has ensued pursuant to the 1972 consent decree predominantly has involved discharged public employees who have filed petitions for a rule to show cause why a defendant should not be held in contempt of court for violating the decree.\(^{64}\) The exemption clause has generated challenges regarding the appropriateness of classifying certain positions as exempt.\(^{65}\)

In entering the 1972 decree, the court noted that the terms of the decree did not represent an admission that any of the defendants’ acts were illegal or unconstitutional.\(^ {66}\) The court adjudicated these substantive issues in 1979, concluding that the challenged patronage practices did interfere with the plaintiffs’ rights to equal participation in the electoral process.\(^ {67}\) Remedies for injuries to the plaintiff class were provided in 1983, when the court entered an implementation order.\(^ {68}\)

The 1983 implementation order included an injunction which prohibited the unconstitutional conditioning of employment upon political considerations\(^ {69}\) and mandated the implementation of objective hiring plans.\(^ {70}\) The order also included a list of "interim


\(^{66}\) Shakman IV, 481 F. Supp. at 1356.

\(^{67}\) Id. at 1355. The court held that defendants had infringed upon plaintiffs' rights as candidates and voters under the first and fourteenth amendments and the Civil Rights Act of 1871. Id. The district court specifically noted defendants' violations of 42 U.S.C. § 1983, which provides a civil action for deprivation of rights secured by the Constitution and federal laws, and 42 U.S.C. § 1985, which provides a civil action for injury resulting from any conspiracy to interfere with civil rights. Id. at 1355. As the challenged practices were unnecessary for the furtherance of any compelling government interest, the court found that those practices violated the United States Constitution. Id.

\(^{68}\) Shakman V, 569 F. Supp. at 178-83.

\(^{69}\) Id. at 179. This emphasis on hiring procedures was an expansion of the 1972 consent decree, which had addressed only patronage dismissals. Shakman IV, 481 F. Supp. at 1358.

\(^{70}\) Shakman V, 569 F. Supp. at 180. The order required that each defendant submit to the court a plan of compliance setting forth methods of governmental hiring. Id. Additionally, the court mandated that notice of all available government jobs, except exempt positions, be provided at places of application and in newspapers and that notices and a copy of the judgment be sent to employees and job applicants. Id. The order also speci-
exempt positions": positions which were generally described in the order, but which would not be determined exempt from the 1972 and 1983 judgments until so adjudicated. The court thus retained jurisdiction to hear government employers' applications for orders declaring positions to be exempt.

In an appendix added three months later (the "1983 appendix"), the district court, on motion of the City of Chicago and with the consent of the plaintiffs, supplanted the implementation order's provisions regarding exempt positions in the city government. The sections in the appendix relating to those positions included a general description of several employee positions ("Schedules A-F") followed by a detailed list of particular jobs within various city departments ("Schedule G"). The court retained jurisdiction to consider employees' petitions for the deletion of their positions from Schedule G.

Supreme Court Decisions

While the district court and the Seventh Circuit were struggling to resolve the issues raised in the Shakman cases, the United States Supreme Court had its first opportunity to decide a constitutional challenge to patronage dismissals. Like the Shakman cases, Elrod v. Burns concerned the Cook County patronage system.
The plaintiffs in *Elrod*, however, brought their claims in their capacities as public employees, rather than as voters, taxpayers or candidates. The employees filed their complaint against Cook County Sheriff Richard Elrod, who, after defeating the incumbent Republican, allegedly had used his elected position to bring Democrats into the sheriff’s office. Plaintiffs, Republicans who had either lost their jobs or had their positions jeopardized, complained that the practices of Elrod and the Cook County Democratic Party organization had violated their rights under the first and fourteenth amendments and the federal civil rights statutes. A divided Supreme Court held that the patronage dismissals had impermissibly infringed upon the plaintiffs’ rights to political speech and association by unconstitutionally conditioning employment on partisan support.

79. Id. at 353-55.
80. Id. at 350.
81. See supra note 54 and accompanying text.
82. *Elrod*, 427 U.S. at 351. The Supreme Court found that it had been a traditional practice for an incoming sheriff of a different political party to replace that office’s non-civil service employees with members of his own party when the holdover employees either lacked or failed to obtain the requisite support from, or failed to affiliate with, the party of the new sheriff. *Id.* Sheriff Elrod, along with the Chicago Park District, had refused to enter into the 1972 *Shakman* consent decree. *Shakman IV*, 481 F. Supp. at 1324.
83. *Elrod*, 427 U.S. at 351. Three of the plaintiffs had been discharged, while the fourth had been put in “imminent danger of being discharged.” *Id.* All of these employment decisions were based on the fact that plaintiffs were not Democrats and had failed to obtain Democratic sponsorship. *Id.* As non-civil service employees, the plaintiffs in *Elrod* were covered by no statute or regulations protecting them from arbitrary employment decisions or guaranteeing procedural safeguards in light of such decisions. Comment, *First Amendment Limitations on Patronage Employment Practices*, 49 U. Chi. L. Rev. 181, 182 (1982).
85. *Elrod*, 427 U.S. at 356. The plurality opinion was written by Justice Brennan, who was joined by Justices Marshall and White. *Id.* at 347. Although the plurality avoided any assertion that employees in *Elrod* were “entitled” to government jobs, the
In a plurality opinion, the Court held that Elrod and the county Democratic organization had failed to demonstrate that patronage employment furthered some vital government interest by a means "least restrictive" to first amendment freedoms. The plurality rejected Elrod's contention that the patronage system countered a lack of motivation on the part of holdover employees and thus lent itself to office efficiency; the Court noted that a "wholesale replacement" of personnel subsequent to a change of party hands controverted any theory of efficiency. Although the Court found more merit in Elrod's assertion that political loyalty was necessary to prevent an undermining of the administration and its policies, "policies [which] presumably [had] been sanctioned by the electorate," the plurality determined that limiting patronage dismissals to "policymaking positions" would achieve that governmental end. The Court noted that nonpolicymaking employees typically have only limited responsibility and consequently are not in a position to "thwart the goals of the in-party," while employees with responsibilities that are not well-defined, or are of broad scope, are more likely to be in policymaking positions. Justice Stewart, joined by Justice Blackmun, concurred with the plurality's conclusion that a "nonpolicymaking, nonconfidential government employee" cannot be discharged or threatened with discharge based solely on his political beliefs.
Four years later, the Court articulated a new test for determining which employees' positions were exempt from constitutional restraints. In _Branti v. Finkel_, Republicans who had been discharged from their positions as public defenders filed suits alleging that Chief Public Defender Branti, a Democrat, had dismissed them solely because of their political affiliations.

Before the Supreme Court, Branti unsuccessfully argued that _Elrod_ allowed dismissal of employees who had not been asked to change political affiliation or work for a party's candidates. Branti argued that such an employee could be fired even if the employee would not have been dismissed had he had the proper political sponsorship, and even if his dismissal was solely for the purpose of replacing him with an individual with the appropriate sponsorship. The Court rejected this interpretation as an emasculation of the principles set forth in _Elrod_, and reiterated the doctrine of "unconstitutional conditions": although an individual has no right to government employment, denial of employment may not be based on political affiliation.

In response to Branti's argument that, in any case, assistant public defenders were policymaking, confidential employees within the

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94. _Id_.
95. _Id_ at 509.
96. _Id_ at 508-09.
97. _Id_ at 516.
98. _Id_.
99. _Id_. Branti's conception of legitimate employment practices had been embraced by some lower courts. See, e.g., Illinois State Employees Union v. Lewis, 473 F.2d 561, 566 (7th Cir. 1972), _cert. denied_, 410 U.S. 928, 943 (1973) (posing the issue as "whether a non-policy making employee . . . may be discharged for refusing to transfer his political allegiance from one political party to another").
100. _Branti_, 445 U.S. at 514-15. This doctrine was first enunciated in _Perry v. Sinderman_, 408 U.S. 593 (1972):

> [E]ven though a person has no "right" to a valuable government benefit and even though the government may deny him that benefit for any number of reasons, there are some reasons upon which the government may not rely. It may not deny a benefit to a person on a basis that infringes his constitutionally protected interests—especially, his interest in freedom of speech.

_Id_ at 597.
Elrod exception,\textsuperscript{101} the Branti Court “revamped” the Elrod test\textsuperscript{102} for determining which positions were exempt from constitutional restraints: “[t]he ultimate inquiry is not whether the label ‘policymaker’ or ‘confidential’ fits a particular position; rather, the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved.”\textsuperscript{103} Applying the new test, the Court concluded that the assistant public defenders’ employment could not legitimately be conditioned on political allegiance.\textsuperscript{104} Justice Stewart dissented because he believed the public defender positions did not fall within the class of “nonconfidential” positions which Elrod had sought to protect.\textsuperscript{105}

**Seventh Circuit and Northern District of Illinois Exemption Formulas**

Shortly after the Supreme Court handed down its opinion in Branti, the Seventh Circuit was presented with a case requiring an

\textsuperscript{101} Branti, 445 U.S. at 512.

\textsuperscript{102} Id. at 518. The Seventh Circuit has stated that Elrod’s policymaking and confidentiality exemption was “revamped” by Branti. Livas v. Petka, 711 F.2d 798, 800 (7th Cir. 1983). The “policymaking” and “confidential” categorizations are still useful in that they describe a vast majority of the positions exempt under Branti. Meeks v. Grimes, No. 85-1176, slip op. at 6 (7th Cir. Dec. 19, 1985).


\textsuperscript{103} Branti, 445 U.S. at 518. The Court supported its new tests by discussing problems presented by application of the more rigid “policymaker” or “confidential” standards. The Court noted that some positions, such as precinct election judges, would obviously be considered political although they are not confidential and do not involve policymaking. Id. On the other hand, Justice Stevens stated, political affiliation would be irrelevant to the policymaking position of head football coach at a state university. Id.

\textsuperscript{104} Id. at 514. In light of the limited question before it, the Court in Branti found it unnecessary to address petitioners’ argument that patronage is justified by the need to strengthen political parties and protect the democratic process. Id. at 513 n.7.

\textsuperscript{105} Id. at 520-21 (Stewart, J., dissenting). See supra note 92 and accompanying text.
application of that decision. In *Nekolny v. Painter*, former township employees alleged that their dismissal was based on political affiliation. In deciding whether one of the employees held an exempt position, the *Nekolny* court restated the *Branti* test as "whether the position held by the individual authorizes, either directly or indirectly, meaningful input into government decision making on issues where there is room for principled disagreement . . . . " The court considered the employee's functions (conducting feasibility studies of programs and making proposals to the township's supervisor and board of auditors) and salary (the fourth highest in the township) as evidence from which a reasonable jury could conclude that the ex-coordinator had "meaningful input" into "decisionmaking" regarding a major township program.

Subsequent to the *Nekolny* decision, a federal court for the Northern District of Illinois noted the uncertainty created by the *Branti* standard. In *Gannon v. Daley*, the court attempted to harmonize *Nekolny* and *Branti* by adding another factor to the *Nekolny* test: to be exempt, an employee must have decisionmaking input which is not only meaningful but also capable of jeopardizing the public employer's ability to run the office. This latter requirement would serve the exemption rule's ultimate aim of protecting the public's interest in efficient government.

**Application of Exemption Formulas in Shakman Cases**

Inconsistent holdings in various *Shakman* decisions indicate that lower courts, attempting to clarify the exemption standard by articulating more detailed tests, have contributed to the uncertainty. In *In re Lindsey*, the Seventh Circuit affirmed a deter-

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107. Id.
108. Id. at 1166.
109. Id. at 1169.
110. Id. at 1170. Although it noted that *Branti* provided the more recent exemption test, the *Nekolny* court still employed the *Elrod* "policymaking" label. Id. The court recognized that "policymaking and policy implementation may occur at many levels even within a particular office whose sphere of authority is narrowly circumscribed." Id.
111. Id.
113. Id. at 1377.
114. Id. at 1383. The *Gannon* court emphasized the extent of plaintiff's discretion: "[w]here an employee's discretion is sufficiently cabined so that his or her meaningful policy and administrative guidance comes from superiors, the Constitution prohibits political dismissals." Id.
115. Id.
116. See infra notes 117-46 and accompanying text.
117. Shakman v. Democratic Org. of Cook County (In re Lindsey), 722 F.2d 1307
mination that the position of Cook County Park District Superintendent of Employment was exempt from the proscriptions of a Shakman decree. The court considered such factors as the employee's broadly defined responsibilities, his formulation of Park District policy, and the confidentiality of his position — all factors originally articulated in Elrod. Additionally, the court noted that the employee's position authorized "meaningful input" into the Park District's goals and policies and thus met the Nekolny test.

The employee, on the other hand, focused on the Branti rule, arguing that since his position was part of the Park District's Civil Service Board, party affiliation was not an "appropriate require-

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(7th Cir. 1983). Lindsey filed suit against the Chicago Park District, one of the Democratic defendants who had declined to enter into the 1972 Shakman consent decree. Shakman IV, 481 F. Supp. at 1324. See supra note 60. In response to the court's determination in Shakman IV, plaintiffs and defendant Park District determined that a consent decree was in their best interests. Shakman v. Democratic Org. of Cook County (consent judgment of Chicago Park District), No. 69-2145 (N.D. Ill. June 27, 1980) [hereinafter cited as 1980 decree].

The proscriptions of the 1980 decree resembled those of the 1972 decree. See supra notes 61-62 and accompanying text. The 1980 decree, like the 1972 decree, covered only public employees who already had been hired. The 1980 decree, however, explicitly delineated the employment decisions from which political considerations were excluded: "firing, layoff, promotion, demotion, compensation, job assignment, transfer or benefits." 1980 decree at 2 (emphasis in original). Unlike the 1972 decree, the 1980 decree also listed the proscribed political considerations:

- past, present or future political support of, or sponsorship by or affiliation with, any political party or any official or associate of any political party or any candidate for public office or any program, position or project of any such political party, official, or associate, or . . . lack of such political support, sponsorship, affiliation or connection.

Id.

The 1980 decree acknowledged that certain Park District positions "by their nature involve policy-making to such a degree or are so confidential in nature as to require [that] discharge from such positions be exempt from inquiry under the Judgment." Id. at 4. Accordingly, jurisdiction was retained to determine which positions were properly classified as exempt. Id.

118. Lindsey, 722 F.2d at 1310.
119. Id. at 1309. For a review of the Elrod factors, see supra notes 88-90 and accompanying text.
120. Lindsey, 722 F.2d at 1309 (citing Nekolny v. Painter, 653 F.2d 1164 (7th Cir. 1981)). Lindsey argued that the Illinois legislature, by providing that the Park District Superintendent of Employment can only be removed for incompetence or malfeasance, had determined that party affiliation was not an appropriate criterion for evaluating effective performance of the position. According to Lindsey, this legislative determination preempted application of the policymaker exemption. Lindsey, 722 F.2d at 1310. Though Lindsey's argument failed in federal court and his position was considered exempt from first amendment protections, an Illinois state court has determined that the legislation does ensure some procedural safeguards prior to removal. Lindsey v. Chicago Park Dist., 134 Ill. App. 3d 744, 745, 481 N.E.2d 58, 59 (1st Dist. 1985).
ment for effective performance of the position." The court dismissed this argument by reiterating the purpose of the policymaker exemption: to ensure that first amendment protections do not interfere with the workings of democratic governments and the ability of duly elected officials to implement their policies.

Vrdolyak v. City of Chicago

Facts

The federal district court's decision in *Vrdolyak v. City of Chicago* further illustrates the difficulty of applying various tests to determine whether an admittedly high ranking official's position should be exempt from patronage prohibitions. Peter Vrdolyak, an assistant director in the Bureau of Technical Inspections in the Chicago Department of Inspectional Services, was terminated from his city job. In his complaint against the city, Vrdolyak alleged that his termination violated the 1972 *Shakman* consent decree. Because Vrdolyak’s position, Assistant Director of Technical Inspections, was listed as exempt under Schedule G of the 1983 appendix, Vrdolyak’s complaint included a challenge to that classification.

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121. Lindsey, 722 F.2d at 1310 (citing Branti v. Finkel, 445 U.S. 507, 518 (1980)).
122. Lindsey, 722 F.2d at 1310 (citing Elrod v. Burns, 427 U.S. 347, 367 (1976)). The court reiterated Nekolny’s point that a “narrow definition of who is a policymaker necessarily increases the chances of ‘undercutting the implementation of the policies of the new administration, policies presumably sanctioned by the electorate.’” Id. at 1310 (citing Elrod, 427 U.S. at 367; Nekolny v. Painter, 653 F.2d 1164, 1169-70 (7th Cir. 1981)).
124. Peter Vrdolyak is the brother of Edward Vrdolyak. Id., slip op. at 7. In its findings of fact, the court noted, “Defendants were aware that Vrdolyak is the older brother of Edward R. Vrdolyak, Alderman of the 10th Ward, and widely portrayed as a principal opponent of Mayor Washington.” Id. The rivalry solidified when, soon after Mayor Washington’s election, Alderman Vrdolyak created a coalition of 29 aldermen who agreed to organize against the Mayor. M. Kahn & F. Majors, The Winning Ticket 254 (1984).
125. Vrdolyak, No. 83-7999, slip op. at 7 (N.D. Ill. Nov. 27, 1984). Shortly thereafter, the district court entered a temporary restraining order and preliminary injunction, enjoining defendants from terminating Vrdolyak. Id. at 2.
126. Id. at 1. Specifically, the complaint stated that the attempt to dismiss Vrdolyak was contrary to the terms of the decree which permanently enjoined the City and its mayor from “conditioning, basing, or knowingly prejudicing or affecting any term or aspect of governmental employment, with respect to one who is at the time already a governmental employee upon or because of any political reason or factor.” Id. (quoting *Shakman IV*, 481 F. Supp. at 1356).
128. Vrdolyak, No. 83-7999, slip op. at 3 (N.D. Ill. Nov. 27, 1984). The *Shakman*
Consideration of Administrative Loyalty

Vrdolyak was fifth in the relevant "chain of command" between the mayor and himself. Vrdolyak assisted the Director of the Bureau of Technical Inspections in the coordination of the Bureau's operations and procedures, and in the formulation and enforcement of work quality and performance standards for the seven technical sections. Vrdolyak handled complaints, answered correspondence and helped the Director with building code amendments, revisions and deletions. He also coordinated special inspection programs and assisted the Director by meeting with city attorneys and Bureau personnel regarding Bureau litigation. Vrdolyak assumed the duties and responsibilities of the Director in his absence. Upon the request of the Director, Vrdolyak met with various outside groups as a representative of the Bureau. He spent a substantial amount of his time on iron section work, inspecting the iron work on construction projects to see whether it complied with the city building code. At the time of his dismissal, Vrdolyak was earning $47,508 per year.

Court's Analysis

The court stated that several factors were relevant in determining whether Vrdolyak's position was properly listed as exempt under Schedule G of the 1983 appendix: (1) the extent to which the job involved policymaking and required confidentiality; (2) whether responsibilities were broadly defined; (3) whether the duties involved highly sensitive subject matter; (4) whether the posi-

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129. Vrdolyak, No. 83-7999, slip op. at 4-5 (N.D. Ill. Nov. 27, 1984). Under the mayor was the commissioner of the Department of Inspectional Services, a cabinet-level position. Below the commissioner were two deputy commissioners. The directors of four bureaus reported to the deputy commissioners. Vrdolyak, as assistant director, reported to the Director of the Bureau of Technical Inspections. Below Vrdolyak were the chiefs of the seven inspection sections, as well as assistant chiefs, superintendents or both. The inspectors, or field workers, in each of the seven sections were at the end of the chain. Id. at 5-6. Vrdolyak estimated that he spent 50-60% of his time doing iron inspection work, while his director contended that 90% of Vrdolyak's time was spent in that capacity. Id. at 6. Prior to becoming Assistant Director of the Bureau of Technical Services, Vrdolyak had served as supervising iron inspector. Id. The iron section is the smallest of the technical sections in the Bureau of Technical Inspections; that section is responsible for ensuring the structural integrity of new construction by inspecting foundation caissons, reinforced concrete, structural steel, material and personnel hoists and fire escapes. Brief and Argument of Plaintiff-Appellee at 39, Vrdolyak v. City of Chicago, No. 84-3160 (7th Cir. brief filed Apr. 14, 1985).

130. Id. at 5-6. Vrdolyak estimated that he spent 50-60% of his time doing iron inspection work, while his director contended that 90% of Vrdolyak's time was spent in that capacity. Id. at 6. Prior to becoming Assistant Director of the Bureau of Technical Services, Vrdolyak had served as supervising iron inspector. Id. The iron section is the smallest of the technical sections in the Bureau of Technical Inspections; that section is responsible for ensuring the structural integrity of new construction by inspecting foundation caissons, reinforced concrete, structural steel, material and personnel hoists and fire escapes. Brief and Argument of Plaintiff-Appellee at 39, Vrdolyak v. City of Chicago, No. 84-3160 (7th Cir. brief filed Apr. 14, 1985).

131. Vrdolyak, No. 83-7999, slip op. at 7 (N.D. Ill. Nov. 27, 1984). When Vrdolyak was first appointed assistant director in 1981, his annual salary was $32,772. Id. at 6. The next year, it was raised to $45,240. Id. at 7.
tion required a close working relationship with policymakers; and
(5) whether considerations of personal loyalty were appropriate.\(^{132}\)

The court noted that all of these factors related to the *Nekolny*

test of whether the position authorized, "either directly or indi-
rectly, meaningful input into government decisionmaking on issues
where there is room for principled disagreement on goals or their
implementation."\(^{133}\) The *Vrdolyak* court reasoned that if a posi-
tion satisfied that description, it would typically be, in the words of
*Branti*, a position for which party affiliation was an "appropriate
requirement."\(^{134}\) The ultimate purpose of the "policymaker" ex-
ception, according to the court, was to ensure that first amendment
protections do not frustrate the ability of administrations to imple-
ment their policies.\(^{135}\)

**Court's Holding**

In holding that Vrdolyak's position was improperly classified as
exempt under Section G,\(^{136}\) the court touched upon four of the five
factors deemed relevant to the *Nekolny* test.\(^{137}\) The court first
noted that, although Vrdolyak occupied a supervisory position of
considerable importance to the city, his responsibilities had limited
and well-defined objectives.\(^{138}\) Although on its face the job de-
scription appeared to involve broad responsibilities, the court held
that Vrdolyak's testimony had established that his responsibilities
were, in fact, quite narrow in scope.\(^{139}\)

With respect to "policymaking," the court found that
Vrdolyak's legislative input was limited to assisting the commis-

\(^{132}\) *Id.* at 11 (citing Shakman v. Democratic Org. of Cook County (*In re Lindsey*),
552 F. Supp. 907 (N.D. Ill. 1982), *aff'd*, 722 F.2d 1307 (7th Cir.), *cert. denied* sub nom.
Lindsey v. Kelly, 464 U.S. 916 (1983)).

\(^{133}\) *Vrdolyak*, No. 83-7999, slip op. at 11 (N.D. Ill. Nov. 27, 1984) (citing *In re
Lindsey*, 722 F.2d 1307, 1309 (7th Cir. 1981), which in turn cited *Nekolny v. Painter*, 653
F.2d 1164, 1170 (7th Cir. 1981)).

\(^{134}\) *Vrdolyak*, No. 83-7999, slip op. at 11 (N.D. Ill. Nov. 27, 1984) (quoting *Branti
v. Finkel*, 445 U.S. 507, 518 (1979)).

\(^{135}\) *Vrdolyak*, No. 83-7999, slip op. at 11 (N.D. Ill. Nov. 27, 1984) (citing *In re
Lindsey*, 722 F.2d 1307, 1310 (7th Cir. 1983)). The court then asserted that the poli-
cymaking exception should be implemented only in the name of governmental, not parti-
Burns*, 427 U.S. 347, 368 (1976)).


\(^{137}\) See *supra* note 132 and accompanying text.

Burns*, 427 U.S. 347, 368 (1975)). See *supra* note 92 and accompanying text.

\(^{139}\) *Vrdolyak*, No. 83-7999, slip op. at 12 (N.D. Ill. Nov. 27, 1984).
employees shared.\textsuperscript{140} Vrdolyak's input into fiscal policy also was deemed limited.\textsuperscript{141} The court acknowledged that Vrdolyak had a duty to recommend fee schedules, but the court determined that this responsibility did not elevate Vrdolyak to exempt status since any changes had to be approved by the commissioner and city council.\textsuperscript{142}

The court disposed of the "confidentiality" factor by concluding that the subject matter of Vrdolyak's work was not highly sensitive because he was not made party to confidential investigations regarding bribery allegations but instead was under a duty to report information obtained to the commissioner.\textsuperscript{143} The Vrdolyak court also summarily rejected any need for "political loyalty,"\textsuperscript{144} apparently substituting that term for the "personal loyalty" factor which the court had included in its description of the Nekolny test.\textsuperscript{145} Thus, without mention of the remaining factor, "a close working relationship with policymakers," the district court held that the defendants had failed to show that party affiliation was an appropriate requirement for the position of Assistant Director of Technical Inspections.\textsuperscript{146}

Office vs. Officeholder Test and the Need for "Professional Loyalty"

The conflicting analyses and holdings in the Lindsey and Vrdolyak\textsuperscript{147} cases illustrate the need to determine which exemption formulas are still viable and the amount of weight the various tests should receive. Recently the Seventh Circuit, in a Shakman decision, enunciated still another test: a more objective test which emphasizes the typical duties of the employee's office rather than the functions actually performed by the individual officeholder.\textsuperscript{148}

\begin{footnotes}
\item[140] Id.
\item[141] Id.
\item[142] Id.
\item[143] Id. The city's Office of Municipal Investigations would then investigate the allegations. Id.
\item[144] Id.
\item[145] Id. at 11. See supra note 132 and accompanying text.
\item[146] Vrdolyak, No. 83-7999, slip op. at 12 (N.D. Ill. Nov. 27, 1984). Having determined that Vrdolyak's position was not exempt, the district court then noted that he had established by clear and convincing evidence that political considerations were a motivating factor behind his discharge. Id. Next, the court considered the defendants' testimony, and held that the City had been unsuccessful in proving legitimate, nonpolitical reasons for Vrdolyak's dismissal. Id.
\item[147] See supra notes 117-46 and accompanying text.
\item[148] See infra notes 149-64 and accompanying text.
\end{footnotes}
In *Tomczak v. City of Chicago*, Donald Tomczak, the First Deputy Commissioner of the Department of Water, successfully alleged in the district court that his position had been improperly classified as exempt under Schedule G of the 1983 appendix, and that his dismissal had been politically motivated in violation of the 1972 *Shakman* decree. The lower court held that since Tomczak's decisions related only to the repair and rehabilitation of Chicago's water system, his position did not involve decisionmaking in which there was room for "principled disagreement" on goals or their implementation, as required by *Nekolny*. The trial court also was persuaded that Tomczak's job should not be exempt because his input was not of the type that could jeopardize the mayor's ability to run the mayoral office.

The Seventh Circuit disagreed, holding that the provision of services was a primary function of any local government, and that planning within the Water Department therefore allowed room for "principled disagreement" as described by *Nekolny*. Even assuming that the ultimate goal of providing water was undisputed, the *Tomczak* court stated that there were numerous methods of achieving that goal.

The court of appeals noted that in *Branti*, the Supreme Court had abandoned the labels of "policymaker" or "confidential employee" for a more functional analysis. The court stated that the

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149. 765 F.2d 633 (7th Cir. 1985).
150. *Id.* at 636, 639. See *supra* notes 75-76 and accompanying text.
151. *Tomczak*, 765 F.2d at 636, 637.
152. *Id.* at 639. See *supra* note 110 and accompanying text.
154. *Id.* at 641. The court opined that evaluation of a candidate's proposals for or provision of services (such as police and fire protection, public schools, transportation, libraries, water, garbage, and sewage) often determines the outcome of a local political election. *Id.*
155. *Id.*
156. *Id.*
157. *Id.* The court noted that after *Branti*, the "policymaker" label had no "talismanic significance" in identifying exempt positions. *Id.* This assertion does not eliminate an individual's "policymaking" functions as a potential factor in determining whether a position should be exempt from first amendment protection. One court of appeals has stated that while the Supreme Court in *Branti* dismissed the "confidential" and "policymaker" labels as irrelevant, labels still can help "illuminate the contours of the employee class that may permissibly be subjected to *Branti*'s political litmus test," although the exemption itself must turn on the "importance of political loyalty to the execution of the employee's duties." Barrett v. Thomas, 649 F.2d 1193, 1200-01 (5th Cir.), *reh'g* denied, 656 F.2d 700 (5th Cir.), *cert. denied*, 456 U.S. 936 (1982).

The *Tomczak* court also noted that although *Branti* involved the termination of Republican employees by a Democratic official, its reasoning is equally applicable when one party faction replaces another. *Tomczak*, 765 F.2d at 640 (citing Joyner v. Lancaster,
Elrod and Branti holdings and the Seventh Circuit’s restatement of the Branti rule in Nekolny mandated an examination of the typical functions of the office involved, rather than those duties actually performed by a particular occupant of the position.158

Applying this “office vs. officeholder” distinction, the court disposed of Tomczak’s assertion that his job involved merely ministerial functions159 by noting that his position and salary ($62,000) were the second highest in a large and important city department,160 and that the position included administration of a bureau with 1,150 employees and an annual budget of approximately $40,000,000.161 The court emphasized Tomczak’s admission that thirty percent of his time was spent planning the bureau’s budget requirements and another ten percent developing the bureau’s activities.162

The court noted that its approach supported goals of judicial efficiency and fairness to litigants since an evaluation emphasizing the position held would resolve in one proceeding the issue of whether an office was appropriately classified as exempt, and thus relieve the courts of the burden of reexamining a particular position every time a new administration changed the responsibilities of an officeholder.163 The court also held that the “office vs. office-

553 F. Supp. 809 (M.D.N.C. 1982); Ecker v. Cohalan, 542 F. Supp. 896 (E.D.N.Y. 1982)). This was said to be particularly true in jurisdictions where a primary victory within a dominant party virtually assures victory in the subsequent general election. Tomczak, 765 F.2d at 640 (citing Barner v. Bosley, 745 F.2d 501, 506 n.2 (8th Cir. 1984); McBee v. Jim Hogg County, Tex., 703 F.2d 834, 838 n.1 (5th Cir. 1983), vacated en banc on other grounds, 730 F.2d 1009 (5th Cir. 1984); Stegmaier v. Trammel, 597 F.2d 1027, 1032 n.4 (5th Cir. 1979)). The Tomczak court took judicial notice of the fact that Chicago was such a jurisdiction. 765 F.2d at 640.

158. Tomczak, 765 F.2d at 641-42. This emphasis on the office rather than the officeholder stemmed from a very literal reading of the Nekolny test by the Tomczak court: “The test is whether the position held by the individual authorizes, either directly or indirectly, meaningful input into government decisionmaking on issues where there is room for principled disagreement on goals or their implementation.’” Id. at 641 (quoting Nekolny v. Painter, 653 F.2d 1164, 1170 (7th Cir. 1981)) (emphasis added by the Tomczak court).

159. Tomczak, 765 F.2d at 642.

160. Id.

161. Id.

162. Id. The court’s discussion of the percentages of time which Tomczak spent on these duties is not inconsistent with the court’s emphasis on the position rather than the duties performed since the court was attempting merely to demonstrate that Tomczak’s position involved nonministerial functions. Id.

holder” distinction would provide certainty to litigants.\textsuperscript{164}

The \textit{Tomczak} “office vs. officeholder” test has enabled the City of Chicago to make successful summary judgment motions in several \textit{Shakman} petition cases.\textsuperscript{165} The courts granting these motions have considered the following factors important: The employee's rank within a department,\textsuperscript{166} the employee's salary,\textsuperscript{167} the size of the employee's budget,\textsuperscript{168} and the responsibilities and duties inherent in the employee's position,\textsuperscript{169} including input into personnel decisions\textsuperscript{170} and the budgeting process.\textsuperscript{171} Courts also have inquired into whether the employee's position entailed acting as

\begin{itemize}
\item \textsuperscript{164} \textit{Tomczak}, 765 F.2d at 641.
\item \textsuperscript{165} See infra notes 166-72 and accompanying text.
\item \textsuperscript{166} Eiseman v. City of Chicago, No. 84-9717, slip op. at 3 (N.D. Ill. Aug. 28, 1985) ("one of the highest ranking positions" in the Department of Aging and Disability); Ianello v. City of Chicago, No. 84-5881, slip op. at 3 (N.D. Ill. Aug. 20, 1985) (fifth highest ranking position in the Department of Neighborhoods); Rubenstein v. City of Chicago, No. 84-8590, slip op. at 2 (N.D. Ill. July 20, 1985) (head of the Bureau of Health Regulations within the Department of Health).
\item \textsuperscript{167} Eiseman v. City of Chicago, No. 84-9717, slip op. at 3 (N.D. Ill. Aug. 28, 1985) ($41,000, third highest in the department); Ianello v. City of Chicago, No. 84-5881, slip op. at 3 (N.D. Ill. Aug. 20, 1985) ($37,368); Rubenstein v. City of Chicago, No. 84-8590, slip op. at 2 (N.D. Ill. July 20, 1985) (eighth highest paid employee in the Department of Health).
\item \textsuperscript{168} Rubenstein v. City of Chicago, No. 84-8590, slip op. at 2 (N.D. Ill. July 20, 1985) ($1,300,000 - $1,400,000 annually).
\item \textsuperscript{169} Eiseman v. City of Chicago, No. 84-9717, slip op. at 3 (N.D. Ill. Aug. 28, 1985) (interpreting policy and seeing that it was carried out; assisting commissioners in the development and supervision of all program activities; ensuring that the agency's programs and services were implemented by staff; developing and maintaining community participation in activities; ensuring that services were equitably distributed; evaluating department programs, recommending new programs and changes in accordance with federal guidelines); Ianello v. City of Chicago, No. 84-5881, slip op. at 5 (N.D. Ill. Aug. 20, 1985) (overseeing entire Department of Neighborhoods under the direct authority of the commissioner); Rubenstein v. City of Chicago, No. 84-8590, slip op. at 4 (N.D. Ill. July 20, 1985) (planning, developing, and reviewing effectiveness of programs that enforce Department of Health guidelines and municipal codes; interpreting and recommending changes in problematic regulatory policies, directions and issues).
\item \textsuperscript{170} Eiseman v. City of Chicago, No. 84-9717, slip op. at 4 (N.D. Ill. Aug. 28, 1985) (in charge of all personnel decisions in his division, his decisions subject only to the commissioner's approval, the latter having adopted all of them); Rubenstein v. City of Chicago, No. 84-8590, slip op. at 5 (N.D. Ill. July 20, 1985) (authority to hire, recommend promotions and terminations of bureau personnel).
\item \textsuperscript{171} Eiseman v. City of Chicago, No. 84-9717, slip op. at 4 (N.D. Ill. Aug. 28, 1985) (assisted in budget process regarding program and staffing needs and the spending of public funds; head of accounts for seventy percent of the staff of the department); Ianello v. City of Chicago, No. 84-5881, slip op. at 5 (N.D. Ill. Aug. 20, 1985) (responsible for the fiscal programs of the Department of Neighborhoods, under the authority of the commissioner); Rubenstein v. City of Chicago, No. 84-8590, slip op. at 18 (N.D. Ill. July 20, 1985) (responsible for budget preparation, submission and supervising of expenditures of bureau).
spokesperson for the government. 172

Recently, in Grossart v. Dinaso, 173 the Seventh Circuit noted that a public employer may require even a “nonpolicymaker” to be a zealous and loyal employee. 174 Moreover, the employer may require such an employee to act in accordance with the employer’s political beliefs even though the employer cannot require the employee to adopt those beliefs as a condition of employment. 175

On the other hand, the Grossart court noted that under Branti, certain high-level employees with meaningful input into decision-making may be required to conform even their political beliefs to those of their superiors, so that public policy may be carried out by “representatives of the electorate.” 176 Thus, under Grossart, “professional loyalty” may be expected of all employees, but “political loyalty” requirements are constitutionally sound only when exempt positions are involved. 177

ANALYSIS

The 1972 Shakman decree 178 and 1983 implementation order 179 and appendix 180 exempted certain positions from first amendment protection against patronage practices. 181 In evaluating the appropriateness of classifying various positions as exempt, courts have

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172. Eiseman v. City of Chicago, No. 84-9717, slip op. at 4 (N.D. Ill. Aug. 28, 1985) (liaison for the department; interacting with citizens, other government agencies and the press); Ianello v. City of Chicago, No. 84-8557, slip op. at 5 (N.D. Ill. Aug. 20, 1985) (“primary liaison” between the department and other government agencies); Rubenstein v. City of Chicago, No. 84-8590, slip op. at 4-5 (N.D. Ill. July 20, 1985) (in constant contact with the city’s corporation counsel, the Department of Inspectional Services, and other outside agencies and organizations; on television 10 to 15 times and mentioned or quoted in newspapers 20 to 25 times; speechwriter and drafter of press releases for the commissioner).

173. 758 F.2d 1221 (7th Cir. 1985).

174. Id. at 1230; see also Meeks v. Grimes, No. 85-1176, slip op. at 11-12 (7th Cir. Dec. 19, 1985) (nonpolicymakers’ ties to the bureaucracy are based on “organizational” loyalty).

175. Id. The court noted that defendant could be required to enforce policies of which she did not approve, since “the first amendment does not protect insubordination.” Id.

176. Id. at 1227 n.4.

177. Id.; see also Meeks v. Grimes, No. 85-1176, slip op. at 11-12 (7th Cir. Dec. 19, 1985) (nonpolicymakers’ ties to the bureaucracy are based on “organizational” loyalty).


179. Shakman V, 569 F. Supp. at 178-84. See supra notes 68-72 and accompanying text.

180. Shakman V, 569 F. Supp. at 185-207. See supra notes 73-76 and accompanying text.

relied upon formulas which have raised as many questions as they have answered.

Having realized that application of Elrod's "policymaking" and "confidential" labels could produce inequitable results, the Supreme Court in Branti replaced the labels with a consideration of whether "political affiliation" was an "appropriate requirement" for carrying out the duties of a particular office. The Seventh Circuit, in Nekolny, attempted to flesh out this vague standard by focusing on a position's authorization of "meaningful input" in areas of "principled disagreement." In Gannon, the district court further refined the test by examining whether the employee in question had the type of discretion which would enable him to thwart an administration's partisan goals.

The subsequent refinements of the Elrod test have produced an uncertainty which invites inconsistent applications and precludes the establishment of guidelines which might assist employers and employees prior to litigation. More seriously, some of the new formulations have strayed from the underlying intent of the Elrod exemption: "to ensure that the first amendment's protection not interfere with the workings of democratic governments and the ability of duly elected officials to implement their policies." Though the Branti and Nekolny courts reaffirmed this need for administrative allegiance in the execution of policies, the Gannon decision obscured this democratic concern by focusing not on the ability of employees to help implement the goals of a new administration but rather on their ability to thwart those goals.

Critical analysis of the Vrdolyak decision demonstrates

182. See supra notes 89-92 and accompanying text.
186. See supra note 20 and infra notes 192-207 and accompanying text.
187. See supra notes 163-64 and accompanying text.
188. In re Lindsey, 722 F.2d 1307, 1310 (7th Cir. 1983) (construing Elrod v. Burns, 427 U.S. 347, 367 (1976)). See supra notes 88-89 and infra notes 206-07, 215-16, 227-28 and accompanying text. The Court in Elrod articulated the "policymaking" exception in the context of the governmental goal that a "representative government not be undercut by tactics obstructing the implementation of policies of the new administration, policies presumably sanctioned by the electorate." Elrod, 427 U.S. at 367.
189. Branti v. Finkel, 445 U.S. 507, 518 (1980); Nekolny v. Painter, 653 F.2d 1164, 1170 (7th Cir. 1981). The Branti rule acknowledged that a new administration must control specific offices in order to effectively implement its policies. Branti, 445 U.S. at 518. Similarly, the Nekolny court stated that our representative system of government requires that policymaking and implementation occur at many levels in order to implement the will of the people. 653 F.2d at 1170.
the extent to which the uncertainty produced by the various exemption formulas can lead to a result which runs contrary to Elrod's concern for the workings of democratic governments.\textsuperscript{191}

**Critique of Vrdolyak v. City of Chicago**

The Vrdolyak court's conclusions of law focused on the extent to which Vrdolyak's activities involved policymaking, confidentiality, broadly defined responsibilities and a need for political loyalty.\textsuperscript{192} The first three of these factors reflect the outdated approach of the Elrod Court;\textsuperscript{193} the last factor merely restates the Branti test\textsuperscript{194} without incorporating any standards as to how the test should be applied. The Branti Court recognized that the Elrod formula would not always produce the right result\textsuperscript{195} — the Vrdolyak decision confirms that conclusion.

If the Vrdolyak court had applied carefully the teachings of the precedents it cited, the court might well have reached a different result. Although Tomczak\textsuperscript{196} had not yet been decided, the Vrdolyak court's focus on the officeholder, rather than the office, was unwarranted. Elrod, Branti and Nekolny all had analyzed the duties inherent in particular positions, not the subjective manner in which those duties were carried out.\textsuperscript{197} Yet the Vrdolyak court chose to emphasize Vrdolyak's testimony as to his daily routine\textsuperscript{198} rather than such objective factors as rank within the agency, sal-

\textsuperscript{191}. See infra notes 192-207 and accompanying text.
\textsuperscript{193}. See supra notes 192-207 and accompanying text.
\textsuperscript{194}. See supra note 103 and accompanying text.
\textsuperscript{195}. Branti v. Finkel, 445 U.S. 507, 523 (1980). The Branti Court did not discount the "policymaking" and "confidentiality" labels as valid inquiries. Instead, the Court stated that these considerations could not constitute the final inquiry. Id. One commentator has concluded that the Branti Court's application of a new standard indicated that the "policymaking/confidential" distinction is no longer the primary test but is still a useful factor in determining the legitimacy of partisan political interests. 58 U. Det. J. Urb. L. 291, 302 (1981).
\textsuperscript{196}. See supra notes 148-64 and accompanying text.
\textsuperscript{197}. See supra notes 77-111 and infra note 208 and accompanying text. The Elrod court specifically referred to consideration of the nature of the responsibilities, as defined by the position. Elrod v. Burns, 427 U.S. 347, 367-68 (1976).
\textsuperscript{198}. See supra note 139 and accompanying text. The Vrdolyak court noted that although his job description, on its face, concerned broadly defined duties, Vrdolyak's
Moreover, although the Vrdolyak court cited Nekolny's concern with "meaningful input" in areas where there is "room for principled disagreement," the court misapplied this test. For example, the fact that Vrdolyak shared with all employees of his agency the duty to recommend building code changes does not mean that Vrdolyak's input was not meaningful, and the parameters of building code requirements certainly provide room for principled disagreement. Similarly, the requirement that Vrdolyak's fee schedule recommendations be approved by the city council and the commissioner should not have placed Vrdolyak outside the exempt class that Nekolny envisioned. Such changes always must be reviewed by the legislative body which will enact them and the city official who will present them to the mayor. Hence, the Vrdolyak court's reasoning would limit exemption to cabinet-level positions, a class far more restricted than Nekolny's "meaningful input" test would support. Indeed, the Seventh Circuit already had upheld exemption of a position which did not include final decisionmaking authority.

Finally, the Vrdolyak court gave considerable weight to the fact that Vrdolyak did not deal directly with "highly sensitive" or "confidential" matters. Besides resurrecting Elrod's outdated emphasis on "confidentiality," this approach suggests adherence to the Gannon court's focus on whether an employee can thwart an administration's goals. But a careful reading of Elrod suggests that courts also should be concerned with whether an employee can further those goals, a consideration absent in the Vrdolyak court's analysis.

testimony at trial revealed that in fact his responsibilities were quite narrow in scope. Vrdolyak, No. 83-7999, slip op. at 12 (N.D. Ill. Nov. 27, 1984).

199. See supra notes 166-71 and accompanying text.
200. See supra note 133 and accompanying text.
201. See supra note 140 and accompanying text.
202. See supra note 142 and accompanying text.
205. See supra note 92 and accompanying text.
206. See supra note 114 and accompanying text; see also Brief for Appellant at 7, Vrdolyak v. City of Chicago, No. 84-1360 (7th Cir. docketed Dec. 20, 1984) (noting that in a preliminary injunction hearing, the district court overlooked the Nekolny formula and instead repeatedly asked each witness whether Mr. Vrdolyak had the "type of discretion to hurt the current Administration or to thwart its objectives").
207. See supra note 188 and accompanying text.
Consideration of Administrative Loyalty

An Alternative Approach—Appropriate Standards

The rationale underlying the Branti and Nekolny tests is utilitarian. Aimed at the effective implementation of an administrator’s policies, the tests arguably focus on the objective nature of the office. The very language of these tests, however, invites a subjective approach. For example, the Vrdolyak court, in attempting to apply Branti’s “appropriate requirement” and “effective performance” and Nekolny’s “meaningful input” and “principled disagreement” standards, relied too heavily on the employee’s actual performance of his duties rather than on the manner in which his particular position fit into the structure of city government.

These subjectivity problems were reduced by the Tomczak approach, which emphasized the office held as opposed to the individual officeholder. While the Tomczak decision thus marked an important shift in analysis of exemption cases, the court’s analytical framework retained some confusing language. The Tomczak opinion continued to refer to a need for “political loyalty,” although the type of loyalty required is more accurately termed “administrative loyalty.” The Elrod Court noted that patronage dismissals severely restrict political belief and association. Accordingly, any allowance for “political loyalty” is automatically suspect. Since exemption turns on whether a position is necessary to implement an administration’s policies, the requisite loyalty is actually that which motivates an employee to work toward an administration’s objectives, rather than an adherence to a particular political belief. The Seventh Circuit recognized the importance of such administrative loyalty considerations when it held in Grossart v. Dinaso that, even in the case of a non-exempt employee, “professional loyalty” could be required.


211. See supra notes 198-202 and accompanying text.


213. Tomczak v. City of Chicago, 765 F.2d 633, 642 (7th Cir. 1985).


216. See Grossart v. Dinaso, 758 F.2d 1221, 1226, 1227 n. 4 (7th Cir. 1985).

217. Id. at 1221, 1232, 1234-35 (employer’s demand for professional loyalty over-
need for "administrative loyalty," courts will develop a class of exempt employees larger than that envisioned by courts that look solely at an individual's ability to thwart an administration's goals. 218

Organizational management theories similarly recognize that the achievement of organizational objectives in the private and public sectors is dependent on employees' commitments to those objectives. 219 The management-by-objective theory also recognizes the importance of the sharing of management goals at several levels. 220

Although Grossart and business management theories open the door for considerations of administrative loyalty, it is necessary to turn to Tomczak and theories of public administration to define the parameters of the exempt class of positions. In accordance with Tomczak, courts hearing Shakman challenges to exempt classifications should consider the manner in which a position fits into the scheme of governmental decisionmaking, rather than focusing on the specific officeholder and the duties which the officeholder attests to performing or the employer attests to delegating. Applying the Tomczak approach, courts should consider whether a position was properly classified as exempt by reviewing objective standards: plaintiff's salary, his level (or rank) within his department, the number of employees working under him and the duties which traditionally accompany his position. 221

Courts would do well to employ public administration theories in defining the appropriate exempt class. Such theories acknowledge that elected officials must be able to appoint administrative-managerial groups in order to maintain bureaucratic accountability. 222 One commentator has suggested that the success of a bu-

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218. See supra notes 113-14, 206 and accompanying text.
219. See D. McGregor, *Theory X and Theory Y*, in *Organization Theory* 322 (D. Pugh ed. 1971). Theory Y, an organization theory designed to integrate individual and organizational goals, is based on the assumption that people will exercise self-control and self-direction to the degree that they are committed to those objectives. Id. Behaviorists also have noted that because leaders are dependent upon subordinates for the implementation of plans, "synergism" between these two groups is ideal, and can be reached only when there is a great deal of trust and confidence between the leader and the employees. G. Francis & G. Milbourn, Jr., *Human Behavior in the Work Environment: A Managerial Perspective* 285-86 (1980).
221. See Tomczak v. City of Chicago, 765 F.2d 633, 638 (7th Cir. 1985); see also supra notes 166-72 and accompanying text.
222. Brief for Appellant at 28 n.14, Vrdolyak v. City of Chicago, No. 84-3160 (7th
Consideration of Administrative Loyalty

Reaucratic policymaking system is judged by its responsiveness to the electorate and its effectiveness in attaining short-term objectives that will lead to desired long-range goals.\textsuperscript{223} To the extent that exemption decisions limit the number of upper-level political appointments that incoming political executives can make, a cast of public employees who are less responsive to democratic demands may develop.\textsuperscript{224} By including in their exemption analyses an administrative loyalty factor which focuses on the ability of employees to implement policies chosen by the electorate, courts can counteract any trend toward creation of a nonresponsive bureaucracy.

For example, in the \textit{Vrdolyak} case, attention to the need for administrative loyalty probably would have produced a different result. Vrdolyak himself admitted that his position entailed the following substantial duties: Assisting the Director in managing the operations of the Bureau of Technical Inspection; assisting in the formulation and implementation of directives, rules and procedures concerning inspection practices, work performance, work quality and supervisory performance; meeting with lawyers, contractors, architects, businessmen and the general public to resolve problems and complaints concerning the building code; assisting the Director in matters regarding code amendments, revisions and deletions, including recommending code amendments; representing the Director before various citizen and professional groups; assisting the Director in initiating special inspection programs and coordinating their operation with that of other department activities; assisting the Director in conferring with the city corporation counsel's office and reviewing matters needing preparation for prosecution; carrying out special assignments, studies, evaluations and investigations assigned by the Director; and assuming the duties and responsibilities of the Director in his absence.\textsuperscript{225}

Contrary to the district court's conclusion, these job duties were not narrowly defined directives which left little room for discre-

\textsuperscript{223} F. KRAMER, DYNAMICS OF PUBLIC BUREaucRACY: AN INTRODUCTION TO PUBLIC MANAGEMENT 191 (2d ed. 1981) (citing F. ROURKE, supra note 222, at 3).
\textsuperscript{224} F. KRAMER, supra note 223, at 193.
\textsuperscript{225} Brief for Appellant at 9-10, Vrdolyak v. City of Chicago, No. 84-3160 (7th Cir. docketed Dec. 20, 1984).
tion. Instead, Vrdolyak's position involved the types of duties which are essential to implementation of an administration's policies. The "administrative loyalty" standard would mandate that such a position be filled by an individual who shares the administration's objectives and thus can be expected to respond to the electorate's wishes. This is particularly important when the individual's duties include, as did Vrdolyak's, being a spokesperson for the administration before citizen and professional groups.

CONCLUSION

The Shakman decrees each contained an exemption from the general rule proscribing patronage employment practices. Courts from Elrod to Tomczak have struggled to define the parameters of the exempt class. It now seems well settled that courts should concentrate on the "office" rather than the "officeholder" and that they should be concerned primarily with the extent to which a particular office is crucial to implementation of an administration's goals. First amendment protections sometimes must give way to the duty of elected officials to carry out the policies which the electorate has sanctioned. By focusing on the extent to which good management requires high degrees of "administrative loyalty" at certain levels in a government bureaucracy, courts will be better able to identify those positions where political affiliation is an appropriate consideration in employment decisions.

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226. Id. at 10.  
227. See supra notes 213-24 and accompanying text.  
228. Brief for Appellant at 101, Vrdolyak v. City of Chicago, No. 84-3160 (7th Cir. docketed Dec. 20, 1984).  
229. Id. See supra note 172 and accompanying text.