No. 122802

IN THE
SUPREME COURT OF ILLINOIS

ERIC GREGG, Plaintiff-Appellant, v. BRUCE RAUNER, Governor of Illinois, Defendant-Appellee,	)	Petition for Leave to Appeal from the Appellate Court, Fifth District, No. 5-16-0474 There heard on Appeal from the Circuit Court of Saline County, No. 15-L-29 Hon. Todd Lambert Judge Presiding

REPLY BRIEF OF PETITIONER ERIC GREGG

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ORAL ARGUMENT REQUESTED

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ARGUMENT

THE ILLINOIS LEGISLATURE CREATED THE PRISONER REVIEW BOARD TO BE AN INDEPENDENT QUASI-JUDICIAL BODY WHOSE MEMBERS CAN BE REMOVED ONLY FOR CAUSE.

The Governor argues the Prisoner Review Board is composed without a "requirement of strict party balance" and this disqualifies the Illinois Prisoner Review Board (IPRB) as an independent entity, forfeiting its members' judicial review of the grounds for removal by the Governor. Rauner brief p. 19. Indicia the General Assembly intended the IPRB to be politically independent can be found in its bi-partisan composition. What other reason explains the requirement of a closely balanced political composition? The applicable statute creating the bi-partisanship 15-member Prisoner Review Board titled "Establishment and Appointment of Prisoner Review Board" states, "No more than 8 Board members may be members of the same political party." 730 ILCS 5/3-3-1(b).

The Chairman is arguably the only member of the IPRB terminable at the will of the Governor. The IPRB statute provides, "One member of the Board shall be designated by the Governor to be Chairman and shall serve as Chairman at the pleasure of the Governor." See 730 ILCS 5/3-3-1(b). If the General Assembly intended that all 15 members of the Illinois Prisoner Review Boards served at the "pleasure" of the Governor they would have included such a provision. The General Assembly chose to explicitly restrict the power of removal of an IPRB board member for specific cause. See 730 ILCS 5/3-3-1(c), ("Any member may be removed by the Governor for incompetence, neglect of duty, malfeasance or inability to serve."). The fact the General Assembly limited the

grounds of removal of IPRB board members is a clear indicator the Board was to remain independent of interference by the Governor.

The Prisoner Review Board is a politically independent legislatively created board that exercises its judgment without interference from any other official or department of government. By statute the Prisoner Review Board was intended to function as an independent agency. "There shall be a Prisoner Review Board independent of the Department of Correction . . ." 730 ILCS 5/3-3-1. The Illinois legislature can remove quasi-judicial authority from direct control of an executive department and vest the quasi-judicial duties in an independent agency. By creating the IPRB as an independent quasi-judicial agency, the legislature recognized its members would be afforded judicial review of removals for cause to insulate the independence of Board members from arbitrary removals by the Governor.

The Illinois legislature vested quasi-judicial authority in the Prisoner Review Board and through a 1988 amendment made clear its intent that the IPRB fell within the purview of quasi-judicial state agencies that *Lunding* afforded judicial removal grounds review. The express language of the IPRB enabling statute demands the Governor's discretion to remove Board members was intended to be limited to particular causes: "incompetence, neglect of duty, malfeasance or inability to serve." 730 ILCS 5/3-3-1(a). With the exception of the words "inability to serve", the statutory causes enumerated in the statute, which permit the Governor to remove an IPRB board member, mirror those of Ill. Const. 1970, Art. V, §10 ("remove for incompetence, neglect of duty, or malfeasance in office any officer who may be appointed by the Governor"). *Lunding* announced that

quasi-judicial agencies would be entitled to judicial review of the legality of the governor's grounds for exercise of his removal authority under Ill. Const. 1970, Art. V, §10. Where statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law. *Exelon Corp. v Ill Dept. of Revenue*, 376 Ill.App.3d 918, 922 (1st Dist. 2007). Prior to the 1988, post-*Lunding* amendment, the statute's removal clause was unambiguous and provided the Governor could remove a IPRB member for "cause shown." *See* 730 ILCS 5/3-3-1(c) Historical and Statutory Notes (West 2017). Amendment of an unambiguous statute indicates a legislative intent to change the law. See*: Williams v. Staples* 208 Ill. 2d 480 (2004) 804 N.E.2d 489. The Governor offers a limited acknowledgment of established Illinois law of statutory construction. Rauner brief p. 24-26. The doctrine of statutory construction dictates that where statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law; and that, Illinois law has long recognized that an amendment to an unambiguous statute indicates a legislative intent to change the law, and it is presumed that every amendment is made for some purpose; courts must give effect to the amended law in a manner consistent with the amendment. *Exelon Corp.* supra.; *People v Youngbey,* 82 Ill.2d 556, 563 (1980).

The Governor attempts to cast the import of the legislature's post-Lunding amendment of the grounds for removal in the IPRB enabling legislation in a different light:

> By incorporating the substantive constitutional test for removal (while adding "inability to serve"), the legislature did nothing to resolve the question of whether

> judicial review of the Governor's removal decision is appropriate, which is a question of constitutional dimension. And while Gregg is correct that the General Assembly in 1988 must be presumed to have been aware of controlling rules of constitutional law, the more logical conclusion is that it expected this executive agency to be covered by the general *Wilcox* rule rather than the narrow *Lunding* exception. Rauner brief p. 25-26.

The Governor does not acknowledge the Legislature, in 1988, was cognizant of *Lunding* and adopted the constitutional grounds for removal discussed in *Lunding* when it amended the grounds predicate to removal of Board members. The Governor is reluctant to accept the Legislature amended the enabling statute with knowledge of *Lunding* because to do so would acknowledge the Legislature intended that the governor's grounds for removal of IPRB members would be subject to judicial review. The Governor instead states that it is more logical to assume the amendment was to reaffirm constitutional law as it existed before *Lunding,* the "Wilcox rule". Rauner brief p. 26. The "logic" of this conclusion is not apparent. A more logical interpretation is to follow the accepted rules of statutory construction; that amendatory change in the language of a statute creates a presumption that it was intended to change the law as if theretofore existed. *People v. Nunn* 77 Ill. 2d 243 (1979) 396 N.E.2d 27.

GOVERNOR RAUNER'S CONSTITUTIONAL SEPARATION OF POWERS ARGUMENT AGAINST GROUNDS CHALLENGES TO REMOVAL AUTHORITY OF GUBENITORIAL APPOINTEES WAS REJECTED IN THE *HUMPHREY'S EXECUTOR-WIENER* LINE OF CASES AND IMPLICITLY BY THIS COURT IN *LUNDING*

Governor Rauner protests Gregg's characterization of *Free Enterprise Fund v. Public Co. Acctg. Oversight Bd.*, 561 U.S. 477, 486 (2010) as the Supreme Court's latest exposition of the *Humphrey-Weiner* line of cases; in which the Supreme Court confirmed

prohibiting the President's arbitrary removal of an appointee to a quasi-judicial commission, does not violate constitutional separation of powers principles. Rauner Brief at p. 17. *Free Enterprise Fund* is instructive as to the Governor's separation of powers argument. The Majority in *Free Enterprise Fund* noted that neither the parties nor the Court question that the *Humphrey-Weiner* line of cases firmly establish that constitutional separation of powers principles do not prevent grounds challenge to Presidential removal authority of principal officers appointed by the President. Although since 1789 the Constitution has been understood to empower the President to keep these executive branch officers accountable-by removing them from office, if necessary,-the Court in *Humphrey's Executor v. United States* determined the President's removal authority is not without limit. Id. at 561 U.S. 483-484. In *Humphrey's Executor,* the Court held that Congress can, under certain circumstances, create independent agencies run by principal officers appointed by the President, whom the President may not remove at will but only for good cause. Id. Thereafter, in *Morrison v. Olson,* 487 U.S. 654, 108 S.Ct. 2597, 101 L.Ed.2d 569 (1988), the Court sustained similar restrictions on the power of principal executive officers—themselves responsible to the President—to remove their own inferiors. Id.

The Majority in *Free Enterprise Fund* refused to extend protection to inferior officers of quasi-judicial agencies from direct removal by the President reasoning the added layer of protection violated the separation of powers doctrine. Id. at 484. ("We hold that such multilevel protection from removal is contrary to Article II's vesting of the executive power in the President. The President cannot "take Care that the Laws be faithfully executed" if he cannot oversee the faithfulness of the officers who execute

them."). The Governor protested that Gregg cited language explaining the underpinnings of the *Humphrey* decision from the dissent subtly inferring that the Majority expressed a different view of the law. Rauner Brief at p. 17. The Governor went further by intimating that federal law has retreated from precedent allowing removal grounds challenges by presidential appointees serving in quasi-judicial agencies. Rauner Brief at p. 17. ("Federal law, in short, has moved away from unquestioning solicitude for the independence of "quasi-judicial" agencies in the four decades since *Lunding").* However, the dissent's discussion of the *Humphrey-Weiner* line of cases did not deviate from the view of the Court Majority and federal law continues to allow grounds challenges to the President's removal authority to preserve the integrity of agencies in the discharge of quasi-judicial functions.

Chief Justice John G. Roberts, Jr., writing for the majority in *Free Enterprise Fund*, reaffirmed precedent that the President's removal power was tempered by cause as to appointees to agencies whose statutory functions include quasi-judicial duties discharged without executive control, rather than purely executive duties. Id. 561 U.S. 493. The Dissent in *Free Enterprise Fund* also asserted that *Humphrey's Executor* has become unassailable precedent that Congress may constitutionally limit the President's authority to remove certain principal officers. Id. 561 U.S. at 534.

Gregg referenced the discussion in *Free Enterprise Fund* of *Morrison* in relation to the Governor's separation of powers argument. Gregg Brief p. 29-31. *Free Enterprise Fund,* is authority for the proposition that Congressional imposition of a "good cause" standard for presidential removal by itself "does not unduly trammel on executive authority". *Free Enterprise Fund,* 561 U.S. at 535; *Morrison v. Olson,* 487 U.S. 654, 658

(1988). Both *Free Enterprise Fund* and *Morrison* confirmed *Humphrey's Executor* imposition of a cause element on the President's removal power of an appointed member serving on a quasi-judicial agency does not violate the separation of powers principle. *Id.* The dissent in *Free Enterprise Fund* went further than the Majority to explain why *Humphrey's* grounds challenges to presidential removal do not violate the separation of powers doctrine. Id. 561 U.S. at 535. The dissent noted that constitutional separation-of-powers jurisprudence generally focuses on the danger of one branch *aggrandizing its power* at the expense of another branch. *Id.* That Congress was attempting to reserve unto itself a check on the President's removal authority was "the essence of the decision in *Myers,"* which is the only Supreme Court case to have struck down a "for cause" removal restriction, because the Constitution "prevents Congress from *`draw[ing] to itself . . . the power to remove.' Free Enterprise Fund*, 561 U.S. at 535.

That federal law post-*Lunding* firmly supports grounds challenges for removal of members of legislatively created quasi-judicial boards cuts against Governor Rauner's argument that permitting grounds challenges to the exercise of his constitutional removal authority (of an appointee to the IPRB who is charged with performing quasi-judicial functions) constitutes violation of the separation of powers principle embodied in the Illinois Constitution. *Lunding* judicial review does not constitute a separation of powers violation because the judicial cause review is limited to the judicial determination of the legality of the Governor's actions in light of the constitutional and statutory prescribed grounds. The judicial branch, by conducting a removal grounds review, does not usurp the Governor's constitutional removal authority. The separation of powers clause provides that none of the three branches of government "shall exercise powers properly

belonging to another." Illinois Constitution 1970 Art. II § 1. The separation of powers doctrine of the Illinois Constitution provides that the Legislative, Executive and Judicial branches are separate and that no branch shall exercise powers properly belonging to another. Thus each branch has its own sphere of authority. The separation of powers doctrine does not require a complete divorce between the branches of government. *People v. Peterson,* 2017 IL 120331 (No. 120331, mod. upon denial of rehearing 1/19/18).

THIS COURT SHOULD AFFIRM THE JUDGMENT OF THE TRIAL COURT TO ALLOW GREGG TO SERVE OUT HIS TERM ON THE ILLINOIS PRISONER REVIEW BOARD

Gregg requested this Court to utilize a *de novo* standard of review of the trial court's declaratory judgment and injunctive relief based on a finding Governor Rauner's removal of Gregg was not based on grounds required by the 1970 Illinois Constitution or the enabling legislation. Gregg sought a *de novo* review in this Court, not of Governor Rauner's decision to remove Gregg, but instead asks this Court to affirm the trial court's judgment without remand for further appellate review. *De novo* review to affirm the trial court's judgment is appropriate because the record presents no disputed facts (as the parties stipulated to all material facts) and the credibility of witness testimony is not at issue. *Cf. Paul v. Gerald Adelman & Associates, Ltd.*, 858 N.E.2d 1, 7, 223 Ill.2d 85 (Ill., 2006). The Appellate Court ruled that judicial review was not allowed and, therefore, did not address the trial court's declaratory judgment that the Governor's removal of Gregg was wrongful and not permissible under Article V, §10 of the 1970 Illinois Constitution, nor the IPRB enabling statute, 730 ILCS 5/3-3-1(c).

Governor Rauner responded that exercise of removal authority is not subject to *de novo* review but the judicial inquiry is limited to an inquiry to determine if the decision to remove constituted an abuse of the Governor's discretion as an arbitrary and capricious act. Rauner Brief at p.32, citing *Bigelow Group, Inc. v. Rickert,* 877 N.E.2d 1171, 377 Ill. App. 3d 165 (Ill. App., 2007). However, the trial court' declaration that the Governor's act of removal was arbitrary given the grounds stated for Gregg's removal (filing a false Statement of Economic Interest and a later amended scrivener's error on a bankruptcy schedule), did not comport with law because they contravened the requisite constitutional and statutory grounds required for removal of a member of the IPRB. The trial court reversed the Governor's removal decision because the evidence demonstrated the grounds asserted were arbitrary, unreasonable, and unrelated to the requirements of service. *Cf.* Kosoglad v. Porcelli, 132 Ill.App.3d 1081, 1089 (1985). The trial court's analysis adhered to the dictates of limited judicial review discussed in *Bigelow.* The trial court's review of Governor Rauner's act of removal of Gregg was limited to the declaration that the removal did not satisfy the constitutional and statutory grounds. Cf. *Bigelow Group, Inc.*, *supra*, 877 N.E.2d at 1179-81 ("the judiciary must limit itself to infringing on official discretion only where that discretion can be shown to not comport with the law because it contravenes a statute or constitution or does not comport with the relevant enabling statute.").

The trial court's declaration that the conduct supporting the Governor's decision to remove Gregg did not constitute the requisite constitutional and statutory grounds was based on the stipulated facts and testimony of witnesses whose credibility was not

challenged. Based on the parties stipulation and the absence of the credibility issues of witness testimony, Gregg asks this Court to affirm the Trial Court's judgment reinstating Gregg to active participation as a Board member of the Illinois Prisoner Review Board.

THE GOVERNOR'S CONTENTION THAT THE IPRB IS NOT A QUASI JUDICIAL BODY IS CONTRARY TO ILLINOIS LAW DEFINING QUASI JUDICIAL BODIES

The Governor argues that the IPRB is not a "quasi-judicial" agency, and performing some "quasi-judicial" functions does not bring an agency within the ambit of *Lunding.* Rauner brief p.26-31. The Governor disputes that the IPRB is a quasi-judicial agency, only coming to this conclusion by blatantly dismissing the pronouncement the IPRB is a "quasi-judicial" entity on the Board's web site and annual report to the Governor. *State of Illinois Prisoner Review Board, 39th Annual Report, (2015),,*p. 4; Rauner brief p. 26. The Governor's dismissal of the IPRB Annual Report as not relevant is at odds with the fact the IPRB's annual reports are prepared pursuant to mandate of the Illinois Constitution. Ill.Const. 1970, art. V, §19.

The Governor does not address Illinois case law which define quasi-judicial entities but carves out definitions of his own creation. The IPBR exercises all six powers that have been recognized under Illinois law differentiating a quasi-judicial body from one that performs merely administrative functions: (1) the power to exercise judgment and discretion; (2) the power to hear and determine or to ascertain facts and decide; (3) the power to make binding orders and judgments; (4) the power to affect the personal or property rights of private persons; (5) the power to examine witnesses, to compel the attendance of witnesses, and to hear the litigation of issues on a hearing; and (6) the

power to enforce decisions or impose penalties. *Kalish v. Illinois Education Association*, 157 Ill.App.3d 969, 971-72 (1st Dist., 1987). A quasi-judicial body need not possess all six powers; however, the more powers it possesses, the more likely the body is acting in a quasi-judicial manner. *Id.* at 972.

Begrudgingly, the Governor admits that the IPRB does perform activities that could be described as quasi-judicial but counters quoting *Parillo, Weiss & Moss v. Cashion,* 181 Ill.App.3d 920, 926 (1rst Dist. 1989): "an entity with quasi-judicial powers is not, as a matter of law, a quasi-judicial body at all times". Rauner brief p. 28. The discussion of the quasi-judicial functions in *Parillo* related to whether the absolute privilege against slander enjoyed by members of quasi-judicial tribunals was applicable when the member was not engaged in quasi-judicial functions at the time of the offending utterance. Id.

The Governor argues *Lunding* strictly limits judicial review of removal grounds to appointees of an agencies that are completely non-partisan in composition-have an even number board composed of equal numbers of members from each party. A fair reading of the Governor's argument reflects the assertion that *Lunding* has no application beyond the Board of Elections. In other words because the Board of Election, unlike any other state agency, was established by Constitutional mandate and has a strict party balance and even bi-partisan composition. See: Rauner Brief p. 19 ("there is no requirement of strict party balance on the Prisoner Review Board."); p. 8. ("But the Prisoner Review Board does not share the distinctive features of the State Board of Elections that prompted this Court to recognize an exception to *Wilcox*."); p.14 (..."the Board of Elections, unlike virtually all other multimember agencies in the State, has an even number of members.");

p. 19 ("unlike the eight-member State Board of Elections with its constitutional and statutory nonpartisanship requirements…there is no requirement of strict party balance on the Prisoner Review board…The Board as a whole, then, is not required to be nonpartisan…"); p. 22 ("By giving the Prisoner Review Board this role in the clemency process, the General Assembly established that the Board-far from being a body that must act with complete political independence-is an agency of the executive branch…").

As previously discussed, after the ratification of the 1970 Constitution, this Court took up the interpretation of Article V, Section 10, structuring the Governor's removal power. *Lunding* found the Governor's removal authority under the Illinois Constitution of 1970 was analogous to the President's removal power. *Lunding*, 65 Ill. 2d, 516 at 521. The *Lunding* court noted the drafters of the constitution intended the governor's removal power to be co-extensive with the removal power enjoyed by the President. Id. at 520-21, (citing *Ramsay v. VanMeter* (1921) 300 Ill. 193, 201-202 ("It was the intention of the framers of the Constitution of 1870 to adopt the rule which had been established under the rule of the Constitution of the United States…"). Therefore, this Court in *Lunding* examined, and then adopted functional criteria developed by the Supreme Court, to determine the extent of the President's removal power from a trilogy of modern Supreme Court cases, *Myers-Humphrey-Wiener. Id.* Although not bound to these Federal decisions, this Court found the *Humprey-Weiner* decisions, dealing with "considerations of 'independence,'" to be significant in structuring the Governor's removal power. *Lunding*, at 525.

The Governor suggests that *Lunding* did not principally rely on the fact that the Board of Elections exercised some quasi-judicial powers in finding the governor's removal of a member of the Board was subject to judicial review. Rauner brief p. 29. ("Had this Court intended to embrace such a far-reaching new rule in *Lunding,* one would expect it to have relied heavily on the fact that the State Board of Elections exercised some quasi-judicial power. But it did not do so."). However, the bulk of this Court's opinion in *Lunding* was an exposition on federal precedent that allowed grounds challenges to the Presidents removal power to assure the independence of commissions that were charged with quasi-judicial duties; specifically, the Federal Trade Commission in *Humphrey's Estate* and the War Claims Commission in *Wiener*. See: *Lunding*, at 521 to 525 (...this court in both *Wilcox* and *Ramsay* indicated that it was disposed to follow the Federal rule, and we now find the reasoning of the *Myers-Humphrey-Wiener* trilogy persuasive...while neither *Humphrey's* nor *Wiener* is directly on point, the same considerations of "independence" make those cases analogous to the case at bar.") *Id* at 525. *Lunding* adopted the Supreme Court's functional criteria to allow a grounds challenge for removal of federal appointees who serve in agencies tasked with the performance of quasi-judicial duties. Grounds challenges were authorized under the *Humphrey's –Wiener* rationale despite the fact the agencies did not have even partisan composition. *See: Humphrey's Executor* at 295 U.S. 624, (which addressed the independence of the bi-partisan 5 member board of the Federal Trade Commission whose duties are neither political nor executive, but predominantly *quasi*-judicial and *quasi*-legislative and whose members are called upon to exercise the trained judgment of

a body of experts "appointed by law and informed by experience.); see also, *Weiner* (finding the three member War Claims Commission independent of executive control).

The Governor elevates form over substance by insisting that an evenly balanced bi-partisan membership is the sole criteria to be used under *Lunding* to assess whether a state board possesses the requisite need for independence to warrant judicial review. In *Crowell v. Benson*, 285 U. S. 22, 53 (1932), a foundational separation-of-powers case, the Court said that "regard must be had, as in other cases where constitutional limits are invoked, not to mere matters of form, but to the substance of what is required." The Court repeated this injunction in *Morrison*, 487 U. S., at 689–690 ("The analysis contained in our removal cases is designed not to define rigid categories of those officials who may or may not be removed at will by the President," but rather asks whether, given the "functions of the officials in question," a removal provision "interfere[s] with the President's exercise of the 'executive power'").

In *Lunding* a new precedent was set. In an attempt to obscure the precedential effect of *Lunding*, the Governor exaggerates the discussion of the Board of Election's even political composition, with an even number of members from both parties as the touchstone of independence required for judicial review. Federal and State courts have applied *Lunding* as precedent to afford judicial review of the legality of the exercise of removal authority as to appointees of quasi-judicial agencies have not adopted the Governor's restrictive interpretation of *Lunding*. See: *Kosoglad v. Porcelli*, 132 Ill.App.3d 1081, 1088(1rst Dist. 1985)(the Board of Fire and Police commissioners was created so that no more than 2 of its 3 members were of the same political party); *Ford v.*

Blagojevich, 282 F.Supp.2d 898, 905 (C.D. Ill. 2003)(the Illinois Workers' Compensation Commission consists of 10 members with no more than 6 members of the same political party). By reducing the application of Lunding only to boards that are mandated by the Constitution and are by design composed of an even number of members from both parties, the Governor's position does not track the functional criteria *Lunding* sought to permit judicial review of the grounds for removal of an appointee to a state board that needs independence to assure integrity in the discharge its quasi-judicial duties. At its essence, *Lunding* determined that judicial review of the legality of the Governor's grounds for exercise of removal authority as established by the 1970 Ill. Const. art. V, §10, or the IPRB enabling legislation, 730 ILCS 5/3-3-1(c) was appropriate in the context of appointees to quasi judicial boards.

The Governor's refusal to recognize the functional criteria for judicial review established by this Court in *Lunding* contravenes the well-established principles of *stare decisis*. The doctrine of *stare decisis* protects against the law changing erratically, but develops a principled and intelligible fashion. *Chicago Bar Ass'n v. Ill. State Bd. of Elections*, 161 Ill. 2d 502, 510 (1994). *Stare decisis* allows fundamental principles established a body of law, rather than in the "proclivities of individuals." *Id.* As the doctrine of *stare decisis* preserves the integrity of our constitutional system of government both in appearance and in fact, a court will detour from this straight path only for "articulable reasons, and only when the court must bring its decisions into agreement with experience and newly ascertained facts." Id. 161 Ill. 2d 502, 510, (citing *Vasquez* v. *Hillery*, 474 U.S. 254, 265-66 (1986)). Any departure from the doctrine of *stare decisis* demands special justification. *Arizona* v. *Rumsey*, 467 U.S. 203, 212 (1984).

The Governor has not articulated any reasons, or special justifications, as to why the precedent set by *Lunding* should be radically diminished.

Post *Lunding* commentators have recognized *Lunding* as established precedent for judicial review of the Governor's exercise of constitutional removal power of board members serving within the executive branch on boards that perform quasi-judicial functions:

> The Illinois Supreme Court soon resolved the basic constitutional status of the board: a special agency within the executive branch whose members are appointed by the governor, but who cannot be removed by except "for cause". In *Lunding v. Walker*, 65 Ill.2d 516, 359 N.E.2d 96 (1976), the question was whether the governor could remove member Frank Lunding for failing to file a financial disclosure report that a gubernatorial executive order required of employees responsible to the governor. The underlying and more important issue was whether the board was part, of the executive branch of state government. The court held that the Board, whose members were appointed by the governor, was part of the executive branch of state government. The court held that the Board, whose members were appointed by the governor, was part of the executive branch, but that it was intended to be both independent and non-partisan. Absent a showing of "good cause," the governor could not remove a member.

Ann M. Louisn, Oxford Commentaries on the State Constitutions of the United States, 2011 at Pg. 96.

The Governor's use of an evenly split bi-partisan board as the key indicia of the General Assembly's intention to create an independent quasi judicial body fails to take into account the practical limitations of even number boards. The Governor's argument does not give credence to the fact the General Assembly indicates its intention to make an agency independent of political influence when it requires bipartisan composition of an

agency and allow only a one member partisan majority; as in the case of the IPRB which has 15 members with only 8 being from the same party. 730 ILCS 5/3-3-1. The IPRB is a quasi-judicial entity that makes decisions concerning adult and juvenile prison inmate matters, sitting in panels of three, conducts dockets at various penal institutions and in 2015 issued decisions in over 8,000 cases. *State of Illinois Prisoner Review Board, 39th Annual Report, (2015),* p. 4. To assure timely dispositions of the hearings, the IPRB uses odd number of member to deliberate and in that manner avoids stalemates. *Cf. Campaign for Pol. Reform v Election Bd.* 886 N.E. 2d 1220, 382 Ill.App.3d 51 (2008)(Bd. of Elections failure to achieve a majority vote results in stalemate resulting in dismissal of complaints).

CONCLUSION AND PRAYER FOR RELIEF

Eric Gregg, prays this court reverse the Appellate Court's decision which held the removal of Petitioner from the IPRB is not judicially reviewable; and affirm the Trial Court's Judgment Declaring Rights that Governor Rauner did not have constitutional or statutory cause to remove Eric Gregg from the IPRB, or, alternatively, reverse the Appellate Court and remand the case to the Appellate Court with directions.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under rule 342(a) is 18 pages.

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