IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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| J. DENNIS HASTERT, ET AL., | ) | |
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| Plaintiffs, | ) | |
| | ) | |
| v. | ) | Case No. 91 C 4028, 91 C 4154 |
| | ) | 91 C 4643, 91 C 4656, 91 C 5472 |
| | ) | |
| ILLINOIS STATE BOARD | ) | HONORABLE SUZANNE B. CONLON |
| OF ELECTIONS, ET AL., | ) | HONORABLE MICHAEL S. KANNE |
| | ) | HONORABLE CHARLES R. NORGLE |
| Defendants. | ) | |
| | ) | |
| | ) | |

**ORDER**

Before KANNE, Circuit Judge, CONLON, District Judge, NORGLE, District Judge.

Per curiam:

Before the court is Intervenor's motion styled as "Motion Attacking Subject Matter Jurisdiction." For the following reasons, the court denies the motion.

## I. BACKGROUND[1]

This case involves claims under the Constitution of the United States, Article I, Section 2, the Fourteenth Amendment, the Fifteenth Amendment, and 42 U.S.C. § 1983. In 1991, Congressmen J. Dennis Hastert[2], Philip M. Crane, and Henry J. Hyde ("Hastert Plaintiffs") filed an

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[1] The facts are taken from the pleadings submitted as well as the previous action heard before this court. See Hastert v. State Board of Elelections, 777 F. Supp. 634 (N.D. Ill. 1991). None of the parties have disputed any of the facts.

[2] J. Dennis Hastert is now Speaker of the House of Representative in the United States Congress. In 1991, Mr. Hastert was a representative in Congress and did not hold the Speaker's Office.

action in the United States District Court for the Northern District of Illinois. See Hastert v. State Board of Elections, 777 F. Supp. 634 (N.D. Ill 1991). The Hastert Plaintiffs sought to enjoin the Illinois State Board of Election ("Board") from conducting the 1992 congressional elections under the then current congressional district plan. The Hastert Plaintiffs argument was based on the figures of the 1990 national census. The 1990 decennial census showed that the State of Illinois population increased, but the population increase was smaller in proportion than the population increase in the United States as a whole. As a result, the Clerk of the United States House of Representatives determined that Illinois was entitled to twenty federal congressional representatives instead of twenty-two representatives in place at the time. The Illinois General Assembly ("Assembly") was then constitutionally obligated to devise a new congressional redistricting scheme for the state to reflect the twenty instead of twenty-two congressional seats. The Assembly failed to take the action necessary under the Illinois Constitution, and the Board was bound to conduct the 1992 elections according to 1981 congressional district plan. See In re Congressional Districts Reapportionment Cases, No. 81 C 3915, slip op. (N.D. Ill. Nov. 23, 1981), aff'd sub nom. Ryan v. Otto, 454 U.S. 1130 (1982). The Hastert Plaintiffs proposed a new congressional redistricting plan that was in alignment with the 1990 census and reflected the loss of the two congressional seats.

The Chief Judge of the Seventh Circuit Court of Appeals convened this three-judge district court panel to hear the Hastert action. See 28 U.S.C. § 2284(a).[3] After truncated litigation, the court adopted the plan submitted by the Hastert Plaintiffs. The court issued an injunction that stated that

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[3] 28 U.S.C. § 2284(a) states as follows:

> a district court of three judges shall be convened when otherwise required by an Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide body.

the plan "shall govern the nomination and election of members of the House of Representatives from the State of Illinois effective with respect to the 1992 primary and continuing until Illinois congressional districts are reapportioned in accordance with law." Hastert, 777 F. Supp. at 662.

With the dawning of the new millennium, the Bureau of Census conducted a new census of the United States. Once again, Illinois' population grew, but not in proportion to the population of the rest of the United States. Based on the figures accumulated during the 2000 census, Illinois will be reduced from twenty to nineteen congressional seats beginning with the 2002 congressional elections. In accordance with its constitutional obligations, both state and federal, the Assembly developed a redistricting plan when it enacted HB 2917, the Illinois Redistricting Act of 2001. The Act was signed into law on May 31, 2001 by Illinois Governor George H. Ryan.

On June 1, 2001, the Hastert Plaintiffs submitted to this court, in the form of a motion pursuant to Federal Rule of Civil Procedure 60(b)(5) and (6), that the congressional redistricting plan enacted by the Assembly and signed into law by Governor Ryan redistricts Illinois in accordance with law. The Hastert Plaintiffs request that this court modify the previously entered judgment in Hastert to order the Board to conduct congressional primary and general elections in accordance with the congressional redistricting plan enacted by the Assembly and signed into law by Governor Ryan.

On June 4, 2001, David Phelps ("Phelps"), a United States Congressman for the State of Illinois, filed an action in Illinois state court claiming that the Illinois Redistricting Act of 2001 is unconstitutional. This court granted Phelps leave to intervene in this action on July 10, 2001. Phelps, as intervenor, now brings a motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(1), against the Rule 60(b) motion filed by the Hastert Plaintiffs. The court's opinion here is

limited to Phelps' 12(b)(1) motion. The court expresses no opinion on the substantive aspects of the Hastert Plaintiffs' 60(b) motion.

## II. DISCUSSION

Federal Rule of Civil Procedure 12(b)(1) provides, in relevant part: "Every defense, in law or fact, to a claim for relief in any pleading . . . Shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction of the subject matter." "Fundamental to our law is the understanding that '[f]ederal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto.'" Transit Express, Inc. v. Ettinger, 246 F.3d 1018, 1023 (7th Cir. 2001) (quoting Bender v. Williamsport Area School Dist., 475 U.S. 534, 541 (1986)); see also Allen v. Wright, 468 U.S. 737, 750 (1984)). Furthermore, 28 U.S.C. § 1331 provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Transit Express, 246 F.3d at 1023. The court must also be "cognizant of the Supreme Court's admonition that 'federal question jurisdiction arises only when the complaint standing alone 'establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law.'" Transit Express, 246 F.3d at 1023 (quoting Minor v. Prudential Securities, Inc., 94 F.3d 1103, 1105 (7th Cir. 1996) (in turn quoting Franchise Tax Bd. v. Construction Laborers Vacation Trust, 463 U.S. 1, 27-28 (1983)).

In May of 1932 United States Supreme Court Justice Cardozo wrote:

> We are not doubtful of the power of a court of equity to modify an injunction in adaptation to changed conditions though it was entered by consent . . . Power to modify the decree was reserved by its very

> terms, and so from the beginning went hand in hand with its restraints. If reservation had been omitted, power there still would be by force of principles inherent in the jurisdiction of the chancery. A continuing decree of injunction directed to events to come is subject always to adaptation as events may shape the need.

United States v. Swift & Co., 286 U.S. 106, 114 (1932) (citations omitted);[4] See also System Federation No. 91, Railway Employees' Dept. v. Wright, 364 U.S. 642, 647 (1961). Following along these lines, the Seventh Circuit has held that "when an equity case ends in a permanent injunction, the trial court, with or without an explicit reservation of jurisdiction, retains jurisdiction to enforce the injunction . . . ." McCall-Bey v. Franzen, 777 F.2d 1178, 1183 (7th Cir. 1985); see also United States v. Fisher, 864 F.2d 434, 436 (7th Cir. 1988) (when a court issues an injunction, it automatically retains jurisdiction to enforce it); Zbaraz v. Hartigan, 776 F. Supp. 375, 384 (N.D. Ill. 1991) (a court retains jurisdiction to modify or dissolve an injunction).

Phelps argues in his motion to dismiss that: (1) Federal Rule of Civil Procedure 60(b) does not confer subject matter jurisdiction since the injunction has expired; and (2) the statement that an injunction may be modified is an abstract statement of law and cannot confer subject matter jurisdiction in this case. (See Intervenor's Mot. To Dismiss, pp. 3-4.) Phelps argues that the Hastert Plaintiffs cannot raise a 60(b) motion because the State of Illinois has "reconfigured the Illinois

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[4] A more contemporary statement of law has been provided by Wright & Miller:

> [A] court has continuing power to modify or vacate a final decree. This continuing responsibility of the issuing court over its decrees is a necessary concomitant of the prospective operation of equitable relief and has its roots in the historic power of chancery to modify or vacate its decrees "as event may shape the need."

11 Charles A. Wright, Arthur R. Miller & Mary K. Kane, Federal Practice and Procedure: Civil § 2961, at 599 (2d ed. 1981).

Congressional Districts." (Intervenor's Mot. to Dismiss, pg. 3.) As a result of the reconfiguration, Phelps argues that the State has fulfilled the court's order that the Illinois congressional districts be reapportioned in accordance with law. (See Intervenor's Mot. to Dismiss, pg. 3.); See Hastert, 777 F. Supp. at 662. Thus, according to Phelps, the court's injunction has expired. As an extension of this first argument, Phelps also claims that since the court's order has expired based on the State of Illinois redistricting then any contemplation of modification is made only in the abstract or theoretical sense. (See Intervenor's Mot. to Dismiss, pp. 3-4.) Or in other words, Phelps argues it is impossible to modify an injunction that no longer exists.

None of Phelps' arguments are persuasive. Phelps ignores the well accepted rule that the court always has jurisdiction over its own injunction. As stated before, the court, as a matter of law, with or without an explicit reservation of jurisdiction, retains jurisdiction to enforce its own injunction. See McCall-Bey, 777 F.2d at 1183; Fisher, 864 F.2d at 436; Zbaraz, 776 F. Supp. at 384. Phelps admits as much in his reply brief, but unconvincingly attempts to couch his admission, once again, in terms of "abstract" legal theory. (See Intervenor's Reply, pg. 7.) The court does not deal in abstract legal theory but in motions that are presented and relevant arguments before it. Here, the court's 1991 decision in Hastert, 777 F. Supp. 634, entailed an injunction. The Hastert Plaintiffs ask the court to modify the injunction. It is plain that the court has the authority to entertain such a motion.

## II. CONCLUSION

For the foregoing reasons, the court denies Intervenor's motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1).

IT IS SO ORDERED.

ENTER:

MICHAEL S. KANNE, Judge
Seventh Circuit Court of Appeals

SUZANNE B. CONLON, Judge
United States District Court

CHARLES R. NORGLE, Sr., Judge
United States District Court

DATED: August 20, 2001