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# The Demise of the Praecipe

Diane S. Kaplan\*

## I. INTRODUCTION

The Illinois Marriage and Dissolution of Marriage Act (“Marriage and Dissolution Act”) permits a dissolution of marriage action to be commenced by the filing of a Praecipe for Summons (“Praecipe”) in lieu of a petition for dissolution of marriage.<sup>1</sup> In form, the Praecipe is an abbreviated version of a formal dissolution petition: it is captioned, numbered and date stamped,<sup>2</sup> but alleges no grounds, seeks no relief, and need not be served.<sup>3</sup> Its sole function is to confer subject matter jurisdiction upon the court in which it is filed. Unique to Illinois procedural law, the Praecipe has become the “Pushme Pullyou” of Illinois jurisdictional devices: it invites jurisdiction yet places nothing before the court to adjudicate.

This article poses a constitutional challenge to Illinois divorce jurisdiction when triggered by the use of the Praecipe. It examines the statutory and constitutional validity of the Praecipe, traces its legislative development, and analyzes the applicable law of jurisdiction and judgments to determine what jurisdictional effect, if any, the Praecipe is entitled to receive. The article concludes that, as a venue provision masquerading as a jurisdictional device, the Praecipe violates the Illinois and federal due process and equal protection clauses, as well as the Illinois special legislation prohibition.

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1. ILL. REV. STAT. ch. 40, § 411(a) (1985). From October 1, 1985 to December 31, 1985, a total of twenty-five Praecipies were filed in the Circuit Court of Cook County, Illinois—Domestic Relations Division. Five of the twenty-five Praecipies were not followed by divorce petitions. Of those that were followed by divorce petitions, the petitions were filed between 0-190 days after the filing of the Praecipe.

By statistical projection, this data indicates that approximately ninety Praecipies are filed in Cook County each year, totalling approximately 180 state wide. Because it takes approximately two years for a dissolution action to be adjudicated in the Illinois courts, approximately 360 cases are currently pending in Illinois courts that are jurisdictionally predicated upon the Praecipe.

2. The form of the Praecipe appears as Appendix A.

3. ILL. REV. STAT. ch. 40, § 411 (1985).

## II. JURISDICTION

In form, the Praeceptum is an original writ, addressed to the clerk of the court, requesting that summons issue.<sup>4</sup> In content, the Praeceptum recites only such preliminary information as is necessary to identify the parties, the filing date, and the file number. Otherwise, it alleges no grounds, seeks no relief, and need not be served.<sup>5</sup> Nevertheless, it purports to be jurisdictional. Why?

In 1956, the Illinois Supreme Court addressed the issue of whether the Praeceptum was a valid means of securing jurisdiction in divorce proceedings.<sup>6</sup> In the seminal case of *People ex rel. Doty v. Connell*,<sup>7</sup> the appellant wife sought to expedite her divorce proceedings by filing a motion to waive a sixty-day waiting period and file her complaint *instanter* despite her refusal to commence the suit by filing a Praeceptum as required by statute. The clerk of the court refused to file the complaint. Thereafter, the wife filed a mandamus to compel the clerk to waive the sixty-day waiting period and to file her complaint for divorce.<sup>8</sup> Affirming the denial of the mandamus, the *Doty* court construed sections 7a-7e of the 1955 Illinois Divorce Act ("Divorce Act") as providing "for immediate commencement of the suit by the filing of a *praecipue* for summons, with the consequent prompt obtaining of jurisdiction of the subject matter and the parties."<sup>9</sup> By virtue of this ruling, the court conferred upon the Praeceptum the same jurisdictional dignity as a complaint or a petition.

Similar results have obtained in virtually all subsequent suits in which the issue of the Praeceptum's jurisdictional integrity has been raised. For example, in *Abbott v. Abbott*,<sup>10</sup> the husband and wife each attempted to invoke the prior jurisdiction of the court in which each had filed his or her respective divorce action.<sup>11</sup> The husband commenced his action by filing a Praeceptum in Piatt County, Illinois.<sup>12</sup> Shortly thereafter, the wife commenced her action by filing a complaint in Peoria County, Illinois

4. The following is the current legal definition of a Praeceptum:

Lat[in]. In practice, an original writ drawn up in the alternative, commanding the defendant to do the thing required, or show the reason why he had not done it. It includes an order to the clerk of court to issue an execution on a judgment already rendered . . . . A paper upon which the particulars of a writ are written. It is filed in the office out of which the required writ is to issue. Also an order, written out and signed, addressed to the clerk of a court, and requesting him to issue a particular writ.

BLACK'S LAW DICTIONARY 1055-56 (5th ed. 1979).

5. See *supra* notes 2-4 and accompanying text.

6. *People ex rel. Doty v. Connell*, 9 Ill. 2d 390, 137 N.E.2d 849 (1956).

7. *Id.*

8. *Id.* at 392, 137 N.E.2d at 851.

9. *Id.* at 393, 137 N.E.2d at 851.

10. 52 Ill. App. 3d 728, 367 N.E.2d 1073 (3d Dist. 1977).

11. *Id.* at 729, 367 N.E.2d at 1073-74.

12. *Id.* at 729, 367 N.E.2d at 1073.

and then personally served the husband.<sup>13</sup> Subsequently, the husband served the wife.<sup>14</sup> The husband then moved to dismiss the wife's suit on the grounds that he had previously filed the same action in Piatt County.<sup>15</sup> After a series of appeals, the Illinois Appellate Court was faced with the question of which circuit court had prior jurisdiction over the action.<sup>16</sup> Quoting *Doty*, the court held that the filing of a Praeipce in Piatt County commenced the divorce action there and resulted in the "prompt obtaining of jurisdiction of the subject matter and the parties."<sup>17</sup>

Similarly, in *Van Dam v. Van Dam*,<sup>18</sup> the petitioning wife filed a Praeipce and a motion for waiver of the sixty-day waiting period on the grounds that the husband was incurring financial debts for which she could be held liable if her divorce was not litigated on an expedited basis.<sup>19</sup> The court granted the motion on the day it was filed and the petitioner immediately filed her complaint.<sup>20</sup> The husband challenged the subsequent divorce decree alleging, *inter alia*, that the court had failed to obtain jurisdiction over both the subject matter and the parties.<sup>21</sup> The Illinois Supreme Court upheld the jurisdiction of the circuit court by reciting the *Doty* proposition that the action commenced upon the filing of the Praeipce "with the consequent prompt obtaining of jurisdiction of the subject matter and the parties."<sup>22</sup>

The jurisdictional value of the Praeipce was insightfully explained in an article entitled, "The Magic and Versatility of the 'Praeipce' in Divorce and Separate Maintenance Cases,"<sup>23</sup> in which the article's author stated:

[T]here is magic and versatility in any pleading, herein the Praeipce, which can endow a court with jurisdiction. It is clerical in form and consists only of a statement of intention, without allegations, yet puts in effective function the machinery of a modern judicial system to the

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13. *Id.* at 729, 367 N.E.2d at 1073-74.

14. *Id.* at 729, 367 N.E.2d at 1074.

15. *Id.*

16. *Id.* at 729-30, 367 N.E.2d at 1074.

17. *Abbott*, 52 Ill. App. 3d at 730, 367 N.E.2d at 1074 (quoting *People ex rel. Doty v. Connell*, 9 Ill. 2d 390, 393, 137 N.E.2d 849, 851-52 (1956)).

18. 21 Ill. 2d 212, 171 N.E.2d 594 (1961).

19. *Van Dam*, 21 Ill. 2d at 213, 171 N.E.2d at 596.

20. *Id.*

21. *Id.* at 216, 171 N.E.2d at 597.

22. *Id.* at 216, 171 N.E.2d at 597-98 (quoting *People ex rel. Doty v. Connell*, 9 Ill. 2d 390, 394, 137 N.E.2d 849, 852 (1956)); see also *Pantle v. Pantle*, 19 Ill. App. 2d 353, 153 N.E.2d 740 (1958). See generally Note, *Divorce-Illinois 60-Day "Cooling-Off" Period Held Constitutional*, 6 DEPAUL L. REV. 162 (1956) (analyzes the 1955 Divorce Act amendments as scrutinized in *Doty*).

23. Weinberg, *The Magic and Versatility of the "Praeipce" in Divorce and Separate Maintenance Cases*, 59 ILL. B.J. 564, 566 (1971).

end of reconciliation and psychological counseling for husband and wife.<sup>24</sup>

Therein lies not only the magic but the malady of the Praeceptum. Contrary to the Illinois Supreme Court's unfortunately overbroad language in *Doty* and its progeny,<sup>25</sup> the filing of the Praeceptum does not result in the "prompt obtaining of jurisdiction of the subject matter and the parties."<sup>26</sup> Personal jurisdiction does not obtain upon the filing of the complaint, petition or Praeceptum, but only upon the service of process on the defendant in accordance with the appropriate Illinois service provision.<sup>27</sup>

Similarly, the filing of the Praeceptum cannot confer subject matter jurisdiction on the court in which it is filed. The Praeceptum alleges no grounds and seeks no relief.<sup>28</sup> It invokes no adjudicatory function because upon its filing, "there is nothing pending before the court to be decided."<sup>29</sup> In fact, the cause of action need not even be ripe when the Praeceptum is filed.<sup>30</sup> None of these functions occur until the complaint is

24. *Id.* at 573.

25. *Doty*, 9 Ill. 2d at 393, 137 N.E.2d at 851 (filing of Praeceptum immediately commences divorce action "with the consequent prompt obtaining of jurisdiction of the subject matter and the parties."); *VanDam*, 21 Ill. 2d at 216, 171 N.E.2d at 597-98 (quotes *Doty* as authority for the same principle); *Abbott*, 52 Ill. App. 3d at 730, 367 N.E.2d at 1074 (quotes *Doty* for the same principle); see also *Weinberg*, *supra* note 23, at 565 (quotes *Doty* for the same principle).

26. *Doty*, 9 Ill. 2d at 393, 137 N.E.2d at 851.

27. ILL. REV. STAT. ch. 110, §§ 2-203, 2-206, 2-208 (1985).

28. See *infra* Appendix A (form of Praeceptum); see also ILL. REV. STAT. ch. 40, § 411 (1985).

29. *People ex rel. Christiansen v. Connell*, 2 Ill. 2d 332, 348, 118 N.E.2d 262, 270.

30. *Weinberg*, *supra* note 23, at 567. The Praeceptum's unique (magical) ability to secure for its users the subject matter jurisdiction of Illinois courts even though no cause of action is pleaded could result in untoward consequences. For example, a nervous newlywed could marry one day and in anticipation of marital woes file a Praeceptum the next, thus gaining the tactical advantage of obtaining jurisdiction in that spouse's chosen forum even though no cause of action for divorce had yet accrued. This theoretical possibility stands in contrast to the general rule that the subject matter jurisdiction of Illinois circuit courts will attach only when justiciable matters, causes or controversies exist and have been presented to the court for resolution. See ILL. CONST. art. VI, § 9 ("Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction . . ."); see also *Walton v. Albers*, 380 Ill. 423, 426, 44 N.E.2d 145, 147 (1942) ("Jurisdiction is the legal authority to hear and determine controversies concerning certain subjects. [Subject matter jurisdiction] is the right to hear and determine causes of the general class to which the particular cause belongs."); *In re Gray*, 131 Ill. App. 3d 401, 408, 475 N.E.2d 1116, 1120-21 (4th Dist. 1985) (If a "justiciable controversy" exists, subject matter jurisdiction is present.); *In re Marriage of Hostetler*, 124 Ill. App. 3d 31, 34, 463 N.E.2d 955, 957 (1st Dist. 1984) (Subject matter jurisdiction "is the power of the court to hear and determine causes of the general class to which the particular cause belongs.").

An Illinois court's jurisdictional authority to hear divorce actions is derived solely from the divorce statute. *Galvin v. Galvin*, 72 Ill. 2d 113, 119, 378 N.E.2d 510, 513 (1978); *People ex rel. Christiansen v. Connell*, 2 Ill. 2d 332, 341, 118 N.E.2d 262, 266 (1954). The Illinois Divorce Act requires that a complaint for divorce set forth, *inter alia*, "that the jurisdictional requirements of subsection (1) of Section 401 exist and that there exist grounds for [the] dissolution" sought. ILL. REV. STAT. ch. 40, § 403(a)(3) (1985). The jurisdictional requirements of subsection (1) of Section 401 include, *inter alia*, allegations that respondent was an adulterer, alcoholic or drug addict, or that

filed at which time grounds are alleged, relief is sought, and, presumably, the cause of action is ripe for adjudication. Once the complaint is filed, the Praecipe expires for all functional purposes except that the complaint assumes the date stamped on the Praecipe. Hence, the real function the Praecipe serves is the reservation of a filing date in an appropriate court of petitioner's choosing—venue. Once the complaint is filed, the reservation of venue relates back to the date on which the Praecipe was filed and date stamped.

The Praecipe is the only procedural device in this country that allows a party to reserve the prior jurisdiction of a court in the event that party chooses to prosecute the action later. By its nature and uniqueness, the Praecipe is a procedural anomaly which is not entitled to the same jurisdictional dignity of any other procedural device that commences an action.

### III. CONSTITUTIONAL INFIRMITIES

The Praecipe violates the Illinois Constitution's prohibition against special legislation and the Illinois and federal Constitutions' guarantees of equal protection and due process of law. Hence, actions commenced by the filing of a Praecipe will not be entitled to, and will not receive, recognition in sister state courts.<sup>31</sup>

#### A. *Special Legislation and General Legislation*

Article IV, Section 13 of the 1970 Illinois Constitution prohibits special legislation by providing that: "[t]he General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination."<sup>32</sup> The special legislation prohibition restrains the General Assembly from passing laws that either grant a special right, privilege or immunity to a few at the expense of many, or that impose a particular burden on many for the benefit of a few.<sup>33</sup> The presumption

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the spouses have lived apart for two years and have "irreconcilable differences [which] have caused the irretrievable breakdown of the marriage . . . ." ILL. REV. STAT. ch. 40, ¶ 401(a)(1-2) (1985). Thus, to secure the court's jurisdiction, an ordinary divorce petitioner must state in the complaint the grounds on which the divorce is sought. Contrarily, the Praecipe Petitioner can secure the court's jurisdiction without complying with this requirement.

31. See *infra* text accompanying notes 130-47.

32. ILL. CONST. art. IV, § 13.

33. *Bridgewater v. Hotz*, 51 Ill. 2d 103, 109-110, 281 N.E.2d 317, 321 (1972) (citing *Latham v. Board of Educ.*, 31 Ill. 2d 178, 201 N.E.2d 111 (1964); *People v. Diekmann*, 285 Ill. 97, 120 N.E. 490 (1918); *People ex rel. Stuckart v. Day*, 277 Ill. 543, 115 N.E. 732 (1917); *People v. Wilcox*, 237 Ill. 421, 86 N.E. 672 (1908)); see also *Gaca v. City of Chicago*, 411 Ill. 146, 148-49, 103 N.E.2d 617, 619 (1952); *People ex rel. Gleeson v. Meech*, 101 Ill. 200, 204-05 (1881).

Prohibitions against special legislation date back to the Illinois Constitution of 1848 which con-

underlying the prohibition is that every citizen has the right to share in the common benefits of government with the expectation that the legislature will not "arbitrarily confer upon one class benefits not conferred upon another class in a like situation."<sup>34</sup>

The prohibition against special legislation is addressed to a specific type of class legislation.<sup>35</sup> Class legislation consists of laws that are limited in their operation to specific persons or objects. Class legislation is

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tained provisions prohibiting the General Assembly from passing private, local, or special laws. ILL. CONST. art. III, §§ 32, 36 (1848). These provisions were intended to restrain the General Assembly from concentrating on local rather than state wide matters and from submitting to the influence of special interest groups and the corruption attendant thereto. Gove & Carlson, *The Legislature*, in CON-CON: ISSUES FOR THE ILLINOIS CONSTITUTIONAL CONVENTION 101, 106 (V. Ranney ed. 1970); see also Karasick, *Equal Protection of the Law Under the Federal and Illinois Constitutions: A Contrast in Unequal Treatment*, 30 DEPAUL L. REV. 263, 270-72 (1981). These provisions, however, failed to constrain the General Assembly from passing such laws in increasing numbers on a regular basis. Kales, *Special Legislation as Defined in the Illinois Cases*, 1 ILL. L. REV. 63, 66 (1906). As a result, when the Illinois Constitution of 1870 was passed it included Article IV, § 22, which contained a list of twenty-two specific subjects in respect of which no special legislation could be enacted. *Id.* The prohibition against special legislation was carried into Article V, § 13 of the 1970 Constitution. Section 13 altered the special legislation prohibition in two significant ways: It extended the prohibition to all legislation, not just the twenty-two enumerated subjects set out in the 1870 Constitution, and it shifted from the legislature to the judiciary the power of determining if a law was special or general. See *Bridgewater*, 51 Ill. 2d at 109-10, 281 N.E.2d at 321; see also Karasick, *supra*, at 279; Whalen & Wolff, *Constitutional Law: The Prudence of Judicial Restraint Under the New Illinois Constitution*, 22 DEPAUL L. REV. 63, 77-78 (1972) (provides brief discussion of *Bridgewater* decision).

Notwithstanding these changes, the Illinois Supreme Court has held that Section 13 does not affect the criteria defining when a law is "general" or "special." *Bridgewater*, 51 Ill. 2d at 110, 281 N.E.2d at 321; *Anderson v. Wagner*, 79 Ill. 2d 295, 314-15, 402 N.E.2d 560, 567 (1979); see also *Grace v. Howlett*, 51 Ill. 2d 478, 486-87, 283 N.E.2d 474, 479 (1972). Hence, pre-1970 special legislation case law is still "good law" and relevant for purposes of this article.

34. Note, *Constitutional Law—Privileges or Immunities and Class Legislation—Whether Section 29 of the Limitations Act is Constitutional*, 45 CHI.-KENT L. REV. 115, 121 (1968) (provides discussion of Illinois decisions on point).

35. The legislative power to classify derives from the police power of the state and is subject to two general limitations: classifications must be restricted to the protection of public health, safety, and welfare, and must be rationally based, not arbitrary. See *Grace v. Howlett*, 51 Ill. 2d 478, 495-96, 283 N.E.2d 474, 483 (1972) (Underwood, C.J., dissenting); see also *Illinois Polygraph Soc'y v. Pellicano*, 83 Ill. 2d 130, 136, 414 N.E.2d 458, 462 (1980). Illinois courts have subjected legislative classifications to three rationality tests to determine whether legislation is special and, therefore, invalid or general and, therefore, valid. First, the classification must be reasonably related to the purpose of the legislation. *Skinner v. Anderson*, 38 Ill. 2d 455, 460, 231 N.E.2d 588, 591 (1967). Second, the classification must be based upon substantial and real differences in situation or condition between those who are members of the class and those who are not. See, e.g., *Illinois Coal Operators Ass'n v. Pollution Control Bd.*, 59 Ill. 2d 305, 311, 319 N.E.2d 782, 785 (1974); *Bridgewater v. Hotz*, 51 Ill. 2d 103, 111, 281 N.E.2d 317, 322 (1972); *Begich v. Industrial Comm'n*, 42 Ill. 2d 32, 35-36, 245 N.E.2d 457, 459 (1969). Third, the classification must be applied equally to all who are similarly situated. *Friedman & Rochester, Ltd. v. Walsh*, 67 Ill. 2d 413, 422-23, 367 N.E.2d 1325, 1329 (1977); *Harvey v. Clyde Park Dist.*, 32 Ill. 2d 60, 65-66, 203 N.E.2d 573, 576 (1965) (citing *Grasse v. Dealer's Transp. Co.*, 412 Ill. 179, 106 N.E.2d 124 (1952)); see also Note, *supra* note 34, at 121.

proper if it is reasonably related to a valid legislative purpose<sup>36</sup> and is actually targeted to the class sought to be affected by the legislation.<sup>37</sup> Class legislation is invalid if there does not exist a rational relationship between the classification and its legislative purpose, or if the legislative purpose itself is irrational.<sup>38</sup> The prohibition against special legislation does not forbid legislative classifications per se, but rather, requires that a classification be based upon a similarity of condition or situation among members of the same class which, for purposes of the legislation, rationally distinguishes class members from nonclass members.<sup>39</sup>

Special legislation creates classifications that improperly discriminate between similarly situated persons or objects by selecting from among the class certain persons or objects and arbitrarily conferring privileges on them. The most frequent problem arising from such classifications is the tendency to be irrational or underinclusive or both. A classification is irrational if it is not reasonably related to the legislative purpose for which it was created.<sup>40</sup> A classification is underinclusive if it

36. *S. Bloom, Inc. v. Mahin*, 61 Ill. 2d 70, 76, 329 N.E.2d 213, 217 (1975); *Begich*, 42 Ill. 2d at 36, 245 N.E.2d at 459; *Skinner*, 38 Ill. 2d at 460, 231 N.E.2d at 591; see also *Illinois Polygraph Soc'y*, 83 Ill. 2d at 139-40, 414 N.E.2d at 463; *Davis v. Commonwealth Edison Co.*, 61 Ill. 2d 494, 497-98, 336 N.E.2d 881, 883 (1975) (agreement to indemnify for liability under Structural Works Act was not special legislation but was found void on other grounds); *McRoberts v. Adams*, 60 Ill. 2d 458, 462-64, 328 N.E.2d 321, 323-24 (1975) (classification created by a statute that did not require liability coverage for occupants of rented vehicles was not clearly unreasonable and thus was not unconstitutional) (quoting *Shuman v. Chicago Transit Auth.*, 407 Ill. 313, 95 N.E.2d 447 (1950)); *Illinois Coal Operators Ass'n*, 59 Ill. 2d at 311-13, 319 N.E.2d at 785-86 (sound pollution regulation exempting sounds emitted by construction equipment but not exempting sounds emitted by mining equipment was not special legislation); *Youhas v. Ice*, 56 Ill. 2d 497, 500-01, 309 N.E.2d 6, 8 (1974) (refund of Illinois retailers' occupation taxes paid on certain federal excise taxes was not unconstitutional special legislation); *People ex rel. City of Salem v. McMackin*, 53 Ill. 2d 347, 363-64, 291 N.E.2d 807, 817 (1972) (Industrial Project Revenue Bond Act was not special legislation even though its application was limited to industrial or manufacturing plants); *Bridgewater*, 51 Ill. 2d at 111-12, 281 N.E.2d at 321-22 (statutory provisions for primaries and elections applicable to class of counties was held constitutional); *County of Champaign v. Adams*, 59 Ill. App. 3d 62, 64, 375 N.E.2d 184, 186 (1978) (statute authorizing counties having populations of 80,000 or more to issue and sell bonds and levy taxes for purposes of constructing a county jail and sheriff's residence was not unreasonable or irrational).

37. See, e.g., *Illinois Coal Operators Ass'n*, 59 Ill. 2d at 311, 319 N.E.2d at 785; *Bridgewater*, 51 Ill. 2d at 111, 281 N.E.2d at 322; *Begich*, 42 Ill. 2d at 35, 245 N.E.2d at 458-59; *Skinner*, 38 Ill. 2d at 460-61, 231 N.E.2d at 591.

38. See *supra* note 36.

39. See, e.g., *McDonald v. Board of Election Comm'rs*, 394 U.S. 802, 808-09 (1969) (held that Illinois' failure to provide absentee ballots for inmates did not violate their equal protection rights); *Morey v. Doud*, 354 U.S. 457, 463-64 (1957) (held that the Illinois Community Currency Exchanges Act, which extensively regulated currency exchanges but which expressly exempted the money orders of the American Express Co. from its provisions, violated the equal protection clause); see also *Bridgewater*, 51 Ill. 2d at 111, 281 N.E.2d at 322; *Begich*, 42 Ill. 2d at 35, 245 N.E.2d at 458-59. See generally *Kales*, *supra* note 33, at 66-80 (provides exhaustive overview of Illinois case law defining the permissible scope of class legislation).

40. See, e.g., *Illinois Polygraph Soc'y*, 83 Ill. 2d at 137-38, 414 N.E.2d at 462-63; *Illinois Coal*



does not include within the class all persons or objects that are similarly situated to each other and substantially different from all those excluded from the class.<sup>41</sup>

Special legislation stands in contradistinction to general legislation. Both types of legislation concern the appropriateness of legislative classifications. General legislation, however, does not require equal treatment of all similarly situated persons or objects as long as a rational basis exists for distinguishing between the class to which the law is applicable and all others who are excluded from the class.<sup>42</sup> If such a rational basis exists, then the classification is general and, therefore, valid and is not subject to attack as special legislation.

At this point, one might reasonably infer that general and special legislation are mirror images: if a legislative classification is properly constituted and rationally related to its legislative purpose, it is general legislation; if the classification is improperly constituted or is not rationally related to its legislative purpose, it is special legislation. This inference, however, is erroneous. The error is manifest because a unique relationship between special legislation and equal protection has developed under Illinois law. Thus, an examination of this relationship is necessary to fully understand the relationship between special legislation and general legislation.

### B. *Special Legislation and Equal Protection*

An examination of the relationship between special legislation and equal protection requires a brief return to Illinois constitutional history. Neither the 1843 nor the 1870 Illinois Constitution contained an equal protection clause. In its absence, Illinois case law invoked another constitutional provision—the special legislation prohibition against the granting of special or exclusive privileges to “any corporation, association or individual”<sup>43</sup>—as Illinois’ equivalent of the fourteenth amendment’s equal protection guaranty.<sup>44</sup> Although the applicable case law

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*Operators Ass’n*, 59 Ill. 2d at 311-12, 319 N.E.2d at 785; *Bridgewater*, 51 Ill. 2d at 111, 281 N.E.2d at 322. See generally Kales, *supra* note 33, at 66-67, 71-72, 78 (provides summary of pre-1906 Illinois case law on point).

41. See, e.g., *Illinois Polygraph Soc’y*, 83 Ill. 2d at 138, 414 N.E.2d at 463; *Davis*, 61 Ill. 2d at 497-98, 336 N.E.2d at 883; *Illinois Coal Operators Ass’n*, 59 Ill. 2d at 311, 319 N.E.2d at 785; *People ex rel. City of Salem*, 53 Ill. 2d at 363-64, 291 N.E.2d at 817; *Bridgewater*, 51 Ill. 2d at 111, 281 N.E.2d at 322.

42. E.g., *Anderson*, 79 Ill. 2d at 315, 402 N.E.2d at 569; *Illinois Coal Operators Ass’n*, 59 Ill. 2d at 311, 319 N.E.2d at 785; *Bridgewater*, 51 Ill. 2d at 111, 281 N.E.2d at 322; *Begich*, 42 Ill. 2d at 36, 245 N.E.2d at 459.

43. ILL. CONST. art. IV, § 22 (1870).

44. *Anderson*, 79 Ill. 2d at 313-14, 402 N.E.2d at 568 (citing G. BRADEN & R. COHN, *THE ILLINOIS CONSTITUTION: AN ANNOTATED AND COMPARATIVE ANALYSIS* 203-26 (1969)); see also

was phrased in special legislation language, it applied the equal protection rational basis analysis.<sup>45</sup> Consequently, the equal protection and special legislation doctrines developed coextensively under Illinois case law. Legislation that failed to withstand an equal protection attack was held to be special legislation as well.<sup>46</sup>

The 1970 Illinois Constitution, however, included for the first time an equal protection clause<sup>47</sup> and a revised version of the special legislation prohibition.<sup>48</sup> The passage of these separate provisions has occasioned considerable debate among Illinois courts questioning whether it is appropriate to continue to treat special legislation as coextensive with equal protection.<sup>49</sup> The gist of the debate recognizes that while Illinois'

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*S. Bloom, Inc.*, 61 Ill. 2d at 76-77, 329 N.E.2d at 217; Karasick, *supra* note 33, at 270. See generally Turkington, *Equal Protection of the Laws in Illinois*, 25 DEPAUL L. REV. 385, 385-86 (1976) (provides historical overview of the ways in which Illinois courts have treated class-based legislation).

45. See *Skinner*, 38 Ill. 2d at 460-61, 231 N.E.2d at 591; *Harvey*, 32 Ill. 2d at 64, 203 N.E.2d at 575; see also *Anderson*, 79 Ill. 2d at 316, 402 N.E.2d at 569-70 (recognizes that older Illinois cases were phrased in special legislation language but clearly applied an equal protection rational basis standard). For an expanded discussion of this point, see *infra* note 49 and sources cited therein.

46. See Karasick, *supra* note 33, at 572-73 & n.50 (note cases cited therein).

47. ILL. CONST. art. I, § 2. ("No person shall . . . be denied the equal protection of the laws.")

48. ILL. CONST. art. IV, § 13 ("The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.").

49. *E.g.*, *Bridgewater v. Hotz*, 51 Ill. 2d 103, 281 N.E.2d 317 (1972); *Grace v. Howlett*, 51 Ill. 2d 478, 283 N.E.2d 474 (1972). The following Illinois Supreme Court cases demonstrate the confusion which occurs when the court relies on two different tests to determine if legislation is special or general.

*Bridgewater* was the first Illinois Supreme Court case to construe the Illinois special legislation prohibition ("Sec. 13") in light of the 1970 Illinois Constitution and the new due process clause contained therein. In *Bridgewater*, the plaintiff argued that certain election laws violated the special legislation prohibition by creating two classes of counties and then providing less opportunity for voter registration in one county than in the other. *Bridgewater*, 51 Ill. 2d at 106-08, 281 N.E.2d at 319-20. After holding that the new § 13 required no change in the old definitions of when laws would be considered "general and uniform," "special," or "local," the court applied the traditional equal protection test to the special legislation issue. *Id.* at 110-12, 281 N.E.2d at 321-22.

In *Grace*, the plaintiff argued that the Illinois Insurance Code, ILL. REV. STAT. ch. 73, § 1065.150-1065.163 (1971), violated the prohibition against special legislation by creating two classes of victims—one that was entitled to compensation and one that was not. The court held that the statute violated Illinois' special legislation prohibition because a general law could be made applicable. *Grace*, 51 Ill. 2d at 486-87, 283 N.E.2d at 479. In a dissenting opinion, Justice Underwood chastised the court for confusing the equal protection and special legislation tests. *Id.* at 493-513, 283 N.E.2d at 482-92.

Several years later, in *Illinois Housing Dev. Auth. v. Van Meter*, 82 Ill. 2d 116, 412 N.E.2d 151 (1980), the plaintiff argued that an amendment to the Illinois Housing Development Act, ILL. REV. STAT. ch. 67 1/2, § 301 (1967), violated the equal protection clauses of the United States and Illinois Constitutions and the prohibition against special legislation of the Illinois Constitution by restricting recipients of mortgage loans to first time homeowners. The court held that there was no equal protection violation because the classification was rationally related to the legitimate legislative purpose of providing financing for low and moderate income families. *Van Meter*, 82 Ill. 2d at 124-25, 412 N.E.2d at 155. The court dismissed the special legislation challenge stating that "the same standards applied in both Federal and State equal protection analyses are utilized to determine viola-

equal protection clause and special legislation prohibition "cover much of the same terrain, they are not duplicates . . . ." <sup>50</sup>

In *Illinois Polygraph Society v. Pellicano*,<sup>51</sup> the Illinois Supreme Court articulated the following distinction between special legislation and equal protection:

Special legislation confers a special benefit or exclusive privilege on a person or a group of persons to the exclusion of others similarly situated . . . . It arbitrarily, and without a sound, reasonable basis, discriminates *in favor* of a select group . . . . Special legislation differs from a violation of equal protection in that the latter consists of arbitrary and invidious discrimination *against* a person or a class of persons. It results from the governmental withholding of a right, privilege or benefit from a person or a class of persons without a reasonable basis . . . for doing so. Whether a law is attacked as special legislation or as violative of equal protection, it is still the duty of the courts to decide whether the classification is unreasonable in that it preferentially and arbitrarily includes a class (special legislation) to the exclusion of all others, or improperly denies a benefit to a class (equal protection) . . . . While certain pieces of legislation may be attacked as both special legislation and violative of equal protection since they confer a benefit on one class while denying a benefit to another, there will be many cases where a benefit is conferred on one class to which no other class has a right. In those cases, legislation would be attacked

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tions of the special legislation provision of the Illinois Constitution." *Id.* at 124, 412 N.E.2d at 155. In a dissenting opinion, Justice Kluczynski criticized the court for operating on the faulty assumption that an unsuccessful equal protection challenge foreclosed a special legislation challenge. *Id.* at 127, 412 N.E.2d at 156.

In the 1984 case of *Fireside Chrysler-Plymouth, Mazda, Inc. v. Edgar*, 102 Ill. 2d 1, 464 N.E.2d 265 (1984), the Illinois Supreme Court added to the confusion by upholding the validity of Illinois' Sunday auto dealer closing law, ILL. REV. STAT. ch. 95 1/2, § 5-106 (1983), which was challenged as violative of both Illinois' special legislation prohibition and its equal protection clause. The court held that the plaintiffs had failed to overcome the presumption that the classification was reasonable and that the statute was part of a comprehensive regulatory scheme, the wisdom of which was not a proper subject for judicial scrutiny. *Fireside*, 102 Ill. 2d at 6-7, 464 N.E.2d at 278. While adopting the regulatory scheme approach, the *Fireside* opinion virtually ignored such case precedent as: (1) *Illinois Polygraph Soc'y v. Pellicano*, 83 Ill. 2d 130, 414 N.E.2d 458 (1980), which set forth the standards for separate equal protection and special legislation analyses; (2) *Courtesy Motor Sales v. Ward*, 24 Ill. 2d 82, 179 N.E.2d 692 (1962), which struck down a virtually identical regulatory scheme as special legislation; and (3) *Grasse v. Dealer's Transp. Co.*, 412 Ill. 179, 106 N.E.2d 124 (1952), which held that special legislation cannot be justified because of its inclusion in a regulatory scheme.

For post-1970 cases in which Illinois courts applied the equal protection and special legislation tests interchangeably, see *Friedman & Rochester, Ltd. v. Walsh*, 67 Ill. 2d 413, 367 N.E.2d 1325 (1977); *Kobylanski v. Chicago Bd. of Educ.*, 63 Ill. 2d 165, 347 N.E.2d 705 (1976); *S. Bloom, Inc. v. Mahin*, 61 Ill. 2d 70, 329 N.E.2d 213 (1975); *Youhas v. Ice*, 56 Ill. 2d 497, 309 N.E.2d 6 (1974).

50. *Grace*, 51 Ill. 2d at 487, 283 N.E.2d at 479.

51. 83 Ill. 2d 130, 414 N.E.2d 458 (1980).

as special legislation but not as violative of equal protection.<sup>52</sup>

According to the *Polygraph* analysis, there is special legislation, general legislation, and special legislation that is subject to challenge on equal protection grounds.<sup>53</sup> The pertinent inquiry under the equal protection analysis is whether the challenged legislation invidiously discriminates<sup>54</sup> or is rationally related to a legitimate legislative purpose.<sup>55</sup> The pertinent inquiry under the special legislation analysis considers the classification in relation to its legislative purpose to determine “whether a general law is or can be made applicable” in lieu of the special law.<sup>56</sup> Hence, both the equal protection doctrine and the special legislation doctrine question classifications that benefit or burden one class to the detriment of others similarly situated. The critical problem in distinguishing between the two doctrines is determining the appropriate degree of classification. For example, the equal protection doctrine recognizes that legislative reform may proceed “one step at a time”<sup>57</sup> and, thus, defers to legislative classifications that are underinclusive.<sup>58</sup> Special legislation, on the other hand, does not defer to legislative classifications<sup>59</sup> and does not tolerate underinclusive legislation<sup>60</sup> or piecemeal legislative reform.<sup>61</sup> Under Illinois

52. *Illinois Polygraph Soc’y*, 83 Ill. 2d at 137-38, 414 N.E.2d at 462-63, quoted in *Fireside*, 102 Ill. 2d at 4-5, 464 N.E.2d at 277.

53. See *Illinois Polygraph Soc’y*, 83 Ill. 2d at 137-38, 414 N.E.2d at 462-63; see also *Anderson v. Wagner*, 79 Ill. 2d 295, 312-17, 402 N.E.2d 560, 568-70 (1980) (citing *BRADEN & COHN*, *supra* note 44, at 203-26).

54. *Karasick*, *supra* note 33, at 279-80.

55. *Id.* See also *S. Bloom, Inc.*, 61 Ill. 2d at 76, 329 N.E.2d at 217.

56. *Karasick*, *supra* note 33, at 279-80; *Grace*, 51 Ill. 2d at 487, 283 N.E.2d at 479.

57. *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489 (1955), cited in *Illinois Coal Operators Ass’n v. Pollution Control Bd.*, 59 Ill. 2d 305, 312-13, 319 N.E.2d 782, 786 (1974).

58. See *Turkington*, *supra* note 44, at 416-17, which sets forth several examples of underinclusive classifications that have survived equal protection challenge. In *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483 (1955), the Court upheld an Oklahoma law that excluded opticians from the class of persons who could lawfully fit lenses or replace eye glass frames. The Court recognized that the statute was underinclusive in that it did not include all categories of optical dealers but still upheld the statute against an equal protection challenge. Similarly, in *Railway Express Agency v. New York*, 336 U.S. 106 (1949), the Court upheld a New York statute that prohibited advertisement on motor vehicles unless the advertisement related to the business of the vehicle’s owner. The purpose of the law was to reduce distractions to motor vehicles and thus promote motor vehicle safety. The Court recognized that the statute was underinclusive in that it did not prohibit all distracting advertisement but upheld the statute in the face of an equal protection challenge as a legitimate exercise of the state’s police power under the tenth amendment. *Turkington*, *supra* note 44, at 417. See also *Karasick*, *supra* note 33, at 291 (discusses Illinois cases on point).

59. See *Grace*, 51 Ill. 2d at 487, 283 N.E.2d at 479; *People ex rel. East Side Levee and Sanitary Dist. v. Madison County Levee and Sanitary Dist.*, 54 Ill. 2d 442, 447, 289 N.E.2d 177, 180 (1974).

60. See *East Side Levee and Sanitary Dist. v. Madison County Levee and Sanitary Dist.*, 54 Ill. 2d 442, 447, 298 N.E.2d 177, 180 (1973); see also *Turkington*, *supra* note 44, at 416-18. The article examines the different standards that exist between the federal courts’ equal protection analysis and Illinois’ special legislation analysis. Two pay-while-voting cases are set forth to illustrate the different treatment of an underinclusive classification. In *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421 (1952), the Court upheld a pay-while-voting statute which penalized employers for deducting up

law, therefore, a legislative classification may be sustained under an equal protection challenge because it is rationally related to its legislative purpose, but may be struck down under a special legislation challenge because the problem could have been resolved by a general, nondiscriminatory law.

The debate over which analysis is better suited to determine if legislation should be subject to the special legislation prohibition or to the equal protection analysis continues to date. Because separate treatment of these constitutional provisions is considered to be most appropriate,<sup>62</sup> this article adopts the separate analysis approach to determine whether the Praeceptum violates either the special legislation prohibition or the equal protection clause, or both.

### 1. The Classes

Chapter 40, paragraph 411 of the Marriage and Dissolution Act provides:

Commencement of Action. (a) *Actions for dissolution of marriage or legal separation shall be commenced as in other civil cases or, at the option of petitioner, by filing a praecipe for summons with the clerk of the court and paying the regular filing fees, in which latter case, a petition may be filed at any time thereafter.*

(b) When a praecipe for summons is filed without the petition, the summons shall recite that petitioner has commenced suit for dissolution of marriage or legal separation and shall require the respondent to file his or her appearance not later than thirty days from the day the summons is served and to plead to the petitioner's petition within thirty days from the day the petition is filed.

Until a petition has been filed, the court in its discretion, may

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to four hours of employees' wages on election day on the grounds that the statute was designed to encourage employees to vote. The statute was overinclusive in that it reached all employees who were absent from work for up to four hours on election day whether or not such employees actually voted or spent the entire four hours voting, and it was underinclusive in that it did not provide comparable incentives to nonemployees. Nonetheless, the Court upheld the statute against an equal protection challenge. In contrast, the Illinois Supreme Court, in *Heimgaertner v. Benjamin Elec. Mfg. Co.*, 6 Ill. 2d 152, 128 N.E.2d 691 (1955), took the opposite approach and struck down a pay-while-voting statute as special legislation on the grounds that it excluded all self-employed workers, commissioned workers, housewives, and farmers, all of whom suffered similar obstacles to voting but none of whom were included in the class entitled to receive the benefits of the statute.

61. *Grace*, 51 Ill. 2d at 487, 283 N.E.2d at 479 (Illinois Supreme Court specifically rejects the *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489 (1955), equal protection notion that legislative reform can proceed "one step at a time.")

62. See Karasick, *supra* note 33, at 279-91 (discusses Illinois' confused and often contradictory approach to class legislation, which runs the gamut from separate equal protection and special legislation analyses to cases which mix both approaches, to cases which confuse the two approaches); *Illinois Polygraph Soc'y*, 83 Ill. 2d at 137-38, 414 N.E.2d at 462-63 (recognizes the need to examine class legislation under either the equal protection analysis or the special legislation analysis or both).

dismiss the suit, order the filing of a petition, or grant leave to the respondent to file a petition, or grant leave to the respondent to file a petition in the nature of a counterpetition.<sup>63</sup>

When a dissolution action is commenced by the filing of a complaint, it is governed, as are “all other civil actions” by chapter 110, paragraph 2-201 of the Illinois Civil Practice Act,<sup>64</sup> which requires that all civil actions be commenced by the filing of a complaint followed by the issuance of summons.<sup>65</sup> The commencement of a dissolution action by the filing of a Praecipe, however, is governed by paragraph 411 of the Marriage and Dissolution Act, which does not require service of summons upon the respondent.<sup>66</sup> Rather, under paragraph 411, a Praecipe can be filed without summons, in which case it “just sits” until or unless it is dismissed on the court’s motion—a period of not less than six months.<sup>67</sup> If the Praecipe does not come to the court’s attention, it may pend indefinitely<sup>68</sup> because “a petition may be filed at any time thereafter.”<sup>69</sup>

Hence, paragraph 411 singles out a class of litigant—the Praecipe Petitioner—who is allowed to commence an action by “reserving jurisdiction” in his or her chosen forum without committing to prosecute the action, without committing to allegations of grounds, without reciting a prayer for relief and, in some instances, without serving a summons on the respondent. Similar procedural benefits are not conferred upon any other class of litigant under Illinois law or under the laws of any other jurisdiction in this country.<sup>70</sup> Concomitantly, paragraph 411 creates a unique class of civil defendant—the Praecipe Respondent—against whom a dissolution action “may be” commenced by the filing of the Praecipe. Unlike any other class of civil defendant, the Praecipe Respondent may or may not be an actual respondent in a civil action depending upon whether the Praecipe Petitioner subsequently commits to the action

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63. ILL. REV. STAT. ch. 40, ¶ 411 (1985) (emphasis added).

64. ILL. ANN. STAT. ch. 40, ¶ 411 (Smith-Hurd 1980) (Historical and Practice Notes).

65. ILL. REV. STAT. ch. 110, ¶ 2-201(a) (1985) provides: “Commencement of actions—Forms of process. (a) Every action, unless otherwise expressly provided by statute, shall be commenced by the filing of a complaint. The clerk shall issue summons upon request of the plaintiff.”

66. ILL. REV. STAT. ch. 40, ¶ 411 (1985).

67. Interviews with Jerry Staszak, Clerk of the Circuit Court of Cook County, Illinois—Domestic Relations Division (April 4, 1985, and July 10, 1985). Mr. Staszak stated that when a divorce action is commenced by the filing of a Praecipe and the petitioner does not request that summons issue, the Praecipe will “just sit” in the files and collect dust until or unless it is dismissed on the court’s own motion. *Accord* Weinberg, *supra* note 23, at 567; *see also supra* note 1.

68. *See* Weinberg, *supra* note 23, at 567 (“Except for local rules of court, there appears to be no time limitation on the pendency of a Praecipe.”).

69. ILL. REV. STAT. ch. 40, ¶ 411(a) (1985).

70. ILL. ANN. STAT. ch. 40, ¶ 411 (Smith-Hurd 1980) (Historical and Practice Notes). Independent research disclosed no comparable procedural device in other jurisdictions.

by filing a complaint. In the meantime, the Praecept Respondent is a named defendant in a lawsuit of record which may not be served on him or her and against which he or she cannot defend because the record is devoid of allegations to answer. Furthermore, the Praecept Respondent is effectively foreclosed from prosecuting his or her own suit in another jurisdiction because current Illinois case law holds that an action commenced by the filing of a Praecept "results in the prompt obtaining of jurisdiction of the subject matter and parties."<sup>71</sup>

Hence, by permitting an action to be commenced in a manner exempt from the procedural requirements of the Civil Practice Act, paragraph 411 creates two classes of civil litigants: the Praecept Petitioner, upon whom it confers extraordinary procedural benefits unknown to any other class of civil litigant, and the Praecept Respondent, upon whom it imposes extraordinary procedural burdens unknown to any other class of civil litigant.

## 2. The Tests

### a. *Is the Praecept rationally related to a legitimate legislative purpose?*

Under the equal protection analysis the question to be answered is whether there is any rational basis for singling out the Praecept Petitioner and the Praecept Respondent for the benefits and burdens imposed by the Praecept in light of the purposes of the Marriage and Dissolution Act.<sup>72</sup> The answer requires an examination of the purposes underlying the statutory scheme which gave rise to the Praecept.

#### (i) The 1953 Amendment: The Statement of Intention

In 1953, the Divorce Act was amended to require the plaintiff to file with the court a "statement of intention" as a precondition to the commencement of a divorce action.<sup>73</sup> The statement of intention recited the names and addresses of the prospective parties, the date and place of the marriage, whether the spouses were cohabitating, and the names, gender, age, location and custody arrangements for the minor children.<sup>74</sup> Like a complaint, upon the filing of a statement of intention, a fee was paid, and

71. *Doty*, 9 Ill. 2d at 393, 137 N.E.2d at 851.

72. See, e.g., *Stanton v. Stanton*, 421 U.S. 7, 14 (1975) ("A classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'") (quoting *Reed v. Reed*, 404 U.S. 71 (1971)); *Haughton v. Haughton*, 76 Ill. 2d 439, 445, 394 N.E.2d 385, 388 (1979); *People ex rel. City of Salem v. McMackin*, 53 Ill. 2d 347, 363, 291 N.E.2d 807, 817 (1972).

73. ILL. REV. STAT. ch. 40, § 23 (1953).

74. *Id.* § 26; see also *People ex rel. Christiansen v. Connell*, 2 Ill. 2d 332, 336, 118 N.E.2d 262, 263-64 (1954); *Miner, The 60-Day Cooling Off Period*, 41 ILL. B.J. 636, 637 (1953).

a file number and date received.<sup>75</sup> Unlike a complaint, the statement of intention was not served on the defendant and did not commence the action.<sup>76</sup> Rather, the statement of intention served the function of apprising the prospective defendant that a divorce action might be commenced after the expiration of a prejurisdictional sixty-day cooling-off period<sup>77</sup> during which the prospective litigants could use the conciliation service of the courts.<sup>78</sup>

The purposes of the conciliation service were "to prevent disintegration of families . . . before the actual suit [was] filed"<sup>79</sup> and, coincidentally, to reduce the docket congestion of the divorce courts.<sup>80</sup> The conciliation service included a voluntary conference between the court and one or both parties.<sup>81</sup> In the event that reconciliation was not possible, a divorce action could then be commenced by the filing of a petition.<sup>82</sup> The petition recited the date upon which the statement of intention was filed and the file number assigned thereto.<sup>83</sup> Because the divorce action could not commence until the petition was filed, the date of commencement related back to the date on which the statement of intention was filed.

In 1954, the Illinois Supreme Court struck down this statutory scheme in *People ex rel. Christiansen v. Connell*.<sup>84</sup> In *Christiansen*, the appellant husband filed a mandamus to compel the clerk of the Circuit Court of Cook County to waive the sixty-day prejurisdictional cooling-off period and to file, instant, the appellant's divorce petition.<sup>85</sup> The appellant did not object to the length of the delay, "but rather to the fact that the delay [was] interposed before jurisdiction [was] obtained . . ."<sup>86</sup> The court granted the mandamus and struck down the 1953 amendment on two grounds. First, the sixty-day prejurisdictional cooling-off period deprived the petitioner of the constitutional right of access to the courts without delay in violation of Article IV Section 19 of the Illinois Consti-

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75. *Christiansen*, 2 Ill. 2d at 336, 118 N.E.2d at 264.

76. *Miner*, *supra* note 74, at 637.

77. *Christiansen*, 2 Ill. 2d at 336, 118 N.E.2d at 264.

78. *Miner*, *supra* note 74, at 637; *see also Christiansen*, 2 Ill. 2d at 346, 118 N.E.2d at 268-69. The Divorce Division of the circuit court provided conciliation services to prospective divorce litigants pursuant to ILL. REV. STAT. ch. 40, § 7(a) (1953). *Id.* at 337, 118 N.E.2d at 264.

79. *Miner*, *supra* note 74, at 638.

80. *See id.*

81. *Christiansen*, 2 Ill. 2d at 336, 118 N.E.2d at 264.

82. *See* ILL. REV. STAT. ch. 40, § 23 (1953); *see also Christiansen*, 2 Ill. 2d at 336, 118 N.E.2d at 264.

83. ILL. REV. STAT. ch. 40, § 25 (1953).

84. 2 Ill. 2d 332, 118 N.E.2d 262 (1954).

85. *Id.* at 334, 118 N.E.2d at 263.

86. *Id.* at 339, 118 N.E.2d at 265.



tution.<sup>87</sup> Second, the voluntary reconciliation conference between the judge and the prospective litigants imposed a nonjudicial function upon the judiciary in violation of the separation of powers provision contained in Article III of the Illinois Constitution.<sup>88</sup>

(ii) The 1955 Amendment: The Mandatory Praecipe

In an effort to cure the *Christiansen* defects, the Illinois legislature amended the Divorce Act in 1955 to provide for: (1) the commencement of all divorce actions upon the filing of a Praecipe;<sup>89</sup> (2) the filing of a complaint after the expiration of a postjurisdictional sixty-day waiting period;<sup>90</sup> and (3) the dismissal of the action if a complaint was not timely filed.<sup>91</sup>

The 1955 amendment differed from the 1953 amendment in several ways. First, unlike the statement of intention, which had been a precondition to the court's subject matter jurisdiction, the Praecipe was jurisdictional in the sense that it was the only means by which a divorce action could be commenced.<sup>92</sup> Like the statement of intention, however, the Praecipe merely recited preliminary information about the parties and did not allege grounds or pray for relief. That information was reserved for the complaint which was to be filed after the exhaustion of a sixty-day waiting period.<sup>93</sup> Second, while all references to reconciliation conferences were deleted from the 1955 amendment, a sixty-day postjurisdictional waiting period was included in furtherance of the legislative policy of promoting marital reconciliation.<sup>94</sup> Third, unlike the statement of intention, which was date stamped but not served, the Praecipe was date stamped and served for the purpose of determining whether the action was diligently prosecuted within the limitations period set by the court.<sup>95</sup>

The 1955 amendment was challenged in *People ex rel. Doty v. Connell*.<sup>96</sup> Following the *Christiansen* strategy, the appellant wife filed a mandamus to compel the clerk of the court to waive the filing of the Praecipe and the sixty-day postjurisdictional waiting period and to file, *instanter*, her complaint for divorce.<sup>97</sup> Unlike the sixty-day prejurisdic-

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87. *Id.* at 346-47, 118 N.E.2d at 269.

88. *Id.* at 348-49, 118 N.E.2d at 269-70.

89. ILL. REV. STAT. ch. 40, § 7(a) (1955).

90. *Id.* § 7(b).

91. *Id.*

92. ILL. REV. STAT. ch. 40, § 7(a) (1955); *People ex rel. Doty v. Connell*, 9 Ill. 2d 390, 392-93, 137 N.E.2d 849, 851 (1956).

93. ILL. REV. STAT. ch. 40, § 7(a)-(b) (1955).

94. *Id.* § 7(d); *see also Doty*, 9 Ill. 2d at 394, 137 N.E.2d at 852.

95. ILL. REV. STAT. ch. 40, § 7(a)-(b) (1955).

96. 9 Ill. 2d 390, 137 N.E.2d 849 (1956).

97. *Id.* at 392, 137 N.E.2d at 851.

tional period struck down in *Christiansen*,<sup>98</sup> the 1955 amendment was upheld as a reasonable exercise of legislative power. The *Doty* court found that the sixty-day postjurisdictional waiting period permitted “immediate access to courts by a procedural means applicable alike to all litigants, with no delay being interposed before jurisdiction is obtained.”<sup>99</sup> In spite of this ruling, the sixty-day postjurisdictional waiting period did not promote reconciliations and, consequently, did not reduce the docket congestion of the divorce courts.<sup>100</sup> Shortly after its adoption, the 1955 amendment was overwhelmingly voted for repeal.<sup>101</sup>

### (iii) The 1961 Amendment: The Optional Praeceptum

In 1961, the Divorce Act was again amended to provide:

Actions for divorce shall be commenced as in other civil cases or, at the option of the plaintiff, by filing a praecipe for summons with the Clerk of the Court and paying the regular filing fees, in which latter case a complaint may be filed at any time thereafter.<sup>102</sup>

Like the 1955 amendment, the 1961 amendment was intended to continue the statutory policy of encouraging a “milieu” which reduced acrimony and promoted settlement of divorce actions.<sup>103</sup> Unlike the 1955 amendment, the 1961 amendment deleted the postjurisdictional waiting period<sup>104</sup> and provided for conciliation services upon the filing of either a complaint or a Praeceptum.<sup>105</sup> The Praeceptum was retained as an optional means of commencing a divorce action for the purpose of maintaining whatever benefits that might inure from the delay between commencing the divorce action and filing the complaint.<sup>106</sup>

By deleting the sixty-day waiting period, however, the 1961 amendment also eliminated the time limitation between the filing of the Praeceptum and the filing of the complaint. Instead, the 1961 amendment provided that “a complaint may be filed at any time” after the filing of a Praeceptum.<sup>107</sup> Consequently, the Praeceptum could be filed and pend indefinitely unless or until it came to the attention of the court or was voluntarily dismissed by the petitioner. The unlimited pendency of the Praeceptum allowed a litigant to commence a divorce action by filing a Praeceptum, fore-

98. See *supra* text accompanying notes 84-88.

99. *Doty*, 9 Ill. 2d at 393, 137 N.E.2d at 852.

100. Forkins, *A Report on Recent Matrimonial Legislation*, 43 CHI. B. REC. 85, 85 (1961).

101. See *id.* at 85.

102. ILL. REV. STAT. ch. 40, § 7(a) (1961) (emphasis added).

103. ILL. ANN. STAT. ch. 40, § 411 (Smith-Hurd 1980) (Historical and Practice Notes).

104. Compare ILL. REV. STAT. ch. 40, § 7(b) (1959) with ILL. REV. STAT. ch. 40, § 7(b) (1961).

105. Forkins, *supra* note 100, at 86.

106. *Id.* at 85 (both the Chicago and Illinois Bar Associations sponsored the 1961 amendment which created the “Optional Praeceptum”).

107. ILL. REV. STAT. ch. 40, § 7(a) (1961).

stall service of process and the filing of a complaint indefinitely, and never utilize the conciliation services of the court. As a result, there developed a variance between the legislative purposes of the Praeceptum and its use.

In sum, the purpose of the 1953 Divorce Act was the preservation of the marital relationship through the use of reconciliation services.<sup>108</sup> The Praeceptum, the postjurisdictional sixty-day cooling-off period, and the reconciliation services—pivotal components of the 1955 amendment—represented the legislature's attempt to further this purpose.<sup>109</sup> The Praeceptum was necessary to trigger the subject matter jurisdiction of the Domestic Relations Court, which in turn triggered the running of the sixty-day cooling-off period and the availability of conciliation services for the potential litigants.<sup>110</sup> Together, these three provisions were designed to counter the precipitous filing of dissolution actions under circumstances promoting acrimony and preventing reconciliation. In this

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108. See Miner, *supra* note 74, at 636-37 (provides background discussion of social forces that prompted the Illinois legislature to enact the statement of intention and the sixty-day cooling-off period as part of the 1953 Divorce Act); see also *People ex rel. Christiansen v. Connell*, 2 Ill. 2d 332, 346, 118 N.E.2d 262, 269 (1954) (recognizes the purpose underlying the statement of intention and the sixty-day cooling-off period as "clearly intended . . . to afford an opportunity [for divorce litigants] to explore the possibility of a reconciliation.").

The 1953 Divorce Act evolved from a comprehensive legislative scheme which expressly recognized the state's interest in promoting marital stability. The 1947 Domestic Relations Act declared the public policy of the state as follows:

The alarming and consistent increase in the number of divorce, separate maintenance and annulment of marriage actions is a serious threat to the general welfare, health, morals and safety of the State. In addition to disrupting basic family relationships, the moral consequences of divorce, separate maintenance and annulment of marriage to the minor children affect adversely the interests of the State as a whole. Authoritative research and statistics effectively demonstrate the causal [sic] relationship between broken homes and juvenile dependency and delinquency. Moreover, the failure of many defendants in such proceedings to comply with alimony and support orders has resulted in the assumption by the state and local government unit, under the applicable public assistance laws, of the burden of providing necessary financial assistance to economically distressed mothers and children. The State, as *parens patriae* [sic] and in the fulfillment of its legitimate governmental objective of promoting the public welfare, is directly and immediately concerned with the prevention of the evils engendered by the weakened integrity of the family relationship. To the end that society's interest in the domestic relations of the people be protected, the policy and intent of this enactment are directed.

ILL. REV. STAT. ch. 37, § 105.1 (1947).

To advance this laudable goal, the Act also provided, *inter alia*, that the judges of the Divorce Division "shall ascertain the possibility of effecting a reconciliation of the parties . . ." *Id.* § 105.12. Moreover, the 1947 Divorce Act empowered the court, during the pendency of divorce proceedings, to restrain or enjoin any "person who is made a party to the suit from doing or threatening to do any act calculated to prevent or interfere with a reconciliation of the husband and wife . . ." ILL. REV. STAT. ch. 40, § 13 (1947). For an analysis of the legislative purposes sought to be advanced by the 1947 Domestic Relations Act and Divorce Act, see *Hunt v. County of Cook*, 398 Ill. 412, 414-15, 76 N.E.2d 48, 50 (1947).

109. See *supra* text accompanying notes 89-101.

110. See Weinberg, *supra* note 23, at 566.

context, there is no doubt that the Praeceptum was rationally related to the purpose of the 1953 Divorce Act.

However, since the repeal of the sixty-day cooling-off period and the provision for conciliation services, all that remains of the 1953 legislative scheme is the Praeceptum.<sup>111</sup> The current Marriage and Dissolution Act does not purport to preserve the marital relationship through conciliation services. Rather, that Act seeks only to “mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.”<sup>112</sup> Shorn of its statutory context, there is no indication that the Praeceptum assists in the preservation of marriage or minimizes the harms attendant to the dissolution action. To the contrary, the Praeceptum has evolved into a tool by which the Praeceptum Petitioner may gain extraordinary procedural advantage over the Praeceptum Respondent who, in turn, is subject to extraordinary procedural disadvantage. As such, the Praeceptum contravenes the statutory policy of the Marriage and Dissolution Act and, thus, denies equal protection to the Praeceptum Respondent because it bears no rational relationship to its legislative purpose.

b. *Do the classifications created by the Praeceptum violate the prohibition against special legislation?*

The prohibition against special legislation considers whether the classification of Praeceptum Petitioner, the exclusive recipient of the benefits of the Praeceptum, is rationally constituted or whether it is special legislation to which a general law should be made applicable. Assuming, *arguendo*, that divorce litigants may be treated as a distinct class for some purposes,<sup>113</sup> the question remains whether they should be singled out for the particular benefits and burdens of the Praeceptum. Certainly, all civil litigants can appreciate access to a procedural device that enables them to: (1) reserve jurisdiction in the event they subsequently choose to pros-

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111. See *supra* text accompanying notes 100-03. The statement of intention and the sixty-day prejurisdictional cooling-off period contained in the 1953 Divorce Act evolved into the Praeceptum and sixty-day postjurisdictional cooling-off period contained in the 1955 Divorce Act. The 1961 Divorce Act retained the Praeceptum, albeit as an optional device, but eliminated the sixty-day cooling-off period. Thus, by 1961, the evolution from the 1953 Act to the 1961 Act resulted in the elimination of the statutory scheme from which the Praeceptum derived its fundamental relevance.

112. ILL. REV. STAT. ch. 40, ¶ 102(4) (1985). *But cf.* ILL. REV. STAT. ch. 40, ¶ 102(3) (1985) (act has purpose of “promot[ing] the amicable settlement of disputes that have arisen between parties to a marriage”).

113. See *Gilmore v. Gilmore*, 74 Ill. App. 3d 831, 837, 393 N.E.2d 33, 38 (1st Dist. 1979) (court held that there was a reasonable basis for differentiating between parties to divorce actions and parties to other kinds of suits for the purpose of requiring one spouse to pay for the other spouse's attorneys fees on appeal); see also *In re Marriage of Galvin*, 94 Ill. App. 3d 1032, 1035, 419 N.E.2d 417, 419 (1st Dist. 1981) (court upheld against a special legislation challenge a statute permitting an attorney to proceed against his own client for fees in a marriage dissolution proceeding even though such claims were not permitted in other types of proceedings).

ecute the action; (2) file an action of record against an opponent who need not be served with summons and, who, if served, cannot answer because there are no allegations of record to defend against; (3) secure a win in a race to the courthouse; and (4) oust any competitor court of prior jurisdiction. To this extent, paragraph 411 is underinclusive because it fails to include all civil litigants who could benefit from the "magic and versatility" of the Praeceptum.<sup>114</sup> Paragraph 411 is similarly overinclusive because its powers are uniquely conferred upon a class of litigant that has no legitimate need of them.

Is there something in the nature of the dissolution action, as opposed to other civil actions, that justifies the difference in treatment between the Praeceptum Petitioner and all other civil litigants? To the contrary, the Praeceptum is a uniquely inappropriate device for dissolution actions given the emotionally charged atmosphere of such proceedings and the deeply felt personal vulnerabilities of the participants. Even if the Praeceptum were currently used in a manner consistent with its legislative purpose, it is no longer necessary to achieve those goals. Today, Illinois divorce litigants can receive the conciliation services of the divorce court whether they file a Praeceptum or a complaint.<sup>115</sup> Furthermore, the benefits of autonomy and privacy that attach to the "groundless pleading" are now provided by the No Fault Petition which allows a petitioner to allege "irretrievable breakdown" as a cognizable ground for dissolution.<sup>116</sup> Hence, the Praeceptum is special legislation to which general legislation, the No Fault Petition, is not only applicable but available.

### C. *Due Process*

Courts consider a two-part test<sup>1</sup> when determining whether a law violates the due process guarantees of the Illinois and Federal Constitutions. Part one asks whether the law is a legitimate exercise of the police power of the state.<sup>117</sup> Part two asks whether the law is reasonable in light of its legislative objectives.<sup>118</sup>

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114. Weinberg, *supra* note 23, *passim*.

115. Interview with Jerry Staszak, Clerk of the Circuit Court of Cook County, Illinois—Domestic Relations Division (November 20, 1985). Mr. Staszak indicated the filing of either a Praeceptum or a petition with the clerk of the court triggers the parties' right to obtain conciliation services from the Domestic Relations Division of the Cook County Circuit Court.

116. ILL. REV. STAT. ch. 40, § 401(a)(2) (1985).

117. *Nebbia v. New York*, 291 U.S. 502, 523-24 (1934); *Chicago Real Estate Bd. v. City of Chicago*, 36 Ill. 2d 530, 541-42, 224 N.E.2d 793, 801 (1967); *see also* *Trust Co. of Chicago v. City of Chicago*, 408 Ill. 91, 97, 96 N.E.2d 499, 503 (1951) ("The police power of the State is that power required to . . . effectually discharge within the scope of the constitutional limitations its paramount obligation to promote and protect the public health, safety, morals, comfort and general welfare of the people.").

118. *Chicago Real Estate Bd.*, 36 Ill. 2d at 541-42, 224 N.E.2d at 801; *People ex rel. Doty v.*

Given the Praecipe's current use as a strategic device to gain procedural advantage over an adversary, both of these questions must be answered in the negative: The Praecipe is neither a legitimate exercise of the police power nor is it reasonable in light of its legislative purpose. The Praecipe neither discourages divorce nor minimizes the harms attendant to the dissolution of a marriage. To the contrary, the Praecipe confers upon the Praecipe Petitioner such extraordinary litigation advantages over his or her spouse as to virtually insure the acrimony the Domestic Relations Act seeks to mitigate. Consider, for example, the Praecipe Respondent's surprise in being subject to a law so unique in nature and function that it has no procedural counterpart anywhere;<sup>119</sup> or the surprise and unfairness of being named as a respondent in a lawsuit which may not be served, which cannot be answered even if served, and which may divest any other court of prior jurisdiction over the respondent's own action. Finally, by virtue of its unlimited pendency, the Praecipe may assure immediate access to the courts for the Praecipe Petitioner, but it denies such access to the Praecipe Respondent who can neither answer the groundless Praecipe nor prosecute the action in the court of his or her choice.<sup>120</sup>

In sum, given its current uses and statutory context, the Praecipe is no longer rationally related to the problem the police power was originally invoked to guard against—marital breakdown. Nor is there any indication that the Praecipe is used in a manner consistent with its current statutory context. To the contrary, the Praecipe has evolved into a litigation tool for gaining undue procedural advantage over an adversary spouse. Accordingly, its continuing availability denies due process of law to those against whom it is used.

#### D. *Demonstrative Cases*

In current practice, the Praecipe is used anticipatorily by an uncommitted spouse to reserve jurisdiction in an Illinois court or is used preemptively to facilitate a win in a race to the courthouse between spouses. The inequitable treatment of the Praecipe Petitioner at the expense of the Praecipe Respondent can be demonstrated by cases showing the Praecipe's effect when used in Illinois on both intercounty and interstate bases.

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Connell, 9 Ill. 2d 390, 396, 137 N.E.2d 849, 853 (1956); *Clarke v. Storchak*, 384 Ill. 564, 576, 52 N.E.2d 229, 236 (1944).

119. See *supra* note 70.

120. See *supra* text accompanying notes 6-22. Not to be overlooked is the possibility that while the Praecipe is "just sitting," the Praecipe Petitioner garners time to marshal and secrete assets under the auspices of the Domestic Relations Court the jurisdiction of which was triggered upon the filing of the Praecipe.

1. Intercounty Use of the Praecept: *Abbott v. Abbott*<sup>121</sup>

<i>Timing</i>	<i>Occurrence</i>
Time 1	Husband commenced divorce action by filing Praecept in Piatt County, Illinois.
Time 2	Wife commenced divorce action by filing petition in Peoria County, Illinois.
Time 3	Wife served Husband.
Time 4	Husband served Wife.
Time 5	Husband filed Motion to Dismiss Wife's action because of the prior pending action in Piatt County. Motion denied.
Time 6	Husband filed petition in Piatt County.
Time 7	Circuit Court of Peoria enjoined Husband and attorney from proceeding in Piatt County action.
Time 8	Injunction dissolved for lack of notice.
Time 9	Circuit Court of Peoria entered second injunction against Husband and attorney.
Time 10	Husband filed interlocutory appeal to vacate injunction. Injunction vacated on grounds that Praecept conferred upon Piatt County Court prior jurisdiction over that action.

Ironically, the *Abbott* court's holding that "a divorce action commenced by a praecipe may be considered to have prior jurisdiction over a subsequently filed suit"<sup>122</sup> was based on the premise that "dismissal of an action on the grounds that there is another action pending between the same parties for the same cause is to foster orderly procedures by preventing a multiplicity of actions."<sup>123</sup> Apparently, the court failed to recognize that the Praecept invited, rather than discouraged, multiple actions.

Despite the *Abbott* court's recitation of the *Doty* rule conferring jurisdictional status upon the Praecept, when used on an intercounty basis, the Praecept merely reserves venue in the court in which it is filed.<sup>124</sup> It cannot reserve jurisdiction because subject matter jurisdiction cannot attach until the complaint is filed at which time the cause of action is alleged and, presumably, ripe for adjudication.<sup>125</sup>

Judged on equal protection grounds, the only benefit of the intercounty use of the Praecept is its potential for conserving judicial resources since the court in which the Praecept is filed is entitled to and can demand the jurisdictional deference of any other court in which a peti-

121. 52 Ill. App. 3d 728, 367 N.E.2d 1073 (3d Dist. 1977).

122. *Abbott*, 52 Ill. App. 3d at 730, 367 N.E.2d at 1075.

123. *Id.* at 731, 367 N.E.2d at 1075; *People ex rel. Lehman v. Lehman*, 34 Ill. 2d 286, 290, 215 N.E.2d 806, 809 (1966).

124. See *supra* text accompanying notes 23-30.

125. See *supra* notes 28-30 and accompanying text.

tion is subsequently filed. On this level, the intercounty use of the Praecipe may pass the rational basis test because it bears a theoretical, albeit minimal, relationship to the generic legislative purposes of conserving and allocating judicial resources throughout the state. Yet, given the multiple actions, multiple injunctions, interlocutory appeal and attendant delay, expense and docket congestion of the *Abbott* case, a stronger argument can be made that the prior jurisdictional status of the Praecipe wastes judicial resources by inviting rather than discouraging intercounty jurisdictional battles over the same action.

## 2. Interstate Use of the Praecipe: *Doe v. Doe*<sup>126</sup>

### *Timing*

### *Occurrence*

- |        |  |
|--------|--|
| Time 1 | Wife, an Illinois resident, filed a Praecipe in Cook County, Illinois but did not serve the Praecipe on Husband, a Florida resident. |
| Time 2 | Husband filed a Dissolution Petition in Florida.   |
| Time 3 | Wife filed a Dissolution Petition in Illinois.   |

According to the law of Illinois, the Circuit Court of Cook County had prior jurisdiction over this action because the wife filed a Praecipe in Illinois before the husband filed a petition in Florida. Did the filing of the Praecipe provide sufficient legal authority for the Illinois court to assert its prior subject matter jurisdiction over the action?

- |        |   |
|--------|---|
| Time 4 | Based upon the finding that the Praecipe conferred prior subject matter jurisdiction on the Illinois court, the Illinois court enjoined Husband from litigating his action in Florida.                              |
| Time 5 | Based upon: (1) refusal to recognize the jurisdictional dignity of the Praecipe; and (2) the prior filing of Husband's Petition in Florida, the Florida court enjoined Wife from litigating her action in Illinois. |

From a strategic standpoint, the Praecipe was preemptively filed by the wife to win a race to the courthouse for the purpose of reserving jurisdiction in an Illinois court. The Praecipe was never served on the husband. Its sole purpose was to divest any other state court of jurisdiction over the action in the event the husband filed elsewhere.

Assuming the Illinois legislature wishes to confer special benefits on its citizens in instances of interstate divorces, it must do so in compliance with constitutional requirements.<sup>127</sup> In this case, the interstate use of the Praecipe bore no rational relationship to the purposes of the Marriage

126. This example is based upon the cases of *Doe v. Doe*, No. 82-D 21712, Cook County, Illinois (trial level) (1983), and *In re Marriage of Doe*, No. 82-16780 FC, Dade County, Florida (trial level) (1983). The identity of the parties has been changed.

127. See *supra* note 113.



and Dissolution Act which repudiates rather than endorses such tactics.<sup>128</sup> Unlike the intercounty use of the Praeceptum, the interstate use of the Praeceptum does not even theoretically conserve judicial resources. To the contrary, when faced with an Illinois procedural device which purported to divest it of jurisdiction, the Florida court aggressively sought to protect its own jurisdictional integrity by refusing to recognize the prior jurisdiction of the Illinois court. The jurisdictional battle was especially futile in this case in light of the fact that the preemptive use of the Praeceptum backfired: rather than securing jurisdiction in an Illinois court, the "reservation of jurisdiction" caused an Illinois proceeding to be denied recognition in a sister state. *Doe v. Doe*<sup>129</sup> demonstrates that the burdens imposed on the nonresident spouse were intolerable under special legislation standards and that the "benefits" conferred on the resident spouse were of no use to her at all. This is hardly rational legislation.

### E. *Recognition by Sister States*

Assuming the Illinois legislature deems the use of the Praeceptum appropriate on an intercounty basis, the question remains whether Illinois can reach beyond its territorial borders to impose upon a nonresident adversary of an Illinois petitioner the inordinate burdens of the Praeceptum. Under both the full faith and credit clause<sup>130</sup> and notions of comity,<sup>131</sup> no state can enact laws that another state must enforce.<sup>132</sup> Because it is common for two separate state court systems to have concurrent jurisdiction over separately filed divorce actions of the same parties, will an ac-

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128. See *People ex rel. Lehman v. Lehman*, 34 Ill. 2d 286, 290-91, 215 N.E.2d 806, 809 (1966) (citing ILL. REV. STAT. ch. 110, ¶ 48(1)(c) (1963), and noting that the "purpose of [this] provision is to foster orderly procedure by preventing a multiplicity of actions").

129. No. 82-D 21712, Cook County, Illinois (trial level) (1983).

130. U.S. CONST. art. IV, § 1; see Speidel, *Extraterritorial Assertion of the Direct Action Statute: Due Process, Full Faith and Credit and the Search for Governmental Interest*, 53 NW. U.L. REV. 179 (1958) (background regarding the development of the common law under the full faith and credit clause).

131. Comity is defined as: "Courtesy . . . respect; a willingness to grant a privilege, not as a matter of right, but out of deference and good will." BLACK'S LAW DICTIONARY 242 (5th ed. 1979).

132. See, e.g., *Bonaparte v. Tax Court*, 104 U.S. 592, 594-95 (1881); *Pennoyer v. Neff*, 95 U.S. 714, 729-33 (1877); *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 405 (1856); see also *Graham v. General U.S. Grant Post No. 2665, V.F.W.*, 43 Ill. 2d 1, 6-8, 248 N.E.2d 657, 659-60 (1969) (held that in action for damages under Illinois Dramshop Act for injuries sustained in another state, the court will not give extraterritorial applicability to the Act, thereby precluding recovery); *Butler v. Wittland*, 18 Ill. App. 2d 578, 583, 153 N.E.2d 106, 109 (3d Dist. 1958) ("It is a well established principle that a statute has no extraterritorial force and is prima facie operative only as to persons or things within the jurisdiction of the state where such statute is enacted."). *But cf. Wimmer v. Koenigseder*, 128 Ill. App. 3d 157, 470 N.E.2d 326 (2d Dist. 1984) (Illinois' long arm statute rendered Wisconsin tavern owner amenable to suit under Illinois' Dramshop Act where Wisconsin tavern owner advertised in Illinois and it was reasonably foreseeable that Illinois resident would cross border, drink in Wisconsin, and drive home to Illinois where auto accident occurred.).

tion commenced by the filing of the Praeceptum be entitled to recognition in the later filed case? This question must be answered in light of the anomalous nature of the Praeceptum and its primary function, which, as a jurisdictional device, is to oust the sister state court of jurisdiction.

Under Illinois law, an Illinois court must dismiss a prior action pending in another Illinois court between the same parties as to the same issue.<sup>133</sup> This rule does not obtain between sister states. In Illinois, as in most jurisdictions, the prior pendency in a foreign forum of the same lawsuit between the same parties does not bar the litigation of the same action in Illinois.<sup>134</sup> Rather, the deference by one state to a prior pending action in another state is a matter of comity.

By the exercise of judicial comity, "the courts of one state or jurisdiction give effect to the laws and judicial decisions of another, not as a matter of obligation but out of deference and respect."<sup>135</sup> The primary function of comity in a federalist system is expediency—to secure uniformity of decision and prevent repeated litigation on the same questions.<sup>136</sup> Thus, to prevent multiple law suits and the expense, delay and docket congestion attendant thereto, the state in which the action was later filed, as a matter of comity, normally will defer to the first filed action.<sup>137</sup> As *Doe v. Doe*<sup>138</sup> illustrates, however, the enforcing state may refuse to defer to the prior pendency of an Illinois action because the Praeceptum, which purports to be jurisdictional, in fact, is not.<sup>139</sup>

Similar questions arise under the full faith and credit clause of the federal constitution: does the full faith and credit clause compel other states to recognize the jurisdictional priority of an Illinois divorce action

133. ILL. REV. STAT. ch. 110, § 2-619(a)(3) (1985) (provides that a lawsuit may be involuntarily dismissed by the court on the grounds that "there is another action pending between the same parties for the same cause"); see also *People ex rel. Lehman v. Lehman*, 34 Ill. 2d 286, 290, 215 N.E.2d 806, 809 (1966) (applied same rule under old Civil Practice Act, ILL. REV. STAT. ch. 110, § 48(1)(c) (1963), which contained same rule on involuntary dismissal for prior pending actions).

134. Cf. *Dayan v. McDonald's Corp.*, 78 Ill. App. 3d 194, 196, 397 N.E.2d 101, 103 (1st Dist. 1979) ("the rule is that the mere pendency of a lawsuit in a foreign country is not a bar to proceedings in our courts"); *Goldberg v. Goldberg*, 27 Ill. App. 3d 94, 97, 327 N.E.2d 299, 301-02 (1st Dist. 1975); *Farah v. Farah*, 25 Ill. App. 3d 481, 492, 323 N.E.2d 361, 368 (1st Dist. 1975); *Skolnick v. Martin*, 32 Ill. 2d 55, 203 N.E.2d 428 (held that pendency of lawsuit in the federal courts bars proceeding between the same parties for the same cause in Illinois courts), *cert. denied*, 381 U.S. 926 (1965).

135. 16 AM. JUR. 2D *Conflict of Laws* § 10 (1979); see also *Nevada v. Hall*, 440 U.S. 410, 416-18 (1979). See generally W. COOK, *THE LOGICAL AND LEGAL BASES OF THE CONFLICT OF LAWS* 20-21 (1942).

136. BLACK'S LAW DICTIONARY 334 (rev. 4th ed. 1968).

137. Cf. *Sommer v. Borovic*, 69 Ill. 2d 220, 231, 370 N.E.2d 1028, 1031 (1977); *People ex rel. Phillips Petroleum Co. v. Gitchoff*, 65 Ill. 2d 249, 257, 357 N.E.2d 534, 538 (1976).

138. No. 82-D 21712, Cook County, Illinois (trial level) (1983).

139. See *supra* text accompanying notes 128-31.

commenced by the filing of a Praeceptum?<sup>140</sup> Like comity, full faith and credit need not be given to the statutes of another state if enforcement thereof would be contrary to the statutes or public policy of the forum.<sup>141</sup> As the United States Supreme Court observed:

[I]n the case of statutes, . . . we think the conclusion is unavoidable that the full faith and credit clause does not require one state to substitute for its own statute, applicable to persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events.<sup>142</sup>

To the extent that the Praeceptum provides any constructive benefits—such as the autonomy of groundless pleading or the allocation of judicial resources within the Illinois court system—such benefits are purely domestic in nature. A statute that embodies “the expression of domestic policy, in terms declared to be exclusive in its application to persons and events within the state” is particularly ineligible to receive full faith and credit.<sup>143</sup>

All state court systems have procedures by which legal actions are commenced. None have procedures analogous to the Praeceptum. Moreover, all state court systems have legitimate interests in providing a forum for their citizens, protecting their citizens from the unwarranted extraterritorial grasp of other states, and safeguarding the integrity of their own judicial borders.<sup>144</sup> As *Doe v. Doe*<sup>145</sup> demonstrates, Illinois

140. The full faith and credit clause does not require a final judgment. “[N]either the constitution nor the Federal statute that implements it expresses any requirement of finality in describing the judgments that are entitled to full faith and credit. The constitution speaks of ‘judicial proceedings.’” *Light v. Light*, 12 Ill. 2d 502, 511, 147 N.E.2d 34, 40 (1958) (citing *Barber v. Barber*, 323 U.S. 77 (1944) (Jackson, J. concurring)). Further, it applies to judicial proceedings regarding state statutes. See *Phillips Petroleum Co. v. Shutts*, 105 S. Ct. 2965, 2979-81 (1985); *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 322 (1981). Although the full faith and credit clause compels the recognition of a valid foreign judgment by the enforcing court, a more lax interpretation of the clause pertains when the recognition of a judicial procedure short of a judgment is at issue.

141. *Marchlik v. Coronet Ins. Co.*, 40 Ill. 2d 327, 333-34, 239 N.E.2d 799, 803 (1968). See generally *Reese & Johnson, The Scope of Full Faith and Credit to Judgments*, 49 COLUM. L. REV. 153, 171-77 (1949) (provides background analysis of United States Supreme Court decisions that recognize this exception to the full faith and credit requirement).

142. *Pacific Employers Ins. Co. v. Industrial Accident Comm’n*, 306 U.S. 493, 502 (1939).

143. *Id.* at 502-03.

144. For cases in which jurisdiction was denied, see *Pennoyer v. Neff*, 95 U.S. 714 (1877); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945); *Hanson v. Denckla*, 357 U.S. 235 (1958); *Kulko v. Superior Court of California*, 436 U.S. 84 (1978); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 104 S. Ct. 1868 (1984). For cases in which jurisdiction was upheld, see *Burger King Corp. v. Rudzewicz*, 105 S. Ct. 2174 (1985); *Calder v. Jones*, 104 S. Ct. 1482 (1984); *Keeton v. Hustler Magazine, Inc.*, 104 S. Ct. 1473 (1984).

145. No. 82-D 21712, Cook County, Illinois (trial level) (1983); see *supra* text accompanying notes 126-29.

courts should not expect actions commenced by the filing of a Praeceptum to be recognized in sister states as a prior pending action. By definition, the Praeceptum is too unique to be comprehended by other judicial systems.<sup>146</sup> In practice, the Praeceptum is too offensive to be tolerated by other judicial systems.<sup>147</sup>

#### IV. CONCLUSION

The Praeceptum is a procedural device whose time has passed. Shorn of its policy justifications, its primary purpose is to oust a competitor court of jurisdiction and to subject the Praeceptum Respondent to extraordinary procedural disadvantages. In modern practice, the Praeceptum no longer serves the legislative purposes of discouraging marital breakdown or of reducing docket congestion in the domestic relations courts. Rather, whatever benefits were once thought to inure from this mode of pleading can now be obtained from the general, nondiscriminatory No Fault Petition.

Although the Praeceptum purports to be jurisdictional, when used on an intercounty basis, it serves only the theoretical purpose of allocating judicial resources within Illinois by reserving venue in the court in which it is filed. Because the Praeceptum only reserves venue, it should have no interstate function at all. When used on an interstate basis, the Praeceptum is such a procedural anomaly that it is unworthy of recognition by sister state courts. Accordingly, proceedings that will be deemed legal and binding in Illinois will have no extraterritorial effect. When used on either intercounty or interstate bases, the Praeceptum invites battles over the primacy of the first filed action and the expense, delay, and docket congestion attendant thereto.

In sum, because the Praeceptum advances no legitimate legislative purpose, serves no legitimate jurisdictional function, and devalues Illinois

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146. See *Marchlik*, 40 Ill. 2d at 333-34, 239 N.E.2d at 803 (indicating that because Wisconsin's unique direct action statute is contrary to the public policy of Illinois, the court would not give a Wisconsin judgment, which was rendered under the statute, full faith and credit in Illinois); see also *Speidel*, *supra* note 130, at 203. The author argues that few matters are of more dominant local concern than the proper administration of law by the state courts at the place of trial. This interest is of even greater concern when the courts of one state are faced with the question of whether to give full faith and credit to unique laws of other states. The author concludes that "[w]hile uniform enforcement in general may be a desirable goal, it should not foist the experimental whims of other states upon the place of trial" in a sister state. *Id.*

147. See *Reese & Johnson*, *supra* note 141, *passim*, which indicates that there are three lines of cases which purport to be valid exceptions to the full faith and credit clause: (1) where the judgment was entered by a court which lacked proper jurisdiction, *id.* at 165-71; (2) where the enforcement of the judgment would result in an infringement upon the legitimate interests of the enforcing state, *id.* at 171-77; and (3) where the enforcement of the judgment would result in an infringement upon policies superior to those underlying the full faith and credit clause, *id.* at 177-78.

proceedings in sister states, it either should be stricken from the statute books by the Illinois legislature or declared unconstitutional by an Illinois court.

APPENDIX A  
FORM 3 CC-CH-D

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In the Circuit Court of Cook County, Illinois  
County Department, Chancery-Divorce Division Praeipce for Sum-  
mons in Suit for \*(Divorce) (Separate Maintenance)

(\*Strike out one not applicable)

)

)

)

vs. ) No.

)

)

) To Honorable MORGAN M. FINLEY, Clerk of said Court:

Please issue summons in the above cause to the Sheriff of Cook County,  
Illinois, directed to the above named defendant.

Name:

Attorney for:

Address:

City:

Telephone:

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MORGAN M. FINLEY, CLERK OF THE CIRCUIT COURT  
COOK COUNTY  
CHANCERY-DIVORCE DIVISION

