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REDISTRICTING IN ILLINOIS JUDICIAL ELECTIONS:

A ONCE IN FIVE DECADES EVENT

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AUTHOR'S NOTE: THE VIEWS EXPRESSED IN THIS PAPER ARE THE AUTHOR'S ALONE

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Redistricting in the Illinois Judicial Elections: A Once in Five Decades Event

Abstract

In 2021, the Illinois General Assembly for the first time in over five decades was successful in redrawing the boundaries of the districts for the election of Illinois Supreme Court and Appellate Court justices (Judicial District Act of 2021; PA 102-0011 (SB0642). Why after more than fifty years? And what is the impact of the changes? This paper explores those questions and provides some answers. It compares Illinois with the practices of other states which also elect their judges through partisan elections. The paper also raises and discusses several issues which remain about the way judicial selection is done in Illinois.

Background

The Illinois Constitution of 1970 recognized the Illinois Supreme Court that had been created by prior state Constitutions. The Constitution defined the Court as consisting of seven justices, to be elected as follows: three from Cook County and one each from the Second, Third, Fourth, and Fifth Districts. The 1970 Constitution expanded the Appellate Court to include justices to be elected from the same five districts (Illinois Constitution, Article VI, Sec. 2 and 3).

The Constitution specifies that the four districts outside Cook County are to be substantially equal in population and be compact and composed of contiguous counties (Article VI, Sec. 2). The district boundaries had been established by the Illinois General Assembly in the Judicial Article of 1964 and were not changed by the 1970 Illinois Constitution (Act, Sec. 5).

The General Assembly first attempted to change the district boundaries in 1997 when it sought to sub-divide the First District and made changes to the other four districts. The subdivision violated the Illinois Constitution, and the entire law was stricken *Cincinnati Insurance Co. v. Chapman, 181 Ill.2d 65 (1998).* Despite changes in the state's population centers over the ensuing decades, the General Assembly made no further effort at re-drawing the boundaries until 2021.

Changes

In June of 2021, the Illinois General Assembly enacted the 2021 Judicial District Act. Relying on the American Community Survey data, the legislature found that the districts were no longer "substantially equal" as required by the state constitution (Article IV, Section 3). Notably, the Second District was comprised of 3.2 million persons while there were 1.28 million persons in the Fifth District. As a result of the newly drawn districts, the Second and Third Districts have shrunk in the number of counties and in population. The Fourth and Fifth Districts have expanded in the number of counties and in population. The changes are described in Table 1 below.

Table 1: Population of the State Judicial Districts Before and After Redistricting

District	Prior to Redistricting	Post Redistricting
First District	5.2 Million population One county Elects 3 Justices	5.2 Million population One county Elects 3 Justices
Second District	3.2 Million population 13 counties Elects 1 Justice	1.7 Million population 5 counties Elects 1 Justice
Third District	1.78 Million population 21 counties Elects 1 Justice	1.9 Million population 7 counties Elects 1 Justice
Fourth District	1.29 Million population 30 counties Elects 1 Justice	2.0 million population 41 counties Elects 1 Justice
Fifth District	1.28 Million population 37 counties Elects 1 Justice	1.8 Million population 48 counties Elects 1 Justice

The attached maps, Appendix A, display the district boundaries before and after redistricting.

The General Assembly did not and could not re-draw the borders of the First District because the Illinois Constitution defines it as composed of Cook County. The Constitution provides only that Cook County is to elect three justices and makes no allocation between the population and the number of justices. However, for the sake of comparing the districts, the 5.2 million persons divided by the three justices assigned to the First District works out to about 1.7 million persons per justice.

The Second District, whose boundaries were from Lake Michigan on the east to the Iowa border on the west, including those commonly known as the "Collar Counties," was reduced from thirteen to five counties near Cook. Lake, McHenry, and Kane counties are the largest in the Second District. DuPage County, the largest county in what was the Second District, has been moved to the Third District (See maps, Appendix A). The Third District, which formerly ran roughly along Interstate 80 from the Indiana border to the Iowa border, is more compact; it now includes DuPage and Will Counties as its largest counties, with seven counties in total down from twenty-one counties.

The Fourth District, which ran across the state south of the Third and included much of central Illinois, now extends from the Wisconsin border on the north to Springfield in the center of the state and spans the state from near the Indiana border to the Mississippi River. It grew from thirty counties to forty-one. Winnebago, Peoria, Rock Island, Sangamon, and McLean Counties are the largest in the Fourth District. Champaign and Vermillion Counties, formerly in the Fourth, were moved to the Fifth District.

The Fifth District, which formerly covered all of southern Illinois, now extends from the east-central part of the state along the Indiana border on the east to the Missouri border at St. Louis on the west and ends at the Ohio River, bordering Kentucky. Champaign, St. Clair, and Madison counties are the largest counties in the Fifth District, now consisting of forty-eight counties, up from thirty-seven.

The reality is that most of the population of Illinois resides in the northeastern thirteen counties. The new boundaries reflect that reality.

The Act retained the seats of the appellate courthouses in the districts where they had been located: The First District sits in Chicago; the Second District sits in Elgin in Kane County; the Third in Ottawa in LaSalle County; the Fourth in Springfield in Sangamon County; and the Fifth in Mt. Vernon in Jefferson County.

The General Assembly also provided that nothing in the Act was to affect the tenure of any Appellate or Supreme Court Justice in office. Incumbent judges have the right to run for retention in the counties comprising the district that elected the judge or in the counties comprising the new district where the judge resides (Act, Sec. 5).

Criticisms

The Act was sponsored by a Democrat, passed by a Democratic-controlled legislature, and signed by a Democratic Governor. The act passed with all Republicans in each house of the General Assembly voting against it. The new act drew criticisms from the Republican party that the redistricting was political and that it failed to use the official 2020 U. S. Census data. The Republican legislators also complained that the bill was rushed through the General Assembly

without a public hearing. The Democrats' response cited the need to re-align boundaries to meet the requirement that the districts be substantially equal.

Republicans accused the Democrats of becoming interested in re-drawing the districts only after the failed retention election of Justice Thomas Kilbride, then a Justice from the Third District, and only after Democrats realized their 4-3 majority on the Court might be at risk.

Justice Kilbride had been elected to the Illinois Supreme Court from the Third District in 2000. As provided under the Illinois system, Justice Kilbride sought retention in 2010 and succeeded. In 2020, he again sought to be retained and received 56% of the vote for retention, falling short of the three-fifths or 60% of the vote required for retention (Illinois Constitution Sec. 10 and 12). Illinois Supreme Court justices are elected for a term of ten years and then run for retention, for which the Constitution requires a three-fifths vote to be retained.

This was the first time a sitting Illinois Supreme Court justice had failed to be retained since the adoption of the current Illinois Constitution in 1970. This failure occurred only after a massive effort was mobilized against Justice Kilbride with $11.5 million spent on the political campaigns for and against his retention. This Illinois case is one example of how much the selection and retention of state Supreme Court Justices nationwide has been politicized and polarized in the 21st Century, beginning in 2008 when $9 million was spent in the Karmeier vs. Maag race for the Illinois Supreme Court. At that time $9 million was a national record for spending on a state judicial race.

In 2020, the political alignment of the Illinois Supreme Court's seven justices was 4-3, with four justices, including Justice Kilbride, having been elected on the Democratic ballot and three on the Republican ballot. Had Justice Kilbride been retained in 2020, Democrats would have

maintained their majority. With the failed retention vote, the Third District seat was vacant and was to be filled in the 2022 election. Republicans believed that there was a good chance that the Third District would elect a Republican judge in 2022 and, if all else remained as it had been, there would be a 4-3 Republican majority on the Court.

In the interim, because the Third District seat was vacant in 2020, the Illinois Supreme Court, as provided by the Illinois Constitution, filled the vacancy, appointing a senior Appellate Justice, Robert L. Carter, formerly on the Third District Appellate Court. Justice Carter, also a Democrat, filled the seat until the 2022 election (Illinois Constitution, Art VI, Sec. 12 c). (See: Tabor, November 4, 2020). Justice Carter announced that he would not seek the Supreme Court seat in the November, 2022 election.

Some observers expected that the newly drawn Third District would be a tossup while Democrats presumably believed the district would favor Democrats. The removal of DuPage County from the Second to the Third District might have supported the Democrats' belief. In the 2020 Presidential election, DuPage County voted for President Biden by 281,000 to 193,000.

In fact, voters in the new Third District elected a Democrat candidate, Mary K. O'Brien, to the Illinois Supreme Court as did the voters in the newly drawn Second District, electing Elizabeth Rochford. Thus, after the first election following the enactment of the 2021 Act, the Illinois Supreme Court has five candidates who were elected on a Democratic ballot and two aligned with the Republican party.

The Republicans also opposed this bill because those re-drawing the districts relied on data from the American Community Survey, rather than from the U.S. Census (Act, 2021, Sec.5). The Census data was not available in the spring of 2021 when the bill was passed.

Republicans also accused the Democrats of rushing to enact this bill without any public hearings. The Act was introduced in the General Assembly on May 27, 2021, just over six months after Justice Kilbride's failed retention vote. It was introduced as an amendment to what had been the Clerk of Courts Act; the act was signed by the Governor on June 4, 2021, eight days after being introduced. It was effective immediately (102d Illinois General Assembly, SB 0642 history).

At least one sitting Supreme Court justice was affected by the redistricting. Justice Michael Burke of DuPage County was sitting by appointment to fill a vacancy on the Court from the Second District. He was expected to run on the Republican ticket for the Second District seat on the Court in 2022, but because DuPage County was moved to the Third District, he sought election from the Third District. With the exception of the DuPage County voters, many of the voters he faced in the Third were different from those he expected to face in the Second District. He was not successful in his bid for election from the new Third and pundits will debate how much the redistricting contributed to the loss.

Had she not decided to retire, a second sitting justice would have been affected as well. Justice Rita Garman, a Republican, who was elected to the Court from the Fourth District, would have stood for retention in November of 2022. Vermillion County, her home county, is now in the Fifth District. The Fifth District already had a justice, Justice David Overstreet**,** a Republican, elected in 2020. Presumably, had Justice Garman decided to run for retention in the Fourth, she would have had to reside in a county within the Fourth District. The Illinois Constitution requires that judges be a resident of the unit which selects the justice (Art. VI, Sec. 11).

Justice Garman announced her retirement from the Court, to be effective in July 2022, with a record as one of the longest-serving justices. The Court appointed Lisa Holder White, a Republican justice currently on the Fourth Appellate Court, to assume Justice Garman's seat after

her retirement in July, 2022. Justice White faced the same problem. Her home is in Macon County, formerly in the Fourth District, now in the Fifth District. To serve on the Court from the Fourth District, she will have to relocate as well.

Each party seeks control of the Supreme Court, which leads voters to question whether the court is truly independent. Traditionally, business groups favor Republican candidates for the Court while labor and trial lawyers favor Democratic candidates. The fact that the Court may rule on future redistricting maps of the Congressional districts or the legislative districts as well as other matters related to redistricting magnifies the interests of each party.

Effect on Voters

The public will be affected by the new lines, especially when it comes to voting. Citizens often complain that they feel uninformed when electing judges and justices. For those in the Fourth and Fifth Districts, the size of the districts means that they will choose from candidates in over forty counties, many of whom will be unfamiliar to them. Given the low population of many of the counties in the Fourth and Fifth, one wonders if judicial candidates will even visit the counties, thus further decreasing voters' familiarity with them.

In contrast, voters in the First, Second, and Third Districts, with the exception of those in DuPage County, will see familiar faces.

Effect on the Legal Community

The legal community is affected by the new district lines, most especially in the Fourth and Fifth Districts. Many appellate lawyers will have to travel greater distances to argue their cases. For example, an attorney arguing an appeal from a Winnebago County case will have to travel to Springfield, a distance of 300 miles, a drive of more than four hours, rather than the prior hour

drive to Elgin, the seat of the old Second District. An attorney appealing a decision of a Champaign County court will travel to Mt. Vernon, a distance of 140 miles and a drive of two and a half hours, rather than the former one and half hour drive to Springfield. Undoubtedly, the widespread use of Zoom for oral arguments employed during the pandemic will continue as a means of alleviating travel time. Lawyers will debate the value of presenting arguments via Zoom as opposed to in person.

Lawyers from DuPage County and those who practice before the Fourth and Fifth Appellate Courts will experience a short-term learning challenge of adjusting to local rules and procedures unfamiliar to them. They will have to learn the judicial philosophies of appellate justices new to them and those they did not elect. In contrast, no attorney in the First or Second District will face such changes.

Lawyers planning to run for either a Supreme Court or Appellate Court seat face new questions. As noted earlier, those from DuPage County now will seek votes from the Third, rather than the Second District. Candidates for office in the Fourth District will face the challenge of campaigning in forty-one counties spread from central Illinois to the Wisconsin border and west to the Mississippi River. Those in the Fifth District must seek votes from forty-eight counties from the Ohio River on the south to Champaign and Vermillion Counties along the Indiana border in the east-central area of the state.

Considering that the traditional "campaign season" extends from Labor Day to Election Day, campaigning in forty-some counties in ten weeks will be overwhelming. Thus, the campaigns may start much earlier. Those running for justice from the Fourth or the Fifth District seats will face greater challenges to achieve name recognition and to personally campaign throughout the district. Judicial candidates will likely rely even more heavily on electronic media or online

platforms, further distancing the judicial candidates from their voters, and further increasing the costs of campaigning. The campaign expense is likely to be comparable, if not more so, to Congressional campaigns. In effect, the judicial campaigns will become more overtly political, more costly, and more like those in the other two branches of government.

Issues for debate

The districts were no longer "substantially equal," and change had to occur. The reality is that 60% of the state's population now resides in the northeastern 13 counties. The re-drawing of the district lines and the concerns that surrounded it drew attention to several issues most of which existed prior to the re-drawing.

Retention

One issue relates to the three-fifths requirement for retention. As noted above, the term of justices is set by the Constitution at ten years. Once elected, they stand for retention every ten years. While a justice can win an election initially by 50% plus one vote, the justice must gain three-fifths of the vote to be retained. While Justice Kilbride received a majority of the voters for retention in 2020, he fell short of the three-fifths requirement. Ann Louisin, University of Illinois Chicago John Marshall law professor and long-time student of Illinois government, suggested the three-fifths requirement adopted by the 1970 Constitutional Convention was a compromise between those who wanted an appointment system and those who preferred an elected system for judges. She noted the hope of the delegates that, once elected, judges would run on their record, rather than party affiliation (Vinicky, November 10, 2020). It appears the hope of the constitutional delegates of 1970 has dissipated.

The same retention rules apply to trial-level judges, some of whom have challenged the retention system. In 2006 and again in 2016, several St. Clair County trial court judges resigned and immediately ran for office as new judges, rather than as those seeking retention. As new judges, they needed only 50% plus one of the votes, rather than 60%. At least one effort to amend the Election Code to prevent judges from avoiding the three-fifths retention vote has not succeeded to date. Representative Charlie Meier introduced HB 0624 in 2016 without success.

Campaign Funds

Another issue relates to the public concern about judicial independence when millions of dollars are spent on partisan campaigns to elect, retain or defeat a judge. During the 2019-20 period, Illinois led the nation in spending a total of over $18 million on Supreme Court races, according to a study by the Brennan Center for Justice (Keith and Velasco, 2022).

Illinois continues to have some of the weakest campaign finance rules in the nation whether applied to judicial or other offices. The Brennan Center's 2007 Campaign Finance in Illinois report concluded that in Illinois, "an absence of any campaign contribution limits or public financing, limited disclosure, and poor enforcement of existing campaign finance laws are pushing campaign costs through the roof and fueling a pay-to-play culture that threatens to undermine public confidence in state and local government" (Novak and Shah, February, 2022, 2007).

As was noted earlier, the Karmeier-Maag race for the Fifth District seat on the Illinois Supreme Court in 2004 was regarded as astonishing at $9.4 Million but it is less than the $11.5 million spent on the 2020 Kilbride retention race, an election in which the justice is supposed to run on his record (Skaggs, April 3, 2010).

The public may be ready to change the funding of judicial campaigns. A 2011 Simon Institute poll reported that "seven in ten (71.4 percent) favored or strongly favored a proposal to put limits on the amount that people could contribute to judicial campaigns, while 21.2 percent either opposed or strongly opposed the idea" (Paul Simon Public Policy Institute, November 2, 2011).

In 2021, the General Assembly limited the campaign contributions to judicial candidates from anonymous sources and limited out-of-state contributions to judicial candidates. (PA 102-0668, SB 536). These changes were challenged in federal court and currently stayed or put on hold, pending resolution of the case (*Chancey v. Illinois State Board of Elections*, 2022).

Whether the recent changes that have been enacted survive and whether they improve public confidence remains to be seen. But improvements in public confidence are needed.

Recusal

Related to the issue of campaign donations is the question of whether and when a judge should recuse himself or herself from a case where campaign donations are involved. The United States Supreme Court addressed this question in *Capperton v. A.T. Massey,* 2009). A West Virginia trial court awarded a $50 million judgment against Massey Coal. Massey had contributed heavily to Brent Benjamin who was elected and was in the 3-2 majority of the Court that overturned the trial court award. Justice Benjamin had refused to recuse himself. The U. S. Supreme Court reversed the West Virginia Supreme Court ruling that, "there was a serious objective risk of actual bias that required Justice Benjamin's recusal" (*Ibid*).

The Illinois Code of Judicial Conduct of 2023 attempts to assure that judges and justices are free from bias due to political and other influences. The Code requires that a "… judge shall

disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned" (Canon 2, Rule 2.11(A)). Examples of when recusal would be required are instances where the judge has an economic interest in the matter or had handled the matter prior to becoming a judge. Judges shall "…not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment" (Canon 2, Rule 2.3 (B)). The Code prohibits a judicial candidate from personally soliciting or accepting campaign contributions (Canon 4; R. 4.1 (E)).

The *Comment* to Canon 4 states the purpose of the rules affecting judges and judicial candidates: "A judge plays a role different from that of a legislature or executive branch official. Rather than making a decision based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure" (*Comment*, Canon 4).

The issue of recusal remains a contentious one. While the Canons provide guidance and, in some instances, direct instruction, much is left to interpretation. The ethics guiding judges can be further clarified but must not become so strict that no one is left to judge. For example, given that each justice on the Illinois Supreme Court is elected on a partisan ballot, a requirement that the justice recuses himself or herself from any matter regarding political issues, such as a political discrimination case or a claim of political gerrymandering, would require each of them to recuse. There would be no sitting justice left to decide the matter.

Election – the best system?

A fourth question involves the issue of the selection of judges by election rather than appointment. While Illinois voters elect circuit (trial level) judges and appellate and Supreme Court justices, not all states do so. In the federal system, governed by the U.S. Constitution, the President of the United States appoints judges for the trial and appellate levels of federal courts, including the U.S. Supreme Court, subject to the advice and consent of the U.S. Senate (U.S. Constitution, Art. II, Sec. 2, and Art. III). In practice, the ranking Senator or Congressional member of the President's party recommends candidates to the President. These candidates are investigated by the Federal Bureau of Investigation prior to appointment and confirmation. The U.S. Senate Judiciary Committee further reviews the nominees and confirms or fails to confirm their appointment. Those hearings have become increasingly partisan and polarized as the recent nominations of both Justice Jackson and Justice Kavanaugh demonstrated. Then, the entire Senate, by majority vote, has the final say on the president's nomination. Those final confirmation votes also have become more reliably party-line votes as the 21st Century contests have dramatically demonstrated.

In contrast to the appointment system used by the federal government, states use one of several systems for the election of judges at the appellate and supreme court levels with some using a different method for choosing judges at the trial level. Over twenty states elect judges, some, including Illinois, on partisan ballots and most on non-partisan ballots.

About eleven states use "merit selection" for judges. Under this system, with some variation, an appointed, independent, bipartisan commission of lawyers and non-lawyers, screens applications, interviews applicants, and prepares a list of nominees to the governor for appointment. "In nearly all merit-selection states, the governor must appoint one of the candidates nominated by the independent commission. In each merit-selection state, an appellate judge must

stand for retention at an up-or-down election at some point after appointment, and at regular intervals thereafter" (Johnson, Spring, 2017).

One advantage of the electoral system is that citizens make the choice for judicial officers just as they do for members of the legislative and executive branches. No gatekeeper prevents access to the ballot, assuming the candidate meets the qualifications and acquires the appropriate number of petitions. Disadvantages include the perception that the judiciary is not independent when it is tied to a political party, the perception that judges are tied to special interests when they amass these large campaign chests, and the sense among voters that they do not consider themselves sufficiently competent to make the choices.

The advantage of the "merit selection" system is that it enhances the perception of judicial independence by removing the partisan labels and the money needed to campaign. The disadvantages are that it replaces the voter with committees that may or may not be as partisan as political parties and places an obstacle in front of a judicial candidate who may not make the committee's "approved" list.

Some judicial hopefuls complain that the commissions are dominated by bar associations, other lawyers, or friends of the appointing authority, especially when the governor makes the appointment. Some women and members of underrepresented groups believe they have greater success in becoming judges by appealing directly to the voters, rather than to committees, which may have "more traditional" views of what is expected in a judge (Johnsen, Spring, 2017).

No system is free of political influence, and that is becoming increasingly evident to the voters in our current deeply polarized political system**.** If the legislature elects or confirms the appointment, its political biases are at play. If a commission vets the candidates for judicial office,

the quality of the commission depends on who selects the commissioners – the governor, the legislature, the bar association, or others, as well as who makes the final decision.

Advisory committees

One means of inspiring public confidence is the use of advisory committees. The author has served on three committees to select judicial officers, though none were at the appellate level. The first was an advisory committee created by U.S. Senator Dick Durbin to advise him regarding nominees to send to the President to fill seats on the federal trial court. The second committee was created by Illinois Supreme Court Justice David Overstreet to advise him in filling a vacancy on the Illinois state circuit or trial court. (While Illinois elects trial court judges, when a vacancy occurs, the Court fills the vacancy until the next election. That incumbent status is believed to give a significant advantage to the sitting judge in the next election to fill the seat.) The third committee was created by the U.S. District Court judges for the Southern District of Illinois to recommend candidates for U.S. Magistrate. Magistrates, who served for eight years, are appointed by the federal district judges and assist them at the trial level. Magistrates may not be well-known to the public, but they make significant contributions to the judicial system.

Each of these committees acted as the public might hope it would. Applicants submitted resumes and other materials which the committee reviewed. Lawyers and judges in the community made themselves available to respond to reference checks and were forthcoming in their critiques of the applicants. The committees interviewed the applicants. Upon completion of the interviews, the committees recommended candidates. In each case, the committee easily reached an agreement on the qualifications of the applicants. In each case, the judicial officers chosen were recommended by the committee.

The committees the author served on focused on the needs of the office and the capability of the applicants to meet those needs. In contrast, recent U.S. Senate Judiciary Committee hearings do little to inspire public confidence in the independence of the judges or of the review process. In two recent instances, each of a different political party, the Committee hearings have been highly partisan and as described by one member as "toxic" (Kane, March 26, 2022).

The U.S. Supreme Court Justices themselves have used public forums recently to decry the erosion of trust in the non-partisanship of the Court and the widespread perception that at least its high-profile decisions are tainted by partisanship. U.S. Supreme Court Chief Justice Roberts has been widely reported to be deeply concerned about how the court's independence is now perceived, and some of his decisions have indicated those concerns. U.S. Supreme Court Justice Amy Coney Barrett, in a public address, stated "…my goal today is to convince you that this court is not comprised of a bunch of partisan hacks" (September 13, 2021).

Public opinion polls have documented the erosion of trust in the Supreme Court over time with the recent approval of the Court at near historic lows. For example, a recent Associate Press/NORC poll found that only 18% of the respondents said they had a great deal of confidence in the Supreme Court; 54% said they had some confidence, and 27% said they had hardly any confidence in the court (Associated Press/NORC, April 26, 2022, A 5). While this poll considers public views of the U.S. Supreme Court, similar views are extending to state courts.

In contrast, the advisory committees the author served on and others like them work quietly and, in the author's view, competently. The success of advisory committees to recommend competent judicial candidates lies in the competence and intention of the appointer and in the competence and intention of the committee members. The appointing authority, whether the Court, a Justice, or some other body, must choose committee members who, regardless of their political

views, will act independently of special interest groups and commit the time and effort needed to review applications, check references, and interview candidates. The committee members must have the courage to recommend only competent and independent candidates worthy of the office. The appointing authority must also have the courage and independence to act on the recommendation. No law and no system can guarantee courage and independence.

Conclusions and Recommendations

The judicial districts were notably out of compliance with the "substantially equal" requirement of the Illinois Constitution before this historic redistricting process took place in 2021. Regardless of the motivation of the General Assembly, the new districts are now more closely aligned in regard to their population. Downstate districts had to grow in physical size, but many Fourth and Fifth District voters, already unsure of their ability to select judges through partisan elections, will be challenged to select candidates increasingly distant from them geographically, and will likely not even see or meet the candidates in the voter's county.

The courts play a critical role in ensuring that in the United States, it is the "rule of law," and not "might" or power that governs our relations. Recently, the Brennan Center recently warned us all, "At a moment when our democracy is being tested, it is crucial to ask whether modern judicial elections leave state supreme courts equipped to play their vital constitutional role. Courts will need the public's trust to effectively counter antidemocratic forces, yet this uptick in spending gives the public little reason to trust that courts are independent of big donors, or any different than the political branches of government (Keith and Velasco, January 25, 2022).

Illinois citizens, political leaders, legislators, and judges have the opportunity to better equip the courts to play that vital role.

Illinois could choose another system for selecting judges. Or it could continue to elect judges but do so without the judicial candidates running on partisan tickets. The state could also change the retention system by which a sitting judge needs a three-fifths vote to be retained, even though the judge was initially elected by a simple majority vote. Any such changes would require a constitutional amendment, an action that can be initiated by the General Assembly or by a constitutional convention, but not by citizens on their own. While the Illinois Constitution does permit citizen initiatives, these are limited to changes to Article IV of the Constitution (Illinois Constitution, Art. XIV, Sec. 3). Amendments to Article VI, the Judicial article, seem limited to the legislature which has not shown interest in changes in the manner of selecting judges.

In 2022, the General Assembly created a Task Force to consider public financing of judicial campaigns. Its authority is limited; it includes no member of the judiciary; and its report is due on June 30, 2023 (Public Act 102-0909). While it might produce reforms addressing campaign finance reform, that remains to be seen. But it might initiate a discussion that could begin to tackle the problem.

Assuming there are no changes in the Constitution or in campaign finance laws, there are three actions the Illinois Supreme Court can take. First, the Illinois Supreme Court should find a way to clarify recusal requirements to avoid the appearance of impropriety given the amount of campaign funds donated to candidates. Second, the Court can strengthen the canons governing judicial ethics to address campaign behavior and campaign finance.

Third, the Supreme Court should use advisory committees to advise it when it must fill vacancies between elections. The Court should appoint lawyers, and possibly other citizens, who will commit the time and have the courage to make informed recommendations to the Court. The

Court should adopt its recommendations. Without jeopardizing the independence of these committees, the Court should better inform the public about their use.

Confidence in an independent and transparent judiciary is a crucial quality undergirding the legitimacy of any democratic political system. Citizens must perceive the judicial system as unbiased if they are to give it their respect and support. The founders of the U. S. Constitution attempted to ensure these qualities for the federal courts through the appointment of the judges for life with the advice and consent of the U. S. Senate. That process is now under fire because of the intrusion of endemic partisanship in the selection process. Some of that same party polarization has now intruded on the state judiciary, especially in states, like Illinois, where the recruitment and selection process is overtly partisan.

Summary

In summary, this seemingly obscure and technical adjustment in the formula for representation on the Illinois Supreme Court, and the appellate courts, can impact the legitimacy of the entire judicial system for decades to come. This paper also considers and makes recommendations regarding some ways the current judicial selection process in Illinois could be improved.

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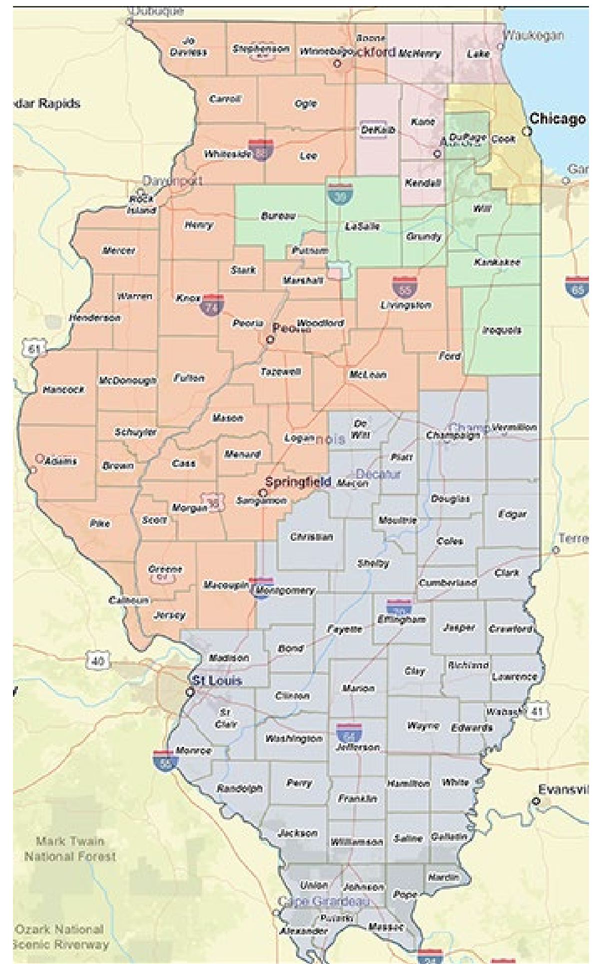
APPENDIX A Illinois Judicial Districts Before and After Redistricting

2020 2022



Source; Illinois Courts Redistricting. Public Act 102-001. https://www.illinoisourts.gov.

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