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THERE'S NOTHING FAIR ABOUT THE ILLINOIS MAP: An Examination of the Reapportionment Process in Illinois

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Abstract: Despite repeated reform efforts by a variety of activists and reform groups, the process by which reapportionment is accomplished in Illinois falls far short of the ideal. A set of cosmetic reforms was enacted at the end of the last decade, but the process is not transparent and still easily hijacked for partisan and incumbent advantage by the leadership of the General Assembly. The system falls even farther short of ideal when compared to the relatively apolitical and efficient system employed in neighboring Iowa. This paper demonstrates the anti-democratic nature of the current process and examines the mechanisms by which reform efforts have been thwarted in the recent past. The continued abuse of the apportionment process serves to perpetuate the control of a power elite in Illinois, which, in turn, prevents consideration of policy proposals that hold the potential to alleviate the host of other problems that plague the state.

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Introduction: What is Democracy?

Just what is democracy? Renowned political theorist Bernard Crick stated unconditionally there is no one clear definition of the term (Crick 2002, 11-13). He argued that the term democracy has its origins in four historical usages, one of which is the American Constitution. That tradition is one that relies on an actively involved citizenry and upon certain limiting principles that constrain government from behaving in a way that tramples the rights of individuals in the society (Crick 2002, 91). Other writers in this area agree there is no agreement on a single, precise definition (Haerpfer et al 2009, 12), but commonly mentioned is the idea that the citizens must have a meaningful opportunity to influence political outcomes. Seymour Martin Lipset (1959, 71) defined democracy, "as a political system which supplies regular constitutional opportunities for changing the governing officials."

The power of government, under the idea of a social contract as John Locke conceived it, derives from the consent of the governed. Crick argued that even modern authoritarian or totalitarian governments need the important symbolic label "democratic" to maintain control of their societies:

But in the modern industrial and globalizing world all governments seeking to manage such social transformation need mass consent – which is why so many military dictatorships claim to be democratic and . . . depend on an active mass support in a way that no despot or autocrat in older peasant societies needed to (Crick 2002, 92).

That consent comes in the form of participation in elections whereby the people who exercise the power of the government are selected. That selection process, consisting of free and honest elections, has a powerful symbolic importance, as witnessed by the emotional responses that people in newly democratizing nations experience when they vote (e.g., Gilligan 2012; Ifill, 2012). The legitimacy of our own national government rests in large part on our belief that candidates and political parties do not attempt to win elections via means of controlling the rules of the game as has been alleged so often in recent elections in places like Mexico (Miroff 2012), Iraq (Araf 2010), Afghanistan (Abdul-Ahad 2009), and Egypt (CNN 2012). Rather, candidates win elections because they have convinced a majority of those voting that they are best suited to serve.

While political theorists might disagree about the precise definition of democracy, for purposes of this paper, we start with the following propositions: 1) it is a fundamental tenet of democratic theory that all citizens have the opportunity to participate in a meaningful way in their government; 2) this participation should have the potential to actually affect the policy output of a government; and, 3) this participation should also be distributed in a roughly equal fashion – no one person or group should have significantly greater access to the system than any other.

Inherent in the American version of democracy is the right to vote. Schumpeter's (1943, 271) famous minimalist definition of democracy is that there is "free competition for a free vote." In numerous decisions by the United States Supreme Court, the fundamental nature of the right to vote is extolled. The list of cases is well known to scholars. *Yick Wo v. Hopkins* (1886) marks a key beginning when Justice Matthews

opined that the right to vote, “is regarded as a fundamental political right, because preservative of all rights (118 US 370). From the cases outlawing the White Primary (*Smith v. Allright* 1944) to the cases establishing the “one person, one vote” rule (*Baker v. Carr* 1962; *Wesberry v. Sanders* 1964; *Reynolds v. Sims* 1964), the language of the Justices of the Supreme Court has made it clear that the right to vote is one of the most essential rights in our democracy. In *Kramer v. Union Free School District*, (1969, 626), Chief Justice Warren said, “Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government.” There is also ample precedent for the principle that abuse of the apportionment process violates the Equal Protection Clause and the Fifteenth Amendment to the Constitution (*Gomillion v. Lightfoot* 1960).

Despite the broad agreement in our society that voting is an essential element of democracy, the process for redrawing electoral districts every ten years is self-consciously manipulated for partisan advantage by both parties whenever they have the chance to do so. “Redistricting is one of the most conflictive political activities in the United States” (Engstrom 2002, 51). Attempts to control the redistricting process occur in virtually every state, and even attempts to use a non-partisan commission can backfire as the parties seek advantage. The recent experience in Arizona where the efforts of an independent redistricting commission were initially blocked and Chairwoman Colleen Coyle Mathis was fired by the Governor and then reinstated by the Arizona Supreme Court (see, Pitzl 2011a; 2011b; *Mathis v. Brewer* 2012) is disappointing to those who would argue for attempts to remove partisanship from this vital process. Ultimately, a map emerged that was approved by the United States

Department of Justice (Prescott News 2012) and, despite continuing challenges, was used in the 2012 elections (Associated Press 2012; Sanders 2012). Texas, under the leadership of Tom DeLay, even went so far as to redistrict mid-decade in the 2000s in an unapologetic attempt to increase the control of the Republican Party (Bickerstaff 2007). DeLay's efforts led to increased scrutiny of his behavior and ultimately to his downfall. The unabashed efforts by the leadership of the Illinois General Assembly to make sure that the process of apportionment stays under their personal control and its use to achieve personal and partisan goals was compared unfavorably to the mid-decade redistricting in Texas (Blake 2011) and arguably undermines the very legitimacy of Illinois government.

Robert Dahl in his famous 1999 book, *On Democracy*, opined that effective participation and equality in voting were two of the five conditions for an ideal democracy to exist. Lipset and Lakin (2004, 27) wrote, "Generally, there must be a realistic chance that the party in power will loseOur preference for democracy, though only imperfectly realized, is that competition yields some degree of candidate responsiveness to the electorate." Huntington (1991, 7) defined democracy in terms of leaders being elected in "fair, honest, and periodic elections in which candidates freely compete for votes" When the system of apportionment creates districts wherein the outcome is predetermined, effective participation, free competition for votes and equality in voting is not present. This point can be well illustrated by the history of redistricting during the Civil Rights Era.

Once the Supreme Court had made it clear that every state had to redraw its legislative districts (*Baker v. Carr* 1962) and laid out the basic standard of "one person,

one vote” (*Gray v. Sanders* 1963) the actual process of drawing the districts in the Deep South commenced. It was a process in which the idea of massive resistance led those who controlled the process to focus their efforts on drawing district lines so that the votes of minorities were diluted. The tactics, as always shrouded in unstated goals and hidden behind code phrases, involved the use of at-large districts, combinations of multi-member districts and single-member districts, and drawing single member districts in such a way so as to divide minority neighborhoods between districts.

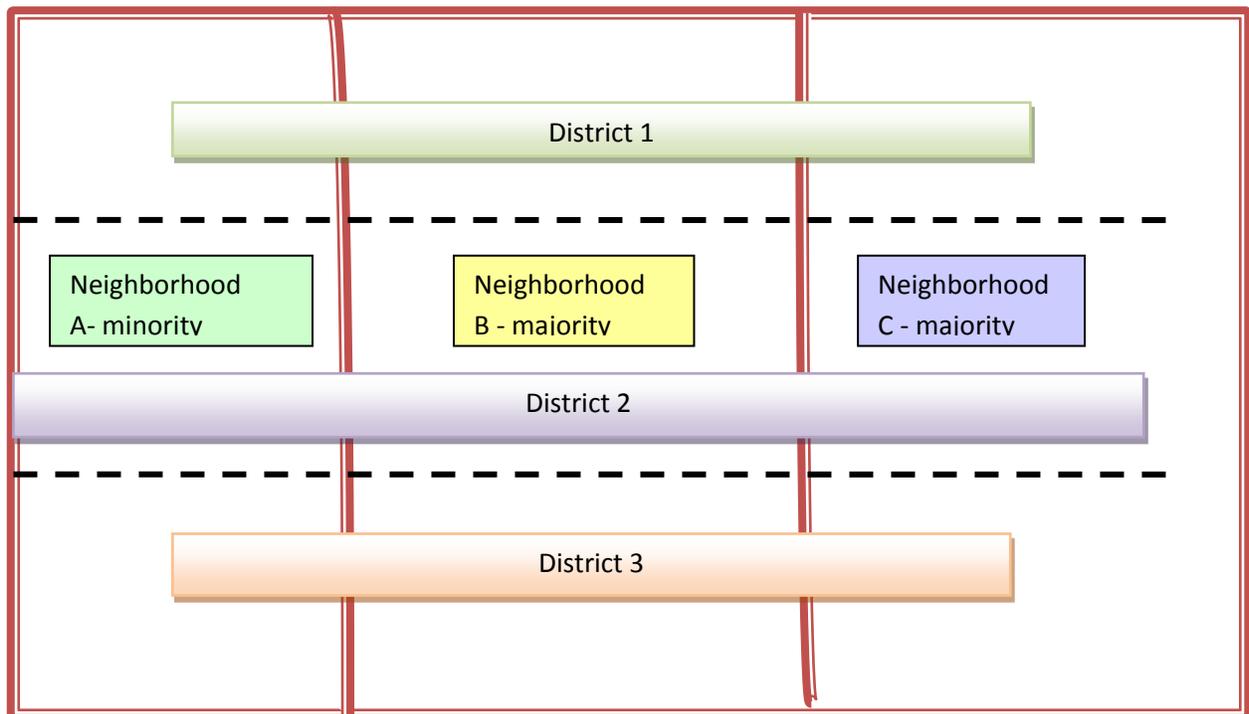
The tool box available to those who would subvert the process and dilute the votes of sections of the society is well known (ACLU 2010; Southern Coalition for Social Justice, 2010).

Three techniques frequently used to dilute minority voting strength are “cracking,” “stacking,” and “packing.” “Cracking” refers to fragmenting concentrations of minority population and dispersing them among other districts to ensure that all districts are majority white. “Stacking” refers to combining concentrations of minority population with greater concentrations of white population, again to ensure that districts are majority white. “Packing” refers to concentrating as many minorities as possible in as few districts as possible to minimize the number of majority-minority districts (ACLU 2010, 11).

Let’s look at a few examples of how this can work. Take the example of a simple city as illustrated in Figure 1. Let’s say that the city has a three member city council, all elected from single member districts. Let’s also say that the city has a minority population of about 30%, and that the minority population is largely concentrated in readily identifiable neighborhoods. Logic might suggest that one of the three members of the council should represent the interests of the minority community. The literature on the implementation and impact of the Voting Rights Act of 1965 has often been based on the idea that success can best be defined by the election of minority

candidates (see, e.g., Grofman 1993; Grofman and Handley 1991) and efforts have been made to remedy past discrimination by creating so called majority minority districts (see, *Shaw v. Reno*, 1993; *Shaw v. Hunt*, 1996). If we assume that the minority and majority voters will both vote as blocks, creating one minority district containing the identifiable minority neighborhoods and two districts dominated by majority voters would logically virtually guarantee two majority representatives and one minority representative on the council. This scenario would be illustrated in Figure 1 if the district boundaries followed the red lines with each of the neighborhoods constituting a council district.

Figure 1: A Hypothetical City



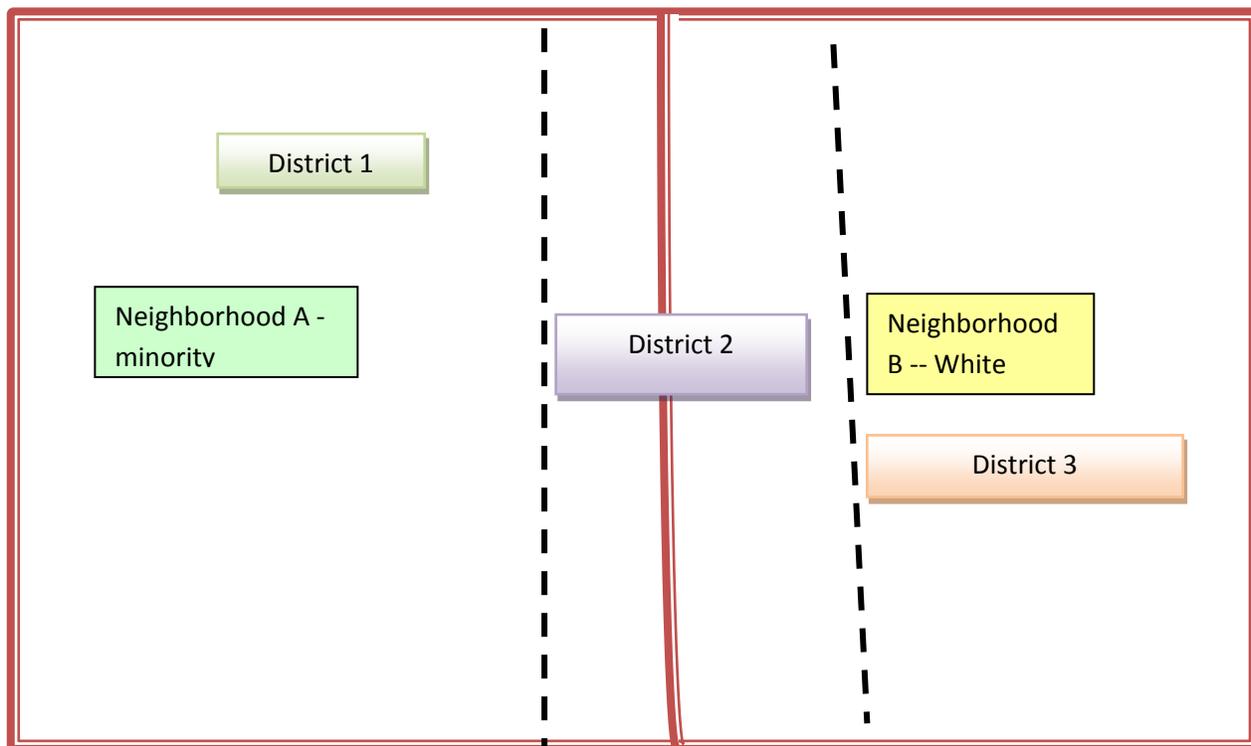
If the powers in the city prior to the Supreme Court rulings mandating redistricting were all members of the majority group, and wanted to keep that power to themselves,

they have two obvious choices. The first is to employ a “cracking” or “stacking” technique to draw three single member districts so that the minority neighborhoods are divided between the three districts. Each district would consist of a population that is approximately 30% minority. This would be illustrated by the dotted lines in Figure 1 demarcating three districts. The odds of electing a member of the minority group are greatly lessened under this map. Dividing the minority population would seem a logical goal of the existing powers if they want to retain total control of the council.

A second strategy is to move away from single member districts entirely. If all voting citizens of the city are charged with voting for three candidates, and cumulative voting is not allowed, then moving away from single member districts would logically make it harder for the minority voters to elect one of their own to office when compared to a situation wherein single member districts are employed and wherein neighborhood boundaries are respected. This second strategy was used by the City of Mobile, Alabama and was upheld by the Supreme Court in *Mobile v. Bolden* (1980) despite its effectiveness in preventing the election of minority groups to the city council.

Let us consider the situation wherein the hypothetical city is majority African American or Latino. This scenario is illustrated in Figure 2. Once again, the city has a three member city council, all elected from single member districts. Our hypothetical city is divided into two main neighborhoods, with a minority population that is 55% of the city. If the power structure in the city is dominated by Whites, then the “stacking” technique can be used to ensure that no more than one member of our three member city council is beholden to minority voters.

Figure 2: A Hypothetical “Majority Minority” City



All of these strategies can be pursued based on facially benign criteria. If a federal court has evidence that invidious discriminatory intent exists, then the law mandates that the jurisdiction be redistricted according to legitimate criteria (*Gomillion v. Lightfoot*, 1960; *Hunter v. Underwood*, 1985). The leaders of the massive resistance movement in the Deep South in the aftermath of *Brown v. Board of Education* (1954) very quickly established code words to make sure that their allies knew the purpose of any action they took, and that their enemies could not prove invidious intent in the court. It is far more difficult for opponents of redistricting to win a court battle when there is only evidence of disparate impact on racial groups (*Shaw v. Reno*, 1993, 641; *Mobile v. Bolden*, 1980, 62).

While it is easy for a court to decide in favor of a disadvantaged group when presented with clear evidence of intent to dilute minority votes, the situation wherein partisan advantage is alleged is much harder for those alleging disadvantage. The pursuit of partisan advantage is a pervasive aspect of reapportionment every decade (Bullock 2010; Windburn 2008). While the Supreme Court has stated that a cause of action may arise when partisan gerrymandering takes place (*Dans v. Banemer, 1986*; *Vieth v. Jubelirer, 2004*), the justices have not been able to come to any agreement on how to decide cases in which partisan advantage is alleged, even though they do not particularly like its use (*Vieth v. Jubelirer, 2004*; *League of United Latin American Citizens v. Perry, 2006*).

The issue is not just one of legality. It is one of the most basic of democratic theories – that citizens get a meaningful role in the process whereby public decisions are made. If the leaders of a legislative body get to determine the boundaries of the maps used to run elections, those leaders get to protect themselves in office. This is exactly what has been done for decades in many states, and it is a violation of democratic theory. It is time for it to stop.

Illinois has had some of the most blatant and nasty reapportionment battles in its recent history. No example is more disturbing than the profanity-laced tirades unleashed by a Democratic member of the Madison County Board during the dispute over redistricting after the 2000 census and quoted in the decision of a federal court in the case of *Hulme v. Madison County* (2001, 1050-1051). The comment made in direct response to a claim of partisanship by a Republican on the redistricting committee is especially foul and embarrassing: “We are going to shove it [the map] up your f_____

ass and you are going to like it, and I'll f_____ any Republican I can.” (*Hulme v. Madison County*, 2001, 1051). While this extreme example is likely not typical, the experience of one of the authors of this paper is that the leadership of the General Assembly will resort to almost any step to avoid an open and non-partisan redistricting process.

The battles over redistricting that rage in almost every state in the union every ten years are a clear indication that political leaders firmly believe that it matters how the districts are drawn (Bullock 2010, 127). The huge advantage that incumbents enjoy in elections in virtually all legislative bodies at the state and federal level provides further evidence that our current system is not offering voters a real choice in most states. Bullock (2010, 126-127) documents the decline in district competitiveness in races for seats in the House of Representatives since World War II, but it should be noted that 58 incumbents lost seats in 2010 (Left and Right News 2010) . Hirsh (2003, 179) even went so far as to open his analysis of the redistricting after the 2000 census with the comment that, “The 2001-2002 round of Congressional redistricting was the most incumbent friendly in modern American history, as many pundits have noted.” Turnover in state legislatures is lower now than in the past and much of the turnover can be attributed to term limits and retirements (Storey, 2003)¹. Even though redistricting does normally produce higher turnover numbers in state legislatures in the first election after redistricting, especially where the redistricting process is non-partisan, in 2002, “only 4 percent of all incumbents lost their seat to an opponent of the opposite party (Storey 2003, 7). Windburn (2008) argues convincingly that the types of redistricting rules in place play a large role in preventing one party from protecting its own members through gerrymandering. Notably, Windburn (2008, 199) found in his research that, “the two

most egregious gerrymanders occurred in those states where the controlling party had complete control of the process”

The problems with redistricting in Illinois are even worse than in most states and hold the key to real reform. So long as the legislative leaders get to design the maps, they have no real chance of losing their leadership position. They have every reason to avoid reform. They have every reason to keep the process secret and under their control. The main reason to change this state of affairs is that it is not democratic, and that reason is more than enough to do so.

Illinois Reform Commission (IRC) Recommends Comprehensive Redistricting Reform

In his first executive order as Illinois governor, Pat Quinn established the Illinois Reform Commission stating that there has become a “crisis of integrity” and giving the new advisory body 100 days to issue a report recommending necessary and urgent governmental reforms (Executive Order 09-01). The IRC held eight hearings and seven town hall meetings throughout the state, receiving testimony in favor of meaningful reforms from national experts and thousands of Illinois citizens. On April 29, 2009, the IRC presented its final 100-day report to Governor Quinn with one of the key recommendations being a call for comprehensive redistricting reform.

The IRC report found:

The current system in Illinois for drawing congressional and state legislative districts following a decennial census places Illinois voters in direct conflict with the legislators who are supposed to represent them. Behind closed doors, political operatives scrutinize the voting history of constituents to draw boundaries intended to protect incumbents or draw “safe” districts for either the Democratic or Republican parties. The results are gerrymandered districts that

are neither compact nor competitive and do not serve the best interests of the people of Illinois (IRC Report 2009, 48)

At the Rock Island IRC town hall meeting, a retired citizen poignantly stated “I’m an engineer by training...why is it that Illinois doesn’t know how to draw rectangles” (Collins 2010, 77).

Indeed, as a look at Figure 3 shows, the former 17th District is the poster child for gerrymandered districts in the country. One look at the map shows it is neither compact nor contiguous. Clearly, the 17th Congressional district was drawn for political purposes and not for good government purposes.

Likewise, former Illinois Senate District 51 was clearly not compact (110 miles long and eight miles wide in parts) and was drawn by the Democrats in power to pit two Republican incumbents against each other. Former Illinois Senate District 38 had an unusual tail on the end to take in the residence of the incumbent’s fiancée. These districts are an affront to democracy. And, in the past, when Republicans were in charge of the redistricting process, the same shenanigans were played (Jackson and Prozesky, 2005, 10).

Figure 3: Illinois Congressional District 17, 2002 - 2012

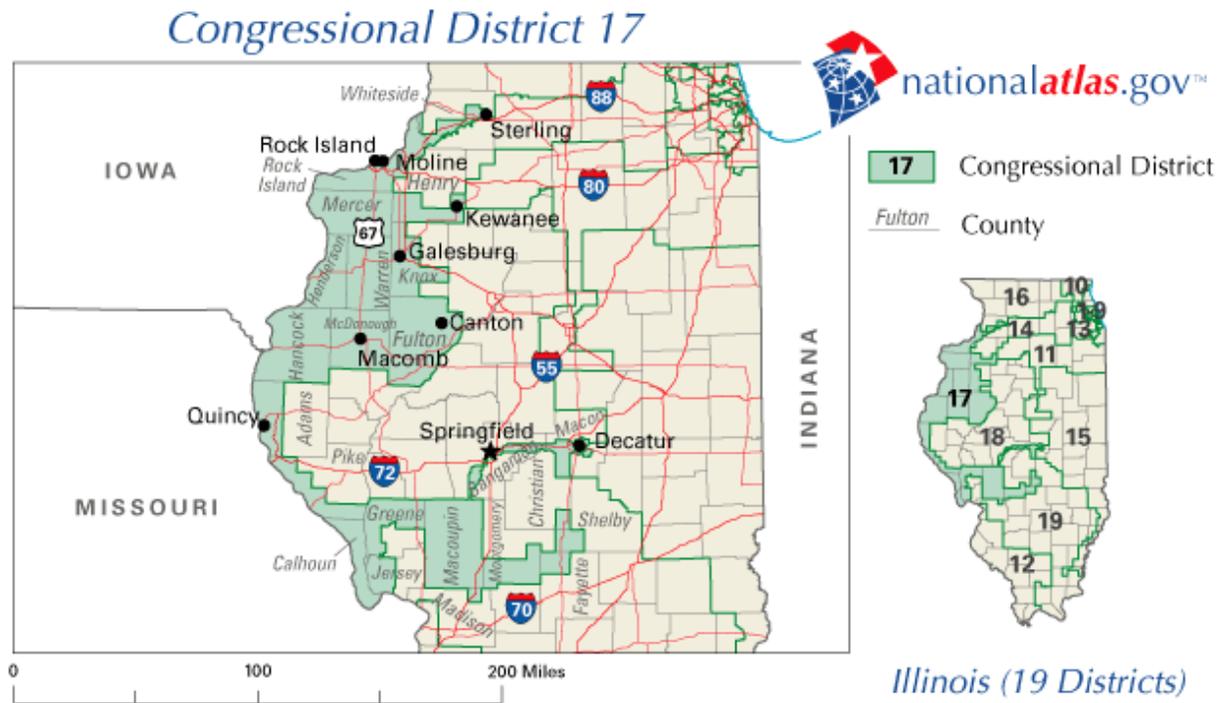
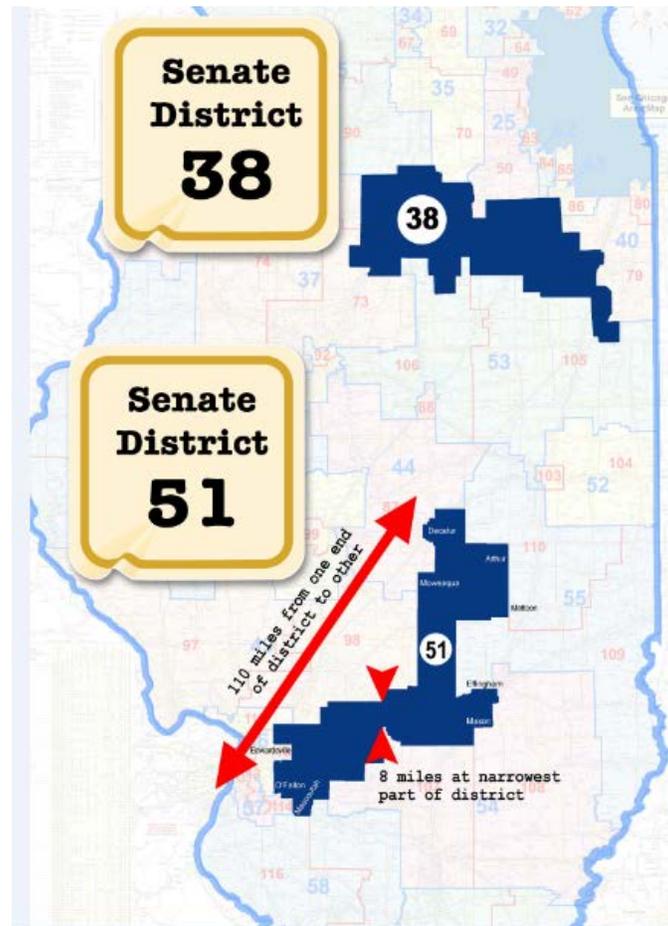


Figure 4: Illinois Senate Districts 38 and 51, 2002 - 2012



In researching redistricting reform recently taking place in other states like California and New Jersey and closely examining the Iowa model, the IRC recommended that the Illinois redistricting process be placed in hands of a five member independent, bipartisan Temporary Redistricting Advisory Committee (TRAC). The TRAC would appoint an independent, non-partisan Redistricting Consulting Firm that would use qualified computer software technicians to provide advice and guidance similar to the Legislative Service Bureau utilized in Iowa.

Importantly, the TRAC would have to hold at least five public hearings in different geographic regions of the state on the proposed maps and the commission could not consider residency of incumbent legislators, political affiliations of registered voters, or previous election results. Additionally, the IRC, recognizing the great diversity in Illinois, recommended that the redistricting process, “maximize the number of majority-minority districts consistent with the Constitution and the 1965 Voting Rights Act...to ensure that the interests of racial minorities are protected” (IRC Report 2009, 56). The TRAC maps would need two thirds majority approval of the relevant legislative voting body.

Additionally, the IRC report recommended getting rid of the crazy tie-breaker system that is currently being used. When the current redistricting process called for in the Illinois Constitution does not result in an agreed-upon map by a majority of the legislature (3 out of the last 5 times) then the Illinois Secretary of State draws a political name out of a hat. If the Republican name is drawn, they control the redistricting process, and if the Democratic name is drawn they determine the legislative boundaries for the next ten years. Illinois is the only state in America that has a “winner-take-all” lottery system. Indeed, the Illinois Supreme Court has criticized this process stating, “the rights of voters should not be part of a game of chance” (*People ex rel. Burriss v. Ryan*, 1992, 295). To alleviate this ludicrous tie-breaker system, the IRC report recommended adopting the plan proposed by Southern Illinois University’s Paul Simon Public Policy Institute wherein the Chief Justice of the Illinois Supreme Court and a Justice from the opposing political party would appoint a Special Master to oversee the redistricting process and serve as the final arbiter if the legislature failed to approve a map (IRC Report 2009, 54).

To change the redistricting process in Illinois it will take either a legislative constitutional amendment or a citizen led petition driven constitutional amendment. The IRC redistricting recommendations were, in large part, codified into Senate Joint Constitutional Amendment 69, which was never voted on by the Illinois General Assembly. For nearly six months, the IRC in good faith attempted to work with the Illinois legislature on a legislative constitutional amendment. IRC members discussed with Governor Quinn his intention to call a special legislative session on redistricting constitutional amendments which never materialized.

Illinois Fair Map Amendment

Since the Illinois legislature failed to address redistricting reform during the fall of 2009, the citizen led Illinois Fair Map Amendment spearheaded by the League of Women Voters of Illinois was launched in December 2009. The framework for the Fair Map Amendment came from the IRC recommendations but also included input from statewide reform groups and the Brennan Center for Justice, a national leader in redistricting reform and the protection of minority voting rights. In order to place the citizen led constitutional amendment on the November 2010 ballot, the coalition needed to get the signatures of 282,000 registered voters on petitions by May 2, 2010. For five months, the League of Women Voters of Illinois, the Illinois State Chamber of Commerce, the Illinois Farm Bureau, United Power for Action and Justice, and a host of other reform groups and hundreds of Illinois citizens gathered petition signatures. In the end, however, the Fair Map Amendment coalition did not gather enough valid signatures to place the question before the voters.

The Fair Map Amendment constitutional amendment language expanded the IRC's Temporary Redistricting Advisory Commission (TRAC) to nine members. All meetings of the TRAC would be made open to the public with 24 hours public notice, thus ensuring full transparency in the redistricting process. The TRAC would be required to hold at least five public hearings around the State prior to voting on any maps and would be required to hold at least three public hearings after its preliminary approval of maps to be considered by the legislature. The TRAC would be guided by stringent, established criteria:

- Echoing the verbatim language of the Voting Rights Act, "Districts must comply with all federal laws, and shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice"
- Districts shall be contiguous
- Districts shall be substantially equal in population
- Districts shall be compact
- District boundaries shall follow visible geographic and municipal boundaries, to the extent practical
- The map shall not be drawn to favor one political party
- Party registration, voting history or incumbency cannot be used to draw the maps except to ensure minority voting rights are protected
- Allows "de-nesting"—House districts need not be contained within a single Senate district

Similar to the IRC recommendations, the Fair Map Amendment required a 2/3 majority for legislative approval of the maps and provided for the Chief Justice of the Illinois Supreme Court and Justice of the opposing party appointing a Special Master if the legislature failed to approve maps. Republican legislative leaders introduced the Fair Map Amendment in the Illinois General Assembly, but the Democratic leaders did not allow a vote on it (The Illinois Campaign for Political Reform 2012).

Senate Joint Constitutional Amendment 121

Nearly four months after the Fair Map Amendment was launched, Illinois Senate Democrats introduced their own plan for redistricting reform in the form of Senate Joint Resolution Constitutional Amendment 121 (SJRCA 121). Under the proposed plan, the legislature would still directly control the map drawing process and maps would need to be approved by a simple majority. Voter history and the residence of incumbents could be considered. Thus, the plan did not attempt to take away the partisan political portion of the Illinois redistricting process. The plan did, however, contain further transparency provisions requiring the Illinois General Assembly to hold four or five regional public hearings before voting on a map. SJRCA 121 passed in the Senate but died in the House on April 29, 2010 when it failed to gain the 3/5 majority needed for passage by one vote. Ironically, before the House vote on SJRCA 121, Governor Quinn made public comments that the plan did not constitute true redistricting reform.

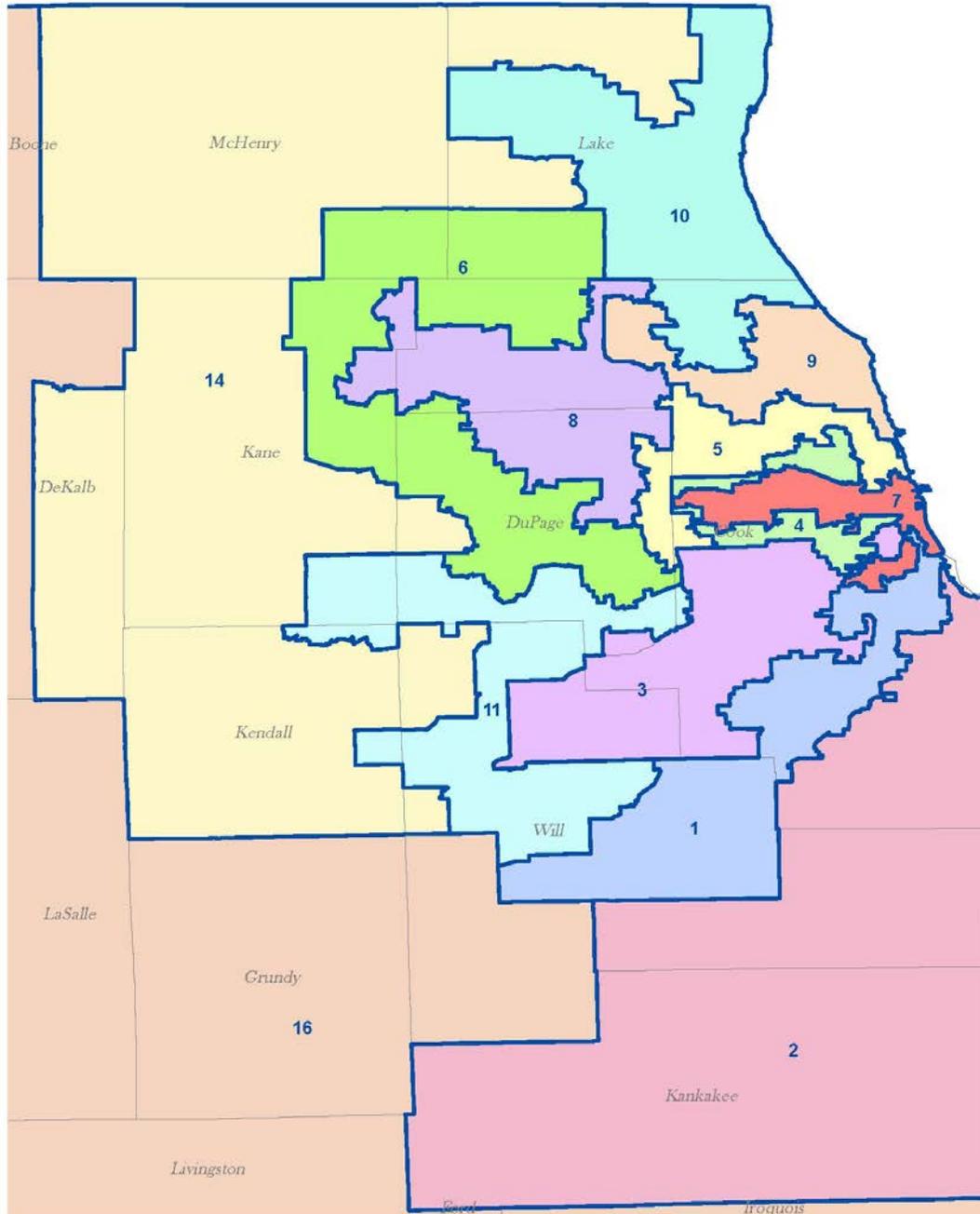
The 2012 Maps and Election Results

For the first time since the redistricting process was created in the 1970 Constitution, one party, the Democratic Party, was able to control the process without

Republican support. Not surprisingly, the 2012 state legislative and congressional maps heavily favored the Democrats and resulted in the Democrats winning a historic 40-19 seat super majority in the Senate, a super majority in the House 71-48, and flipping four United States Congressional seats to the Democrats. Both the State legislative district maps and Congressional district maps were approved without any opportunity for meaningful public input. A quick review of the boundaries of the Chicago area congressional districts shown in Figure 5 reveals the extent to which the lines were contorted to ensure safe Democratic congressional seats.

Figure 5: 2012 Chicago-Area United States Congressional Districts

Congressional Districts under Public Act 97-0014
Cook and Collar County View



The Path Forward on Redistricting Reform

Reforming Illinois's seriously flawed redistricting process has to remain a top priority until the job is finally accomplished. As stated by David Yepsen (2009) of the Paul Simon Public Policy Institute, "The single most important ethical reform Illinois could undertake is to eliminate the system that allows state lawmakers to draw their own legislative district lines...because redistricting problems sit at the core of every other reform and ethical issue facing the state." A similar sentiment was shared by Patrick Collins who chaired the IRC. "I must admit that it took some time for me to come around to the conclusion that redistricting reform was a critical, game-changing issue...I have moved redistricting reform to the top of the reform agenda" (Collins 2010, 69).

A group of advocates for redistricting reform, CHANGE Illinois, is prepared to lead the charge on a new citizen led constitutional amendment on redistricting reform. For over a year, reformers have been revising the language of the Fair Map Amendment and are close to launching the new petition drive. The hope is that the coalition will have a year and not just five months to get the necessary signatures to get this critical issue before the voters in November 2014.

The "Miracle" of Iowa

Given that the state of Illinois, despite widespread agreement that the system is purposely manipulated for partisan advantage, can't seem to accomplish meaningful reform, how did it come to pass that its near neighbor to the west was able to do so? Many of those who were in government service at the time the current system was put in place have some very interesting insights into that history. It was not always the case

that Iowa drew its legislative districts in a non-partisan fashion. For much of its history, the Republican Party controlled the redistricting process. The early history of the state is instructive.

After a “false start” in 1844-45 with a constitutional convention, a congressional resolution, and a negative vote of the people, a second try resulted in Iowa coming into the Union as the 29th State on 28 December 1846 (Racheter 2012, 3). The Constitution was revised in 1857 and the state divided into 99 counties so that anyone could ride a horse-drawn buggy or wagon to the county seat, do business, and return home in daylight (Racheter 2012, 73). This Constitution provided for a House of Representatives of no more than 100 members, with a maximum of four counties per district, and a Senate of no more than 50 members (Knapp 2008).

Early elections for both state and federal officers were dominated by the Democrats, but the slavery issue and the Civil War turned the state solidly Republican. Population was first concentrated on the eastern side of the state as people flowed into Iowa from the east and south on rivers like the Ohio and Mississippi, and eventually on railroads which crossed the state from east to west. As the population shifted to the western portions of the state, the Capitol was moved from Burlington to Iowa City, and then to its current location in Des Moines (Racheter 2012, 3).

At the federal level, the Iowa delegation to the House of Representatives consisted of two from admission in 1846 until after the census of 1860 which increased Iowa’s congressmen to six, with another bump to nine after the 1870 census (Iowa Highway Ends 2013). Word was spreading fast about the superior quality of Iowa

farmland, just as waves of immigrants from Holland, Norway, Sweden, Germany, Denmark, and other parts of Europe were seeking freedom and personal improvement by coming to the new land. Another increase to eleven representatives followed the 1880 census. That number persisted until very slow population growth in Iowa combined with faster growth in other states, and a fixed number of 435 members in the House of Representatives, resulted in decreases in the Iowa House delegation to nine (after 1930 census), eight (after 1940 census), seven (after 1960 census), six (after 1970 census), five (after 1990 census), and four (after the most recent census in 2010) (Iowa Highway Ends, 2013).

As had been the case with the original thirteen colonies, towns and cities along the coast were advantaged in representation in the legislative bodies when district lines were not redrawn as quickly, if at all, as populations shifted westward. During the time Iowa was a territory and during the early period under the Constitutions of 1846 and 1857, the House and Senate were reapportioned every two years until a gerrymander in 1886 by the dominant Republicans shaped control of the state, with minor modifications, until the post *Baker v. Carr* era of the 1970s and 80s (League of Women Voters of Iowa, 1978). Every two years until 1904, the Iowa General Assembly merely re-passed the 1886 apportionment without change, despite the rapidly shifting population within Iowa. The Constitution was amended in 1904 to increase the number of House seats to 108 from 99, by giving the largest nine counties a second Representative (League of Women Voters of Iowa 1978). Legislation passed in 1928 specified that no county could be represented by more than one Senator, so representation in both houses was more based on geography than population (League of Women Voters of Iowa 1978).

As was the case in many of the states, this inaction on Iowa reapportionment was occurring simultaneously with a vast migration of population off the farms and out of the small towns into the growing urban areas. Mechanization reduced the number of people needed to produce as much, or more, from the land and industrialization created factory jobs concentrated in the cities. This resulted in rural domination of the Iowa General Assembly and agitation by people suffering from mal-apportionment for redress. In 1941 there was a partial reapportionment which only affected five of the Senate's 50 districts, and in 1953 four additional Senate districts were reapportioned (League of Women Voters of Iowa, 1978).

In spite of the *Colegrove v. Green* (1946) case in which the United States Supreme Court declared that mal-apportionment was a "political question" not to be decided by the courts, the Iowa Farm Bureau and its rural allies saw the handwriting on the wall and decided to try to prolong their dominance of the political scene by proposing a Constitutional Amendment which would continue "one county, one Representative" in a smaller 99 member Iowa House, but create a Senate of 58 members based on area -- plus population -- in hopes of appeasing the restive urban groups. As required in Article X, section 1 of the Iowa Constitution, this amendment (referred to as the Shaff Plan) was introduced and passed in both houses of the Iowa General Assembly in 1961 and again in identical form in 1963 after the intervention of a general election in the fall of 1962. It was sent to the public for ratification in a special election on December 3, 1963, but in response to vigorous opposition from the Democrats, led by their popular Governor Harold Hughes and their labor-union allies, it lost overall, even though it passed in 64 of the 99 counties (Knapp 2008, 34).

In 1960 in *Gomillion v. Lightfoot*, the Supreme Court invalidated a gerrymander of the city of Tuskegee, Alabama and in 1962, in *Baker v. Carr*, they reversed *Colegrove*, and declared that courts should address mal-apportionment in the states. In the 1963 case of *Gray v. Sanders*, Justice William Douglas first used the phrase “one person, one vote” in striking down Georgia’s County Unit system. In May of 1963, the United States District Court for the Southern district of Iowa (*Davis v. Synhorst 1963*) agreed with the Iowa Federation of Labor that the 1904 and 1928 plans for apportionment of the Iowa House and Senate were unconstitutional, but they did not stay the December vote on the Shaff plan.

In February 1964 the Supreme Court struck down Georgia’s congressional district plan (*Wesberry v. Sanders 1964*), and in June ruled that both houses of the Alabama legislature must be apportioned based on population (*Reynolds v. Sims 1964*). Writing for the majority in the *Reynolds* case, Chief Justice Earl Warren said, “legislatures represent people, not trees or acres” (*Reynolds v. Sims 1964, 562*). A tremendous backlash swept the states, especially the more rural ones. Congressmen introduced bills to deny the court’s jurisdiction in apportionment cases, and a constitutional amendment to allow states to apportion one house of their legislatures based on area such as the U. S. Senate was proposed. Senator Paul Douglas of Illinois led a six-week filibuster to stop this effort, and so Senate Minority Leader Everett Dirksen, also of Illinois, asked the states to call for a constitutional convention to be held for this purpose (Knapp 2008). Of the required 34 states for such a procedure, 32 agreed, but that was the “high-water mark” of the effort (Knapp 2008, 7-8).

Because of the subsequent redistricting in all the states between 1964 and 1994, along with the Goldwater and McGovern challenges to the “old guard” in the Republican and Democrat parties respectively, the whole landscape of American politics was “turned on its head.” The “Solid South” shifted from Democrat to Republican, New England shifted from Republican to Democrat, and urban areas gained power at the expense of the formerly dominant “conservative coalition.”

On January 14, 1964, a federal district court in Iowa directed that a special session of the Legislature be called to deal with the unconstitutional apportionment issue, with the threat that the Court would draw the districts themselves if the political branches failed to act in a timely fashion (*Davis v. Synhorst* 1964). Governor Hughes promptly called a special session, and the Iowa General Assembly provided for two plans to deal with the problem. Plan 1 was to govern only the 1964 election, in which 59 members would be elected to the Senate based on population plus area considerations, and 124 to the House from districts each based on “equal” population (League of Women Voters of Iowa 1978, 6).

Plan 2 was a constitutional amendment to go into effect for the election of 1966 and subsequent years, but it was not re-passed in the 1965 session because of the *Reynolds* decision and the certainty it would be stuck down if challenged (League of Women Voters of Iowa 1978, 6). In April 1966, the Republicans sued on the basis that the election of 1964 had used multi-member instead of single districts and the court agreed with them in *Krudienier v. McCulloch* (1966) that multi-member districts violated the Constitution. This was codified in a constitutional amendment adopted in 1970 (League of Women Voters of Iowa 1978, 8). The Iowa General Assembly authorized a

bipartisan commission to come up with recommendations for the 1966 election, and the seven Democrats and seven Republicans produced a plan which was subsequently amended in “horse-trading” between the parties in the Iowa General Assembly, mostly to protect incumbents in each party.²

Under the plan, the Republicans maintained control of the House after the 1966 general election, but for the first time since the Depression, the Iowa General Assembly was split with the Senate controlled by the Democrats who won a majority of the 61 seats from 49 districts under the plan (League of Women Voters of Iowa 1978, 7). Since either party could now veto an attempted long-term gerrymander, the Iowa General Assembly again created a 14-member bipartisan commission to draft a plan for a 100 member House and a 50 member Senate for the 1968 election (League of Women Voters of Iowa 1978, 8).

Also in the 1968 general election a constitutional amendment was passed establishing that the Iowa General Assembly would apportion itself on the basis of population in the first year following every decennial census, and if they failed to do so, the job would fall to the Iowa Supreme Court. Compact and contiguous districts were required, and for the first time in Iowa history, crossing county lines in drawing legislative districts was allowed (League of Women Voters of Iowa 1978, 8). Citizens were given standing to sue if they thought a plan was deficient (Knapp 2008, 34).

The plan recommended by the commission was again subject to lots of “horse-trading” amendments to protect incumbents before it was adopted in 1969 by the Republicans who again controlled both Houses after re-taking the Senate majority in the

1968 general election, and signed into law by newly elected Republican Governor Robert Ray. Clifton Larson, the Chairman of the Iowa State Democratic Party, brought suit alleging it was unconstitutional and in early 1970 the Iowa Supreme Court agreed (Cook, 2007, 2; *In re Legislative Districting of General Assembly* 1972), but they allowed the election of 1970 to take place under the plan anyway!

Remaining in control after the 1970 election, the Republicans asked the well-regarded Legislative Service Bureau (LSB) to come up with new plans taking into account the 1970 census data and the various applicable court decisions, and Phil Burks, the Senior Research Analyst who was the LSB expert in the area again asked University of Iowa Professor of Systems Engineering John M. Liittschwager, who had assisted in drawing up the 1969 plan, for help (Burks 1979). At the time, the University was the only one in the State with a powerful enough mainframe computer to handle the computational load necessary to do the districting according to the criteria laid down by the courts (Liittschwager 1978; 2013). They came up with 12 plans, and the majority Republicans picked the one which they thought would give them the most advantage in the 1972 election. Governor Ray signed it into law on March 8, 1971 (Knapp 2008, 40).

The Iowa Civil Liberties Union (ICLU), the Iowa League of Women Voters (ILWV), the Iowa Federation of Labor (IFL), the United Auto Workers Union (UAW), and the Iowa Democrat Party (IDP) jointly sued to have the new plan declared unconstitutional, since the changes to the original plans were designed to protect incumbents rather than improve the equality of the districts' populations (Lloyd-Jones 2013). On January 14, 1972, the Iowa Supreme Court unanimously declared the 1971 plan void and took it upon itself, with the assistance of Burks, the LSB, and

Liittschwager and his team at the University of Iowa to come up with a better plan. This was accomplished by April 1, and the plan had a variance between the largest and smallest districts of .009 versus the variance of 3.8 in the former Iowa General Assembly plan (*In re Legislative Districting of General Assembly 1972*).

The districts might have been nearly equal, but they weren't pretty. One representative had his house in one district, but his barn in another. Don Avenson, who went on to become the Leader of the Democrats in the House, then Speaker, and who now is a lobbyist, angrily whipped out a pen and paper upon being asked about his district under the court's plan, drew the outline of his district, and pointed out that he had parts of four counties, had a single town from one county, had a town whose township was in another district, and had half of another town (Avenson 2013).

The Iowa legislators did not like the court's encroachment on their institutional autonomy, and determined to come up with an apportionment plan that would not be struck down according to former Representative and former Senator David M. Stanley (2013). The legislators thought the courts did a terrible job in the plan they imposed for the 1972 election (Schroeder 2013). The implication was that the Iowa General Assembly could do a much better job without the courts interfering (Horn 2013). Most legislators also at least paid lip service to the idea that fair apportionment was "the right thing to do" and that something needed to be done to address the "one man, one vote" edict of the Supreme Court (Neu 2013).

The Democrats had the added incentive that they believed they would gain seats under a fairer apportionment which gave more seats to urban districts where their

supporters were concentrated, and taking them from rural districts which traditionally in Iowa had supported Republicans (Avenson 2013). Indeed this proved to be the case, as the number of Democrats in the House increased to 45 under the court ordered plan, and once the subsequent non-partisan LSB plan was adopted, they took control (Avenson 2013). This gives rise to the “\$64,000 question” of why the dominant Republicans gave up their ability to gerrymander and adopted a long-range plan for non-partisan redistricting, creating the “Miracle” of Iowa.

Many, Republicans and Democrats alike, were of the opinion, “to the victor go the spoils.” While acknowledging the necessity for any Iowa reapportionment plan to meet, “population standards delineated by the United States Constitution,” they attempted to create “wiggle room” for factors in addition to population if they were allowed by the Supreme Court in other states (Burks 1977, 3-4). Senators Elizabeth Shaw, Philip Hill, Richard Ramsey, Richard Drake, and David Readinger introduced Senate Joint Resolution (SJR) 10 in 1977 which would have pushed back the deadline for coming up with a plan from September 1st of the first year of each decade to January 15th of the second year as well as allowing more population variation (Burks 1977, 1).

One can speculate that the Iowa Republicans were encouraged by the replacement of Earl Warren by William Rehnquist as Chief Justice of the Supreme Court, and by the evolving reapportionment standards in cases like *Mahan v. Powell* (1973), *Gaffney v. Cummings* (1973), and *White v. Regester* (1973) in which variance from strict equality was allowed if it, “may reasonably be said to advance the rational state policy of respecting the boundaries of political subdivisions” (Wollock 1980, 11-14). However, HJR 10 did not pass, and after the 1978 election Reid W. Crawford,

Chairman of the House State Government Committee appointed a sub-committee composed of Republicans James Anderson and Nancy Shimanek (Chairman), and Democrat Jean Lloyd-Jones (who as President of the ILWV had been a party to the suit invalidating the 1971 plan) (Crawford 1979; Lloyd-Jones, 2013; Shimanek, 2013).

The plan they produced specified that the Legislative Service Bureau was to provide plans for both congressional and Iowa General Assembly redistricting by April 1st of the first year after each decennial census; the Iowa General Assembly must vote on the plan -- without amendment -- within seven days. If defeated, the LSB must produce a second plan by May 1st. Again the Iowa General Assembly has seven days to act and may only vote the plan up or down, not amend it. If defeated, the LSB must produce a third plan by June 1st and this plan can be amended. If a plan is not adopted by the Iowa General Assembly by September 1st, the Iowa Supreme Court was to again draw up a plan in time for the elections in the second year after the census (Cook 2007). Both congressional and legislative districts would have to be as equal in population and as compact and contiguous as possible.

More importantly for preventing gerrymandering, the LSB is forbidden to take into account previous election results, current voting registration figures, or the residences of any incumbent representatives (Garrison and Kaufman 1981). In order to make the job more manageable, according to Professor Liittschwager, they would first draw the number of congressional districts to which Iowa was entitled, then fit (an equal number if possible) the state Senate seats within those districts, and finally divide each Senate district into two House districts. The task was very labor intensive, because while the computer could crunch the census numbers, there were no computerized mapping

programs available, and the results had to be transferred to maps by hand (Liittschwager 2013).

In her notes prepared for the debate on the bill which she ran on the floor of the House, Representative Shimanek characterized the plan as “Fair, Efficient, & Workable,” “Constitutionally Valid,” and “Politically Feasible” (Shimanek n.d.). She went on to emphasize that the elected legislature, not an appointed court or administrative body, should make districting decisions. Further, while the legislative process would be a political one, gerrymandering and “horse-trading” to protect incumbents could be discouraged under this bill because of the objective, strict standards for population equality, compactness, and contiguousness, and because the burden would be on the Iowa General Assembly to defend any deviations if an adopted plan was subject to court challenge (Shimanek n.d.).

In reporting the outcome, the *Cedar Rapids Gazette* (Editorial Board, 1979b) said on Sunday April 8, 1979:

The Iowa House, composed of 56 Republicans and 44 Democrats, voted 97-0 the other day for a bill assigning the initial task of drawing new legislative and congressional Districts, based on the 1980 census, to the Legislative Service Bureau. Any time the House votes unanimously for anything other than non-controversial measures, it is news. And any time the vote is 97-0 (it probably would have been 100-0 if three members hadn't missed the roll call) for a bill containing the word “reapportionment,” it borders on earth-shaking news.

In its discussion of the process, the *Des Moines Register* (Editorial Board 1979a) reported on March 19, 1979, that Jean Lloyd-Jones and Reid Crawford who had initially favored a bi-partisan commission approach pushed by Common Cause and supported by Governor Ray, had switched to the LSB non-partisan plan as superior. Crawford was cited as fearing that the commission system left the door open to district trade-offs

to protect incumbents and the parties at the expense of the people. They especially approved of the first two plans put forward by the LSB being not amendable as a bulwark against gerrymandering.

The Senate fell in line and this approach became law in Iowa. There have been some minor amendments; for example, the number of days the LSB has to prepare a plan is pushed back by the same number of days the US Census Bureau is late in delivering the data required. But nothing has changed the main thrust of the “non-partisan miracle” (Cook 2007). In the time it has been used it has never gone to the amendable third plan. When popular Republican Congressmen Tom Tauke and Jim Leach were put into the same district by the first plan, the first plan was rejected, but the second adopted (Knapp 2008, 12). There have been as many as 20 of the 100 House members in a district with another incumbent, but that still leaves 80 who are not, and as much as they might want to vote “no” on the first plan to help these friends out, they want to vote “yes” on plan one even more in hopes of avoiding being one of those thrown in with another incumbent in the subsequent plan – “better the Devil you know, than the Devil you don’t.”

So what can we conclude are the reasons the majority Republicans gave up the power to gerrymander? One of us, Don Racheter, has had extensive contact with members of the Iowa legislature and based on his conversations with these affected legislators, it appears to be a combination of the following four factors. Even within a majority party, there are those members close to the leadership, and those who are “back-benchers,” who might be gerrymandered out of a seat if they cross the leaders. Voting for a non-partisan plan minimizes this risk. Much more significant was the

resentment of the Court stepping in, at the request of the Democrats and their allies, and infringing on the institutional autonomy of the General Assembly. Closely tied to this was the belief that the Court had botched the job, and the Iowa General Assembly acting through the LSB could do a much better job. Finally, there were a significant number of upstanding Republican members of the Iowa General Assembly who, like Representative Shimanek, just thought “it was the right thing to do” (Shimanek 2013).

Is it possible that these conditions can be replicated in other states like Illinois to move them from gerrymandering to non-partisan redistricting? It seems very unlikely. We have seen both Democrats and Republicans carve up congressional and legislative districts for partisan advantage in Texas, California, and other states even while carefully meeting the court imposed “population equality” criteria through usage of ever more powerful and convenient computer programs. There no longer is a cadre of moderate “Ray Republicans” in Iowa or other states, and the moderate “Blue Dog” Democrats also seem to be a vanishing species. Congressmen and legislators are more afraid of a primary challenge from the left or the right if they are seen as insufficiently liberal or conservative respectively than worried about prevailing in the general election. Incumbency has replaced other factors in most easily explaining election outcomes in America.

What Must Be Done in Illinois to Guarantee Meaningful Participation by Our Citizens

Noted scholars in the area of democratic theory Seymour Martin Lipset (1959) and Samuel Huntington (1991) both have argued forcefully that in order for democracy to thrive, the incumbents must have a realistic chance of losing an election. So long as

the state of Illinois purposefully gerrymanders its legislative districts to favor incumbents and the political party in power, many legislators have no chance of losing an election. The current process allows for packing, cracking, and stacking, and that must change.

The comparison between the miserable failures of the State of Illinois to address citizen demands for reform in the reapportionment process with the “miracle” in Iowa could not be starker. While the leaders of the Illinois General Assembly maneuvered to avoid meaningful reform, the citizens of Iowa enjoyed a fair reapportionment process once again. As a result of a map drawn by the Democratic leadership of the Illinois General Assembly, three incumbent Republicans were pitted against each other in the 2012 election.

The leaders of the Illinois General Assembly had ample opportunity to study the success in Iowa because Governor Quinn’s Reform Commission presented them with a well-researched proposal based on a modified Iowa model. Experts told them in open hearings how it could work and the benefits it could bring. The treatment of the experts who testified was, in the view of two of the authors, shabby and disrespectful. If that were not enough, the Fair Map initiative presented an opportunity to improve the process, based on a proposal drafted with the assistance of the Brennan Institute, hardly known as a bastion of Republicanism, but the Democratic leadership of the Illinois General Assembly went out of their way to attack the Fair Map proposal, falsely claiming it did not protect minority voting rights.

While the exact process used in Iowa may not translate perfectly to Illinois, creating a redistricting process that ignores the way precincts voted in the last

presidential election, the residences of incumbents, and that respects existing city and county political boundaries would be a huge step forward. Having boundaries that are compact and contiguous would be nice as well. In Iowa, they still know how to draw a rectangle. If only Illinois political leaders could learn that skill, it would be an improvement. One of the authors of this paper is actively involved in the CHANGE Illinois effort which will attempt to bypass the legislative leadership via a citizen-led redistricting constitutional amendment. Indeed, a recent Paul Simon Public Policy Institute (2012, 11) poll of registered voters found that 70% of respondents favored taking the map making power away from the General Assembly and giving it to an independent commission.

In California, the adoption of two different reforms, including a non-partisan mechanism for drawing legislative districts, has resulted in districts that are more compact and slightly more contiguous (Cain 2012, 1828). In addition, the Public Policy Institute of California (McGhee and Krimm, 2012) reported that the 2012 election had more competitive races for both state legislative seats and United States House seats than had been the case under previous maps drawn with an eye towards partisan or incumbent advantage. Turnover was also greater than in past election cycles (McGhee and Krimm, 2012) an important fact given that one of the criteria for democracy is that incumbents have a realistic chance to lose an election. In Arizona, several congressional races were very close and not finally decided for days after the 2012 election (Sanders 2012). There was also substantial turnover at both the state and national level (Sanders 2012). The experience of these two states provides evidence in

support of the idea that a non-partisan commission can do a better job of drawing competitive, compact, and contiguous districts.

There are numerous ways to measure the effects of reform efforts. The relative competitiveness of races, the number of existing political boundaries that are crossed by legislative districts, the degree to which minority populations have a realistic chance to elected members of their communities to leadership positions, are all valuable things to know, but one criterion stands above all these in a state racked by political corruption and scandal. That criterion is legitimacy. When the citizens perceive that the process is rigged, they do not accord legitimacy to the results of the election. The lack of legitimacy percolates throughout the system. Citizens become fed up with an unfair system that is more focused on keeping political power than serving the public's best interests.

In addition, there is a lack of legislative accountability which results in a lack of leadership to tackle the critical issues facing Illinois. Following the 2000 remapping process, 98% of state legislative incumbents won re-election in 2002 (Collins 2010, 73). By drawing "safe" legislative districts incumbents have stacked the deck in favor of their re-election. And, they continue to avoid addressing the financial mess and pension debacle that makes Illinois one of the worst states in the nation on these issues. Since their re-elections are virtually assured, state legislators can keep kicking the can down the road.

The legislative leaders in Illinois have no incentive to allow real reform. A popular movement must be started and nurtured to overcome their resistance. This

can't be done by proposing a new legislative constitutional amendment. That effort will fail in the legislature. It has to be done by demanding, in a loud and unmistakable chorus, that the citizens of Illinois will not accept the status quo. Mobilization efforts must be grass roots based and persistent. We cannot wait until 2019 to do anything. Two of the authors of this paper (Curtis and Racheter) argued in March of 2006 that the effort to reform redistricting needed to start then. Despite the best efforts of some very dedicated people, the process ended with no real reform. It is too important to leave it to the Illinois General Assembly. If we want fundamental reform in Illinois, ordinary citizens will have to rise up and turn Illinois in a better direction by signing petitions to place a citizen-led constitutional amendment on the November 2014 ballot. It will take "people power" to overcome entrenched political power. After all, Illinois is the land of Lincoln, Paul Simon, and other dedicated public servants who knew that serving the public's best interests, not preserving their own power, should be priority number one in a thriving democracy.

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Endnotes

¹It should be noted that some commentators argue that the reason for the low turnover and increased partisanship in recent elections has more to do with the changes in the electorate than with the redistricting process (see e.g. Abramowitz, Alexander, and Gunning, 2006).

²On more than one occasion, former State Senator Cloyd “Robby” Robinson has told Don Racheter that a Republican Senator came up to him at his desk on the floor of the Iowa Senate, laid out a map of the Cedar Rapids area, and asked Robby to indicate where he lived. When the map for the Senate districts came out, Robby’s cul-de-sac was appended to a Democrat heavy district, while his neighbors were in a different Republican dominated one. Robby served in the Iowa Senate from 1971-81.